

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

RB, an infant, by her guardian, Isaac Birnhack,

Plaintiffs,

-against-

Bais Yaakov D'Chassidei Gur, Mayer Gelbart, Michael Sternbuch, Yehuda Segal, Shlomo Rottenberg, Usher Jalas, and John Does #1-10 Board of Directors of Bais Yaakov D'Chassidei Gur in their individual capacity and as members of the Board of Directors of Bais Yaakov D'Chassidei Gur,

Defendants.

Index No.: 528307/2021

AMENDED COMPLAINT AND CIVIL JURY DEMAND

Plaintiffs, by their attorneys, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone LLP, complaining of the defendants, upon information and belief, allege as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to New York State Civil Rights Law §79-n and New York State Executive Law § 296 to, among other things, seek redress for defendants' egregious, pervasive and distressing behavior aimed at the infant plaintiff based upon her, her guardian and her family's religious practice.

2. The infant plaintiff is a student at defendants' school. As set forth in detail below, defendants threatened to suspend the infant plaintiff from her school because of her and her family's religious practice.

3. As a result, the infant plaintiff is threatened with being denied an education; and, having been discriminated against, harassed, and threatened with

isolation at school, has been traumatized and humiliated resulting in emotional injury and harm which is continuing.

PARTIES

4. Infant Plaintiff RB is 12 years old and is an individual residing in the State of New York with an address located in the State of New York, Kings County.

5. Isaac Birnhack is RB's brother and legal guardian, residing in the State of New York with an address located in the State of New York, Kings County.

6. Defendant Bais Yaakov D'Chassidei Gur is a religious corporation in the State of New York, Kings County that exists to operate elementary and secondary schools in Kings County.

7. Defendant Mayer Gelbart is the President of Bais Yaakov D'Chassidei Gur, Defendant Mayer Gelbart is a resident of Kings County.

8. Defendant Michael Sternbuch is a board of director of Bais Yaakov D'Chassidei Gur and is a resident of Kings County.

9. Defendant Yehuda Segal is a board of director of Bais Yaakov D'Chassidei Gur and is a resident of Kings County.

10. Defendant Shlomo Rottenberg is a board of director of Bais Yaakov D'Chassidei Gur and is a resident of Kings County.

11. Defendant Usher Jalas is a board of director of Bais Yaakov D'Chassidei Gur and is a resident of Kings County.

12. Defendants, Bais Yaakov D'Chassidei Gur, its President and its Board of Directors are designated with the authority and control over all operations, functions, decisions and actions of Bais Yaakov D'Chassidei Gur's schools.

FACTUAL BACKGROUND

13. On or about November 1, 2021, plaintiffs were given a letter whereby they were threatened that if they engaged in their religious practice, the infant plaintiff would be suspended or expelled from school.

14. On that same day, plaintiffs' counsel sent defendants a cease and desist letter.

15. Plaintiffs then exercised their religious practice thereafter by attending a religious gathering and visit with their Rebbe.

16. As a result of engaging in this religious practice, the infant plaintiff has been threatened with suspension from school and has been threatened with punitive isolation and segregation from the other students.

STATUTORY FRAMEWORK

17. Pursuant to New York State's Civil Rights Law §79-n:

Any person who intentionally selects a person . . . for harm or causes . . . an imminent threat to a person . . . because of a belief or perception regarding the . . . religious practice . . . regardless of whether the belief or perception is correct, shall be liable, in a civil action or proceeding maintained by such individual or group of individuals, for injunctive relief, damages, or any other appropriate relief in law or equity. If it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining

any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

18. New York State's Executive Law § 296(4) provides that:

It shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, gender identity or expression, military status, sex, age or marital status, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.

N.Y. Exec. Law § 296 (4).

COUNT I
Violation of New York Civil Rights Law § 79-n

19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 18 with the same force and effect as if fully set forth herein.

20. As stated, pursuant to New York Civil Rights Law §79-n, "any person who intentionally selects a person . . . for harm or causes . . . an imminent threat to a person . . . in whole or in substantial part because of a belief or perception regarding the . . . religious practice, . . . regardless of whether the belief or perception is correct, shall be liable, in a civil action or proceeding maintained by such individual or group of individuals, for injunctive relief, damages, or any other appropriate relief in law or equity."

21. On or about November 1, 2021, plaintiffs were threatened with the suspension and/or expulsion of the infant plaintiff if they engaged in their religious

practice, i.e., visiting with their Rebbe; and, on or about November 3, 2021, plaintiffs were also threatened with being punitively segregated, ostracized, and sequestered.

22. Plaintiffs exercised their religious practice and as a result have been threatened with suspension from school and segregated isolation.

23. By reason of the foregoing, plaintiffs are entitled to money damages against defendants in an amount to be determined at trial (and consisting of both compensatory and punitive damages), together with attorneys' fees, interest and the costs and disbursements of this action.

COUNT II
Violation of New York States Executive Law § 296

24. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 23 with the same force and effect as if fully set forth herein.

25. Defendants are the Board, Directors and Agents of an educational institution.

26. Defendants have engaged in discriminatory practices by denying the use of their facilities to their student, the infant plaintiff, based upon the infant plaintiff's and her guardian's and family's religious practices.

27. Defendants permitted the infant plaintiff to be harassed because of her and her guardian's and family's religious practices.

28. By reason of the foregoing, plaintiffs are entitled to money damages against defendants in an amount to be determined at trial (and consisting of both compensatory and punitive damages), together with attorneys' fees, interest and the costs and disbursements of this action.

COUNT III
Negligence

29. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 28 with the same force and effect as if fully set forth herein.

30. The defendants, their agents, servants and employees were reckless, careless and negligent, all of whom owed a duty of care to the infant plaintiff.

31. The defendants' breached the duty of care owed to the infant plaintiff.

32. The defendants' breach of the duty of care owed to the infant plaintiff was foreseeable.

33. As a result of the defendants', their agents', servants' and employees' reckless, careless and negligent acts, the infant plaintiff was caused to suffer physical, emotional and personal injuries.

34. The injuries suffered by the infant plaintiff were a foreseeable result of the defendants', their agents', servants' and employees' reckless, careless and negligent acts.

35. The aforesaid injuries and damages were the result of the reckless, careless and negligent acts of the defendants, their agents, servants and employees.

36. The reckless, careless and negligent acts of the defendants, their agents, servants and employees were the proximate cause of the infant plaintiff's injuries.

37. That defendants are liable for the acts of the schools' agents, servants and employees under the doctrine of *respondeat superior*.

38. By reason of foregoing, plaintiffs demand compensatory and punitive damages against defendants.

COUNT IV
Negligent Infliction of Emotional Distress

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38 with the same force and effect as if fully set forth herein.

40. Plaintiff is a student of defendants.

41. Defendants owed a duty of care to the infant plaintiff.

42. Defendants had a duty to act with reasonable care toward the infant plaintiff.

43. Defendants breached the duty of care owed to the infant plaintiff by threatening her, harassing her, ostracizing her, threatening her with suspension and threatening to hold her in punitive seclusion.

44. The defendants' breach of their duty of care caused plaintiff to sustain pain, suffering and injury, extreme emotional pain, suffering and distress, fear of imminent harm, and to otherwise sustain emotional damages. Such damages are continuing.

45. That the individual Board member defendants' conduct proximately caused the plaintiff to suffer and plaintiff continues to suffer from stress, emotional pain, suffering and distress.

46. By reason of the foregoing, plaintiffs are entitled to money damages against defendants in an amount to be determined at trial (and consisting of both

compensatory and punitive damages), together with attorneys' fees, interest and the costs and disbursements of this action.

COUNT V
Declaratory and Injunctive Relief

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 with the same force and effect as if fully set forth herein.

48. Unless enjoined by order of this Court, defendants will continue to act in violation of New York State's Human and Civil Rights laws.

49. Plaintiffs' claims constitute a justiciable controversy.

50. Plaintiffs' claims as set forth in all previously alleged paragraphs, warrant a judicial determination thereof.

51. Plaintiffs are entitled to a declaratory judgment otherwise declaring and adjudicating the rights and relations of the parties.

52. By reason of the foregoing, Plaintiffs will suffer injury for which they have no other adequate remedy at law.

53. Upon such declaratory relief, a permanent injunction enjoining and restraining Defendants from engaging in conduct in violation of New York State Civil and Human Rights Law.

54. Prior to the granting of a declaratory judgment and a permanent injunction, plaintiffs are entitled to a preliminary injunction as set forth fully in plaintiffs' order to show cause filed with this Court seeking a temporary restraining order and a preliminary injunction.

No Prior Application

55. No prior application for this or any similar relief has been made in any court.

WHEREFORE, plaintiffs request relief jointly and severally as against all of the defendants:

1. A trial by jury;
2. An award of full and fair compensatory damages as decided by the jury;
3. An award of full and fair punitive damages as decided by the jury;
4. A declaratory judgment;
5. A preliminary injunction;
6. A permanent injunction; and
4. Granting such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
November 7, 2021

ABRAMS, FENSTERMAN, FENSTERMAN,
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