New York Disaster Interfaith Servs. Inc. v Council of Peoples Org., Inc.
2018 NY Slip Op 30105(U)
January 19, 2018
Supreme Court, New York County
Docket Number: 152338/2017
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 43

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NEW YORK DISASTER INTERFAITH SERVICES INC.,

Plaintiff,

- against -

COUNCIL OF PEOPLES ORGANIZATION, INC. and REGINA LEWIS, a/k/a REGINA ZLOTINA,

Defendants.

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Index No. 152338/2017
DECISION & ORDER

(Motion Seq. 001)

ROBERT R. REED, J.:

Plaintiff New York Disaster Interfaith Services Inc. (NYDIS) brings this action to recover damages arising from the theft of more than $250,000 in disaster relief funds by defendant Regina Lewis a/k/a Regina Zlotina (Lewis), a former employee of defendant Council of Peoples Organization, Inc. (COPO). Defendant COPO moves to dismiss the complaint, pursuant to CPLR 3211 (a) (7), for failure to state a cause of action.

FACTUAL ALLEGATIONS AND CLAIMS

In the aftermath of the 9/11 tragedy, plaintiff NYDIS, a not-for-profit corporation, established the Unmet Needs Roundtable (the Roundtable) to connect local and national charitable organizations and donors such as the American Red Cross with under-served, disaster-impacted people represented by local, community-based charitable organizations (First Amended Complaint [FAC], ¶ 8). Through the Roundtable, NYDIS receives applications from participating disaster case management providers (DCM providers),

such as COPO, whose individual clients have been adversely impacted by disasters (*id.*, ¶ 9). To obtain an assistance award from NYDIS, an individual applicant must be sponsored by a DCM provider, which must vouch for the legitimacy of the applicant's request (*id.*, ¶ 10).

In 2012, NYDIS established the NYC Sandy Unmet Needs Fund (the Fund) to provide assistance funding and other direct support through the Roundtable to under-resourced survivors or families of victims of Superstorm Sandy (FAC, ¶ 11). The FAC alleges that, in the disaster-recovery field in which NYDIS and COPO operate, it is foreseeable and well known that certain precautions are necessary to deter theft, fraud and duplication of benefits by applicants, payees, and DCM providers and their employees (*id.*, ¶¶ 23, 59). These precautions, which are the responsibility of DCM providers, include the following:

> --a DCM case manager must confirm the applicant's identity, document their relationship to the disaster, verify their degree of financial distress and unmet needs, authenticate the applicant's supporting documentation, and conduct a home visit;
>
> --each application must include certain documentation, including a Confidentiality Agreement, a Client Recovery Plan, a Client Budget Plan and a Web Portal Application (the Application Documents); and
>
> --the application must be reviewed, and verified and approved by a DCM staff supervisor

(*id.*, ¶¶ 17-21). The FAC alleges that NYDIS, in its capacity as Fund administrator, has delegated to its DCM providers the responsibility of verifying the eligibility of applicants, and thus DCM providers warrant that the Application Documents and other information submitted to the Roundtable are complete, truthful and accurate (*id.*, ¶¶ 24-

25). DCM providers also allegedly warrant that the DCM case managers and staff supervisors they hire are themselves competent and vetted (*id.*, ¶ 26).

The FAC alleges, on information and belief, that COPO is subcontracted to provide DCM services under a New York State Disaster Case Management Program contract granted by the New York State Division of Homeland Security and Emergency Services, State Office of Emergency Management and managed by Catholic Charities Community Services (Catholic Charities Contract) (FAC, ¶ 31). The FAC further alleges, also on information and belief, that the Catholic Charities Contract requires COPO to adhere to certain disaster-recovery program standards and best practices aimed at deterring fraud, theft, and duplication of benefits, including training its staff and using a national disaster case management database system to cross-reference and verify applicants before providing them relief services (*id.*, ¶¶ 32-33).

In 2012, COPO was allegedly granted NYDIS's permission to submit Fund applications to the Roundtable through the NYDIS Web Portal, subject to COPO's compliance with disaster recovery program standards and best practices (FAC, ¶¶ 34-37). COPO's staff supervisors were provided information about the Fund and Roundtable rules in 2012–2015; Lewis herself completed Roundtable training in 2014 and was given information about the Fund and Roundtable rules (*id.*, ¶¶ 38-39).

Lewis is alleged to have used her employment position within COPO to falsify applicants, Application Documents, and other documentation, and to submit such false information to the Roundtable. The FAC alleges, on information and belief, that Lewis defrauded the Roundtable by: (a) creating fictitious disaster victims; (b) overstating the

unmet needs of otherwise legitimate applicants; and (c) obtaining and converting checks intended for otherwise legitimate applicants or purposes (FAC, ¶¶ 41-42). Lewis allegedly was able to deposit at least 27 NYDIS checks directly into accounts she controlled and was also able to obtain deliveries of goods and services from vendors such as Home Depot, and thus deceived NYDIS into paying approximately $263,000 from the Fund to Lewis (*id.*, ¶¶ 43-45).

NYDIS complains that COPO did not fulfill its responsibilities to NYDIS and did not have adequate safeguards or internal controls in place to prevent or detect Lewis' wrongdoing (FAC, ¶ 60). The FAC alleges, on information and belief, that a COPO staff supervisor signed each COPO application submitted by Lewis to the Roundtable, or otherwise negligently allowed the staff supervisor's signature to be forged by Lewis (*id.*, ¶¶ 61-62). If COPO had abided by its responsibilities or otherwise instituted adequate safeguards or internal controls, Lewis would not have been able to convert money from the Fund or obtain it by fraud, as she did (*id.*, ¶ 63). NYDIS further alleges that Lewis was able to misappropriate money from the Fund only by working under the auspices of COPO, and that Lewis filed these false and fraudulent applications while acting in the course of her normal duties at COPO (*id.*, ¶¶ 64-66)

The following five causes of action are asserted against COPO: (1) vicarious liability for Lewis' fraudulent misrepresentations; (2) vicarious liability for Lewis' conversion of the disaster relief funds; (3) direct liability for negligent misrepresentations and/or omissions and vicarious liability for Lewis' negligent misrepresentations and/or omissions; (4) negligence; and (5) breach of contract.

DISCUSSION

Standard of Review

On a motion addressed to the sufficiency of a complaint pursuant to CPLR 3211 (a) (7), the facts pleaded are presumed to be true and are accorded every favorable inference (*see Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). This court's inquiry is limited to determining whether the amended complaint states any cause of action, not whether there is evidentiary support for it (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636 [1976]). "On a CPLR 3211 motion to dismiss, a court may consider affidavits to remedy pleading problems" (*Sargiss v Magarelli*, 12 NY3d 527, 531 [2009]).

Vicarious Liability

COPO maintains that it cannot, as a matter of law, be held vicariously liable for the alleged self-interested misconduct of Lewis, because the FAC consistently alleges that she acted "for her personal benefit," "for her own purposes," and "for the benefit of herself" in converting the disaster recovery funds for her "personal use" (*see* FAC, ¶¶ 53, 54, 77).

Pursuant to the doctrine of respondeat superior, liability for an employee's tortious acts may be imputed to the employer when they were committed "in furtherance of the employer's business and within the scope of employment" (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]; *see also Riviello v Waldron*, 47 NY2d 297, 302 [1979]). "An act is considered to be within the scope of employment if it is performed while the employee is engaged generally in the business of his employer, or if [her] act may be reasonably

said to be necessary or incidental to such employment" (*Holmes v Gary Goldberg & Co., Inc.*, 40 AD3d 1033, 1034 [2d Dept 2007], quoting *Davis v Larhette*, 39 AD3d 693, 694 [2d Dept 2007]). Courts have recognized that there is "no respondeat superior liability for torts committed by an employee solely for personal motives unrelated to the furtherance of the employer's business" (*Manno v Mione*, 249 AD2d 372, 372 [2d Dept 1998] [citations omitted]). However, "those acts which the employer could reasonably have foreseen are within the scope of the employment and thus give rise to liability under the doctrine of respondeat superior" (*Holmes v Gary Goldberg & Co., Inc.*, 40 AD3d at 1034, citing *Riviello v Waldron*, 47 NY2d at 302–305).

> "The applicability of this doctrine, and the question of whether a particular act falls within the scope of the servant's employment, depends heavily on the facts and circumstances of each particular case and as a result, the determination of that question is normally left to the trier of fact"

(*Schilt v New York City Tr. Auth.*, 304 AD2d 189, 193 [1st Dept 2003], citing *Riviello v Waldron*, 47 NY2d at 302–303 [further citations omitted]).

In cases where the issue has been decided based on the pleadings alone, the employees were clearly acting outside the scope of their employment. For example, in *Salomon v Citigroup Inc.* (123 AD3d 517 [1st Dept 2014]), a secretary assigned to work for the plaintiff, a former executive of Citigroup now working as a consultant, stole approximately $3 million from the plaintiff while assisting him, not with his work for the company, but with his personal expenses over the years. The cause of action for conversion, predicated upon a vicarious liability theory, was dismissed because the factual allegations indicated that the theft was not in furtherance of Citigroup's business.

The court explained: "[t]he secretary's conduct constituted such a gross departure from the normal performance of her secretarial duties that the charged conduct could not be considered as being within the scope of her employment" (123 AD3d at 518-519). And in *Island Associated Coop. v Hartmann* (118 AD2d 830 [2d Dept 1986]), a vicarious liability claim was dismissed on summary judgment where the employee was caught removing inventory from the warehouse of one of his employer's customers. The court concluded that the employee's actions were in no way incidental to the furtherance of the employer's interest (*id.*).

In contrast to these cases where the employee's conduct was not in furtherance of the employer's business, in *Holmes v Gary Goldberg & Co., Inc.* (40 AD3d 1033, *supra*), customers of a brokerage firm were found to have stated a cause of action against the brokerage firm, based on a theory of vicarious liability for conversion of their funds when their sister, a financial advisor in the firm's employ, converted monies from their brokerage account.

The FAC certainly alleges a personal motive on the part of Lewis in converting the disaster recovery funds at issue. Indeed, the broker in the *Holmes* case clearly also had a personal motive. However, NYDIS also alleges that her wrongful behavior was undertaken while she was acting in the course of her normal duties at COPO (*see* FAC, ¶¶ 64-71). In other words, the tort itself was directly related to the tasks Lewis was hired to perform for COPO. Thus, it cannot be said, as a matter of law, that Lewis was not acting in furtherance of COPO's business. As the Second Department has noted, "it is certainly foreseeable that an agent entrusted with significant sums of money might

convert such funds to his [or her] own use" (*Hatton v Quad Realty Corp.*, 100 AD2d 609, 610 [2d Dept 1984]). NYDIS alleges, and the court must accept as true, that, in the disaster recovery field in which both NYDIS and COPO operate, numerous precautions must be taken "to deter theft, fraud, and duplication of benefits by applicants, payees, and DCM providers and their employees" (FAC, ¶ 23). It is also alleged that "[i]t was reasonably foreseeable to COPO that an employee entrusted with representing COPO's clients, soliciting charitable disbursements from the Fund, and personally handling Fund assistance checks or other items of value, might seek to convert NYDIS funds or obtain them by fraud" (*id.*, ¶ 59).

NYDIS also argues that even Lewis' fraudulent advocacy on behalf of COPO benefitted COPO at the time by increasing this defendant's putative charitable footprint by more than a quarter of a million dollars. NYDIS argues that COPO's reputation as a DCM provider depends, in part, on how much money it can secure for its clients and on how much it can claim to have distributed. NYDIS points to the statement in COPO's moving brief that, when Superstorm Sandy struck New York City, COPO launched a major recovery effort and was able to generate over $2 million in grants from an array of sources, one of which was NYDIS, to support their disaster relief efforts (*see* Moving Mem. of Law at 1). According to the opposing affidavit of NYDIS' Executive Director, "an increase in COPO's charitable footprint advances its organizational interests" (Gudatis aff, ¶ 10). Thus, NYDIS argues that, prior to being found out, Lewis was a successful proponent of COPO's mission. COPO's response to this argument is to point

out that the FAC is bereft of any factual allegations that it benefitted from Lewis's alleged fraud and maintains that the argument is, in any event, contrary to applicable law.

The court agrees that the FAC does not make any direct allegation that COPO benefitted from Lewis' conduct. However, the court disagrees that an indirect benefit to an employer is not a relevant fact in the mostly factual analysis attendant to a vicarious liability claim. In *Demas v Levitsky* (291 AD2d 653 [3d Dept 2002]), the court's discussion of whether Cornell University could be vicariously liable for a professor's academic dishonesty made no mention of whether his alleged misconduct may have advanced the university's reputation in the academic community as COPO's argues. Nor was this issue addressed in *Roberts v 112 Duane Assoc. LLC* (32 AD3d 366 [1st Dept 2006]). To the contrary, the Appellate Division merely stated that a bank manager's conduct in accepting bribes to assist in improper transactions was "so gross a departure from normal performance that it cannot be considered to have been within the scope of his employment" (*id.* at 369).

For these reasons, COPO's motion is denied as to the first, second, and third causes of action to the extent that they are predicated on a theory of vicarious liability.

Fraud

COPO argues that NYDIS's fraud claim is not pleaded with the detail required by CPLR 3016 (b) and the allegations at the core of the fraud claim are all made "on information and belief" and do not disclose the source of NYDIS' information or the reason for its beliefs.

CPLR 3016 (b) provides that "[w]here a cause of action or defense is based upon *misrepresentation, fraud*, . . . the circumstances constituting the wrong shall be stated in detail" (emphasis added). "What is '[c]ritical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action,' and although under CPLR 3016 (b) 'the complaint must sufficiently detail the allegedly fraudulent conduct, that requirement should not be confused with unassailable proof of fraud'" (*Sargiss v Magarelli*, 12 NY3d at 530-531, quoting *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]).

NYDIS sufficiently identifies Lewis' fraudulent conduct and describes when and how it was defrauded. The FAC alleges that at least eleven fraudulent applications were filed by Lewis, under the signature of her COPO staff supervisor, in 2014–2015 and describes the various methods by which she accomplished this fraud (*see* FAC, ¶¶ 42, 54). In addition, NYDIS provided every detail and date from one such case as an example (*see id.* ¶¶ 47-53). COPO claims that the FAC fails to set forth the alleged misrepresentations relied upon by NYDIS. To the contrary, NYDIS identified the finite universe of documents containing the misrepresentations, i.e., the "Application Documents," as well as the in-person meetings during which COPO's representatives made oral misrepresentations, i.e., the Roundtable hearings (*see id.* ¶¶ 21–22, 48–50). These allegations are "sufficient to permit a reasonable inference of the alleged conduct" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d at 492).

NYDIS need not identify in its pleading each and every false statement and fraudulent application. The Court of Appeals has cautioned that CPLR 3016 (b) "should

not be so strictly interpreted as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud" (*Sargiss v Magarelli*, 12 NY3d at 530 [citations omitted]). "[W]here concrete facts are peculiarly within the knowledge of the party charged with the fraud, it would work a potentially unnecessary injustice to dismiss a case at an early stage where any pleading deficiency might be cured later in the proceedings" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d at 491-492 [internal quotation marks and citation omitted]). Here, NYDIS has pleaded several alternative theories under which Lewis may have perpetrated the fraud, any of which would suffice to establish liability (*see* FAC ¶ 42), and alleges that, in addition to one known fraudulent application, at least ten other fraudulent applications were submitted by her through COPO in order to convert Fund money for her own purposes (*id.*, ¶ 54) COPO is entitled to a pleading that identifies "the incidents complained of," which the FAC provides (*see Sargiss v Magarelli*, 12 NY3d at 530-531).

Breach of Contract

COPO moves to dismiss the fifth cause of action, contending that NYDIS has failed to adequately allege the existence of a contract between these parties, its terms, and a breach thereof. The court disagrees. NYDIS has adequately met its pleading burden by pleading the material elements of the parties' bargain, namely that, at COPO's request, NYDIS offered COPO access to the Fund's benefits in exchange for COPO's agreement to authenticate its clients and their needs, to present those clients and their needs to the Roundtable accurately in Application Documents and oral statements, and to do so using the safeguards and controls required by NYDIS and the industry standards applicable to

DCM providers as well as by undergoing Roundtable training (*see* FAC, ¶¶ 34-39, 101-104; *see also* Gudatis aff, ¶¶ 1, 3 [in or around April 2013, the executive directors of NYDIS and COPO expressly agreed, on behalf of their respective organizations, that COPO would submit applications to the Roundtable using the Application Documents and subject to the rules and industry standards described in the FAC]). NYDIS further alleges that subject to the parties' mutual understanding, COPO has submitted 143 applications for disaster-relief aid to the Roundtable, 135 of which were funded, with NYDIS paying out approximately $1,230,000 to COPO-sponsored applicants (Gudatis aff, ¶ 4). The FAC further alleges that COPO breached their contract "by failing to implement and maintain adequate internal controls and safeguards to deter theft and fraud against the Fund" by Lewis and "by submitting false applications and allowing false applications to be submitted" by Lewis (FAC, ¶¶ 105-106).

Under New York law, a "contract implied in fact may result as an inference from the facts and circumstances of the case, although not formally stated in words, and is derived from the 'presumed' intention of the parties as indicated by their conduct" (*Jemzura v Jemzura*, 36 NY2d 496, 503-504 [1975] [internal citations omitted]). Such a contract "is just as binding as an express contract" (*id.*). COPO is correct that "[a] contract cannot be implied *in fact* where the facts are inconsistent with its existence . . . or against the intention or understanding of the parties' (*Julien J. Studley, Inc. v New York News*, 122 AD2d 633, 636 [1st Dept 1986] [internal quotation marks and citations omitted], *affd* 70 NY2d 628 [1987]). Citing only NYDIS' allegation about the Catholic Charities Contract, COPO argues that "[g]iven this norm of written contracts," "had the

parties intended a contract, it would have been written" (Reply Mem. of Law at 17-18). However, the fact that the alleged contract between NYDIS and COPO was oral and/or implied is not a basis to dismiss NYDIS' breach of contract claim action at the pleading stage. Whether it is, in fact, the norm of the disaster relief charitable world to have written contracts has not been demonstrated as a matter of law and is clearly an area of inquiry for discovery and/or, perhaps, summary judgment.

The court does agree with COPO that the FAC, in its present form, fails to properly allege a contract claim based on NYDIS' alleged status as a third-party beneficiary of the Catholic Charities Contract.

> "A party asserting rights as a third-party beneficiary must establish '(1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for his benefit and (3) that the benefit to him is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate him if the benefit is lost'"

(*State of Cal. Pub. Employees' Retirement Sys. v Shearman & Sterling*, 95 NY2d 427, 434–35 [2000], quoting *Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 336 [1983]). COPO maintains that there are no allegations that the Catholic Charities Contract was intended for NYDIS' benefit. However, the FAC alleges that applications to the Fund can only be made through DCMs and that COPO was subcontracted to provide DCM services under the Catholic Charities Contract (*see* FAC, ¶¶ 9, 16, 31). NYDIS will be granted leave to further amend its complaint to assert a claim for breach of the Catholic Charities Contract as an intended third-party beneficiary. However, the amended pleading must include factual allegations that would, if proven true, establish that NYDIS was more than just an incidental beneficiary of this alleged contract.

Negligence

COPO argues that a negligent misrepresentation claim is legally deficient where, as here, the plaintiff only seeks compensation for purely economic losses, citing *Cedar & Wash. Assoc., LLC v Bovis Lend Lease LMB, Inc.* (95 AD3d 448 [1st Dept 2012]). NYDIS contends that the "economic loss rule" has no application outside of the product liability context, relying on Judge Shira A. Scheindlin's opinion in *King County, Wash. v IKB Deutsche Industriebank AG* (863 F Supp 2d 288, 302 [SD NY 2012], *revd on other grounds*, 2012 WL 11896326 [SD NY 2012]). However, even Judge Scheindlin recognized that the rule is applied much more widely (*id.*). Indeed, the rule has been upheld on many occasions to protect landowners or their agents from limitless liability where construction or other activity causes economic loss to surrounding people and businesses economic loss (*see 532 Madison Ave. Gourmet Foods, Inc. v Finlandia Ctr.*, 96 NY2d 280, 288-292 [2001]; *Roundabout Theatre Co. v Tishman Realty & Constr. Co.*, 302 AD2d 272, 272-273 [1st Dept 2003]).

Nevertheless, in New York, a claim for economic damages based on negligent misrepresentations may proceed in the commercial context if the injured party can establish "a special relationship of trust or confidence between the parties which creates a duty for one party to impart correct information to another" (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 296 [1st Dept 2011], citing *OP Solutions, Inc. v Crowell & Moring, LLP*, 72 AD3d 622, 622 [1st Dept 2010]; *see also Hudson Riv. Club v Consolidated Edison Co. of N.Y.*, 275 AD2d 218, 220 [1st Dept 2000]). As the Court of Appeals explained:

> "liability for negligent misrepresentation has been imposed only on those persons who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified. Professionals, such as lawyers and engineers, by virtue of their training and expertise, may have special relationships of confidence and trust with their clients, and in certain situations we have imposed liability for negligent misrepresentation when they have failed to speak with care"

(*Kimmell v Schaefer*, 89 NY2d 257, 263 [1996] [citations omitted]).

The FAC fails to allege that COPO possessed any unique or specialized expertise that may justify holding it to a duty to speak with care in connection with the submission of applications to the Roundtable for Fund benefits. It is alleged that COPO obtains specialized knowledge of its clients by visiting the homes of Superstorm Sandy victims, verifying their identities and their needs and finances, and COPO alone visually inspects any damage and displacement caused by the storm (FAC ¶¶ 17, 20, 22, 24). In fact, NYDIS alleges that COPO is required to obtain this knowledge through its agreements with Catholic Charities and NYDIS itself (*id.* ¶¶ 17, 31-33). However, the "specialized knowledge" that is required usually arises due to the speaker's status as a professional, and the allegation that COPO staff received some training is insufficient. The allegations of the FAC merely establish, if anything, that COPO's "area of expertise involve[d] the particulars of its business" (*MBIA Ins. Co. v GMAC Mtge. LLC*, 30 Misc 3d 856, 864 [Sup Ct, NY County 2010] [negligent misrepresentation claim against mortgage originator dismissed where details of loan files held to constitute the particulars of the defendant's business]; *see also Batas v Prudential Ins. Co. of Am.*, 281 AD2d 260, 264 [1st Dept 2001] [an insurance company's superior knowledge of its own products

created no special relationship with its customer]). In addition, the FAC fails to distinguish COPO's alleged duty in tort from the same duty NYDIS alleges in the context of its breach of contract claim (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389 [1987] ["a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated").

The FAC contains a separate fourth cause of action for "negligence." COPO argues that the claim is nearly identical to, and should be dismissed as duplicative of the claim for negligent misrepresentation. In response, NYDIS maintains that the claims are different and that its negligence claim stems from COPO's failure to supervise and monitor Lewis, whose fraud scheme was made possible only through COPO's failure to implement reasonable internal controls.

> "In instances where an employer cannot be held vicariously liable for its employee's torts, the employer can still be held liable under theories of negligent hiring, negligent retention, and negligent supervision. However, a necessary element of such causes of action is 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 AD2d 159, 161 [2d Dept], *cert denied* 522 US 967 [1997] [citations omitted]). NYDIS makes no such claim in this case.

The motion to dismiss is granted with respect to the third and fourth causes of action.

Punitive Damages

The FAC's allegations fall far short of supporting a claim against COPO for punitive damages. COPO's alleged conduct in failing to supervise Lewis and detect her

fraudulent dealings with NYDIS "do[es] not rise to the level of moral culpability necessary to support a claim for punitive damages" (*Zabas v Kard*, 194 AD2d 784 [2d Dept 1993]).

> "[T]he standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases, the conduct justifying such an award must manifest 'spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton'"

(*Marinaccio v Town of Clarence*, 20 NY3d 506, 511 [2013], quoting *Dupree v Giugliano*, 20 NY3d 921, 924 [2012]). Significantly, "punitive damages can be imposed on an employer for the intentional wrongdoing of its employees only where management has authorized, participated in, consented to or ratified the conduct giving rise to such damages" (*Loughry v Lincoln First Bank*, 67 NY2d 369, 378 [1986]; *accord Vanderpuye v AuPrintemps Fashions*, 234 AD2d 158 [1st Dept 1996]; *Anonymous v Streitferdt*, 172 AD2d 440, 441 [1st Dept 1991]).

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that defendant's motion to dismiss the complaint is granted only to the extent of dismissing the third and fourth causes of action and striking the demand for punitive damages; and it is further

ORDERED that plaintiff is granted leave to serve/file an amended complaint to replead the fifth cause of action within twenty (20) days after the service/filing of a copy of this order with notice of entry; and it is further

ORDERED that defendant shall serve/file an answer to the amended complaint within twenty (20) days of the service/filing of the amended complaint.

Dated: January 19, 2018

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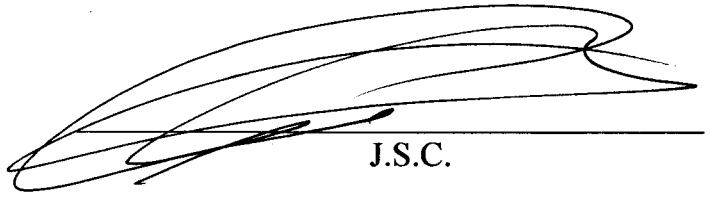

J.S.C.

1/19/18