Doe v Yeshiva of Brooklyn
2025 NY Slip Op 32216(U)
June 18, 2025
Supreme Court, Kings County
Docket Number: Index No. 512993/2020
Judge: Sabrina Kraus

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: **HON. SABRINA B. KRAUS** **PART** **CVA 1 / 57**

Justice

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INDEX NO. 512993/2020

JOHN DOE,

MOTION DATE 3/28/25

Plaintiff,

MOTION SEQ. NO. 006

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

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 97 - 117 were read on this motion to/for DISMISS.

BACKGROUND

This is an action commenced pursuant to the Child Victims Act ("CVA") in which Plaintiff alleges that from 1991 to 1992, when he was seven to 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 Plaintiffs parents if they were to pursue the claim.

Plaintiff's amended complaint also asserts claims brought under the Victims of Gender-Motivated Violence ("GMV").

Movants now seek dismissal of the amended complaint pursuant to CPLR 3211(a)(7). The motion is granted to the extent set forth below.

DISCUSSION

The Amended Complaint alleges the following causes of action against movants: negligent supervision, negligent retention, negligent failure to train, negligent failure to warn, vicarious liability, and violation of the GMV.

Movants argue the negligence causes of action must be dismissed for failure to plead notice.

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 Dep't 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 determining dismissal 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 elements of a cause of action alleging common-law negligence are a duty owed by the defendant to the plaintiff, a breach of that duty, and a showing that the breach of that duty constituted a proximate cause of the injury (*see Turcotte v. Fell,* 68 N.Y.2d 432, 437, 510 N.Y.S.2d 49, 502 N.E.2d 964; *Jiminez v. Shahid,* 83 A.D.3d 900, 901, 922 N.Y.S.2d 123; *Ruiz v. Griffin,* 71 A.D.3d 1112, 1114, 898 N.Y.S.2d 590)

Roberson v. Wyckoff Heights Med. Ctr., 123 A.D.3d 791, 792 (2014).

To state a claim for negligent hiring, retention or supervision under New York law, a plaintiff must plead, in addition to the elements required for a claim of negligence: (1) the existence of an employee-employer relationship; and (2) "that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 161, 654 N.Y.S.2d 791 [2d Dept. 1997]).

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 negligent supervision or retention 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).

To survive a motion to dismiss pursuant to CPLR §3211(a)(7) in such a case, a plaintiff need only allege that an employer knew or should have known of its employee or agent'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 *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".

Furthermore, as argued by plaintiff the Appellate Division, Second Department has already ruled that a complaint nearly identical to the one in this action did sufficiently plead notice to state a cause of action. *Becastro v. Roman Catholic Diocese of Brooklyn, New York* 213 AD 3d 800 (2d Dep't 2023).

The cases relied upon by movants, *Doe v. Education Institute Obolei Torah*, 235 AD 3d 843 (2d Dep't 2025) and *Kessler v. Yeshiva of Central Queens*, 231 AD 3d 3 (2nd Dep't 2024) which movants assert creates a new standard for what is required to plead notice, in fact create no such new standard and are distinguishable from the case at bar.

Doe v. Educ. Inst., *supra* did not involve a minor. It was a school at the college level where the court held the doctrine of *in loco parentis* was generally inapplicable, and that colleges in general had no legal duty to shield their students from the dangerous activity of other students. *Id* at 844-845. The *Kessler* case is also distinguishable because the abuse did not occur on the premises, but at the tutor's home, therefore the *in loco parentis* duty would not be applicable, and

there were no constructive notice allegations as in the case at bar where a student was being abused in the classroom at school.

Vicarious Liability

The cause of action for vicarious liability is dismissed. It is essentially duplicative of the claims for negligent supervision and retention.

The GMV Cause of Action is Dismissed as to Movants

Plaintiff's eighth cause of action is dismissed because entities or employers cannot be held liable for conduct committed by employees prior to the 2022 amendments by the City Council to the GMV.

To state a claim under the VGM, Plaintiff must plead "(1) the alleged act constitutes a misdemeanor or felony against the plaintiff; (2) presenting a serious risk of physical injury; (3) that was perpetrated because of plaintiff's gender; (4) in part because of animus against plaintiff's gender; and (4) resulted in injury" (*Hughes v Twenty-First Century Fox, Inc.*, 304 F Supp 3d 429, 455 [SDNY 2018]).

Prior to 2022, the GMV provided for a cause of action against individual defendants who personally engaged in acts of gender-motivated violence, but not against their employers or supervisory entities. Specifically, the GMV provided, in relevant part: "any person claiming to be injured by an individual who commits a crime of violence motivated by gender has a cause of action against such individual" to recover damages ("Local Law 2022-21).

In 2022, the New York City Council expanded the GMV to provide for entity liability, amending the foregoing text to read: "any person claiming to be injured by a party who commits, directs, enables, participates in, or conspires to in the commission of a crime of violence motivated by gender has a cause of action against such party" *Id.* "It is a fundamental canon of

statutory construction that retroactive operation is not favored by courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it" (*Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 584 [1998]). "[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic" (*Landgraf v USI Film Prods.*, 511 US 244, 265 [1994]). Local Law 2022-21 does not contain any express language stating that the expansion of the VGMVPL to provide for entity liability is retroactive. Accordingly, such expansion of liability cannot be applied retroactively against movants for conduct the Plaintiff claims was committed prior to the year 2022. *Bensky v Indyke*, 2024 WL 3676819, at *9–10 (SDNY Aug. 5, 2024); *Doe v Combs*, 2024 WL 4987044, at *4 (SDNY Dec. 5, 2024)(*nothing in the text or legislative history overcomes presumption against retroactivity*).

Here, the alleged abuse occurred between 1991 and 1992, accordingly, Plaintiff's GMV cause of action is dismissed as against movants, because all the conduct claimed by the Plaintiff under the GMV was committed prior to the 2022 legislative extension of liability under the act to entities.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion is granted to the extent of dismissing the causes of action for vicarious liability as to all defendants; and the GMV cause of action as to movant and otherwise denied.

6/18/25
DATE

HON. SABRINA KRAUS

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
[ ] GRANTED [X] DENIED [ ] GRANTED IN PART [ ] OTHER

512993/2020 DOE V YESHIVA
MOTION NO.006