

K.S. v BSC Hous. Co., Inc.
2026 NY Slip Op 31938(U)
May 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 518399/2020
Judge: Sharon A. Bourne-Clark
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At Part 44 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 320 Jay Street, Brooklyn, New York, on the 5th day of May, 2026.

PRESENT:

HON. SHARON A. BOURNE-CLARKE, J.S.C.

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K.S., AN INFANT BY HIS MOTHER AND NATURAL
GUARDIAN, DOMINIQUE A. WILLIAMS, AND
DOMINIQUE A. WILLIAMS, INDIVIDUALLY,

Plaintiffs,

- against -

BSC HOUSING COMPANY, INC., TWIN PINES
MANAGEMENT, LLC., BSC OWNER LLC,
GRENADIER REALTY CORP., GAMETIME, A
PLAYCORE COMPANY, PLAYCORE
WISCONSIN, INC. D/B/A GAMETIME,
PLAYCORE WISCONSIN, INC.

Defendants.

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Index No.: 518399/2020

DECISION AND ORDER

The following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Order to Show Cause – Exhibits and Affidavits Annexed	No(s). 236-250; 251-260; 282-290
Affirmation in Opposition	No(s). 261-265; 266-270;
Replying Affidavits and Exhibits	No(s). 295-297

These matters come before the Court on two motions for summary judgment and one Order to Show Cause. This action arises from personal injuries allegedly sustained by the infant plaintiff, K.S., then five years old, on August 23, 2020, while using playground equipment located at Spring Creek Towers, 190 Bethel Loop, Brooklyn, New York.

Defendant GAMETIME, A PLAYCORE COMPANY, PLAYCORE WISCONSIN, INC. d/b/a GAMETIME, PLAYCORE WISCONSIN, INC. (“Gametime”) moves (Motion Sequence #10) for summary judgment dismissing the complaint, asserting that the subject playground equipment was not defectively designed or manufactured and complied with applicable industry standards, including ASTM F1487 and the Consumer Product Safety Commission (CPSC) Playground Safety Handbook guidelines for upper body equipment designed for children ages five to twelve.

Defendants BSC HOUSING COMPANY, INC., TWIN PINES MANAGEMENT LLC, and BSC OWNER LLC (collectively “BSC and Twin Pines”) move (Motion Sequence #11) for summary judgment dismissing the complaint and all cross-claims, contending that they lacked actual or constructive notice of any alleged dangerous condition and that the playground equipment was not inherently dangerous.

Plaintiffs move by Order to Show Cause (Motion Sequence #12) to quash a subpoena issued by Gametime seeking the deposition of Robert T. Fuchs, plaintiffs’ previously retained expert, arguing that the subpoena fails to comply with CPLR § 3101(a)(4) and seeks privileged material.

After a review of the papers proffered, the defendants Motions for Summary Judgment are hereby **DENIED**. “A party moving for summary judgment pursuant to CPLR § 3212 must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact.” *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]; *Napolitano v. Suffolk County Dept. of Pub. Works*, 65 A.D.3d 676 (2d Dept 2009). “Once the movant meets this burden, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a triable issue of fact.” *Zuckerman*, supra. “Mere conclusory assertions, speculation, or hearsay are insufficient to defeat a motion for summary judgment.” *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974).

In support of their respective motions, defendants rely upon the expert report of Teresa Hendy, a certified playground safety inspector and design consultant, who inspected the subject playground on May 8, 2023, and opined that the equipment complied with applicable safety standards and was not defective.

In opposition, plaintiffs submit the expert opinion of Carl Abraham, a licensed professional engineer and forensic safety expert, who raises issues regarding the design, warning labels, configuration, and safety of the subject equipment, including the height and spatial arrangement of the monkey rings and the adjacent stepping platform.

The Court finds that the parties' submissions present a classic battle of the experts. "It is well settled that issues of credibility, including conflicting expert opinions, are for the trier of fact and not properly resolved on a motion for summary judgment." *Stoves v. City of New York*, 741 N.Y.S.2d 269 [2d Dept 2002]; *Halkias v. Otolaryngology-Facial Plastic Surgery Assoc.*, 724 N.Y.S.2d 432 [2d Dept 2001]).

Here, triable issues of fact exist as to whether the subject playground equipment, including the monkey rings and the height and configuration of the platform, was reasonably safe for its intended use and whether any alleged defect was a proximate cause of the infant plaintiff's injuries. Additionally, issues remain as to whether BSC and Twin Pines had notice of any hazardous condition.

Accordingly, defendants have failed to establish their entitlement to judgment as a matter of law.

With respect to plaintiffs' motion to quash the subpoena issued to non-party Robert T. Fuchs, the Court finds that the relief sought is warranted.

Pursuant to CPLR § 3101(c), the work product of an attorney is absolutely immune from disclosure. This protection extends to materials prepared by or for counsel that reflect legal strategy, analysis, or mental impressions, including the retention and consultation of experts in anticipation of litigation. To the extent the subpoena seeks to elicit testimony concerning plaintiffs' prior retention of Mr. Fuchs, the substance of communications between counsel and the expert, or the strategic considerations underlying such retention, such information constitutes protected attorney work product and is not discoverable.

Disclosure of such material would improperly intrude upon counsel's litigation strategy and trial preparation, which are afforded absolute protection under the CPLR. Accordingly, the subpoena seeks information that is privileged and beyond the permissible scope of disclosure.

Accordingly, the subpoena issued to non-party Robert T. Fuchs is hereby QUASHED, and plaintiffs' Order to Show Cause (Motion Sequence #12) is **GRANTED**.

As such, it is **HEREBY ORDERED** that defendants' motions for summary judgment (Motion Sequence #10 and #11) are **DENIED**; and

It is **FURTHER ORDERED** that plaintiffs' Order to Show Cause (Motion Sequence #12) to quash the subpoena of non-party Robert T. Fuchs is **GRANTED**.

A copy of this Decision and Order with Notice of Entry shall be served upon all parties within thirty (30) days of entry.

This constitutes the Decision and Order of the Court.

Date: May 5, 2026

ENTER:



SHARON A. BOURNE-CLARKE, J.S.C.