

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T:

HON. FELICE J. MURACA, A.J.S.C.

IAS/TRIAL PART 42

BIANCA KYNE,

Plaintiff,

DECISION & ORDER

Index No. 900001/2023

Motion Seq. # 002

-against-

**BRIAN WARNER a/k/a MARILYN MANSON,
 INTERSCOPE MUSIC PUBLISHING, INC.,
 NOTHING RECORDS, and DOES 1-20,
 whose identities are unknown to Plaintiff,**

Defendants.

E-filed documents 14-20 and 27-28 were reviewed in preparing this Decision and Order.

Plaintiff commenced this action under New York's Adult Survivors Act, CPLR 214-j ("ASA") by filing a Summons and Complaint on January 30, 2023.¹ Plaintiff alleges claims of sexual misconduct against Defendant, Brian Warner ("Warner") from 1995 until 1999. Plaintiff alleges she was the subject of retaliation that caused her emotional harm and distress after she came forward with allegations of abuse against Warner during an interview in 2021. Plaintiff's Complaint alleges the following causes of action:

- 1) **COUNT I:** Sexual Battery (Against Defendant Brian Warner);
- 2) **COUNT II:** Negligence (Against Defendant Interscope and Defendant Nothing Records and Does 1-20);
- 3) **COUNT III:** Negligent Supervision and Retention (Against Defendant Interscope and Defendant Nothing Records and Does 1-20);
- 4) **COUNT IV:** Intentional Infliction of Emotional Distress (Against All Defendants);
- 5) **COUNT V:** Deceptive Acts and/or Practices as a Violation of General New York General Business Law Section 349 (Against Defendant Interscope and Defendant Nothing Records and Does 1-20).

¹ Amended Summons and Complaint filed on April 21, 2023.

Warner moves pre-answer pursuant to CPLR 3211(a)(5), to dismiss allegedly time-barred causes of action in the Amended Complaint. In addition, Warner move pursuant to CPLR 3024(b), to strike certain “scurrilous allegations” claiming they are allegedly “not relevant to any timely cause of action.”

Defendants Interscope Music Publishing, Inc., Nothing Records (“Company Defendants”) and John Does 1-20 have not appeared in this Action. However, Plaintiff has not electronically filed proof of service on the Company Defendants or Does 1-20.²

CPLR 3211(a)(5)

First Cause of Action

Warner seeks dismissal of Count 1-Sexual Battery, relating to allegations of abuse against Plaintiff when she was a minor. Plaintiff alleged in her Complaint incidents that occurred in the states of Texas and Louisiana during 1995, when Plaintiff was under the age of 18. Warner claims those incidents were not revived by the ASA statute and therefore, should be dismissed.

Plaintiff concedes and consents to removal of paragraphs 67, 74-76 and 78 from the Complaint. Ultimately, Plaintiff agrees to limit the battery causes of action to two incidents alleged to have occurred in New York from 1999.

This Court finds that Plaintiff substantially addressed the 1995 “minor” claims in Plaintiff’s “Factual Allegations” contained in Paragraphs 40-53. The Plaintiff is ordered to remove all allegations of sexual abuse by Warner while Plaintiff was a minor. The Court will permit Plaintiff to state with particularity the time, place, and witnesses of all interactions between Plaintiff and Warner, solely for the purposes of notice, as it relates to the Second, Third and Fourth Causes of Action.³

Warner has not moved to dismiss the First Cause of Action relating to Sexual Battery claims alleged in 1999.

Second, Third and Fifth Cause of Action

Warner seeks dismissal of Plaintiff’s allegations of Negligence, Negligent Supervision and Retention, and for Violations of General Obligations Law § 349, against Company Defendants and

²No affidavit of service was proffered as to Warner; however, Warner waived any allegation of improper service as it was not raised in his motion to dismiss. (CPLR 3211(e))

³Any specific reference to conduct of sexual abuse to Plaintiff as a minor must be removed.

Doe Defendants. Warner claims that the ASA did not extend the statute of limitations for the respective claims.

In Opposition, Plaintiff does concede to remove references to claims of sexual abuse while Plaintiff was a minor, Paragraphs 104 and 115. Plaintiff is directed to abide by its concession and remove references to conduct of sexual abuse against Plaintiff as a minor with the “notice” exception as directed by the Court above.

Warner does not have standing to seek dismissal of these allegations. Warner’s counsel does not represent Company or Doe Defendants. Company and Doe Defendants have not appeared in this Action. Moreover, Company and Doe Defendants have not raised a statute of limitations defense. Which is a waivable defense, and this Court cannot *sua sponte* grant dismissal. (CPLR 3211(e)). Therefore, Warner’s motion seeking dismissal of the Second, Third and Fifth Causes of Action against Company Defendants and Doe Defendants is denied.

Fourth Cause of Action

Warner seeks dismissal of Plaintiff’s allegations of Intentional Infliction of Emotional Distress (IIED) against Warner, Company Defendants and Doe Defendants. Warner claims that the ASA revival statute did not extend the statute of limitations to permit Plaintiff to bring a cause of action of IIED.⁴ Warner argues that Plaintiff’s claims for IIED are based on related incidents of abuse that occurred outside of New York (i.e., Texas and Louisiana, 1995 claims). Warner claims it is entitled to dismissal since the claims accrued outside of New York and applying the borrowing statute under CPLR 202, the claims would be time barred under the foreign jurisdiction’s time limitations period. Warner argues and cites to supporting case law that “the accrual of IIED occurs at the time and place of where the Plaintiff first had the right to bring the cause of action.” (*Doe v. Roman Cath. Diocese of Erie, Pa.*, No. 20-CV-0257 (LEK/ML), 2021 WL 5232742, at *6 (N.D.N.Y. Nov. 10, 2021) (quoting *Glob. Fin. Corp.*, 93 N.Y.2d at 528) (emphasis added); see also *Kidder*, 2023 WL 361200, at *7).

Plaintiff opposes dismissal claiming that the borrowing statute, CPLR 202, does not apply and that the continuous tort doctrine applies to the IIED claim. Plaintiff argues that the legislature

⁴ This Court did not address Defendant’s IIED claims as it relates to the Causes of Action of Battery in Louisiana and Texas as Plaintiff already conceded above that she is removing the claims of battery when she was a minor from the pleading.

did not intend for CPLR 202 to bar claims of *future liability*. Plaintiff avers that Warner's argument is not supported in fact or law and that her IIED claims from 1999, 2021 and 2023 are not barred by the first possible claim of IIED stemming from out of state conduct in 1995. Plaintiff also concedes that she will remove portions of paragraphs 119 and 122 as they relate to the sexual abuse of Plaintiff as a minor. As explained above, Warner does not have standing to move for dismissal of the Fourth Cause of Action on behalf of Company and Doe Defendants.

As to Warner's individual claim for dismissal, the borrowing statute does not and cannot apply to the facts in this case. Warner claims that Plaintiff's time to commence the IIED claim commenced in 1995 at the time of the first alleged sexual abuse, when Plaintiff was a minor. Warner's argument fails since the sexual abuse claim as a minor is not being presented as evidence by the Plaintiff. As stated above, Plaintiff conceded to removing any reference to the battery claims as a minor. Warner cannot argue it both ways. In the first section of his motion he sought dismissal of the sexual abuse of a minor claim. Plaintiff conceded to remove it. Warner cannot now argue that the statute of limitations period commenced from that same sexual abuse claim.

It should also be noted that Plaintiff does not claim they intend to prove an IIED claim stemming from 1995. Warner has not proffered a valid argument entitling him to dismissal under CPLR 3211(a)(5).

CPLR 3024(b)

Warner moves to strike several paragraphs from Plaintiff's Amended Complaint: 1-3, 5-6, 16-53, 56, 60, and 67. Warner claims that all paragraphs related to time barred claims should be stricken as they would cause undue prejudice. Warner also claims that "the dozens of paragraphs...about Warner's alleged obsession with minors, acts against minor and the like, serve no purpose other than to prejudice Warner."

Plaintiff concedes that there is no direct claim for childhood sexual abuse but opposes striking the factual allegations as they directly relate to Company and Doe Defendant's notice and knowledge of Warner's propensity for violence and sexual abuse. Plaintiff contends that notice and knowledge are relevant to the Second, Third and Fifth Causes of Action.

CPLR 3024(b) allows a party to move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading. In deciding a CPLR 3024(b) motion, the court is to determine whether the questioned material is relevant to a cause of action. (*Soumayah v. Minelli*, 41 AD3d

390 [1st Dept. 2007]). "...[I]t is generally held that the test under this section is whether the allegation is relevant, in an evidentiary sense, to the controversy and, therefore, admissible at trial." (*Wegman v. Dairylea Co-op., Inc.*, 50 AD2d 108, 111 [4th Dept. 1976]).

A "[m]atter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements (*see New York City Health & Hosps. Corp. v St. Barnabas Community Health Plan*, 22 AD3d 391 [2005]; *Cassisi v Yee*, 46 Misc 3d 552, 557 [Sup Ct. Westchester County 2014]). However, the mere striking of matter from a pleading under CPLR 3024 (b) does not, ipso facto, preclude related facts or evidence from being admitted at a later trial." (*Pisula v R.C. Archdiocese of New York*, 201 AD3d 88, 97 [2d Dept 2021]). While left to the discretion of the trial court, striking scandalous or prejudicial matter from pleadings are generally disfavored. (*Id.*) "Scandalous matter may be stricken from a pleading regardless of whether it is prejudicial, and vice versa, but also if the matter contained in the pleading is unnecessary." (*Id.* at 95).

Plaintiff's Amended Complaint includes images of flyers, promotions, billboards and posters of Warner's band. These documents were allegedly published by Company Defendants. Plaintiff then gives her own personal description of the imagery therein. Plaintiff proffers this explanation to support her claim that Company Defendants were on notice of Warner's propensity for violence and sexual abuse. In addition, Plaintiff proffers album titles, song titles and lyrics, and gives her own personal description of their meaning. Plaintiff's Amended Complaint also includes several statements quoted from public interviews: Access Magazine, Seconds Magazine, Rolling Stone.⁵ Plaintiff also claims that some of the statements and/or admissions were made by Warner himself in his autobiography.

Plaintiff's Amended Complaint, while it may contain excessive detail it certainly does not rise to a level of scandalous or prejudicial information. Since Plaintiff has conceded to remove all claims of sexual abuse alleged while she was a minor, the remaining factual allegations are merely public records and Plaintiff's opinions.

Plaintiff's Amended Complaint organizes paragraphs 40-53 under a section labeled "Defendant Warner Sexually Assaulted Plaintiff at Age 16." Plaintiff has conceded to remove all references to the alleged sexual abuse at age 16. Plaintiff will have to reorganize the Complaint to

⁵ To name a few, additional cited interviews throughout the Amended Complaint.

reflect that the paragraphs relate to notice of Company Defendants. The subtitle of the section alone does not warrant all the paragraphs being stricken.

The Court does find that Paragraphs 49⁶-51, along with Plaintiff's drawings made when she was 16 years old, while not scandalous or prejudicial, are completely unnecessary to support Plaintiff's pleadings. These paragraphs will be stricken, and the Court directs Plaintiff to remove any reference thereto of irrelevant drawings made by Plaintiff when she was minor from the Second Amended Complaint. The Plaintiff does not claim the drawings put the Company Defendants on notice.

Accordingly, it is hereby

ORDERED, that Warner's motion to dismiss is **GRANTED IN PART**, as to the Plaintiff's First Cause of Action, all allegations of sexual abuse as a minor in 1995 are dismissed on consent, and Plaintiff is directed to remove these allegations from the section "Factual Background," and it is further

ORDERED, that Warner's motion as to the Second, Third, Fourth, and Fifth Causes of Action are **DENIED**; and it is further

ORDERED, that the Court is striking the paragraphs related to Plaintiff's drawings as a minor and Plaintiff is directed to remove them from the Second Amended Complaint, and it is further

ORDERED, that Plaintiff is to serve a Second Amended Complaint in accordance with this Decision, within thirty (30) days.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this Court.

Dated: July 2, 2024
Mineola, NY

ENTER:


Hon. Felice J. Muraca, A. J. S. C.

⁶ The portion of paragraph 49 that relates to her at age 16 and her drawings.