

A.R. v City of New York

2024 NY Slip Op 30430(U)

February 7, 2024

Supreme Court, New York County

Docket Number: Index No. 950266/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

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

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

Justice

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A. R.,

Plaintiff,

- v -

CITY OF NEW YORK, CHILDREN'S VILLAGE, DOES 1-10

Defendant.

-----X

INDEX NO. 950266/2021

MOTION DATE 11/14/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for AMEND CAPTION/PLEADINGS.

BACKGROUND

Plaintiff commenced this action pursuant to the New York Child Victims Act, CPLR Section 214-g. Plaintiff alleges that in 1992, he was placed in a group home controlled by ACS. Due to the alleged trauma caused by severe abuse and Plaintiff's young age, Plaintiff asserts he did not recall each event, inclusive of the timeline of abuse by his alleged perpetrators Ms. Tanya and Cedric Green ("Green"), prior to the investigation and the filing of the Summons and Complaint of this action, and now seeks to amend his complaint.

For the reasons set forth below, the motion is granted.

DISCUSSION

Plaintiff alleges negligence against Defendants in their placement and supervision of Plaintiff in children's shelters the foster home where he was abused, in their retention of Plaintiff in the shelters and foster home.

The proposed Amended Complaint alleges that Ms. Tanya, performed additional sexual assaults upon the Plaintiff, including but limited to performing oral sex on the Plaintiff. The proposed Amended Complaint additionally alleges that Green, removed the Plaintiff from the Children's Village Foster home campus to Green's private residence and supplied the Plaintiff with drugs and alcohol. Plaintiff also seeks to specify that the sexual abuse occurred in 1997.

CPLR §3025(b) provides that “[a] party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court ...”. Courts shall “freely give” leave to amend or supplement a complaint “upon such terms as may be just.” CPLR §3025(b). This provision of the CPLR explicitly endorses the State policy of liberality in permitting amendments. See *Tucker v. Tucker*, 55 N.Y.2d 378, 385 (1982) (*statutory provision authorizing amendment of pleadings reflects a liberal attitude by directing leave to amend shall be freely given*). Leave should freely be granted to amend a pleading unless doing so would hinder the opposing party's ability to prepare a case. *Loomis v. Civetta Corinno Const. Corp.*, 54 N.Y.2d 18, 23 (1981). Only if the opposing party would be unfairly surprised or prejudiced would granting leave to amend a pleading be improper. *Murray v. City of New York*, 43 N.Y.2d 400, 406 (1977).

The proposed amended pleading seeks to add the following factual allegations. Plaintiff alleges that Ms. Tanya, sexually assaulted Plaintiff for her own sexual gratification, including but not limited to squeezing Plaintiff's testicles and buttocks, forcing Plaintiff to touch her breasts, and performing oral sex on Plaintiff. It is further alleged that beginning in 1996, when Plaintiff was approximately fifteen (15) years old, Green, a supervisor at Children's Village, took a special interest in Plaintiff, giving him gifts, special privileges, and signing Plaintiff out of the Children's Village campus to take Plaintiff off-premises on several occasions. During some of

these outings, Green would bring Plaintiff to Green's private residence for overnight visits, during which Green supplied Plaintiff with drugs and alcohol.

It is further alleged that in the summer of 1997, after signing Plaintiff out of Children's Village, Green brought Plaintiff to his private residence for an overnight visit, during which Green supplied Plaintiff with drugs and alcohol, and sexually assaulted and abused Plaintiff numerous times. The acts of sexual assault and abuse allegedly perpetrated against Plaintiff by Green for his sexual gratification included but were not limited to wrestling with Plaintiff and touching Plaintiff's genitals, performing oral sex on Plaintiff and penetrating Plaintiff's anus with Green's penis, while Plaintiff was sixteen years old and intoxicated.

The court finds Defendants' claim of prejudice by the amendment to be unpersuasive. Defendants are already on notice that Plaintiff alleges negligence against the in his placement and supervision while he was in foster care. The Amended Complaint only adds additional allegations of sexual abuse while Plaintiff remained under the Defendants' custody and control.

Additionally, in this case written discovery remains outstanding and no depositions have been taken. Moreover, Plaintiff served his Bill of Particulars on August 28, 2023, which included the more specific allegations of abuse and updated timeline, which is identical to the allegations found in the Amended Complaint. Therefore, for approximately the last six months, Defendants have been on notice of the correct timeframe of abuse.

Finally, the court rejects Defendants' claims that the amendment is barred by the expiration of the statute of limitations. "[A] claim asserted in an amended pleading in deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions or occurrences...to be proved in the

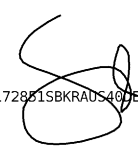
amended pleading”. *Giambrone v. Kings Harbor MultiCare Ctr*, 104 A.D3d 546, 548 (1st Dep’t 2013). The court finds that the original pleading did in fact provide Defendants with such notice.

WHEREFORE it is hereby:

ORDERED that the plaintiff’s motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the Defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

This constitutes the decision and order of the court.



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2/7/2024
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE