

C.S. v Rockefeller Univ.
2022 NY Slip Op 31756(U)
May 25, 2022
Supreme Court, New York County
Docket Number: Index No. 950271/2020
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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C. S.,

Plaintiff,

- v -

ROCKEFELLER UNIVERSITY A/K/A ROCKEFELLER
UNIVERSITY HOSPITAL F/K/A HOSPITAL OF THE
ROCKEFELLER INSTITUTE, MADISON SQUARE BOYS &
GIRLS CLUB, INC., F/K/A MADISON SQUARE BOYS
CLUB

Defendants.

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INDEX NO. 950271/2020

MOTION DATE 03/1/2021,
03/1/2021,
12/1/2021

MOTION SEQ. NO. 003 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 32, 33, 34, 37, 39, 41

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 27, 28, 29, 30, 31, 35, 36, 38, 40, 42

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 49, 50, 51, 52, 55, 58, 59, 60, 61

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on i) Rockefeller University’s motion to dismiss the complaint (mot. seq. no. 003), CPLR 3211(a)(7) – failure to state a cause of action; ii) Rockefeller University’s motion to dismiss count I of the complaint’s cause of action against “the University” (mot. seq. no. 004), CPLR 3211(a)(7) – failure to state a cause of action; and iii) Rockefeller University’s motion to dismiss count I of the amended complaint’s cause of action against “the University” (mot. seq. no. 005), CPLR 3211(a)(7) – failure to state a cause of action.

A complaint was filed on July 13, 2020 and an amended complaint was filed on February 24, 2021 (see NYSCEF Doc. No. 43).

Plaintiff brought this action per the New York Child Victims Act (“CVA”), CPLR 214-g. The amended complaint states causes of action of i) “count I – negligence against Rockefeller University,” and ii) count II – negligence against Madison Square Boys & Girls Club.

Defendant Madison Square Boys & Girls Club submitted an answer on June 9, 2021 (see NYSCEF Doc. No. 53). Rockefeller University submits these multiple motions to dismiss.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept 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” (see *Leon v. Martinez*, 84 N.Y.2d 83 [1994]).

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]).

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” (see *Solomon v. City of New York*, 66 N.Y.2d 1026, 1027 [1985]).

“There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity” (see *Kenneth R. v. R.C. Diocese*, 229 A.D.2d 159, 162 [2d Dept. 1997]).

“A necessary element of a cause of action alleging negligent retention or negligent supervision is that the ‘employer knew or should have known of the employer’s propensity for the conduct which caused the injury’ (see *Bumpus v. New York City Transit Authority*, 47 A.D.3d 653 [2d Dept. 2008]).

The amended complaint states, “[a]t all times relevant and material hereto, Defendant [Rockefeller University], through its employees and agents, knew or should have known that Dr. [...], under its supervision and control, was sexually inappropriate and assaulting minor male patients. At all times relevant and material hereto, various staff members, including nurses, doctors, and other [Rockefeller University] employees, agents, and officials were aware of Dr. [...]’s medically unjustified procedures and examination of minor male patients. Upon information and belief, in 1961, the President of Defendant [Rockefeller University] was made aware of an investigation conducted into Dr. [...] by the New York City District Attorney’s Office in relation to treatment of two minor patients, prompted by a complaint” (see NYSCEF Doc. No. 43 Pars. 38 – 40).

Per plaintiff’s memorandum of law in opposition, “[p]laintiff has sufficiently alleged a cause of action to allow him to conduct discovery. It should not be difficult for Defendant [Rockefeller University] to provide basic discovery that will reveal the nature and scope of its relationship with Dr. [...] and allow Plaintiff to prove his allegations” (see NYSCEF Doc. No. 59 P. 20).

It is now

ORDERED that i) Rockefeller University’s motion to dismiss the complaint (mot. seq. no. 003), CPLR 3211(a)(7) – failure to state a cause of action is DENIED; and it is further

ORDERED that ii) Rockefeller University’s motion to dismiss count I of the complaint’s cause of action against “the University” (mot. seq. no. 004), CPLR 3211(a)(7) – failure to state a cause of action is DENIED; and it is further

ORDERED that iii) Rockefeller University’s motion to dismiss count I of the amended complaint’s cause of action against “the University” (mot. seq. no. 005), CPLR 3211(a)(7) – failure to state a cause of action is DENIED.

5/25/2022
DATE


LAURENCE LOVE, 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