M.M. v City of New York
2025 NY Slip Op 32641(U)
July 7, 2025
Supreme Court, New York County
Docket Number: Index No. 950500/2021
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA, *Justice* — PART 01

INDEX NO. 950500/2021
MOTION DATE 10/12/2021
MOTION SEQ. NO. 002

M. M.,

Plaintiff,

- v -

CITY OF NEW YORK, SCO FAMILY OF SERVICES, DOES 1-10

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53
were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth below, this Court denies in its entirety the motion of the defendant, SCO Family of Services ("Defendant"), to dismiss the complaint of the plaintiff, M.M. ("Plaintiff"), *see generally* Complaint (NYSCEF Doc. No. 1) (the "Complaint"), or, alternatively, to grant summary judgment for Defendant. *See* Notice of Motion at 1.

I. Dismissal

The Court denies the portion of Defendant's motion to dismiss the Complaint, as Plaintiff has stated a claim for negligent supervision and Defendant has not submitted documentary evidence refuting the claim.

A defendant may move to dismiss a plaintiff's complaint based on a documentary-evidence defense or on the plaintiff's alleged failure to state a claim. *See* CPLR § 3211(a)(1), (7). In such cases, "the court must 'accept the facts as alleged in the complaint as true[ ]'" and give the plaintiff "'the benefit of every possible favorable inference,'" unless the facts alleged are

"plainly contradicted by documentary evidence." *Bishop v Maurer*, 33 AD3d 497, 498 (1st Dep't 2006), quoting *Morgenthow & Latham v Bank of New York Co., Inc.*, 305 AD2d 74, 78 (1st Dep't 2003). If the facts alleged in the complaint are not plainly contradicted by documentary evidence, then the court need only decide if the facts alleged "'fit … any cognizable legal theory.'" *See Morgenthow*, 305 AD2d at 78, quoting *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). And "the complaint is deemed to allege whatever can be fairly implied from its statements." *Leo v Mt. St. Michael Academy*, 272 AD2d 145, 146 (1st Dep't 2000).

Here, Plaintiff levies a negligent supervision claim (couched as a general negligence claim) against Defendant. *See* Complaint ¶¶ 19-27, 52-59, 66-68, 79-86. To plead negligent supervision in a child sexual abuse case, as here, a plaintiff must plead (1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, (3) that the defendant's breach proximately injured the plaintiff, (4) that the defendant had notice of the alleged abuser's propensity for child abuse, (5) that the defendant could have and should have controlled the alleged abuser, and (6) that the alleged abuser's sexual abuse occurred through the defendant's property or resources, which the alleged abuser had access to only because of the abuser's relationship to the defendant. *See Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 (2023).

Defendant claims that Plaintiff was not in Defendant's control when Plaintiff's alleged abuse occurred and, presumably and as a result, that Defendant did not owe Plaintiff a duty when she was allegedly abused. *See* Affirmation in Support ("Support") ¶ 18. In support of those claims, Defendant submits the affirmation of Jessica Hanlon, Defendant's employee. *See id.*, Exh. D (the "Hanlon Affirmation").

But the Hanlon Affirmation is not documentary evidence under CPLR § 3211(a)(1).[1] *See Wright v City of New York*, 223 AD3d 547, 548 (1st Dep't 2024); *Celentano v Boo Realty, LLC*, 160 AD3d 576, 577 (1st Dep't 2018); *Correa v Orient-Express Hotels, Inc.*, 84 AD3d 651 (1st Dep't 2011). And if the Hanlon Affirmation is attached not as documentary evidence per se but rather to affirm that Defendant's "review of documentary evidence," *see* Support ¶ 18, including digital databases and "paper records," *see* Hanlon Affirmation ¶¶ 3-7, 9-11, absolves Defendant of liability, *see* Support ¶ 18, it is insufficient for that purpose. After all, it is the Court—not an interested party unilaterally—that must judge the sufficiency of the evidence. *See Burrows v 75-25 153rd St., LLC*, — NY3d —, 2025 NY Slip Op 01669, *3 (2025) (evaluating the "documentary evidence *submitted*" by the defendant to the Court (emphasis added)); *South32 Chile Copper Holdings Pty Ltd v Sumitomo Metal Mining Co., Ltd.*, — AD3d —, 2025 NY Slip Op 02892, *1 (2025) (same). Thus, because Defendant has not submitted documentary evidence under CPLR § 3211(a)(1)—let alone documentary evidence that "plainly contradict[s]" the allegations in the Complaint—the Court must accept as true the allegations in the Complaint and accord Plaintiff the benefit of all favorable inferences. *See Bishop*, 33 AD3d at 498.

With that liberal pleading standard in mind, the Complaint adequately pleads a negligent supervision claim against Defendant. The Complaint fairly alleges, among other things, that Defendant contracted with co-defendant City of New York to provide foster care services to children, including Plaintiff, *see* Complaint ¶¶ 19-20; that Defendant placed Plaintiff in the institutions where Plaintiff's alleged abuse occurred, *see id.* ¶¶ 20-21, 83; that Defendant

[1] Even if the Hanlon Affirmation were documentary evidence, affirmations in support of motions to dismiss for failure to state a claim "will seldom[,] if ever[,] warrant [dismissal] unless … the affi[rmations] establish conclusively that [the] plaintiff has no cause of action." *See Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 (1976). And this is not the rare case in which dismissal is warranted, as the Hanlon Affirmation does not "plainly contradict[]" Plaintiff's allegations. *See Bishop*, 33 AD3d at 498.

controlled those institutions, including the staff, *see id.* ¶¶ 23, 83, 85; that Plaintiff showed "obvious" "signs of distress," *see id.* ¶ 52; and that Defendant "knew[] or … should have known[]" of the propensity of Plaintiff's alleged abusers, *see id.* ¶¶ 54-56, 83.

Plaintiff's allegations "sufficiently placed [Defendant] on notice of [Plaintiff's] claim" and, "pre-answer[,] … [P]laintiff was not required to allege additional specific facts." *See D.F. v General Conference of the United Methodist Church*, 235 AD3d 532, 534 (1st Dep't 2025), citing *SHC-MG-25 Doe v Archdiocese of N.Y.*, 223 AD3d 579, 580 (1st Dep't 2024), *and Ark 55 v Archdiocese of N.Y.*, 222 AD3d 572, 572 (1st Dep't 2023); *Doe v Young People's Chorus of New York City*, — AD3d —, 2025 NY Slip Op 03157, *2-3 (1st Dep't 2025) (same); *J.P. v General Conference of the United Methodist Church*, 235 AD3d 545, 545-546 (1st Dep't 2025) (same); CPLR § 3013 ("Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."). "Plaintiff can amplify [the] allegations in [the] bill of particulars." *See Doe*, 2025 NY Slip Op 03157, *3.

Thus, because Plaintiff adequately pled a negligent supervision claim and Defendant did not submit documentary evidence—let alone evidence that would refute Plaintiff's claim—Defendant's motion to dismiss must be denied.

II. Summary Judgment

The Court denies as premature Defendant's motion, in the alternative to dismissal, for summary judgment.

Generally, a party may move for summary judgment "after issue has been joined[.]" *See* CPLR § 3212(a). But pre-joinder summary judgment is permitted when, upon adequate notice to the parties, the court—not a party—decides that summary judgment is appropriate. *See id.* §

3211(c); *SHG Resources, LLC v SYTR Real Estate Holdings LLC*, 201 AD3d 610, 611 (1st Dep't 2022) ("CPLR 3211 (c) permits *the court*, on notice to the parties, to treat a motion to dismiss as a motion for summary judgment before issue is joined." (emphasis added)). "[T]he rule barring a pre-joinder motion for summary judgment is strictly applied." *SHG Resources, LLC*, 201 AD3d at 611, citing *City of Rochester v Chiarella*, 65 NY2d 92, 101 (1985).

Here, Defendant "moved ... for summary judgment" before answering, so the motion "is premature and must be denied." *See id.* For the reasons above, *see supra* § 1, the Court does not find that summary judgment is appropriate in this case. And for that reason, the Court declines to convert Defendant's motion to dismiss into a motion for summary judgment under CPLR § 3211(c).

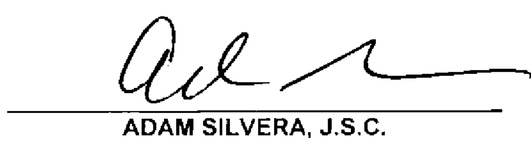
Thus, Defendant's motion for summary judgment must be denied.

Accordingly, it is

ORDERED that Defendant's motion is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, Plaintiff shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



7/7/2025			ADAM SILVERA, J.S.C.	
DATE				
CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION	
	[ ] GRANTED	[X] DENIED	[ ] GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
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