

Motta v Hauppauge Union Free School Dist.

2009 NY Slip Op 32544(U)

October 26, 2009

Supreme Court, Suffolk County

Docket Number: 29043/2006

Judge: William B. Rebolini

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[* 1] COURT

Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Salvatore Motta, Jr., an infant by his mother and natural guardian, Debbie Austin, and Debbie Austin, individually,

Plaintiffs,

-against-

Hauppauge Union Free School District,

Defendant.

Motion Sequence No.: 005; MG
CDISPO:SETT.J

Motion Date: 1/26/09

Submitted: 7/16/09

Index No.: 29043/2006

Attorneys [See Rider Annexed]

Hauppauge Union Free School District,

Third-Party Plaintiff,

-against-

Nicholas Lopez, an infant by and through his parent and natural guardian, Coleen Lopez and Jeovanie Garcia, an infant by and through his parent and natural guardian, Sergio Garcia,

Third-Party Defendant,

Upon the following papers numbered 1 to 19 read on this motion for summary judgment: Notice of Motion and supporting papers, 1 - 12; Answering Affidavits and supporting papers, 13 - 17; Replying Affidavits and supporting papers, 18 - 19.

The instant action arises from a school fight involving the infant plaintiff Salvatore Motta, Jr., the infant third-party defendant Nicholas Lopez, and the infant third-party defendant

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Jeovanie Garcia on December 3, 2005 in the hallway of Hauppauge High School, one of the schools within the defendant Hauppauge Union Free School District. The fight occurred between these ninth grade students, while they were changing classes during school hours. The infant plaintiff was stabbed in the stomach with an X-acto knife during the fight, and sustained injuries. The complaint alleges that the defendant is liable for the infant plaintiff's injuries based on, *inter alia*, its negligence in supervising the students. The defendant has brought a third-party-action against the other students involved in the fight, Lopez and Garcia, seeking indemnification in the event that the infant plaintiff prevails in the action. The infant third-party defendant Garcia has asserted a counter claim against the defendant/third-party plaintiff for indemnification. The infant third-party defendants have also asserted cross claims for indemnification against each other on the third-party complaint.

The defendant now moves for summary judgment dismissing the complaint on the grounds that it cannot be held liable for the infant plaintiff's injuries where (1) the infant plaintiff was a voluntary participant in the fight, (2) the claimed negligent supervision was not a contributing factor to the incident, and (3) it did not have notice or knowledge that Garcia was going to use an X-acto knife to injure the infant plaintiff during a fight.

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (see, Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Winegrad v. New York Univ. Med. Center, 64 NY2d 851 [1985]; Zuckerman v. City of New York, 49 NY2d 557 [1980]). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (see, Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Winegrad v. New York Univ. Med. Center, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see, Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Zuckerman v. City of New York, 49 NY2d 557 [1980]).

Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (see, Mirand v. City of New York, 84 NY2d 44 [1994]; Smith v. Poughkeepsie City School Dist., 41 AD3d 579 [2nd Dept., 2007]; McLeod v. City of New York, 32 AD3d 907 [2nd Dept., 2006]). In determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused the injury; that is, that the third-party acts could reasonably have been anticipated (see, Mirand v. City of New York, 84 NY2d 44 [1994] at 49; Smith v. Poughkeepsie City School Dist., 41 AD3d 579 [2nd Dept., 2007]; McLeod v. City of New York, 32 AD3d 907 [2nd Dept., 2006]). Injuries caused by the impulsive, unanticipated act of a fellow student ordinarily will not give rise to a finding of negligence absent proof of prior conduct that would have put a reasonable person on

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notice to protect against the injury-causing act (see, Siller v. Mahopac Cent. Sch. Dist., 18 AD3d 532 [2nd Dept., 2005]; Morman v. Ossining Union Free School Dist., 297 AD2d 788 [2nd Dept., 2002]). In this regard, it is well settled “schools are not insurers of the safety of the students, for they cannot reasonably be expected to continuously supervise and control all of the students’ movements and activities” (Legette v. City of New York, 38 AD3d 853 [2nd Dept., 2007]; see, MacNiven v. East Hampton Union Free School Dist., 62 AD3d 760 [2nd Dept., 2009]; Williams v. City of New York, 41 AD3d 468 [2nd Dept., 2007]). Moreover, it is well established that liability for injuries resulting from a fight between two students cannot be predicated on negligent supervision if the plaintiff was a voluntary participant in the fight (see, MacNiven v. East Hampton Union Free School Dist., 62 AD3d 760 [2nd Dept., 2009]); Williams v. City of New York, 41 AD3d 468 [2nd Dept., 2007]; Legette v. City of New York, 38 AD3d 853 [2nd Dept., 2007]).

In support of the motion for summary judgment dismissing the complaint, the defendant submitted, *inter alia*, the testimony given by the infant plaintiff at the 50-h hearing, the infant plaintiff’s deposition testimony, the deposition testimony of Rosemarie Torres, the deposition testimony of the infant third-party defendant Jeovanie Garcia, and the deposition testimony of the infant third-party defendant Nicholas Lopez. As is relevant to the instant motion, the infant plaintiff testified, during his 50-h hearing and deposition, that he observed Lopez and Garcia get into an argument in the hallway while he was walking to class. He heard Lopez say to Garcia “I heard you want to stab me” and thereafter observed Lopez initiate the fight by punching Garcia in the face. As Lopez and Garcia grappled with each other, the infant plaintiff observed Garcia reach into his pocket and heard somebody say “he’s got a knife.” Immediately thereafter, the infant plaintiff got between Garcia and Lopez, pulled Garcia away, and began punching Garcia in the face. The infant plaintiff punched Garcia in the face between five and ten times. After the last punch, Garcia said “why are you fighting his fight for him” and the infant plaintiff responded “because you tried to stab [Lopez] and you did.” The infant plaintiff did not realize that he had also been stabbed with the X-acto knife until after he separated from Garcia and saw that he was bleeding.

During his deposition, Lopez testified that the incident began when he approached Garcia and asked him why he was telling people he was going to fight him and stab him. Garcia responded that he was not going to stab him. After a few more words were exchanged, Lopez dropped his books and hit Garcia in the face two times. He then put Garcia in a head lock and punched him two more times. Garcia never hit him, but was trying to struggle free. Two seconds later, Lopez felt a stab and backed up. The infant plaintiff stepped between him and Garcia and punched Garcia in the face.

During his deposition, Garcia testified that the altercation began as he was walking to class when Lopez called his name and said “I heard you wanted to fight me.” He told Lopez “no” that he “did not want to fight.” Immediately thereafter, the infant plaintiff hit Garcia from behind and threw him into Lopez who in turn threw him into the lockers. Both Lopez and the

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infant plaintiff were beating him and he fell to the floor. As he was on the floor he pulled out an X-acto knife he had and poked Lopez with it. He thereafter poked the infant plaintiff with it and the infant plaintiff gave him a big punch. According to Garcia, he poked Garcia and the infant plaintiff because he was scared and had never been involved in a fight before. He testified that he took the X-acto knife from one of the classrooms earlier that day, in order to protect himself, after he heard that the infant plaintiff and Lopez were going to beat him up.

During her deposition, teacher Rosemarie Torres testified that she was standing in the hallway outside her classroom at the time of the incident and observed the infant plaintiff shove Garcia and Garcia fly by her. She then observed the infant plaintiff heading towards Garcia and "looking angry." She went into a nearby classroom and told the teacher to call security.

This evidence established the defendant's *prima facie* entitlement to summary judgment dismissing the complaint by demonstrating that the infant plaintiff was a voluntary participant in the fight, and thus, the alleged inadequacy of the school district's supervision could not be considered a cause of his injuries (see, MacNiven v. East Hampton Union Free School Dist., 62 AD3d 760 [2nd Dept., 2009]; Williams v. City of New York, 41 AD3d 468 [2nd Dept., 2007]; Legette v. City of New York, 38 AD3d 853 [2nd Dept., 2007]; McLeod v. City of New York, 32 AD3d 907 [2nd Dept., 2006]). In opposition, the infant plaintiff failed to submit evidence demonstrating the existence of an issue of fact as to whether he was a voluntary participant in the fight (compare, Ambrose v. City of New York, 44 AD3d 805 [2d Dept 2007]). Accordingly, the defendant's motion for summary judgment dismissing the complaint is hereby granted.

Based upon a search of the record, and this Court's determination to grant summary judgment dismissing the complaint, the third-party plaintiff's complaint, the cross complaint and counterclaims asserted on behalf of the infant third-party defendant Jeovanie Garcia, and the cross claims asserted on behalf of the infant third-party defendant Nicholas Lopez are, *sua sponte*, dismissed.

Accordingly, it is

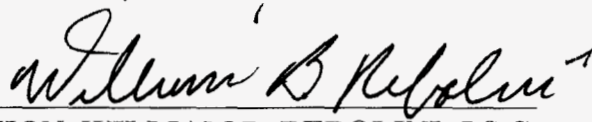
ORDERED that the motion by the defendant Hauppauge Union Free School District for summary judgment dismissing the complaint is granted.

ORDERED that, upon searching the record, the third-party plaintiff's complaint, the cross complaint and counterclaims asserted on behalf of the infant third-party defendant Jeovanie Garcia, and the cross claims asserted on behalf of the infant third-party defendant Nicholas Lopez are, *sua sponte*, dismissed; and it is further

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ORDERED that the defendant shall settle a judgment (see, 22 NYCRR §202.48).

Dated: October 26, 2009


HON. WILLIAM B. REBOLINI, J.S.C.

RIDER

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Clerk of the Court