

Chamberlain v New York City Sch. of Constr. Auth.

2024 NY Slip Op 34745(U)

October 28, 2024

Supreme Court, Queens County

Docket Number: Index No. 709811/2019

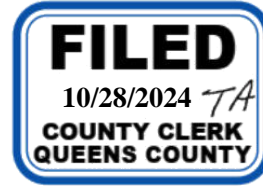
Judge: Chereé A. Buggs

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY



Present: HONORABLE CHEREÉ A. BUGGS

IAS PART 30

Justice

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LAUREN GIOIA CHAMBERLAIN and
CHRISTOPHER CHAMBERLAIN

Index No.: 709811/2019

Motion Date:9/9/2024

Motion Cal. No.: 17

Plaintiff,

Motion Sequence No.: 3

-against-

NEW YORK CITY SCHOOL OF CONSTRUCTION
AUTHORITY, THE CITY OF NEW YORK, THE
DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK, and THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

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The following efiled papers numbered 94-114, 135-150 submitted and considered on this motion by Defendant New York City School Construction Authority (hereinafter "SCA"), seeking an Order Pursuant to CPLR §2221, to renew the prior Order of this Court dated October 15, 2021, denying the motion for summary judgment by SCA, as premature but allowing said motion to be renewed upon completion of the depositions; and, upon renewal, pursuant to CPLR §3212, dismissing the Verified Complaint against SCA; Dismissing any and all cross-claims asserted against SCA. The **motion** is granted in its entirety.

Motion Sequence 3	Papers <u>Numbered</u>
Notice of Motion-Affirmation in Support-	
Affidavits-Exhibits.....	EF 94-114
Affirmation in Opposition-Affidavits Exhibits.....	EF 135-147, 148-149
Affirmation in Reply-Affidavits-Exhibits.....	EF 150

Relevant Factual and Procedural Background

This action stems from personal injuries sustained by Plaintiff Lauren Gioia Chamberlain (hereinafter "Chamberlain") on March 14, 2018, while teaching at P.S. 229 in Queens, New York. The incident occurred when a window in Chamberlain's classroom shattered as she attempted to open it, resulting in severe lacerations and nerve damage to her right arm. Chamberlain asserts that

the windows in the school's "old wing," constructed in 1967, were fitted with single-pane annealed glass instead of safety glass, rendering them unsafe. These windows, which had been in place for over 50 years, had a history of malfunction, according to Chamberlain.

Chamberlain testified at her deposition that on the day of the accident, she lifted the window by placing her hand underneath the frame, at which point the glass shattered. She described how the window unexpectedly broke, causing her injuries. Following the accident, Chamberlain underwent two surgeries to repair severed arteries and tendons in her arm. She contends that these injuries have ended her teaching career. During her deposition, Chamberlain also emphasized that the windows in the old wing were known to malfunction, and that both custodial staff and the school's principal, Sybylle Ajwani, had reported concerns about their condition during annual inspections conducted by the SCA.

Chamberlain filed a Notice of Claim against the SCA on June 5, 2018, and subsequently a Summons and Complaint in June 2019, naming the SCA, the City of New York, the Department of Education (hereinafter "DOE"), and the Board of Education (hereinafter "BOE") as defendants. Chamberlain argues that the SCA had a duty to maintain and repair the windows under Public Authorities Law § 1728, which, according to her, obligates the SCA to oversee the maintenance of educational facilities. She also cited New York Education Law § 409-d and 8 NYCRR 155.4, asserting that these laws required the SCA to conduct annual inspections that provided notice of the windows' dangerous condition. Chamberlain claims that the SCA failed to act upon this information, thereby allowing the hazard to persist. Additionally, Chamberlain raised a spoliation argument, alleging that DOE and BOE destroyed key maintenance records that would have demonstrated a history of window repairs, further bolstering her claim of notice.

The SCA, however, argues that it is not liable. According to Eric Chou, the SCA's Director of Construction Review, the SCA did not own or install the windows in question. Chou testified during his deposition that the windows had been installed long before the SCA was established, and thus, the SCA had no involvement in their original installation. He further explained that the SCA's role was limited to conducting annual Building Condition Assessment Surveys (hereinafter "BCAS"), which did not create a duty to repair or maintain the windows. The SCA argues that these responsibilities belonged to DOE and BOE. Chou also emphasized that the SCA was not involved in custodial operations or regular maintenance, contradicting Chamberlain's argument regarding the SCA's statutory obligations.

Custodian Keith Hennin also provided critical testimony, confirming the deteriorated state of the windows in the old wing. He stated that the balances on the windows were broken, causing them to fall shut unexpectedly, and that the windows were prone to breaking, particularly when exposed to temperature changes. Hennin confirmed that these issues had been raised during annual BCAS inspections and had been discussed with Principal Ajwani and the SCA's inspectors. He admitted, however, that no significant repairs were carried out before Chamberlain's accident. Hennin's testimony also highlighted the lack of comprehensive maintenance, noting that while the custodial staff had made temporary fixes, the windows had not been replaced.

Principal Sybylle Ajwani, in her deposition, corroborated these concerns, describing the windows as a "constant issue" and explaining how the school had repeatedly requested their replacement. Ajwani confirmed that during BCAS inspections, she had raised the issue with the SCA's engineers, but despite these discussions, no remedial action was taken to replace or repair the windows before Chamberlain's accident. Ajwani testified that the hazardous condition of the windows had been a well-known problem, which she had reported multiple times.

The SCA initially filed a motion for summary judgment in April 2021, which was denied as premature pending the completion of depositions. The court permitted the SCA to renew its motion following the discovery phase. In 2023, the SCA renewed its motion. The DOE and BOE, for their part, argue that any allegations regarding destroyed records are unfounded. They contend that they acted appropriately in handling maintenance issues and that Chamberlain's injuries were not the result of any negligence on their part.

Law and Application

CPLR §3212 provides:

(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. Where an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it

shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion...

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

Public Authorities Law § 1728 (5) provides:

The authority shall have the following powers and duties:...

5. To design, construct, reconstruct, improve, rehabilitate, maintain, furnish, repair, equip and otherwise provide for educational facilities, as defined in section twenty-five hundred ninety-a of the education law, for the city board pursuant to agreements with the city board;...

11. Upon completion of the design, construction, reconstruction, improvement, rehabilitation, improvement, rehabilitation, maintaining, repairing, furnishing, equipping of or otherwise providing for educational facilities, to convey title to any such facilities to the city for use as educational facilities by the city board. In the case of educational facilities leased by the authority, the city board may occupy or sublet such facilities from the authority without compensation and without further approval and upon transfer or assignment of the authority's interest in these facilities to the city board, the city board shall assume all rights and obligations of the authority under such lease.

New York Education Law § 409-d provides:

...2. Commissioner's authorization. In implementing the program, the commissioner is authorized to:

(a) require the inspection of every public school building and prescribe qualifications of persons who may perform or supervise such inspections in accordance with the provisions of this section.

(b) establish a safety rating system keyed to the structural integrity and overall safety of the building. Such system shall rate every major building system contained within a building and where practicable identify critical maintenance and include such information in the plan required in subdivision ten of section thirty-six hundred forty-one of

this chapter;

(c) require each school district to develop a buildings condition survey;

(d) require each school district to develop a five year capital facilities plan;

(e) establish a process for monitoring all school buildings; and

(f) provide for waivers of the requirements of this section and/or section four hundred nine-e of this article for districts whose school building safety inspection procedures in existence on the effective date of this section are in substantial compliance with such requirements...

New York Education Law § 2554 provides:

Subject to the provisions of this chapter, the board of education in a city shall have the power and it shall be its duty:...

4. To have the care, custody, control and safekeeping of all school property or other property of the city used for educational, social or recreational work and not specifically placed by law under the control of some other body or officer, and to prescribe rules and regulations for the preservation of such property...

“The movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]; citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Summary judgment is a drastic measure that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues (*see 114 Woodbury Realty, LLC v 10 Bethpage Rd., LLC*, 178 AD3d 757, 759 [2d Dept 2019]; *Castlepoint Ins. Co. v Command Sec. Corp.*, 144 AD3d 731, 733 [2d Dept 2016]; *Doize v. Holiday Inn Ronkonkoma*, 6 A.D.3d 573, 774 N.Y.S.2d 792 [2nd Dept. 2004]). “On a motion for summary judgment, facts must be viewed ‘in the light most favorable to the non-moving party’” (*see Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]; citing *Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]; quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d at 335 [2011]; *see also Moonilal v R.C. Church of St. Mary Gate of Heaven*, 225 AD3d 592, 593 [2d Dept 2024]).

Here, this Court finds that SCA establish prima facie that they are not responsible for the inspection, maintenance and repair of the subject window. Education Law § 2554 (4) affirmatively charges the DOE with responsibility for “the care, custody, control and safekeeping of all school property or other property of the city used for educational, social or recreational work” (*see NY City Charter § 521 [a]; Augustine v City of New York*, 188 AD3d 969, 971 [2d Dept 2020]). “Maintenance of the school buildings is a duty imposed by law upon the Board of Education” (*see Id* at 971; citing *Friedman v Bd. of Educ. of City of New York*, 262 NY 364, 366 [1933]). In *Dilligard v City of New York*, 170 AD3d 955, 957 [2d Dept 2019], the Court ruled that the City of New York could not be

held liable in a personal injury action arising from an accident that occurred on public school premises, since the City of New York did not “operate, maintain, or control the school”, which fell under the “exclusive care, custody, and control of Board of Education”, an entity separate and distinct from the City (*see also Mejias v City of New York*, 183 AD3d 886, 889 [2d Dept 2020]; *Myers v City of New York*, 64 AD3d 546, 547 [2d Dept 2009]). Here, SCA similarly cannot be held liable for the subject accident which happened on public school grounds, since BOE has the exclusive care, custody and control of all public school properties. Furthermore, Eric Chou, the SCA’s Director of Construction Review also testified that the SCA only conducts annual BCAS, which did not create a duty to repair or maintain the windows at the “old wing” at P.S. 229. Hence, this Court finds that the SCA established prima facie that they had no custody or control over the subject window, and cannot be held liable for an accident arising out of it.

In opposition, Chamberlain failed to raise a triable issue of fact. Despite the fact that the SCA is not a contractor of DOE and BOE, since according to Chou’s testimony, there is no contract between the SCA, DOE and BOE, as stated above, New York Education Law § 2554 and caselaw established that DOE is exclusively responsible for all public school properties. Moreover, Chamberlain’s argument regarding Public Authorities Law § 1728 (5) is without merit, since there is no evidence showing that the SCA had an agreement with the city board, and was performing pursuant to that agreement on the subject window. Chamberlain’s arguments regarding New York Education Law § 409-d and 8 NYCRR 155.4 also fail, as those statutes do not include SCA in its scope, and is not applicable here.

With regard to Chamberlain’s spoliation claim as against the BOE and DOE, since Chamberlain did not move for any relief in the current motion, this Court finds it improper to make a ruling at this juncture. Accordingly, it is hereby

ORDERED, that SCA’s branch of motion to renew the prior Order of this Court dated October 15, 2021 is granted, and it is further

ORDERED, that branch of motion seeking for summary judgment pursuant to CPLR §3212 is granted in its entirety. Plaintiff’s verified complaint and any and all cross-claims are dismissed; and it is further

ORDERED, that the caption of this motion is amended as follows:

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X Index No.: 709811/2019

LAUREN GIOIA CHAMBERLAIN and
CHRISTOPHER CHAMBERLAIN

Plaintiff,

-against-

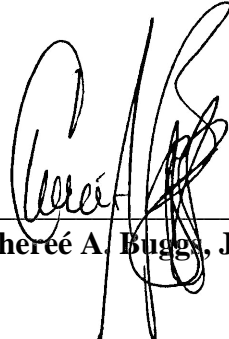
THE CITY OF NEW YORK, THE
DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK, and THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

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This constitutes the decision and Order of the court.

Dated: October 28, 2024



Hon. Chereé A. Buggy, JSC

