

Jane Doe v County of Putnam
2019 NY Slip Op 34229(U)
April 16, 2019
Supreme Court, Putnam County
Docket Number: 501469/2018
Judge: Victor G. Grossman
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To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

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

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"JANE DOE", an infant over the age of fourteen (14) years of age by her mother and natural guardian, DENNA L. MCDONNELL, and DENNA L. MCDONNELL, Individually,

DECISION & ORDER

Plaintiffs,

Index No. 501469/2018
Sequence No. 1
Motion Date: 2/20/19

-against -

COUNTY OF PUTNAM, VILLAGE OF BREWSTER, BREWSTER CENTRAL SCHOOL DISTRICT, SUPERINTENDENT OF SCHOOLS VALERIE HENNING PIEDMONTE, ED. D., PRINCIPAL NICHOLE HORLER, ASSISTANT PRINCIPAL KIERAN STACK, CHRISTOPHER VLANGAS, and JOHN/JANE DOE'S #1-10,

Defendants.

-----X
GROSSMAN, J.S.C.

The following papers, numbered 1 to 7, were considered in connection with Defendant Village of Brewster's Notice of Motion, dated January 29, 2019, seeking an Order, pursuant to CPLR §3211(a)(7), to dismiss the action for failure to state a cause of action.

PAPERS

NUMBERED

Notice of Motion/Affidavit/Exhs. A-D/Memorandum of Law

1-7

The complaint alleges that the infant Plaintiff, Jane Doe, while a student at Brewster High School, was raped and sexually assaulted by Defendant Christopher Vlangas, a teacher at that school (Notice of Motion, Exh. A at ¶¶10-13). Specifically, it is alleged that the physical acts of sexual abuse, including rape, occurred on or about October 2, 2017 and October 3, 2017, inside

Brewster High School, and on October 10, 2017 outside of Brewster High School (Notice of Motion, Exh. A at ¶14). In the complaint, Plaintiffs allege the following causes of action: (1) negligent hiring; (2) negligent supervision; (3) negligence in allowing occurrence after having actual and constructive notice of the prior occurrence; and (4) loss of consortium (Notice of Motion, Exh. A).

Defendants Brewster Central School District, Superintendent of Schools Valerie Henning Piedmonte, Ed. D., Principal Nichole Horler, and Assistant Principal Kieran Stack (collectively “District”), interposed an Answer, generally denying the allegations, raising eight (8) affirmative defenses, and 1 cross-claim for indemnification against Defendants County of Putnam (“County”), Village of Brewster (“Village”), Christopher Vlangas (“Vlangas”), and John/Jane Doe’s #1-10 (Notice of Motion, Exh. C).

Defendant County of Putnam also interposed an Answer, generally denying the allegations, raising ten (10) affirmative defenses, and 1 cross claim for indemnification against all the other Defendants, including the Village (Notice of Motion, Exh. D).

The Village filed the instant motion, pursuant to CPLR §3211(a)(7), claiming Plaintiffs have failed to state a cause of action with respect to the Village. No party has opposed the motion.

“In considering a motion to dismiss pursuant to CPLR 3211(a)(7), ‘the sole criterion is 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.’” Juerrss v. Millbrook Central School District, 161 A.D.3d 967, 968 (2d Dept.), lv. to appeal denied 32 N.Y.3d 903 (2018), quoting Guggenheimer v. Ginzberg, 43

N.Y.2d 268, 275 (1977). “[T]he pleading must be liberally construed, the factual allegations must be deemed true, and the pleading party must be accorded benefit of every possible favorable inference.” Juerss, supra, quoting Michaan v. Gazebo Hort, Inc., 117 A.D.3d 692 (2d Dept. 2014); see also Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994).

The Village’s unopposed motion to dismiss complaint and any and all cross claims advanced against it is granted for the reasons therein advanced. The Complaint only puts forward general allegations that the named District Defendants were also employees of the Village. These statements are nothing more than conclusions. There is nothing in the Complaint that establishes that the District’s employees and Vlangas were also employed by the Village, and consequently, inter alia, would supervise them, other than Plaintiffs’ claims stating it to be so. Furthermore, the Complaint is silent as to where the October 10, 2017 incident occurred, let alone whether it occurred on Village property.


In light of the above, it is hereby

ORDERED that Defendant Village of Brewster’s motion is granted, and the Complaint and Cross Claims with respect to the Village are dismissed; and it is further

ORDERED that the parties and counsel are to appear before the undersigned on Tuesday, June 4, 2019 at 9:30 a.m. for a preliminary conference.

The foregoing constitutes the Decision and Order of the Court.

Dated: Carmel , New York
April 16, 2019


HON. VICTOR G. GROSSMAN, J.S.C.

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