

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-CV-80802-MARRA-JOHNSON

JANE DOE NO. 8

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

DEFENDANT EPSTEIN'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his attorneys, moves to dismiss Counts I and III of Plaintiff's Complaint as the causes of action are barred by the applicable statute of limitations.^{1and 2} Rule 12(b)(6); Local Gen. Rule 7.1 (S.D. Fla. 2009). In support of dismissal, Defendant states:

Plaintiff's Complaint attempts to allege three Counts; the first two counts are pursuant to state common law, and the third count is brought pursuant to 18 U.S.C. §2255. *Civil remedy for personal injuries*. Count I attempts to allege a cause of action for "Sexual Assault and Battery," Count II for "Intentional Infliction of Emotional

¹ Plaintiff's Complaint attempts to assert both state common law claims and a claim pursuant to 18 U.S.C. §2255. Since Jane Doe 8 did not relinquish her state claims and correspondingly did not file her complaint relying, exclusively, on 18 USC 2255, she is not entitled to the litigation benefits including certain waivers that directly or indirectly accrue to other civil plaintiffs from the defendant's fulfilling obligations resulting from his separate confidential agreement with the United States Attorney's Office. Plaintiff's counsel conceded that the provisions of the NPA are not implicated where a plaintiff brings additional causes of action and does not proceed exclusively under §2255. See June 12, 2009, Hearing Transcript in Jane Doe, et al v. Epstein, Case No. 08-80119-Civ-Marra, p. 29, line 19-25, p. 30, line 1.

² Undersigned counsel provided the United States Attorneys' Office a copy of this Motion on July 9, 2009. We requested confirmation that this motion did not involve any aspect of the Non Prosecution Agreement and advised of our required filing date. No response was received from the USAO.

Jane Doe No. 8 v. Epstein
Page 2

Distress;" and Count III for "Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C. §2422," pursuant to 18 U.S.C. §2255.

Pursuant to the allegations on the face of Plaintiff's complaint, Count I, based on Florida's common law of assault and battery, and Count III, brought pursuant to 18 U.S.C. §2255, are barred by the applicable statute of limitations. Although a statute of limitations bar to a claim is an affirmative defense, and a plaintiff is not required to negate an affirmative defense in her complaint, a Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate where, as here, "it is 'apparent from the face of the complaint' that the claim is time-barred." See generally, La Grasta v. First Union Securities, Inc., 358 F.3d 840, 845 -846 (11th Cir. 2004).

Count I is barred by the applicable statute of limitations.

As to Count I, which is plead pursuant to state law, it is well settled that this Court is to apply Florida law. Erie R.Co. v. Tompkins, 58 S.Ct. 817 (1938). Pursuant to Florida law, the statute of limitations for assault and battery is four years, §95.11(3)(o), Fla. Stat. §95.11(3)(o), Fla. Stat., provides –

Actions other than for recovery of real property shall be commenced as follows:

* * *

(3) Within four years.—

* * *

(o) An action for assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7).

In her Complaint, Plaintiff alleges in relevant part that –

9. ... In or about 2001, Jane Doe, then approximately 16 years old, fell into Epstein's trap and became one of his victims.

Jane Doe No. 8 v. Epstein
Page 3

According to the allegations of the Complaint, Jane Doe had one encounter with Defendant at his Palm Beach mansion in or about 2001 when Jane was approximately 16 years old. See Complaint, ¶13, endnote 1 hereto.¹ Based on the allegations of the Complaint, it has been at least 8 years since the alleged conduct by EPSTEIN, well past the four year statute of limitations, thus requiring dismissal of Count I. Based on the allegations, Plaintiff is now at least 24 years old.

Subsections (4) and (5) referenced in §95.11(3)(o) are not applicable. Plaintiff may attempt to argue that subsection (7) of §95.11, Fla. Stat. applies. See endnote 2 hereto for statutory text of subsection (7), including statutes referenced therein.² However, a review of Plaintiff's allegations in Count I establish that Plaintiff is attempting to assert a cause of action based on the elements of Florida's common law assault and battery to which a four year statute of limitation applies. (Compare Count II, ¶24, wherein Plaintiff tracks the language §39.01(2), Fla. Stat. (2001), pertaining to "abuse.").

Pursuant to Florida law, although the term "assault and battery" is most commonly referred to as if it were a legal unit, or a single concept, "assault and battery are separate and distinct legal concepts, assault being the beginning of an act which, if consummated, constitutes battery." 3A Fla.Jur.2d Assault §1. An assault and battery are intentional acts. See generally, Spivey v. Battaglia, 258 So.2d 815 (Fla. 1972); and Travelers Indem. Co. v. PCR, Inc., 889 So.2d 779 (Fla. 2004).

On the face of the Complaint, the applicable four year statute of limitations has expired, and accordingly, Count I is barred and required to be dismissed.

Jane Doe No. 8 v. Epstein
Page 4

Count III – 18 U.S.C. §2255

As to the applicable statute of limitations for Count III which is brought pursuant to 18 U.S.C. §2255, §2255(b), (both the 2001 version, which Defendant asserts is the applicable statute, and the amended version, effective July 27, 2006), provides:

(b) **Statute of limitations.**—Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

As noted above, according to the allegations of the Complaint, Jane Doe had one encounter with Defendant at his Palm Beach mansion in or about 2001 when Jane was approximately 16 years old. See Complaint, ¶13, endnote 1 hereto. Based on the allegations of the Complaint, it has been at least 8 years since the alleged conduct by EPSTEIN, well past the six year statute of limitations, thus requiring dismissal of Count III. Based on the allegations, Plaintiff is now at least 24 years old, well past the age of majority. (The age of majority under both federal and state law is 18 years old. See 18 U.S.C. §2256(1), defining a “minor” as “any person under the age of eighteen years,” and §1.01, *Definitions*, Fla. Stat., defining “minor” to include “any person who has not attained the age of 18 years.”). Thus, on the face of the Complaint, Count III is timed barred and required to be dismissed.

Conclusion

Accordingly, Counts I and III of Plaintiff’s Complaint are subject to dismissal. On the face of the Complaint, the causes of action which Plaintiff attempts to allege are barred by the applicable statute of limitations of 4 and 6 years, respectively.

Jane Doe No. 8 v. Epstein
Page 5

WHEREFORE, Defendant requests that this Court dismiss Counts I and III of Plaintiff's Complaint with prejudice.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 14th day of July, 2009:

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Respectfully submitted,

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¹ Complaint, ¶13 alleges in relevant part –

... Jane Doe was recruited by another girl, who told her that she could make some money, but did not tell her what was involved. At all relevant times, the girl who

Jane Doe No. 8 v. Epstein
Page 6

recruited Jane Doe was acting on behalf of and as an agent for Epstein. Jane was contacted by this girl by telephone. Jane was then picked up and brought to Epstein's mansion in Palm Beach. Once there, she was lead up a flight of stairs to the room with the massage table. Epstein came into the room and directed Jane to remove her clothes and give him a massage. Jane was frightened and felt trapped. As directed by Epstein, Jane removed her clothes. Epstein then during the massage touched Jane on her breasts and vagina, and he grabbed her hand and placed it on his penis. Epstein masturbated himself during the massage. Epstein then left money for Jane.

² **§95.11(7), Fla. Stat. –**

(7) For intentional torts based on abuse.--An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03, or incest, as defined in s. 826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

§39.01(2), Fla. Stat. (2001) –

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

§415.102(1), Fla. Stat. (2001) –

(1) "Abuse" means any willful act or threatened act that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

§984.03 (2), Fla. Stat. (2001) –

"Abuse" means any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Corporal discipline of a child by a parent or guardian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child as defined in s. 39.01.