SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE LOVE** **PART** **63M**

Justice

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D. S.,

Plaintiff,

- v -

JEWISH CHILD CARE ASSOCIATION OF NEW YORK F/K/A JCCA, THE CITY OF NEW YORK, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES

Defendant.

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INDEX NO. 950666/2020

MOTION DATE 03/23/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for DISMISS.

Upon the foregoing documents, the decision on defendant, JEWISH CHILD CARE ASSOCIATION OF NEW YORK f/k/a JCCA's motion pursuant to CPLR §3211(a)(7) seeking dismissal of this complaint and plaintiff's cross-motion seeking sanctions in the form of costs, disbursements, and reasonable attorneys' fees incurred from Defendant's filing of its main motion is as follows:

Plaintiff commenced the instant action by filing a summons and complaint on September 23, 2020, alleging that when Plaintiff was approximately seven (7) years old, he was removed from his home and put under the care of JCCA, and in 1978 or 1979 JCCA placed plaintiff in the JCCA Pleasantville Cottage campus where he was allegedly abused by "Christina Holla" and "Mr. Gordon," employees of defendant. Thereafter in approximately the year 1986 or 1987, Defendants placed the then infant Plaintiff in a home for boys located at 94-30 60th Avenue, Apartment 3H, Queens, New York, 11373, where he was abused by his roommate "Roger."

Defendants seek dismissal of this action CPLR § 3211(a)(7) arguing that because plaintiff fails to allege any facts to support the conclusory allegation that defendant had notice of the alleged abusers' dangerous propensities, his complaint fails as a matter of law. Defendant also seeks dismissal of plaintiff's third cause of action for "Breach of Statutory Duty to Report Abuse Under Soc. Serv. Law §§ 413, 420" as duplicative of plaintiff's negligence causes of action.

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. Nat1 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], *Leon v. Martinez*, 84 N.Y.2d 83, 87-88[1994]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained, see *Stendig, Inc. v Thorn Rock Realty Co*., 163 AD2d 46 (1st Dept 1990).

A necessary element of a claim based upon negligent hiring, retention, and supervision of an employee "is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury." *Doe v. Rohan*, 17 A.D. 509, 512 (2d Dep't 2005); see also *Ehrens v. Lutheran Church*, 385 F.3d 232, 235 (2d Cir. 2004). The First Department has held that conclusory allegations of notice are insufficient to sustain a negligent supervision claim because they do not show that the defendant knew or should have known of the propensity of the perpetrator to commit the tortious acts alleged. See *Naegele v. Archdiocese of New York*, 39 A.D.3d 270, 270

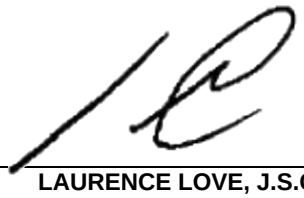
(1st Dep't 2007). However, in that action, the Court found that plaintiff failed to establish that additional discovery was necessary.

The issue at this juncture is not whether plaintiff's claims have factual support, but whether they state cognizable causes of action. Although defendant argues that plaintiff's allegations of notice are conclusory, "[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 162 [2nd 1997]). Giving the complaint the benefit of every favorable inference, as the court must do at this point, plaintiff's allegations are sufficient to state causes of action for negligence (see *Gray v. Schenectady City School Dist*., 86 A.D.3d 771 [3rd Dept 2011]). Further plaintiff should be allowed to seek evidence "through pre-trial disclosure" (*Nice v Combustion Eng'g*, 193 A.D.2d 1088, 1089 [4th Dept 1993]). That is especially so given that plaintiff was a young child at the time of the alleged events and relevant records, if they exist, are most likely to be in the defendants' possession and control (see *Penato v George*, 52 A.D.2d 939 [2nd 1976]). However, the filing of the instant motion is entirely insufficient to establish an entitlement to sanctions.

Plaintiff's third cause of action is that defendant breached their statutory duty to report abuse under Social Services Law §§ 413 and 420. Pursuant to Social Services Law §413, school officials, which include but are not limited to school teachers, school guidance counselors, school psychologists, school social workers, school nurses, school administrators or other school personnel required to hold a teaching or administrative license or certificate, are required to report "when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child." Social Services Law §420(2) states that "Any person, official or institution required by this title to report a case of suspected child abuse or

maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure." "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" (*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" (*Young v. Campbell*, 87 AD3d 692, 694 [2nd Dept 2011], lv denied 18 NY3d 801 [2011]). Defendant argues that this cause of action is duplicative of plaintiff's negligence causes of action and that they are not liable under the Social Services Law, because they lacked notice of the abuse. As plaintiff has alleged violations of a statutory duty, same cannot be duplicative of its negligence causes of action.

ORDERED that defendant's motion to dismiss and plaintiff's cross-motion seeking sanctions are DENIED in their entirety.



8/10/2022
DATE

LAURENCE LOVE, J.S.C.

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