Anonymous v Graham Sch. Found., Inc.
2023 NY Slip Op 31765(U)
May 17, 2023
Supreme Court, Kings County
Docket Number: Index No. 508380/2020
Judge: Mark Partnow
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At an IAS Term, Part CVA4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of May, 2023.

PRESENT:

HON. MARK PARTNOW,
Justice.

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ANONYMOUS,

Plaintiff,

- against -

THE GRAHAM SCHOOL FOUNDATION, INC. AND GRAHAM WINDHAM,

Defendants.

---------------------------------------X

MS#5

Index No. 508380/2020

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) ___	63-65
Opposing Affidavits (Affirmations)___	66-68
Reply Affidavits (Affirmations)___	72

Upon the foregoing papers, Defendant Graham Windham (Graham Windham), moves for dismissal of plaintiff's amended verified complaint pursuant to CPLR 3211(a)(7) (Motion Seq. 005).

According to the amended verified complaint, plaintiff attended Graham Windham, a school and residential care facility in Westchester County, New York. The complaint asserts that Joseph Kane and Lonnie Stafford were resident directors of the school and were in charge of supervision of the children. Plaintiff alleges that Joseph Kane, Lonnie Stafford, and Mr. Spencer,

(individual employees) employees of Graham Windham, raped and viciously and brutally sexually assaulted plaintiff starting when plaintiff was approximately 10 or 11 years old up until he was 16 or 17 years old. Plaintiff further claims that the individual employees violently attacked him and forcefully anally raped him for a prolonged period. The complaint asserts four causes of action: (1) negligence; (2) negligent hiring; (3) negligent retention, supervision and/or direction; and (4) violation of Social Services Law Section 413.

DISCUSSION

Dismissal of Individual Causes of Action

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]). "On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), a 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 within any cognizable legal theory" (*Eskridge v Diocese of Brooklyn*, 210 AD3d 1056 [2d Dept 2022]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Boyle v North Salem Central School District*, 208 AD3d 744 [2d Dept 2022]). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss" (*Eskridge*, 210 AD3d at 1057; *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11 [2005]). 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; *Guggenheimer*, 43 NY2d at 275; *Salles*, 300 AD2d at 228).

The Court will address each of the grounds upon which Graham Windham seeks dismissal in turn.

Negligence, Negligent Hiring, Retention, and Supervision

Graham Windham argues that Plaintiff's first, second and third causes of action for negligence, negligent hiring, retention, supervision and/or direction should be dismissed for failure to sufficiently plead a cause of action. A claimant can maintain a cause of action for negligent hiring, supervision, or retention by adequately alleging that the "employer knew or should have known of the employee's propensity for the conduct which caused the injury" and nevertheless continued the employee's service (*Bumpus v New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept 2008] [internal quotation omitted]; *see also Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801, 801–02 [2d Dept 2010]; *Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161-163 [2d Dept 1997], *cert. denied* 522 U.S. 967 [1997], *lv. dismissed* 522 91 NY2d 848 [1997]).

"Causes of action alleging negligence based upon negligent hiring, retention, or supervision are not statutorily required to be pleaded with specificity" (*Belcastro v. Roman Catholic Diocese of Brooklyn, New York*, 213 AD3d 800, 801 [2d Dept 2023]). "An employer can be held liable under theories of negligent hiring, retention, and supervision where it is shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*id.*). "The manner in which the defendant acquired actual or constructive notice of the alleged abuse is an evidentiary fact, to be proved by the claimant at trial. In a pleading, the plaintiff need not allege his [or her] evidence" (*Martinez v. State*, 2023 NY Slip Op. 01990 [2d Dept 2023]).

"A school has a duty to exercise the same degree of care toward its students as would a reasonably prudent parent, and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision" (*Belcastro*, 213 AD3d at 802). "A school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians" (*id.*).

Here, Graham Windham contends that Plaintiff has failed to plead the existence of an applicable general duty of care or special duty of care. Graham Windham further argues that even if plaintiff sufficiently pled the existence of an applicable duty, plaintiff failed to plead a breach and that such breach serves as the proximate cause of plaintiff's alleged damages. The Court finds that allegations of the amended complaint provide a basis to find that Graham Windham had a duty to plaintiff (*Shapiro v. Syracuse University*, 208 AD3d 958 [4d Dept 2022]).

Graham Windham additionally argues that plaintiff fails to allege that it knew or should have known of the individual employee's alleged propensities. However, plaintiff's complaint specifically alleges that Graham Windham knew or should have known of the employee's propensity for the conduct which cause plaintiff's injury. Additionally, plaintiff argues that the discovery process will reveal how much Graham Windham knew or should have known of the acts of its employees. The Court finds that plaintiff has sufficiently alleged, at this juncture, that Graham Windham knew or should have known of Joseph Kane's, Lonnie Stafford's, and Mr. Spencer's propensity to sexually abuse minors and did nothing to prevent plaintiff's abuse from occurring.

Accordingly, the branch of the motion seeking dismissal of plaintiff's claims for negligence, negligent supervision, hiring, and retention is denied as premature at this juncture in the litigation.

Social Services Law Section 413

Graham Windham's motion to dismiss plaintiff's fourth cause of action for violation of Social Services Law 413 is granted as plaintiff failed to oppose this portion of the motion and agreed to discontinue the claim during oral argument on the record.

CONCLUSION

Accordingly, it is

ORDERED that the motion of Defendant Graham Windham to dismiss the action insofar as asserted against them (Motion Seq. 005) is decided as follows:

(i) The fourth cause of action for violation of Social Services Law Section 413 as against Graham Windham is dismissed;

(ii) Graham Windham's motion is otherwise denied; and it is further

This constitutes the decision and order of the court

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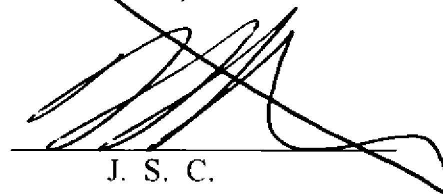

J. S. C.

HON. MARK I PARTNOW
SUPREME COURT JUSTICE