Weinstock v ABP Corp.
2021 NY Slip Op 30489(U)
February 23, 2021
Supreme Court, New York County
Docket Number: 157311/2018
Judge: Louis L. Nock

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **IAS MOTION 38EFM**

Justice

----------X

MARK WEINSTOCK,

Plaintiff,

- v -

ABP CORPORATION,

Defendant.

----------X

INDEX NO. 157311/2018

MOTION DATE 1/1/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28

were read on this motion to DISMISS THE AMENDED COMPLAINT.

Upon the foregoing documents, and after due deliberation, the motion of defendant ABP Corporation ("Defendant") to dismiss the amended complaint is granted, in accord with the following memorandum.

BACKGROUND[1]

Plaintiff Mark Weinstock ("Plaintiff") asserts causes of action against Defendant ABP Corporation ("Defendant") for violation of General Business Law ("GBL") § 491, *et seq.*, negligence, and intentional infliction of emotional distress, arising from an incident that occurred in a retail café bakery located at 599 Lexington Avenue, New York, New York 10022, which is owned and operated by Defendant, known as "Au Bon Pain." The amended complaint alleges that Plaintiff "suffers from a medical condition which causes him to sometimes feel the urgent need to urinate, with little or no prior warning," and that his mobility is extremely limited due to

[1] Allegations of the amended complaint are taken as true for purposes of this motion to dismiss.

chronic, long term arthritis (Amended Complaint ¶¶ 7-8). On April 19, 2018, Plaintiff was meeting with several business associates at the Au Bon Pain when he felt the immediate and urgent need to urinate (*id*. ¶¶ 6, 10). Plaintiff asked an Au Bon Pain employee for use of the restroom but was advised by the employee that there were no restrooms available for use by the public (*id.* ¶ 12). Plaintiff explained to the employee that his medical condition was causing him the need to immediately use the restroom, but the employee again refused to allow Plaintiff to use a restroom on the premises, and advised Plaintiff that company regulations did not allow customers to use restrooms in that premises (*id*. ¶¶ 13-14). Plaintiff left the Au Bon Pain and attempted to locate another restroom, but he was unable to avoid soiling his clothing while travelling there (*id*. ¶ 15). Thereafter, Plaintiff had to return to the Au Bon Pain café to retrieve his personal effects which he had left with his business associates (*id*. ¶ 16). As alleged, his business associates, as well as other customers, observed his soiled clothing and surmised what had taken place, causing Plaintiff much embarrassment (*id*. ¶ 17). Plaintiff also alleges that he continues to experience trepidation being in public places for fear he will not be able to use a restroom (*id*. ¶ 18).

The amended complaint asserts causes of action for violation of GBL § 491, *et seq*., negligence, and intentional infliction of emotional distress. Defendant moves to dismiss the amended complaint pursuant to CPLR 3211 (a) (7) on the grounds that GBL § 491, *et seq.*, does not confer a private right of action, and for failure to state a claim for negligence and intentional infliction of emotional distress. Plaintiff opposes the motion.

STANDARD OF REVIEW

On a motion to dismiss under CPLR 3211 (a) (7), the court must "accept the facts as alleged in the complaint as true, accord the plaintiff 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 NY2d 83, 87-88 [1994] [citations omitted]). Ambiguous allegations must be resolved in the plaintiff's favor (*see JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). "The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal citations omitted]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*Cortlandt Street Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018]), but a pleading consisting of "bare legal conclusions" is insufficient (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006], *affd* 9 NY3d 836 [2007], *cert denied sub nom Spiegel v Rowland*, 552 US 1257 [2008]) and "the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts" (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

DISCUSSION

A. General Business Law

Defendant first moves to dismiss the amended complaint on the ground that GBL § 491, *et seq.*, titled the "Crohn's and Colitis Fairness Act" (the "Act"), does not confer a private right of action. As originally enacted,[2] the Act states as follows:

> **§ 491. Definition**
> As used in this article, "eligible medical condition" means Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or any other medical condition that requires immediate access to a toilet facility.

[2] The Act was originally enacted in 2018 (L. 2018, c. 42, § 2, eff. April 17, 2018). The amended complaint in this action alleges that the operative events occurred on April 19, 2018 – which is two days after the effective date of the Act.

§ 492. Access to restroom facilities

A place of business open to the general public for the sale of goods or services that has a toilet facility for its employees shall allow any individual who is lawfully on the premises of such place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the public, provided that all of the following conditions are met:

1. the individual requesting the use of the employee toilet facility has an eligible medical condition or utilizes an ostomy device, provided that the place of business may require the individual to present reasonable evidence that the individual has an eligible medical condition or uses an ostomy device;

2. two or more employees of the place of business are working at the time the individual requests use of the employee toilet facility;

3. the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the requesting individual or create an obvious security risk to the place of business;

4. use of the toilet facility would not create an obvious health or safety risk to the requesting individual; and

5. a public restroom is not immediately accessible to the requesting individual.

§ 493. Required changes

Nothing in section four hundred ninety-two of this article shall be construed as requiring a place of business open to the general public for the sale of goods or services that has a toilet facility for its employees to make any physical changes to an employee toilet facility.

(GBL § 491-493.) The Act was recently amended[3] to add the following provision:

§ 494. Denial of access

1. The consumer protection division, as established in section ninety-four-a of the executive law, shall have the power and duty:

(a) to receive complaints from any individual that has been denied access to an employee toilet facility in violation of this article;

(b) to attempt to mediate such complaints where appropriate; and

(c) to refer such complaints to the appropriate unit of the department or the federal, state or other agency authorized by law for appropriate action on such complaints.

2. Any county, city or town office of consumer protection shall have the power and duty:

(a) to receive complaints from any individual that has been denied access to an employee toilet facility in violation of this article;

[3] L. 2020, c. 208, § 1, eff. Oct. 7, 2020.

(b) to attempt to mediate such complaints where appropriate; and

(c) to refer such complaints to the appropriate unit of the department or the federal, state or other agency authorized by law for appropriate action on such complaints.

(GBL § 494.)

"Where a statute fails to expressly prescribe a private right of action, one can nevertheless be implied, provided that it is consistent with the legislative intent" (*Rhodes v Herz*, 84 AD3d 1, 9 [1st Dept], *appeal dismissed* 18 NY3d 838 [2011]). "A private right of action will be implied if (1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the recognition of such right promotes the legislative purpose which undergirds the statute; and (3) the creation of such right is consistent with the legislative scheme for the statute" (*id.*, *citing Sheehy v Big Flats Community Day, Inc.*, 73 NY2d 629, 633 [1989]). If any one part of the test fails, the statute does not provide a private right of action (*Sheehy*, 73 NY2d at 634).

When interpreting the Act, the court must adhere to the traditional rules of statutory construction. "The primary rule is that 'courts are obliged to interpret a statute to effectuate the intent of the Legislature, and when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used'" (*Avella v City of N.Y.*, 131 AD3d 77, 84 [1st Dept 2015], *affd* 29 NY3d 425 [2017], *quoting People v Finnegan*, 85 NY2d 53, 58, *cert denied*, 516 US 919 [1995]). "Further, '[i]t is an accepted rule that all parts of a statute are intended to be given effect and that a statutory construction which renders one part meaningless should be avoided'" (*Avella, supra, quoting Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 515, 577 NYS2d 219 [1991]). "Finally, we must be mindful of 'the statutory context of the provision'" (*Avella, supra, quoting New York State Psychiatric Assn., Inc. v New York State Dept. of Health*, 19 NY3d 17, 24 [2012]).

Under *Sheehy*, the court must first determine whether the Plaintiff is a member of the class for whose benefit the statute was enacted. GBL § 491 indicates that the statute was enacted to benefit individuals with an "eligible medical condition," which is defined as "Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome or any other medical condition that requires immediate access to a toilet facility." Plaintiff pleads that he "suffers from a medical condition which causes him to sometimes feel the urgent need to urinate, with little or no prior warning" (Amended Complaint ¶ 7). On a motion to dismiss, the court is obliged to accept the facts as alleged as true and afford the plaintiff the benefit of every favorable inference. Taking this standard into consideration, and giving effect to the plain language of the statute, Plaintiff's allegation that he suffers from a medical condition which causes him to sometimes feel the urgent need to urinate, with little or no prior warning, is sufficient. Although legislative history cited by Defendant indicates that the focus of the Legislature may have been "gastrointestinal diseases," which is, to be sure, noted in the statute, this court cannot overlook the broadly worded clause of the statute adding "any other medical condition that requires immediate access to a toilet facility" as an "eligible medical condition" coming within the purview of the statute (GBL § 491) (*see Avella* 131 AD3d at 84). To focus only on gastrointestinal diseases to the exclusion of other comparable medical conditions would render the inclusion of the clause "any other medical condition that requires immediate access to a toilet facility" meaningless (*see Rocovich* at 78 NY2d 515). Therefore, Plaintiff has satisfied the first prong of the test.

The court must next determine whether recognition of a private right of action would promote the legislative purpose of the governing statute. "[W]hether an implied private right of action promotes the legislative purpose, is a two-part inquiry, requiring determination of (1) what

the Legislature was seeking to accomplish in enacting the statute; and (2) whether a private right of action promotes that objective" (*Rhodes*, 84 AD3d at 10). A court may determine whether these elements are satisfied by looking to the "statute's legislative history, such as amendments to the statute itself, and the memoranda and/or letters submitted during the legislative process" (*id.*). Here, the legislative history indicates throughout that the objective of the Act was to provide restroom access to people with eligible medical conditions (*see* Assembly Mem. in Support of GBL § 491-493, submitted as NYSCEF Doc. No. 29 Exh. C, at 000005, 000009, *et seq.*), while avoiding any additional financial burden to business owners (*id.* at 000006 ["Notably, this legislation would not create any additional cost to businesses as they are not required to alter their toilet facility"], 000007 ["businesses would not incur any financial burden"], Division of the Budget Bill Memorandum, submitted as NYSCEF Doc. No. 29 Exh. C, at 000011 ["This bill is not expected to have a significant State fiscal impact and is not expected to impact businesses as it does not require a business to make physical changes to an existing facility"]).

While a private right of action would promote the legislative objective of providing restroom access to people with eligible medical conditions, it might have the potential of running afoul of the second objective of avoiding additional costs to business owners (*see Uhr ex rel. Uhr v East Greenbush Central School Dist.*, 94 NY2d 32, 41 [1999] ["There is also the matter of cost to the school districts, as evidenced by the Legislature's expressed sensitivity in that regard"]; *see also Rhodes*, 84 AD3d at 11 [noting prior instances where the Court of Appeals declined to find an implied private right of action where doing so would impose "crushing personal liability" on defendants that was inconsistent with the legislative scheme]). Therefore, the second prong of the test might not be fully satisfied given the legislative history's expressly

stated precaution not to cause business owners to incur additional cost due to the measure, and given the Court of Appeals' sensitivity to the prospect of "crushing personal liability," which would be inconsistent with stated legislative concerns (*see, Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 329 [1983] [noting the effects of implying a private right of action giving rise to widespread claims for damages and concluding that "the provisions of the present statute and the history of their enactment strongly suggest that a private right of action based on the statute was not intended"] [cited in *Rhodes v Herz*, 84 AD3d 1 [1st Dept], *appeal dismissed* 18 NY3d 838 [2011]).[4]

However, the Court of Appeals has held that the **third** prong of the test – whether the creation of a private right of action is consistent with the legislative scheme for the statute (*Rhodes*, 84 AD3d at 1, 9) – is the "most critical inquiry in determining whether to recognize a private cause of action where one is not expressly provided" (*Brian Hoxie's Painting Co., Inc. v Cato-Meridian Central School Dist.*, 76 NY2d 207, 212 [1980]). "Here, the relevant inquiry is whether the private right of action coalesces smoothly with the legislative goal, ***in particular with its enforcement mechanism***, or whether it is completely at odds with the same" (*Rhodes*, 84 AD3d at 10 [emphasis added]). Thus, distinct of whether a private right of action stands at odds with the legislative goals of the Act insofar as they take into account the financial burden on business owners – discussed immediately above – the court is obligated to take careful note of the language of GBL § 494 which expressly and unequivocally empowers, and imposes a duty upon, "[t]he consumer protection division,[5] as established in section ninety-four-a of the

[4] The foregoing analysis is statute specific, and is driven, in this particular statutory context, by the Act underlying this case which, in its express articulation as well as in its legislative history, evinces a clear desire by the Legislature to temper its reach by a palpable concern not to have the Act result in undue costs to business owners.

[5] A reference to the New York State Department of State's Consumer Protection Division.

executive law" and "[a]ny county, city or town office of consumer protection" to receive complaints from individuals denied access to bathroom facilities, mediate such complaints, and to refer complaints to "the appropriate unit of the department or the federal, state or other agency authorized by law for appropriate action on such complaints" (GBL § 494). This provision – which the Court of Appeals in *Rhodes* would refer to as the statute's "enforcement mechanism" (*Rhodes, supra,* at 10) – evinces a legislative intent to leave enforcement of the Act to administrative oversight, to the exclusion of privately lodged litigation.

The court takes note of the fact that section 494 came into being as a 2020 amendment (L. 2020, c. 208, § 1, eff. Oct. 7, 2020) – subsequent to the alleged 2018 incident forming the factual backdrop of the amended complaint in this action. However, it is the court's observation that said amendment was clearly intended to memorialize the Act's original legislative intent, as clearly shown by the Governor's Approval Statement for the Act (NYSCEF Doc. No. 29 Exh. B), which indicates that the Governor has "directed the Department of State's Division of Consumer Protection to answer questions and concerns about this legislation from individuals requiring assistance" and directs that "individuals subject to the protections of this law may file a complaint by contacting the consumer protection bureau of their local or state government, including those located within the New York State Department of State or the New York Attorney General's office." Indeed, when the Legislature decided to memorialize that policy through its 2020 amendment (GBL § 494), expressly opting for agency enforcement, it conspicuously refrained from adding language providing a private right of action. The Legislature simply did not go that far. The fact that the Legislature amended the Act without adding private-right-of-action language makes it evident that the Legislature affirmatively did not intend to provide a private right of action under the Act, consistent with what the then-

existing legislative history indicated, as noted above. It is not within the province of this court to impose into statutory law what its legislative authors have affirmatively determined to exclude (*see Uhr*, 94 NY2d at 41 [holding that the Legislature did not intend to create a private right of action where recent amendments did not include provisions for one]; *Varela v Investors Ins. Holding Corp.*, 81 NY2d 958, 961 ["Given the Legislature's action in amending article 22-A to expressly provide for a private cause of action in that article, its provision for private causes of action in other portions of the General Business Law, and the absence of a similar provision for enforcing article 29-H, we conclude the Legislature did not intend to create a private cause of action for violations of article 29-H"] [internal citations omitted], *rearg denied* 82 NY2d 706 [1993]; *see also Bartman v Shenker*, 5 Misc 3d 856, 860 [Sup Ct, NY County, 2004] ["Because the statute 'gives no indication that it was intended to provide a cause of action for disability association discrimination,' plaintiff ART's claims under the Executive Law must be dismissed"]). It is, therefore, the observation of this court that the Act was not intended by the Legislature to create a private right of action. Therefore, the court has no choice but to dismiss the first cause of action grounded in General Business Law § 491, *et seq*.[6]

B. Negligence

Defendant next moves to dismiss the second cause of action for negligence on the grounds that Plaintiff cannot point to either the existence, or the violation, of a duty owed to Plaintiff by Defendant and because Plaintiff otherwise fails to establish the necessary elements of the claim. Plaintiff argues that the protection afforded to him by the Act imposes a standard of care on Plaintiff, the violation of which constitutes negligence *per se*.[7]

[6] Thus, any change in the statutory policy underlying the current version of the Act must, naturally, rest with the Legislature.
[7] This argument is not dependent on a finding that the Act provides for a private right of action; but rather, looks to the Act solely as the possible bellwether of a particular standard of care in common law terms.

In order to prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Pasternack v Laboratory Corp. of America Holdings*, 27 NY3d 817, 825, *rearg denied* 28 NY3d 956 [2016]). The threshold focus regarding a cause of action for negligence is duty. In the absence of a duty, as a matter of law, there can be no liability (*id.*; *see also Lauer v City of N.Y.*, 95 NY2d 95, 100, [2000] ["Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm"]). The definition and scope of an alleged tortfeasor's duty owed to a plaintiff is a question of law (*Pasternack*, 27 NY3d at 825). Courts "fix the duty point by balancing factors, including the reasonable expectations of the parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability" (*id.* [internal quotation marks and citations omitted]). At common law, a landowner or business proprietor only has a duty to maintain its premises in a reasonably safe condition and warn visitors of known hazards (*see Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507 [1980]; *Basso v Miller*, 40 NY2d 233, 386 NYS2d 564 [1964]). Thus, it is clear that, starting from the common law standard, Defendant had no original duty to make its employee restroom open for use by anyone other than its employees.[8]

Relying on *Barnes v Stone-Quinn* (195 AD2d 12 [4th Dept 1993]) and *Carlock v Westchester Lighting Co.* (268 NY 345, 349 [1935]), Plaintiff asserts that the Act imposes an additional duty or standard of care that constitutes negligence *per se*. It is true that New York

[8] The amended complaint does not identify the basis for the duty that Defendant is alleged to have breached, pleading only that "Defendant, through its employees, breached the duty it owed to Plaintiff" (Amended Complaint ¶ 27).

courts have held that "[w]hen a statute designed to protect a particular class of persons against a particular type of harm is invoked by a member of the protected class, a court may, in furtherance of the statutory purpose, interpret the statute as creating an additional standard of care," the violation of which may be regarded as negligence *per se* (*Dance v Town of Southampton*, 95 AD2d 442 445 [2d Dept 1983] ["Where the statute codifies an already existing common-law rule or where the conduct prohibited is closely related to common-law negligence, a violation of the statute is often regarded as negligence *per se.*"]). However, this type of additional standard of care does not impose a duty that did not exist at common law (*Uhr*, 94 NY2d at 42 [holding that a statute did not imply a private right of action and affirming dismissal of a common law negligence claim based on the same conduct]; *see also Cruz v TD Bank, N.A.*, 855 F Supp 2d 157, 178 [SDNY 2012], *affd* 742 F3d 520 [2d Cir 2013], *citing Uhr*, 94 NY2d at 42 ["Where a statute does not imply a private right of action for money damages, the plaintiff may not restate the identical claim under a negligence theory"]). In the absence of a common law duty to Plaintiff, any expansion of the existing standards of care recognized by law, in the manner advocated by Plaintiff in this action, would effectively grant Plaintiff a private right of action that the statute does not recognize (*see Lugo v St. Nicholas Assocs.*, 2 Misc 3d 212, 218 [Sup Ct, NY County, 2003] ["If mere proof of a violation of the ADA were to establish negligence *per se*, plaintiff would effectively be afforded a private right of action that the statute does not recognize"], *affd* 18 AD3d 341 [1st Dept 2005]).[9]

[9] In this respect, this matter is analogous to the numerous Court of Appeals holdings regarding attempts by various plaintiffs to pursue common law causes of action predicated solely on violations of the Martin Act (GBL §§ 352-353), for which no private right of action exists (*see, e.g., Assured Guar. [UK] Ltd. v J.P. Morgan Inv. Mgt. Inc.*, 18 NY3d 341, 353 [2011] ["Read together, *CPC Intl.* and *Kerusa* stand for the proposition that a private litigant may not pursue a common-law cause of action where the claim is predicated solely on a violation of the Martin Act or its implementing regulations and would not exist but for the statute"]; *Kerusa Co. LLC v W10Z/515 Real Estate L.P.*, 12 NY3d 236, 245 [2009] ["Thus, to accept Kerusa's pleading as valid would invite a backdoor private cause of action to enforce the Martin Act in contradiction to our holding in *CPC Intl*. that no private right to enforce that statute exists"]).

In discerning what duty is owed to Plaintiff, it is also incumbent on this court to consider the balancing factors set forth by the Court of Appeals in *Pasternack, supra*, including "the reasonable expectations of the parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability" (27 NY3d at 825). Consequently, whereas GBL § 494 only sets forth administrative remedies for denial of access, the reasonable expectation of individuals and society in general is, undoubtedly, that they may pursue those remedies in the event of a violation of the Act.

Accordingly, this court does not perceive any basis to interpret the Act as creating an additional standard of care or duty of care sufficient to sustain a common law cause of action for negligence. In the absence of a common law duty, the negligence cause of action cannot be sustained as a matter of law and is, therefore, dismissed.

C. Intentional Infliction of Emotional Distress

Finally, Defendant moves to dismiss the cause of action for intentional infliction of emotional distress on the grounds that the conduct complained of is not "extreme and outrageous" as a matter of law. To state a claim for intentional infliction for emotional distress, Plaintiff must plead facts sufficient to establish the following four elements: (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 N.Y. Post Co., Inc.*, 81 NY2d 115, 121 [1993]). In determining whether a plaintiff has sufficiently stated a claim, "courts have tended to focus on the outrageousness element, the one most susceptible to determination as a matter of law" (*id.*). "The requirements of the rule are rigorous, and difficult to satisfy" (*id.* at 122 [internal quote

omitted]). Liability may be found "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*id.*). Generally, claims that have been upheld by the courts "were supported by allegations detailing a longstanding campaign of deliberate, systematic and malicious harassment of the plaintiff" (*Seltzer v Bayer*, 272 AD2d 263, 264-265 [1st Dept 2000]; *see also Nader v General Motors Corp.*, 25 NY2d 560, 569 [1970]); *Cavallaro v Pozzi*, 28 AD3d 1075, 1078 [4th Dept 2006] [only "campaign of harassment and intimidation" could give rise to a triable issue of fact]). Even where the court may "view the alleged conduct as being deplorable and reprehensible does not necessarily lead to the conclusion that it arose to such a level that the law must provide a remedy" (*Leibowitz v Bank Leumi Trust Co.*, 152 AD2d 169, 182 [2d Dept 1989]). In light of this rigorously high standard, and having reviewed every allegation in the amended complaint, it is the determination of this court that the amended complaint does not adequately allege extreme and outrageous conduct such that a cause of action for intentional infliction of emotional distress has been made out. As such, the court has no choice but to grant the motion to dismiss this claim.[10]

Accordingly, it is

ORDERED that Defendant's motion to dismiss the amended complaint is granted and, therefore, the amended complaint is dismissed.

[10] As noted above (*supra*, note 6), any statutory response to the lack of a common law avenue for the type of redress sought in this action must come from the Legislature.

This shall constitute the decision and order of the court.

ENTER:

2/23/2021
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE