

J.C. v City of New York

2023 NY Slip Op 33334(U)

September 22, 2023

Supreme Court, New York County

Docket Number: Index No. 950307/2021

Judge: Sabrina B. Kraus

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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J. C., INDEX NO. 950307/2021
MOTION DATE 03/23/2022
MOTION SEQ. NO. 002

Plaintiff,

- v -

CITY OF NEW YORK, A MUNICIPAL CORPORATION,
CHILDREN'S AID, ARCHDIOCESE OF NEW YORK,
CATHOLIC CHARITIES OF STATEN ISLAND,
INC., CATHOLIC CHARITIES OF THE ARCHDIOCESE OF
NEW YORK, DOES 1-10

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39,
40, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for DISMISS

BACKGROUND

Plaintiff commenced this action under the Child Victim’s Act (“CVA”) alleging that she suffered sexual abuse, between about 1981 and 1984, while she was in foster care at the home of Beatrice and Hollace Richardson. Plaintiff alleges the abusers were two adult relatives of Mrs. Richardson and two unidentified adult males. Plaintiff further alleges that, in 1984 or 1985, Plaintiff was transferred from the Richardson home to Mt. Loretto Orphanage (“MLO”) -- a facility that, according to the Complaint, was owned, staffed, maintained, controlled and supervised by defendant Catholic Charities of Staten Island, Inc. (“CCSI”) -- where she suffered sexual abuse at the hands of another MLO resident and three staff members before she left the facility in 1987 or 1988.

The Children's Aid Society ("Defendant") is a social services agency that placed Plaintiff in Foster Care.

Defendant moves to dismiss the complaint as against it pursuant to CPLR §3211(a)(7) on the basis that it is not responsible for any abuse that took place at MLO and that the complaint fails to adequately plead the basis to allege Defendant had notice of the alleged abuse.

For the reasons set forth below, the motion is denied.

DISCUSSION

On a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "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" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997]).

The pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*), and the court must "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 into any cognizable legal theory" (*Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

“In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint’s allegations against the defendant’s contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims” (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon*, 84 NY2d at 87-88, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept. 2002]).

Plaintiff asserts cause of action against Defendant for negligence. “In any common-law negligence case brought pursuant to New York law, ‘a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom’” (*Ferreira v City of Binghamton*, 38 NY3d 298, 308 [2022], *quoting Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]).

With respect to sexual abuse committed by the perpetrators, the allegations of fact in paragraphs 62-64, 66-67, 69-71, and 74-78, of the complaint manifest a cause of action for negligence under New York law. Plaintiff acknowledges it is not seeking to hold Defendant liable for the abuse which occurred at MLO.

Defendant’s allegation that the complaint does not sufficiently plead notice does not warrant dismissal of the complaint at this early stage. The complaint alleges:

The sexual abuse of Plaintiff was open and notorious and was reported to the foster mother, who aided and abetted the abuse. When Plaintiff’s behavior changed, thereby signifying emotional distress, her social worker did not investigate the source of Plaintiff’s distress, (Complaint, ¶¶ 98).

This one paragraph alone alleges facts of Defendant’s knowledge or notice of Plaintiff’s significant change in behavior and the failure of the social worker to conduct a meaningful investigation. These facts are sufficient to allege notice as to Defendant.

Based on the foregoing, the motion to dismiss is denied.

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that Defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual second compliance conference on November 14, 2023, at 11:00 AM; and it is further

ORDERED that this constitutes the decision and order of the Court.

9/22/2023
DATE


HON. SABRINA B. KRAUS
J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE