SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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John Doe,

Plaintiff,

- v -

Yeshiva University, Marsha Stern Talmudical Academy, Yeshiva University High School For Boys, Pat Doe 1-30, Members Of The Board Of Trustees Of Yeshiva University, Pat Doe 31-60, Members Of The Board Of Directors Of Yeshiva University, James Doe 1-30, Members Of The Board Of Trustees Of Marsha Stern Talmudical Academy, James Doe 31-60, Members Of The Board Of Directors Of Marsha Stern Talmudical Academy, Robert Hirt,

Defendant.

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INDEX NO. 951285/2021

MOTION DATE 02/03/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 41,42, 43, 44, 45, 46, 47, 48, 50, 51

were read on this motion to/for DISMISS.

Plaintiff commenced the instant action pursuant to the Child Victims Act (the "CVA"), seeking to recover damages for personal injuries sustained as a result of sexual abuse he allegedly experienced while he was a student at defendant Yeshiva University High School for Boys ("YUHS").

Specifically, the Complaint (NYSCEF Doc. No. 1) alleges Plaintiff began attending YUHS as a sophomore in 1983, when he was approximately 15-16 years old. During that fall semester, George Finkelstein ("Finkelstein"), who was Principal of YUHS, called Plaintiff into his on-campus office, where he quizzed Plaintiff on academic topics and then proceeded to drag Plaintiff to the floor and sexually assault him twice because Plaintiff had supposedly failed to answer certain

questions correctly. As a result of these assaults, Plaintiff sustained "extensive and painful abrasions."

Throughout 1983-1985, Plaintiff repeatedly had to refuse Finkelstein's further attempts to schedule after-hours meetings alone in his office. Plaintiff lived in fear of Finkelstein for the remainder of his time at YUHS and committed himself to avoiding all interaction with Finkelstein. Around the end of 1985, when Plaintiff required Finkelstein's assistance with college applications, Finkelstein refused to provide help unless Plaintiff met with him alone after school hours. Although Plaintiff declined to meet in Finkelstein's office, he was persuaded to meet at Finkelstein's apartment because Plaintiff believed that Finkelstein's wife and children would be present. However, once Plaintiff arrived, Finkelstein said "Now you're dead," and sexually assaulted Plaintiff again. Following these assaults, Finkelstein retaliated against Plaintiff in various ways, including concocting false allegations against Plaintiff, which resulted in Plaintiff's expulsion from the school during his senior year.

Within Plaintiff's first year at YUHS, he was also subjected to misconduct by a Richard Andron ("Andron"), a friend of Finkelstein, and who had free access to student dormitories through his relationship with Finkelstein and other administrators at YUHS and at defendant Yeshiva University ("YU"). During one encounter, Andron lured Plaintiff to his apartment building where Andron and an unidentified male attempted to show Plaintiff obscene material. The unidentified male also disrobed, exposing his penis and buttocks to Plaintiff. After Plaintiff refused their advances, Andron threatened harm both over the phone and in person, and retaliated by directing students to harass Plaintiff and visiting Plaintiff's family home under false pretenses.

As to notice, the Complaint alleges administrators "had actual and constructive knowledge that Andron was sexually perpetrating upon students at YU and YUHS both on and off-campus,"

yet failed to take appropriate protective action. Plaintiff also alleges "numerous students reported Finkelstein's sexual abuse to YU and YUHS administrators," and states:

> "Finkelstein was widely known for roaming YUHS hallways to target students he wished to assault, and for using his position to summon them to his office for that purpose. Finkelstein was also known to physically attack students in the YUHS elevator and to grope students' genitals under the guise of "checking" to see that they were wearing Tzitzis, required ritual garments that were typically tucked into pants."

(Complaint, ¶ 35).

The Complaint asserts five causes of action: (1) negligent breach of duty to provide care and protection; (2) negligent retention; (3) negligent supervision; (4) violation of New York City Human Rights Law ("NYCHRL"); and (5) violation of New York State Human Rights Law ("NYSHRL").

Instant Motion

In the instant motion, defendants Yeshiva University (YU), Marsha Stern Talmudical Academy Yeshiva University High School For Boys (YUHS), and Members of the Board of Trustees (collectively, the "YU Defendants"), seek an order pursuant to Civil Practice Law and Rules §§ 3211(a)(5), (a)(7) and (a)(11), dismissing the Complaint dated August 12, 2021, in its entirety, with prejudice.

Arguments by the YU Defendants

Defendants' arguments are briefly summarized below:

The YU Defendants contend that the CVA's revival provision violates due process under the New York State Constitution. Alternatively, the CVA only revived claims involving specified

Penal Law violations, and here, the Complaint fails to allege sufficient factual details regarding the nature of the alleged sexual abuse to qualify for revival.

The YU Defendants also argue the Complaint fails to allege any employer-employee relationship between Andron and YU/YUHS, and without such a relationship, the YU Defendants cannot be held liable for negligent retention, supervision or discrimination based on Andron's conduct. Movants also contend the Complaint has not sufficiently stated a claim, as it lacks specific factual allegations regarding how the YU Defendants had the requisite prior notice, and instead contains only conclusory allegations that Defendants had somehow knew of the perpetrators' propensities. They also seek to dismiss the cause of action for "failure to provide care and protection" under New York law on the ground that schools do not have an independent, absolute duty to prevent any crime from occurring, and any such claim would be duplicative of negligent supervision claims.

The YU Defendants also argue Plaintiff has failed to allege any claim under the NYCHRL, which only authorizes claims for discrimination in employment, public accommodation, and housing. Further, Plaintiff fails to allege he was treated differently from similarly situated students not in his protected class, and the fact that YUHS was an all-male school negates any inference of discrimination. As to the Trustees, the YU Defendants argue the Complaint contains no factual allegations concerning any Trustees, so the Trustees are entitled to immunity under the Not-for-Profit Corporation Law (N-PCL) § 720-a as uncompensated directors of a non-profit. Further, they argue, Plaintiff failed to show gross negligence, as required to overcome immunity.

Finally, the YU Defendants argue the Complaint fails to allege conduct warranting punitive damages, as the standard for punitive damages against an employer is high and requires showing of moral turpitude, which has not been alleged here.

Arguments by the Plaintiff

In opposition, Plaintiff contends:

The revival provision of the CVA is a reasonable, Constitutional, response to address injustice and the inability of abuse victims to bring timely claims due to psychological trauma. Further, the Complaint sufficiently alleges conduct constituting sexual offenses under New York Penal Law Article 130, including forcible touching, sexual abuse in the third degree, and sexual abuse in the first degree, as required for revival under the CVA.

Plaintiff argues the YU Defendants can be found liable for Andron's conduct because they gave Andron access to students on campus and in dormitories, despite knowing of his propensity to abuse students. Plaintiff alleges the school administrators knew for years prior to 1983 that Andron was using his relationship with the school to enter campus and dormitories to approach boys sexually. Plaintiff also takes the position that there is no requirement for notice allegations to "be pleaded with specificity" in sex abuse cases under New York law. The Complaint adequately alleges the YU Defendants had actual and constructive knowledge of both perpetrators' conduct yet failed to take appropriate protective action.

With respect to the YU Defendants' argument that there is no cognizable cause of action for "failure to provide care and protection" under New York law, Plaintiff explains his claim is for "negligent failure to provide a safe and secure environment," a cognizable cause of action under New York law.

As to discrimination, Plaintiff argues his discrimination claims are not negated by YUHS being an all-male school, as the laws that prohibit discrimination in educational/housing settings

cover same-sex harassment. Here, Plaintiff argues, he became a target precisely because he was a male student who rebuffed sexual advances.

With respect to the Trustees, Plaintiff argues that the Complaint sufficiently pleads gross negligence, and the Trustees therefore may be held liable if they knowingly permitted predators to remain employed despite receiving multiple abuse complaints. At a minimum, Plaintiff argues, discovery is needed on the gross negligence issue.

Finally, Plaintiff take the position the Complaint sufficiently alleges conduct warranting punitive damages, including alleging that school administrators received countless complaints but nevertheless failed to remove either perpetrator, and even promoted Finkelstein multiple times.

DISCUSSION

Standard for a Motion to Dismiss

In determining a motion to dismiss a complaint pursuant to CPLR 3211 § (a)(7), a court's role is deciding "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" (*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 403). 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" (*id.* quoting *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]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co.*, NYLJ January 18, 2005, p. 26 col.4, citing *P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id.* at 376; *see Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

The movant has 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).

Constitutionality of the CVA

YU Defendants argue that the CVA's revival provision violates due process under the New York State Constitution. At this point, it is well established the statute represents a reasonable legislative response to address past injustice. For example, in *Matarazzo v Charlee Family Care, Inc.*, the court noted:

> "[A] claim-revival statute will satisfy the Due Process Clause of the [NY] Constitution if it was enacted as a reasonable response in order to remedy an injustice [...] we conclude that the CVA was a reasonable response to remedy an injustice, and we decline defendants' invitation to depart from this conclusion which is shared by other courts that have addressed a facial challenge before us"

(218 AD3d 941 [3d Dept 2023]). Accordingly, Defendants application for dismissal on this ground is denied.

Penal Law Violations

YU Defendants argue the Complaint fails to allege sufficient factual details to establish violations of the Penal Law. This argument is unavailing, as the Complaint alleges Finkelstein "dragged Plaintiff to the floor and sexually assaulted him twice" over his protests and resistance, causing physical injuries. This sufficiently alleges conduct that would constitute sexual offenses under New York Penal Law Article 130, including forcible touching and sexual abuse, as required for revival under the CVA.

YU Defendants' Relationship with Andron

YU Defendants argue they cannot be held liable for negligent retention, supervision or discrimination based on Andron's conduct, as the Complaint fails to allege any employer-employee relationship between Andron and the school. The Court finds this argument to be unavailing, as the Complaint alleges that the YU Defendants gave Andron access to students and dormitories while knowing of his propensity to abuse students. In *Mirand v City of New York*, the New York Court of Appeals made clear that schools could be held responsible for the acts of third parties, if the school had adequate notice:

> "Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision [...] In determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; *that is, that the third-party acts could reasonably have been anticipated* [emphasis added]."

(84 NY2d 44 [1994])

Specificity About Notice

The YU Defendants argue the Complaint lacks the requisite specificity regarding the YU Defendants' prior notice regarding the perpetrators' propensities. "[T]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" at this stage in the litigation (*Kenneth R. v R.C. Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Further, Plaintiff attached as Exhibit A (NYSCEF Doc. No. 48) a report which summarized the findings made by Sullivan & Cromwell, a law firm that was hired by YU / YUHS to investigate "allegations that two staff members at Yeshiva University High School for Boys' Manhattan campus sexually abused students during the late 1970s and early '80s." This report stated, in part:

> The Investigative Team has concluded that multiple incidents of varying types of sexual and physical abuse took place at YUHSB during the relevant time period. This conduct was carried out by a number of individuals in positions of authority at the High Schools at various times throughout the period covered by the Investigation, including, in certain instances, after members of the administration had been made aware of such conduct. In addition, the Investigative Team found that, during the relevant time period, sexual and physical abuse took place at other schools comprising the University as well.

Sufficient facts have been alleged to support plaintiff's claim the Yu Defendants had prior notice regarding the perpetrators' propensities. This claim will also survive.

"Failure to Provide Care and Protection"

YU Defendants argue that there is no cognizable cause of action for "failure to provide care and protection" under New York law. However, as stated above, it is well settled that schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (*Mirand, supra).*

New York State Human Rights Law and New York City Human Rights Law

YU Defendants argue Plaintiff has failed to allege any claim of discrimination under the NYSHRL and the NYCHRL, as Plaintiff fails to allege he was treated differently from similarly situated students not in his protected class.

Here, the Complaint states, "Plaintiff, a male, is a member of a protected class within the meaning of this statute." Plaintiff further argues that he was targeted for harassment because he was a male student who had attempted avoid farther abuse and that other members of his class of male students were similarly adversely affected, and just because YUHS did not have female students, making Plaintiff unable to show a distinction between his treatment and that of similarly situated non-class-members, does not mean he did not experience discrimination.

With respect to the NYCHRL, "to establish a gender discrimination claim under the City Human Rights Law, a plaintiff need only demonstrate by a preponderance of the evidence that she has been treated less well than other employees because of her gender" (*Suri v Grey Glob. Group, Inc.*, 164 AD3d 108 [1st Dept 2018]). Here, however, the record is devoid of any evidence to suggest that Plaintiff was treated less well because he was male. Indeed, the record shows all the students at YU and YUHS were male, and the alleged perpetrators targeted some male students and not others. Further, the record does not contain any information on whether the alleged perpetrators targeted, or attempted to target, any women or girls. Finally, the record does not include examples of any negative comments made to Plaintiff concerning his sex or gender, or any other reason to believe that Plaintiff's gender was a motivation behind the alleged attacks. Given this, the Court grants this branch of the YU Defendants' motion to dismiss the claims brought under the NYCHRL. As to the NYSHRL, as a plaintiff's burden is higher than under the NYCHRL, the NYSHRL claims are also dismissed (see *Suri, supra*, where the court described the NYCHRL as "more broadly protective" than the NYSHRL).

Trustees

The YU Defendants argue the Trustees are entitled to immunity as uncompensated directors of a non-profit and that Plaintiff failed to show the gross negligence required to overcome such immunity.

The Court finds such argument to be unavailing, for as stated above, the investigative report provides that multiple incidents of sexual and physical abuse took place at YUHS during the relevant time period; that this conduct was carried out by a number of individuals in positions of authority at the High Schools at various times; and that in certain instances, the conduct occurred after members of the administration had been made aware of such conduct. Accordingly, the Court

finds that further factual development through discovery is needed to determine whether the Trustees' conduct constituted gross negligence which would defeat the Trustees' immunity under N-PCL 720-a (*see Karen S. v Streitferdt*, 172 AD2d 440, 441 [1st Dept 1991]).

Punitive Damages

YU Defendants argue the Complaint fails to allege conduct warranting punitive damages. The remedy of punitive damages is only awarded in exceptional cases. "To recover punitive damages, a plaintiff must show, by clear, unequivocal and convincing evidence, egregious and willful conduct that is morally culpable, or is actuated by evil and reprehensible motives" (*Munoz v Puretz*, 301 AD2d 382, 384 [1st Dept 2003] [internal citations and quotation marks omitted]). "Even where there is gross negligence, punitive damages are awarded only in singularly rare cases such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public" (*Karen S. "Anonymous" v Streitferdt*, 172 AD2d at 441 [internal quotation marks and citation omitted]).

Punitive damages may be assessed against an employer for an employee's conduct

> "'only where management has authorized, participated in, consented to or ratified the conduct giving rise to such damages, or deliberately retained the unfit servant,' such that it is complicit in that conduct. Complicity is evident when 'a superior officer in the course of employment orders, participates in, or ratifies outrageous conduct'"

(*Borst v Lower Manhattan Dev. Corp.*, 162 AD3d 581, 582 [1st Dept 2018], quoting *Loughry v Lincoln First Bank, N.A.*, 67 NY2d 369, 378 [1986]).

Here, the Complaint alleges YU and YUHS administrators had actual knowledge of ongoing abuse but failed to take appropriate action. It is unclear at this juncture whether the schools' conduct amounts to egregious and willful misdoing sufficient to justify an award of punitive damages. As such, it is better left for the trier of fact to determine whether an award of

punitive damages is warranted (*see e.g. Laurie Marie M. v Jeffrey T.M.*, 159 AD2d 52, 59-60 [2d Dept 1990], *affd* 77 NY2d 981, 982 [1991] ["the issue of punitive damages was properly submitted to the jury"]).

CONCLUSION

For the reasons stated above, it is hereby:

ORDERED that the YU Defendants' motion is granted solely with respect to the extent that the claims filed under the NYSHRL and the NYCHRL are dismissed with prejudice; and it is further

ORDERED that the motion is otherwise denied.

05/27/2025
DATE

ALEXANDER M. TISCH, J.S.C.

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