

Doe v Duff

2023 NY Slip Op 33455(U)

September 27, 2023

Supreme Court, New York County

Docket Number: Index No. 150600/2022

Judge: Leslie A. Stroth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

-----X
JANE DOE INDEX NO. 150600/2022
MOTION DATE 06/13/2023
MOTION SEQ. NO. 002

Plaintiff,

- v -

MICHAEL DUFF,

**DECISION + ORDER ON
MOTION¹**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 14, 15, 16, 20, 21 were read on this motion to/for DISMISSAL.

On January 13, 2022, plaintiff filed a summons and verified complaint pleading three causes of action arising out of the facts set forth below. Plaintiff's first cause of action is for sexual abuse and is brought pursuant to the extended statute of limitations for sexual assault survivors established by CPLR 213-c.² Plaintiff's second and third claims are for battery and intentional infliction of emotional distress, respectively.

For the reasons set forth below, the motion of defendant Michael Duff (defendant) to dismiss the complaint is denied in its entirety.

I. Alleged Facts³

Plaintiff Jane Doe (plaintiff) and defendant met in 2013 and were in an intimate, sexual

¹ The Court would like to thank Austen Fisher, J.D. candidate, for his assistance in this matter.

² Although plaintiff alleges certain crimes of sexual violence and violations of the Penal Law in her first cause of action, she does so only in support of her civil sexual abuse claim which is properly before this Court.

³ The following facts are derived from the complaint (see NYSCEF doc. no. 1) and accepted as true for purposes of the instant motion pursuant to CPLR 3211. See *TIAA Glob. Investments, LLC v One Astoria Sq. LLC*, 127 AD3d 75, 85 (1st Dept 2015).

relationship lasting approximately eight years. During a period of this eight-year relationship, defendant leased an apartment for himself and plaintiff to reside.

Plaintiff accuses defendant of a range of abusive behavior between 2017-2021. The acts allegedly committed by defendant include:

- Unsuccessfully coercing plaintiff into sexual acts, such as intercourse with additional parties and insertion of objects into defendant's anus.
- Sending plaintiff bestiality pornography despite her objections.
- Forcing dildos into plaintiff's vagina during sex after defendant was told by plaintiff to stop, causing bleeding and pain.
- Continuing to have rough intercourse with plaintiff after she withdrew her consent.
- Threatening plaintiff, stating he would "destroy" her, make her homeless, or "make her disappear" if she did not submit to defendant's desired sexual acts (NYSCEF Doc. No. 1 ¶ 5).
- On March 3, 2021, pushing plaintiff to the floor, punching her, ripping her hair out, and mocking her while she was on the ground, resulting in numerous physical injuries.
- Continuing to contact plaintiff in violation of a one-day order of protection issued after the March 3, 2021 incident.

II. Motion to Dismiss

Defendant now moves to dismiss plaintiff's complaint in its entirety pursuant to CPLR 3211(a)(7) for failure to state a claim. Plaintiff opposes.

Oral argument was held on June 13, 2023, at which all parties were present.

A. Analysis

In determining a motion to dismiss pursuant to CPLR 3211, the court's role is limited to evaluating whether the complaint states a cause of action. *See Frank v DaimlerChrysler Corp.*, 292 AD2d 118 (1st Dept 2002). Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. *See*

CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980). A complaint shall be liberally construed, and the allegations in such a complaint are given the benefit of every possible favorable inference. *See Leon v Martinez*, 84 NY2d 83, 87 (1994).

Moreover, “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” CPLR 3013. As squarely held by the Appellate Division, First Department, “...the emphasis with respect to pleading is placed, where it should be, upon the primary function of pleadings, namely, that of adequately advising the adverse party of the pleader’s claim or defense.” *Foley v D’Agostino*, 21 AD2d 60, 62-63 (1st Dept 1964).

1. First Cause of Action – Sexual Abuse

i. Statute of Limitations

Plaintiff fashions her first cause of action as an “action of victim of conduct constituting certain sexual offenses and acts *pursuant to* CPLR 213-c for rape in violation of Penal Law §130.25⁴ and aggravated sexual abuse in violation of Penal Law § 130.70.⁵” NYSCEF Doc. No. 1 ¶ 7 (emphasis added). Stated otherwise, plaintiff’s first cause of action seeks redress for alleged sexual abuse that occurred from 2017-2021, which may have been time barred without the benefit CPLR 213-c.

⁴ Pursuant to Penal Law § 130.25 (3): “A person is guilty of rape in the third degree when...[[h]e or she engages in sexual intercourse with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent.”

⁵ Pursuant to Penal Law § 130.70 (1): “A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person...[b]y forcible compulsion...”

The statute of limitations for intentional torts is generally one year. *See* CPLR 215. However, CPLR 213-c extends the statute of limitations for certain sexual offenses. CPLR 213-c states, in pertinent part:

All civil claims or causes of action brought by any person *for physical, psychological or other injury or condition* suffered by such person as a result of conduct which would constitute...rape in the third degree as defined in subdivision one or three of section 130.25 of the penal law...or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law...may be brought against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of the said conduct, within twenty years.

A claim brought under CPLR § 213-c does not require that a criminal charge be brought or that a criminal conviction be obtained against a defendant, and the rules governing criminal proceedings are not applicable to a claim brought pursuant to CPLR 213-c.

Defendant maintains that plaintiff improperly pleads CPLR 213-c as a singular cause of action, rather than as an extension of the statute of limitations. In response, plaintiff contends that defendant mischaracterizes her first cause of action. Plaintiff argues that her first cause of action is for sexual abuse. In support of her factual allegations of her civil claim for sexual abuse, and to clarify her position that the statute of limitations conferred by CPLR 213-c applies here, plaintiff pleads that defendant committed violations of both rape in the third degree (Penal Law § 130.25) and first degree aggravated sexual abuse (Penal Law § 130.70).

Liberally construing plaintiff's first cause of action, as required on a motion to dismiss, plaintiff states a cognizable cause of action for sexual abuse. *See* CPLR 3211(g)(2); *Leon v Martinez*, 84 NY2d 83, 87 (1994). Although defendant correctly notes that CPLR 213-c "does not create a cause of action where none otherwise exists" (*Gutierrez v Mount Sinai Health Sys, Inc*, 188 AD3d 418 [2020]), plaintiff does not plead CPLR 213-c alone. Rather, plaintiff properly pleads a cause of action for the intentional tort of sexual abuse. *See e.g. Tserotas v Greek Orthodox Archdiocese of N. and S. Am.*, 251 AD2d 323, 324 (2d Dept 1998), citing *Sharon B. v Reverend*

S., 244 AD2d 878, 879 (4th Dept 1997) (holding that, “[r]egardless of how it is pleaded, sexual abuse is an intentional tort); *see also* 75 C.J.S. Rape § 123 (“A civil action may be maintained to recover damages for the injuries sustained as the result of a rape... Rape is an intentional tort”).

ii. Notice Pleading

In the alternative, defendant maintains that plaintiff’s claim for sexual abuse is so vague and conclusory that it fails to notify defendant of his alleged tortious conduct and must be dismissed. Defendant contends that the complaint fails to identify his allegedly impermissible actions, when they took place, or why they are actionable. Defendant argues the complaint is therefore subject to dismissal due to insufficient particularization. In turn, plaintiff maintains that she pleads her claim for sexual abuse with sufficient particularity to give the Court and parties notice of the occurrences that she intends to prove.

In her complaint, plaintiff clearly alleges that defendant had sexual intercourse with plaintiff without her consent, inserted dildos into her vagina despite her objections, causing her injury, and threatened her, making her fearful of resisting defendant’s actions. Plaintiff further pleads that these violations occurred between 2017-2021. Plaintiff has sufficiently notified defendant and the Court of the occurrences intended to be proved, the material elements of the cause of action, and the period during which defendant allegedly committed these acts, thereby satisfying the notice pleading standard. *See* CPLR 3013.

Defendant’s contention that plaintiff must apply the heightened criminal pleading standards to this civil matter is unavailing. The plain language of CPLR 213-c explicitly states that rules governing criminal proceedings are inapplicable to civil actions brought under the statute. Plaintiff has plainly met the “...minimal standard necessary to resist dismissal of a complaint” in a civil action. *Armstrong v Simon & Schuster, Inc.*, 85 NY2d 373, 379 (1995).

Additionally, the Court notes that legislative intent of CPLR 213-c is to remedy sexual assault survivors' "limited ability to prosecute their abusers due to the passage of time." 2019 Legis. Bill Hist. NY S.B. 6574. The legislature expounded that, "[f]or crimes of sexual violence in particular, the clock ticks against the trauma and culture of silence that prevents victims from speaking out." 2019 Legis. Bill Hist. NY S.B. 6574. To dismiss a complaint at this stage of the proceedings because the passage of time has affected plaintiff's recall of each specific date and time of an alleged series of abuse would run counter to the legislative intent in extending the statute of limitations in these matters involving sensitive issues.

Therefore, the Court finds that plaintiff's cause of action for sexual abuse is sufficiently pled, and defendant's motion to dismiss that claim for failure to state a cause of action with respect to that claim is denied.

2. Second Cause of Action - Battery

Defendant next argues that plaintiff insufficiently pleads a cause of action for battery for an incident which purportedly occurred on March 3, 2021. Plaintiff responds that she has sufficiently pled such claim.

"Battery is the unjustified touching of another person, without that person's consent, with the intent to cause a bodily contact that a reasonable person would find offensive[.]" *Rivera v State*, 34 NY3d 383, 389 (2019). When considering a motion to dismiss, allegations in a complaint alleging assault and battery must be liberally construed. *See Corcoran v City of New York*, 180 AD3d 1151 (1st Dept 2020); *Scollar v City of New York*, 160 AD3d 140, 144 (1st Dept. 2018). To succeed on a motion to dismiss for failure to state a claim for battery, the moving party must be able to reasonably claim to have been unaware of the allegations made against them. *See Corcoran* at 1152.

The complaint sufficiently states a claim for battery. Plaintiff alleges when, where, and how the battery took place in her complaint. Plaintiff states that “on or about March 3, 2021,” Defendant pushed Plaintiff to the floor and “punched Plaintiff about her body and ripped Plaintiff’s hair out of Plaintiff’s head.” (NYSCEF Doc. No. 1 ¶ 6). Plaintiff claims she suffered both physical and emotional harm as a result of these actions. Plaintiff additionally pleads that, “[a]s a result of Defendant’s actions,” Plaintiff suffered injuries to her hand, neck, head, and body.” *Id.* Plaintiff also specifies that this act happened “[o]n or about March 3, 2021... inside of their shared apartment...” *Id.* Plaintiff has sufficiently pled offensive touching without her consent and included specific details of the event. Additionally, the complaint alleges that defendant was arrested, and that an ensuing order of protection was issued on April 22, 2021, for defendant’s behavior. (NYSCEF Doc. No. 1 ¶ 6). Therefore, the Court denies defendant’s motion with respect to plaintiff’s claim for battery.

3. Third Cause of Action – Intentional Infliction of Emotional Distress

Plaintiff’s third cause of action is for intentional infliction of emotional distress (IIED). “[I]ntentional infliction of emotional distress has four elements: (1) extreme and outrageous conduct, (2) intent to cause severe emotional distress, (3) a causal connection between the conduct and the injury, and (4) severe emotional distress.” *See Howell v New York Post Co.*, 81 NY2d 115, 121 (1993). “In practice, courts have tended to focus on the outrageousness element, the one most susceptible to determination as a matter of law.” *Id.*, citing Restatement [Second] of Torts § 46, comment h and Givelber, *Social Decency*, 82 Colum.L.Rev. 42, 42–43 (1982). IIED “may overlap other areas of the law, with potential liability for conduct that is otherwise lawful. Moreover, unlike other torts, the actor may not have notice of the precise conduct proscribed.” *Id.* at 122, citing Givelber, *Social Decency*, 82 Colum.L.Rev., at 51–52.

Defendant maintains that plaintiff's allegations of intentional infliction of emotional distress (IIED) are insufficient to state a claim. Defendant argues the conduct alleged in Plaintiff's complaint does not rise to the level of outrageousness necessary to establish IIED. He asserts that plaintiff's IIED claim must be dismissed because other tort remedies are available, thereby making plaintiff's IIED claims duplicative. *See Leonard v Reinhardt*, 20 AD3d 510 (2d Dept 2005); *Medcalf v Walsh*, 938 FSupp2d 478, 490 (SD NY 2013). Additionally, defendant calls into question the causal connection between any emotional distress plaintiff experienced and Defendant's behavior. He asserts that plaintiff's allegations are conclusory, and that the complaint fails to identify any basis supporting the claim that defendant caused plaintiff emotional distress.

In opposition, plaintiff responds that she has provided enough information in her complaint to meet the requirements to plead an IIED claim and to survive defendant's motion. Plaintiff argues that she alleged the elements of an IIED claim, namely that defendant's actions intended to cause, and were the proximate cause, of her emotional distress. Plaintiff also submits that dismissal of this cause of action would be premature at this early pleading stage.

It is inappropriate to dismiss plaintiff's intentional infliction of emotional distress claims at this juncture. Affording the complaint all reasonable inferences, plaintiff adequately alleges an IIED claim. Plaintiff argues defendant's extreme and outrageous conduct over a five-year period was intended to cause her emotional distress and proximately caused her mental health to suffer. Plaintiff's IIED claim is not duplicative of her other claims because she alleges extreme and outrageous conduct resulting in emotional damage that is distinct from her other claims. *Compare Leonard v Reinhardt*, 20 AD3d 510 (2d Dept 2005) (dismissing IIED claim where "the complaint fail[ed] to allege extreme or outrageous conduct necessary to support [an IIED] claim."). Plaintiff's allegations that she endured five-years of violent sexual abuse under threat of further violence or

losing her home plainly constitutes the extreme and outrageous conduct contemplated by an IIED claim. Plaintiff's IIED claim survives because is about the emotional consequence of years of alleged sexual violence, which is distinct from the alleged violence itself.

Further, plaintiff has demonstrated a sufficient nexus between her emotional distress and Defendant's conduct. She claims a "fear of future attacks" along with feelings of humiliation, anxiety, and depression. NYSCEF Doc. No. 1 ¶ 7. Liberally construing the complaint, as necessary, but for Defendant's alleged violence towards plaintiff, it is plausible Plaintiff would not experience a fear of future attacks along with the additional emotional distress she asserts. Plaintiff has therefore stated a claim for IIED, and defendant's motion to dismiss her claim is denied.

III. Conclusion


Accordingly, it is hereby

ORDERED that the motion of defendant Michael Duff to dismiss the amended complaint is denied in all respects; and it is further

ORDERED that defendant is to serve and file an answer within 30 days of the date of this decision and order.

This constitutes the Decision and Order of the Court.

9/27/2023
DATE


HON. LESLIE A. STROTH

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE