J.L. v Madison Sq. Boys & Girls Club
2024 NY Slip Op 32912(U)
July 23, 2024
Supreme Court, New York County
Docket Number: Index No. 951189/2021
Judge: Sabrina Kraus

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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J. L.

Plaintiff,

- v -

THE MADISON SQUARE BOYS AND GIRLS CLUB,

Defendant.

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INDEX NO. 951189/2021

MOTION DATE 05/06/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 24, 31, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISS.

BACKGROUND

Plaintiff commenced this action pursuant to the Child Victims Act ("CVA") seeking damages for alleged abuse he suffered as a child by Reginald Archibald ("Archibald"), a doctor who volunteered with Defendant. Plaintiff asserts a cause of action for negligence against Defendant.

On August 15, 2022, Defendant moved to dismiss the complaint pursuant to CPLR §3211(a)(7). The motion was stayed pending a Chapter 11 Bankruptcy filed by Defendant. The Chapter 11 Bankruptcy Plan was confirmed by the United States Bankruptcy Court for the Southern District of New York effective August 21, 2023, and the stay was lifted. The motion was marked submitted in July 2024, and the Court reserved decision.

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

ALLEGED FACTS

Archibald was a pediatric endocrinologist who volunteered and worked for as the resident doctor, and was later on the Board of Trustees of Madison Square Boys Club ("MSBGC"). MSBGC maintained a Clubhouse for young boys in New York City, representing that it provided the boys with a positive place to belong in order to keep boys busy and out of trouble.

Archibald provided medical screenings and basic medical services in an office given to him by MSBGC.

Archibald was a pedophile and child molester who sexually exploited and abused hundreds and hundreds of children over his career. During Archibald's tenure with the MSBGC, he used his position of authority to sexually abuse young boys at the Clubhouse. Archibald also took nude and pornographic photos of his victims. Archibald kept photography and lighting equipment in plain view in his office. He also kept developed photos of young, naked boys hanging on a clothesline in plain view in his office, which was visible outside of his office when the door was opened.

He abused children at both the MSBGC Clubhouse, and at his office at Rockefeller University Hospital, where MSBGC referred boys for treatment.

MSBGC failed to properly supervise various Clubhouse personnel, including Archibald; permitted them unfettered and unsupervised access to children; failed to address sexual abuse which was occurring in plain sight; and exposed the boys to systematic sexual abuse.

Archibald died in 2007.

Archibald was a preeminent pediatric endocrinologist. He studied growth and nutrition, and his specialty was children of short stature. Many of the children who sought treatment from Archibald (or were brought to him) were undersized and had trouble growing.

Archibald required his patients to remove all clothing during examinations. Archibald measured his victims' penises, both flaccid and erect. Archibald masturbated his victims or asked them to masturbate, sometimes to ejaculation. In some cases, he both asked his victims to masturbate and also masturbated them. When Archibald photographed the children, he required them to stand fully nude against a wall and hold their palms out facing the camera. Archibald also took close-up photographs of his victims' genitals.

Archibald was usually employed by and based out of the Rockefeller Institute, ("Rockefeller"), he also had a close relationship with the Madison Square Boys Club.

The Clubhouse had a dark room in which photographs could be developed. The Clubhouse had a locker room where boys changed in and out of their street clothes into athletic wear. The flagship physical program for young boys was Madison Square Boys Club's swimming pool.

A physical examination by MSBGC's selected physician was mandatory before using the swimming pool or gymnasium. MSBGC staff escorted boys to Archibald's office for their annual physical exams. Boys were often lined up outside of Archibald's office naked or wearing only a towel for a physical examination.

From the early 1940s throughout the 1960s, Archibald traveled to different Clubhouses throughout New York City and examined children at those facilities.

Archibald often stood on the deck of the MSBGC pool, watching young boys swim and frolic naked. Archibald was known as the "pool doctor." The boys did not swim naked by choice; Madison Square Boys Club required them to do so. The swimming pool was one floor up from the boys' locker room, so children would often disrobe in the locker room and then walk one flight of stairs naked to the swimming pool. Archibald's office was located in or near the

locker room, close to the stairs where naked boys walked up and down to reach the swimming pool.

Archibald's actions were well known at the MSBGC and boys often referred to him as "Dr. Archie-Balls." Boys discussed strategies to avoid Archibald's repeated physical "examinations."

Children at MSBGC complained to counselors and higher-ranking staff members at MSBGC. A child at MSBGC complained that Archibald was sexually abusing him in or about 1978. He complained to counselors and to a man whom he knew as "Moff," who was a senior-ranking staff member at MSBGC. However, neither those staff members nor Moff took any action to protect the children at MSBGC or to curtail Archibald's sexually abusive behavior in any way. Additionally, in or about the early 1950s, one of the boys reported to the MSBGC Swim Director that Archibald was touching boys' genitals. The Swim Director disregarded the complaint and told the boy not to worry about it.

Plaintiff was born in in 1961. At about the age of 9 or 10, Plaintiff came under the "care" of Reginald Archibald. As required by MSBGC's rules, Plaintiff had to undergo a physical examination before he could use the facilities or the pool, or to get a "club ticket." MSBGC members like Plaintiff were also required to undergo an annual examination. Archibald was the physician there that day. This was the first time that Archibald molested Plaintiff.

Plaintiff went into a second-floor office adjoining the gymnasium with a desk, filing cabinet, and camera. There was a line of boys outside the room in their underwear or with towels wrapped around them. Archibald had photos of naked boys and their genitalia hanging on a clothesline in his office. Archibald was wearing a white coat with writing on the breast. After Plaintiff stepped into the room, Archibald shut the door. Archibald instructed Plaintiff to strip

naked and to stand against the wall with palms out. Plaintiff did so. Archibald proceed to take naked pictures of Plaintiff. Archibald had two cameras. One was on a tripod, and the other was a polaroid camera. Archibald took pictures of Plaintiff with both cameras. Archibald fondled Plaintiff's genitals. Archibald then directed Plaintiff to become erect and masturbate. When Plaintiff did not immediately so, Archibald put Plaintiff on his lap and used his hands to stimulate Plaintiff to have an erection. Plaintiff had additional examinations until he was about 12 years old. During each examination, Archibald abused him again.

DISCUSSION

New York's pleading standard is fundamentally notice pleading – a very liberal standard. "The allegations of a complaint generally need not be set forth in detail; it is sufficient if the parties are (1) put on notice of the underlying transactions or occurrences, and (2) the material elements of the cause of action are stated." *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 64 N.Y.S.3d 389, 393 (3d Dept, 2017), aff'd, 31 N.Y.3d 1090 (2018). Furthermore, "[a] complaint need not, and should not, anticipate and refute defenses." *Sabater ex rel. Santana v. Lead Indus. Ass'n, Inc.*, 704 N.Y.S.2d 800, 804 (Sup. Ct. Bronx Cnty. 2000).

In deciding a motion to dismiss under CPLR Rule 3211 (a) (7), the "complaint is to be afforded a liberal construction." (*Goldfarb v Schwartz*, 26 AD3d 462, 463 [2d Dept 2006]). The "allegations are presumed to be true and accorded every favorable inference." (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). "[T]he 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." (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Additionally, "[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

The standard to sufficiently plead notice in CVA cases to survive a motion to dismiss pursuant to CPLR §3211(a)(7) on a cause of action involving negligence is well established and has been recently reiterated by both the First and Second Departments. See e.g., *J.D. v. The Archdiocese of New York*, 214 AD3d 561(1st Dept. 2023) and *Novak v. Diocese of Brooklyn, et al*, 210 A.D.3d 1104 (2022).

A plaintiff need only allege that defendant knew or should have known of the perpetrator's harmful propensities, that it failed to take necessary action, and that this failure caused damage to others. The cause of action does not need to be pleaded with specificity. S*ee Novak, supra*; *Kenneth R. v. Roman Cath. Diocese of Brooklyn*, 229 A.D.2d 159,162 (2d Dept 1997) *Belcastro v Roman Catholic Diocese of Brooklyn, N.Y.*, 213 AD3d 800, 801 [2d Dept 2023]).

Plaintiff has clearly plead all the required elements of the claim.

Furthermore, Plaintiff has not yet had the benefit of discovery. Here, at the pleading stage of the litigation where Plaintiff's allegations in the complaint are treated as true and are accorded the benefit of every possible favorable inference, the Court finds that the complaint is sufficiently pled as to notice.

This holding is further supported by the recent decision of *Grabowski v. Orange County*, 219 AD3d 1314 (2023), where the Second Department upheld New York's liberal pleading standard and found that the Plaintiff's CVA Complaint, "which asserted that the abuse was foreseeable, inter alia, because the County knew or in the exercise of reasonable case should have known of the foster father's propensity to engage in the sexual abuse of children,

sufficiently alleged that the County had notice of the dangerous condition at issue such that the abuse could reasonably have been anticipated".

WHEREFORE it is hereby:

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that Defendant shall serve and file its answer to the complaint within 20 days from the date of service of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual preliminary conference on September 23, 2024, at 3:30 pm.

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7/23/2024
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE