

Anonymous v Cosby

2025 NY Slip Op 32934(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 952230/2023

Judge: Shlomo S. Hagler

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SHLOMO S. HAGLER PART 17

Justice

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ANONYMOUS,

Plaintiff,

- v -

WILLIAM COSBY, NBCUNIVERSAL MEDIA,
LLC, KAUFMAN ASTORIA STUDIOS, INC., ASTORIA
STUDIOS LIMITED PARTNERSHIP II, THE CARSEY-
WERNER COMPANY, LLC

Defendant.

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INDEX NO. 952230/2023

MOTION DATE 02/06/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 60, 61, 62, 63, 64, 69, 70, 71, 103

were read on this motion to/for DISMISS.

Plaintiff brought the instant action pursuant to the Adult Survivors Act, CPLR 214-j. In Motion Sequence No. 003, defendant William Cosby, Jr. (“Cosby”) moves, pursuant to CPLR 3211 (a)(5) and (a)(7), for an Order dismissing plaintiff’s complaint as against him. Plaintiff opposes.

Facts

In the complaint, Plaintiff alleges that she was employed as a stand-in on *The Cosby Show* in or around the 1980s (*see* Complaint, NYSCEF Doc. No. 1 ¶ 42). Plaintiff alleges that she met defendant Cosby on the show and after their first meeting, he offered to act as plaintiff’s mentor in her acting career (*id.* ¶¶ 43, 44). Plaintiff avers that the mentorship included performing acting exercises in Cosby’s dressing room on the show and later, at Cosby’s home (*id.* ¶¶ 45, 46). Plaintiff accepted Cosby’s invitation to his home, where he provided her with

wine (*id.* ¶¶ 47, 48). Plaintiff alleges that Cosby put an unknown intoxicant into her wine, which she drank (*id.* ¶¶ 49, 50). Plaintiff claims that Cosby brought her upstairs under the pretext of doing an acting exercise, and during the exercise, plaintiff blacked out (*id.* ¶¶ 51, 52). When plaintiff awoke, she was partially undressed and vomiting into a toilet (*id.* ¶ 53).

In the complaint, plaintiff alleges a cause of action for battery (first cause of action), a cause of action for assault (second cause of action), a cause of action for intentional infliction of emotional distress (third cause of action), and a cause of action for false imprisonment (fourth cause of action) against Cosby. Cosby moves in the instant motion to dismiss all causes of action as against him.

Standard of Review

On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), the court must provide “the pleading a liberal construction and must accept the facts as alleged ... as true, accord [the nonmoving party] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Thus, [w]hether [the nonmoving party] can ultimately establish its allegations is not part of the calculus” (*Taxi Tours Inc. v Go N.Y. Tours, Inc.*, 41 NY3d 991, 993 (2024) [internal quotation marks and citations omitted]).

Discussion

Plaintiff has pled the causes of action with the requisite specificity

First, Cosby argues that the complaint should be dismissed as against him because the four causes of action asserted against him are not pled with the adequate level of specificity (*see* Memo of Law [NYSCEF Doc. No. 39]). Plaintiff argues that the complaint is pled with the

requisite level of specificity required by CPLR 3013 (*see* Opposition [NYSCEF Doc. No. 60] at 3).

CPLR 3013 requires that 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.” The causes of action alleged against Cosby are not required to be pled with specificity (*cf* CPLR 3016). Plaintiff adequately pled the “transactions” or “occurrences” giving rise to the complaint by alleging that she met Cosby on the set of *The Cosby Show*, where the two fostered a relationship under the guise of Cosby serving as her mentor, and that the alleged assault occurred in Cosby’s residence (Complaint ¶¶ 43-51). Furthermore, plaintiff has adequately pled the elements of each cause of action asserted against Cosby. Accordingly, for each cause of action asserted against Cosby, plaintiff pleaded the elements with the requisite level of specificity to survive a motion to dismiss.

Under the first cause of action, plaintiff adequately pled a cause of action for battery by alleging that Cosby made a contact with the plaintiff “with the intent to harm or offend her,” plaintiff “did not consent to the touching,” and the touching “was harmful and offensive” (Complaint ¶¶ 57, 59-61; *see Corcoran v City of New York*, 186 AD3d 1151, 1151 [1st Dept 2020] [“A valid claim for battery exists where a person intentionally touches another without that person’s consent”] [internal citations omitted]).

To plead a cause of action for assault, a plaintiff must allege “intentional physical conduct placing the plaintiff in imminent apprehension of harmful conduct” (*Corcoran*, 186 AD3d at 1151 [internal citations omitted]). Plaintiff adequately set forth a claim for assault in her second cause of action by alleging that Cosby “unlawfully used physical force against” plaintiff,

and by doing so “intentionally placed [plaintiff] in reasonable apprehension of immediate bodily harm” (Complaint ¶¶ 71-73).

To plead a cause of action for intentional infliction of emotional distress, a plaintiff must plead four elements: “(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and [the plaintiff’s] injury; and (iv) severe emotional distress” (*Brown v Riverside Church in the City of N.Y.*, 231 AD3d 104, 109 [1st Dept 2024] [quoting *Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 56 (2016)] [internal citations omitted]). The plaintiff herein has adequately pled her third cause of action for intentional infliction of emotional distress by alleging that Cosby “engaged in outrageous and extreme conduct toward [plaintiff] with the intention to cause, or with reckless disregard for the probability of causing” plaintiff to suffer severe emotional distress, and that “[a]s a proximate result of the outrageous and extreme conduct of Cosby. . . [plaintiff] suffers and continues to suffer from extreme mental distress...” (Complaint ¶¶ 82, 84).

Finally, plaintiff has sufficiently pled her fourth cause of action against Cosby for false imprisonment. “To prove a cause of action for false imprisonment, a plaintiff must demonstrate that the defendant intended to confine the plaintiff, the plaintiff was conscious of the confinement, the plaintiff did not consent to the confinement, and the confinement was not otherwise privileged” (*Rivera v City of New York*, 40 AD3d 334, 341 [1st Dept 2007]). Here, plaintiff satisfies the pleading requirements for a cause of action for false imprisonment by alleging that Cosby “intentionally and without the right to do so, confined” plaintiff, and plaintiff “was aware of her confinement” (Complaint ¶¶ 93, 94).

Accordingly, Cosby's motion to dismiss the complaint for failure to plead each cause of action with factual specificity is denied.

The Adult Survivors Act does not violate the statute of limitations, due process, or the ex post facto clause

Next, Cosby argues that plaintiff's claims are unable to be revived by the Adult Survivors Act because they "are not based on allegations of specific [sic] sexual offenses that occurred in the state of New York and which violated the penal code of the state of New York" (Memo of Law at 5). Defendant is correct that the ASA does not apply to out-of-state assaults, but this fact is immaterial to the instant case as plaintiff does not allege that the assault occurred in a state outside of New York. While the complaint does not specify that the assault occurred in his home in New York, the complaint does detail that plaintiff is a New York resident and that *The Cosby Show* where plaintiff and Cosby met and interacted was located in Queens, New York (Complaint ¶¶ 8, 38). The complaint does not allege the assault occurred anywhere besides New York. Affording the non-moving party "the benefit of every possible favorable inference" at the pleading stage, this Court declines to presume the assault occurred in any state other than New York (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). Accordingly, the claims are permitted to be revived under the Adult Survivors Act.

Cosby's argument that the Adult Survivors Act as a revival statute is unconstitutional is without merit. Courts have already determined that the Adult Survivors Act is constitutional and does not violate due process. Notably, the Southern District of New York in *Carroll v Trump* held that the ASA is constitutional as a matter of law:

[I]n the historical context, literally all of the indicia of legislative intent available to us, and the precise words of the statute laid alongside the words to the CVA undeniably demonstrate the precise injustice that moved the Legislature to act. In any case, under New York law, it is not the function of the courts to second

guess the Legislature as to the existence of a serious injustice in determining the constitutionality of a revival statute.

(650 F.Supp.3d 213, 222 [SDNY 2023]). The Southern District held that the ASA is constitutional “just as the similar revival provision of the Child Victims Act has passed constitutional muster by every court to consider the question” (*id.* at 224-25). Other courts have considered the constitutionality of both the ASA and CVA and have all agreed that these claim-revival statutes do not violate due process (*see Evans v USA Bobsled and Skeleton Federation*, 2024 WL 4120716 *8 [NDNY September 9, 2024] [quoting *Carroll* in its agreement that the ASA is constitutional]; *Anonymous v Cosby*, 2025 NY Slip Op 25163 *3 [NY Sup, NY County July 11, 2025]; *Giuffre v Andrew*, 579 F.Supp.3d 429, 454 [SDNY 2022] [“New York’s modest two-year revival window [under the CVA] was a reasonable measure for remedying injustice to victims without treading upon the state Constitution’s Due Process Clause”]; *Spira v National Council of Young Israel*, 231 AD3d 987, 988 [2d Dept 2024] [affirming that the CVA does not violate due process]). Accordingly, Cosby’s motion to dismiss the complaint on this ground is denied.

Finally, Cosby’s argument that the ASA violates the ex post facto clause of the United States Constitution is similarly without merit. As plaintiff correctly argues, the application of the ex post facto clause “applies only to penal statutes” (*Collins v Youngblood*, 497 US 37, 41 [1990] [citing *Calder v Bull*, 3 US 386 (1798)]). While the Adult Survivors Act revives claims that are based upon an act “which would constitute an offense as defined in article one hundred thirty of the penal law,” the ASA is civil in nature as it provides an opportunity for survivors to seek damages for “intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition” suffered as a result of an aforesaid sexual offense (CPLR 214-j). The United States Supreme Court has upheld a retroactive sex offender registration law as not in

violation of the ex post facto clause (*see Smith v Doe*, 538 US 84 [2003]). In *Smith*, the Supreme Court emphasized that ““only the clearest proof” will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty,” and used the factors as outlined in *Kennedy v Mendoza-Martinez*, 372 US 144 (1963) to find that the statute requiring public registration of sex offenders did not violate the ex post facto clause (*id.* at 92 [quoting *Hudson v United States*, 522 US 93, 100 (1997)], 97). Here, the Adult Survivors Act allows survivors to seek damages through causes of action based in tort. Punitive damages as a civil remedy does not itself turn a civil statute into a punitive one in violation of the ex post facto clause (*see Anonymous v Cosby*, 2025 NY Slip Op 25163 *5 [NY Sup, NY County, July 11 2025]). As such, Cosby’s motion to dismiss the complaint on the grounds that the Adult Survivors Act violates the ex post facto clause of the United States Constitution is denied.

Conclusion

Accordingly, it is

ORDERED that Cosby’s motion to dismiss the plaintiff’s complaint as against it pursuant to CPLR 3211 (a)(5) and (a)(7) is denied.

7/25/2025		SHLOMO S. HAGLER, J.S.C.
DATE		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE