

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D34033  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 27, 2012

RUTH C. BALKIN, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
JEFFREY A. COHEN, JJ.

---

2010-11981  
2011-03103

DECISION & ORDER

Christopher C. Evans, etc., appellant, v City of  
Mount Vernon, et al., respondents, et al., defendant.

(Index No. 15233/08)

---

Brodsky & Peck, Harrison, N.Y. (Beverly T. McGrath of counsel), for appellant.

Bond, Schoeneck & King, PLLC, Garden City, N.Y. (Howard M. Miller, Terry  
O'Neil, and Hilary L. McHugh of counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from (1) an order of the Supreme Court, Westchester County (Smith, J.), dated October 28, 2010, which granted the motion of the defendants City of Mount Vernon and City of Mount Vernon Fire Department for summary judgment dismissing the complaint insofar as asserted against them, and (2) an order of the same court dated February 8, 2011, which denied his motion for leave to renew and reargue.

ORDERED that the order dated October 28, 2010, is affirmed; and it is further,

ORDERED that the appeal from so much of the order dated February 8, 2011, as denied that branch of the plaintiff's motion which was for leave to reargue is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order dated February 8, 2011, is affirmed insofar as reviewed; and it is further,

February 21, 2012

Page 1.

ORDERED that one bill of costs is awarded to the respondents.

On March 14, 2006, Christopher C. Evans, then age 14, sustained injuries when he was pushed to the ground by Delio Valdes, a fire safety inspector for the City of Mount Vernon Fire Department. Evans, by his mother and natural guardian (hereinafter the plaintiff), commenced this action against the City of Mount Vernon and the City of Mount Vernon Fire Department (hereinafter together the municipal defendants), alleging vicarious liability and negligent hiring and supervision with respect to Valdes, and against Valdes individually.

An employer is vicariously liable for the acts of its employee committed within the scope of employment and in furtherance of the employer's business (*see Fernandez v Rustic Inn, Inc.*, 60 AD3d 893; *Schuhmann v McBride*, 23 AD3d 542; *Brancato v Dee & Dee Purch.*, 296 AD2d 518; *Vega v Northland Mktg. Corp.*, 289 AD2d 565, 566). The municipal defendants established their prima facie entitlement to judgment as a matter of law as to the vicarious liability cause of action by showing that Valdes's conduct in pushing the plaintiff was not within the scope of his employment. In opposition, the plaintiff failed to raise a triable issue of fact (*see Schuhmann v McBride*, 23 AD3d 542; *Vega v Northland Mktg. Corp.*, 289 AD2d at 566).

To establish a cause of action based on negligent hiring and supervision, it must be shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury (*see Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801; *Carnegie v J.P. Phillips, Inc.*, 28 AD3d 599, 600). The municipal defendants established their prima facie entitlement to judgment as a matter of law as to the negligent hiring and supervision cause of action by showing that they were not on notice that Valdes allegedly had violent propensities (*see Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801; *Carnegie v J.P. Phillips, Inc.*, 28 AD3d at 600). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324-325; *Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801; *Carnegie v J.P. Phillips, Inc.*, 28 AD3d at 600; *Zanghi v Laborers' Intl. Union of N. Am., AFL-CIO*, 8 AD3d 1033, 1034-1035).

Accordingly, the Supreme Court properly granted the motion of the municipal defendants for summary judgment dismissing the complaint insofar as asserted against them and denied that branch of the plaintiff's motion which was for leave to renew.

BALKIN, J.P., DICKERSON, BELEN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court