

IN THE STATE COURT OF CHATHAM COUNTY

STATE OF GEORGIA

WILLIE B. HARRIS and KRISTY D.)
 HARRIS, Individually and as Next)
 Friends of RILEY L. HARRIS, a Minor,)
)
 Plaintiff,)
)
 vs.)
)
 CLIFFORD DUCEY and HIRAM)
 HERNANDEZ,)
)
 Defendant.)

CIVIL ACTION NO: STCV1801021

ORDER

Pending before the Court is Clifford Ducey and Hiram Hernandez' Motion for Summary Judgment filed on March 5, 2019. Oral argument has not been requested.

The Court has reviewed the record as it existed prior to April 7, 2019 in the light required by Lau's Corporation, Inc. v. Haskins, 261 Ga. 491 (1991), and by Prophecy Corp. v. Charles Rossignol, Inc., 256 Ga. 27 (1986), if applicable.

The Complaint filed on June 26, 2018 alleges that on or about November 10, 2012, Plaintiffs were attending a youth football game at the Garden City Recreation Center in Garden City, Georgia, that Plaintiffs' and their daughter, Riley Harris, who was six years old at the time, were watching the game from bleachers, that while walking along the bleachers, Riley slipped and fell through a gap between the seatboard and the footboard which gap was larger than allowed by building and safety codes. The Complaint alleges that Riley fell 25 feet to the ground below, and was injured.

The Complaint alleges that Defendant Ducey was the Director of the Garden City Parks and Recreation Department, that Defendant Hernandez was the maintenance supervisor for the Garden City Parks and Recreation Department, and that both Defendants' job duties included the maintenance of said bleachers. The Complaint alleges that both Defendants' job duties included compliance with various building codes and safety codes requiring that the bleachers be inspected on a regular basis by a qualified person to ensure that the bleachers were code compliant. The Complaint alleges that the Defendants' job duties regarding having inspections done on a regular basis by a qualified person mandated simple, absolute, and definite action by Defendants and required the execution of a specific task without any exercise of discretion. The Complaint alleges that the Defendants failed to perform said duties.

The Complaint sets forth causes of action for negligence, negligence per se, and attorney's fees pursuant to O.C.G.A. § 13-6-11.

The Defendants argue that they are entitled to summary judgment on Plaintiffs' claims because the Plaintiffs have failed to present any evidence to show that the Defendants had the duties alleged in the Complaint, and because the undisputed evidence shows that the Defendants had no such ministerial duties and that they are entitled to qualified immunity.

The building code in question requires that bleachers, including pre-existing ones, have no openings between the seatboards and footboards such that a sphere four

inches in diameter could pass through. The building code in question also requires that “[a]ll existing tiered seating shall be inspected and evaluated at least once a year by a qualified person for compliance with the provisions of this chapter.”

The safety code in question provides that “the owner shall provide for not less than annual inspection and required maintenance of each outdoor grandstand to ensure safe conditions. At least biennially, the inspection shall be performed by a professional engineer, registered architect, or individual certified by the manufacturer.”

The evidence in the record viewed in the light most favorable to the non moving Plaintiffs shows that Defendant Ducey has been the Director of the Garden City Department of Parks and Recreation since 2006. Garden City owns and maintains the Garden City Stadium and the bleachers in questions. Defendant Ducey is not trained or licensed in the fields of engineering, architecture, or building construction. No Garden City Department of Parks and Recreation policy known to Defendant Ducey requires him, as Director, to conduct annual inspections of the bleachers in question for code compliance. Defendant Ducey’s job duties do not include inspecting facilities for code compliance, and Defendant Ducey does not inspect facilities for code compliance.

Defendant Hernandez has been the Supervisor of Facilities at the Garden City Parks and Recreation Department since 2010. Defendant Hernandez is not trained or license in the fields of engineering, architecture, or building construction. No Garden City Department of Parks and Recreation policy known to Defendant Hernandez

requires him to conduct annual inspections of the Garden City Stadium bleachers for code compliance. Defendant Hernandez' job duties do not include inspecting facilities for code compliance, and Defendant Hernandez does not inspect facilities for code compliance.

Defendant Ducey is Defendant Hernandez' director. (Hernandez depo. p. 9). Defendant Hernandez' duty related to the bleachers was to pressure wash them. (Hernandez depo. p. 9). Defendant Hernandez has never performed any inspection of the bleachers to make sure the rebar is still in place. (Hernandez depo. p. 11-12). Defendant Hernandez takes orders from Defendant Ducey. (Hernandez depo. p. 13). Defendant Ducey has never told Defendant Hernandez to conduct any type of inspection of the bleachers. (Hernandez depo. p. 14-15). Defendant Ducey has never conducted any type of inspection of the bleachers. (Hernandez depo. p. 15). Defendant Hernandez is not aware of any codes or regulations that apply to the bleachers. (Hernandez depo. p. 17).

The bleachers were installed in 1964. (Ducey depo. p. 5). Defendant Ducey has never had the bleachers inspected by any professional engineer. (Ducey depo. p. 7).

After high school games in the fall and winter, there is a lot of trash and things. So, "[w]e go through and clean up and... pressure wash [the bleachers] once a year. And just look at them and inspect them, make sure everything is [not] broken." (Ducey depo. p. 8). Defendant Ducey does not personally do the cleaning, pressure washing,

looking, and inspecting to make sure everything is not broken, because he has a maintenance supervisor, Defendant Hernandez, who goes through that. (Ducey depo. p. 8). Just to be clear, Defendant Hernandez would clean up trash after events, pressure wash the bleachers once a year, and if some component of the bleachers was broken or something, they would handle the repairs. (Ducey depo. p. 9).

It is the finding of the Court that there are no genuine issues of material fact with regard to whether the Defendants did not have the ministerial duties alleged in the Complaint, and that the Defendants are entitled to judgment as a matter of law based on qualified immunity. O.C.G.A. § 13-6-11.

Wherefore, it is hereby **ORDERED** that the Defendants' Clifford Ducey and Hiram Hernandez' Motion for Summary Judgment is **GRANTED**.

So **ORDERED** this _____ day of May, 2020.



H. Gregory Fowler, Chief Judge
State Court of Chatham County, Georgia

cc: Christopher D. Britt, Esq.
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