SCAN

SHORT FORM ORDER mg,mg

SUPREME COURT - STATE OF NEW YORK

Present:

HON. UTE WOLFF LALLY,

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

JODY RAVNER, individually and as administrator of the estate of Matthew Joseph Ravner, deceased,

Plaintiff(s),

-against-

FRANK AUTUN, FRANK P. AUTUN, JERICHO UNION FREE SCHOOL DISTRICT and CHOICE SECURITY CO., INC. d/b/a Choice Security Service,

Defendant(s).

MOTION DATE: 1/3/08
INDEX No.:9556/06
MOTION SEQUENCE NO:1,2

CAL. NO.:2007H3200

The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....	1-5
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Answering Affidavits.....	9-13
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Briefs:	

Upon the foregoing papers, it is ordered that the motions by defendants Jericho Union Free School District (hereinafter "Jericho") and Choice Security Co., Inc. d/b/a Choice Security Service (hereinafter "Choice") for summary judgment dismissing the complaint and all cross-claims against them are granted.

This action concerns Matthew Ravner, a senior at Jericho High School, who died in a tragic accident in the school's "Senior Parking Lot" on September 9, 2005, at approximately 11 a.m. Matthew Ravner was killed when he fell off the running board and under the rear wheel on the passenger side of a friend's moving Ford Excursion as the vehicle moved away.

Defendant Frank Autun, a fellow senior, was the driver of the Excursion. He and three other students, Paul Chung, Alberto Moreno and Dino Suric, were in the vehicle at the time of the accident. They were returning to the high school after purchasing lunch. Matthew Ravner was walking toward the school with another student, Angelo Fuschetto, when he stopped to say hello as the Excursion

stopped. After what Frank Autun describes as "a few seconds," he says he stepped "lightly" on the gas and the vehicle began "rolling forward" when he felt the vehicle go over a bump. The speed of the vehicle was allegedly "between five and ten miles per hour."

Frank Autun says that Matthew Ravner had jumped up on the running board when the vehicle first stopped and the students were conversing, but that he saw Matthew Ravner jump off the running board right before Autun began moving the vehicle forward. Angelo Fuschetto states that Autun was driving "fast." Alberto Moreno testified that Matthew Ravner jumped onto the car while the vehicle was moving. The speed limit at the school for the 2005-2006 school year was fifteen miles per hour.

When the subject accident occurred, the Senior Parking Lot was unsupervised. In 2005 three security guards were employed. Winston Webb, the security guard on Jericho's custodial staff on duty at time of the subject incident, was not at his assigned post because he left the school campus on a personal errand. Mr. Webb testified that, on a daily basis, after supervising the senior parking lot between 8:00 a.m. and 9:00 a.m., he was required to patrol the entire school campus, in addition to the Senior Parking Lot. Although he could not recall the exact hour of the lunch break for seniors, he testified that he was generally manning the Senior Parking Lot during the senior lunch break.

Plaintiff argues that Jericho's failure to properly supervise the Senior Parking Lot is a proximate cause of Matthew Ravner's death. They insist that such proper supervision would have required a security guard to be present in the parking lot at all times, and such security guard would have been instructed and trained to direct Matthew Ravner to get off of the running board of the Excursion in the first place. According to plaintiff, had Mr. Webb been at the Senior Parking Lot at the time of this incident, he would have been stationed at the entrance to the parking lot, very close to where the Autun vehicle stopped the first time.

Jericho submits evidence from an expert who opines that "there is nothing that the School District could have done or should have done which would have prevented the tragic accident in question". Plaintiff's expert, in contrast, opines that "this accident would not have taken place had a comprehensive and well thought out policy been set and enforced by" Jericho.

Summary judgment is the procedural equivalent of a trial (*SJ Capelin Assoc. Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 341). The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material

issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557). Once the movant makes its *prima facie* showing, the burden shifts to the opponent, who must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial (*Alvarez*; *Zuckerman*, supra). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient (*Zuckerman*, supra). Summary judgment will not be defeated by surmise, conjecture or suspicion (*Shaw v Time-Life Records*, 38 NY2d 201, 207).

A school owes it to the students to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances; however school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students daily (*Mirand v City of New York*, 84 NY2d 44, 49). Moreover, when an accident occurs in so short a span of time that even the most intense supervision could not have prevented it, any lack of supervision is not the proximate cause of the injury, and summary judgment in favor of the defendant school district is warranted [*Ronan v School District of City of New Rochelle*, 35 AD3d 429, 430 (no school liability when students collide during gym class); *Swan v Town of Brookhaven*, 32 AD3d 1012 (no school liability for child's act of going over the side of a playground slide); *Convey v City of Rye School District*, 271 AD2d 154, 160 (no liability for students throwing pine cones); see also *Velez v Freeport Union Free School District*, 292 AD2d 595 (no school liability for assault after chase through locker room) ; *Lopez v Freeport Union Free School District* , 288 AD2d 355 (no school liability where student injured on jungle gym apparatus); *Janukajitis v Fallon*, 284 AD2d 428 (school not liable for injuries to student hit by stick)].

Schools are not insurers of safety [*Mirand, supra*]. In the context of negligence, constant supervision of high school students is not required [*Johnsen v Carmel Central School District*, 277 AD2d 354 (no school liability for student injured in hallway altercation); *Convey; Barretto v City of New York*, 229 AD2d 214, lv app den 90 NY2d 805, (no school liability for student injured during gymnastic dive in absence of coach)].

There is no dispute that this incident happened quickly and spontaneously. Under these circumstances, Jericho has presented a *prima facie* case that any alleged negligence on its part was not the proximate cause of the death of Matthew Ravner.

In opposition plaintiffs have failed to raise a triable issue of fact that Jericho's alleged failure to supervise, in failing to properly position and properly train security guards, was the

proximate cause of this tragedy. Plaintiff's expert's conclusion, that enactment and enforcement of a comprehensive security plan would have prevented this accident, is simply speculation [*Colarossi v University of Rochester*, 2 AD3d 1272, affd 2 NY3d 773; see generally *Clough v Szymanski*, 26 AD3d 894; *Pirie v Krasinski*, 18 AD3d 848; *Leggio v Gearhart*, 294 AD2d 543; *Aghabi v Sebro*, 256 AD2d 287; *Mkrtchyan v 61st Woodside Associates*, 209 AD2d 490, lv app den 86 NY2d 711].

Based on the foregoing, the motion by Jericho for summary judgment dismissing all claims against it is granted.

Choice provides security guard service for Jericho. It moves for summary judgment alleging, *inter alia*, that there is no evidence that conduct by Choice proximately caused the subject accident. Choice makes a *prima facie* case by presenting the transcripts of how the incident took place .

In opposition, plaintiff argues that triable issues of fact exist as to whether Choice breached its contract with Jericho, whether Matthew Ravner was the third-party beneficiary of Choice's contract with Jericho, and whether Choice is liable for Winston Webb's negligence in abandoning the campus to go on a personal errand which allegedly resulted in Matthew Ravner's death.

Plaintiff's proposed issues of fact do not meet her burden. Neither Mr. Webb's conduct, nor that of any Choice employee, was the proximate cause of Matthew Ravner's death [*Jackson v Lefferts Heights Housing Development Fund Co., Inc.*, 38 Ad3d 610; *Colarossi*, supra]. Consequently, the motion by Choice for summary judgment dismissing the complaint and all cross-claims against it must also be granted.

Dated: FEB 27 2008

J.S.C.

ravner