

Doe v Cosby

2026 NY Slip Op 31645(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 952116/2023

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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JANE DOE,

Plaintiff,

- v -

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

Defendant.

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INDEX NO. 952116/2023
MOTION DATE 01/16/2024
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 29, 30, 31, 32, 33, 62, 63, 64, 65, 104, 107, 116

were read on this motion to/for DISMISSAL.

This action was brought under the Adult Survivors Act ("ASA") (CPLR 214-j).¹ Plaintiff alleges that on or around 1992 she was invited to Kaufman Astoria Studios on two occasions to meet with Defendant William Cosby ("Cosby") about a potential guest role on The Cosby Show (NYSCEF Doc. No. 1, Complaint, ¶ 43).² Plaintiff alleges that on the second visit, she was directed to Cosby's dressing room, where she was left alone with Cosby with the door closed (id. ¶ 53-54). Plaintiff alleges that Cosby offered her a beverage and, upon ingesting a small amount of it, she lost consciousness (id. ¶ 59-62). Plaintiff alleges that she regained consciousness temporarily and she was slumped in a chair, her underwear was removed, Cosby had his pants down and was pulling his penis out from her legs (id. ¶ 63). Plaintiff alleges that she woke up at home, though she was unaware of how she got there (id. ¶ 64).

¹ The ASA created a one-year revival window, starting on November 24, 2022, during which victims of sexual assault could file civil lawsuits even though the applicable statute of limitations had lapsed (CPLR 214-j).

² This lawsuit was filed on October 13, 2023, during the ASA one-year revival window. Therefore, this action is timely under the ASA.

The complaint asserts causes of action for battery, assault, and intentional infliction of emotional distress against Cosby. The complaint also asserts causes of action of negligence and negligent hiring, retention and supervision against Defendants Kaufman Astoria Studios, Inc., Astoria Studios Limited Partnership II, The Carsey-Werner Company, LLC (“Carsey-Werner”), and NBCUniversal Media, LLC. Defendants Kaufman Astoria Studios, Inc., Astoria Studios Limited Partnership II, and NBCUniversal Media, LLC have been discontinued from this action (*see* NYSCEF Doc. Nos. 121-122). Defendant Carsey-Werner’s motion to dismiss is pending oral argument before this Court.

In the instant motion (motion sequence 002), Cosby moves to dismiss the complaint pursuant to CPLR 3211(a)(5), claiming that the ASA is unconstitutional under the United States and New York Constitutions for (1) allegedly violating Cosby’s due process rights and (2) for allegedly violating the ex post facto clause.

LEGAL STANDARD

On a CPLR 3211 (a)(5) motion to dismiss, “a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation marks and citation omitted]). Upon such a showing, “the burden shift[s] to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action or interposed the subject cause of action within the applicable limitations period” (*Bailey v Peerstate Equity Fund, L.P.*, 126 AD3d 738, 740 [2d Dept 2015] [internal citations omitted]). “[P]laintiff’s submissions in response to the motion must be given their most favorable intendment” (*Benn*, 82 AD3d at 548 [internal quotation marks and citation omitted]).

DISCUSSION

Constitutionality of the Adult Survivor's Act

Cosby moves to dismiss the complaint on the ground that the ASA is unconstitutional. Specifically, Cosby contends that the ASA violates the Due Process Clauses of the United States and New York State Constitutions, and the Ex Post Facto Clause of the United States Constitution. For the reasons set forth below, the motion is denied.

A. New York State Due Process

It is well settled that “a claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice” (*Matter of In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 NY3d 377, 400 [2017]). Courts applying New York law assess revival statutes, such as the ASA, functionally, “weighing the defendant's interests in the availability of a statute of limitations defense with the need to correct an injustice.” (*World Trade Ctr.* 30 NY3d 377 at 394).

The ASA satisfies that standard. The Legislature enacted CPLR 214-j to provide a one-year window in which survivors of sexual offenses committed when they were adults could bring civil claims previously barred by the statute of limitations. The legislative justification explicitly states that New York's limitations periods had proven insufficient “in giving survivors of these heinous crimes enough time to pursue justice” (Senate Mem in Support, S66-A [2022]). Such shows a legislative intent to “correct an injustice.”³

³ New York State Assemblymember Linda Rosenthal stated the following purpose as it relates to the ASA: “Regardless of your age, sexual assault destroys a piece of you, and it takes most survivors time to process and overcome the trauma. More time than New York law currently allows. Now that the Adult Survivors Act is finally law, the doors to justice will be flung wide open and countless survivors will have an opportunity to seize justice by filing a case against their abusers, and the institutions that harbored them, in the civil court...[T]he passage of the ASA signals a long overdue shift in New York's law, a necessary rebalancing of the scales of justice and ensures that survivors are protected.” (Governor Hochul Signs Adult Survivors Act, available at <https://www.governor.ny.gov/news/governor-hochul-signs-adult-survivors-act>).

Although no New York State Appellate Court has ruled directly as to the constitutionality of the ASA, the Southern District of New York explicitly found that the ASA does not violate the Due Process Clause of the New York State Constitution in *Carroll v Trump*, 650 F Supp 3d 213, 224-25 [SDNY 2023]. The Court in *Carroll* held that “it is not the function of courts to second guess the Legislature as to the existence of a serious injustice in determining the constitutionality of a revival statute” and ultimately concluded 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.” (*Carroll*, 650 F Supp 3d 213 at 224-25). This Court adopts the *Carroll* Court’s ruling in finding that the ASA does not violate the New York State Constitution’s Due Process Clause. As discussed *infra*, the *Carroll* decision also found that the ASA did not violate the United States Constitution’s Due Process Clause.

Moreover, New York Courts have weighed in on precisely this question as it relates to the revival window of CPLR 214-g, the Child Victim’s Act (“CVA”), finding that the CVA does not run afoul of the New York State Constitution’s Due Process Requirement because it was “enacted as a reasonable response in order to remedy injustice” (*Schearer v Fitzgerald*, 217 AD3d 980, 982 [2d Dept 2023]; *see also Sipra v National Counsel of Young Israel*, 231 AD3d 987 [2d Dept 2024]; *PB-36 Doe v Niagara Falls City School District*, 213 AD3d 82 [4th Dept 2023]; *Guiffre v Andrew*, 579 F Supp 3d 429 [SDNY 2022]; *Farrell v US Olympic & Paralympic Committee*, 567 F Supp 3d 378 [NDNY 2021]). The CVA is a mirror statute to the ASA, reviving claims for alleged victims. The primary distinction between the two acts is that the ASA revives claims for people who allege that they were sexually assaulted when they were over the age of 18, while the CVA does the same for alleged victims who were under the age of 18 at the time of the alleged assault.

The assertion that the ASA is unconstitutional because the plaintiffs were able to bring their suit at the time the alleged incident occurred is also without merit. The Court of Appeals in *Hymowitz v Eli Lilly and Co.* squarely rejected the notion that a claim revival statute violates the New York State Constitution's Due Process Clause because plaintiffs were able to assert a cause of action at the time of the initial alleged incident (73 NY2d 487, 502 [1989]). Here, the fact that the Plaintiff could have asserted a claim at the time of the alleged incidents is therefore irrelevant, as that fact alone has been found insufficient to support the finding of a violation of a defendant's due process rights.

Cosby's arguments that the two acts are fundamentally different because the CVA includes a "Justification" section are unpersuasive, as this Court finds the legislative text between the two statutes and the legislative intent to be sufficiently similar for the purposes of analysis of the constitutionality of the ASA. New York State Courts and Federal Courts have similarly found that the legislative intent of the ASA to clearly evince a legislative intent sufficient to defeat a due process challenge. (*see Carroll*, 650 F Supp 3d 213 at 224-25; *Evans v USA Bobsled and Skeleton Federation*, 2024 WL 4120716 [NDNY 2024]; *J.S.M. v City of Albany Dept. of Gen. Services*, 83 Misc 3d 1082, 1088 [NY Sup, Albany Cty January 25, 2024]).

As discussed above, the New York State Courts have consistently held that the CVA does not run afoul of the New York State Constitution's Due Process Requirement (*see Schearer v Fitzgerald*, 217 AD3d at 982). As the ASA and CVA are analogous statutes, and the legislative intent is clear, this Court holds that the ASA does not violate Cosby's due process rights under the New York State Constitution.

B. United States Constitution Due Process

Federal constitutional principles compel the same result. The United States Supreme Court has long held that revival of expired civil claims does not violate the Due Process Clause. (*Stogner v California*, 539 US 607, 651 [2003]). Moreover, in *Chase Sec. Corp. v Donaldson* (325 US 304, 314 [1945]), the Supreme Court emphasized the deference it gives to the legislature relative to civil statutes of limitations:

“The[] shelter [of statutes of limitations] has never been regarded as what now is called a ‘fundamental’ right or what used to be called a ‘natural’ right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.”

(*Id.*)

Moreover, the Southern District of New York in *Carroll*, adopted by this Court, found that the ASA did not violate the Due Process Clause of either the United States Constitution or the New York State Constitution.

As claim revival statutes generally do not give rise to the issue of Federal due process violations and the ASA specifically has been found to comply with Federal due process protections, this Court is not inclined to disturb established precedent. Arguments that the ASA is different from the general class of claim revival statutes are unavailing, and as such this Court does not consider such. Notably, Cosby actually concedes that claim-revival statutes pose no issue under the Fourteenth Amendment.

C. Ex-Post Facto

Cosby further argues that the ASA violates the Ex Post Facto Clause of the United States Constitution. This argument is similarly without merit.

As the United States Supreme Court has made clear, “[t]he Ex Post Facto Clause, by its own terms, applies only to penal statutes” (*Collins v Youngblood*, 497 US 37, 41 [1990], citing *Calder v Bull*, 3 US 386 [1798]). The ASA is a civil remedial statute. It imposes no criminal liability, and its sole function is to reopen access to civil courts.

In *Smith v Doe*, 538 US 84 [2003], the Supreme Court upheld a retroactive sex offender registration statute against an ex post facto challenge, emphasizing that “only the clearest proof” will suffice to override legislative intent and reclassify a civil statute as punitive (*Id.* at 92). Applying the factors from *Kennedy v Mendoza-Martinez*, 372 US 144 (1963), the *Smith* Court concluded that even the public registration of sex offenders—a far more severe consequence than mere monetary liability—was not punitive in nature. The ASA, which allows civil plaintiffs to seek compensatory and punitive damages under longstanding tort principles, does not remotely approach the threshold for punitive legislation.

Courts analyzing revival statutes akin to the ASA have reached the same conclusion. In *Bernard v Cosby*, 648 F Supp 3d 558 [DNJ January 3, 2023]), the United States District Court rejected defendant’s ex post facto challenge to a nearly identical New Jersey revival statute. The court explained that civil remedies, including punitive damages, do not transform a remedial statute into criminal punishment. That reasoning applies with equal force here. *Cosby* again fails to demonstrate that the ASA is punitive in nature such that the legislation may be successfully challenged on Ex-Post Facto grounds.

Accordingly, it is

ORDERED that Defendant Cosby's motion to dismiss (motion sequence 005) is denied in its entirety.

4/9/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
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