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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SUZANNE J. ADAMS** **PART** **39M**

Justice

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JULIA ORMOND,

Plaintiff,

- v -

HARVEY WEINSTEIN, CREATIVE ARTISTS AGENCY, LLC,THE WALT DISNEY COMPANY, MIRAMAX FILM NY, LLC

Defendant.

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INDEX NO. 952107/2023

MOTION DATE 5/20/2024

MOTION SEQ. NO. 002 003 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 34, 35, 41, 45

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 15, 16, 17, 18, 38, 39, 42

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 29, 30, 31, 32, 36, 37, 40

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and oral argument having been held before the court on May 20, 2024, it is ordered that the motions of defendants The Walt Disney Company ("Disney") (mot. seq. 002), Creative Artists Agency, LLC ("CAA") (mot. seq. 003), and Miramax Film NY, LLC ("Miramax") (mot. seq. 005), are denied. Plaintiff commenced this action in October 2023 pursuant to New York's Adult Survivors Act, CPLR § 214-j, alleging that defendant Harvey Weinstein sexually assaulted her in December 1995, and asserting four causes of action: the First sounding in battery as against Weinstein; the Second sounding in negligent supervision and retention as against Disney and Miramax; and the Third and Fourth Causes of action sounding in

negligence and breach of fiduciary duty, respectively, as against CAA. Disney, Miramax, and CAA now move pursuant to CPLR 3211(a)(7) to dismiss the respective causes of action asserted against them. Plaintiff opposes the motions.

Standard of Review and Relevant Factual Allegations of the Complaint

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." *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)).

The complaint (NYSCEF doc. no. 1; subsequent paragraph citations refer to the complaint) alleges that in December 1995, plaintiff, an actor, was sexually assaulted by Weinstein, a film producer, in her Manhattan apartment. By way of background, the complaint alleges that Weinstein and his brother, Robert Weinstein, had created an independent film-distribution company named "Miramax" in the late 1970s (¶ 16), which entity was purchased by Disney in 1993 (¶ 18). The complaint identifies defendant Miramax (*i.e.*, Miramax Film NY, LLC) as having "merged with and assumed all liabilities of Miramax Film Corp." in 2010 (¶ 10), and that Miramax Film Corp. was at all relevant times a subsidiary of Disney. The complaint refers to Miramax Film NY, LLC, and Miramax Film Corp. collectively as "Miramax" (¶ 10).[1] It further alleges that Miramax Film Corp., Disney, and Weinstein entered into two employment agreements, effective for the periods 1993 to 1995, and 1995 to 1999 (¶ 12).

[1]Plaintiff discontinued the action as to defendant Miramax Holding Corp. without prejudice in November 2023 (NYSCEF doc. no. 6).

Plaintiff and Weinstein had become acquainted in 1994, and in 1994 and 1995 Weinstein would periodically contact plaintiff to discuss screenplays. In August 1995, CAA, plaintiff's agent in the United States, negotiated and secured for plaintiff a two-year film production agreement with Miramax. Per the agreement, plaintiff moved from England to New York City and lived there in an apartment paid for by Miramax. On the day of the alleged assault in December 1995, plaintiff and Weinstein met for a business dinner in New York City to discuss certain details of the first phase of a film project proposed by plaintiff's production company to Miramax. Later that evening, after the dinner, plaintiff and Weinstein returned to plaintiff's apartment, where the assault occurred.

Miramax's Motion to Dismiss (mot. seq. 005)

Although not first to be filed, Miramax's dismissal motion is considered first, since Weinstein's connection to Miramax necessarily defines his connection to Disney. The Second Cause of Action as to Miramax alleges negligent supervision and retention. It is not disputed that to state such a claim, a plaintiff must allege not only the elements of a negligence claim (*i.e.*, duty, breach of same, injury proximately resulting from the breach), but must further allege that "(1) the employer had actual or constructive knowledge of the employee's propensity for the sort of behavior which caused the injured party's harm; (2) the employer knew or should have known that it had the ability to control the employee and of the necessity and opportunity for exercising such control; and (3) the employee engaged in tortious conduct on the employer's premises or using property or resources available to the employee only through their status as an employee, including intellectual property and confidential information." *Moore Charitable Found. v. PJT Partners, Inc.*, 440 N.Y.3d 150, 157 (2023). Viewing the complaint so as to "accord plaintiffs the benefit of every possible favorable inference," as the court is required to do, the allegations therein

sufficiently state a negligent supervision and retention claim against Miramax. Thus, Miramax's motion is denied.

A threshold question is whether the Miramax entity sued herein – Miramax Film NY, LLC – can be held liable for Weinstein's conduct. Miramax maintains that because Miramax Film NY, LLC, was only formed in 2010, it had not employed Weinstein at time of the alleged assault. The complaint alleges that Weinstein had an employment contract with, or was an officer or director of, Miramax Film Corp. (¶ 10) However, plaintiff also alleges that in 2010, Miramax Film NY, LLC merged with and assumed all liabilities of Miramax Film Corp. (¶ 10) Miramax proffers no documentary evidence to contradict this allegation, and as such, the claim survives.

Next, plaintiff's allegations that Miramax knew it had the ability, need, and opportunity to control Weinstein are sufficiently pled. It is enough to allege that Weinstein was either an employee, or officer or director, of Miramax, a corporation, to support a claim that Miramax exercised supervision and control over him. *J.D. v. Archdiocese of N.Y.*, 214 A.D.3d 561 (1st Dep't 2023). *See also Engelman v. Rofe*, 194 A.D.3d 26, 33-34 (1st Dep't 2021). Furthermore, plaintiff sufficiently alleges that Miramax knew or should have known of Weinstein's propensity to commit sexual assault. The complaint sets forth allegations which suggest that Weinstein's untoward behavior was known to Miramax officers prior to the assault at issue, including Amy Israel, Miramax's Senior Vice President and Co-head of Acquisitions (¶ 76); Irwin Reiter, Miramax's Executive Vice President of Accounting and Financial Reporting (¶ 77); and Nancy Ashbrooke, Miramax's Vice President of Human Resources (¶ 78). These and other allegations (cf. (¶(¶ 71, 72, 75) "permit [ ] an inference" that Miramax, as "a reasonably prudent employer, exercising ordinary care under the circumstances, would have been aware of [Weinstein's] propensity to engage in the injury-causing conduct." *Moore Charitable Found.*, 440 N.Y.3d at 158-59.

Finally, plaintiff has sufficiently alleged the last element of a negligent supervision claim, that the alleged assault took place on Miramax premises, or was connected to Weinstein's employment at Miramax. Plaintiff alleges that her move from London to New York City was prompted by her film production agreement with Miramax: she began working from Miramax's Manhattan office and moved into an apartment paid for by Miramax (¶¶ 41, 42). However, apart from the allegation that the assault occurred in this apartment – Weinstein's comment that he was paying for it (¶ 49) more reasonably implies that his company was paying for it, not him personally – is the assertion that plaintiff and Weinstein's meeting on the day of the assault was occasioned by the fact of their professional relationship, since the meeting was to discuss Miramax's financing of plaintiff's proposed film project (¶¶ 44, 45, 46, 47, 49, 50), and plaintiff alleges they continued to discuss the financing in the apartment – at Weinstein's suggestion (¶ 49) – shortly before the moment of the assault (¶¶ 49, 50). Weinstein is alleged to have "engaged in tortious conduct on the employer's premises *or using . . . resources available to [him] only through [his] status as an employee* . . . (emphasis added)," as set forth in *Moore Charitable Found.*, 440 N.Y.3d at 157. Plaintiff has adequately alleged that Weinstein used his position at Miramax, and his power to greenlight financing on her project per her film production agreement with Miramax, to facilitate his assault on her.

Disney's Motion to Dismiss (mot. seq. 002)

Plaintiff's allegations as to Disney are also sufficient to state a claim for negligent supervision and retention, warranting denial of Disney's motion. The gravamen of Disney's argument for dismissal is that it was not Weinstein's employer, and the fact that Miramax was Disney's separate corporate subsidiary did not confer on Disney the power to control Weinstein's activities. However, the complaint alleges that Weinstein signed employment contracts with

Disney, as well as with Miramax, prior to the alleged assault (¶ 12). This allegation is enough to state a claim at the pleading stage. *See Engelman v. Rofe*, 194 A.D.3d 26, 33 (1st Dep't 2021). Moreover, the complaint also alleges, beyond the existence of a Disney-Weinstein employment contract, that Weinstein reported directly to Disney's CEO, Michael Eisner; that Eisner delegated oversight of Weinstein to several other Disney – not Miramax – executives, including the Chairman, Jeffrey Katzenberg (¶¶ 24, 25, 26); and that Disney paid Miramax's employees, controlled its budget, audited its books, and reviewed and paid its business expenses (¶ 13). Cumulatively, these allegations meet the first prong of the test for "piercing the corporate veil" articulated in *Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141 (1993), namely that "the owners exercised complete domination of the corporation in respect to the transaction attacked." Disney proffers no documentary evidence to disprove plaintiff's characterization of the Weinstein-Disney or the Miramax-Disney relationship.

Consequently, the second prong of the *Matter of Morris* test, "that such domination was used to commit . . . a wrong against the plaintiff which resulted in plaintiff's injury," 82 N.Y.2d at 141, is also met by virtue of the allegations asserted as to Miramax, discussed hereinabove. Disney purchased Miramax in 1993, prior to the alleged December 1995 assault, and one or both employment agreements among Weinstein, Miramax, and Disney were in effect in December 1995. Thus, the allegations that Miramax knew it had the ability, need, and opportunity to control Weinstein; that it knew or should have known of Weinstein's propensity to commit sexual assault; and that the alleged assault took place on Miramax premises, or was connected to Weinstein's employment at Miramax, all stand against Disney at this pleading stage of the litigation.

CAA's Motion to Dismiss (mot. seq. 003)

The Third Cause of Action sounds in negligence as against CAA, and the Fourth Cause of Action claims that CAA breached its fiduciary duty to plaintiff. To reiterate the standard described above, the court must afford the complaint herein a liberal construction, accept the alleged facts as true, and accord plaintiff the benefit of every favorable inference. Under this standard, the complaint has sufficiently stated these causes of action against CAA, and as such, CAA's motion is denied.

To state a claim for negligence, a plaintiff must allege a duty owed by the defendant, a breach of the duty, and an injury proximately resulting from the breach. *Pasternack v. Lab'y Corp. of Am. Holdings*, 27 N.Y.3d 817, 825 (2016). A claim for breach of fiduciary duty requires a plaintiff to allege the existence of a fiduciary duty owed by the defendant, misconduct by the defendant, and damages caused by the defendant's misconduct. *Besen v. Farhadian*, 195 A.D.3d 548, 549-50 (citation omitted) (1st Dep't 2021). CAA does not dispute that it owed plaintiff a fiduciary duty; her contract with CAA incorporated a Screen Actors Guild regulation that specifically provides that an agent's relationship to an actor is that of a fiduciary. (Affidavit of Meredith A. Firetog, Esq. in Support of Plaintiff's Opposition, ¶ 5, and Exhibit C annexed thereto.) It therefore follows that CAA also had a "special relationship" with plaintiff. A "special relationship" giving rise to a duty between a victim of harm and a defendant has been held to include that between an employer and an employee. *Einhorn v. Seeley*, 136 A.D.2d 122, 126 (1st Dep't 1988). Further, the Court of Appeals has recognized that " 'a contracting party may be charged with a separate tort liability arising from a breach of a duty distinct from, or in addition to, the breach of contract [citation omitted].' A tort may arise from the breach of a legal duty independent of the contract . . .. A legal duty independent of contractual obligations may be

imposed by law as incident to the parties' relationship. Professionals . . . for example, may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties. [citations omitted]" *Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 551 (1992). Here, any question as to the duty imposed generally by the commercial relationship between plaintiff as an actor and CAA as her agent is put to rest by the specific provision in their contract that CAA's relationship to plaintiff is that of a fiduciary. The court does not have to stretch to recognize a claim that a special relationship exists in the context of CAA's specifically agreeing to assume the responsibilities of a fiduciary. *See, e.g., King County, Wash. v. IKB Deutsche Industriebank AG*, 863 F. Supp. 2d 288, 314 ("a breach of fiduciary duty claim requires a closer relationship that the 'special relationship' necessary for a negligent misrepresentation claim").

Thus, both the negligence claim and the fiduciary duty claim turn on allegations that prior to the alleged assault, CAA had knowledge of Weinstein's tortious proclivities and failed to protect plaintiff from him. With respect to CAA's prior knowledge of Weinstein's alleged propensity toward sexual assault, plaintiff alleges that the year before the assault at issue, another CAA client reported to CAA that Weinstein proposed sex in exchange for career opportunities (¶ 69). The complaint alleges that CAA advised this woman that it was pointless to do anything about the encounter (¶ 69), which advice is similar to that alleged to have been given plaintiff after she told them of Weinstein's assault on her, *i.e.*, that nothing should be done about it. CAA representatives are claimed to have advised her not to report the assault because she likely would not be believed, would not receive more than $100,000, and might be sued by Weinstein for libel (¶ 57). These allegations, taken together, suggest that CAA knew or had reason to know of a potential assault by Weinstein. "The allegations are drafted with "sufficient precision to enable the court to control the case and the opponent to prepare [citation omitted]." *Century Indem. Co. v. Archdiocese of*

N.Y., 226 A.D.3d 557, 558 (1st Dep't 2024) (where the First Department reversed dismissal of plaintiff's action because, *inter alia,* "[t]he complaint alleges that issues surrounding child sexual abuse in the Archdiocese 'reached the Church's highest levels' and that 'senior [Church] officials had known for decades that members of the clergy had and were committing sexual abuse,' as reflected in newly public sources"). Likewise, the complaint sufficiently alleges that CAA failed to protect plaintiff from Weinstein, failing to warn her of his alleged reputation while at the same time negotiating the production company agreement between plaintiff and Miramax, and later arranging the dinner meeting between plaintiff and Weinstein (¶¶ 43, 46). Weinstein's alleged continuation of the business meeting in the apartment where plaintiff was living and subsequent assault there does not eliminate the possibility of CAA as a proximate cause of harm to plaintiff. "An intervening act may not serve as a superseding cause, and relieve an actor of responsibility, where the risk of the intervening act occurring is the very same risk which renders the actor negligent (*Derdiarian v. Felix Contr. Corp.,* 51 N.Y.2d 308, 316 (1980) [other citations omitted]." *Gonzalez v. City of New York*, 133 A.D.3d 65, 70-71); *see also Sokola v. Weinstein*, 78 Misc. 3d 842, 860 (Sup. Ct. New York County 2023).

Accordingly, it is hereby

ORDERED that defendant Disney's motion (mot. seq. 002) is denied; and it is further

ORDERED that defendant CAA's motion (mot. seq. 003) is denied; and it is further

ORDERED that defendant Miramax's motion (mot. seq. 005) is denied; and it is further

ORDERED that defendants Disney, CAA, and Miramax 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 within 35 days of service of defendants' answers, the parties shall submit to the Part Clerk of Part 39 an agreed upon Preliminary Conference Order for the judge's review and signature, as per the Part Rules.

This constitutes the decision and order of the court.

8/19/2024
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE