

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- x INDEX NO.: 510155/2021

ANONYMOUS 13 DOE, ANONYMOUS 5 DOE,
ANONYMOUS 6 DOE, ANONYMOUS 25 DOE, :

Plaintiffs, : **AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS**

- against - :

THE YESHIVA OF BROOKLYN A/K/A :
TALMUDICAL SCHOOL OF BROOKLYN, :

Defendant. :

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Glen Feinberg, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am a member of the law firm Fullerton Beck, LLP, attorneys for defendant Yeshiva of Brooklyn (“Yeshiva”). I am fully familiar with the facts and circumstances set forth herein. I submit this affirmation in support of the defendant’s motion seeking an Order (a) pursuant to C.P.L.R. Rule 3211(a)(7) to dismiss the complaint for failure to state a cause of action (b) pursuant to C.P.L.R. Rule 3211(a)(5) to dismiss specified claims as barred by the statute of limitations, (c) pursuant to C.P.L.R. 3024(b) to strike scandalous material from the complaint, together with costs and disbursements and such other relief as the Court deems just and proper.

INTRODUCTION

2. The complaint has been brought pursuant to the revival provisions of the Child Victims Act (“CVA”). The CVA revived time-barred claims and extended the statute of

limitations for civil sex abuse actions. The CVA did not alter any substantive legal principles, nor did it impose new legal duties for revived claims.

3. The complaint, a copy of which is annexed hereto as Exhibit A, alleges that the Yeshiva is liable pursuant to Social Services Law § 413 for failing to report child sex abuse and child neglect and abuse. The complaint must be dismissed because the express terms of Social Services Law § 413 impose a reporting duty only on specified individuals. The law does not require a school to report abuse. Therefore, the complaint fails to state a cause of action.

4. Alternatively, because the CVA did not revive claims relating to non-sexual child abuse and neglect, the allegations in the complaint regarding non-sexual child abuse and neglect must be dismissed as time-barred or stricken as scandalous.

THE COMPLAINT

5. The Complaint filed by the 4 plaintiffs, identified as Anonymous 13, 5, 6 and 25 Doe, is premised on the school's alleged "failure to report the sexual battery of Plaintiffs by their father, the Rabbi Gershon Kranczer, and his sons, including, but not limited to Yechezkel Kranczer and Asher Anshel Kranczer, collectively from infancy to 2010." (§1)

6. The plaintiffs claim that they attended the Yeshiva as follows:

- Anonymous 13: 1994 to 2008
- Anonymous 25: 1995 to 2009
- Anonymous 5: 2003 - 2008
- Anonymous 6: 1997 – 2011

(§§ 8 – 11)

7. Each plaintiff claims to have been sexually abused by their father, Rabbi Kranczer, and his sons (their brothers) during the years they attended the Yeshiva. (§§ 11 – 15) Plaintiffs do not claim that they were abused by school personnel or while they were in the school's custody.

8. The complaint asserts that the teachers and staff “knew and had cause to know that Plaintiffs were being neglected, abused, and/or maltreated at home” (§ 16) and that they “knew and had cause to know that Plaintiffs came to school without bathing, that Plaintiffs wore torn clothes, that Plaintiffs came to school hungry, that Plaintiffs came to school with poor hygiene, and that Plaintiffs were malnourished.” (§ 17) Teachers and staff “gave Plaintiffs food to eat, gave Plaintiffs clothing to wear, and gave Plaintiffs hygiene products.” (§ 18)

9. In 1999 or 2000, Doe 13 “stopped talking at school.” (§ 19) When “the school counselor asked Doe 13 if her father and brothers were hurting her and/or touching her in a sexual manner at home. Doe 13 burst out crying and shaking in affirmation.” (§ 22) The Yeshiva allowed her father to pick up Doe 13 and bring her home from school (§ 23) and “failed to take any further corrective, protective, or other action after Doe 13 's disclosure of sexual abuse.” (§ 24)

10. The complaint alleges that after learning of the sexual abuse of Doe 13, the Yeshiva failed to take steps to protect Doe 25, Doe 5, and Doe 6 or to take any steps to determine if they were victims of sexual abuse. (§§ 24 – 30) Plaintiffs claim that their father/abuser, “Rabbi Gershon Kranczer was the principal of the private, all-boys, Jewish school, Yeshiva Tehila L'Dovid, and was friends with the principal of Defendant Yeshiva of Brooklyn and her husband.” (§ 31)

11. The complaint contains one cause of action entitled “Failure to report under Social Services Law.” This cause of action opens with a series of legal conclusions, many of which are erroneous, about the mandatory reporting requirements of the Social Services Law:

- At all times material, Yeshiva of Brooklyn as an institution was a mandated reporter under Social Services Law 413(b).
- At all times material, Defendant Yeshiva of Brooklyn staff, including, but not limited to school officials, school social workers, and/or mental health professionals, at Yeshiva of Brooklyn were mandated reporters under Social Services Law

413(a).

- At all times material, Defendant Yeshiva of Brooklyn had a statutory duty to report the neglect, abuse, or maltreatment of students under its charge.
- At all times material, Defendant Yeshiva of Brooklyn had a statutory duty to report the neglect, abuse, or maltreatment of Plaintiffs, including the child sexual abuse of Plaintiffs.
- At all times material, school staff, including, but not limited to school officials, school social workers, and/or mental health professionals, at Yeshiva of Brooklyn had a statutory duty to report the neglect, abuse, or maltreatment of students under its charge, including the child sexual abuse of Plaintiffs.
- At all times material, school staff, including, but not limited to school officials, school social workers, and/or mental health professionals, at Yeshiva of Brooklyn had a statutory duty to report the neglect, abuse, or maltreatment of Plaintiffs, including the child sexual abuse of Plaintiffs.

(¶¶ 33 – 38).

12. The complaint asserts that the Yeshiva had reasonable cause to believe that plaintiffs were “neglected, abused, and/or maltreated children” (¶ 43) and that they “were sexually abused children.” (¶ 44) The complaint concludes with a series of paragraphs alleging that the Yeshiva knowingly failed to report child abuse, including sexual abuse, as required by law.

THE STANDARD OF REVIEW

13. A motion to dismiss pursuant to CPLR 3211(a)(7) is to be determined on the analysis of “whether the facts as alleged in the complaint fit within any cognizable legal theory.” *Winkler v. Battery Trading, Inc.*, 89 A.D.3d 1016, 1017 (2d Dep’t 2011). The analysis must be afforded a liberal construction, and the facts alleged in the complaint must be accepted as true,

with the plaintiff accorded the benefit of every favorable inference. *Shu Yuan v. St. John's Evangelical Lutheran Church*, 129 A.D.3d 1053 (2d Dep't 2015).

14. However, "while factual allegations contained in the complaint are deemed true, bare legal conclusions and facts flatly contradicted on the record are not entitled to a presumption of truth." Thus, bare, unsubstantiated, legal conclusions are not entitled to such consideration. *Garber v. Board of Trustees of State Univ. of N.Y.*, 38 A.D.3d 833 (2d Dep't 2007), quoting *Maas v. Cornell Univ.*, 94 N.Y. 2d 87, 91 (1999).

ARGUMENT

Point I: The Complaint does not state a cause of action for failure to report child abuse because the school is not a mandated reporter.

15. The obligation to report child abuse is established by § 413 of the Social Services Law, entitled "*Persons and officials* required to report cases of suspected child abuse or maltreatment." (Emphasis supplied.) The statute states:

(a) The following *persons and officials* are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, . . . *school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate.*

(Emphasis supplied.)

16. The statute requires only specified "persons and officials" to report abuse. Schools are *not* mandated reporters.

17. Application of the rules of statutory construction mandate that the Court apply the plain unambiguous meaning of the statute. "As a general rule, unambiguous language of a statute

is alone determinative" *Theroux v Reilly*, 1 NY3d 232, 239 [2003] quoting *Riley v County of Broome*, 95 N.Y.2d 455, 463, 719 N.Y.S.2d 623, 742 N.E.2d 98 [2000].

18. A statute's plain meaning must be discerned "without resort to forced or unnatural interpretations" *Castro v United Container Mach. Group*, 96 N.Y.2d 398, 401, 736 N.Y.S.2d 287, 761 N.E.2d 1014 [2001], citing McKinney's Cons Laws of NY, Book 1, Statutes § 232. Where the language of a statute is clear, it is presumed that that intent is reflected in the words chosen by the Legislature and the plain meaning they express. *A.J. Temple Marble & Tile v Union Carbide Marble Care*, 87 NY2d 574, 580 [1996].

19. § 413 unambiguously requires only specified "persons and officials" to make reports of child abuse. The statute does not require schools to make reports. Because the plain, unambiguous language of the statute does not impose a reporting obligation on the school, the Complaint must be dismissed.

Point 2: Alternatively, because the CVA only revived claims relating to sexual abuse, all claims related to physical and verbal abuse must be dismissed and stricken from the Complaint.

20. The CVA revived claims *only* of sexual abuse, and not claims of physical abuse. Pursuant to the CVA, under CPLR 214-g:

Notwithstanding any provision of law which imposes a period of limitation to the contrary . . . every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition ***suffered as a result of conduct which would constitute a sexual offense***...is hereby revived....

[Emphasis added].

21. Many of the allegations in the Complaint relate to physical and emotional abuse. These claims, which arose from 1994 to 2011, have long been time-barred. As these allegations do not relate to a sexual offense and do not constitute a violation of any Penal Law section set forth in CPLR 214-g, they are time barred. The plaintiffs' attempt to intertwine these claims into

the complaint is an improper attempt to prejudice the defendant with scandalous and irrelevant allegations to bolster her revived CVA claims.

22. Pursuant to CPLR 3024(b), “A party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading.” In *Matter of Albany Law School v. New York State Off. Of Mental Retardation & Dev. Disabilities*, the Court struck some of the paragraphs within the Complaint and held that:

Some of the paragraphs at issue here discussed the conditions at Willowbrook and other state institutions in the 1970s that ultimately led to the creation of a protection and advocacy system. The other stricken paragraphs discussed the 2007 death of an individual in respondent’s care. While this information may create an interesting history background for this proceeding, none of it is relevant to petitioners’ claims, but it could serve to prejudice respondent.

Matter of Albany Law School v. New York State Off. Of Mental Retardation & Dev. Disabilities, 81 A.D. 3d 145 (3d Dep’t, 2011).

23. In *Braney v Roman Catholic Church*, 2020 N.Y.Misc. LEXIS 8240, 2020 NY Slip Op 33714 (2020), the Court struck scandalous or prejudicial allegations that were not relevant to a cause of action. The Court held that:

To the extent paragraphs in this section relate to defendants and to plaintiff’s claims that defendants did nothing despite knowledge of wrongdoing by priests, they are relevant to plaintiff’s cause of action for negligence (Cause of Action V). To the extent paragraphs in this section are unrelated to the named defendants, they are not relevant to any cause of action in the complaint. Accordingly, the Court will strike the following paragraphs from the complaint as unrelated to the named defendants and thus irrelevant to any cause of action.

Id.

24. The Complaint contains many allegations relating to claims of physical and emotional abuse that are time barred. See, ¶ 17 (“Yeshiva of Brooklyn teachers and staff knew and had cause to know that Plaintiffs came to school without bathing, that Plaintiffs wore torn clothes,

that Plaintiffs came to school hungry, that Plaintiffs came to school with poor hygiene, and that Plaintiffs were malnourished”); ¶ 18 (“ Yeshiva of Brooklyn teachers and staff gave Plaintiffs food to eat, gave Plaintiffs clothing to wear, and gave Plaintiffs hygiene products to use”); ¶¶ 35 - 38 (all of which contain references to “neglect, abuse, or maltreatment . . . including [but not limited to] the child sexual abuse of Plaintiffs”); ¶ 43 (referring to plaintiffs as “neglected , abused , and/or maltreated children”); ¶¶ 46 – 52 (alleging failure “to report the neglect, abuse, or maltreatment of Plaintiffs Doe 5, including [but not limited to] child sexual abuse”).

25. These allegations are not relevant to the revived claim. If the Court denies the motion to dismiss for failure to state a cause of action, claims of failure to report physical and emotional neglect should be dismissed as time-barred and stricken from the Complaint.

WHEREFORE, defendant, The Yeshiva of Brooklyn, requests the Court enter an Order dismissing the complaint for failure to state a cause of action, or alternatively, dismissing time-barred claims and striking them from the Complaint, together with costs and disbursements and such other relief as the Court deems just and proper.

Dated: White Plains, New York
September 7, 2021

FULLERTON BECK, LLP

By: Glen Feinberg
Glen Feinberg