

Anonymous 13 Doe v Yeshiva of Brooklyn

2023 NY Slip Op 31766(U)

May 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 510155/2021

Judge: Mark I. 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 13 DOE, ANONYMOUS 5 DOE,
ANONYMOUS 6 DOE, AND ANONYMOUS 25 DOE,

Plaintiffs,

- against -

Index No. 510155/2021

MS#2.

THE YESHIVA OF BROOKLYN A/K/A
TALMUDICAL SCHOOL OF BROOKLYN,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) _____

22-24

Opposing Affidavits (Affirmations) _____

25

Reply Affidavits (Affirmations) _____

26

Upon the foregoing documents, Defendant The Yeshiva of Brooklyn a/k/a Talmudical School of Brooklyn (“Yeshiva of Brooklyn”), moves for dismissal of this action pursuant to CPLR 3211(a)(7), CPLR 3211(a)(5) and to strike scandalous material from the complaint pursuant to CPLR 3024(b).

Plaintiffs (Doe 13, Doe 5, Doe 6 and Doe 25), who have chosen to proceed anonymously, allege that the Yeshiva of Brooklyn failed to report sexual battery by their father, Rabbi Gershon

Kranczer and his two sons, Yechezkel Kranczer and Asher Anshel Kranczer, in accordance with New York Social Services Law §413 and §420. The Yeshiva of Brooklyn is a private religious school and nonprofit business entity located at 1470 Ocean Parkway in Brooklyn, New York. Each of the Plaintiffs allege that they were subjected to repeated instances of sexual battery by their father Rabbi Gershon Kranczer and his sons collectively from infancy through 2010 (complaint at ¶1). These incidents allegedly occurred while they were attending the Yeshiva of Brooklyn Elementary Girls Division from 1994-2009 (id.). According to the complaint, “Yeshiva of Brooklyn teachers and staff knew and had cause to know that Plaintiffs came to school without bathing, that Plaintiffs wore torn clothes, that Plaintiffs came to school hungry, that Plaintiffs came to school with poor hygiene, at that Plaintiffs were malnourished” (id. at ¶17). Teachers and staff at the Yeshiva of Brooklyn gave Plaintiffs food to eat, clothing to wear and hygiene products to use (id. at ¶18). On or about 1999 to 2000, when she was approximately 10 to 11 years old, Doe 13 stopped talking at school which was not believed to be biological (id. at ¶20). In response to Doe 13’s mutism, the teachers and staff of the Yeshiva of Brooklyn determined that she should see the school counselor (id. at ¶21). When asked if her father or brothers were hurting her and/or touching her in a sexual manner at home, Doe 13 burst out crying and shaking in affirmation (id. at ¶22). After hearing Doe 13’s response, the Yeshiva of Brooklyn contacted her father (the alleged perpetrator) to pick her up from school (id. at ¶23). According to the complaint, “the Yeshiva of Brooklyn did not take any further corrective, protective or other action following Doe 13’s disclosure of sexual abuse” and despite having reason to know of such abuse, the Yeshiva of Brooklyn “knowingly and willfully” failed to interview or question the other Plaintiffs, Doe 5, Doe 6, and Doe 25 regarding same (id. at ¶¶24-30).

The complaint asserts a single cause of action: (1) failure to report the suspected child abuse/maltreatment under Social Services Law §413 and §420.

DISCUSSION

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).

Social Services Law §413 and §420

Yeshiva of Brooklyn contends that Plaintiffs' complaint fails to state a cause of action for failure to report child abuse pursuant to Social Services Law §413 and §420 because the Yeshiva is not a mandated reporter. In their opposition, Plaintiffs argue that the Yeshiva of Brooklyn was required to report the alleged child abuse through its personnel since the institution itself cannot

report as a non-living entity. In support, Plaintiffs cite to the language in Social Services Law §420 when read in conjunction with Social Services Law §413, imposes civil liability on institutions when its personnel fail to report suspected child abuse.

Social Services Law § 413(1)(a) provides that certain school officials “are required to report or cause a report to be made in accordance with this title 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” (*Brave v. City of New York*, --- AD3d ---, 2023 NY Slip Op 02490 [2d Dept 2023]). Social Services Law § 420(2) provides that “[a]ny 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” (*id.*). “For purposes of Social Services Law § 413, an ‘abused child’ means ‘a child under eighteen years of age and who is defined as an abused child by the family court act’” (*id.*). The Family Court Act, in turn, defines an “abused child” as a child who is harmed by a “parent or other person legally responsible for his [or her] care” (*id.*). School counselors who routinely work and care for students in their professional capacity are required to report child abuse on behalf of their institutions when they have reason to suspect that a child is abused by a parent or other person legally responsible for his or her care (*id.*).

Here, the complaint sufficiently alleges a cause of action against the Yeshiva of Brooklyn for failing to report the suspected child abuse by Plaintiff’s father and his sons. After meeting with Doe 13, the counselor, who was acting in their professional capacity and was legally responsible for the Plaintiff’s care at the time, had reason to suspect that Doe 13 was a victim of child abuse. As one of the individuals required to report suspected child abuse pursuant to Social Services Law §413, the counselor had an obligation to report such abuse on behalf of the institution in accordance

with Social Services Law §420. As such, the portion of Yeshiva of Brooklyn's motion to dismiss for failure to state a cause of action pursuant to Social Services Law §413 and §420 is denied.

CPLR 3211(a)(5)

Yeshiva of Brooklyn seeks to dismiss the instant action pursuant to CPLR 3211(a)(5). However, Yeshiva of Brooklyn fails to provide any argument in support of this relief. To the extent that Yeshiva of Brooklyn argues that the Child Victims Act does not revive claims for neglect, abuse or maltreatment, Plaintiffs assert that they do not allege that such claims can be revived by the Child Victims Act, nor do they bring any causes of action pertaining to claims of physical and verbal abuse. Plaintiffs' sole cause of action against the Yeshiva of Brooklyn is for failure to report suspected child abuse pursuant to Social Services Law §413 and §420. For those reasons, the Court need not evaluate this portion of Yeshiva of Brooklyn's requested relief.

CPLR 3024(b)

Next, Yeshiva of Brooklyn seeks to strike portions of Plaintiffs' complaint pursuant to CPLR 3024(b). Yeshiva of Brooklyn contends that portions of the complaint pertaining to allegations of physical and emotional abuse are prejudicial and irrelevant to the underlying claim of sexual abuse and should be stricken. In opposition, Plaintiffs argue that the portions of the complaint pertaining to physical and emotional abuse are factual assertions that support the underlying claim of sexual abuse giving rise to Yeshiva of Brooklyn's obligation to report the suspected child abuse pursuant to Social Services Law §413 and §420.

"Matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements" (*Pisula v. Roman Catholic Archdiocese of New York*, 201 AD3d 88 [2d Dept 2021]). "However, the mere striking of matter from a pleading under CPLR 3024(b) does not, ipso facto, preclude related facts or evidence from being admitted

at a later trial”. “Motions to strike scandalous or prejudicial matter from pleadings are generally disfavored” (*id.*). “Whether to strike allegedly scandalous or prejudicial matter from a pleading in a given instance is left to the discretion of the trial court” (*id.*).

Here, the Court finds that the portions of the complaint related to physical and emotional abuse bolster Plaintiffs’ allegations of sexual abuse and provides detail as to their claim against the Yeshiva of Brooklyn for failure to report the suspected child abuse to Child Protective Services pursuant to Social Services Law §413 and §420. Thus, the portion of Yeshiva of Brooklyn’s motion to strike portions of Plaintiffs’ complaint relating to physical and emotional abuse is denied.

CONCLUSION

Accordingly, it is

ORDERED, that the motion of Defendant The Yeshiva of Brooklyn a/k/a Talmudical School of Brooklyn to dismiss the action is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

**HON. MARK I PARTNOW
SUPREME COURT JUSTICE**