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<b>Pandolfini v City of New York</b>
2015 NY Slip Op 50463(U)
Decided on April 7, 2015
Supreme Court, Richmond County
Aliotta, J.
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Decided on April 7, 2015

Supreme Court, Richmond County

**Teresa Pandolfini and Jason Pandolfini, Plaintiffs,**

**against**

**The City of New York, NEW YORK CITY DEPARTMENT OF EDUCATION, THE MICHAEL J. PETRIDES SCHOOL, ST. PATRICK'S SCHOOL, ARCHDIOCESES OF NEW YORK, STATEN ISLAND YOUTH SOCCER LEAGUE, INC., EASTERN NEW YORK YOUTH SOCCER ASSOCIATION, INC., JOHN AND JANE DOE and ABC CORPORATION fictitious names for persons, corporations, partnerships, associations, and/or entities; whose true names are presently unknown, and who own, maintain, and/or control or are employed by a certain premises known as THE MICHAEL J. PETRIDES SCHOOL, 715 Ocean Terrace, Staten Island, NY 10301, Defendants.**

102072/12

Thomas P. Aliotta, J.

The following papers numbered 1 to 3 were fully submitted on the 11th day of February, 2015:

Pages Numbered

Notice of Motion for Summary Judgment

by Defendants the City of New York, New York City Department of Education,

The Michael J. Petrides School, Staten Island Youth Soccer League, Inc.,

Eastern New York Youth Soccer Association, Inc.,

with Supporting Papers, Exhibits and Memorandum of Law

(dated September 22, 2014).....1

Affirmation in Opposition

by Plaintiffs, with Supporting Papers and Exhibits

(dated December 3, 2014).....2

Reply Affirmation

by Defendants the City of New York, New York City Department of Education,

The Michael J. Petrides School, Staten Island Youth Soccer League, Inc.,

Eastern New York Youth Soccer Association, Inc.,

with Supporting Papers and Exhibits

(dated February 9, 2015).....3

Upon the foregoing papers, the motion for summary judgment by defendants the City

of New York, New York City Department of Education, the Michael J. Petrides School, Staten Island Youth [\*2] Soccer League, Inc., Eastern New York Youth Soccer Association, Inc. (collectively, hereinafter the "City") is granted and the complaint is dismissed. [\[FN1\]](#)

In this action for personal injuries, plaintiff Teresa Pandolfini (hereinafter "plaintiff") alleges that on October 22, 2011, "she was caused to slip and fall while walking to her daughter's soccer game due to an unsafe condition... [*i.e.*,] she had to walk through a field, [and] down a steep hill, where numerous raised and exposed tree roots were located causing an unsafe condition" (*see* Verified Complaint, para 28-29). [\[FN2\]](#) It is further alleged that "[p]laintiff was caused to fall down the hill, thereby causing [her] to sustain sever[al] serious [and] permanent injuries" (*id.* at 30). Plaintiff alleges that defendants were negligent in failing to maintain and control "the means of ingress and egress to the soccer field, and therefore failed in their duty to [1] make the entrance safe for the general public" (*id.* at 31) and "[2] supervise and/or train the parties responsible...[to] inspect and repair the means of ingress and egress to the soccer field" (*id.* at 33).

At her deposition, plaintiff testified that on the date of her accident, she was attending her daughter's soccer practice at the Michael J. Petrides School (hereinafter "Petrides") (*see* EBT of Teresa Pandolfini, pp 22-23). Plaintiff has been to the school on one prior occasion but "stayed in the parking lot" (*id.* at 23). [\[FN3\]](#) On the accident date, she parked in the parking lot closest to the soccer field (*id.* at 42), from which she could not see any paved pathways that led to the field (*id.* at 43). Neither did she observe any security guards or school personnel on the field or in the parking lot (*id.* at 56). After exiting her vehicle, plaintiff approached the soccer field. At the time, plaintiff was purportedly carrying her younger daughter Kayla and an over-the-shoulder bag (*id.* at 57-58), while her older daughter, Jenna, was walking to her right (*id.* at 72). Before walking onto the grassy area, plaintiff did not look around to see if there were other ways to enter the field (*id.* at 64). Rather, she "just started to walk down [the unpaved path] where everybody [else] was walking... [T]he next thing I know, I fall" (*id.* at 84). According to the witness, the path was located on a downward sloping hill (*id.* at 110). Prior to her fall, plaintiff did not see

anything on the ground that she felt could be dangerous, nor did she feel concerned about losing her balance when she began to descend the hill (*id.* at 88-89). It was not until after her fall that she realized that it was "a very unlevel pathway... [with] roots or trees" (*id.* at 97). Plaintiff was unaware of any prior accidents or complaints pertaining to the condition of the hill (*id.* at 89-90, 98-99). On October 26, 2011, *i.e.*, four days after the accident, plaintiff filed a police report which, she testified at her deposition, contained a true and accurate reflection of what happened on the date of the accident (*id.* at 129, 253-256). The report indicated that she had she sustained an injury to her left leg "from slipping off [a] sidewalk on school property" (*id.* at 256).

Also attached to the moving papers are copies of photographs of the general area of plaintiff's fall, which she had reviewed at her deposition. However, she did not testify that they accurately depicted the accident location (*id.* at 153-179; *see* the City's Exhibit "N").

Vincent Sisto, a custodial engineer employed by the City's Department of Education [\*3](hereinafter "DOE") testified on its behalf that he has worked at Petrides for nine years. His responsibilities include repairs, groundwork, snow removal and landscaping (*see* EBT of Vincent Sisto, p 9, 14). According to the witness, he was aware of the exposed tree roots on the hill where plaintiff fell (*id.* at 43), but denied knowledge of any complaints or accidents regarding the hill leading to the soccer field or the surrounding area (*id.* at 43-47). Upon review of the custodial office log, the witness testified that it contained only a single entry for the date of plaintiff's accident, *i.e.*, that "all buildings/grounds checked/all okay. Athletic [sic] on field/gym" (*id.* at 64-65). When asked if there were any walkways leading to the playing fields, the witness testified that there were two: "[t]here is a walkway entrance as you enter the field onto the track... [and another] entrance by the baseball field" (*id.* at 71-72).

Daniel D'Alessandro, a field official employed by the Staten Island Youth Soccer League (hereinafter "SIYSL") testified on its behalf that it was his responsibility "to direct people... to the proper [soccer] fields... [and] check the fields to make sure that they were safe, properly aligned, that the nets were secured and that the goal posts were anchored"

(*see* EBT of Daniel D'Alessandro, p 15). Upon review of the "extended use application for" the Petrides fields, the witness testified that DOE granted SIYSL a permit effective September 10, 2011 through November 13, 2011 (*id.* at 31). According to the witness, he has seen "people on occasion utilize the hill to enter or exit the facilities or fields", but denied knowledge of any complaints regarding its topography (*id.* at 66).

Danny Gutierrez, a fieldman employed by DOE, testified that he has worked at Petrides since 1998 (*see* EBT of Danny Gutierrez, p 9-10), and that his responsibilities include cutting the grass and painting the fields (*id.* at 13). Gutierrez was working on the date of plaintiff's accident, but had no knowledge as to what happened (*id.* at 30, 43-44). However, he stated that there are security guards on the campus and "they go all over the place" (*id.* at 20). When asked if there are signs or employees assigned to direct spectators where to walk during sporting events, the witness answered in the negative (*id.* at 23, 40). According to the witness, he uses a weed whacker instead of a lawnmower in the area where plaintiff fell "[be]cause it's easier" (*id.* at 35-37). He, too, was unaware of any complaints pertaining to the tree roots or any accidents that had occurred there (*id.* at 36-38, 47).

In further support of its motion, the City submits an affidavit by Joanne Buckheit, the principal of Petrides, who attested that she had no knowledge of any complaints or accidents pertaining to the area where plaintiff fell, nor is the school in possession of any incident reports involving similar accidents on the subject premises (*see* Affidavit of Joanne Buckheit, para 5, 7-8). Also submitted is an affidavit by Rich Nellis, the vice president of SIYSL who attests that the organization adheres to the rules set forth for the "Extended Use of School Buildings" and, thus, has responsibility only with regard to the playing fields at the subject premises (*see* Affidavit of Rich Nellis, para 7-9). Accordingly, SIYSL did not have any responsibilities with regard to the maintenance or landscaping of the area where plaintiff fell (*id.* at 10-11). Finally, he testified that he was unaware of any prior complaints or accidents in the area (*id.* at 17).

That branch of defendants' motion which is for summary judgment dismissing the complaint as against defendants SIYSL and Eastern New York Youth Soccer Association,

Inc. (hereinafter the "ENY YSA") must be granted, as said defendants established, prima facie, they did not own, occupy, control or make a special use of the hillside area at the time of the accident and, thus, could not be held liable for any injuries caused by its allegedly dangerous condition ([see \*Khanimov v. McDonald's Corp.\*, 121 AD3d 1050](#) [2nd Dept 2014]). In opposition, plaintiff has failed to raise a triable issue of fact.

With regard to the balance of the motion for summary judgment, the City asserts that it was [\*4] under no duty to warn visitors of the existence of the open and obvious condition. It further contends that plaintiff has failed to establish that the City created the alleged dangerous condition or had actual or constructive notice thereof.

In opposition, plaintiff attests that she did not observe any signs or security guards in the parking lot to direct spectators to the entrances, nor did she observe any signage urging "caution" or indicating "danger" (*see* Affidavit of Teresa Pandolfini, para 7-9). Moreover, she did not "realize how steep the hill [really] was" (*id.* at 12). According to plaintiff, she never saw the "raised [or] exposed tree root" over which she appeared to have tripped (*id.* at 21).

In order to establish a prima facie case of negligence, a plaintiff must demonstrate (1) the existence of duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) an injury proximately caused by the breach ([see \*Bluth v. Bias Yaakov Academy for Girls\*, 123 AD3d 866](#) [2nd Dept 2014]). While a landowner has a duty to maintain its premises in a reasonably safe manner, he or she has no duty to protect or warn against any open and obvious condition that is not, as a matter of law, inherently dangerous ([see \*Varon v. New York City Dept of Educ.\*, 123 AD3d 810](#), 811 [2nd Dept 2014]). Thus, landowners are not obligated to warn against conditions on the land that can be readily observed by the use of one's senses ([see \*Torres v. State of New York\*, 18 AD3d 739](#) [2nd Dept 2005]). In addition, landowners will not be held liable for injuries arising from a condition on the property that is inherent or incidental to the nature of the property and could be reasonably anticipated by those using it (*id.*).

Whether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case, and is generally a question of fact for the jury. However, summary judgment in favor of a defendant is appropriate where a plaintiff fails to submit any evidence that a particular condition is actually dangerous or defective (*see Witkowski v. Island Trees Public Library*, \_\_AD3d\_\_, 2015 NY Slip Op 01269 [2nd Dept]).

Here, defendant met its prima facie burden of demonstrating its entitlement to judgment as a matter of law by submitting the transcripts of the deposition testimony of the respective parties and the transcript of plaintiff's testimony at the General Municipal Law §50-h hearing, all of which served to establish the absence of any hidden dangerous or defective condition on the premises in question (*id.*). In addition, defendants demonstrated prima facie that the presence of tree roots was a condition inherent or incidental to the nature of the property which could reasonably be anticipated by anyone using it (*see Badalbaeva v. City of New York*, [55 AD3d 764](#) [2nd Dept 2008]).

In opposition, plaintiff failed to raise a triable issue of fact (*see Bluth v. Bias Yaakov Academy for Girls*, 123 AD3d at 866-867; *Varon v. New York City Dept of Educ*, 123 AD3d at 811).

Accordingly, it is

ORDERED that defendants' joint motion for summary judgment is granted; and it is further

ORDERED that the complaint is dismissed; and it is further

ORDERED that the Clerk enter judgment accordingly.

ENTER,

\_\_\_/s/ Hon. Thomas P. Aliotta\_\_\_\_\_

J.S.C.

DATED: April 7, 2015

### Footnotes

**Footnote 1:** In an Order entered on March 22, 2013, the motion for summary judgment by defendants St. Patrick's School and the Archdiocese of New York was granted (*see* the City's Exhibit "G").

**Footnote 2:** The Notice of Claim does not include any mention of raised or exposed tree roots (*see* City's Exhibit "A").

**Footnote 3:** However, at her General Municipal §50-h hearing, plaintiff testified that on the prior occasion, she had walked down the same hill (*see* General Municipal 50-h hearing transcript, p 31; EBT of Teresa Pandolfini, p 44).

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