

John Roe v Roman Catholic Archdiocese of N.Y.

2024 NY Slip Op 31514(U)

April 25, 2024

Supreme Court, New York County

Docket Number: Index No. 950835/2021

Judge: Alexander M. Tisch

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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INDEX NO. 950835/2021

JOHN ROE,

MOTION DATE 12/06/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
CHURCH OF SAINT CLARE, OF STATEN ISLAND, NY,
RALPH LABELLE, DOES 1-10

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant The Church of Saint Clare (“the Church”) moves for an order pursuant to CPLR 3211(a)(7) dismissing Plaintiff’s causes of action for conspiracy to commit fraud, breach of fiduciary duty, and negligent infliction of emotional distress (Motion Seq. 002).

BACKGROUND

This is an action commenced pursuant to the Child Victims Act (“CVA”) in which Plaintiff alleges that as a child in the 1980s, he was repeatedly abused by Defendant Ralph LaBelle, a priest employed by Defendant Roman Catholic Archdiocese of New York (“the Archdiocese”) and assigned to work at the Church. Plaintiff alleges that the Church was aware of LaBelle’s proclivity for abuse yet took no action to prevent him from having repeated private contact with Plaintiff.

The Church now moves for partial dismissal of Plaintiff's complaint, arguing that his causes of action for conspiracy to commit fraud, breach of fiduciary duty, and negligent infliction of emotional distress fail to state a claim.

DISCUSSION

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "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 a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204, 211 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, 402-03 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (see *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46, 48 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 208 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]).

When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*). The court must "accept the facts as alleged in the complaint as true, accord plaintiffs 'the benefit of every possible favorable inference,'" and "determine only whether the facts as alleged fit into any cognizable legal theory" (*Siegmund Strauss, Inc.*, 104 AD3d 402-03, *supra*; *Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Breach of Fiduciary Duty

Under Plaintiff's fifth cause of action, he alleges that that he entered a "confidential" relationship with the Archdiocese and the Church, and that Defendants breached their fiduciary duty to him.

Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with an institution extends beyond that of other similarly situated individuals (see *Doe v Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]). A fiduciary relationship can be established upon a showing that an individual's relationship with the institution resulted in "de facto control and dominance" when the individual was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). See also *J. D. v R.C. Diocese of Brooklyn*, 203 AD3d 880, 881 (2nd Dept 2022) (finding plaintiff failed to establish his relationship with defendants was unique or distinct from defendants' relationships with parishioners generally).

Here, Plaintiff alleges a "fiduciary relationship" existed with Defendants, including the Church, as they were entrusted with the responsibility to provide him spiritual guidance and protect his best interests as a child. However, Plaintiff does not allege that his relationship with the Church was any different from that of other parishioners. To state a valid cause of action for breach of a fiduciary duty, a plaintiff cannot rely on bare allegations that a fiduciary relationship existed. By simply alleging that a fiduciary duty arose because Plaintiff was a minor and under the supervision of Defendants, Plaintiff has failed to state a cause of action for breach of fiduciary duty. While Plaintiff alleges he spent substantial time alone with LaBelle, Plaintiff does not allege facts that would purport to show a relationship of "de facto control and dominance." Additionally, Plaintiff's breach of fiduciary duty claim, as pleaded in the complaint,

is duplicative of Plaintiff's claims for negligence and negligent hiring and supervision, which are not challenged in this motion.

Accordingly, the Church's motion to dismiss Plaintiff's fifth cause of action is granted.

Conspiracy to Commit Fraud

Plaintiff separately alleges that Defendants acted fraudulently within the scope of their fiduciary relationship, and that Defendants engaged in a conscious plan to conceal LaBelle's abuse.

"The required elements of a common – law fraud claim are a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (see *Ambac Assurance Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 578-579 [2018]). A cause of action for fraudulent concealment requires, in addition to the four foregoing elements, an allegation that the defendant had a duty to disclose material information and that it failed to do so" (see *Gomez-Jimenez v New York Law School*, 103 AD3d 13, 17-18 [1st Dept. 2012]). A duty to disclose arises only where "a fiduciary or confidential relationship exists between plaintiff and defendant" (see *Mandarin Trading, Ltd. v Wildenstein*, 16 NY3d 173, 179 [2011]).

Although Plaintiff alleges that LaBelle's proclivity for abuse was known to Defendants, Plaintiff's complaint fails to specify the distinct representation(s) that was made to Plaintiff. In *Gregor v Rossi*, 120 AD3d 447 (1st Dept 2014), the Appellate Division, First Department, held that plaintiff's claims for fraud and constructive fraud should be dismissed because the complaint failed to provide the requisite particularity required by CPLR §3016(b) with respect to the fraud

element of a false allegation "because the words used by defendants and the date of the alleged false representations are not set forth."

Here, similarly, Plaintiff's complaint is devoid of any details about the purported representations, the words used by the Church and other Defendants, and the dates of the alleged false representations. Plaintiff generally alleges Defendants were aware of LaBelle's propensity but does not provide specificity with respect to when the Church became aware such that it should have warned Plaintiff. Additionally, while Plaintiff alleges LaBelle had numerous other victims that the Church failed to help, Plaintiff's complaint does not allege Plaintiff reported the abuse or asked for an investigation. Furthermore, as stated above, Plaintiff has failed to adequately plead that there is a fiduciary relationship between Plaintiff and the Church.

In the absence of such specific allegations, the Church's application for dismissal of Plaintiff's cause of action premised on conspiracy to commit fraud is granted.

Negligent Infliction of Emotional Distress

Typically, a cause of action for NIED "must be premised on conduct that unreasonably endangers the plaintiff's physical safety or causes the plaintiff to fear for his or her physical safety" (*Johnson v New York City Bd. Of Educ.*, 270 AD2d 310, 312 [2d Dept 2000]). However, New York courts have held that "a cause of action for infliction of emotional distress is not allowed if [it is] essentially duplicative of tort . . . causes of action." (*Wolkstein v Morgenstern*, 275 AD2d 635, 637 [1st Dept 2000]). Here, the allegations set forth under Plaintiffs' NIED claim are duplicative of the negligence causes of action- namely, that Defendants breached their duty to Plaintiff by failing to supervise LaBelle and protect Plaintiff from danger. Given that Plaintiff may recover for emotional distress caused by this breach under his other negligence-based causes of action, the NIED claim is duplicative (*see Fay v Troy City Sch. Dist*, 197 AD3d 1423,

[3d Dept 2021] [dismissing an NIED claim in a CVA action as duplicative of the negligence, negligent supervision, hiring, and retention claims]).

Accordingly, the final branch of the Church’s motion is granted and Plaintiff’s cause of action for NIED is dismissed.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion of Defendant St. Clare’s Church for partial dismissal of this action pursuant to CPLR 3211 (Motion Seq. 001) is granted in full, and Plaintiff’s fourth, fifth, and sixth causes of action are dismissed; and it further

ORDERED that counsel for the Church shall serve a copy of this order with notice of entry within 14 days of the date this order.

4/25/2024

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: