SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 6
NASSAU COUNTY

MARGUERITE NASH, individually and as mother and natural guardian of STEPHEN A. NASH, an infant,

Plaintiff(s),

-against-

THE PORT WASHINGTON UNION FREE SCHOOL DISTRICT,

Defendant(s).

MOTION #002, 003
INDEX #697/2008
MOTION DATE:
September 22, 2009

THE PORT WASHINGTON UNION FREE SCHOOL DISTRICT,

Third-Party Plaintiff(s),

-against-

JAMES KRELLENSTEIN, an infant by his Mother and Natural Guardian, CATHERINE KRELLENSTEIN,

Third-Party Defendant(s).

The following papers read on this motion:

Notice of Motion.....1
Notice of Cross-Motion.....1
Answering Affidavits.....3
Plaintiff's Brief.....1
Defendant/Third Party Brief.....1

Upon the foregoing papers, it is ordered that plaintiff's motion for summary judgment and the defendant's cross-motion for summary judgment are determined as hereinafter set forth.

The plaintiff commenced this action alleging personal injuries as the result of fire that occurred at the Paul D. Schreiber High School on April 12, 2007. It is alleged that the defendant School District was negligent in the supervision of the students.

In support of the motion, the plaintiff maintains that while in the science laboratory the plaintiff and third-party defendant Krellenstein were left unattended by their teacher Ms. Serfaty. Thereafter, while unattended, Krellenstein started a fire thereby injuring the plaintiff.

In opposition to the plaintiff's motion and in support of the cross-motion, the defendant maintains that the level of supervision was adequate and that they had no notice of the situation that caused the fire. Further, it is asserted that negligent supervision was not the proximate cause of the accident, in that there are various versions of how the accident occurred.

"'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' (*Mirand v City of New York*, 84 NY2d 44, 49, 614 NYS2d 372, 637 NE2d 263; *see Mayer v Mahopac Cent. School Dist.*, 29 AD3d 653, 815 NYS2d 189). 'To find that a school district has breached its duty to provide adequate supervision, a plaintiff must show that the district had sufficiently specific knowledge or notice of the dangerous conduct and that the alleged breach was a proximate cause of the injuries sustained' (*Nocilla v Middle Country Cent. School Dist.* 302 AD2d 573, 757 NYS2d 300; *see, Mirand v City of New York supra*; *Siller v Mahopac Cent. School Dist.*, 18 AD3d 532, 795 NYS2d 605). Moreover, 'where 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' *(Convey v City of Rye School Dist.*, 271 AD2d 154, 160, 710 NYS2d 641; *see Walker v Commack School Dist.*, 31 AD3d 752, 820 NYS2d 287; *Mayer v Mahopac Cent. School Dist, supra; Siegell v Herricks Union Free School Dist.*, 7 AD3d 607, 777 NYS2d 148)." *Ronan v School District of City of New Rochelle,* 35 AD3d 429, 825 NYS2d 249, 250 [2nd Dept., 2006].

The role of the Court on a motion for summary judgment is issue finding rather than issue determination. *(Town Board of the Town of Ellicott v Lee, 241 AD2d 958, 661NYS2d 384 [4th Dept., 1997])*. Once the moving party has met its initial burden of entitlement to summary judgment, it is then incumbent upon the opponent to come forward with sufficient evidence to create an issue of fact. (*Ryan v Xuda*, 243 AD2d 457, 663 NYS2d 220 [2nd Dept., 1997]). Here, the plaintiff has met its burden and shifted the burden to the defendant. (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). An opponent to a summary judgment motion may show an acceptable excuse for an inability to produce admissible proof, but, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." (*Zuckerman*, supra).

In the instant matter, the Court finds that the plaintiff has met its initial burden of entitlement to judgment as a matter of law. It is undisputed that the teacher Ms. Serfaty neglected to supervise the students in the science lab at the time the accident occurred. The Court finds the assertion that there was adequate supervision unavailing, there was no supervision as Ms. Serfaty left the building. In addition, notwithstanding the varying versions

of events, the Court finds that Ms. Serfaty had specific knowledge or notice that there were flammable substances in the science lab. Therefore, the argument of lack of proximate cause is unavailing. The Court finds the defendant has failed to come forward with sufficient evidence to create a question of fact.

As such, the plaintiff's motion for summary judgment is granted. The cross-motion is denied.

A conference shall take place before the undersigned on February 23, 2010 at 9:30 a.m.

Dated: JAN 14 2010

J.S.C.

ENTERED
JAN 15 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE