Chalas v Miniventures Child Care Dev. Ctr., Inc.
2015 NY Slip Op 30407(U)
February 19, 2015
Supreme Court, Bronx County
Docket Number: 305013/14
Judge: Mark Friedlander
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NEW YORK SUPREME COURT-COUNTY OF BRONX
PART IA-25

NYALA CHALAS, an infant under the age of 14 years by her mother and natural guardian, KELEASHEA CHALAS, and KELEASHEA CHALAS, individually,

Plaintiffs,

-against

MINIVENTURES CHILD CARE DEVELOPMENT CENTER, INC. and MINIVENTURES OF NY, INC.,

Defendants.

MEMORANDUM DECISION/ORDER
Index No. 305013/14

HON. MARK FRIEDLANDER

Defendants, Miniventures Child Care Development Ceenter, Inc. and Miniventures of NY, Inc. ("Miniventures") move for an order, pursuant to CPLR§3212, granting defendants summary judgment dismissing all claims against them. The motion is decided as hereinafter indicated.

This is an action by infant plaintiff, Nyala Chalas ("Nyala") to recover monetary damages for personal injuries allegedly sustained on May 1, 2012, at the playground located on 79th Street, Middle Village, New York. More specifically, Nyala alleges that she fell while climbing on a jungle jim. Co-plaintiff, Keleashea Chalas, the mother and natural guardian of Nyala, has asserted a derivative claim for loss of services, society and companionship of Nyala.

The facts, as culled from the pleadings, transcripts of deposition testimony, photographs and exhibits submitted, are as follows: Miniventures operates a preschool program for children three to five years old and a universal pre-kindergarten program for four year old children, located at 79th Street, Middle Village, Queens, New York. Nyala was a student enrolled in the

universal pre-kindergarten program. At the time of the incident, Michelle Njagu ("Njagu") was employed by Miniventures as a head teacher for the universal pre-kindergarten program. Usually, in the afternoon, if the weather was appropriate, the pre-kindergarten children would go to the park, located one block away.

On May 1, 2012, Njagu, after first obtaining permission from Stephanie McCarthy ("McCarthy") or Lynn Mills, Miniventures' Educational Director and Administrator, respectively, took Nyala and two other children to the park. McCarthy arrived at the park approximately five or ten minutes later. This park had a basketball and handball court and two jungle jims. According to Njagu, one of the jungle jims was extremely small and was more appropriate for two year olds. Njagu's class played on the larger jungle jim. The children were given rules regarding their behavior at the park and the use of the larger jungle jim, including to sit on the slide, and not to walk up the slide. When climbing up the ladder, they were to hold on, and no one was to push other children. Prior to the incident, Njagu observed no difficulty with Nyala's capacity to follow the rules.

Nyala's accident happened at the ladder attached to the larger jungle jim. Nyala had used this ladder on prior occasions, exhibiting no difficulties. On previous occasions, Nyala climbed up the front of the ladder attached to the larger jungle jim. However, on this day, Nyala commenced climbing the ladder attached to the jungle jim, but with her back to the jungle jim. While Nyala was ascending the ladder and had traversed a short distance, Njagu, who was standing a few feet from Nyala, and McCarthy who was standing next to Njagu, saw this, and both instructed Nyala to come down from the ladder and climb up the other side. Njagu did not seek to assist Nyala because Nyala was showing no signs of any struggle and at other times had

climbed up and down the ladder by herself. Nyala then started to descend the ladder. While doing so, Nyala's hands were on the side of the ladder. Nyala let her feet go off the step and she fell.

Njagu did not know what rung Nyala was on when she fell, but Nyala was on the lower part of the ladder. At Nyala's deposition, Nyala was shown a photograph of the jungle jim ladder and identified where she was on the ladder when she fell. Njagu testified that this happened very quickly. No one else was on the ladder at the time of the incident. No one ever complained about the jungle jim prior to Nyala's accident and there were no prior incidents. McCarthy was also there at the time of Nyala's accident, standing next to Njagu, watching the children play. McCarthy testified that she believed Nyala was on the second step of the ladder, on the lowest part of the "Z" shaped rung, when she fell, and Nyala's fall was unexpected and happened "very fast soon after" being instructed to climb down.

Defendants have a duty to adequately supervise 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 N.Y.2d 44, 49 (1994); *Hunter v. The New York City Department of Education,* 95 A.D.3d 719 (1st Dept. 2012). Notwithstanding, they are not insurers of safety, for they cannot reasonably be expected to continuously supervise and control all movements and activities of students, and thus they are not liable for every thoughtless or careless act. *Mirand v. City of New York, supra; Hunter v. The New York City Department of Education, supra.* A plaintiff has the burden of proving an alleged breach of t he duty to adequate supervision by establishing that the defendants had sufficient knowledge or notice of the dangerous conduct which caused the injury; and that the negligence was the proximate cause of the injuries

sustained. *Mirand v. City of New York, supra.*

Here, defendants established a *prima facie* case that they provided adequate supervision and the accident was not foreseeable. In opposition to the motion, plaintiffs have failed to raise a triable issue of fact. In particular, the affidavit submitted by plaintiffs' expert did not offer support for her conclusions that the defendants failed to provide adequate supervision, other than her reliance upon nonmandatory recommendations and guidelines, including those regarding the recommended age of toddlers and pre-school children permitted upon certain playground apparatus, contained in the Consumer Product Safety Commission's "Public Playground Safety Handbook." Where, as here, there is no proof that any "particular guideline or recommendation has been adopted in actual practice, it cannot be held to impose a heightened standard of care upon the defendants," and the affidavit of plaintiffs' expert was insufficient to raise a triable issue of fact in this regard." *Charles v. City of Yonkers,* 103 A.D.3d 765 (2nd Dept. 2013), *citing Capotosto v. Roman Catholic Diocese of Rockville Ctr.,* 2 A.D.3d 384, 386, 767 N.Y.S.2d 857 [citations omitted]; *see Davidson v. Sachem Central School Dist.,* 300 A.D.2d 276, 731 N.Y.S.2d 300; *Merson v. Syosset Central School Dist.,* 286 A.D.2d 668, 730 N.Y.S.2d 132).

Defendants' motion for summary judgment is granted, and plaintiffs' complaint is dismissed in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: 2/19/15

MARK FRIEDLANDER, J.S.C.