M.H. v Rockefeller Univ.

2025 NY Slip Op 30063(U)

January 2, 2025

Supreme Court, New York County

Docket Number: Index No. 950206/2020

Judge: Alexander M. Tisch

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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: **ALEXANDER M. TISCH** **PART** **18**

Justice

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INDEX NO. 950206/2020

M.H.,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 002

- v -

ROCKEFELLER UNIVERSITY a/k/a ROCKEFELLER UNIVERSITY HOSPITAL f/k/a HOSPITAL OF THE ROCKEFELLER INSTITUTE and MADISON SQUARE BOYS & GIRLS CLUB, INC., f/k/a MADISON SQUARE BOYS AND GIRLS CLUB,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 33, 34, 35, 38, 40, 42, 44

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant Madison Square Boys & Girls Club, Inc. f/k/a Madison Boys and Girls Club (Madison) moves for dismissal of this action pursuant to CPLR 3211(a)(7) (Motion Seq. 002).

Plaintiff alleges that in the period of 1978 through 1987, plaintiff was sexually abused and assaulted by Dr. Archibald, a professor and senior physician at defendant Rockefeller University, to whom Madison referred children for medical examinations and treatment required to participate in Madison programming.

Plaintiff's complaint asserts one cause of action against Madison for negligence. Madison moved to dismiss the complaint on the ground the complaint inadequately alleges the notice element of the negligence claim.

In deciding a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), a court must determine "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" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether, deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]).

When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see* CPLR § 3026; *Siegmund Strauss, Inc.*, 104 AD3d at 401). The Court must "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 into any cognizable legal theory" (*Siegmund Strauss, Inc.*, 104 AD3d at 401; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *aff'd* 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept 1996], *lv denied* 89 NY2d 802 [1996]), and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275

[1977]; *see also Leon*, 84 NY2d at 88; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001] ["In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

The movant bears the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon,* 84 NY2d at 87-88; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Salles*, 300 AD2d at 228).

Specifically, a claimant can maintain a cause of action for negligent hiring, supervision and retention by adequately alleging that the "employer knew or should have known of the employee's propensity for the conduct which caused the injury" and nevertheless continued the employee's service (*Bumpus v New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept 2008] [internal quotation marks and citation omitted]; *see also Jackson v New York Univ. Downtown Hosp.*, 69 AD3d 801, 801–02 [2d Dept 2010]; *Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161-163 [2d Dept 1997], *cert. denied* 522 U.S. 967 [1997], *lv. dismissed* 522 91 NY2d 848 [1997].

Defendant argues plaintiff has failed to plead with specificity that they were on constructive or actual notice of Archibald's propensity to commit abuse. "There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R.*, 229 AD2d at 162). Plaintiff also alleges staff members at Madison were aware of Archibald performing medically unnecessary procedures and examinations (Complaint, NYSCEF Doc. No. 2, ¶ 26). The allegations in the complaint, which

are to be taken as true, adequately alleges this element. Plaintiff is not required to provide proof at this juncture in the litigation, and Madison has introduced no evidence conclusively establishing that the allegations are false. Plaintiff has thus sufficiently alleged, at this juncture, that Madison may have had actual knowledge, or should have had knowledge, of Archibald's propensity to sexually abuse minors and did nothing to prevent plaintiff's abuse from occurring. Further, discovery from Madison is likely to shed light on this issue and others (*see generally Doe v Intercontinental Hotels Group, PLC*, 193 AD3d 410, 411 [1st Dept 2021]). Several recent Appellate Division, Second Department cases have held that complaints alleging a defendant knew or should have know of the alleged abuser's propensity for abuse sufficiently pleads the notice element (*see Sullivan v St. Ephrem R.C. Parish Church*, 214 AD3d 751, 753 [2d Dept 2023]; *Kaul v Brooklyn Friends Sch.*, ___AD3d___, 2023 NY Slip Op 05396 at *3-*6 [2d Dept 2023]; *Kwitko v Camp Shane, Inc.*, 224 AD3d 895, 896 [2d Dept 2024]).

The allegations are adequately pled with regards to the knowledge element of the negligence cause of action against Madison. As such, Madison's motion seeking dismissal of plaintiff's cause of action for negligence is denied.

Accordingly, it is hereby

ORDERED that the motion of defendant Madison for dismissal of this action pursuant to CPLR 3211 (Motion Seq. 002) is denied; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry within 14 days of the date this order; and it is further

ORDERED that defendant Madison shall serve an answer to the complaint or otherwise respond thereto within 30 days from the date of said service; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and submit a first compliance conference order within 60 days.

This constitutes the decision and order of the Court.

January 2, 2025
DATE

ALEXANDER M. TISCH, 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

950206/2020 M.H. v. ROCKEFELLER UNIVERISTY a/k/a ROCKEFELLER UNIVERSITY HOSPITAL f/k/a HOSPITAL OF THE ROCKEFELLER INSTITUTE et al
Motion No. 002