

<b>R.F. v Rockefeller Univ.</b>
2022 NY Slip Op 31791(U)
June 2, 2022
Supreme Court, New York County
Docket Number: Index No. 950205/2020
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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R. F.,

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.** 950205/2020

**MOTION DATE** 02/08/2021,  
02/08/2021

**MOTION SEQ. NO.** 003 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 36, 37, 38, 39, 40, 45, 48

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 28, 29, 30, 31, 32, 34, 35, 41, 42, 43, 44, 46, 47, 49, 50

were read on this motion to/for DISMISS.

Upon the foregoing documents,

Defendant – Madison Square Boys Club seeks to dismiss (mot. seq. no. 003) the amended complaint, CPLR 3211(a)(7) – failure to state a claim; and Defendant – Rockefeller University seeks to “dismiss[] the complaint’s cause of action against the University (Count I),” CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff submits this litigation pursuant to the Child Victims Act, CPLR 214-g.

Plaintiff submits an amended complaint with causes of action for i) negligence against Rockefeller University, and ii) negligence against Madison Square Boys Club (see NYSCEF Doc. No. 56). Defendants submit their respective pre – answer 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]).

“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” (see *Pasternack v. Lab. Corp. of Am. Holdings*, 27 N.Y.3d 817, 825 [2016]).

“[T]he test of the sufficiency of a complaint is whether it gives sufficient notice of the transaction, occurrences, or series of transactions and 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” (see *Moore v. Johnson*, 147 A.D.2d 62 (2nd Dept. 1989)).

Plaintiff’s amended complaint states the nature of the abuse, the abuser by name, and the year and age of the occurrence. “In approximately 1958, when he was approximately nine (9) years old” (see NYSCEF Doc. No. 56 Par. 32). Plaintiff’s amended complaint further provides information to highlight the connection of all defendants to plaintiff. “Dr. [] was a former professor and senior physician at Defendant [Rockefeller University] from approximately 1940 to 1982. Dr. [] studied childhood growth and sexual maturity. He ran an endocrine clinic within

[Rockefeller University] in which he treated pediatric patients who had growth issues. Dr. [] received patient referrals from other [Rockefeller University] – affiliated physicians and youth-serving organizations such as Defendant Madison Square. These acts of ... of Plaintiff by Dr. [] occurred in his official capacity as a physician in the employ of [Rockefeller University] and took place on the premises of Madison Square and/or premises affiliated, owned, operated, maintained, and/or controlled by Madison Square” (see NYSCEF Doc. No. 56 Par. 29, 35).

As plaintiff has shown a connection between each defendant, their respective pre – answer motions to dismiss, for failure to state a cause of action, cannot stand at this time. Allegations have been made that a Doctor from Rockefeller University, who did studies on boys, may have abused them. While Madison Square has been shown to have allowed a Doctor to perform studies on boys in their care, and who might have abused them.

“The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (see *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

“A pre – discovery motion to dismiss should be granted only when the moving party can show definitively that the allegations of the non – moving party contain only bare legal conclusions or facts flatly contradicted by the record” (see *Parola, Gross & Marino, P.C. v. Susskind*, 43 A.D.3d 1010 [2d Dept. 2007]).

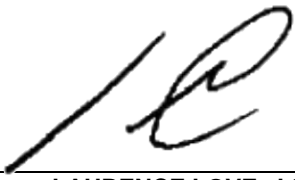
In the case at bar it is simply premature to consider a motion to dismiss by either defendant. Discovery must proceed in order to ascertain sufficient information to determine the possible merit of plaintiff’s claims.

ORDERED that Defendant – Madison Square Boys Club’s motion to dismiss (mot. seq. no. 003) the amended complaint, CPLR 3211(a)(7) – failure to state a claim is DENIED; and it is further

ORDERED that Defendant – Rockefeller University’s motion to “dismiss[] the complaint’s cause of action against the University (Count I),” CPLR 3211(a)(7) – failure to state a cause of action is DENIED.

ORDERED that Defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

6/2/2022  
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