

**PC-58 Doe v Mid-Island
Y Jewish Community Ctr., Inc.**

2023 NY Slip Op 33560(U)

October 5, 2023

Supreme Court, New York County

Docket Number: Index No. 950616/2021

Judge: Sabrina Kraus

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

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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PC-58 DOE,

Plaintiff,

- v -

MID-ISLAND Y JEWISH COMMUNITY CENTER, INC., JCC
ASSOCIATION OF NORTH AMERICA, UNITED JEWISH
APPEAL-FEDERATION OF JEWISH PHILANTHROPIES
OF NY, INC., WILLIAM SHORE,

Defendant.

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INDEX NO. 950616/2021

MOTION DATE 05/13/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 50, 51, 52, 53, 54, 55

were read on this motion to/for DISMISS.

BACKGROUND

Plaintiff commenced this action seeking damages under the Child Victims Act based on his claim that when he was approximately 11 to 12 years, he was repeatedly and severely sexually abused by William Shore a/k/a Bill Shore (Shore) who at the time, was an instructor and/or counselor at the Mid-Island Y Jewish Community Center (“Mid-Island Y JCC”) in Planview, New York.

Defendants Mid-Island Y Jewish Community Center (“Mid-Island Y JCC”) and the United Jewish Appeal-Federation of Jewish Philanthropies of NY, Inc., (“UJA”) move pursuant to CPLR §3211(a) (a)(7) for a partial dismissal of the third cause of action which asserts a breach of statutory duty to report.

Because the court finds that the complaint fails to allege that Shore had sufficient custody and control over Plaintiff to trigger mandatory reporting requirements, the motion is granted.

ALLEGED FACTS

Plaintiff alleges the following facts:

When Plaintiff was approximately 11 to 12 years old, he was a member of a weekend/evening youth group at the Mid-Island Y Jewish Community Center in Plainview, New York. During this time, he was sexually abused at the Mid-Island Y Jewish Community Center and elsewhere by Shore, who was one of the youth group's instructors/counselors. Mid-Island Y/JCC was an affiliate, organized and operating within the national standards under the direct control and supervision of the UJA-Federation.

Defendants owned, operated, controlled, and/or supervised the Mid-Island Y/JCC located at 45 Manetto Hill Road, Plainview, New York 11803 and controlled each of the youth group programs at the Mid-Island Y/JCC, including the evening/weekend youth program. Shore was under the direct supervision, employ and control of the Defendants. Shore was assigned to the position as counselor/instructor of the Plaintiff's evening/weekend group at the Mid-Island Y JCC. Shore's duties and responsibilities included supervising, interacting with, mentoring, and counseling children in the youth group, including Plaintiff. Defendants authorized Shore to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

Shortly after joining the evening/weekend youth group at the Mid-Island Y/JCC, Shore singled out Plaintiff and engaged in inappropriate grooming behavior on Defendants' property and elsewhere. Shore, among other things, took steps to make Plaintiff feel special and promoted himself as a mentor and guide to lull Plaintiff into a false sense of trust. On multiple occasions

from approximately 1981 to 1982 while Plaintiff attended the evening/weekend youth group at the Mid-Island Y/JCC, Shore engaged in unpermitted, forcible, and harmful sexual contact with Plaintiff in a classroom and recreational hall area on Defendants' property and elsewhere. Shore's grooming behaviors and unlawful sexual contact with Plaintiff at the Mid-Island Y/JCC was open and obvious to Defendants and Defendants knew or should have known that Shore was a danger to children like Plaintiff before he sexually abused Plaintiff.

DISCUSSION

In determining a CPLR §3211(a)(7) motion to dismiss, "the sole criterion is 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." *Wilner v. Allstate Ins. Co.*, 71 AD3d 155, 159 (2d Dept. 2010) (quoting, *Guggenheimer v. Ginzburg*, 43 NY2d 268 (1977), and *Pacific Carlton Dev. Corp. v. 752 Pac., LLC*, 62 AD3d 677, 679 [2d Dept. 2009]). "On a motion made pursuant to CPLR 3211(a)(7), the burden never shifts to the nonmoving party to rebut a defense asserted by the moving party" *Sokol v. Leader*, 74 AD3d 1180, 1181 (2d Dept. 2010).

Additionally, "[o]n a CPLR 3211 motion to dismiss, the court will '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'" (*Nonnon v. City of New York*, 9 NY3d 825, 827 [2007], quoting, *Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]; *Grassi & Co., CPAS, P.C. v. Honka*, 180 AD3d 564, 564-565 [1st Dept. 2020]).

Social Services Law § 413, which went into effect on September 1, 1973, 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" (*id.* § 413

[1] [a]; *see* L 1973, ch 1039). 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.” 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.* § 412 [1]). Family Court Act § 1012 (e) defines an “abused child” as one harmed by a “parent or other person legally responsible for his [or her] care.”

Hanson v. Hicksville Union Free Sch. Dist., 209 A.D.3d 629, 631 (2022)

In *Hanson* the plaintiff alleged her English teacher and guidance counselor sexually abused her while she was in Junior High School or High School. The Appellate Division, Second Department held that it was reversible error for the court to have denied a 3211(a)(7) motion to dismiss the cause of action for duty to report. The court held:

The Supreme Court should have granted that branch of the District's motion which was to dismiss the ninth cause of action, alleging that it failed to report suspected child abuse committed by Bova, because Bova was not a “person legally responsible” for the plaintiff's care (*see Matter of Catherine G. v County of Essex*, 3 NY3d 175, 179-180 [2004]; *Matter of Yolanda D.*, 88 NY2d 790, 796 [1996]).

Hanson v. Hicksville Union Free Sch. Dist., 209 A.D.3d 629, 631 (2022).

Similarly, in another case decided earlier this year, where plaintiff had alleged she was sexually abused by the janitor while in elementary school, the court held:

... the Supreme Court should have granted that branch of the defendants' motion which was pursuant to CPLR 3211 (a) (7) to dismiss the third cause of action, alleging a violation of Social Services Law § 413. Since the janitor was not a “person legally responsible” for the plaintiff's care within the meaning of Family Court Act § 1012 (e), the defendants had no duty under Social Services Law § 413 (1) (a) to report the alleged abuse of the plaintiff by the janitor (*see* Social Services Law § 412 [1]; *Matter of Catherine G. v County of Essex*, 3 NY3d 175, 179-180 [2004]; *Matter of Yolanda D.*, 88 NY2d 790, 796 [1996]; *Hanson v Hicksville Union Free Sch. Dist.*, 209 AD3d 629, 631 [2022]).

Sullivan v. Port Washington Union Free Sch. Dist., 213 A.D.3d 966, 968 (2023).

Both these cases support dismissal of the cause of action in the case at bar.

Plaintiff cites to *Kimberly S.M. by Mariann D.M. v. Bradford Cent. Sch.*, 226 A.D.2d 85, 88 (1996) which went the other way. In *Kimberly* a sixth grader reported sexual abuse by her uncle to her teacher, who made no report of the alleged abuse. There the court held that whether a teacher is required to report a suspected case of child sexual abuse is determined by the facts and circumstances known to the teacher at the time she learns of the abuse. The court further held that given what was known by the teacher at the time, the uncle could have been a custodian or a person responsible for the child's care at the relevant time, and therefore the court should have denied defendant's motion for summary judgment. The court does not find the holding in *Kimberly* warrants denial of the motion in the case at bar, as there is no claim that anyone believed Shore was Plaintiff's custodian at any point in time.

Moreover, to the extent that there is a conflict between the holdings of the Second Department and the Fourth Department the court notes that the Court of Appeals has held that to trigger the duty the alleged abuser must be a parent, guardian or other person legally responsible for the care of the victim. *Catherine G. v. Cnty. of Essex*, 3 N.Y.3d 175, 179 (2004). In reversing the lower court's decision to allow the late filing of a notice of claim, the Court of Appeals held:

... the Legislature intended the custodial category to permit child protective petitions against parents' paramours (*see* Besharov, Practice Commentaries, McKinney's Cons Law of NY, Book 29A, Family Ct Act § 1012, at 373 [1999 ed]). While the classification could properly extend to adult members of a household ... Moreover, the purpose behind the child abuse provisions of Family Court Act § 1012 is set forth in section 1011, in which the lawmakers declared that article 10 is "designed to provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child." Plainly, the law contemplates intervention in relationships between children and their parents (or guardians or custodians).

Id at 180.

The Court further added:

Our conclusion is supported by the Social Services Law's definition of the “[s]ubject of the report” as including “any parent of, guardian of, custodian of or other person eighteen years of age or older legally responsible for [a child]” (Social Services Law § 412 [4]). . . . Moreover, it would make no sense to require mandatory reporters to furnish information to the state hotline if the reporters know the abuser cannot be the subject of a report.

Id.

Based on the foregoing, the motion is granted, and the cause of action is dismissed.

Plaintiff seeks leave to replead in the event of dismissal. Leave for same is denied at this time, as Plaintiff has failed to identify what further facts and circumstances could be alleged that would warrant an inference that Shore, a counselor at the JCC, was Plaintiff's custodian at the time the alleged abuse occurred.

WHEREFORE it is hereby:

ORDERED that the motion to dismiss the third cause of action is granted and the third cause of action of the complaint is dismissed; and it is further

ORDERED that movants directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual first compliance conference on November 21, 2023, at 10:00 AM; and it is further

ORDERED that, within 20 days from entry of this order, movants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

