SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

BC545264 October 20, 2020
JAMES SAFECHUCK VS DOE 1 ET AL 4:53 PM

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 10/16/2020, now rules as follows:
FINAL RULING

In February of 2017, Plaintiff James Safechuck ("Safechuck") filed a third amended complaint (TAC) against Defendants MJJ Productions, Inc., MJJ Ventures, Inc., and Does 6 – 50 for (1) intentional infliction of emotional distress, (2) negligence, (3) negligence supervision, (4) negligent hiring, (5) negligent failure to warn or train; and (6) breach of fiduciary duty.

LEGAL STANDARD

A demurrer for sufficiency tests whether the complaint alleges facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10; Young v. Gannon (2002) 97 Cal.App.4th 209, 220. The court "may consider all material facts pleaded in the complaint and those arising by reasonable implication therefrom; it may not consider contentions, deductions or conclusions of fact or law. (Young v. Gannon (2002) 97 Cal.App.4th 209, 220 (citing Moore v. Conliffe (1994) 7 Cal.4th 634, 638; Montclair Parkowners Assn. v. City of Montclair (1999) 76 Cal.App.4th 784, 790).) The court treats all facts alleged in the complaint to be true. (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732.)

When considering demurrers, courts "are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded." (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 733 (citing Rogoff v. Grabowski (1988) 200 Cal.App.3d 624, 628.)) "The burden is on the plaintiff to demonstrate the manner in which the complaint can be amended." (Ross v. Creel Printing & Publishing Co. (2002) 100 Cal.App.4th 736, 748.)

REQUEST FOR JUDICIAL NOTICE

MJJ Productions, Inc., and MJJ Ventures, Inc. ("Defendants") filed a request for judicial notice of Exhibits 1 – 10. Exhibits 1 – 8 and 10 are court records and Exhibit 9 is a certificate from the California Secretary of State showing that Defendant MJJ Ventures was incorporated on February 26, 1991. All of the documents are judicially noticeable as court records. Therefore, the court GRANTS the request for judicial notice.

ANALYSIS
Demurrer
Sixth Cause of Action: Breach of Fiduciary Duty
Defendants demur to the breach of fiduciary duty cause of action arguing that Plaintiff has not alleged sufficient facts to show that the Defendants and Plaintiff were in a fiduciary relationship, and that as a matter of law, employers do not owe employees a fiduciary duty. In opposition, Plaintiff argues that a fiduciary duty arose because (1) the parties stood in loco parentis based on Plaintiff's status as a minor employee (TAC ¶¶ 3, 11, 13, 101, 112, 116 and 131) and (2) a special relationship arose between Defendants and Plaintiff because Plaintiff was a minor (TAC ¶¶ 101, 171-173). These same arguments as to a special relationship are also relevant to the negligence causes of action.

In paragraph 101 of the TAC, Plaintiff alleges, "As a minor student, employee, and guest of MJJ Productions and MJJ Ventures, where Michael Jackson was employed and worked, Plaintiff was under Michael Jackson's, MJJ Productions, and MJJ Ventures' direct supervision, care and control, thus creating a special relationship, fiduciary relationship, and/or special care relationship with Defendants, and each of them." (TAC ¶ 101 [uppercase removed].) Plaintiff also alleges "as a minor child under the custody, care and control of Defendants, Defendants stood in loco parentis with respect to Plaintiff while he was attending events and functions at locations run and controlled by Defendants MJJ Productions and MJJ Ventures. As the responsible parties and/or employers controlling Michael Jackson, Defendants were also in a special relationship with Plaintiff, and owed special duties to Plaintiff." (Id. [uppercase removed].) Additional allegations include that "as a minor at all relevant times alleged herein, was placed in the physical custody, control, and dominion of Defendants MJJ Productions, MJJ Ventures and Does 6 through 50, inclusive, and their agents, employees, and/or servants, and was placed in such custody, control, and dominion in locations including, but not limited to: Neverland, the 'Hideout', and the Havenhurst residence." (TAC ¶ 112.). Plaintiff alleges that Jackson purchased Neverland in Santa Barbara. (TAC ¶ 40.) The "hideout" is also alleged to be owned by Jackson. (See TAC ¶¶ 56-57.) The Havenhurst residence was also Jackson's home. (See TAC ¶ 13.)

"The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary

relationship, breach of fiduciary duty, and damages." (Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 820.) A fiduciary relationship is created when a party either (1) knowingly undertakes to act on behalf and for the benefit of another, or (2) enters into a relationship which imposes that undertaking as a matter of law." City of Hope Nat. Med. Ctr. v. Genentech, Inc., (2008) 43 Cal.4th 375, 386 (2008). "In general, employment-type relationships are not fiduciary relationships. (Amid v. Hawthorne Community Medical Group, Inc. (1989) 212 Cal.App.3d 1383, 1391.) In the absence of a fiduciary relationship, there can be no breach of fiduciary duty as a matter of law. (O'Byrne v. Santa Monica-UCLA Medical Center (2001) 94 Cal.App.4th 797, 811–812.)

Plaintiff argues, in part, that a fiduciary duty arose between Plaintiff and Defendants because of a special relationship that arose between the parties. In support of this argument, Plaintiff relies on Brockett v. Kitchen Boyd Motor Co. (1968) 264 Cal.App.2d 69. Brockett, however, is distinguishable. In Brocket, the court held that an employer who serves alcohol to a minor employee (aged 19) assumes the duty of responsibility for the minor's well-being and proper conduct, to protect both the minor and the general public. (Brockett 264 Cal.App.2d at 72.) The court noted that the employer urged drinks upon the minor, procured his drunkenness, guided the minor to his car and directed him to drive home, when he promptly got into an accident. (Id.) By taking such action, the employer had assumed the responsibility for the well-being and proper conduct of the minor under those circumstances. (Id.) Plaintiff has not presented any facts that the employer MJJ Productions or MJJ Ventures, and not Jackson, undertook similar affirmative action that would create either a fiduciary duty, or with respect to the negligence causes of action, a special relationship.

As noted above, Plaintiff also alleges that Defendants were in a in loco parentis relationship with Plaintiff. (See TAC ¶ 101, 171.) In loco parentis is defined as, "Of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent." (IN LOCO PARENTIS, Black's Law Dictionary (11th ed. 2019) [emphasis added].) Person in loco parentis means "Someone who acts in place of a parent, either temporarily (as a schoolteacher does) or indefinitely (as a stepparent does); a person who has assumed the obligations of a parent without formally adopting the child. See IN LOCO PARENTIS." (PERSON, Black's Law Dictionary (11th ed. 2019) [defining person in loco parentis].) The in loco parentis relationship allegations in paragraph 101 of the TAC are conclusions of law and Plaintiff has not alleged any facts demonstrating that Defendants had a duty to control the conduct of Plaintiff as a parent would. (See Poncher v. Brackett (1966) 246 Cal.App.2d 769, 773–774 (raw allegations that parents stood in relation of loco parentis insufficient as a matter of law.) The Court does not accept conclusions of law as true for the purpose of a demurrer.

The facts set forth in the TAC fail to support the allegation that Plaintiff was in a fiduciary relationship with Defendants, whether as a result of a special relationship or by in locus parentis. Plaintiff seeks leave to amend. At oral argument, Plaintiff conceded that there were no additional facts that could be added to the TAC demonstrating a fiduciary relationship. Therefore, the demurrer to the sixth cause of action is sustained without leave to amend.
First Cause of Action: Intentional Infliction of Emotional Distress
Defendants demur to the first cause of action for IIED. "The elements of a prima facie case for the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (Wilson v. Hynek (2012) 207 Cal.App.4th 999, 1009, citation and ellipses omitted.)

In their demurrer, Defendants argue that Plaintiff has failed to allege extreme and outrageous conduct by the Defendants as required to state a claim. In response, Plaintiff argues that Defendants were created to, and did, facilitate Jackson's sexual abuse of children. Plaintiff also argues that there are three alternative ways to plead outrageous conduct that courts have recognized, including where a defendant: "(1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress." (Cole v. Fair Oaks Fire Protection Dist. (1987) 43 Cal.3d 148, 155, fn. 7.). While the Court agrees that there are other ways to show outrageous conduct, Plaintiff has not shown that any of these three alternative methods apply to the facts in this case. (See Opp. at 14:6-22.).

The TAC contains numerous allegations that Defendant's employees took actions with knowledge and intent that Plaintiff would be abused. For instance, Plaintiff alleges in paragraph 5 that "Plaintiff was one of several children who were entrapped by MJJ Productions' and MJJ Ventures' child sexual abuse procurement and facilitation organization." (TAC ¶5.) Plaintiff also alleges on information and belief that Defendants' managing agents and employees were "madams" or "procurers, and that Jolie Levine was a managing agent of Defendants." (TAC ¶13, 31.) When combined with Plaintiff's alter ego theory of liability, these allegations indicate that Plaintiff is attempting to hold Defendants liable as direct perpetrators of sexual abuse under Code of Civil Procedure section 340.1(a). Courts, however, have held that corporations cannot be direct perpetrators: "[a] 'person' for purposes of subdivision (a)(1) may not be defined to include an entity defendant. [Such] interpretation is confirmed by the legislative history of section 340.1,

subdivisions (a)(1)–(3) and (b)(1)." (Boy Scouts of America National Foundation v. Superior Court (2012) 206 Cal.App.4th 428, 447.)

The sole basis for holding Defendants liable for IIED would be as a direct perpetrator, which is prohibited by Code of Civil Procedure section 340.1(a)(1). Therefore, the demurrer to the first cause of action for IIED is sustained without leave to amend.

Negligence Causes of Action

Plaintiff alleges four distinct negligence causes of action, including (1) the second cause of action for negligence, (2) the third cause of action for negligent supervision, (3) the fourth cause of action for negligent retention/hiring, and (4) the fifth cause of action for negligent failure to warn.

As an initial issue, the negligence causes of action all require Plaintiff to sufficiently allege a duty of care, or if there is no duty, allege misfeasance on the part of Defendants. "In general, one owes no duty to control the conduct of a third person to prevent him from causing physical harm to another, absent a special relationship between the defendant and either the person whose conduct needs to be controlled or the foreseeable victim of that conduct." (Wise v. Superior Court (1990) 222 Cal. App. 4d 1008, 1013.) "Liability may not be premised on a defendant's nonfeasance if the defendant did not create the peril." (Todd v. Dow (1993) 19 Cal. App. 4th 253, 260.) Thus, in order to establish a duty of care between the Defendants and Plaintiff, Plaintiff must allege a "special relationship" between himself and Defendants. That special relationship, however, does not create limitless duties of care, but must be rationally related to the relationship. (see e.g. Regents of Univ. of California v. Superior Court, (2018) 4 Cal. 5th 607, 626-27 (recognizing college-student duty of care, but limited to activities tied to the school's curriculum but not to student behavior over which the university has no significant degree of control.) As set forth above, the Court has concluded that Plaintiff has not sufficiently alleged a special relationship between himself and Defendants.

Even if there was a special relationship, a legal duty only exists where a defendant has an actual ability to control the person who needs to be controlled. (Doe v. United States Youth Soccer Association (2017) 8 Cal.App.5th 1118, 1128.) "The absence of an ability to control is fatal to a claim of legal responsibility." (Todd v. Dow (1993) 19 Cal. App. 4th 253, 259.) In the TAC, Plaintiff alleges that Defendants had the "ability to exercise control over Michael Jackson's business and personal affairs." (TAC ¶¶ 3-4.) Michael Jackson, however, was the founder and sole shareholder of the Defendants. (Id.) As the sole shareholder of the defendant entities, Jackson had absolute legal control over the entities and everyone employed by them. (Coit Drapery Cleaners, Inc. v. Sequoia Ins. Co. (1993) 14 Cal. App. 4th 1595, 1605 (the trial court properly concluded that the entity could not have disciplined or supervised its president,

chairman of the board, and major shareholder.) Moreover, the corporation's board manages the business affairs of the corporation and holds all corporate powers. (Corp. Code § 300(a).) Here, Jackson was the owner and sole shareholder of the Defendants, and as matter of law, had complete legal authority over Defendants.

Since Defendants have no ability to control Jackson regarding his alleged sexual abuse of Plaintiff, there is no legal duty of care between the parties and the negligence causes of action fail as a matter of law. Despite this finding, the Court will continue its analysis as to the separate negligence causes of action.

1. Second Cause of Action for Negligence

In order to state a claim for negligence, Plaintiff must allege the elements of (1) the existence of a legal duty of care, (2) breach of that duty, and (3) proximate cause resulting in an injury. (McIntyre v. Colonies-Pacific, LLC (2014) 228 Cal.App.4th 664, 671.)

Defendants argue that Plaintiff has failed to allege sufficient facts to allege negligence per se under the Child Abuse and Neglect Reporting Act (CANRA), Penal Code section 11166 et seq. Specifically, Defendants argue that Plaintiff has not alleged facts that show that any person supervised Plaintiff. Defendants further argue that CANRA does not impose a general duty to report suspected child abuse and that no duty to aid also applies in the context of child abuse, citing Eric J. v. Betty M. (1999) 76 Cal.App.4th 715, 727-30. In opposition, Plaintiff argues that Defendants were mandatory reporters of suspected sexual abuse because Plaintiff has alleged that Defendants were created to provide mentorship of young children in the entertainment industry. Plaintiff does not actually cite the provision but appears to argue that Defendants are mandated reporters under Penal Code section 11165.7(a)(6) and (7).

There are over 47 different categories of employees that are mandated reporters. (See generally Pen. Code, § 11165.7(a).) The current version of Penal Code section 11165.7(a)(6) makes "An administrator of a public or private day camp" a mandated reporter and (7) applies to "An administrator or employee of a public or private youth center, youth recreation program, or youth organization." (Pen. Code, § 11165.7(a)(6), (a)(7).) Plaintiff has not shown or argued that these provisions of the Penal Code were in force or applicable during the time period of the alleged abuses or that Defendants ran a private youth center, recreation program, or youth organization. Plaintiff has also not alleged facts that show that Defendants ran a private day camp.

Penal Code section 11165.7(a)(8) also includes as a mandated reporter "An administrator, board member, or employee of a public or private organization whose duties require direct contact and

supervision of children." (Pen. Code, § 11165.7(a)(8).). Plaintiff has not alleged facts that show that Staikos or Levine were required to supervise Plaintiff. Furthermore, it is not clear that these specific categories of employees were mandated reporters at the time that the alleged abuse occurred.

Penal Code section 11166 provides, "(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident." (Pen. Code, § 11166(a).). Here, Plaintiff has not alleged that Staikos and Levine suspected that Plaintiff was a victim of child abuse. Furthermore, Plaintiff has not alleged that Staikos or Levine were child care custodians of Plaintiff during the relevant time period. Therefore, the mandated reporter requirement does not apply.

For these reasons, along with a failure to establish a duty of care, the negligence cause of action is sustained without leave to amend.

2. Third and Fourth Causes of Action: Negligent Supervision/Retention/Hiring

The elements of a cause of action for negligent hiring, retention, or supervision are: (1) the employer's hired, retained, or supervised an employee; (2) the employee was incompetent or unfit; (3) the employer had reason to believe undue risk of harm would exist because of the employment; and (4) harm occurs. (Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 836-837.) In a footnote, Defendants note that the Court previously sustained the demurrer to the SAC because Plaintiff had failed to allege that there was a specific person in a supervisorial position over Michael Jackson. On reply, Defendants also argue Plaintiff's position is that Jackson was supervising himself. (See Reply 9:1-2, citing Opp. 11, at fn.1) Indeed, Plaintiff argues "Jackson's status as a managing agent provides actual notice to the corporation" (Opp. 11, at fn.1) and that the duty to adequately retain, supervise, hire, and warn against known dangers included Jackson. (See opp. at 11:13-15.)

Plaintiff alleges that Jackson was the president/owner of both entities (TAC ¶¶ 3-4). Plaintiff also

alleges that these entities were Jackson's alter egos. (Id. ¶¶ 5, 100.). Plaintiff also alleges that Defendants hired Jackson to "serve as a singer, dancer, entertainer, teacher, mentor, and coach to, in part, mentor and train minors in the entertainment industry." (TAC ¶ 8.) Plaintiff further alleges that the Defendants had a "duty to not hire and/or retain" Jackson. (See TAC ¶ 155.) The allegation that Defendant had a duty not to hire/retain Jackson, however is contradicted by their allegation that Jackson created the Defendants. (See TAC ¶¶ 3-4 ["MJJ Ventures was a company established by Michael Jackson" and "MJJ Productions was a company established by Michael Jackson"].)

Defendants are corporations and artificial entities. Corporations can only act through their agents, i.e. people, and Plaintiff appears to be arguing that Jackson should not have hired himself. Plaintiff does not allege facts that any other person at MJJ Productions or MJJ Ventures supervised Jackson such that they could terminate his role as a "singer, dancer, entertainer, teacher, mentor, and coach to, in part, mentor and train minors in the entertainment industry." (TAC ¶ 8.) Here, Jackson is both the employer (since Jackson was the president of both entity defendants) and the employee as alleged in the complaint. Therefore, the demurrer to this cause of action is sustained without leave to amend.

3. Fifth Cause of Action: Negligent Failure to Train, Warn or Educate

Defendants demur to the fifth cause of action arguing that they did not owe a duty to train, warn or educate Plaintiff. Defendants argue that the sort of special relationship that gives rise to a duty to warn has been reserved for schools, day care, or other youth organizations. (See Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377; Doe v. United States Youth Soccer Association (2017) 8 Cal.App.5th 1118.)

In opposition, Plaintiff argues that Courts have imposed duties on organizations that accept minors into their care, also citing Juarez. As Plaintiff recognizes, the Court of Appeal in Juarez engaged in a multi factor analysis to impose a duty based upon the factors set forth in Rowland v. Christian (1968) 69 Cal. 2d 108, 112-113.) Here, Plaintiff concludes that Defendants owed Plaintiff a duty arising from taking custody of children when the children face foreseeable risk (See Opp. at 13:13-14:4.). Plaintiff reaches this conclusion but fails to undertake the Rowland factor analysis. In Rowland, the Court looked at: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with resulting potential liability. The Rowland factors do not compel an imposed duty on

Defendants. In addition, Plaintiff alleged the secondary purpose of the corporations was to operate as a child sex abuse operation. (see TAC ¶ 5.) This alleged purpose would go to the creator of the organization and not the organizations themselves.

The Court of Appeal in United States Youth Soccer, declined to impose a duty to warn, train, or educate about the risk of sex abuse despite finding a special relationship. (Doe v. United States Youth Soccer Assn., Inc. (2017) 8 Cal.App.5th 1118, 1139, as modified on denial of reh'g (Mar. 16, 2017).) The Court distinguished Juarez from the case at hand, noting that in Juarez, the Boy Scouts already had a system in place to educate children, scout leaders, and parents, in English and in Spanish. (See id. at 1138.) The Court also noted that the Boy Scouts were designed to teach moral principles and that the activities of soccer were not similarly designed. The Court explained "Defendants are sports organizations. Children participate in these organizations to develop their athletic skills and to learn sportsmanship. These organizations are not designed to educate children, their parents, and others regarding the risk of sexual abuse . . .. Moreover, many parents would consider the education of their children about the risk of sexual abuse to be their responsibility, not that of a youth sports organization." (Id. at 1138.) While finding a special relationship existed, the Court of Appeal declined to impose a duty to train, warn, or educate about the dangers of sexual assault.

Here, Plaintiff alleged that Jackson was "hired" by Defendants to coach, teach, and mentor minors interested in the entertainment industry. Setting aside Plaintiff's allegation that Jackson was the President of both Defendants, Plaintiff has failed to allege specific facts detailing what such mentorship looked like (or was supposed to look like) from 1988 through 1992. Defendants also argue that Defendants were established for a completely different reason – that is, to manage the business affairs of Jackson. While there may be a factual dispute as to why Defendants were created by Jackson, there are no allegations that the Defendants were created – like the Boys Scouts were created – for the purpose of teaching moral principles, or that there was a system in place to educate either the children or parents. The rationale behind United States Youth Soccer in not imposing a duty to warn, train or educate children or their parents regarding the risk of sexual abuse, is even stronger with respect to the Defendants.

For these reasons, Plaintiff has failed to show that it has alleged sufficient facts to support a duty to warn, train, or educate. The demurrer is sustained without leave to amend.

END OF FINAL RULING

Clerk to give notice.

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Certificate of Mailing is attached.