

<b>J.L. v City of New York</b>
2016 NY Slip Op 30703(U)
March 18, 2016
Supreme Court, Bronx County
Docket Number: 350267/08
Judge: Ruben Franco
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - IAS PART 26

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J.L., an infant, by his mother and natural guardian,  
MIRIAM NAZARIO, and MIRIAM NAZARIO  
individually,

Index No.: 350267/08

Plaintiffs,

**MEMORANDUM  
DECISION/ORDER**

-against-

THE CITY OF NEW YORK, and THE NEW YORK  
CITY BOARD OF EDUCATION,

Defendants.

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HON. RUBEN FRANCO

This is an action to recover monetary damages for personal injuries allegedly sustained by an infant student, as a result of being “struck by another student while playing basketball in the gymnasium” of his school. The infant plaintiff’s mother asserts a derivative claim for loss of her son’s aid, society, comfort and happiness of his well-being.

The facts, as culled from the pleadings and deposition testimony, are as follows: The infant plaintiff was an eighth grade student attending school in Bronx County. On October 20, 2007, his class of approximately 30 students, accompanied by James Kent (“Kent”), a physical education and health teacher, were in the school gymnasium. In addition to these 30 students, Kent permitted a few kids from the basketball team, as well as another group of students, to join the gym class. The students were playing basketball in the gymnasium, which was divided into three basketball courts. At the time of the incident, the infant plaintiff with approximately 6 other students, were shooting the ball at the basket on one court. Behind, and to the right of the basket that the plaintiff was shooting at, another student, T.A., was playing shoot around. Just before the incident, the plaintiff went to get the basketball that he was using to shoot, which went

into the court to the right. After retrieving the basketball, T.A., who was playing on that court, was in the middle of taking a jump shot, when the infant plaintiff “bumped into his knee.”

The moving party in a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, presenting sufficient evidence to demonstrate the absence of any material issues of fact (see, Alvarez v. Prospect Hospital et.al., 68 NY2d 320, 501 NE2d 572, 508 NYS2d 923 [Ct of App 1986]; Winegard v. New York Univ. Med Center, 64 NY2d 851, 476 NE2d 642, 487 NYS2d 316 [Ct of App 1985]; Zuckerman v. City of New York, 49 NY2d 557, 404 NE2d 718, 427 NYS2d 595 [Ct of App 1980]; Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 144 NE2d 387, 165 NYS2d 498 [Ct of App 1957]). Failure of the movant to sustain its burden requires denial of the motion, regardless of the sufficiency of the opposition Winegard v. New York Univ. Med. Center, *supra*, at 853. Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Gaddy v. Eyler, 79 NY2d 955, 591 NE2d 1176, 582 NYS2d 990 [Ct of App 1992]; Alvarez v. Prospect Hospital, et al., *supra*; Zuckerman v. City of New York, *supra*.

Prefatorily, the City’s motion for summary judgment, on the ground that it is not a proper party to this action, which is not addressed by plaintiffs, is granted and the Complaint against the City is dismissed (see Luis S. v. City of New York, 130 A.D.3d 485 [1<sup>st</sup> Dept. 2015]; Santiago v. New York City Board of Education, 130 A.D.3d 428 [1<sup>st</sup> Dept. 2015]; Perez v. City of New York, 41 A.D.3d 378 [1<sup>st</sup> Dept. 2007]).

The New York City Board of Education (“BOE”) asserts, *inter alia*, that the accident resulting in the infant plaintiff’s injury was a spontaneous event for which there is no liability.

Plaintiffs, while acknowledging that the accident was the result of a spontaneous event, nevertheless assert that Kent never instructed plaintiff or the other students, to stay on their respective courts; that he did not prevent students from charging out of adjacent courts; that he allowed other students to get involved in this activity; that he did not witness the actual accident; and, that this constitutes lack of supervision.

An entity such as BOE has a duty to adequately supervise students in its charge and it will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (see 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 [1<sup>st</sup> Dept. 2012]). However, BOE is not an insurer of safety, for it cannot reasonably be expected to continuously supervise and control all movements and activities of students, thus, it is not liable for every thoughtless or careless act by which one student may injure another ( 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 the duty to adequately supervise by establishing that the entity had sufficient knowledge or notice of the dangerous conduct which caused the injury; that the actions of the other student could have been reasonably anticipated; and, that the negligence was the proximate cause of the injuries sustained. Mirand v. City of New York, *supra*.

Here, the court finds that BOE is entitled to judgment as a matter of law. It has made out a *prima facie* case by showing that the infant plaintiff's injury was caused by the unanticipated spontaneous acts of the infant plaintiff and T.A., which could not reasonably be anticipated (see Chung v. New York City Board of Education, 2016 WL 732107, 2016 N.Y. Slip Op. 01423 [1<sup>st</sup> Dept. 2016]; Lizardo v. Board of Educ. Of the City of New York, 77 A.D.3d 437,439 [1<sup>st</sup> Dept.

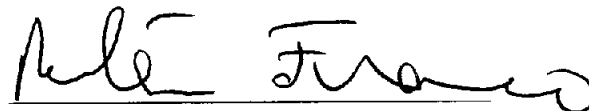
2010)). The alleged lack of supervision, if any, was not the proximate cause of the injury.

(Lizardo v. Board of Educ. Of the City of New York, *supra*; Diana G. v. Our Lady Queen of Martyrs School, 100 A.D.3d 592 [2<sup>nd</sup> Dept. 2012]).

Accordingly, defendants' motion for summary judgment is granted and plaintiff's Complaint is dismissed in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 18, 2016



Ruben Franco, J.S.C.

**HON. RUBÉN FRANCO**