

Braham v Board of Educ. of Hempstead Union Free Sch. Dist.
2017 NY Slip Op 32390(U)
March 6, 2017
Supreme Court, Nassau County
Docket Number: 600123/2014
Judge: Julianne T. Capetola
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court
of the State of New York held in
and for the County of Nassau,
100 Supreme Court Drive,
Mineola, New York, on the 6th
day of March 2017

0

P R E S E N T:

HON. JULIANNE T. CAPETOLA
Justice of the Supreme Court

-----X

PATRICK BRAHAM, Administrator of the Estate of
SHAMAY BRAHAM, deceased infant, and
PATRICK BRAHAM, Individually,
Plaintiffs,

**DECISION AND
ORDER ON MOTION**

Index No: 600123/2014
Motion Sequence: 006

- against -

BOARD OF EDUCATION OF HEMPSTEAD
UNION FREE SCHOOL DISTRICT,
HEMPSTEAD UNION FREE SCHOOL DISTRICT,
HEMPSTEAD PUBLIC SCHOOLS,
FRANKLIN ELEMENTARY SCHOOL,
PERCY JACKSON MEMORIAL YOUTH CENTER,
TIME OUT CLUB DEVELOPMENT CORP.,
TIME OUT CLUB OF HEMPSTEAD, INC.,
KATHLEEN NOLAN,
DENISE DESMOND NOLAN,
and LAQUANA GRIFFIN,

Defendants.

-----X

The following papers were read on Motion Sequence 006:

- Defendants Hempstead Union Free School District, Hempstead Public Schools, and Franklin Elementary School's Notice of Motion and Supporting Documents
- Plaintiffs' Affirmation in Opposition
- Defendants Hempstead Union Free School District, Hempstead Public Schools, and Franklin Elementary School's Reply Affirmation

Motion by Defendants Hempstead Union Free School District, Hempstead Public Schools, and Franklin Elementary School ("the School District"), for an order pursuant to CPLR §2221 granting reargument of this Court's Decision and Order on Motion dated December 12, 2016 which denied their motion for an order pursuant to CPLR §5015

vacating the default of Defendant Laquana Griffin, and permitting it to submit an answer on her behalf. Plaintiffs have opposed the motion, the School District has replied and the motion was deemed submitted March 1, 2017.

As a threshold matter, the motion papers are defective on their face for two reasons. The papers fail to annex a copy of the Decision and Order on Motion dated December 12, 2016 (hereinafter the "Original Decision") to their moving papers, and they have annexed only their own initial moving papers on the underlying motion and not a complete set of moving papers.

It has been held that, "Because a Supreme Court Justice does not retain the papers following the disposition of a motion and should not be compelled to retrieve the clerk's file in connection with its consideration of subsequent motions, Supreme Court properly required [movants] to submit to it all papers that were to be considered on the instant motion (*see*, CPLR 2214 [c])". *Sheedy v. Pataki*, 236 A.D.2d 92 (3d. Dept. 1997). Accordingly, "courts have withheld reargument based upon a movant's failure to submit a complete set of papers relevant to the underlying motion." *All Am. Moving & Storage, Inc. v. Andrews*, 31 Misc. 3d 1214(A), (Bronx Sup. Ct. 2011). Therefore the motion is defective on its face.

In any event, the arguments made on the instant motion are unavailing.

CPLR §2221(d) states, in relevant part, that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion". Plaintiffs alleges that this Court overlooked and/or misapplied the facts in that the Original Decision states that the event in question took place "in their school" when the event was actually at the Percy Jackson Memorial Youth Center which is affiliated with the School District and used for other school-related events. Plaintiffs further allege that the Court placed too much emphasis on the testimony of Plaintiff Patrick Braham in determining that the School District had sufficient notice that Laquana Griffin, a school employee, was the person supervising the event in question.

The School District does not dispute that Laquana Griffin was a school employee who they themselves characterize as "a part-time lunch monitor *and dance instructor*". They note that the event was scheduled through Ms. Griffin two weeks prior, but they argue that this was insufficient time for the School District to have had notice of this event. The School District has not made any showing whatsoever that the Court

misapplied the facts in this case, nor have they cited any relevant case law or statutory authority in support of the instant motion. Additionally, though the School District has alleged additional facts and included an affidavit from Investigator Joseph Lupo that was not annexed to the prior motion, they have failed to provide any reasons why these facts were not set forth in the underlying motion.

The instant motion is defective and wholly without merit.

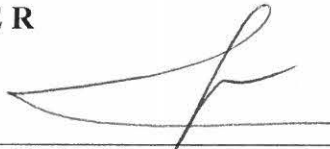
In accordance with the foregoing, it is hereby:

ORDERED, with respect to Defendants Hempstead Union Free School District, Hempstead Public Schools, and Franklin Elementary School's motion to reargue the Court's Decision and Order on Motion dated December 12, 2016 is hereby denied in its entirety; and it is further

Defendants Hempstead Union Free School District, Hempstead Public Schools, and Franklin Elementary School shall serve a copy of this order upon all parties within ten (10) days of their receipt hereof.

This constitutes the decision and order of the Court.

ENTER



HON. JULIANNE T. CAPETOLA
J.S.C.

ENTERED

MAR 08 2017

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**