

Doe v Dominican Found. of Dominican Friars

2022 NY Slip Op 31792(U)

June 3, 2022

Supreme Court, New York County

Docket Number: Index No. 950649/2020

Judge: Laurence Love

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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. LAURENCE LOVE PART 63M

Justice

-----X

JOHN DOE,

Plaintiff,

- v -

THE DOMINICAN FOUNDATION OF DOMINICAN FRIARS,
PROVINCE OF ST. JOSEPH, INC., DOMINICAN FRIARS'
GUILDS, XAVERIAN BROTHERS U.S.A., INC., AMERICAN
CENTRAL PROVINCE OF XAVERIAN BROTHERS, INC.
A/K/A BROTHERS OF ST. FRANCIS XAVIER, SACRED
HEART PROVINCE, ARCHDIOCESE OF NEW YORK, THE
CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW
YORK, JEAN-LOUIS DELOUCHE, LOUIS DELOUCHES

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 68, 69, 70, 71, 72, 73, 74, 81

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 32, 44, 45, 46, 47, 48, 49, 50, 51, 75, 76, 77, 78, 79, 80, 82

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 84, 85, 86, 88

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following reads on I) THE DOMINICAN FOUNDATION OF DOMINICAN FRIARS, PROVINCE OF ST. JOSEPH, INC.’S (“Dominican Friars”) pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, and plaintiff’s cross – motion to deny; and II) THE DOMINICAN FRIARS GUILDS’ (“Dominican Guilds”) pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, and plaintiff’s cross – motion to deny; and III) ARCHDIOCESE OF NEW YORK (“Archdiocese”) and THE

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK'S ("Catholic Charities") pre – answer motion to dismiss, CPLR 3211(a)(1) – defense is based on documentary evidence, CPLR 3211(a)(7) – failure to state a cause of action, or in the alternative to grant summary judgment per CPLR 3212(b).

Xaverian Brothers USA, Inc. submits a verified answer (see NYSCEF Doc. No. 22), and Louis Joseph DesLouches submits a verified answer (see NYSCEF Doc. No. 25).

Plaintiff submitted an amended complaint with sixteen (16) causes of action, in relation to allegations that pertain to the Child Victims Act ("CVA"), CPLR 214-g. Causes of action include i) negligence against Dominican Friars, ii) negligent infliction of emotional distress ("NIED") against Dominican Friars, iii) negligence against Dominican Guilds, iv) NIED against Dominican Guilds, v) negligence against Xaverian Brothers USA Inc ("Xaverian Brothers"), vi) NIED against Xaverian Brothers, vii) negligence against Sacred Heart Province, viii) NIED against Sacred Heart Province, ix) negligence against Archdiocese, x) NIED against Archdiocese, xi) negligence against Catholic Charities, xii) NIED against Catholic Charities, xiii) assault against Louis Joseph Delouches, xiv) battery against Louis Joseph Delouches, xv) "Negligent Intentional Infliction of Emotional Distress" (see NYSCEF Doc. No. 18 P. 27), and xvi) "Article 16 Allegations" (see NYSCEF Doc. No. 18).

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We 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 within any cognizable legal theory" (see *Leon v. Martinez*, 84 N.Y.2d 83 [1994]).

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every

possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]).

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).

The elements of negligence are “1) a duty owed by the defendant to the plaintiff, 2) a breach thereof, and 3) injury proximately resulting therefrom” (see *Elmaliach v. Bank of China Ltd.*, 971 N.Y.S.2d 504 (1st Dept. 2013). “Liability for negligent supervision is based not on the tortious conduct of the employee but on the negligence of the Defendant – employer for failing to supervise the employee in a situation which involves the risk of harm by the employee to others” (see *Werner v. Diocese of Rockville Ctr.*, 2020 N.Y. Misc. LEXIS 2003, at *24 (Sup. Ct. Nassau May 11, 2020, No. 900012/2019).

The elements of negligent infliction of emotional distress include “1) extreme and outrageous conduct, ii) an intent to cause – or disregard of a substantial probability of causing – severe emotional distress, iii) a causal connection between the conduct and the injury, iv) the resultant severe emotional distress, and v) the existence of extreme and outrageous conduct” (see *Lau v. S&M Enters.*, 72 A.D.3d 497, 498 [1st Dept. 2010]).

Per Defendant – The Dominican Friars’ affirmation in support,

“Plaintiff’s first cause of action is for negligence against the Dominicans. Plaintiff alleges the Dominicans ‘had a duty to supervise and prevent known risks of harm to students its camp and counselors.’ (NSYCEF Doc. No. 18 Par. 34). The Dominicans were

‘negligent in hiring, retaining, and supervising their personnel, including defendant DeLouches’ and ‘knew or should have known that counselor DeLouches sexually abused and/or had the propensity to sexually abuse children, and it did nothing to stop it, and failed to properly supervise defendant DeLouches’ (NYSCEF Doc. No. 18 Pars. 35 – 36). Plaintiff’s second cause of action is for negligent infliction of emotional distress against the Dominicans. Plaintiff alleges the Dominicans ‘knew or reasonably should have known that the failure to properly advise, supervise, and hire counselors, including defendant DeLouches, who sexually abused the plaintiff, would and did proximately result in physical and emotional distress to the plaintiff.’ (NYSCEF Doc. No. 18 Par. 45). ‘Despite said knowledge, power and duty, the defendant negligently failed to act so as to stop, prevent, and prohibit the improper conduct that result in defendant DeLouches sexually abusing the plaintiff.’ (NYSCEF Doc. No. 18 Par. 48)” (see NYSCEF Doc. No. 27 Pars. 11 – 12).

Defendant – Dominican Guilds submits an affirmation in support,

“[T]he Guild respectfully adopts the and incorporates the summary of the allegations in the Amended Complaint and arguments set forth in the moving papers of the Dominican Foundation of Dominican Friars, Province of St. Joseph, Inc. ..., which seeks the identical relief sought herein. The third cause of action for negligence against the Guild and the fourth cause of action for negligent infliction of emotional distress against the Guild are identical to the first and second causes of action asserted against the Dominicans” (see NYSCEF Doc. No. 31 Pars. 6 – 7).

Defendants Dominican Friars and Dominican Guilds argue that their respective claims against them for negligence and NIED are duplicative. “Since the gross negligence cause of action arose from the same facts as the veterinary malpractice and fraud causes of action, the gross negligence cause of action is duplicative and, thus, cannot be sustained” (see *Gale v. Animal Med. Ctr.*, 108 A.D.3d 497, 498-499 [2nd Dept. 2013]). “Causes of action that are based on the same set of facts and theories and seek identical damages are duplicative of one another and must be dismissed” (see *NYAHS A Servs., Inc., Self-Insurance Trust v. People Care Inc.*, 167 A.D.3d 1305, 1309 [3rd Dept. 2018]).

“Here, the allegations set forth in the ... cause of action are duplicative of the negligence cause of action. As such, [Defendants’] motion to dismiss the ... cause of action is granted” (see *Torrey v. Portville Central School*, 66 Misc.3d 1225(A) [Sup. Ct., N.Y., Cattaraugus County, February 21, 2020]).

Archdiocese’s and Catholic Charities’ affirmation in support states,

“[T]he documentary evidence flatly contradicts Plaintiff’s false allegation that the Archdiocese and Catholic Charities exercised some degree of control over the Dominican Boys’ Camp. In truth, the Archdiocese and Catholic Charities had no control over the Dominican Boys’ Camp and the Archdiocese and Catholic Charities did not own, manage or operate the Dominican Boys’ Camp at any time relevant to the Complaint” (see NYSCEF Doc. No. 53 Par. 4).

Archdiocese and Catholic Charities submits a Dominican Friars Deed (see NYSCEF Doc. No. 59), a Certificate of Incorporate of Dominican Fathers Province of St. Joseph (see NYSCEF Doc. No. 60), and a Certificate of Incorporation of American Province of the Xaverian Brothers Inc. (see NYSCEF Doc. No. 61).

An affidavit from Roderick J. Cassidy, Associate General Counsel for the Archdiocese affirms, “[t]he Archdiocese did not own, operate, or control Dominican Boys Camp. [T]he Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Dominican Boys Camp. [B]ecause Dominican Boys Camp was not a part of – and is independent from – the Archdiocese, the Archdiocese did not make any representations regarding the safety of Dominican Boys Camp or its faculty, staff, and employees, and did not have any relationship with the students, or parents or guardians of students, at Dominican Boys Camp” (see NYSCEF Doc. No. 62 Pars. 4, 6 – 7).

The affidavit from Talia Lockspeiser, Associate Executive Director for Catholic Charities, affirms “Catholic Charities did not create, oversee, supervise, manage, control, direct

or operate the Dominican Boys' Camp in Staatsburg, New York at any time relevant to the allegations in the Complaint" (see NYSCEF Doc. No. 63 Par. 5).

Plaintiff's affirmation in opposition states, "[t]hese internal 'records and files' are within the exclusive control of the ARCHDIOCESE, CATHOLIC CHARITIES, and DOMINICAN FRIARS. The moving defendants do not attach any documents regarding their own structure and/or incorporation. Rather, they argue that because the certificates of incorporation of co-defendants do not specifically reference ARCHDIOCESE or CATHOLIC CHARITIES by name, they are not and have never been affiliated with them. There is no mention of who their own trustees are so as to establish that none are or were in common, and no other facts are offered in support of this contention. The DOMINICAN FRIARS certificate of incorporation is dated 1925 and the XAVERIAN certificate of incorporation is dated 1931. No amendments or updated versions or filings were provided. It is quite unlikely that the trustees listed on these documents are still alive, much less running either organization" (see NYSCEF Doc. No. 84 Par. 40, 44 – 46).

Plaintiff does not show any documentary evidence nor testimony showing that Archdiocese and Catholic Charities had any control, own, or operate the Dominican Boys Camp.


It is now,

ORDERED THE DOMINICAN FOUNDATION OF DOMINICAN FRIARS, PROVINCE OF ST. JOSEPH, INC.'S pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action is DENIED and plaintiff's cross – motion to deny is GRANTED; and it is further

ORDERED that THE DOMINICAN FRIARS GUILDS’ pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action is DENIED, and plaintiff’s cross – motion to deny is GRANTED; and it is further

ORDERED that the Archdiocese’s motion to dismiss the ninth cause of action for negligence and the tenth cause of action for NIED is GRANTED; and it is further

ORDERED that the Catholic Charities motion to dismiss the eleventh cause of action for negligence and the twelfth cause of action for NIED is GRANTED.

<u>6/03/2022</u> DATE			 LAURENCE LOVE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE