

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

PRESENT: HON. SUZANNE J. ADAMS PART 39TR

Justice

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CHERI PIERSON,

Plaintiff,

- v -

LEON BLACK, ESTATE OF JEFFREY E. EPSTEIN,
DARREN K. INDYKE, RICHARD D. KAHN, THE 1953
TRUST

Defendant.

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INDEX NO. 952002/2022
MOTION DATE N/A
MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 71, 72, 73, 74, 79, 81, 83, 85

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 75, 76, 77, 78, 82, 84, 87

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that the motion of defendant Leon Black (mot. seq. 004) is denied, and that of defendants Estate of Jeffrey E. Epstein (the "Estate"), Darren K. Indyke, in his capacity as Co-Executor for the Estate and Co-Administrator of The 1953 Trust ("Indyke"), Richard D. Kahn, in his capacity as Co-Executor for the Estate and Co-Administrator of The 1953 Trust ("Kahn," and together with Indyke, the "Co-Executors"), and The 1953 Trust (the "Trust;" and collectively with the Estate and the Co-Executors, the "Epstein Defendants") (mot. seq. 005) is granted in part. This action, commenced in November 2022 pursuant to New York's Adult Survivors Act, CPLR § 214-j, arises out of allegations that in the spring of 2002, defendant Black sexually assaulted plaintiff at the Manhattan townhouse of the late Jeffrey Epstein. The Complaint states five causes of action: the First through Fourth sounding in,

respectively, sexual assault, sexual battery, intentional infliction of emotional distress, and gender motivated violence pursuant to N.Y.C. Admin. Code § 8-901 *et seq.*, as against Black; and the Fifth sounding in negligence as against the Epstein Defendants. Black now moves (mot. seq. 004) pursuant to CPLR 3211(a)(7) to dismiss the Third Cause of Action of the Complaint, and the Epstein Defendants now move (mot. seq. 005) pursuant to CPLR 3211(a)(7), or alternatively CPLR 3013, to dismiss the Fifth Cause of Action of the Complaint, or alternatively to dismiss plaintiff's punitive damages claim against the Estate and the Co-Executors. Plaintiff opposes both motions.

It is well established that “[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026). 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. Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law [cite omitted].” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). The criterion under CPLR 3211(a)(7), is whether the proponent of the pleading has a cause of action, not whether he has stated one. *Leon*, 84 N.Y.2d at 88 (citing *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977)).

Black seeks dismissal of plaintiff's Third Cause of Action for intention infliction of emotional distress (“IIED”) on the grounds that it is duplicative of her claims for assault, battery, and gender-motivated violence, as the claims all arise from the same incident alleged to have occurred in the spring of 2002, citing to, *inter alia*, *Herlihy v. Metropolitan Museum of Art*, 214 A.D.2d 250, 263 (1st Dep’t 1995). However, apart from that specific incident, plaintiff also alleges that other acts by Black, some together with Epstein, both before and after the incident, provide a

basis for the IIED claim. For example, the Complaint alleges that subsequent to the incident, Black repeatedly called plaintiff over the course of several months and “badgered” her into meeting with him on two other occasions, and that in general both Black and Epstein took advantage of the fact that plaintiff needed money. Affording the Complaint a liberal construction, as is required under the rule, it is found to have stated a cause of action for IIED and thus dismissal of the Third Cause of Action is not warranted. *See Warner v. Druckier*, 266 A.D.2d 2, 3 (1st Dep’t 1999).

The Epstein Defendants seek dismissal of the Fifth Cause of Action sounding in negligence. To state such a claim, a plaintiff must allege a duty owed to the plaintiff by the defendant, a breach of that duty, and injury as the proximate result of the breach. *Pasternack v. Lab. Corp. of Am. Holdings*, 27 N.Y.3d 817, 825 (2016). A property owner owes a duty of care to those on their premises to protect them from harm caused by the intentional acts of third parties, where the owner knows or has reason to know of the likelihood of harmful conduct by said third parties. *Nallan v. Helmsley-Spear, Inc.*, 50 N.Y.2d 507, 519 (1980). Here, plaintiff has made sufficient, specific allegations in the Complaint that Epstein knew or had reason to know that plaintiff could possibly be subject to harmful sexual activity by Black at Epstein’s home, that such activity did occur, and that she was injured as a result of the activity. Moreover, the Epstein Defendants’ reliance on CPRL 3013 as a basis for dismissal is misplaced. The Complaint’s allegations pertain to the acts of Epstein, who happens to be deceased; plaintiff has asserted claims as to the entities that now are considered as being in the place and stead of the deceased individual and/or the repository of any assets that Epstein owned in his lifetime. Plaintiff has correctly sued the Co-Executors in their capacities as executors of the Estate and administrators of the Trust. However, the Estate itself and the Trust itself are not proper parties to the action. *See EPTL § 11-3.2(a)(1)*; *Grosso v. Estate of Gershenson*, 33 A.D.3d 587 (2d Dep’t 2006); *People v. Trump*, 217

A.D.3d 609, 612 (1st Dep't 2023). Nor can punitive damages be awarded against the Epstein Defendants pursuant to EPTL § 11-3.2(a)(1), and thus plaintiff's claim for punitive damages are dismissed.

Accordingly, it is hereby

ORDERED that defendant Leon Black's motion (mot. seq. 004) is denied; and it is further

ORDERED that the Epstein Defendants' motion (mot. seq. 005) is granted to the extent that the caption should be amended to remove Estate of Jeffrey E. Epstein and The 1953 Trust as defendants, and that the claim for punitive damages against the Epstein Defendants is dismissed, and is otherwise denied; and it is further

ORDERED that defendants Black, Indyke, and Kahn shall serve their answers to the Complaint within 35 days of service of notice of entry of this order; and it is further

ORDERED that the parties shall appear in person before the court on October 30, 2023, at 3:00 p.m., for a settlement conference.

This constitutes the decision and order of the court.



10/23/2023

DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE