

Ark274 Doe v Archdiocese of N.Y.

2022 NY Slip Op 31995(U)

June 24, 2022

Supreme Court, New York County

Docket Number: Index No. 950383/2020

Judge: Laurence Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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

ARK274 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE MARIST
BROTHERS, MOUNT ST. MICHAEL ACADEMY, DOES 1-5
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

The following read on what appears to be a motion to dismiss, via CPLR 3211(a)(1), 3211(a)(7); and motion for summary judgment, CPLR 3212(b), by defendant Archdiocese of New York (“Archdiocese”). This action is brought per the New York Child Victims Act, CPLR 214-g.

A summons and complaint were submitted on July 23, 2020. Defendant the Marist Brothers submitted an answer on December 21, 2020, and defendant Mount St. Michael Academy submitted an answer on December 21, 2020 also.

The complaint states causes of action for i) negligence, ii) negligent training and supervision of employees, and iii) negligent retention of employees.

Defendant Archdiocese submits this pre – answer motion to dismiss.

“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]).

On a motion to dismiss based upon documentary evidence, defendant must present evidence which “utterly refutes” plaintiff’s allegations and establishes a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314 [2002]).

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]).

Defendant Archdiocese affirmation states, “the Archdiocese does not and did not have any association with Mount Saint Michael nor any of the faculty or staff, ..., nor with the Marist Brothers, the entirely autonomous religious congregation which owns and operates Mount St. Michael Academy” (see NYSCEF Doc. No. 25 Par. 15).

Archdiocese submits the affirmation of Roderick J. Cassidy, Associate General Counsel for the Archdiocese. “I base this affidavit upon my review of the Archdiocese’s records and files, as well as my personal knowledge. I provide this affidavit to attest that the Archdiocese does not and did not own property where the alleged acts occurred and does not and did not employ any people, either at the location of the alleged incident or at any other facility, at any time. The Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Mount St. Michael Academy or it (sic) faculty, staff, employees, or students. The Marist

Brothers are an independent religious order which was and is separate and distinct from the Archdiocese” (see NYSCEF Doc. No. 36 Pars. 2, 4 – 5).

Defendant Archdiocese further provides a Certificate of Incorporation (see NYSCEF Doc. No. 33), and a Certificate of Report of Existence (see NYSCEF Doc. No. 35). Both documents show no affiliation or reference to the Archdiocese.

“Where there is no ownership, control, or responsibility for the property where the accident occurred, there is no duty owed to the plaintiff, a necessary element to find liability for negligence” (see *Balsam v. Delma Eng’g Corp.*, 139 A.D.2d 292, 296-297 [1st Dept. 1988]).

Plaintiff’s affirmation in opposition states, “[d]iscovery is necessary to demonstrate the extent of the Archdiocese’s relationship with its co – defendants and the abuser at issue. The Archdiocese’s liability cannot be conclusively determined until Plaintiff has had an opportunity to conduct discovery” (see NYSCEF Doc. No. 40 Par. 5).

Plaintiff provides the affidavit of Thomas Doyle (see NYSCEF Doc. No. 41) and Father William Woestman (see NYSCEF Doc. No. 46). The Thomas Doyle affidavit states “[p]arish schools are under the immediate authority of the pastor. He is usually responsible for hiring and supervising the school principal. All schools are under the authority of the bishop. He is ultimately responsible for the moral and spiritual welfare of the students in the school” (see NYSCEF Doc. No. 41). The Woestman affidavit mentions how the bishop would fulfill priest positions. “[B]ishops within the Central United States Province’s geographic boundaries who were in need of a priest to staff a specific ministry would contact the Provincial to see if we would be able to assist” (see NYSCEF Doc. No. 46 Par. 4).

Plaintiff further submits various documents from Cincinnati (see NYSCEF Doc. No. 44), and St. Paul, Minnesota (see NYSCEF Doc. No. 45). Plaintiff does not provide information on how the Archdiocese is associated with the Marist Brothers, nor Mount St. Michael Academy.

In *Plaza v. St. Helena's Parochial Elementary, St. Helena Church, and Archdiocese of New York*, “[i]n opposition to the motion, plaintiff attempts to minimize the substance of defendants’ affidavits and documents, however, she offers no evidence that contradicts defendants’ showing, but argues that granting summary judgment would be premature” (see *Plaza v. St. Helena's Parochial Elementary, St. Helena Church, and Archdiocese of New York*, Index No. 28063/2017).

“The mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion” (see *Erkan v. McDonald's Corp.*, 146 A.D.3d [1st Dept. 2017]).

In *Milosevic*, “[d]ismissal of the claims cannot be avoided by speculation as to what discovery might reveal” (see *Silverstein v. Westminster House Owners, Inc.*, 50 A.D.3d 257 [2008]).

As no document or submission shows the connection or link between the Archdiocese and the other two named defendants, the Marist Brothers, and Mount St. Michael Academy, it is now


ORDERED that the motion of defendant Archdiocese of New York, to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

<p><u>6/24/2022</u> DATE</p>			 LAURENCE LOVE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE