

<b>Ark260 Doe v Archdiocese of N.Y.</b>
2022 NY Slip Op 32033(U)
June 27, 2022
Supreme Court, New York County
Docket Number: Index No. 950292/2020
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

-----X

ARK260 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, IONA GRAMMAR  
SCHOOL, IONA PREPARATORY SCHOOL, DOES 1-5  
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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**INDEX NO.** 950292/2020

**MOTION DATE** 04/27/2021

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on Archdiocese of New York’s (“Archdiocese”) pre – answer motion to dismiss, CPLR 3211(a)(1) and CPLR 3211(a)(7); or in the alternative grant summary judgment, CPLR 3212. The complaint alleges abuse per the Child Victims Act (“CVA”), CPLR 214-g, with causes of action for i) negligence, ii) negligent training and supervision of employees, and iii) negligent retention of employees.

“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]).

Archdiocese’s Affirmation in Support states, “[t]he evidence annexed hereto flatly contradicts Plaintiff’s allegations that the Archdiocese owned, operated, managed or controlled either Iona Grammar School or Iona Preparatory School, where the abuse allegedly occurred; flatly contradicts Plaintiff’s allegations that the Archdiocese controlled, employed or supervised the Iona Grammar School or Iona Preparatory School staff; and demonstrates that the Archdiocese did not have any other involvement in the bare and conclusory allegations that give rise to this lawsuit against the Archdiocese, which are flatly contradicted by the documentary evidence” (see NYSCEF Doc. No. 20 Par. 2).

The Affirmation in Support states, “the property on which Iona [...] School was located was owned by Christian Brothers Institute. As made clear by the annexed certificates of incorporation for the Christian Brothers’ Institute and averred by the Christian Brothers’ Institute in court filings in *In re: The Christian Brothers’ Institute, et. al.*, (U.S. Bankruptcy Court S.D.N.Y. Case No: 11-228200), which the Archdiocese asks this Court to take judicial notice of, The Christian Brothers Institute is an independent religious order with an independent legal status. It was incorporated as a Membership Corporation under the Membership Corporations Law on September 22, 1906. The Certificate of Incorporation was later amended in March 8, 1972, and the Christian Brothers Institute became a not-for-profit corporation pursuant to Section

804 of the Not-For-Profit Corporation law. The Christian Brothers' Institute, is a completely independent legal entity. It was not a religious corporation incorporated under the Religious Corporations Law, as the Archdiocese is. Further, the Certificates of Incorporation do not name any hierarchy of the Archdiocese of New York as a Trustee and irrefutably establish that the Christian Brothers' Institute was an independent legal corporation incorporated under a completely different law than the Archdiocese, which had and still has no control or supervision over of this independent legal corporation" (see NYSCEF Doc. No. 20 Par. 5).

Archdiocese submits a Certificates of Incorporation for Christian Brothers (see NYSCEF Doc. No. 22), along with a Deed for Iona Grammar School (see NYSCEF Doc. No. 23), and a deed from Iona Prep School (see NYSCEF Doc. No. 24).

The affidavit of Brother Kevin M. Griffith, Trustee of Iona Preparatory School, affirms, "Iona Prep is an independent New York not-for-profit educational institution chartered by the Regents of the University of the State of New York" (see NYSCEF Doc. No. 25 Par. 4).

The affidavit of Associate General Counsel for the Archdiocese affirms, "[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Iona Grammar School and Iona Preparatory School or their faculty, staff, employees, or students. The Archdiocese did not own the property" (see NYSCEF Doc. No. 26 Par. 4).

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 abusers at issue. Specifically, policies that govern the structure of the Catholic Church place responsibility on dioceses, like the Archdiocese, for activities, programs, and employees working within its geographic territory. Specifically, policies that govern the structure of the Catholic Church place responsibility on dioceses, like the Archdiocese, for activities, programs, and employees working

within its geographical territory. *See* Affidavit of Thomas Doyle” (see NYSCEF Doc. No. 38 Par. 5 – 6).

Plaintiff submits the affidavit of Thomas Doyle (see NYSCEF Doc. No. 39) along with various decisions and letters (see NYSCEF Doc. Nos. 40 – 46).

Archdiocese’s Reply states, “[p]laintiff attempts to create a feigned issue of fact by asking this Court to look to religious law to determine, based on a misinterpretation of Roman Catholic Canon Law, that the Archdiocese violated religious law and therefore, violated a secular legal duty. Plaintiff relies on an affidavit by Doyle dated May 11, 2015, which was submitted to a court in Minnesota, presumably applying Minnesota state law, with respect to allegations of abuse at a parish church in the Diocese of Duluth. Doyle’s affidavit does not address New York Religious Corporations Law, does not address New York Membership Corporations Law, does not address New York Not-For Profit Corporations Law, and does not address New York Education Law. Doyle’s affidavit does not address the differences between parish schools, independent catholic schools, and private catholic schools. Doyle’s six year old affidavit does not address the documentary and testimonial evidence proffered by the Archdiocese establishing the ownership and control of Iona. Thus, Doyle’s affidavit is incompetent as it is not based on any personal knowledge of the law or facts relevant to the matter pending before this Court, and should be rejected as either as a fact witness or as an expert” (see NYSCEF Doc. No. 50 Par. 3, 7).

“In order 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” (see *Pasternack v. Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]).

A claim for negligent supervision, hiring, or retention requires allegations establishing that “the relationship between the defendant and the person who threatens the harm to the third person may be such as to require the defendant to attempt to control the other’s conduct” (see *Pulka v. Edelman*, 40 N.Y.2d 781, 783 [1976]).

As Archdiocese has shown no control, supervision, hiring, or retention of employees at Iona, a duty was not owed to plaintiff. The submitted documents of articles of incorporation and deeds establish that there was no oversight from Archdiocese to Iona. Plaintiff’s affidavit and exhibits and request for additional discovery does not prohibit dismissal at this time.

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](http://www.nycourts.gov/supctmanh)).*

<u>6/27/2022</u> DATE	 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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE