

**Siklas v Oceanside Union Free School Dist.**

2007 NY Slip Op 33481(U)

October 19, 2007

Supreme Court, Nassau County

Docket Number: 9218-06/a

Judge: Thomas Feinman

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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU**

Present:

**Hon. Thomas Feinman**  
Justice

VASILIOS SIKLAS, an infant , by his mother and  
natural guardian, MARIA PAPADATOS-SIKLAS,  
and MARIA PAPADATOS-SIKLAS, Individually,

Plaintiffs,

- against -

OCEANSIDE UNION FREE SCHOOL DISTRICT,

Defendant.

TRIAL/IAS, PART 22  
NASSAU COUNTY

INDEX NO. 9218/06

MOTION SUBMISSION  
DATE: 10/16/07

MOTION SEQUENCE  
NOS. 001, 002

The following papers read on this motion:

Notice of Motion and Affidavits.....	<u>  X  </u>
Notice of Cross-Motion and Affidavits.....	<u>  X  </u>
Affirmation in Opposition.....	<u>  X  </u>
Reply Affirmation.....	<u>  X  </u>

The defendant, Oceanside Union Free School District, moves for an order pursuant to CPLR §3212 granting the defendant summary judgment dismissing plaintiffs' complaint in its entirety. The plaintiffs cross-move for an order pursuant to CPLR §3212 granting summary judgment to the plaintiffs against the defendant on the issue of liability on the grounds that the defendant was negligent as a matter of law inasmuch as its actions were the proximate cause of the foreseeable injuries sustained by the infant plaintiff. The plaintiff submits opposition to the defendant's motion. The defendant submits opposition to the plaintiffs' cross-motion and a reply affirmation to its motion. Plaintiffs submit a reply affirmation in support of plaintiffs' cross-motion.

BACKGROUND

The infant plaintiff, Vasilius Siklas, initiated this personal injury action as a result of an incident that occurred on September 7, 2005 at 12:00 p.m. at the Oaks School, School #3, located at 2852 Fortesque Avenue, Oceanside, New York, at or near the doorway by the northwest exit by Room A-6 of the cafeteria. Plaintiff, a fourth grader at the time, claims that his fourth grade teacher escorted his class from the cafeteria and headed towards their classroom. Plaintiff provides that on the way to the classroom, his fourth grade teacher instructed the class to stop and line up at or near fire doors by the northwest exit. These fire doors are wooden double doors, swinging doors, that students use to exit to and from the playground. Plaintiff testified that his class was lined up and stopped in front of the swinging doors for approximately seven minutes while plaintiff's teacher, approximately a foot away, spoke with another first grade teacher. Plaintiff claims that he stood in front of the swinging doors at the teacher's direction and apparently, the swinging door slammed on his finger severing his finger tip in the doorway, causing amputation of plaintiff's finger as a result. The plaintiff testified that he was leaning against the second of the two swinging doors, where the door meets the frame, when someone went through, and as the door was closing, his finger got stuck.

Mrs. Stark, plaintiff's fourth grade teacher, testified that the incident occurred in the school hallway during the first week of school. Mrs. Stern described the general routine in effect at the time of the incident used to transport students from the cafeteria to the classroom. This routine involved cafeteria lunch monitors who lined up the class, double file in the cafeteria, and then, the teacher would pick up the students. Mrs. Stern picked up her students, stopped at certain designated "stop points" on the way, walked towards the middle-back of the line to supervise students as they walked, and then caught up with the students at the front of the line. Mrs. Stark testified that she stopped the line just long enough to answer a question from the first grade teacher. Mrs. Stark claims she was first alerted to plaintiff's accident when she heard someone scream out her name, plaintiff then approached her, and showed her his finger. Mrs. Stark asked another student to take plaintiff to the nurse's office. Mrs. Stark testified that she was unaware of any prior incidents involving a student getting a finger caught in a school door. Mrs. Stark also testified that since the incident occurred, she no longer stops her classes in front of the swinging doors.

The defendant asserts that the plaintiff's description of how the accident occurred is a "fictional account at best" in that the swinging doors only move "outward" and if plaintiff's description were true, then plaintiff's own actions were the sole cause of the incident as plaintiff apparently leaned against the door with his hand behind him, against the door frame and door. Defendant argues the plaintiff's accident was not a foreseeable injury and was not the result of inadequate supervision.

The plaintiff argues that the defendant created a dangerous condition when Mrs. Stark directed her class, more specifically, the plaintiff, to stand and wait in front of wooden swinging doors that lead to and from a playground at lunchtime, a time when a majority of the students are coming and going from the playground, in an area which plaintiff described as "high traffic area" for seven minutes. Plaintiff submits that it is reasonably foreseeable that the "active swinging doors" would open. Plaintiff claims that the defendant created the dangerous condition by placing plaintiff in front of an active swinging door and directing plaintiff not to move until further instructions from the teacher. Further, plaintiff claims the plaintiff's teacher was negligent in her supervision of the plaintiff's class, and more particularly, the plaintiff, in that plaintiff's teacher not only negligently placed the class in front of the subject doors, but, was apparently so engrossed in conversation with another teacher that plaintiff had to run up to his teacher to alert her about the plaintiff's injury.

The plaintiff refers to a decision of the Honorable Justice Franco dated December 5, 2003, in a separate Supreme Court, County of Nassau action entitled *Cosey Densing v. Oceanside Union Free School District*, bearing Index No. 4771/02. That action involved an incident that occurred on March 27, 2001 at the Walker Boardman Elementary School, another elementary school in the defendant's district. In that case, a fourth grader lost the tip of his right middle finger as a result of his hand becoming caught in a door that he was required to open to return to a gym class from a visit to the bathroom. Apparently, that school's policy was that the double doors were to remain in an open position during school hours, except in the case of a fire drill. Plaintiff refers to the incident as defendant's prior notice of a similar incident.

### APPLICABLE LAW

It is well settled that a school is under a duty to adequately supervise the students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision. (*Mirand v. City of New York*, 84 NY2d 44, citing *Lawes v. Board of Education*, 16 NY2d 302; *Decker v. Dundee Cent. School Dis.*, 4 NY2d 462). The school is not an insurer of safety, however, and cannot be reasonably expected to continuously supervise and control all movements and activities of students, and therefore, are not to be held liable "for every thoughtless or careless act by which one pupil may injure another" (*Id.*, citing *Lawes, supra*; *Ohman v. Board of Educ.*, 300 NY 306). The nature of the duty owed was set forth in the seminal case of *Hoose v. Drumm*, 281 NY 54, whereby a teacher is charged to exercise such care of a student as a parent of ordinary prudence would observe in comparable circumstances. The duty owed derives from the simple fact that while a student is in school, the school is assuming physical custody and control over its students, effectively taking the place of the parent and guardian. (*Id.*, citing *Pratt v. Robinson*, 39 NY2d 554, 560). In determining whether a duty to provide adequate supervision has been breached by the school, it must be established that the school authorities had "sufficient specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated." (*Id.*) Actual or constructive notice to the school of prior similar conduct is generally required because school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place on a daily basis among students. (*Id.*) "Even if a breach of the duty of supervision is breached, the inquiry is not ended, the question arises whether such negligence was the proximate cause of the injuries sustained." (*Id.*)

In *Sellek v. Board of Education of Central School District*, 276 AD 263, the Court found that there was no proof of a dangerous condition of the school property, but, a jury might find that the unrestricted bicycle riding on the part of the grounds where small pupils congregated created a dangerous condition. There were no rules or regulations thereto and in such absence, the Court found that a jury may find that the supervision was inadequate. The Court stated that whether the failure of the defendants was a proximate cause of the accident is an issue over which reasonable minds might differ, and hence an issue of fact arose which was for the jury to resolve. (*Id.*) "As far as the issue of notice is concerned, it was for the jury to say whether defendant in the light of all the circumstances should have known that a situation of some danger existed." (*Id.*) Additionally, it is also well-settled that generally, "[w]here acts of a third person intervene between defendant's conduct and plaintiff's injury, the causal connection is not automatically severed, and in such case, liability turns on whether the intervening act is a normal or foreseeable consequence of the situation created by defendant's negligence. (*Derdiarian v. Felix Contracting Corp.*, 51 NY2d 308).

DISCUSSION

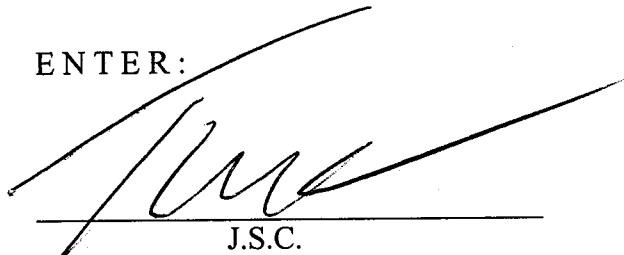
The majority of cases that the defendant relies on are readily distinguishable from the case *sub judice*. Here, the act of another person using the subject doors is not the type of sudden, spontaneous, unforeseeable or thoughtless act which could not have been reasonably anticipated. Additionally, the incident of plaintiff's finger getting stuck between doors while plaintiff was told to stand in front of such doors is not the type of sudden, spontaneous, unforeseeable or thoughtless act which could not have been reasonably anticipated. It cannot be determined, as a matter of law, that the third party act of opening the door could not have been reasonably anticipated. Further, the incident that occurred herein, whereby plaintiff's finger got stuck in the doors, while plaintiff was standing in front of the door, was not the sort of unexpected or unreasonably anticipated event that could not be prevented. Likewise, while the act of another person opening the door may not be the basis alone for liability, the affirmative act of the teacher in placing the students, more particularly the plaintiff, in front of "active" doors, thereby depriving the students of an opportunity to use their own judgment in moving away or standing somewhere else, may constitute an act of negligence. The claim that the teacher was actively engaged in conversation with another teacher while the student was placed by the doorway for a period of time is another factor that a jury may consider.

Additionally, the defendant's submission that plaintiff's testimony is contradicting, in that plaintiff testified the swinging doors opened only "outward" and later testified the doors opened "inward" and "outward", and therefore, plaintiff's account is "fictional", is insufficient to warrant summary judgment dismissing plaintiff's claim. Clearly, in any event, the door closed on plaintiff's finger whereby plaintiff's finger was severed.

In the case at bar, a question of fact exists as to whether the placement of the children in front of the doors created a dangerous condition, and whether the teacher's conduct in placing the student by the doorway and in engaging another teacher in conversation was a proximate cause of the accident. Whether such failure of the defendant is a proximate cause of the accident is an issue over which reasonable minds may differ, and hence, an issue for the trier of fact.

In light of the foregoing, the defendant's motion and the plaintiff's cross-motion for summary judgment are hereby denied.

ENTER:



J.S.C.

**ENTERED**

Dated: October 19, 2007

cc: Day & Associates, P.C.  
O'Connor, O'Connor, Hintz & Deveney, LLP

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NEW YORK COUNTY  
COUNTY CLERKS OFFICE