S.K. v Pleasantville Cottage Sch.
2023 NY Slip Op 30515(U)
February 16, 2023
Supreme Court, New York County
Docket Number: Index No. 950361/2021
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE, *Justice*	**PART** 63M
S. K., Plaintiff, - v - PLEASANTVILLE COTTAGE SCHOOL, JCCA F/K/A JEWISH CHILD CARE ASSOCIATION OF NEW YORK Defendant.	**INDEX NO.** 950361/2021
	MOTION DATE 01/07/2022, 09/06/2022
	MOTION SEQ. NO. 002 003
	DECISION + ORDER ON MOTION

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

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, defendants' motion seeking an Order pursuant to CPLR §3211(a) dismissing the second, fourth, sixth, seventh, eighth and ninth causes of action plaintiff's Complaint for failure to state a cause of action and plaintiff's motion seeking a default judgment against defendant, Pleasantville Cottage School are decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on June 17, 2021 alleging that Plaintiff was a student and resident of PLEASANTVILLE COTTAGE SCHOOL between approximately 1963 and 1966, where she was sexually assaulted by RONALD JOHNSON, "JOHN BAGLEY" and "CHUCK WADSON" who were employees of defendants. Arising from same, plaintiff alleges causes of action of 1) Negligent Hiring, Retention, Supervision and/or Direction; 2) Respondeat Superior; 3) Negligence/Gross Negligence; 4) Breach of Fiduciary Duty; 5) Breach of Non-Delegable Duty; 6) Negligent Infliction of Emotional Distress;

7) Intentional Infliction of Emotional Distress; 8) Breach of Duty In Loco Parentis; and 9) Breach of Statutory Duty pursuant to Social Services law §§ 413, 420.

"On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "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" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp*., 104 AD3d 401 [1st Dept 2013]). 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]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see* CPLR §3026; *Siegmund Strauss, Inc*., 104 AD3d 401, *supra*). In deciding such a

motion, the court must "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 into any cognizable legal theory" (*Siegmund Strauss, Inc*., 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *aff'd* 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], *lv denied* 89 NY2d 802 [1996], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Leon*, 84 NY2d at 88, *supra*; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]). "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co*., NYLJ January 18, 2005, p. 26 col.4, *citing P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id*. at 376; *see Rovello v Orofino Realty Co*., 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon*, 84 NY2d at 87-88, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

To the extent that plaintiffs' complaint bases causes of action upon respondeat superior, such causes of action must be dismissed, however, the majority of plaintiffs' causes of action are pled as negligence causes of action, alleging that defendants knew or should have known of foreseeable harm.

Moving Defendants contend that plaintiff has failed to allege a fiduciary duty between herself and Moving Defendants and that said cause of action is duplicative of plaintiff's negligence causes of action. Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with a church extends beyond that of an ordinary parishioner (*see Doe v. Holy See [State of Vatican City*], 17 AD3d 793, 795 [3d Dept 2005]). In other words, a fiduciary relationship between a plaintiff parishioner and church may exist where the plaintiff comes forward with facts demonstrating that the relationship between the plaintiff parishioner and the church is unique or distinct from the church's relationship with other parishioners generally (*id.*). That said, a fiduciary relationship is not applicable to all parishioners, and can be established upon a showing that a congregant's relationship with a church entity resulted in "de facto control and dominance" when the congregant was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). The existence of a fiduciary duty is a fact-specific question to be determined by the fact-finder, such that breach of fiduciary duty claims should not generally be dismissed before the parties have the opportunity to conduct discovery (*see Doe v. Holy See [State of Vatican City*], 17 AD3d 793, *supra*).

Here, plaintiff pled that "PLEASANTVILLE COTTAGE SCHOOL and JCCA and its employees/agents by the names of RONALD JOHNSON, "JOHN BAGLEY" and "CHUCK WADSON" were in a fiduciary relationship. These men were in a position of trust, confidence, control and authority over plaintiff." The remaining contentions in support of plaintiff's cause of action hinge on negligence, and as such are duplicative of plaintiff's causes of action alleging negligence.

Defendants seeks dismissal of plaintiff's claims premised on intentional infliction of emotional distress ("IIED") and Negligent Infliction of Emotional Distress. "Generally, a cause of action for infliction of emotional distress is not allowed if essentially duplicative of tort or contract causes of action." (*Wolkstein v. Morgenstern,* 275 AD2d 635, 637 [1st Dept 2000]). The elements of that cause of action are "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Chanko v. American Broadcast Companies, Inc*., 27 NY3d 46, 56 [2016]). However, "a cause of action for intentional infliction of emotional distress should not be entertained where the conduct complained of falls well within the ambit of other traditional tort liability" (*Di Orio v. Utica City School District Board of Education*, 305 AD2d 1114, 1115-16 [4th Dept 2003]). Here, plaintiff has asserted multiple causes of action against defendants for negligence. Therefore, causes of action pleading IIED and NIED "should not be entertained" (*id.*). Likewise, plaintiffs has not alleged any actions on the part of defendants directed at them that rise to the level of "extreme and outrageous conduct."

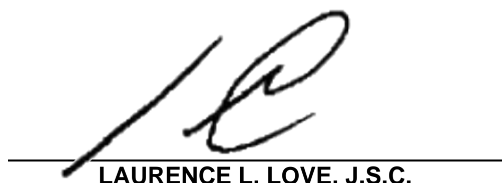
Further, plaintiff's eighth cause of action, "In loco parentis" does not constitute an individual cause of action, *See*, *Torrey v. Portville Cent. Sch.*, 66 Misc. 3d 1225(A), 2020 WL 856432, at *2 (N.Y. Sup. Ct. Cattaraugus Cty. Feb. 21, 2020) and plaintiff's ninth cause of action for Breach of Statutory Duty pursuant to Social Services law §§ 413, 420 must be dismissed as the abuse alleged in this case occurred prior to the passage of said sections into law in 1973.

ORDERED that motion sequence 003 is WITHDRAWN pursuant to the Stipulation e-filed October 5, 2022 as NYSCEF Document No. 41; and it is further

ORDERED that defendants' motion is GRANTED in its entirety and Plaintiff's second, fourth, sixth, seventh, eighth and ninth causes of action are dismissed; and it is further

ORDERED that the Clerk of the Clerk is directed to enter judgment dismissing plaintiff's Eleventh through Twenty-Fifth Causes of Action.

This constitutes the decision and order of the court.



2/16/2023 DATE				LAURENCE L. LOVE, J.S.C.		
CHECK ONE:	[ ] CASE DISPOSED			[X] NON-FINAL DISPOSITION		
	[X] GRANTED	[ ] DENIED		[ ] GRANTED IN PART	[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER			[ ] SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN			[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE	