L.L. v City of New York
2021 NY Slip Op 31953(U)
March 19, 2021
Supreme Court, Richmond County
Docket Number: 151387/2020
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C-2

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L.L., an infant under the age of fourteen (14) years by her parents and natural guardian, DEREK LAWSON And NICOLE PARASCONDOLA and DEREK LAWSON and NICOLE PARASCONDOLA, Individually,

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE ARCHDIOCESE OF NEW YORK, and OUR LADY HELP OF CHRISTIANS,

Defendants.

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Present:
HON. THOMAS P. ALIOTTA

DECISION AND ORDER

Index No.: 151387/2020

Mot. Seq.: 001

Recitation, as required by CPLR 2219(a), of the following papers numbered "1" through "4" were fully submitted on the 26th day of February 2021:

	Papers Numbered
Notice of Motion for Summary Judgment, Affirmation and Exhibits by Defendants City of New York and the New York City Department of Education (Dated: December 31, 2020)	1, 2
Plaintiffs' Affirmation in Opposition with Exhibits (Dated: January 4, 2021)	3
Affirmation, Affidavit in Reply with Exhibits (Dated: February 25, 2021)	4

Upon the foregoing papers, the motion for summary judgment of the defendants City of New York and the New York City Department of Education (hereinafter, together the "City"), is granted and the complaint and cross claims are severed and dismissed as against the moving defendants.

This matter arises out of a trip and fall that occurred on March 27, 2019 in the "school yard" of defendant, Our Lady Help of Christians elementary school (hereinafter "OLHC") located at 23 Summit Avenue in Staten Island (*see* Notice of Claim; NYSCEF #24). At the time of the accident the infant plaintiff, who was enrolled in OLHC through a Universal Pre-Kindergarten program partially funded by the City, tripped and fell due to an allegedly "dangerous and trap-like condition" on the pavement of the school yard. OLHC owned the premises on March 27, 2019 (*see* Response to Notice to Admit; NYSCEF #29). Issue has been joined and initial discovery was exchanged. Depositions have not been conducted.

The City moves for summary judgment dismissing the complaint on the grounds that it did not owe the plaintiff a duty to maintain the premises as alleged in the complaint or to supervise the students (*see* NYSCEF #1, First, Second, Fifth and Sixth Causes of Action), since it did not own the property on the date of the accident. Plaintiffs oppose the motion.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (*see Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once the movant meets this burden, the burden shifts to the opposing party to demonstrate that there are material issues of fact; mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

When deciding a summary judgment motion the Court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v. Shop & Stop, Inc.*,

65 NY2d 625, 626 [1985[). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence or where the credibility of the witnesses is in question (*see Cameron v. City of Long Beach*, 297 AD2d 773, 748 [2d Dept. 2002]).

It is fundamental that for a plaintiff to recover against a defendant in a negligence action, the plaintiff must prove that the defendant owed the plaintiff a duty and that the breach of that duty resulted in the injuries sustained by the plaintiff (*see Lugo v. Brentwood Union Free School Dis.*, 212 AD2d 582 [2d Dept. 1995]). With respect to premises liability, the obligation to respond in damages for a dangerous condition is generally predicated on ownership of the premises (*see Breland v. Bayridge Air Rights, Inc.*, 65 AD3d 559, 560 [2d Dept. 2009]). In this regard, it is well settled that the owner of property has a duty to maintain its premises in a reasonably safe condition (*see Kellman v. 45 Tiemann Assoc.*, 87 NY2d 871, 872 [1995]). Where ownership is not present, a party cannot be held liable for injuries caused by the dangerous or defective condition of the property (*see, e.g., Minott v. City of New York*, 230 AD2d 719 [2d Dept. 1996]).

Here, the City defendants have established *prima facie* that they did not own the subject premises on the date of plaintiff's accident, through the December 30, 2020 affidavit of Chi-Cheung Chan, the City's Title Searcher (NYSCEF #36) and OLHC's admission of ownership in its December 23, 2020 Response to Notice to Admit (NYSCEF #29). No issue was raised in opposition. Inasmuch as the defendants owed no duty to plaintiff (*see Minott v. City of New York*, 230 AD2d 719 [2d Dept. 1996]), they are entitled to dismissal of the First and Second Causes of Action, as well as the Fifth and Sixth Causes of Action of the Complaint grounded in negligent supervision of the infant plaintiff, as the infant was under the physical custody and control of OLHC and its staff at the time of the accident.

While schools are under a duty to adequately supervise the students in their charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (*see Mirand v. City of New York*, 84 NY2d 44 [1994]; *Nash v. Port Wash. Union Free School Dist.*, 83 AD3d 136 [2d Dept. 2011]; *Swan v. Town of Brookhaven*, 32 AD3d 1012 [2d Dept. 2006]), "a school's duty to adequately supervise a student is *co-extensive with and concomitant to its physical custody of and control over the student*" (*Rowe v. Board of Educ. of City of New York*, 12 AD3d 494 [2d Dept. 2004]; [*internal citations omitted*]; [*emphasis supplied*]).

In this regard, nothing in the July 1, 2015 "Full Day Universal Pre-Kindergarten Contract" between the Catholic School Region of Staten Island and the Board of Education of the City School District of the City of New York (*see* NYSCEF #56), first exchanged with Reply papers on this motion, serves to raise an issue of fact that the movants were responsible for the daily custody of and control over the plaintiff. Article 15, entitled "Supervision of Students," sets forth the obligations of the "Provider" (*i.e.,* OLHC) to furnish a requisite number of qualified personnel to instruct and care for the children while they are in school. Article 23, "Facility Requirements," lists the Provider's specific obligations relative to ensuring safety of the premises. The additional insured provision contained in Article 35 and the hold harmless clause set forth in Article 36, further indicate the parties' intention to insulate the moving defendants from liability for this type of accident. Indeed, not every government-sponsored program exposes the government to liability for negligence.

Accordingly, it is

ORDERED, that the motion for summary judgment by defendants the City of New York and the New York City Department of Education is granted; and it is further

ORDERED, that the complaint and all cross claims as asserted against the City of New York and the New York City Department of Education are hereby severed and dismissed; and it is further

ORDERED, that the Clerk shall enter judgment accordingly; and it is further

ORDERED, that the defendants Archdiocese of New York and Our Lady Help of Christians appear virtually before this Court on March 23, 2021 for a further conference at a time to be determined.

This constitutes the decision and order of the Court.

ENTER,

HON. THOMAS P. ALIOTTA, J.S.C.

Dated: March 19, 2021