

<b>PC-2 Doe v Archdiocese of N.Y.</b>
2021 NY Slip Op 32487(U)
June 30, 2021
Supreme Court, New York County
Docket Number: Index No. 950202/2020
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

.....X

**PC-2 DOE**

**Index №. 950202/2020**

**Plaintiff,**

**-against-**

**ARCHDIOCESE OF NEW YORK, et al.**

**Defendants**

.....X

**HON. GEORGE J. SILVER:**

Defendants ARCHDIOCESE OF NEW YORK (“Archdiocese”) and CHURCH OF ST. JOSEPH OF YORKVILLE, and ST. JOSEPH’S SCHOOL-YORKVILLE (“St. Joseph”) (collectively “defendants”) move, pursuant to CPLR §3211(a)(7), to dismiss plaintiff’s third cause of action for negligent infliction of emotional distress (“NIED”), and fifth cause of action for breach of fiduciary duty. The Archdiocese also seeks dismissal of plaintiff’s causes of action for negligence to the extent each such causes of action are predicated upon the doctrine of *respondeat superior* or vicarious liability, and plaintiff’s fourth cause of action for premises liability. Plaintiff opposes defendants’ respective applications.

Plaintiff alleges that when he was a child he served as an altar boy while attending St. Joseph’s as a student. It is further alleged that from approximately 1967 through 1969 a priest in defendants’ service engaged in unpermitted, forceful, and harmful sexual conduct with plaintiff on premises owned and operated St. Joseph.

In support of the request to dismiss plaintiff’s cause of action for negligence, the Archdiocese contends that a claim based on the alleged intentional act of a perpetrator can only be asserted against the Archdiocese by way of *respondeat superior*. Since alleged sexual abuse by an employee cannot be within the scope or in furtherance of that individual’s employment, the Archdiocese argues that there can be no liability against them for negligence as a matter of law.

Collectively, defendants contend that plaintiff’s claim for NIED should also be dismissed pursuant to CLPR §3211(a)(7) because it is duplicative of plaintiff’s negligence causes of action. Defendants contend that plaintiff’s cause of action for breach of fiduciary duty should also be dismissed because it is not pleaded with particularity, and in any event, defendants owed plaintiff no such duty.

Finally, the Archdiocese argues that it cannot be held liable for premises liability since plaintiff’s claim with respect to premises liability simply repackages plaintiff’s cause of action for negligent hiring, retention, supervision and/or direction.

In opposition, plaintiff argues that defendants’ proffered grounds for dismissal of plaintiff’s complaint are erroneous and premature insofar as no discovery has been conducted. Notably, plaintiff underscores that plaintiff is not required to provide specific details at this juncture to fully demonstrate the viability of plaintiff’s various causes of action. Instead, plaintiff emphasizes that the allegations asserted within plaintiff’s complaint should be afforded the benefit of every

favorable inference.

In reply, defendants argue that plaintiff's opposition fails to fully flesh out the deficiencies contained within plaintiff's complaint. Most notably, defendants state that plaintiff does not adequately address the dearth of facts put forward in support of plaintiff's causes of action. Accordingly, defendants reiterate that they are entitled to dismissal of the referenced causes of action.

## DISCUSSION

“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]).

Here, defendants collectively seek dismissal of plaintiff's NIED claim. In general, an NIED cause of action “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” (*Padilla v. Verczky-Porter*, 66 AD3d 1481, 1483 [4th Dept 2009]). “Generally, a cause of action for infliction of emotional distress is not allowed if essentially duplicative of tort or contract causes of action.” (*Wolkstein v. Morgenstern*, 275 AD2d 635, 637 [1st Dept 2000]). Here, the allegations set forth under the NIED cause of action are duplicative of the negligence causes of action. The cases cited by plaintiff are inapposite, as plaintiff's proffered distinctions are not recognized by the relevant Appellate authorities cited. As such, defendants' respective motions to dismiss plaintiff's NIED claim are granted.

With respect to defendants' request to dismiss plaintiff's breach of fiduciary duty cause of action, courts have articulated that a fiduciary duty exists when a plaintiff's relationship with a church extends beyond that of an ordinary parishioner (see *Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3rd Dept 2005]). That said, a fiduciary relationship is not applicable to all parishioners, and can be established upon a showing that a congregant's relationship with a church entity resulted in “de facto control and dominance” when the congregant was “vulnerable and incapable of self-protection regarding the matter at issue” (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). The existence of a fiduciary duty is a fact-specific question to be determined by the fact-finder, such that breach of fiduciary duty claims should not generally be dismissed before the parties have the opportunity to conduct discovery (see *Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, *supra*). Here, plaintiff has alleged that a fiduciary duty was owed to all altar boys and students on account of defendants' position as caretakers and moral authorities. Assuming every fact alleged to be true and liberally construing the pleading in plaintiff's favor, the allegations for breach of fiduciary duty are insufficient as a matter of law. Plaintiff's breach of fiduciary duty, as pleaded in the complaint, is no different from plaintiff's negligence causes of action. Accordingly, plaintiff has failed to state a cause of action for breach of fiduciary duty, and defendants' respective motions to dismiss this cause of action are granted pursuant to CPLR §3211(a)(7).

Separately, the Archdiocese seeks dismissal of plaintiff's negligence cause of action. Contrary to the Archdiocese's contentions, plaintiff is not simply alleging that the Archdiocese is vicariously liable under *respondeat superior* for a perpetrator's alleged actions. Rather, the gravamen of plaintiff's negligence claim is that the Archdiocese owed a duty of care to plaintiff because, among other things, plaintiff was an invitee on property that the Archdiocese owned and/or operated. Plaintiff further underscores that the duty that was owed to plaintiff was breached by allowing a known perpetrator of sex abuse to work on the premises. Although the Archdiocese

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cannot be held vicariously liable for the intentional torts committed by an alleged perpetrator, the Archdiocese can be held vicariously liable for negligence committed in allowing such abuse to take place when a duty of reasonable care existed to safely manage the subject facilities. Moreover, while the Archdiocese argues that it had no notice of the actions at issue, the Archdiocese has failed to conclusively establish a 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. It is plaintiff's contention that the Archdiocese provided unfettered access to children that could not have been achieved in the absence of an employer-employee relationship. This relationship, plaintiff alleges, put any alleged perpetrators in the position to sexually abuse plaintiff. As such, the Archdiocese's motion to dismiss plaintiff's negligence cause of action is denied.

Finally, a claim for premises liability is premised upon a duty owed by a landowner to protect a special class of individuals from a foreseeable harm while on the landowner's premises. (*see generally Nallan v. Helmsley-Spear, Inc.*, 50 N.Y.2d 507, 518-19 [1980]). Moreover, a determination of whether a duty is owed for any alleged defective or dangerous condition on property is predicated on ownership, control, occupancy, maintenance, or a special use of the property (*see Jackson v. Board of Education*, 30 AD3d 57, 60 [1st Dept 2006][holding that "[l]iability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises"]). Here, it remains to be seen whether the Archdiocese owned, operated or controlled the subject premises where the alleged abuse occurred and consequently owed a duty to plaintiff. Nevertheless, the premises liability cause of action fails because it is merely duplicative of plaintiff's first cause of action alleging negligent hiring, retention, supervision and/or direction, and is dismissed on that basis (*see Nouel v. 325 Wadsworth Realty LLC*, 112 AD3d 493,494 [1st Dept 2013][holding that plaintiffs' "premises liability claim" was properly dismissed, as it "is merely duplicative of the negligent hiring, retention, and supervision claims"]).

Based on the foregoing, it is hereby

ORDERED that defendants' respective applications for dismissal of plaintiff's causes of action for negligent infliction of emotional distress ("NIED") and breach of fiduciary duty, are granted; and it is further

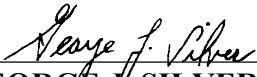
ORDERED that the Archdiocese's application for dismissal of plaintiff's negligence cause of action, is denied for the reasons articulated; and it is further

ORDERED that the Archdiocese's application for dismissal of plaintiff's premises liability cause of action, is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in accordance with this court's decision and order.

This constitutes the decision and order of the court.

Dated: 6-30-21

  
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GEORGE J. SILVER, J.S.C.