

Doe v Zara USA, Inc.
2026 NY Slip Op 31157(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 156814/2025
Judge: Matthew V. Grieco
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

JOHN DOE,

Plaintiff,

- v -

ZARA USA, INC., JOHN DOES, ABC CORPS.

Defendants.

-----X

INDEX NO. 156814/2025

MOTION DATE 05/29/2025, 07/24/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 7, 8 were read on this motion to/for LEAVE TO FILE

The following e-filed documents, listed by NYSCEF document number (Motion 002) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 were read on this motion to/for DISMISS

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motion to proceed anonymously is denied without prejudice to renewing, and the motion of defendant Zara USA, Inc. ("Zara") to dismiss the complaint as against it pursuant to CPLR 3211(a)(7) is granted in part.

Plaintiff commenced this action for personal injuries allegedly sustained as the result of a sexual assault in a fitting room in one of defendant Zara's stores by non-party Esteban Gomez, one of its employees (NYSCEF Doc. No. 1 [summons and complaint]).

Plaintiff moved, by order to show cause, to proceed under the pseudonym "John Doe," which the Court (Ta-Tanisha James, J.) provisionally granted, pending determination of the motion (NYSCEF Doc. Nos. 2-5).

Defendant Zara subsequently moved to dismiss the complaint as against it pursuant to CPLR 3211(a)(7) (NYSCEF Doc. Nos. 9-12).

I. Motion to Dismiss

On a motion to dismiss the complaint under CPLR 3211(a)(7), for failure to state a cause of action, “the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff ... ‘the benefit of every possible favorable inference’” (*AG Capital Funding Partners, L.P. v State St. Bank and Trust Co.*, 5 NY3d 582, 591 [2005], quoting *Leon v Martinez*, 84 NY2d 83, 87 [1994]).

“Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). A plaintiff can submit affidavits or other evidence to remedy any defects in the complaint (*Leon*, 84 NY2d at 88; *Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 635-636 [1976]). “When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

The complaint here alleges that plaintiff, a customer at one of Zara’s retail stores on January 18, 2024, selected various items of clothing to try on. He proceeded to the second-floor fitting room, where Gomez, the only employee stationed, directed him to a changing stall (NYSCEF Doc. No. 1 at 3-4). While plaintiff was undressing, and without his consent, Gomez repeatedly pulled back the curtain and stared at him (*id.* at 4-5). Each time, plaintiff closed the curtain, but eventually Gomez entered the stall and placed his hands on plaintiff’s body and inserted his fingers inside plaintiff’s underwear (*id.* at 5). Plaintiff resisted and expressed his objections, but Gomez returned, put his hand inside plaintiff’s underwear and pulled his genitals, which incident plaintiff

partially captured on his cell phone video (*id.* at 5-6).

Plaintiff asserts causes of action against Zara for: negligence; assault; battery; negligent hiring, retention, and supervision; intentional infliction of emotional distress; negligent infliction of emotional distress; and violations of the New York City Human Rights Law (“City HRL”) (NYSCEF Doc. No. 1 at 7-15). Although the complaint identifies Esteban Gomez by name in factual and legal recitations, he is not named as a defendant; John Does 1 through 10 and ABC Corps. 1 through 10 are listed as defendants.

1. Intentional Torts

“Battery is the unjustified touching of another person, without that person’s consent, with the intent to cause a bodily contact that a reasonable person would find offensive; [a]ssault involves putting a person in fear of a battery” (*Rivera v State*, 34 NY3d 383, 389 [2019] [internal quotes and cite omitted; brackets in original]). Both torts are intentional (*see id.*).

The elements of intentional infliction of emotional distress are: “(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress” (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]).

Zara can be held vicariously liable, under the doctrine of respondeat superior, for the intentional torts of its employee, Gomez, if committed in furtherance of the employer’s business and while acting within the scope of his employment (*see id.*; *Doe v Guthrie Clinic, Ltd.*, 22 NY3d 480, 484 [2014]). To make that determination, the court should consider: “the connection between the time, place and occasion for the act; the history of the relationship between employer and employee as spelled out in actual

practice; whether the act is one commonly done by such an employee; the extent of departure from normal methods of performance; and whether the specific act was one that the employer could reasonably have anticipated” (*Riviello v Waldron*, 47 NY2d 297, 303 [1979]).

The allegations of the complaint are that Gomez committed the sexual assault and battery “to gratify his own sexual desire” (NYSCEF Doc. No. 1 ¶¶ 50, 58). Even affording plaintiff the benefit of every possible favorable inference, Gomez was acting for purely personal motives, unrelated to Zara’s retail business, and clearly departing from the scope of his employment as a fitting room attendant (*see RJC Realty Holding Corp. v Republic Franklin Ins. Co.*, 2 NY3d 158, 163-164 [2004] [sexual assault by beauty salon/health spa masseur not within scope]; *N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251-252 [2002] [sexual assault by hospital doctor not within scope]; *Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932 [1999] [sexual abuse by hospital orderly not within scope]; *Samoya W. v 3940 Carpenter Ave., LLC*, 187 AD3d 678 [1st Dept 2020] [sexual abuse by building superintendent not within scope]; *Bowman v State of New York*, 10 AD3d 315 [1st Dept 2004 [rape of private security guard by court officer in a locker room not within scope]).

Similarly, Gomez allegedly “intended to cause emotional distress” (NYSCEF Doc. No. 1 ¶ 72), solely for his own reasons, dissociated from his employer’s business, and therefore Zara cannot be held vicariously liable for intentional infliction of emotional distress (“IIED”) (*see Jara v Initial Contract Servs., Inc.*, 267 AD2d 106 [1st Dept 1999] [IIED arising from low-level supervisor’s sexual abuse of employee]; *Escobar v Spartan Assemblies, Inc.*, 267 AD2d 272 [2d Dept 1999] [IIED arising from supervisor’s sexual comments, gestures, and touching]; *see also Doe*, 22 NY3d at 483-484 [IIED arising

from hospital nurse's dissemination of embarrassing confidential patient information]).

Accordingly, the claims against Zara for assault, battery, and intentional infliction of emotional distress are dismissed.

2. City HRL

As to the City HRL claim, the complaint alleges that Gomez harassed him "on the basis of gender and perceived sexual orientation" (NYSCEF Doc. No. 1 ¶ 82).

The City HRL does prohibit discrimination by a provider of public accommodations on the basis of gender or sexual orientation, including perceived sexual orientation (Administrative Code of the City of New York § 8-107[4][a][1]; see § 8-102 [definition of public accommodation]).

The City HRL, however, cannot be used to evade "the established body of law finding that an employer is generally not responsible pursuant to respondeat superior for assaults committed by their employees" (*Rizzo v Estate of Polifrone*, 192 AD3d 564, 564 [1st Dept 2021]). There are no allegations of any discriminatory actions Zara itself actively took, or that it encouraged, condoned, or approved Gomez's conduct (see *Doe v Bloomberg, L.P.*, 36 NY3d 450 [2021]).

The City HRL claim is therefore dismissed.

3. Negligence Claims

A cause of action for negligent hiring, retention, and supervision requires allegations that the employer knew or should have known of the employee's propensity for the sort of behavior that caused the injured party's harm, and the employer had the opportunity to take necessary action but failed to do so, which caused damage (see *Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023]; *Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 160 [1st Dept 2022]).

The allegations here are sufficient to sustain the claim (*see Doe v Intercontinental Hotels Group, PLC*, 193 AD3d 410, 411 [1st Dept 2021]), which need not be pleaded with specificity (*see Waterbury*, 205 AD3d at 160), and can be amplified in the bill of particulars (*see John Doe – 18126 v Young People’s Chorus of N.Y. City*, 238 AD3d 633, 634 [1st Dept 2025]). Indeed, at this pleading stage, the relevant information is within defendants’ possession and control, further warranting denial of the motion (*see id.*). Zara asserts in reply that the parties engaged in limited pre-action discovery, including Gomez’s disciplinary history, and that the only pertinent document is a warning letter to him for opening a dressing room curtain of a different customer four months after the incident alleged in this action (NYSCEF Doc. No. 17); Zara has submitted the letter (NYSCEF Doc. No. 18). However, Zara has not moved pursuant to CPLR 3211(a)(1) (defense founded upon documentary evidence), and it is unclear whether further discovery, including depositions, will yield necessary information.

To the extent the claim for negligent infliction of emotional distress is not based on allegations of intentional conduct by Zara, either direct or vicarious, which would require dismissal (*see Black v City of New York*, 244 AD3d 404, 405-406 [1st Dept 2025]), it is duplicative of the claim for negligent hiring, retention, and supervision (*see Redd v Brooklyn Friends School*, 238 AD3d 1181 [2^d Dept 2025]; *see also Engelman v Rofo*, 194 AD3d 26 [1st Dept 2021]).

The general negligence claim is also dismissed as duplicative of the negligent hiring, retention, and supervision claim (*see Doe 42 v Yeshiva Univ.*, 245 AD3d 545, 547-548 [1st Dept 2026] [and cases cited therein]).

II. Motion to Proceed Pseudonymously

Plaintiff seeks to proceed under the pseudonym “John Doe.”

Although plaintiff invokes Civil Rights Law § 50-b, courts have consistently determined that the statute applies to governmental employees and only where the alleged perpetrator has been convicted or formally charged with a sexual offense (*see e.g. Doe v Kidd*, 19 Misc3d 782 [Sup Ct, NY County 2008] [discussing legislative history that the statute is intended to encourage victims to cooperate in the prosecution of sexual offenses]; *Doe v JAS Forwarding (USA), Inc.*, 87 Misc3d 1224[A] [Sup Ct, Queens County 2025]; *GCVAWCG-Doe v Roman Catholic Archdiocese of N.Y.*, 69 Misc3d 648 [Sup Ct, Westchester County 2020]; *Doe v MacFarland*, 66 Misc3d 604 [Sup Ct, Rockland County 2019]; *Doe v Good Samaritan Hosp.*, 65 Misc3d 987 [Sup Ct, Nassau County 2019]; *see also Brown v New York City Police Dept.*, 264 AD2d 558 [1st Dept 1999]). Indeed, while the opening sentence of Civil Rights Law § 50-b appears broad (“[t]he identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential”), the ensuing language circumscribes its effect:

No report, paper, picture, photograph, court file or other documents, *in the custody or possession of any public officer or employee*, which identifies such a victim shall be made available for public inspection. *No such public officer or employee shall disclose* any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.

...

3. The *court having jurisdiction over the alleged offense* may order any restrictions upon disclosure authorized in subdivision two of this section, as it deems necessary and proper to preserve the confidentiality of the identity of the victim.

4. Nothing contained in this section shall be construed to require the court to exclude the public from *any stage of the criminal proceeding* [emphasis added].

The Civil Rights Law is thus inapplicable here.

The determination whether to allow a party to proceed anonymously or under a fictitious name requires a balancing of that person's privacy interest against the presumption in favor of open trials and any potential prejudice to the opposing party (see *Anonymous v Lerner*, 124 AD3d 487 [1st Dept 2015]). Even for plaintiffs suing under the Child Victims Act (CPLR 214-g), alleging sexual abuse when they were minors, "permission to use a pseudonym will not be granted automatically," but only in the exercise of the court's discretion (*Twersky v Yeshiva Univ.*, 201 AD3d 559, 559 [1st Dept 2022]). Even where "the parties seek to stipulate to such relief, the trial court should not pro forma approve an anonymous caption, but should exercise its discretion to limit the public nature of judicial proceedings sparingly and then, only when unusual circumstances necessitate it" (*Applehead Pictures LLC v Perelman*, 80 AD3d 181, 192 [1st Dept 2010] [quotes and cite omitted]).

Factors the court can consider include: "1) whether the plaintiff is challenging governmental activity or an individual's actions, 2) whether the plaintiff's action requires disclosure of information of the utmost intimacy, 3) whether identification would put the plaintiff at risk of suffering physical or mental injury, 4) whether the defendant would be prejudiced by allowing the plaintiff to proceed anonymously, and 5) the public interest in guaranteeing open access to proceedings without denying litigants access to the justice system" (*Doe v Amherst Cent. School Dist.*, 196 AD3d 9, 13 [4th Dept 2021] [internal quotes and cite omitted]). Also relevant is the extent to which the identity of the litigant has been kept confidential (see *Doe v Good Samaritan Hosp.*, 65

Misc3d 987 [Sup Ct, Nassau County 2019]). Assertions of public humiliation and embarrassment alone are insufficient (*see Lerner*, 124 AD3d at 488; *see also Doe v Yeshiva Univ.*, 195 AD3d 565, 566 [1st Dept 2021]).

The applicant must present specific facts, but an affidavit from the party himself or herself is not necessarily obligatory (*see Doe v Yeshiva Univ.*, 195 AD3d at 566).

Here, plaintiff offers only a vague and conclusory affirmation of counsel (*see Twersky*, 201 AD3d at 560). Counsel states that this case has drawn media attention (NYSCEF Doc. No. 4 ¶ 16), but has not submitted the article cited, and Zara represents that plaintiff's attorney "gave an interview to the reporter who wrote the news story and is quoted throughout the article" (NYSCEF Doc. No. 8 ¶ 13). It is unclear how the reporter learned of the incident, including whether plaintiff or his attorney reached out to the paper, or what was said during the purported interview (*see Lerner*, 124 AD3d at 487-488 [plaintiff's privacy concerns "undermined by her reporting her story to the media before serving defendant with process"]).

Plaintiff's motion to proceed under a pseudonym is denied without prejudice to renewing upon submission of more detailed facts. Plaintiff may file a new order to show cause to maintain the temporary John Doe caption should he choose to make such a renewed motion.

It is therefore

ORDERED that defendant Zara's motion to dismiss the complaint as against it is granted to the extent that the first (negligence), second (assault), third (battery), fifth (intentional infliction of emotional distress), sixth (negligent infliction of emotional distress), and seventh (violations of the City HRL) causes of action of the complaint are dismissed as against it; and it is further

ORDERED that defendant Zara’s motion to dismiss is denied as to the fourth (negligent hiring, retention, and supervision) cause of action; and it is further

ORDERED that defendant Zara is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff’s motion to proceed under the pseudonym John Doe is denied without prejudice; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 623, 111 Centre Street, New York, New York, on May 12, 2026, at 10:00 AM.

This constitutes the decision and order of the Court.

3/19/2026

DATE

MATTHEW V. GRIECO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE