

<b>Ark270 Doe v Archdiocese of N.Y.</b>
2022 NY Slip Op 32034(U)
June 28, 2022
Supreme Court, New York County
Docket Number: Index No. 950302/2020
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

ARK270 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SALESIANS OF DON  
BOSCO, SALESIAN HIGH SCHOOL, DOES 1-5 WHOSE  
IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

-----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, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

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

“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]).

“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 to dismiss states, “[t]he Salesian Society, a completely separate legal entity from Defendant Archdiocese who had no control, authority, or supervision over the Salesian High School, was incorporated on February 25, 1907 as The Missionary Society of the Salesian Congregation. On March 22, 1919, The Missionary Society of the Salesian Congregation, Inc. purchased the property where the Salesian High School was located. On January 5, 1939, The Missionary Society of the Salesian Congregation changed their name to Salesian Society. Neither the Salesian Society nor the Salesian High School were affiliated with the Archdiocese at any time relevant to the allegations in the Complaint” (see NYSCEF Doc. No. 24 Par. 5).

Archdiocese provides a Certificate of Incorporation of The Missionary Society of the Salesian Congregation of the State of New York (see NYSCEF Doc. No. 26), a copy of the Property Deed for Salesian High School dated March 22, 1919 (see NYSCEF Doc. No. 27), and a certified copy of the Change of Name and Report of Existence (see NYSCEF Doc. No. 28).

Plaintiff's opposition to dismiss states, "[d]iscovery is necessary to demonstrate the extent of the Archdiocese's relationship with its co – defendants and the abuser 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 geographical territory. *See* Affidavit of Thomas Doyle" (see NYSCEF Doc. No. 34 Pars. 5 – 6).

The affidavit of Thomas P. Doyle states,

"I was ordained a Catholic priest. It is relevant and helpful to review the role of the Catholic Church's internal norms and regulations, commonly referred to as Canon Law, in cases of alleged sexual abuses by Catholic clerics as well as other types of cases before civil courts in which the Catholic Church is a party. The Catholic Church is divided into geographic entities known as dioceses. The main authority figure in a diocese is the bishop who is personally appointed by the pope. The bishop's fundamental obligations are to safeguard and promote the spiritual and moral welfare of the people entrusted to him. The essential unit of the diocese is the parish, which is generally geographic in nature" (see NYSCEF Doc. No. 35).

Plaintiff further provides various decisions and letters from different jurisdictions, including Minnesota and Cincinnati (see NYSCEF Doc. Nos. 36 – 42).

Defendant – Archdiocese's Reply counters, "[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. Of course, Canon Law is not the law of the State of New York and an alleged violation of Canon Law is not a violation of New York civil or statutory law. 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 school, independent catholic schools, and private catholic schools, such as Salesian HS. Doyle's six year old affidavit does not address the documentary and testimonial evidence proffered by the Archdiocese establishing the ownership and control of Salesian HS. 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. 44 Pars. 3, 7).

As Archdiocese has shown they had no control, supervision, hiring, or retention of employees at Salesian High School, 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 Salesian High School. 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

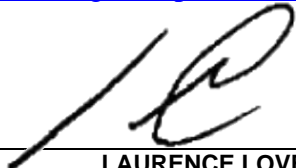
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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)).

6/28/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: