

R.A. v Rockefeller Univ.
2022 NY Slip Op 33177(U)
September 20, 2022
Supreme Court, New York County
Docket Number: Index No. 950069/2020
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. A.,

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. 950069/2020
MOTION DATE 02/23/2021
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 36, 48, 49, 50, 56, 57, 59, 61, 63, 64

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Defendant – Madison Square Boys & Girls Club’s pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action. An amended complaint states causes of action of i) negligence against Rockefeller University, and ii) negligence against Madison Square Boys & Girls Club (see NYSCEF Doc. No. 26). Plaintiff alleges abuse pursuant to the Child Victims Act (“CVA”), CPLR 214-g, 22 NYCRR 202.72.

A decision and order discontinued the litigation against Defendant – Rockefeller University (see NYSCEF Doc. No. 72).

“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]).

“[T]he test of the sufficiency of a complaint is whether it gives sufficient notice of the transactions, 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 [2d Dept. 1989]). “[T]he 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 [1977]).

Plaintiff’s amended complaint states transactions and occurrences of “[i]n approximately 1953, when Plaintiff was approximately twelve (12) years old. In 1961, the President of Defendant [Rockefeller University] was made aware of an investigation. [T]he physician-in-chief from 1960-1974 received several complaints from patients, family members of patients or staff” (see NYSCEF Doc. No. 26 Par. 11, 18-19).

Plaintiff’s memorandum of law in opposition states, “[h]e gained access to children at Madison Square by virtue of his being a board member and a medical ‘volunteer.’ Madison

Square authorized him to conduct annual physicals of the children who came to Madison Square, and Dr. [] ... hundreds of these children. He also used Madison Square to recruit children for his study of children with growth issues” (see NYSCEF Doc. No. 50 Par. 88).

Defendant – Madison Square Boys & Girls Club’s memorandum of law states, “[t]his reading of the amended complaint is entirely consistent with what the Rockefeller report has revealed: that for decades Rockefeller knew about, but covered up, Dr. Archibald’s abuse. Significantly, there are no factual allegations in the Amended Complaint to support an inference that Madison was ever made aware of the information that the Rockefeller Report revealed was known to Rockefeller – because Madison was not” (see NYSCEF Doc. No. 30 P. 17).

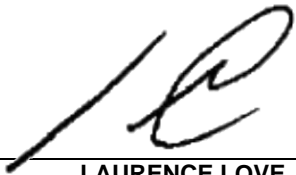
Plaintiff’s memorandum of law in opposition states, “[t]he amended complaint ties together Dr. Archibald’s sexual abuse of Plaintiff at Madison Square and at Rockefeller University, which together form a continuing and sequential wrong. Plaintiff was first introduced to Dr. Archibald at Madison Square. As a matter of proximate causation, facts are plainly alleged demonstrating that the negligence of Defendant Madison Square was the legal cause of all of Dr. Archibald’s sexual abuse of Plaintiff, at both its own facility and at Dr. Archibald’s office in Rockefeller University. It does not matter that some of the acts of sexual abuse occurred at Rockefeller University given that the relationship between Dr. Archibald and Plaintiff was formed and established at Madison Square as a result of Madison Square’s negligence” (see NYSCEF Doc. No. 50 P. 16 – 18)

The amended complaint states a cause of action for negligence against various employees and personnel associated with Madison Square Boys and Girls Club.

ORDERED that Madison Square Boys & Girls Club’s motion to dismiss is DENIED; and it is further

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

9/20/2022
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