

Doe v Yeshiva of Brooklyn

2024 NY Slip Op 30690(U)

March 4, 2024

Supreme Court, Kings County

Docket Number: Index No. 512993/2020

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
KINGS COUNTY**

PRESENT: <u>HON. SABRINA B. KRAUS</u>	PART	<u>57/CVA</u>
<i>Justice</i>		
-----X	INDEX NO.	<u>512993/2020</u>
JOHN DOE,	MOTION DATE	<u>10/26/2023</u>
Plaintiff,		004
	MOTION SEQ. NO.	<u>005</u>

YESHIVA OF BROOKLYN also known as the Talmudical School of Brooklyn, RABBI YEHUDA NUSSBAUM and RABBI SHLOMO MANDEL,

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 68-72; 77-78; 80;85-87 were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73-76; 79;81-84 were read on this motion to/for AMEND CAPTION/PLEADINGS

BACKGROUND

This is an action commenced pursuant to the Child Victims Act (“CVA”) in which Plaintiff alleges that when he was nine years old and attending school at the Yeshiva, he was subject to repeated sexual abuse by Defendant Rabbi Yehuda Nussbaum (“Nussbaum”), and that the Yeshiva and its principal, Rabbi Shlomo Mandel, knew of the abuse but allowed it to continue. Plaintiff also alleges that his parents reported the abuse to Rabbi Mendel who took no action and threatened Plaintiff’s parents if they were to pursue the claim.

PENDING MOTIONS

On August 7, 2023, Yeshiva of Brooklyn a/k/the Talmudical School of Brooklyn and Rabbi Shlomo Mandel (“Defendants”) moved for an order dismissing the action pursuant to CPLR §3211(a)(7).

On September 29, 2023, Plaintiff cross-moved for an order to amend the complaint.

On October 26, 2023, both motions were submitted and the court reserved decision.

For the reasons set forth below, the cross-motion to amend the complaint is granted in part and Defendants’ 3211(a)(7) motion is therefore denied as moot.

DISCUSSION

Plaintiff in his cross-motion seeks to amend his complaint to add a cause of action under the New York City Administrative Code section for “Victims of Gender Motivated Violence” which permits a “civil cause of action” to recover compensatory damages for “ ... any person claiming to be injured by a party who commits, directs, enables, participates in, or conspires in commission of violence motivated by gender...” New York City Administrative Code § 10-1104.

Plaintiff also seeks to add a cause of action under Social Services Law 413 and 420 for Defendants’ failure to report the abuse.

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 ...”. A motion for leave to amend a complaint should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit (*see* CPLR 3025[b]; *Feldman v. Finkelstein & Partners, LLP*, 76 A.D.3d 703, 705, 907 N.Y.S.2d 313).

Landsman v. Tolo, 194 A.D.3d 1034, 1035 (N.Y. App. Div. 2021).

Defendants argue that §10-1104 (“Civil cause of action”) of the New York City Administrative Code (“Actions by Victims of Gender Motivated Violence”) is only applicable to women. There is no basis either in the statute for such a holding.

In the Declaration of Legislative Findings and Intent the statute provides:

... this council finds that victims of gender-motivated violence should have a private right of action against perpetrators of offenses committed against them under the administrative code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence.

New York City, N.Y., Code § 10-1102, New York City, N.Y., Code § 10-1102.

Under section § 10-1103 (“definitions”) a crime of violence is defined as “an act or a series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of injury to another, whether or not those acts actually resulted in criminal charges, prosecution, or conviction.” Additionally, a crime of violence motivated by gender is defined as “a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.” This definition on its face does not limit gender to any specific gender.

Finally, the code provides that “... any person claiming to be injured by a party who commits, directs, enables, participates in, or conspires in the commission of a crime of violence motivated by gender has a cause of action against such party in any court of competent jurisdiction ...” New York City, N.Y., Code § 10-1104, New York City, N.Y., Code § 10-1104.

Nowhere in any of these provisions is there an expressed intent to create these rights only on behalf of women.

Based on the foregoing, the Court grants Plaintiff's motion to amend the complaint to add the proposed eighth cause of action.

Plaintiff's Cross-Motion also seeks to add a claim under Social Services Law § 420 (2) for failure to report the sexual abuse of Plaintiff as a violation of Social Services Law § 413 (1). This proposed amendment is denied as teachers are not considered persons legally responsible for a child's care within the meaning and scope of the Social Services Law. *Hanson v. Hicksville Union Free School District*, 209 A.D.3d 629 (2d Dept 2022); *Solly v Pioneer Central School District* 221 AD 3d 1447 (4th Dept 2023).

As leave to amend is granted, the motion to dismiss the first complaint pursuant to CPLR 3211(a)(7) is denied as moot. *Covert Avenue Apartments, Inc. v Town of Babylon* 134 AD2d 230 (2nd Dept 1987).

WHEREFORE it is hereby:

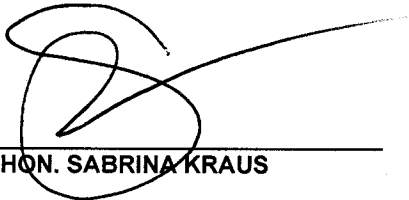
ORDERED that the plaintiff's cross- motion for leave to amend the complaint is granted, in part, as follows: leave is granted to add the eighth cause of action and to this extent the proposed amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that leave to amend the complaint is denied with respect to the proposed ninth cause of action and this cause of action is stricken; and it is further

ORDERED that Defendants shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a virtual compliance on April 8th, 2024,
at 2:30 PM.

This constitutes the decision and order of the Court.

<u>3/4/24</u> DATE		 HON. SABRINA KRAUS
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE