

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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JANE DOE 43,

Plaintiff,

17-cv-00616-JGK

vs.

JEFFREY EPSTEIN, GHISLAINE
MAXWELL, SARAH KELLEN, LESLEY
GROFF, AND NATALYA MALYSHEV,

Defendant.

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**SARAH KELLEN'S REPLY MEMORANDUM OF LAW
IN SUPPORT OF SUPPLEMENTAL MOTION TO DISMISS**

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INTRODUCTION

This case arises out of an adult relationship between Sarah Ransome and billionaire Jeffrey Epstein. More than ten years after-the-fact, Ransome has tried and failed (and then tried again and failed again) to plead sex-trafficking claims against five different individuals. One of them is Sarah Kellen—Epstein’s personal assistant. Kellen showed in her opening brief why Ransome could never state a viable civil claim under the federal trafficking laws, especially not one against Kellen. Ransome cannot create a cause of action against Kellen out of thin (fact-less) air. The opposition brief does nothing to change that. Ransome has proven unable to salvage her legally deficient claims, ignoring key questions and falling short in her efforts to explain away the Amended Complaint’s conclusory and time-barred allegations.

Kellen incorporates by reference—and expressly adopts—the arguments advanced in Jeffrey Epstein and Lesley Groff’s April 23, 2018 reply memorandum in support of their motion to dismiss. Kellen also files this separate reply to highlight additional reasons why the claims against Kellen in particular cannot survive.

ARGUMENT

I. Ransome cannot state a plausible claim that Kellen violated sex-trafficking laws.

The Amended Complaint is label after conclusion after label after conclusion. That sort of formulaic recitation of the elements—“[n]aked assertions devoid of further factual enhancement”—will not do. *Ashcroft v. Iqbal* 556 U.S. 662, 678 (2009) (quoting *Twombly*).

As far as Kellen can glean from the threadbare allegations, Ransome means to claim that at some point during the six-month window “[b]etween October 2006 and May 2007” Kellen (with at least two other defendants) “confirmed and reiterated” someone else’s promise that Epstein “would use his wealth and influence to have Plaintiff admitted into the Fashion Institute of Technology (known as ‘F.I.T.’) in New York City.” (Am. Compl. ¶¶ 36-38.) But that is not nearly enough to meet Rule 9(b)’s heightened “particularity” standard. Among other things, Ransome needed to “specifically identify[] the allegedly fraudulent statements” by Kellen and specifically allege “where and when the statements were made.” *4 Hour Wireless v. Smith*, 2002 WL

31654963, at *2 (S.D.N.Y. 2002). Plus, “where multiple defendants are involved, the complaint is required to describe specifically each defendant’s alleged participation in the fraud.” *Daly v. Castro Llanes*, 30 F. Supp. 2d 407, 414 (S.D.N.Y. 1998). The reason that Ransome has not done those things is she *cannot* do them.

The “fraud” claim. There are other problems for a fraud-based claim against Kellen, too. Ransome must at least allege that Kellen *knew* that “force, fraud, or coercion” would be used to cause Ransome to have sex with Epstein. See 18 U.S.C. § 1591(a)(1) (2006) (requiring that defendant “knowingly” engage in trafficking “knowing that force, fraud, or coercion . . . will be used to cause the person to engage in a commercial sex act”). That has not happened. Even having been on notice of the issue, the best Ransome could muster is an occasional “knowing” label and the allegation that Kellen “knew that Plaintiff was actually being recruited for sexual purposes.” (Am. Compl. ¶ 40.) But one allegation has little to do with the other: Even if Kellen were aware that Ransome was introduced to Epstein “for sexual purposes,” that says nothing about whether Kellen *knew* that Epstein or others never meant to keep any promises to help Ransome gain admission into F.I.T. or a similar fashion school. Ransome has never plausibly alleged the latter.

Nor does it matter that Kellen supposedly “confirmed and reiterated” that “Epstein would use his wealth and connections to advance Plaintiff’s education.” (Am. Compl. ¶ 38.) The Amended Complaint’s allegations suggest that, as far as Kellen would have known, Epstein intended to keep the alleged promises of assistance. There is certainly no plausible inference to be drawn that Kellen knew the opposite—that false promises were used to “defraud” Ransome into having sex with Epstein. After all, we know that Epstein gave Ransome a cell phone, a car service, a large Upper East Side apartment, and other “things of value” over the course of their relationship. (*Id.* ¶¶ 52, 62.) And to the extent Kellen told Ransome that Epstein had helped Kellen out with her own career (*id.* ¶ 53), that would have been 100% true. The takeaway? Even assuming that Kellen “reiterated” promises first made to induce Ransome to have sex with Epstein, there is no basis (alleged, or otherwise) to infer that Kellen knew that those were fraudulent promises.

After Kellen pointed that out in her opening brief, Ransome all but ignored it. As far as any claim against Kellen, Ransome's opposition brief serves only to confirm that she cannot plead that which is required of her. Indeed, a section in that brief titled "Ransome has successfully alleged knowledge against Defendants Groff and Kellen" fails to deliver as advertised. (Opp. Br. at 14-15.) That subsection simply quotes in full five different paragraphs from the Amended Complaint—nothing more, nothing less. The first three paragraphs allege only that Kellen (along with others) repeated the promises at issue "to ensure that Plaintiff would cooperate in fulfilling Epstein's sexual desires." (*Id.* (quoting Am. Compl. ¶¶ 38, 40, 53.)) The last two paragraphs have nothing to do with Kellen and apparently relate to Ransome's "coercion" theory rather than her "fraud" theory. (*Id.* (quoting Am. Compl. ¶¶ 57, 59.)) None of the excerpted allegations could even arguably fill in the knowledge gap as it relates to Kellen.

The "coercion" claim. Where Ransome's fraud claims are bad, her coercion claims against Kellen are even worse. For starters, supposedly in defense of Ransome's coercion-based trafficking claim, the opposition explains that "the Amended Complaint details how the Defendants coerced her with promises of an education, living quarters, and other benefits 'in order to coerce her into sexual compliance' and 'as an inducement to provide sex.'" (Opp. Br. at 12-13.) But promises inducing another to act are not the stuff of coercion. The statute defines "coercion" to include "threats of serious harm" or "physical restraint" or a plan "intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person." 18 U.S.C. § 1591(c)(2) (2006); *see Coercion*, Oxford English Dictionary (2018) ("the action or practice of persuading someone to do something by using force or threats"). Either way, Ransome's "coercion" theory must be different from her "fraud" theory.

If Ransome instead means to press a coercion theory about how certain defendants allegedly "threatened Plaintiff with serious harm, as well as serious psychological, financial, and reputational harm, compelling Plaintiff to perform and continue performing the commercial sexual activity," then those claims have no connection to Kellen. (Opp. Br. at 13.) The opposition brief cites parts of the Amended Complaint that mention only other defendants but not Kellen. (*Id.*

(citing Am. Compl. ¶¶ 43, 48, 57.)) Kellen is never identified as having any involvement in this so-called “coercion.” She never participated in any of the alleged “intimidat[ing]” or “threaten[ing].” (Am. Compl. ¶ 48.) Nor is it alleged that Kellen knew that other defendants allegedly told Ransome that they “had the ability to make sure [Ransome] would obtain no formal education or modeling agency contract if she failed to provide the sexual favors desired.” (*Id.* ¶ 41.) Here again, Kellen highlighted this deficiency in her opening brief, and Ransome responded with silence. Perhaps Ransome says nothing because she has nothing to say.

The Section 1592 claim. Section 1592 makes it unlawful to “knowingly destroy, conceal, remove, confiscate, or possess” another’s passport to restrict that person’s “liberty to move or travel” or “in the course of a violation” of other trafficking laws. 18 U.S.C. § 1592(a) (2006). As Kellen explained in her opening brief, the Amended Complaint is deficient in that it simply parrots back the language from this statute. Ransome’s response? To parrot back those same exact conclusory allegations once again in her opposition. (Opp. Br. at 17 (quoting Am. Compl. ¶¶ 45, 49, 54.)) The problem is the complete lack of factual support. There is no specific allegation about who took Ransome’s passport, when they took it, how they took it, or how any “control” of Ransome’s passport may have been used to cause her to perform sexual acts. *See Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (“[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”) (quoting *Iqbal*).¹

¹ The Amended Complaint likewise fails to state a claim in relation to any other predicate act. Ransome claims that the defendants violated Section 1593A (Compl. ¶ 70), but that provision was first enacted in 2008—after the alleged wrongful conduct. Regardless, there are no facts to support a plausible allegation that Kellen “knowingly benefit[ed], financially or by receiving anything of value, from participation” in a criminal venture. 18 U.S.C. § 1593A.

Ransome’s claims and arguments about Section 1594 are also off the mark because those provisions are inapplicable to her civil claims. At the time, Section 1594(a) related to “attempts” to violate Section 1591, and Section 1591(b)-(c) provided only for criminal sentencing and criminal forfeiture. 18 U.S.C. § 1594(a)-(c) (2000).

II. Any purported claim against Kellen is time-barred.

For the reasons explained in Kellen’s opening brief, Epstein and Groff’s opening brief, and Epstein and Groff’s reply brief, Ransome’s sex-trafficking claims are time-barred. Ransome has no cause of action for the alleged wrongs that took place more than ten years ago.

Kellen writes separately to emphasize yet another issue that Ransome’s counsel has either missed or chosen to ignore. Ransome’s own allegations confirm that by the time that she first left the United States in January 2007 and was abroad with her parents (Am. Compl. ¶ 55), “she knew” already “based upon Plaintiff’s experience” that the defendants were engaged in an alleged fraudulent scheme, and she no longer believed to be “legitimate” any promises of education or career assistance. (*Id.* ¶ 56.) Against that backdrop, Ransome’s half-hearted effort to plead around the limitations period with incomplete, conclusory allegations suggesting that Ransome may have somehow then relied on additional F.I.T.-related promises after she returned to New York in February 2007 should be rejected out of hand.

CONCLUSION

For these reasons, the claims against Sarah Kellen should be dismissed with prejudice.

Dated: Atlanta, Georgia

April 23, 2018

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