

"John Doe I" v Iona Preparatory Sch.

2020 NY Slip Op 35557(U)

July 1, 2020

Supreme Court, Bronx County

Docket Number: Index No. 70007/2019E

Judge: George J. Silver

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----X
"JOHN DOE I" and "JOHN DOE II",

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Plaintiffs,

-against-

DECISION & ORDER

**IONA PREPARATORY SCHOOL, IONA COLLEGE, IONA
PREPARATORY SCHOOL BOARD OF TRUSTEES,
WHOSE NAMES ARE CURRENTLY UNKNOWN AND
THUS DESIGNATED AS "JAMES DOE 1-XXX", THE
CHRISTIAN BROTHERS INSTITUTE, THE CHRISTIAN
BROTHERS OF IRELAND, INC., THE ROMAN CATHOLIC
ARCHDIOCESE OF THE CITY OF NEW YORK, JAMES K.
DEVLIN, MAJORY PRESTON, AND BRIAN WALSH,**

Defendants.

-----X
HON. GEORGE J. SILVER:

Defendant IONA COLLEGE ("defendant") moves for an order, pursuant to CPLR § 3211(a)(7), dismissing plaintiffs' "JOHN DOE I" and "JOHN DOE II" ("plaintiffs") complaint for failure to state a cause of action. Plaintiffs oppose defendant's motion, and cross-move for leave to amend the complaint. For the reasons discussed below, the court denies defendant's motion, and grants plaintiffs' cross-motion.

BACKGROUND AND ARGUMENTS

This action was commenced with the filing of plaintiffs' summons and complaint on or about August 14, 2019. Plaintiffs allege that they were students of Iona Grammar School¹ from 1984 to 1991, during which time they were sexually abused by their fourth-grade teacher, James Thompson ("Mr. Thompson") during the 1985-1986 school year. Plaintiffs also claim that

¹ Plaintiffs note that defendant IONA PREPARATORY SCHOOL "absorbed" Iona Grammar School in or about 2013.

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defendants in this action had knowledge of Mr. Thompson's "pedophilic tendencies," and were in various positions to prevent the sexual abuse from occurring and continuing, but failed to do so.

Defendant argues that plaintiffs failed to state a cause of action against Iona College, and that defendant has not been given notice as to the "transactions or occurrences intended to be proved as to its own conduct." Defendant contends that since plaintiffs are anonymous, defendant has not been able to determine what cause of action may exist.

Defendant also asserts that plaintiffs' complaint does not allege that Iona College is and/or was an agent, servant, and/or employee of Iona Grammar School, or that Iona College otherwise has and/or had any connection to Iona Grammar School. Similarly, defendant avers that plaintiffs' complaint does not claim that Iona College committed any acts or omissions, had notice or knowledge of any occurrence or transaction causally related to plaintiffs' alleged injuries, or had any connection to plaintiffs and/or the events and occurrences which form the basis of this action.

In opposition, plaintiffs argue that Iona College is "intertwined with" and has a connection to Iona Preparatory School. Plaintiffs note that the Irish Christian Brothers founded Iona Preparatory School in 1916, and that the Christian Brothers founded Iona College in 1940. Plaintiffs also highlight that Cornelia Hall, the first building that Iona College occupied, was an Iona Preparatory School building that Iona College seized in a "friendly takeover." Additionally, plaintiffs point out that Brother Joseph Ignatius Doorley, who started Iona Preparatory School as "Iona School" in 1916, purchased an 18-acre property that eventually became Iona College in 1919. Plaintiffs further note that many employees of Iona Preparatory School went on to become employees of Iona College, and that Iona College affords students of Iona Preparatory School the opportunity to earn college credits through their "Iona College's Link Program." As such, plaintiffs posit that Iona College is intertwined with Iona Preparatory School, and because the extent of their

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relationship is currently unknown to plaintiffs, discovery is needed to comprehend the entirety of their relationship to each other.

By cross-motion, plaintiffs seek leave to amend their complaint to specify Iona College's connection to Iona Preparatory School. Plaintiffs contend that Iona College does not argue that it does not have a connection to the alleged events, but only claims that plaintiffs did not properly plead their allegations. In that regard, plaintiffs assert that they should be permitted to amend their complaint to cure the alleged defects by specifically alleging Iona College's connection to Iona Preparatory School. Lastly, plaintiffs maintain that granting plaintiffs leave to amend their complaint will not result in prejudice to defendant.²

In reply, defendant explains that to avoid dismissal, plaintiffs' pleadings must be sufficiently particular to give notice of the alleged transactions and/or occurrences to support the requisite elements of a valid cause of action.

Defendant also argues that even if plaintiffs had properly pleaded that Iona College had failed to discharge its duty, which resulted in plaintiffs' alleged injuries, plaintiffs' complaint does not mention what duty defendant owed to plaintiffs. In that regard, defendant notes that while plaintiffs set forth distinct allegations as to each individual defendant in this action, "which would establish a duty that each individual defendant" owed to plaintiffs, plaintiffs failed to do the same for Iona College. Specifically, defendant highlights that plaintiffs' complaint does not mention that Iona College owned Iona Grammar School, operated or supervised Iona Grammar School, or was an employee of Iona Grammar School. As such, defendant underscores that because plaintiffs have failed to allege facts that would establish a duty on Iona College's behalf, plaintiffs have failed to establish the necessary elements for a cause of action for negligence.

² Plaintiffs annex a proposed amended complaint in support of their cross-motion to amend the complaint, which details the alleged relationship between Iona College and Iona Preparatory School.

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Finally, defendant argues that plaintiffs' proposed amended complaint fails to set forth any additional allegations that are sufficiently particular to give Iona College notice of the alleged transactions and/or occurrences. Specifically, defendant points out that since plaintiffs' proposed amendments fail to allege that Iona College had authority or supervision over Mr. Thompson, plaintiffs, Iona Grammar School, or co-defendants, including Iona Preparatory School, Iona College did not owe a duty to plaintiffs.

DISCUSSION

I. Defendant's Motion to Dismiss

Pursuant to CPLR § 3211(a)(7), a court may dismiss a complaint for failure to "state a cause of action." "On a motion to dismiss pursuant to CPLR [§] 3211, the pleading is to be afforded a liberal construction," and the court "accept[s] the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d 83, 87 [1994]).

"Under CPLR, the sufficiency of a pleading to state a cause of action . . . will generally depend upon whether or not there was substantial compliance with Section 3013 providing that 'Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense'" (*Foley v. D'Agostino*, 21 A.D.2d 60, 62 [1st Dept. 1964] [citations omitted]; see CPLR § 3013). "[G]enerally speaking, 'pleadings should not be dismissed or ordered amended unless the allegations therein are not sufficiently particular to apprise the court and parties of the subject matter of the controversy'" (*id.* [citations omitted]).

Therefore, upon a CPLR § 3211(a)(7) motion to dismiss, the court "look[s] to the substance rather than to the form" (*id.* at 65). In doing so, the pertinent question is "whether the requisite allegations of any valid cause of action cognizable by the state courts 'can be fairly gathered from

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all the averments” (*id. citing Condon v. Associated Hosp. Serv. of New York*, 287 N.Y. 411, 414 [1942]).

In applying these principles, “Looseness, verbosity and excursiveness, must be overlooked on such a motion if any cause of action can be spelled out from the four corners of the pleading” (*id.* at 64-65 [citations omitted]). Similarly, “Defects shall be ignored if a substantial right of a party is not prejudiced” (*id.*).

Here, accepting all the facts as alleged in the complaint as true, plaintiffs have sufficiently stated a cause of action for negligence against Iona College. Notably, plaintiffs’ complaint alleges, *inter alia*, that, “Defendants owed a duty to Plaintiffs to keep them safe while they were in school,” “During the course of the 1985-1986 school year, the defendants had actual and constructive knowledge of Thompson’s sexual abuse of students,” and that, “Defendants failed to take the proper steps to protect [plaintiffs] from Thompson’s continued sexual abuse.” Plaintiffs also claim that, “As a direct and proximate result of [plaintiffs’] childhood abuse by Thompson, and the Defendant exacerbation of that abuse by their failure to protect [plaintiffs] from Thompson’s repeated abuse,” both plaintiffs suffered various injuries. While plaintiffs use the general term “defendants” to broadly encompass all defendants named in the caption, plaintiffs’ failure to specifically list “Iona College” in every allegation set forth in their complaint does not minimize or undermine the sufficiency of their pleadings.

To be sure, it can reasonably be gathered from the “four corners of the pleading” that plaintiffs intended to include Iona College as part of the “defendants” who, *inter alia*, “knew or should have known of Thompson’s propensity for pedophilia and sexual abuse,” and “failed to take the proper steps to protect” plaintiffs (*see, Foley*, 21 A.D.2d at 65, *supra* [“However imperfectly, informally or even illogically the facts may be stated, a complaint, attacked for

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insufficiency, is deemed to allege ‘whatever can be implied from its statements by fair and reasonable intendment.’”] *citing Kain v. Larkin*, 141 N.Y. 144, 150 [1894]; *see also, Kempf v. Magida*, 37 A.D.3d 763, 764 [2d Dept. 2007] [“On a motion to dismiss pursuant to CPLR § 3211(a)(7), the pleading is to be afforded a liberal construction]; *Mihlovan v. Grozavu*, 72 N.Y.2d 506, 509 [1988]).

Moreover, while the nature and extent of the relationship between Iona College and Iona Preparatory School and/or other named defendants is uncertain at this pre-discovery juncture, this fact alone does not preclude a finding that plaintiffs have established a “cognizable legal theory” (*see, Leon*, 84 N.Y.2d at 87, *supra*). Indeed, while the course of discovery may elicit information bearing upon the relationship, or lack thereof, between the named defendants, which may or may not relieve Iona College from liability, it is well-recognized that the “test to be applied is whether the complaint ‘gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments’”(*JP Morgan Chase v. J.H. Elec. of New York, Inc.*, 69 A.D.3d 802, 803 [2d Dept. 2010]). The court finds that the complaint here satisfies this test.

Accordingly, as plaintiffs’ complaint sufficiently states a cause of action for negligence against Iona College, defendant’s application to dismiss the complaint pursuant to CPLR § 3211(a)(7) is denied (*see, Quinones v. Schaap*, 91 A.D.3d 739, 740 [2d Dept. 2012]; *JP Morgan Chase*, 69 A.D.3d at 803, *supra*; *Kaufman v. Sweigard*, 27 A.D.2d 717, 717 [1st Dept. 1967]).

II. Plaintiffs’ Cross-Motion for Leave to Amend

Under CPLR § 3025(b), “A party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties.” ““Applications for leave to amend pleadings under CPLR

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[§] 3025(b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit” (*Favia v. Harley-Davidson Motor Co.*, 119 A.D.3d 836, 836 [2d Dept. 2014] [citations omitted]). “The decision to allow or disallow the amendment is committed to the court’s discretion” (*Edenwald Contracting Co. v. City of New York*, 60 N.Y.2d 957, 959 [1983]).

Here, plaintiffs’ proposed amended complaint adequately states a cause of action for negligence against Iona College (*see, Favia*, 119 A.D.3d at 836, *supra*). Notably, plaintiffs’ proposed amendments, which relate to the alleged relationship and connection between Iona College, Iona Grammar School, and Iona Preparatory School, are not “palpably insufficient” to state a cause of action, or “patently devoid of merit” (*id.* at 837). Moreover, as defendant has failed to allege or establish any surprise or prejudice resulting from plaintiffs’ proposed amended pleading, plaintiffs’ application for leave to amend the complaint is granted (*id.*; *Zorn v. Gilbert*, 60 A.D.3d 850, 850 [2d Dept. 2009]; *D’Onofrio v. St. Joseph’s Hosp. Health Ctr.*, 101 A.D.2d 686, 686 [4th Dept. 1984]; *Fahey v. Ontario Cty.*, 44 N.Y.2d 934, 935 [1978]).

Accordingly, based on the foregoing, it is hereby

ORDERED that defendant’s motion to dismiss the complaint pursuant to CPLR § 3211(a)(7) is denied, and it is further

ORDERED that plaintiffs’ cross-motion for leave to amend the complaint is granted; and it is further

ORDERED that plaintiffs shall serve defendants with the amended complaint within 30 days of this order; and it is further

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

The foregoing constitutes the decision and order of this court.

Dated: 7-1-2020


HON. GEORGE J. SILVER