Worwa v City of New York
2015 NY Slip Op 31433(U)
July 30, 2015
Supreme Court, New York County
Docket Number: 157141/2012
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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GRZEGORZ WORWA,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY and THE NIGHTINGALE-BAMFORD SCHOOL,

Defendants.

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Index No.: 157141/2012

DECISION/ORDER

EDMEAD, J.S.C.

MEMORANDUM DECISION

Defendants The City of New York (the City), New York City Industrial Development Agency (the Agency) and The Nightingale-Bamford School (the School) (collectively defendants) move for an Order pursuant to CPLR 3212(b) granting summary judgment as a matter of law, dismissing each and every cause of action raised in the Complaint as against defendants.

Plaintiff Grzegorz Worwa (plaintiff) does not oppose the motions for summary judgment made on behalf of the City and the Agency.

The School's Contentions

On the date of the incident, December 16, 2011, Plaintiff was employed by Scour by the Hour as a cleaner and in that capacity was assigned to remove wax from the cafeteria floors that evening. Plaintiff's Deposition Transcript, pp. 145-148. (Hereafter "( )") He had cleaned in the cafeteria prior to the incident, but never removed wax. (155). He used water to brush off the wax from the cafeteria floor and then the water in his bucket was dirty so he walked over and spilled

it out in a "hole" in the ground in the area where meals are given out. (162;164-165). After he spilled the dirty water in the "hole," he attempted to get fresh water in his bucket from one of the cafeteria sinks near the kitchen area. (170-190). The intended sink is located in the same area as the "hole" into which he dumped the dirty water. (169). He slipped and fell on water on his way to obtain clean water from the intended sink. (191). This was the first time he ever saw and attempted to use the intended sink. (190). He did not see anything on the surface of the ground as he approached the intended sink. (216). As he approached the area to spill out the dirty water, which is within arms distance of the intended sink, he did not observe any liquid on the ground. (220; 226). After he fell he noticed there was water leaking from the intended sink, which caused his fall. (227).

Despite being asked a number of times and in several ways to specify the precise sink he intended to use, which he said was defective, he was unable to identify a specific cafeteria sink. (170-190). At first he testified he endeavored to obtain water from a sink near the meal preparation area of the cafeteria. (170-190). Later, he testified he was approaching the sink in the cafeteria where dishes are washed before he fell. (222).

Ms. Susan K. Heller was deposed on March 6, 2014 on behalf of The Nightingale-Bamford School. Ms. Heller testified as follows:

> She is the Director of Facilities at the School and has held this position for over 20 years. Heller Transcript at p. 9.
> At all relevant times, there were numerous sinks in the cafeteria and kitchen area. (21).
> On the date of the incident, the School had a contract with Scour by the Hour for cleaning services, which included cleaning the floors in the cafeteria where Plaintiff fell. Heller Transcript at p. 23.
> At the time of the incident, there were no issues with any of the cafeteria sinks. Heller Transcript at p. 24. If there were a known dangerous condition regarding any of the cafeteria sinks, it would have been brought to Ms. Heller's attention via her maintenance

staff. Heller Transcript at p. 25.
She never became aware of which sink Plaintiff claims was involved in the incident. Heller Transcript at p. 17. In addition to her deposition testimony, Ms. Heller submitted further sworn testimony via affidavit, stating that the School had no notice of the allegedly defective condition.

In this instance, the record establishes that the School more than adequately discharged its duty to maintain the premises at the School and did not breach any duty to Plaintiff that was the proximate cause of his incident. There is no evidence that the School had actual notice of the allegedly defective condition that caused Plaintiff's fall. The School's cafeteria is used daily by the staff and students of the school. Hundreds of individuals utilize and/or pass through the School cafeteria daily. However, nobody reported any leaks, spills, or other dangerous conditions regarding any of the sinks in the cafeteria on the day of the incident, or at any time before the incident. Indeed, no dangerous conditions existed with respect to any of the cafeteria sinks following Plaintiff's incident that would require any cleanup. Therefore, Plaintiff cannot establish that the School had specific notice of the allegedly defective condition.

The School having met its burden, the burden shifts to Plaintiff to prove that the School had either actual or constructive notice of a dangerous condition and failed to timely remedy it, a burden which he cannot meet either because he has failed to identify the allegedly defective condition that caused his fall. Plaintiff's testimony assumes that an unidentified leaky cafeteria sink caused his fall. The record establishes there are numerous sinks in the school's cafeteria and kitchen area. Rather than testifying about a specific dangerous condition in a particular sink, Plaintiff testified about several different sinks that might have caused his fall. Therefore, he solely speculates as to the alleged dangerous condition, making it impossible for him to sustain his burden of proof regarding the School's constructive notice.

Not only does Plaintiff fail to identify a dangerous condition with specificity, but he also fails to establish that it was present for a long enough period of time such that the School could have remedied it. Indeed, Plaintiff admitted at his deposition that he did not notice any dangerous condition on the ground before he fell and he had never used the intended sink before that day. Further, the record establishes that there were no defective condition(s) on the premises concerning any of the cafeteria sinks on the date of the incident. No leaky sink was ever found. Thus, Plaintiff cannot establish how long the defective condition remained on the premises, much less that it was present for a sufficient period of time for it to have been noticed and cured by the School. This is fatal to his claim.

Further, it is uncontested that neither the City, nor The Agency, had any involvement or contractual responsibility with regard to the subject premises, which was at all times operated, maintained, controlled, managed, cleaned and supervised by the School's employees and/or its sub-contractors. Indeed, pursuant to the Lease Agreement between the Agency and the School, solely the School is contractually obligated to operate, maintain, control, manage, clean, or supervise the premises, including the cafeteria floors and sinks where plaintiff allegedly fell. Tort liability cannot attach against a defendant without control over a premises in the presence of a written agreement specifically granting such control to another party. Therefore, in light of the Lease Agreement, neither the City, nor the Agency can be liable to Plaintiff on his negligence claim, and summary judgment is appropriate as to the City and the Agency.

In this instance, there is no proof that the School created the dangerous condition. In fact, the record supports the very opposite conclusion. On the date of the incident, the School had a contract with Scour by the Hour for cleaning services, which includes cleaning the floors in the

cafeteria where Plaintiff fell. On the date of the incident, as per the School's policy, had any employee of the School observed or became aware any hazardous condition regarding any of the cafeteria sinks, the proper protocol would be to advise the Director of Facilities, Susan K. Heller, or the School's maintenance staff of the condition via portable radio so that it could be attended to immediately. The School's maintenance staff carries portable radios at all times, as it is the primary means of communication with and among them at the School. There is a portable radio located inside the kitchen area of the cafeteria and at front desk of the School for the use of all employees to communicate with the maintenance staff.

Given the deposition testimony and statements contained in the Affidavit of Susan Heller, the School has met its burden of showing that it neither created, nor had actual notice of the allegedly dangerous condition. Without notice, Plaintiffs claims negligence claims cannot be sustained and his Complaint must be dismissed as a matter of law.

The School having met its burden, the burden shifts to Plaintiff to prove that the School had constructive notice of a defect concerning the intended sink and failed to timely remedy such condition. First, it cannot be contested that there is no evidence in this case that the School had actual notice and the testimony and Affidavit of Susan Heller confirms this. Second, Plaintiff cannot establish constructive notice by the School because he is unable to identify the allegedly defective condition that caused his fall, much less state how long a hazard was present prior to his fall, without which he cannot establish that the School had sufficient time to cure the condition. Despite a lengthy deposition wherein Plaintiff was asked a number of times and in a number of ways to identify and describe the allegedly defective condition, he flip flopped and offered speculation regarding the intended sink at issue. (170-190). Instead, he spoke in circles,

making it impossible to deduce from his testimony which of the numerous cafeteria sinks he intended to use. Id. At first, he testified he fell on his way to the sink near the kitchen area of the cafeteria near the meal preparation lines. Id. Thereafter, he described the intended sink as one where "maybe the dishes were washed." (222). And, even if his vague descriptions all could lead to a particular sink, his testimony fails to identify, with sufficient specificity, which particular sink he refers to given that there are numerous sinks in the cafeteria and in the kitchen area, none of which required any maintenance or repair by the School. Moreover, Plaintiff admitted he had never even seen that sink before the date of the incident, that he did not see anything unusual on the ground before he fell, and is uncertain exactly what he slipped on. (190; 224-226). Rather, after he fell he noticed water on the ground. (216). Thus, beyond pure speculation, plaintiff is simply unable to identify the subject defect, or state how long the allegedly defective condition remained on the floor before his fall. The most the combined testimony of Plaintiff could produce with respect to the allegedly defective condition was little more than bald descriptions of an unidentified leaky sink in the cafeteria, without any specificity as to which of the numerous kitchen sinks he alleges to be defective, much less how long it remained on the floor. Absent proof of a specific defect and the length time it existed such that it could have been cured, the School cannot be charged with constructive notice, without which, Plaintiffs claims of negligence must be dismissed as a matter of law. In addition to Plaintiff's inability to identify the allegedly defective condition and its location, he was also unable to describe the length of time it might have been present at the School such that its employees could have had sufficient time to cure the condition. In at least over twenty years there has never been an accident in the School's cafeteria as a result of dangerous condition resulting from any of the

cafeteria sinks. See Affidavit of Susan Heller at ¶ 6. In at least over twenty years, there have never been any complaints of dangerous conditions concerning any of the cafeteria sinks. See Affidavit of Susan Heller at F 7.

Plaintiff's Contentions

Despite defendants' attorneys' characterizations herein, plaintiff identified, obviously in his own words, where the sink in question was located. For example, plaintiff testified that there were two doors along a hallway one could use to enter the cafeteria and that the sink in question was located nearer to the door into the cafeteria which was closer to the elevator bank (180). He entered the other door which was farther away from the sink in question (181). The sink was located closer to the door he did not use (184). When defendants' attorney asked him if he used the sink which was located "before you enter the cafeteria", plaintiff stated very plainly "No. Inside the cafeteria." (184) He distinguished this sink from the one where you could only collect or dump dirty water (196). A review of plaintiffs testimony demonstrates that he was clear about where the accident took place.

A review of the deposition transcript dated February 4, 2014, indicates that it was defendants' attorney who initiated questioning at page 216, about the "industrial sink", despite the fact that plaintiff never used that word, not even once, at any time prior to the defendants' attorneys formation of that question. Plaintiff rightfully advised defendants' attorney, at page 217 that he had never testified that he went to the industrial sink. Defendants' attorney then followed with "That's what you testified you did last time?"; despite the fact that a review of the record shows no testimony to that effect. At this third deposition, plaintiff, again, explained that the accident happened when he was walking towards the sink where you could take water to make

coffee or tea (222).

In his affidavit submitted in opposition to this motion, plaintiff is consistent with his above 50(h) testimony, and elaborates on matters not explored by defendants' counsel in her questioning of plaintiff. Plaintiffs affidavit was executed in Polish; but also annexed as part of Exhibit "B" as an affirmed translation of the affidavit in English states, in part, as follows:

GRZEGORZ WORWA, being duly sworn deposes and over the age of eighteen, states the following to be true under the penalties against perjury:

I am the plaintiff in the above referenced matter which was brought to recover monetary damages for personal injuries suffered by me on December 16, 2011 at the school known as the Nightingale-Bamford School located at 20 East 92nd Street, New York, New York. I fell on water that was on the floor as a result of a leaking sink. My attorney advised me that the defendants' attorney is representing that I "did not identify the specific sink" which was leaking and caused my accident. That is not true. I clearly stated that it was the sink in the cafeteria. It was not the "industrial sink", nor was it a sink in the kitchen. It was a sink that was located near the vending machines and where one might get water to prepare a cup of tea.

Actually, my attorney provided a photo of the sink in question. A copy of this photograph is attached hereto. This is the leaking sink that caused the puddle that made me fall. However, the leaking is not present in this photograph.

The leaking sink which caused my accident had been leaking for quite some time before the date of my accident and for at least one month. I went to this cafeteria often to have my break and sometimes sit near to this sink area. I recall there being at least three times I saw the leaking condition before the date of my accident. It was clear that the water was leaking from underneath the sink because the water was located right at the base of where the floor met the sink cabinet. Furthermore, on one occasion, two to three weeks before the accident, I opened the sink doors to see what was the cause of the water on the floor. I saw water inside the sink cabinet which confirmed that the sink was leaking.

I did not report the leaking sink to anyone. I worked at the school during evening hours and it was often a solitary job. I did not come into contact with many people. I also did not want to cause any problems or interfere with someone else's job duties.

I understand that the defendant School is asking the Court to dismiss my case. The school should have known about this leaking sink and fixed it. I believe a jury should be allowed to determine the outcome of my case and ask the Court to deny defendants' motion.

Defendant produced Susan Heller for a deposition on March 6, 2014. Ms. Heller testified that she learned of plaintiff's accident the next business day after it occurred, which was a

Monday (17, 18). She was advised by "Chris" the building manager (18). He told her that somebody had slipped and hurt themselves in the cafeteria (18). Ms. Heller testified that at no time did she learn what sink was involved in plaintiff's accident (17). After learning about the accident, she did not have any conversations with anyone about the accident (20). Further, she testified that no one on behalf of the Nightingale —Bamford School performed any kind of an investigation as to the happened of Mr. Worwa's accident (20). Ms. Heller did not speak to anyone at the school about a leaking condition with respect to any of the five sinks on the fifth floor (28). In fact, she did not even speak to "Teddy", her contact person at Scour by the Hour after learning of plaintiff's accident (29). If there had been a leaking condition present in any of the sinks at the school, that is something that "might" have been brought to her attention or to somebody who was on the maintenance staff at the time (25). Defendants submit now, upon their motion for summary judgment, an affidavit by Ms. Heller in which she attempts to establish that there was no leaking sink condition present at the school on the date of the accident. However, the probative value of Ms. Heller's knowledge of such a condition was established by way of her deposition testimony, summarized above and set forth in her transcript, Exhibit "C". Defendants have not and cannot eliminate all issues of fact in this case.

A moving defendant has to affirmatively prove that it lacked notice of the condition in question. The School has not and cannot satisfy this burden in this case. At the examination before trial, their facilities manager, Ms. Heller testified that upon learning of plaintiff's accident, she undertook *no inquiry* as to the condition of the sinks on the second floor and whether there was any leaking taking place. Now, all these years later in an affidavit, Ms. Heller states at paragraph designated 3, Ms. Heller states that "There are numerous sinks in the school's cafeteria

and kitchen area. I am unaware as to which cafeteria sink plaintiff intended to use at the time of his incident." Ms. Heller then goes on to make various statements about her lack of knowledge of any "leaks, spills or dangerous conditions regarding any of the sinks in the cafeteria on the day of the incident, or at anytime before the incident." Ms. Heller's affidavit is wholly lacking. She does not provide any information about *when* the sink in question, or any of the cafeteria sinks, had last been inspected prior to the happening of plaintiff's accident and what was the condition of each at the time. In essence, her affidavit explains why the typical procedure was at the school in terms of addressing hazardous conditions and then that she "knows nothing" about the condition which caused plaintiff's accident. This is an insufficient showing to entitle defendants to summary judgment. Based upon defendants" insufficient proof alone, defendants' motion for summary judgment must be denied.

The School's Reply

The plaintiff's Affidavit was obviously designed for the sole purpose of creating a feigned issue of material fact. Because the law does not permit a party to submit a contrary affidavit for the purpose of avoiding summary judgment, and his deposition testimony clearly establishes that he never noticed any issues with the subject sink, nor had he every used the subject sink, his affidavit should be disregarded, and in any event does not suffice to establish either actual or constructive notice. Although credibility ordinarily may not be determined on a motion for summary judgment, courts have disregarded affidavits to dispositive motions where they directly contradict the plaintiffs own version of the accident and are plainly tailored to avoid dismissal of the action. In this matter, defendant's Affidavit is clearly designed to raise a manufactured issue as to constructive notice, and therefore, this Court should disregard this

evidence. Even if the court were inclined to accept this new version of events, because plaintiff prevaricated about the subject sink both during his 50-H testimony and at his depositions, he cannot establish that his 50-H testimony referred to the sink he now claims is the subject sink. It could have been any of the other sinks he testified about during litigation.

Moreover, if the Court were to believe he was in fact aware of a defective condition for weeks prior to the incident, plaintiff cannot get around his admission that he knowingly failed to complain about or report it to anyone at the school, and then proceeded to use it on the date of the incident. Worwa Aff. in Opp. at pp 4-5.

Contrary to plaintiffs contentions, the record of this case clearly establishes that the School did not have actual notice of the alleged condition. Susan Heller, Facilities Director clearly testified that neither she, nor anyone at the School, ever learned of any defects with any of the cafeteria sinks, that no complaints were made about any of them, and that none of them had to be repaired at anytime before or after the incident, a condition plaintiff admitted in his deposition testimony that he failed to notice before he fell. *See* Heller Aff. at **TT**. 8-9. That Ms. Heller did not speak to "Teddy," a Scour by the Hour employee who did not witness plaintiff s incident, as plaintiff points out in opposition, is inconsequential here.

Nor is there any question as to the School's lack of constructive notice. The fact is that at no point before or after the subject incident did the School ever become aware of an issue regarding any of its cafeteria sinks, which were utilized by many people. *See* Heller Aff. Had there been a real issue as plaintiff suggests, then it would have required repair. *See* Heller Aff. at 1111 8-9. That no maintenance was required despite the fact that all cafeteria sinks were utilized daily reveals the lack of any "leaky" condition. *Id* The combined sworn testimony and affidavits

of plaintiff and Ms. Heller lead to the same conclusion: the School did not have actual or constructive notice of a defective condition that was the subject of plaintiff's fall and therefore the School meets its burden of proof regarding notice. As such, summary judgment is appropriate.

Although plaintiff's counsel implies that defendants "initiated questions at page 216 about the 'industrial sink', despite the fact that plaintiff *never used that word, not even once, at any time prior to* [February 4, 2014]", this contention is belied by the record. (emphasis supplied) Notably, in the 50-Fl hearing on September 19, 2012, plaintiff testified as follows:

Q: For mopping, where do you get the water?

A: As far as the gym is concerned, from the place where you pour it from.

Q: What do you mean? Is there a special industrial sink?

A: You could say so.

Q: Is there a better way to describe it?

A: **I don't see a better one. That is what it is.**

The evidence presented demonstrates that the alleged condition did not exist for an extended length of time so as to have placed the School on notice of its existence. Accordingly, the instant motion should be granted because defendant had no actual or constructive notice of such alleged condition, nor did it create the alleged condition claimed to have caused plaintiffs injuries.

DISCUSSION

Summary Judgment (Defendant is Movant)

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR §3212[b]) sufficient to warrant the court as a matter of law to direct judgment in its favor (*Friedman v BHL Realty Corp.*, 83 AD3d 510, 922 NYS2d 293 [1st Dept 2011]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). Thus, the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Madeline D'Anthony Enterprises, Inc. v Sokolowsky,* 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012] *citing Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572 [1986] *and Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR §3212 [b]; *Madeline D'Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v Steward M. Muller Constr. Co.*, 46 NY2d 276, 281-82, 413 NYS2d 309 [1978]; *Carroll v Radoniqi,* 105 AD3d 493, 963 NYS2d 97 [1st Dept 2013]). The opponent "must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist," and the "issue must be shown to be real, not feigned since a sham or frivolous issue

will not preclude summary relief" (*American Motorists Ins. Co. v Salvatore*, 102 AD2d 342, 476 NYS2d 897 [1st Dept 1984]; *see also, Armstrong v Sensormatic/ADT*, 100 AD3d 492, 954 NYS2d 53 [1st Dept 2012]).

In the instant case, the School failed to establish entitlement to judgment as a matter of law in this action where plaintiff alleges that defendant negligently allowed a broken/leaky sink to create a slipping hazard where plaintiff fell. The School did not demonstrate that it lacked notice of the hazardous condition, as it offered no specific evidence showing that its cleaning routines were followed on the date of the accident, or when the area where plaintiff fell was last cleaned and inspected (*see Guerrero v Duane Reade, Inc.*, 112 A.D.3d 496, 976 N.Y.S.2d 385 [1st Dept.2013]).

And, contrary to the School's contention, plaintiff's testimony, that immediately after he fell he noticed there was water leaking from the intended sink, which caused his fall, provides a nonspeculative basis for his version of the accident and sufficiently establishes a nexus between the hazardous condition and the circumstances of his fall (*see DiVetri v ABM Janitorial Serv., Inc.*, 119 A.D.3d 486, 487, 990 N.Y.S.2d 496 [1st Dept.2014]; *Yuk Ping Cheng Chan v Young T. Lee & Son Realty Corp.*, 110 A.D.3d 637, 637–638, 973 N.Y.S.2d 642 [1st Dept.2013]). In focusing on the persuasiveness of plaintiff's evidence, defendant is asking this Court to engage in issue-determination rather than issue-finding (*see Jacques v Richal Enters.*, 300 A.D.2d 45, 45–46, 751 N.Y.S.2d 726 [1st Dept.2002]).

Finally, the School failed to meet its *prima facie* burden of showing that it lacked constructive notice. Ms. Heller does not provide any information about *when* the sink in question, or any of the cafeteria sinks, had last been inspected prior to the happening of plaintiff's accident

and what was the condition of each at the time. In essence, her affidavit explains why the typical procedure was at the school in terms of addressing hazardous conditions and then that she "knows nothing" about the condition which caused plaintiff's accident. This testimony is insufficient to show the absence of constructive notice because it fails to establish "specifically that the dangerous condition did not exist when the area was last inspected ... before plaintiff fell" (*Ross v Betty G. Reader Revocable Trust*, 86 A.D.3d 419, 421, 927 N.Y.S.2d 49 [1st Dept.2011]).

As plaintiff has attested, the leaking sink which caused my accident had been leaking for quite some time before the date of my accident and for at least one month. He went to this cafeteria often to have my break and sometimes sit near to this sink area. He recalls there being at least three times he saw the leaking condition before the date of his accident. It was clear that the water was leaking from underneath the sink because the water was located right at the base of where the floor met the sink cabinet. Furthermore, on one occasion, two to three weeks before the accident, He opened the sink doors to see what was the cause of the water on the floor. He saw water inside the sink cabinet which confirmed that the sink was leaking.

He did not report the leaking sink to anyone. He worked at the school during evening hours and it was often a solitary job. He did not come into contact with many people. He also did not want to cause any problems or interfere with someone else's job duties.

On the issue of credibity, it well settled that the function of a court in reviewing a motion for summary judgment "is issue finding, not issue determination, and if any genuine issue of material fact is found to exist, summary judgment must be denied" (*People ex rel. Cuomo v Greenberg*, 95 AD3d 474, 946 NYS2d 1 [1st Dept 2012]). Where "credibility determinations are required, summary judgment must be denied" (*People ex rel. Cuomo v Greenberg*, 95 AD3d 474,

946 NYS2d 1 [1st Dept 2012]). Thus, on a motion for summary judgment, the court is not to determine credibility, but whether there exists a factual issue, or if arguably there is a genuine issue of fact (*DeSario v SL Green Management LLC*, 105 AD3d 421, 963 NYS2d 24 [1st Dept 2013] (holding given the conflicting deposition testimony as to what was said and to whom, issues of credibility should be resolved at trial)).

As such, the court is disinclined to follow defendant's suggestion and disregard plaintiff's affidavit where as defendant suggests, it directly contradicts the plaintiffs own version of the accident and as argued by defendant, is plainly tailored to avoid dismissal of the action.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of the defendant The Nightingale-Bamford School for an Order pursuant to CPLR 3212(b) granting summary judgment as a matter of law, dismissing each and every cause of action raised in the Complaint as against said defendant is denied. And it is further

ORDERED that the application of the defendants The City of New York and the New York City Industrial Development Agency for an Order pursuant to CPLR 3212(b) granting summary judgment as a matter of law, dismissing each and every cause of action raised in the Complaint as against said defendants is granted, without opposition. And said claims are severed and dismissed. **The Clerk of the Court shall enter judgment accordingly**. And it is further

ORDERED that counsel for defendant The Nightingale-Bamford School shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on all counsel.

Dated: July 30, 2015

Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD