



THE SEVEN-YEAR STATUTE OF LIMITATIONS IN NYC'S VICTIMS OF GENDER-MOTIVATED VIOLENCE PROTECTION LAW (VGM) IS NOT PREEMPTED BY THE ONE-YEAR OR THREE-YEAR CPLR STATUTES OF LIMITATIONS; ALTHOUGH DEFENDANT AND DEFENDANT S CORPORATION MAY BE ONE AND THE SAME, THERE WAS ENOUGH EVIDENTIARY SUPPORT FOR THE NEGLIGENT HIRING AND SUPERVISION CAUSE OF ACTION TO SURVIVE THE MOTION TO DISMISS (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Acosta, reversing Supreme Court, determined the seven-year statute of limitations in NYC's Victims of Gender-Motivated Violence Protection Law (VGM) was not preempted by the one-year statute of limitations for assault in the CPLR and the negligent hiring and supervision cause of action should have survived the motion to dismiss even though the S corporation (PDR) and the defendant (Rofe) may be one and the same. The complaint alleged plaintiffs were subjected to unwanted sexual touching by defendant Rofe during voice-over coaching sessions offered by defendant S corporation (PDR):

... [W]e find that the legislative intent of the VGM was to create a civil rights remedy or cause of action such as in VAWA, rather than to extend the statute of limitations for a particular class of assaults. Since the nature of the claim is for a civil rights violation (providing a remedy for those subjected to violence because of their gender), the seven-year limitations period provided in the Administrative Code is not preempted by the CPLR statute of limitations for assault claims. * * *

To be sure, defendants may be correct that PDR essentially has no corporate structure separate from Rofe. Plaintiffs themselves do not appear to distinguish between Rofe and PDR in their brief. Nevertheless, plaintiffs have sufficiently alleged that Rofe was an employee of PDR and, through the submission of additional evidence in opposition to the motion to dismiss, have also sufficiently alleged that there may have been other employees of PDR who either hired, or supervised Rofe or whom Rofe hired or supervised. The acts of a corporation's agent and the knowledge acquired by the agent are presumptively imputed to the corporation Thus, Rofe's knowledge (as an alleged agent of PDR) that an employee was potentially violent or prone to sexual assaults would normally be imputed to PDR, potentially requiring PDR to supervise that employee, and the cause of action for negligent hiring and supervision should be reinstated as against PDR [Engelman v Rofe, 2021 NY Slip Op 01321, First Dept 3-2-21](#)

PLAINTIFF'S ALLEGATIONS OF RAPE AND SEXUAL ASSAULT BY DEFENDANT ARE SUFFICIENT TO ALLEGE A CAUSE OF ACTION UNDER NEW YORK CITY'S VICTIMS OF GENDER-MOTIVATED VIOLENCE PROTECTION LAW; THERE IS NO NEED TO ALLEGE SIMILAR ASSAULTS AGAINST OTHER WOMEN TO DEMONSTRATE ANIMUS ON THE BASIS OF GENDER (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Moulton, over a concurring opinion, determined that plaintiff's complaint, alleging rape and sexual assault, stated a valid cause of action under New York City's Victims of Gender-Motivated Violence Protection Law (VGM). The central question on appeal was the meaning of the term "animus." Supreme Court held that allegations defendant had sexually assaulted other women were properly included in the complaint to demonstrate animus. The First Department held plaintiff's allegations of rape and assault, without allegations involving other women, were sufficient:

... [P]laintiff's claims in the amended complaint that she was raped and sexually assaulted are sufficient to allege animus on the basis of gender. She need not allege any further evidence of gender-based animus. Defendant has conceded that the allegations herein are sufficient to show that the acts alleged were "committed because of gender or on the basis of gender." That the alleged rape and sexual assault was "due, at least in part, to an animus based on the victim's gender" is sufficiently pleaded by the nature of the crimes alleged.

Rape and sexual assault are, by definition, actions taken against the victim without the victim's consent Without consent, sexual acts such as those alleged in the complaint are a violation of the victim's bodily autonomy and an expression of the perpetrator's contempt for that autonomy. Coerced sexual activity is dehumanizing and fear-inducing. Malice or ill will based on gender is apparent from the alleged commission of the act itself. Animus inheres where consent is absent. [Breest v Haggis, 2019 NY Slip Op 09398, First Dept 12-26-19](#)