

| |
|--|
| John Doe JP v Archdiocese of N.Y. |
| 2022 NY Slip Op 31618(U) |
| May 12, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 950638/2020 |
| Judge: Laurence Love |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

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

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

JOHN DOE JP,

Plaintiff,

- v -

THE ARCHDIOCESE OF NEW YORK, JOHN S. BURKE
CATHOLIC HIGH SCHOOL

Defendant.

-----X

INDEX NO. 950638/2020

MOTION DATE 01/04/2021,
01/04/2021

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 17, 18, 19, 20, 25, 34, 37, 38, 43

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 27, 28, 29, 30, 31, 35, 36, 39, 42

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants, John S. Burke Catholic High School (“Burke”) and The Archdiocese of New York (“Archdiocese”) (collectively “Moving Defendants”) motions to dismiss plaintiff’s Third, Fourth, and Fifth causes of action pursuant to CPLR 3211(a)(7) is as follows:

Plaintiff commenced the instant Child Victims Act action by filing a summons and complaint on August 28, 2020 alleging that in approximately 1974 Father Francis J. Stinner, a religion teacher and soccer coach at John S. Burke Catholic High School, in Goshen, New York, sexually abused plaintiff. Plaintiff further alleges that Burke and the Archdiocese were aware of Stinner’s abuse of other minor children and failed to take reasonable steps to prevent same. Arising from same, plaintiff pled causes of action alleging 1) Negligence; 2) Negligent Hiring, Supervision

and Retention; 3) Breach of Fiduciary Duty; 4) Constructive Fraud; and 5) Civil Conspiracy to Commit Fraud.

“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]).

Moving Defendants contend that plaintiff has failed to allege a fiduciary duty between himself and Moving Defendants and that said cause of action is duplicative of plaintiff's negligence causes 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 [3d Dept 2005]). In other words, a fiduciary relationship between a plaintiff parishioner and church may exist where the plaintiff comes forward with facts demonstrating that the relationship between the plaintiff parishioner and the church is unique or distinct from the church's relationship with other parishioners generally (*id.*). 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 pled that "Plaintiff purposely sought out the religious advice and guidance of Fr. Stinner, a priest, who served as Plaintiff's religious studies teacher at Burke. Plaintiff advised Fr. Stinner of his desire to join the priesthood and Fr. Stinner offered to guide Plaintiff in reaching his goal" and that "Plaintiff had an especially unique relationship with Fr.

Stinner, through his role as a religion teacher and soccer coach under the auspices and control of Burke. Fr. Stinner would invite Plaintiff over to his on campus house alone, and the two spent an abundant amount of time together, under the guise of discussing Plaintiff's interest in joining the priesthood and theology." While plaintiff has alleged some facts that may be considered in determining if he had a fiduciary relationship with his alleged abuser, plaintiff has not pled any facts which would establish that he was in a fiduciary relationship with either of the defendants. The remaining contentions in support of plaintiff's cause of action hinge on negligence, and as such are duplicative of plaintiff's causes of action alleging negligence.

As discussed in *Levin v. Kitsis*, 82 A.D.3d 1051, 1054 (1st Dept. 2011), "A cause of action sounding in actual fraud must state that the defendant knowingly misrepresented or concealed a material fact for the purpose of inducing another party to rely upon it, and that the other party justifiably relied upon such misrepresentation or concealment to his or her own detriment (*see Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]; *Channel Master Corp. v Aluminium Ltd. Sales*, 4 NY2d 403, 406-407 [1958]; *Deutsche Bank Natl. Trust Co. v Sinclair*, 68 AD3d 914, 916 [2009]). 'The elements of a cause of action to recover for constructive fraud are the same as those to recover for actual fraud with the crucial exception that the element of scienter upon the part of the defendant, his [or her] knowledge of the falsity of his representation, is dropped . . . and is replaced by a requirement that the plaintiff prove the existence of a fiduciary or confidential relationship warranting the trusting party to repose his [or her] confidence in the defendant and therefore to relax the care and vigilance he [or she] would ordinarily exercise in the circumstances' (*Brown v Lockwood*, 76 AD2d 721, 731 [1980])" As plaintiff has failed to adequately plead a fiduciary relationship with defendants, plaintiff's fraud claims must be dismissed, *See, Vitale v. Steinberg*, 307 A.D.2d 107 (1st Dep't 2003).

ORDERED that Moving Defendants' application for dismissal of the Third, Fourth, and Fifth and Sixth causes of action of plaintiff's complaint are 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.

5/12/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE