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

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Index №. 950053/2019

Plaintiff,

-against-

ARCHDIOCESE OF NEW YORK, *et al.*

Defendants

.....X

HON. GEORGE J. SILVER:

Defendants THE USA NORTHEAST PROVINCE OF THE SOCIETY OF JESUS, INC. and THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS i/s/a SOCIETY OF JESUS i/s/a U.S.A. NORTHEAST PROVINCE OF THE SOCIETY OF JESUS i/s/a SOCIETY OF JESUS OF U.S.A NORTHEAST PROVINCE i/s/a THE SOCIETY OF JESUS JESUIT FATHERS AND BROTHERS ("Province") and ARCHDIOCESE OF NEW YORK ("Archdiocese")(collectively "defendants") move, pursuant to CPLR §3211(a)(5) and (7), to dismiss plaintiff's complaint in its entirety or certain causes of action that defendants argue are improperly pled. Specifically, the Province argues that if this action is not time-barred, plaintiff's causes of action for common law negligence and alleged negligent training, supervision, and retention must be dismissed. The Archdiocese argues that it cannot remain in this lawsuit because it has no affiliation with Fordham Preparatory School ("Fordham Prep"), where the alleged improper conduct occurred.

Per the complaint, plaintiff alleges that between 1981 and 1982, when plaintiff was approximately 15 to 16 years old and a student at Fordham Prep, Fernand Beck, a lay teacher at the school, "engaged in unpermitted sexual contact with [p]laintiff."

"[O]n a motion to dismiss a cause of action pursuant to CPLR §3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff (*Benn v Benn,* 82 AD3d 548, 548 [1st Dept 2011] *see also Brignoli v Balch, Hardy & Scheinman, Inc.*, 178 AD2d 290 [1st Dept 1991][defendant bears the burden of proof on an affirmative defense]).

"On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." (*Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

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 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp*., 104 AD3d 401 [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 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d

726 [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*). In deciding such a motion, 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 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *aff'd* 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], *lv denied* 89 NY2d 802 [1996], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Leon*, 84 NY2d at 88, *supra*; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]; "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co*., NYLJ January 18, 2005, p. 26 col.4, *citing P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id*. at 376; *see Rovello v Orofino Realty Co*., 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon*, 84 NY2d at 87-88, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

CPLR §214-g

Here, as a threshold matter, prior to addressing the individual claims at issue in this lawsuit, the court tackles the argument that plaintiff's complaint should be dismissed pursuant to CPLR §3211(a)(5) as time-barred since some of the specific torts alleged were not revived by CPLR §214-g. CPLR §214-g revives, in relevant part, "every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of" specific child sexual abuse offenses. Nevertheless, it is suggested here that any respondeat superior claim, based on acts of individual perpetrators, and any claim premised on conduct that is not intentional or negligent, such as recklessness or gross negligence, is time-barred.

Upon careful review of CPLR §214-g, the court denies the requested relief . The argument that the CVA did not revive claims based upon the acts and omissions of an employee or agent acting within the scope of his or her authority or any other claim against a party alleging intentional or negligent acts as a result of child sexual abuse ignores the revival statute's careful delineation between those whom a cause of action is brought against, and those alleged to have committed an act. As other courts have observed, the use of different words to describe (1) against whom a cause of action is brought or liability is sought (that is, a "party"), and (2) by whom the tortious act was committed (that is, a "person") is telling (*see Koeneke v. Holy Family Roman Catholic Church*, Index No. 900004/2019 [Nassau Cnty 2020]).

When codifying the CVA, the Legislature expressly revived "every" claim or cause of action brought against a "party" so long as the claim alleges intentional or negligent conduct by a "person" causing injury as a result of specific child sexual abuse offenses. The statute clearly differentiates between two different nouns ("party" and "person") and two different prepositions respectively ("against" and "by"). In doing so, the Legislature recognized

that in some instances the "party" held liable and the "person" committing the negligent or intentional tort, such as an employee or agent, would be different. Here, viewing defendants as employers or overseers and Fernand Beck as the person who committed the torts alleged within the scope of his employment comports with the language of CPLR §214-g (*see Riviello v Waldron*, 47 NY2d 297 ([1979): "[W]e first note what is hornbook law: the doctrine of respondeat superior renders a master vicariously liable for at tort committed by his servant while acting within the scope of his employment" (*id*. at 302). Accordingly, the court finds that CPLR 214-g plainly revives the claims at issue in this lawsuit. A finding to the contrary would run athwart of the Legislature's intent when adopting CPLR §214-g. As such, defendants' application for dismissal under CPLR §3211(a)(5) are denied.

Individual Claims

1. Negligence

Next, the Province seeks dismissal of plaintiff's negligence claims. Contrary to the Province's assertions, it can be held vicariously liable for negligence committed in allowing abuse to take place when a duty of reasonable care existed to safely manage the subject educational facility. Moreover, while the Province argues that it had no notice of Fernand Beck's actions, the Province failed to conclusively establish its lack of knowledge as a matter of law. Discovery will be necessary before the parties' significant disputes on the issue of notice can be reconciled. As such, the Province's motion to dismiss plaintiff's negligence claims is denied.

2. Negligent Hiring, Retention, Supervision

The Province also argues that plaintiff's cause of action for negligent supervision should be dismissed for failure to state a claim since there are no specific allegations that it knew of Fernand Beck's propensity to commit sexual abuse of minors. The Province argues that plaintiff's present allegations, absent more, are insufficient and amount to an attempt to surmise that the Province is strictly liable for Fernand Beck's alleged misconduct.

However, contrary to these assertions "[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Instead, to prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). "A necessary element of a cause of action alleging negligent retention or negligent supervision is that the 'employer knew or should have known of the employee's propensity for the conduct which caused the injury'" (*Bumpus v New York City Transit Authority*, 47 AD3d 653 [2d Dept 2008]).

Here, plaintiff alleges that the Province had a duty to protect plaintiff from alleged sexual abuse. In this respect, plaintiff has alleged in more than a generalized manner that the Province overtly knew or should have known of Fernand Beck's propensity to commit such conduct (*contra Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011][generalized claim that defendant "knew the risk of sexual abuse of minor parishioners by priests and other staff" is insufficient (*Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011]). Accordingly, the Province's motion to dismiss plaintiff's cause of action for negligent supervision is denied.

Archdiocese

The Archdiocese separately argues that dismissal of the entire lawsuit as against it is warranted on account of its lack of connection to Fordham Prep. Plaintiff contends that the Archdiocese's application asks this court to completely ignore the structure and hierarchy of the Roman Catholic Church, which gives a bishop broad authority and power over activities in his diocese. To be sure, plaintiff argues that "[p]lainly, those working at Fordham, a religious institution within the Archdiocese, including Beck, are under the jurisdiction of the Archdiocese and subject to the control of the Archbishop." This is an issue that, under the facts of this case, cannot be reconciled in the absence

of discovery. Accordingly, the Archdiocese's present application is denied with leave to renew at the appropriate juncture.

Based on the foregoing, it is hereby

ORDERED that defendants' respective applications for dismissal of plaintiff's complaint are denied in their entirety; and it is further

ORDERED that defendants are directed to serve answers to the complaint within 20 days after service of a copy of this order with notice of entry.

This constitutes the decision and order of the court.

Dated: 7-1-21

George J. Silver

GEORGE J. SILVER, J.S.C.