PC-16 Doe v Hill Regional Career High Sch.
2022 NY Slip Op 33178(U)
September 19, 2022
Supreme Court, New York County
Docket Number: Index No. 950364/2020
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L. LOVE** **PART** **63M**

Justice

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PC-16 DOE,

Plaintiff,

- v -

HILL REGIONAL CAREER HIGH SCHOOL, RICHARD C LEE HIGH SCHOOL, NEW HAVEN SCHOOL DISTRICT, NEW HAVEN BOARD OF EDUCATION, NEW YORK CHORAL SOCIETY

Defendants.

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INDEX NO. 950364/2020

MOTION DATE 06/08/2021, 11/08/2021

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 32

were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following reads on a motion for default judgment that has been withdrawn (see NYSCEF Doc. No. 32) and on Defendant – Hill Regional Career High School, Richard C. Lee High School, New Haven School District, and New Haven Board of Education's ("New Haven Schools") motion to dismiss per CPLR 3211(a)(8), and CPLR 302, for lack of jurisdiction.

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence in the hiring, retention, supervision, training, and direction – New Haven Schools, (ii) breach of fiduciary duty – New Haven Schools, (iii) *in loco parentis* – New Haven Schools, (iv) "negligent, reckless, and willful misconduct" – New Haven Schools, (v) negligent infliction of emotional distress – New Haven Schools, (vi) breach of fiduciary duty – Choral Society, (vii)

in loco parentis – Choral Society, (viii) "negligent, reckless, and willful misconduct" – Choral Society, and (ix) negligent infliction of emotional distress – Choral Society.

In 2019, New York State enacted the Child Victims Act which, *inter alia,* (1) extended the statute of limitations on criminal cases involving certain sex offenses against children under 18 (CPL 30.10 [f]); (2) extended the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (see CPLR 208[b]); and (3) opened a one – year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (see CPLR 214-g).

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (see *Leon v. Martinez,* 84 N.Y.2d 83 [1994]).

Pursuant to CPLR 3211(a)(8), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that … the court has no jurisdiction of the person of the defendant."

New York's long-arm statute, CPLR 302(a)(2) provides, "a court may exercise personal jurisdiction over any non-domiciliary, … who in person or through an agent commits a tortious act within the state."

Plaintiff's complaint states in relevant part,

> "[o]n or about March 3, 1984, on the evening of and prior to the performance, […] proceeded to sexually assault, molest, violate, and abuse the Plaintiff in a side room off the main stage at Carnegie Hall, in the County of New York, State of New York" (see NYSCEF Doc. No. 1 Par. 30).

Defendant – New Haven School argues, "[t]o determine whether personal jurisdiction exists under CPLR 302(a)(1), 'the court must determine (1) whether the defendant 'purposefully availed itself of the privilege of conducting activities within the forum state by either transacting business in New York or contracting activities within the forum state by either transacting business in New York or contracting to supply goods or services in New York' and 92) whether the claim arose from that business transaction or from the contract to supply goods or services" *Qudsi v. Lario*, 173 A.D.3d 920, 922-923 [2d Dept. 2019]) (see NYSCEF Doc. No. 36 Par. 28).

Plaintiff's memorandum of law in opposition states, "The Court of Appeals has repeatedly recognized that CPLR 302(a)(1) "is a 'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction" *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 [1988]). In addition to the 'single act,' personal jurisdiction attaches where: (1) 'the defendant's activities here were purposeful;' and (2) there is a substantial relationship between the transaction and the claim asserted." Plaintiff's opposition continues, "[h]ere, as alleged, Connecticut Employers sponsored a trip to New York – a purposeful act – thereby invoking the privileges and benefits of New York State. Unquestionably, there is a clear nexus between the trip to Carnegie Hall in New York City, sponsored by Connecticut Employers, and Plaintiff's injury, which occurred during that very trip" (see NSYCEF Doc. No. 42 Ps. 13 – 14).

Defendant New Haven Schools Reply states, "there are no factual allegations that the trip to New York was sponsored or approved by the Connecticut defendants. In fact, plaintiff alleges that […] arranged for the trip through his own personal connections with co-defendant New York Choral Society" (see NYSCEF Doc. No. 43 Par. 10).

Defendant New Haven School argues that personal jurisdiction over defendants does not comport with due process. "A court may exercise jurisdiction over only those defendants that

have 'minimum contact' with the forum state such that the maintenance of the action does not offend 'traditional notions of fair play and substantial justice.' *Phillips v. Reed Group, Ltd.*, 955 F.Supp.2d 201, 227 [S.D.N.Y. 2013]. To establish the required minimum contacts, plaintiff's claims must arise out of or relate to the Connecticut defendants' contacts with New York such that the Connecticut defendants 'purposefully availed' itself of doing business and could foresee being hailed into New York courts. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287 [1980]) (see NYSCEF Doc. No. 36 Par. 40).

Defendant New Haven School continues, "the Connecticut defendants are not alleged to have engaged in any activities in New York. The Connecticut defendants did not conduct any business in New York. The Connecticut defendants' presence in New York is limited to occasional field trips" (see NYSCEF Doc. No. 36 Par. 41). This "occasional field trips" avails defendants of doing business in New York.

The pleasing is to be afforded a liberal construction, and here the court finds that plaintiff has alleged facts that fit with a cognizable legal theory based on one event within New York. Thus there is sufficient contact for this matter to proceed against named defendant.

ORDERED that the motion for a default judgment, mot. seq. no. 002, is DENIED; and it is further

ORDERED that the motion to dismiss for lack of jurisdiction is DENIED.

9/19/2022
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE