IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Steve Lingo,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 19 L 9541
La Grange Crane Service, Inc.,	)	
Sodexomagic, LLC, and the Chicago Board	)	
of Education, a municipal corporation and	)	
d/b/a Little Village Elementary School,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Local Governmental and Governmental Employees Tort Immunity Act section 3-108 immunizes public entities from simple negligence for supervising activities on public property. The plaintiff's amended complaint deleted claims that the defendant's negligent supervision of construction work caused his injury. There remain, however, questions as to whether the plaintiff's remaining claims constitute negligent supervision; consequently, the defendant's motion to dismiss must be denied.

Facts

On January 1, 2016, a contract between the Chicago Board of Education and Stanton Mechanical, Inc. became effective. Among other things, the contract defined the Board's role in the operations and maintenance (O&M) program of work projects at Board properties. Under the agreement, the Board determined overall policies and procedures for implementing the O&M program. The contract provided the Board with final authority through its project manager or designee over all O&M activities. The contract also provided the project manager would observe and

inspect the work periodically. The Board retained the right to stop work and make changes, alternatives, or additions to the contract, and to suspend work on any project.

In 2018, the Board called on Stanton to remove a 15,000-pound chiller cooling unit from the roof of Little Village Elementary School, located at 2620 South Lawndale Avenue. On August 29, 2018, Lingo, a Stanton pipefitter, was working inside the chiller's cooling pit on the school roof. At the same time, La Grange Crane, a subcontractor on the project, attached the cooling unit to a crane and moved the crane boom while Lingo was still inside the pit. The movement of the chiller unit pinned Lingo between it and the pit wall, causing his injuries.

On August 28, 2019, Lingo filed a two-count complaint against La Grange Crane and the Board. On March 18, 2020, the Board filed a motion to dismiss the complaint. On August 20, 2020, Lingo filed his response, and on August 31, filed a three-count amended complaint adding Sodexomagic, LLC as a party. The amended complaint also deleted two supervision claims Lingo had previously lodged against the Board. Only count three, directed against the Board, is at issue at this point.

Count three is a cause of action for negligence. Lingo alleges the Board owed him a duty to keep and maintain the premises in a reasonably safe condition and to exercise reasonable care in controlling the work. Lingo alleges the Board breached its duty through "careless and negligent acts and/or omissions" by failing to: (1) make a reasonable inspection of the work area; (2) operate, manage, control, and maintain the work site properly; (3) provide Lingo with a safe place to work; (4) provide adequate safeguards to prevent Lingo's injuries; and (5) provide a safety program at the worksite.

On September 1, 2020, the Board filed its reply based on the allegations and claims in the amended complaint. This court has reviewed all the submissions, including exhibits.

Analysis

The Board brings its motion pursuant to Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995).

One of the enumerated grounds for a section 2-619 motion to dismiss is that the claim, "is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). A claim of immunity based on the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, is affirmative matter properly raised under section 2-619(a)(9). *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 377 (2003) (citing *Bubb v. Springfield Sch. Dist. 186*, 167 Ill. 2d 372, 378 (1995)). Under Illinois statute, school boards are considered local public entities, *see* 105 ILCS 5/10-2, and the Tort Immunity Act explicitly identifies school boards as local public entities that may claim the statute's immunities, if applicable. *See* 745 ILCS 10/1-206.

The Board argues that Tort Immunity Act section 3-108 immunizes the Board from Lingo's claims. The statute explicitly provides that:

> (a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton

> conduct in its supervision proximately causing such injury.
>
> (b) Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.

745 ILCS 3-108. A school building is unquestionably public property. 745 ILCS 10/3-101 ("public property mean[s] real or personal property owned or leased by a local public entity").

Although the Board does not explicitly indicate the source of its argument, the Board plainly draws on both subparagraphs of section 3-108. According to the Board, "supervision" is to be read broadly, thereby immunizing the Board from each of Lingo's remaining claims. Additionally, Lingo has not alleged the Board acted willful and wantonly. In response, Lingo argues that his claims go to issues other than supervision and, therefore, fall outside the limited activities immunized by section 3-108.

The word "supervision" as used in section 3-108 includes "coordination, direction, oversight, implementation, management, superintendence, and regulation." *Moorehead v. Metropolitan Water Reclamation Dist.*, 322 Ill. App. 3d 635, 639 (1st Dist. 2001) (citing *Longfellow v. Corey,* 286 Ill. App. 3d 366, 370 (4th Dist. 1997)). Supervision includes training, *Flores v. Palmer Marketing, Inc.*, 361 Ill. App. 3d 172, 175-76 (1st Dist. 2005), instructing, *Gillmore v. City of Zion,* 237 Ill. App. 3d 744, 751-52 (2d Dist. 1992), and warning, *Payne v. Lake Forest Cmty. H.S. Dist.*, 268 Ill. App. 3d 783, 784, 788 (2d Dist. 1994). The immunity also applies generally to the supervision of any activity on public property, including construction and maintenance. *Epstein v. Chicago Bd. of Ed.*, 178 Ill. 2d 370 376 (1997); *Gusich v. Metropolitan Pier &*

Expo. Auth., 326 Ill. App. 3d 1030, 1033 (1st Dist. 2001); *Moorehead,* 322 Ill. App. 3d at 638-39. The immunity also applies to claims of improper supervision of a local public entity's employees. *Flores*, 361 Ill. App. 3d at 175-76.

The Board relies on *Moorehead* and *Gusich* to support the proposition that "supervision" is to be read broadly and, thereby, encompass Lingo's claims of inspection, operation, control, maintenance, and provision of a safe workplace, safeguards, and a safety program. That argument reaches too far based on the current record. The TIA is in derogation of the common law and, therefore, "must be construed strictly against the public entity seeking immunity." *Andrews v. Metropolitan Water Reclamation Dist. of Greater Chicago*, 2019 IL 124283, ¶ 23, (citing *Snyder v. Curran Township*, 167 Ill. 2d 466, 477 (1995)). The Board does not cite to and this court could not locate any opinions in which courts interpreted "supervision" to include the terms Lingo employs in his claims. The reach of the word "supervision" as employed in section 3-108 is, therefore, not fully defined.

An additional problem with relying on *Moorehead* and *Gusich* is that the defendant in each case sought to dismiss the plaintiffs' complaints at the summary judgment stage. *Moorehead*, 322 Ill. App. 3d at 636; *Gusich*, 326 Ill. App. 3d at 1031. In other words, those courts had available both the parties' written agreements as well as deposition testimony indicating how the parties carried out their agreements. *Moorehead*, 322 Ill. App. 3d at 639; *Gusich*, 326 Ill. App. 3d at 1034-35 (affirming and reversing, in part, because questions of material fact remained). Deposition testimony is particularly useful because it can assist a court in understanding how the contracting parties carried out their agreement, which is, of course, evidence of their intentions. *See McLean Cnty. Bank v. Brokaw*, 119 Ill. 2d 405, 412 (1988).

It may ultimately be determined from additional evidence that all of Lingo's remaining claims are just other forms of "supervision" immunized by section 3-108. If true, then Lingo, at that point, will be able to save his claims only by establishing the

Board's willful and wanton conduct. At this juncture, however, this court cannot reach any judgment without a more complete record.

Conclusion

For the reasons presented above, it is ordered that:

1. The Board's motion to dismiss is denied; and
2. The parties are to submit an agreed case management order no later than September 30, 2020.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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