SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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INDEX NO. 952333/2023

MOTION DATE 05/06/2024

MOTION SEQ. NO. 005

ARLENE J. DELGADO,

Plaintiff,

- v -

DONALD J. TRUMP FOR PRESIDENT, INC.,JAMESTOWN ASSOCIATES, LLC,JASON MILLER

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 89, 92, 93, 94, 95, 96, 97, 98, 99, 100, 110, 111, 112, 113, 114

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant's motion is granted in part and denied in part.

Background

Arlene Delgado ("Plaintiff") served as a Senior Advisor in Communications and a Hispanic Outreach Director for Donald J. Trump for President, Inc (the "Trump Campaign") from September 2016 to January 2017. While working for the Trump Campaign, Plaintiff's direct supervisor was the man who extended her the job offer, Jason Miller ("Miller"). Miller was also employed by Jamestown Associates, LLC ("Jamestown"), a vendor for the Trump Campaign. Plaintiff alleges that, beginning with an incident in Nevada in 2016, she was "subjected to a cycle of sexual coercion, rape, sexual assault, abuse, battery, sexual harassment, and sex trafficking" by Miller. The parties dispute the timing, location, and nature of many of the incidents contained within that alleged cycle. Plaintiff filed her complaint on November 22, 2023, with an amended complaint filed in March of 2024. Miller brings the present motion to dismiss.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340 (2d Dept. 2003). Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 (1994).

CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally "constitutes a complete bar", for a signed release the burden shifts to the plaintiff to "show that there has been fraud, duress, or some other fact which will be sufficient to void the release." *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 (1977).

Discussion

Miller moves to dismiss the amended complaint in its entirety on several grounds. These include lack of jurisdiction, statute of limitations, res judicata, and failure to state a claim. Plaintiff opposes. For the reasons that follow, the motion is granted as to the first, second, fifth, and sixth causes of action and denied as to the remaining claims.

Personal Jurisdiction and the Adult Survivors Act

Miller argues that Plaintiff has failed to meet their burden of establishing personal jurisdiction over him. CPLR § 3211(a)(8) allows a party to move to dismiss claims asserted against them on the grounds that the court lacks jurisdiction over the party. When such a motion is brought, the plaintiff then "has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate that jurisdiction over the defendants is warranted." *Bangladesh Bank v. Rizal Commercial Banking Corp.*, 226 A.D.3d 60, 74 (1st Dept. 2024). Miller is currently a resident of Virginia.

Under CPLR § 302(a)(2), a person who commits a tortious act within the state is subject to New York jurisdiction. Miller's argument that this Court lacks jurisdiction relates to a dispute between Plaintiff and various defendants over allegations made in the first complaint compared to the amended complaint. Miller argues that any allegation of tortious acts committed in New York were not present in the first complaint, and only appeared in the amended complaint. This is relevant because the first complaint was brought pursuant to the limited revival window of the Adult Survivor's Act ("ASA") and the amended complaint was filed after the window to bring claims under the ASA had closed. The amended complaint adds details and factual allegations regarding two incidents of sexual assault in New York in 2016. Under CPLR § 203(f), a claim that is asserted in an amended complaint relates back to the original complaint "unless the

original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading."

Therefore, the issue becomes whether the original complaint gave notice of the New York-based claims or not, according to the CPLR § 203(f) standard. The original complaint makes several conclusory statements that Miller committed various tortious acts in New York, but there are some facts alleged that would go to providing notice. The original complaint states that Miller would insist on Plaintiff staying with him overnight "whenever the two were both in New York" and that he would often arrange for Plaintiff to come to him in New York in order to "engage in relations with her." Other factual allegations regarding sexual assault follow from this statement and could likely have been referring to the time spent together in New York. The original complaint also alleges that Miller required Plaintiff to "engage in coerced sexual acts in multiple jurisdictions" including New York, and that there were "repeated physical and sexual assaults of Plaintiff in New York City."

All of these are sufficient to place the defendants on notice that her claims were based on alleged sexual assaults and tortious actions that took place in New York. That the amended complaint fleshed out these incidents with more specific dates and locations does not mean that the original was fatally deficient in this regard. In *Lippett*, the First Department held that allegations that plaintiff had been sexually assaulted sometime in 2000 and that she had complained to defendant "provides sufficient notice of the events to be proved." *Lippett v. Educ. Alliance*, 14 A.D.3d 430, 431 (1st Dept. 2005). Here, the original complaint had a similar level of detail. Because there were sufficient allegations in the original complaint to put the defendants on notice that there were claims arising from alleged sexual assaults in New York in 2016, the

amended complaint relates back. Both complaints adequately alleged tortious acts in New York and there is personal jurisdiction over Miller.

The Amended Complaint is Not Time-Barred Pursuant to CPLR § 202

Miller argues that CPLR § 202 bars the complaint, because Plaintiff would be forced to bring her claims in the jurisdiction where they first accrued (he argues this is Nevada), and Nevada's statute of limitations applies rather than the ASA. CPLR § 202 is a borrowing statute that requires a nonresident (such as Plaintiff here) who sues on a cause of action that accrued outside New York, to have a claim that is timely under both jurisdictions. *S.H. v. Diocese of Brooklyn*, 205 A.D.3d 180, 190 (2d Dept. 2022). Because here Plaintiff alleges that incidents of sexual assault took place in Nevada, Florida, and New York, Miller argues that all Plaintiff's claims first accrued at the site of the first incident in Nevada and are thus time-barred under that state's statute of limitations. Plaintiff argues that in order for her claims to be time-barred, Miller and the other defendants would bear the burden of establishing that no sexual assaults took place in New York.

The issue then is whether Plaintiff is able to bring a claim solely for the assaults that allegedly occurred in New York, or whether the earlier alleged assault in Nevada would cause all of her claims to have accrued in that state. While the borrowing statute's application is clear in cases where all injuries occurred out of state, application in cases such as the present one where there are injuries occurring in multiple locations over a period of time is murkier. In *Kidder*, the New York Western District Court examined a similar situation. *Kidder v. Hanes*, 2023 U.S. Dist. LEXIS 11126, *8-12 (W.D.N.Y., Jan. 23, 2023). The court there decided that "each assault incident was a separate cause of action" and that CPLR § 202 only applied to claims for incidents that occurred out-of-state. *Id.*, at * 16. If, however, a claim was for a continuous tort

that involved activity both in- and out-of-state, then CPLR § 202 would apply based on when the claim first accrued. *Id.*, at *17. *Kidder* is not binding on this Court, but the reasoning is sound and therefore to the extent that Plaintiff's claim is for incidents that occurred and accrued in New York, CPLR § 202 will not operate to bar them.

Res Judicata Does Not Bar the Amended Complaint

Miller also argues that Plaintiff's claims are barred by *res judicata* or claim preclusion because the allegations of sexual assault were not brought up during the preceding Florida custody dispute between the parties. The doctrine of claim preclusion "acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties." *Rojas v. Romanoff*, 186 A.D.3d 103, 107 (1st Dept. 2020). Miller contends that Plaintiff should have advanced her claims of sexual assault in the Florida custody action, and that failure to do so there barred any subsequent civil action based on sexual assault. Plaintiff argues that a sexual assault counterclaim was not compulsory in the Florida action and distinguishes the case cited by Miller as one involving a Family Court action that had actually adjudicated the contested issue. The Court agrees with Plaintiff on this issue. A claim for sexual assault was not required to have been brought in the Florida action in order to determine Plaintiff's remedies, and as the goal of the two suits are different (adjudicated the welfare of a child versus seeking remedies for sexual assault), *res judicata* does not bar the Plaintiff's claims.

This Court Does Not Have Jurisdiction Over the Federal Sex Trafficking Claim

Plaintiff's first count alleges that Miller and the other defendants violated the federal sex trafficking law (the "TVPRA") found in 18 U.S.C. § 1591, *et seq*. Miller argues that this count fails to state a claim because such a claim is required to be brought in federal not state court, and because the amended complaint fails to adequately plead the required elements. In response,

Plaintiff merely states that Miller has failed to establish that state courts cannot hear federal claims.

The United States Supreme Court has held that while state courts have concurrent jurisdiction over federal claims, this is a presumption that can be rebutted "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore Co., Div. of Pool Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). The TVPRA provides for victims to bring a civil suit "in an appropriate district court of the United States." 18 U.S.C. § 1595(a). Furthermore, the act allows for a state's attorney general to bring a civil action on behalf of victims in their state "in an appropriate district court of the United States." 18 U.S.C. § 1595(d). These provisions are a clear, explicit statutory directive that civil suits seeking remedies for victims pursuant to the federal sex trafficking act are to be brought in an appropriate federal district court. This Court has no jurisdiction over a claim brought under the TVPRA and therefore this cause of action is dismissed in its entirety.

The New York Sex Trafficking Claim Fails to Allege a Necessary Element

Plaintiff has also brought a claim pursuant to the New York sex trafficking act. This act allows for victims of conduct prohibited in certain sections of the New York penal code to bring a civil suit seeking relief. NY CLS Soc. Serv. § 483-bb(c)(i). Plaintiff's claim is predicated on the alleged violation of N.Y. Penal Law § 230.34. This provision states that a "person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by" a set of certain actions. NY CLS Penal § 230.34(1). None of the circumstances outlined in the penal code are alleged in the amended complaint, and there are no allegations that the interactions between Plaintiff and Miller or any of the other defendants was prostitution. Plaintiff has not disputed this

in their papers. Therefore, the second cause of action fails to allege a necessary element and dismissal of this claim in its entirety is proper.

The Sexual Assault and Battery Claim Is Not Inherently Irreconcilable

The third cause of action was brought pursuant to the ASA alleges that Miller committed a sexual assault/battery against Plaintiff in violation of New York Penal Law. Miller has moved to dismiss this claim on the grounds that it is time-barred, blocked by *res judicata*, and that Plaintiff's statements in the Amended Complaint and in various articles and forms of social media are contradictory. As explored above, because the original complaint adequately alleged sexual assault incidents in New York, the amended complaint validly relates back, and the claims were timely under the ASA. The amended complaint is also not barred by *res judicata* from the Florida action. Because this is a motion to dismiss and Plaintiff is given every favorable inference and their facts alleged are taken to be true, this Court does not find that there are inherent irreconcilable differences in the amended complaint that would defeat a claim for sexual assault. Stating that "a relationship [began] which lasted over two months" and alleging unwanted sexual contact is not so inconsistent as to be grounds for claim dismissal at this stage.

The Victims of Gender-Motivated Violence Claim Does Not Require Additional Indicia of Gender-Motivated Animus

In her fourth cause of action, Plaintiff alleges that Miller's assaults constitute a violation of the New York City's Victims of Gender-Motivated Violence Act (the "VGMVA"). This law defines a crime of violence motivated by gender as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." NYC Admin. Code. § 10-1103. Miller moves to dismiss the claim on the grounds that the allegations of assaults in New York City are time-barred. For the reasons explored above,

this argument is unavailing. Miller also argues that the amended complaint does not adequately allege that the assaults were motivated by an animus towards Plaintiff's gender. The First Department grappled with the question of whether the VGMVA requires that in cases of sexual assault, a valid claim would require additional allegations showing gender-motivated animus. *Breest v. Haggis*, 180 A.D.3d 83, 88 (1st Dept. 2019). The court there held that the plaintiff did not need to "allege any further evidence of gender-based animus" because "[a]nimus inheres where consent is absent." *Id.*, at 94. Therefore, dismissal of this claim for failure to allege additional indicia of gender-motivated animus would be improper.

The New York State and City Human Rights Law Claims Fail to Allege Impact in New York

Plaintiff alleges violations of the New York State Human Rights Law in her fifth cause of action and in the sixth, a violation of a similar law for New York City. Miller has moved to dismiss on grounds including that Plaintiff has no standing as a non-resident to bring these claims. The Court of Appeals has held that in order to pursue a claim under either statute, "nonresidents of the city and state must plead and prove that the alleged discriminatory conduct had an impact within those respective boundaries." *Hoffman v. Parade Publs.*, 15 N.Y.3d 285, 289 (2010). Plaintiff argues that simply alleging that an injury occurred in New York City is sufficient. But the First Department has held that allegations that "discriminatory acts and [an] unlawful decision to terminate plaintiff's employment occurred in New York is insufficient to plead impact in New York." *Pakniat v. Moor*, 192 A.D.3d 596, 597 (1st Dept. 2021); *see also Jarusauskaite v. Almod Diamonds, Ltd.*, 198 A.D.3d 458, 459 (1st Dept. 2021) (holding that "the fact that the alleged discriminatory acts occurred in New York is insufficient to plead impact in New York"). Because Plaintiff has failed to properly allege impact in New York, as a non-resident there is no standing to bring these claims and they must be dismissed in their entirety.

The IIED Claim

In the seventh cause of action, Plaintiff alleges that the conduct of all defendants amounted to intentional infliction of emotional distress. This tort has four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a casual connection between the conduct and [plaintiff's] injury; and (iv) severe emotional distress." *Brown v. Riverside Church in the City of N.Y.*, 231 A.D.3d 104, 109 (1st Dept. 2024). The first element is the most difficult for a plaintiff to meet. *Id.* Miller has moved to dismiss on the grounds that Plaintiff has failed to allege conduct arising to the level of extreme and outrageous, nor has she alleged the intent aspect of the second element. The amended complaint allegations regarding the incidents in New York allege that Plaintiff was forcibly raped and choked by her supervisor on multiple occasions.

The First Department has recently explored the difficulty of identifying behavior that rises to the level of extreme and outrageous conduct and drawn on certain "markers of outrage" that include "whether a defendant has abused a power or position of dominance […] and repeats or continues undesirable acts." *Id.*, at 110. Given that Plaintiff's allegations of repeated violent assaults by her supervisor are taken to be true and she must be given every favorable inference, dismissal of this claim at this stage would be improper. The Court has considered Miller's remaining arguments and found them unavailing. Accordingly, it is hereby

ORDERED and ADJUDGED that defendant Jason Miller's motion to dismiss the amended complaint is granted as to the first, second, fifth, and sixth causes of action and these causes of action are hereby dismissed; and it is further

ADJUDGED that defendant Miller's motion to dismiss the amended complaint is denied as to the remaining causes of action; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

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1/31/2025
DATE

LYLE E. FRANK, J.S.C.

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