

John Doe v Syracuse Univ.
2022 NY Slip Op 31908(U)
June 15, 2022
Supreme Court, New York County
Docket Number: Index No. 950596/2020
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

-----X

JOHN DOE,

Plaintiff,

- v -

SYRACUSE UNIVERSITY, BOARD OF TRUSTEES OF
SYRACUSE UNIVERSITY, CONRAD MAINWARING

Defendants.

-----X

INDEX NO. 950596/2020

MOTION DATE 01/21/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Syracuse University (“Syracuse”) and Board of Trustees of Syracuse University’s (“Board”) pre – answer motion to dismiss, per CPLR 3211(a)(5) and CPLR 3211(a)(7). Plaintiff’s complaint states causes of action for i) negligence against Syracuse and Board, ii) negligent hiring, retention and supervision against Syracuse and Board, iii) battery against Conrad Mainwaring, iv) assault against Conrad Mainwaring, v) intentional infliction of emotional distress against Conrad Mainwaring, vi) negligent infliction of emotion distress against Syracuse and Board, vii) intentional infliction of emotional distress against Syracuse and Board, and viii) violation of New York Social Services Law against Syracuse and Board.

Plaintiff provides an affidavit of service (see NYSCEF Doc. No. 17) upon Defendant – Conrad Mainwaring, who has not appeared in this litigation.

This litigation alleges abuse per the Child Victims Act (“CVA”), CPLR 214-g.

“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]).

CPLR 3211(a)(5) states, “the cause of action may not be maintained because of ... statute of limitations.”

Defendants’ memorandum of law highlights the CVA, “which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age.” Defendants continue with, “[h]e pleads no facts stating his age, when or where the attempt occurred, or that he was incapable of or did not consent due to incapacity, age or otherwise. Indeed, it is reasonable to infer that Plaintiff was 18 or older at the time of the alleged attempt – which allegedly occurred after he enrolled at SU – due to his pleading that he was 17 the autumn prior” (see NSYCEF Doc. No. 19 P. 25, 26).

The Complaint states, “[i]n or about autumn of 1981, plaintiff, then a seventeen (17) year-old high school student visited defendant Syracuse University” (see NYSCEF Doc. No. 1 Pars. 15). The complaint continues with the alleged, specific acts of abuse (see NYSCEF Doc. No. 1 Pars. 23 – 28). The complaint continues, “the following year” (see NYSCEF Doc. No. 1 Par. 30).

The complaint alleges abuse when plaintiff was seventeen (17) years old and based upon same plaintiff’s claim is sufficient under the Child Victims Act.

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]).

NEGLIGENCE CLAIMS

Defendant Syracuse and Board affirm, “[f]or the claims sounding in negligence, Plaintiff fails to adequately allege, beyond bare conclusion that the SU Defendants had notice or knowledge of Mainwaring’s prior conduct” (see NSYCEF Doc. No. 20 Par. 4). “Allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration” (see *Kliebert v. McKoan*, 228 A.D.2d 232 [1st Dept. 1996]).

Plaintiff’s memorandum of law in opposition states, “a party is liable for negligence when that party owes a duty to another, breaches that duty, and said breach results in injury. See *Pasternack v. Laboratory Corp. of America Holdings*, 27 N.Y.3d 817 [2016]. An employer may be held liable for the torts committed by an employee under theories of negligence, negligent hiring, negligent supervision, and negligent retention, even when said acts occur outside the scope of employment. See *Chichester v. Wallace*, 150 A.D.3d 1073 [2nd Dept. 2017]” (see NYSCEF Doc. No. 24 P. 16).

CPLR 3013 states, “[s]tatements 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.”

Plaintiff’s memorandum of law in opposition continues, “the Court should deny defendants’ motion to dismiss in its entirety because the Complaint sufficiently alleges that defendants Syracuse University and Board owed plaintiff a duty of care and breached that duty,

resulting in plaintiff's injuries. The Complaint clearly states that "[a]t all times herein mentioned, defendant [...] was an agent, servant, and/or employee of defendant Syracuse University and Board of Trustees of Syracuse University" Pl.'s Complaint, ¶ 14" (see NYSCEF Doc. No. 24 P. 18).

A review of Plaintiff's complaint apprises the parties of the "transactions, occurrences" that surround this litigation.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

"Plaintiff's cause of action for intentional infliction of emotional distress must also fail because it falls within the ambit of other traditional tort liability" (see *Herlihy v. Metro. Museum of Art*, 214 A.D.2d 250, 23 [1st Dept. 1995]). Plaintiff's cause of action for intentional infliction of emotional distress is duplicative of the negligence claim and will be dismissed.

NEW YORK SOCIAL SERVICES LAW

Defendants assert, "the Complaint fails to allege facts to support that either SU or the Trustees were mandatory reporters and thus required to report [...] alleged conduct perpetrated against Plaintiff" (see NYSCEF Doc. No. 19 Par. 24).

"The Legislature enacted Social Services Law 420 which expressly allows a private cause of action for money damages upon the failure of any person, official or institution required by title 6 to report a case of suspected child abuse or maltreatment" (see *Rivera v. County of Westchester*, 31 Misc.3d 985, 994 [Westchester Co. Sup. Ct. 2006]). "An injured child may assert a cause of action for damages under Social Services Law 420 for alleged violations of sections 413 and 417, which were enacted to protect children from physical abuse" (see *Young v. Campbell*, 87 A.D.3d 692, 694 [2nd Dept. 2011]). "Defendant argues that the cause of action is duplicative of the negligence cause of action and that it is not liable under the Social Services

Law, because it lacked notice of the abuse. The cause of action is not duplicative, and Portville failed to establish that no significant dispute exists on the issue of whether the failure to report was knowing or willful” (see *Torrey v. Portville Cent. School*, Index No. 88476/2020, Slip Op 66 Misc.3d 1225(A), at *1, *3 [N.Y. Sup. Ct. Cattaraugus Cnty., Feb 21, 2020]).

ORDERED that Defendants Syracuse and Board’s motion to dismiss the i) negligence cause of action against Syracuse and Board is DENIED; and it is further

ORDERED that Defendants Syracuse and Board’s motion to dismiss the ii) negligent hiring, retention and supervision against Syracuse and Board is DENIED; and it is further


ORDERED that Defendants Syracuse and Board’s motion to dismiss the vi) negligent infliction of emotion distress cause of action against Syracuse and Board is DENIED; and it is further

ORDERED that Defendants Syracuse and Board’s motion to dismiss the vii) intentional infliction of emotional distress cause of action against Syracuse and Board is GRANTED; and it is further

ORDERED that Defendants Syracuse and Board’s motion to dismiss the viii) violation of New York Social Services Law cause of action against Syracuse and Board is DENIED.

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

6/15/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE