

**E.I. v City of New York**

2023 NY Slip Op 31824(U)

May 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 520660/2021

Judge: Mark I. Partnow

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This opinion is uncorrected and not selected for official publication.

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 17<sup>th</sup> day of May, 2023.

P R E S E N T:

HON. MARK PARTNOW,

Justice.

-----X

E.I.,

Plaintiff,

- against -

Index No. 520660/2021

CITY OF NEW YORK; ROMAN CATHOLIC DIOCESE OF BROOKLYN; ST. JOSEPH SERVICES FOR CHILDREN AND FAMILIES A/K/A CATHOLIC CHILD CARE SOCIETY OF THE DIOCESE OF BROOKLYN; SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF NEW YORK; CATHOLIC CHARITIES OF BROOKLYN AND QUEENS, GRAHAM WINDHAM F/K/A GRAHAM HOME AND DOES 1-10,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

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

21-24

Opposing Affidavits (Affirmations) \_\_\_\_\_

34-36

Reply Affidavits (Affirmations) \_\_\_\_\_

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Upon the foregoing papers, Defendant, Sisters of Charity of Saint Vincent de Paul of New York (SCNY) moves for dismissal of plaintiff's complaint for failure to state a cause of action

pursuant to CPLR 3211(a)(7). In the alternative, SCNY seeks to dismiss paragraphs 87-89 of plaintiff's complain pursuant to CPLR 214-g.

According to the complaint, when plaintiff was approximately three and four years old, defendants placed her in foster care in Queens or Staten Island, New York. Plaintiff alleges that she sustained severe abuse and cannot remember the exact location or names of the individuals with whom she lived in the foster homes. When plaintiff was about four years old, she asserts that she was left in the care of older teen-aged boys (perpetrators #1-3) at her first foster placement and was brought to the attic by the boys who took turns holding her down, raping her, and watching. Plaintiff experience copious vaginal bleeding requiring many changes of her underwear that prompted her foster mother to question why plaintiff was bleeding. Plaintiff did not report the abuse to the foster mother because she feared her as she was physically abusive. Plaintiff and her brother ran away from the home to their grandmother's home. After a brief return to her biological mother's home, plaintiff was placed in a foster home in Queens around six years old, where plaintiff lived with a foster mother, her adult daughters, and a grandson (perpetrator #4). Plaintiff alleges that perpetrator #4 would sexually abuse her as part of pretending to be "mom and dad." Although plaintiff did not report the abuse to her foster mother, the foster mother required plaintiff to undress and examined plaintiff's vagina. Plaintiff lived with this foster family for approximately one year and attended first and second grades while at the home.

Plaintiff was next placed in a foster home in Brooklyn, where she lived for a few months with a foster mother whose mother lived nearby with several older foster boys. When plaintiff was seven to eight years old, plaintiff was taken to the foster mother's home for a weekend sleepover and was sexually assaulted by one of the foster boys (perpetrator #5). Plaintiff was placed in a different foster home shortly after experiencing the assault. When plaintiff was approximately nine

or ten years old, she lived in a foster home in Brooklyn with the biological sons of the foster parents. One of the boys (perpetrator #6) invited plaintiff to his room to watch a movie, which was pornography. Plaintiff did not tell her foster mother about the incident, but did tell her cousin and a therapist, and was removed from the home. Plaintiff was then placed in a residential facility owned and operated by defendant Graham Windham when she was about 11 years old. On one occasion, plaintiff was with other children when one of the boys (perpetrator #7) exposed his penis to her and attempted to force it into her mouth while another boy held her head (perpetrator #8). Plaintiff told a bus driver for the facility, Ms. Blount, about the incident but did not tell her social worker, Paige Howell, because sexual abuse at the facility was an endemic and open and notorious.

The complaint asserts seven causes of action: (1) negligence against the City of New York; (2) negligence against the Diocese; (3) negligence against St. Francis; (4) negligence against SCNY; (5) negligence against Catholic Charities; (6) negligence against Graham Windham; and (7) negligence against Does 1-10.

In its motion for dismissal, SCNY contends that plaintiff's complaint fails to state a cause of action under CPLR 3013 and CPLR 3211(a)(7). Specifically, SCNY argues that plaintiff did not sufficiently plead facts that place SCNY on notice of plaintiff's cause of action such that it can defend itself. SCNY asserts that plaintiff fails to state a claim for negligent placement and supervision as she fails to allege with any specificity that SCNY had requisite notice of abuse or the alleged perpetrators' propensity to commit the acts alleged. In the alternative, SCNY argues that plaintiff's claims regarding perpetrator 6 must be dismissed as the alleged abuse does not constitute a sexual offense as defined under Penal Law 130.

In opposition, plaintiff asserts that the substantive allegations against SCNY are more than sufficient to manifest a cause of action for negligence and does, in fact, allege specific facts that

put SCNY on notice of the ongoing sexual assaults. Additionally, plaintiff argues that dismissal of the contentions against perpetrator 6 are permissible as the claims against perpetrator 6 are factual allegations, along with others, that support plaintiff's negligence cause of action against SCNY. Plaintiff opines that either the pleading sufficiently state a cause of action in its entirety, or it does not and thus dismissal of certain factual allegations, at this stage, is improper.

In reply, SCNY argues that dismissal is warranted as the complaint lacks specificity. SCNY also contends that by not addressing the merits of the issue to dismiss paragraphs 87-89, plaintiff concedes that the abuse perpetrated by perpetrator #6 was improperly revived under CPLR 214-g. In sum, SCNY opines that plaintiff has not met its burden of alleging facts in the complaint that are more than just vague and insufficient as a matter of law.

#### 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).

“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]). “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]). “Ultimately, to sustain a cause of action for negligent supervision, the plaintiff must establish that the defendant had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated” (*id.*).

Here, SCNY argues that Plaintiff has failed to plead that SCNY was on constructive or actual notice of the perpetrators’ bad acts. However, Plaintiff’s complaint specifically alleges that SCNY provided foster care services to plaintiff and owed plaintiff a duty of reasonable care to protect her from foreseeable harms. Additionally, the complaint alleges that SCNY knew or should have know about the perpetrators abuse and that the foster homes where plaintiff was placed were unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to their care.

While SCNY argues neither it or its sisters placed children with individual foster families, plaintiff is not required to provide proof at this juncture in the litigation to sustain its claim. Plaintiff has thus sufficiently alleged, at this time, that SCNY may have had specific knowledge or notice of the dangerous conduct and had a duty to supervise the children in its custody. The portion of

SCNY's motion to dismiss the allegations against perpetrator #6 are denied, as the only cause of action asserted against SCNY is negligence and the allegations against perpetrator #6 are part of the plaintiff's factual claims against SCNY for negligence. Thus, the Court is without power to dismiss plaintiff's negligence cause of action, at this time, on the basis that some of the factual contentions in the complaint do not fall within the purview of CPLR 214-g.

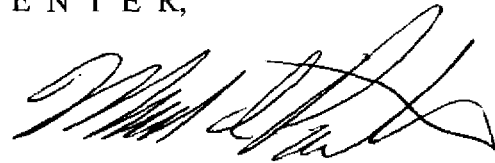
**CONCLUSION**

Accordingly, it is hereby

**ORDERED** that the Sisters of Charity of Saint Vincent de Paul of New York motion to dismiss (sequence 2) 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**