

Ark251 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32102(U)
May 31, 2022
Supreme Court, New York County
Docket Number: Index No. 950334/2020
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

ARK251 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS, ST. IGNATIUS LOYOLA, LOYOLA SCHOOL, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950334/2020

MOTION DATE 05/03/2021,
05/03/2021

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 58, 60, 61, 62, 63, 64

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 54, 55, 56, 57, 59

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on:

I) Defendant – Archdiocese of New York’s motion to dismiss, motion sequence number 002, per CPLR 3211(a)(1) – based upon documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action, or in the alternative, to grant summary judgment, CPLR 3212(b) – cause of action has no merit; and

II) the “Roman Catholic Church of St. Ignatius Loyola’s” cross – motion to dismiss per CPLR 3211(a)(8) – the court has not jurisdiction, CPLR 3211(a)(7) – failure to state a cause of action, and “converting this cross-motion into one for summary judgment pursuant to CPLR

3211(c) and dismissing the Complaint against Loyola Church in its entirety pursuant to CPLR 3212(b);” and

III) Defendant – Loyola School’s motion to dismiss, motion sequence number 003, per CPLR 3211(a)(5), and CPLR 3211(a)(7).

A summons and complaint were filed on July 20, 2020. A complaint states causes of action for i) negligence, ii) negligent training and supervision of employees, and iii) negligent retention of employees. Plaintiff filed this litigation per the Child Victims Act, CPLR 214-g.

“St. Ignatius Loyola” submitted an answer on November 6, 2020 (see NYSCEF Doc. No. 20), and The New York Province of the Society of Jesus and The USA Northeast Province of the Society of Jesus, Inc. submitted a verified answer (see NYSCEF Doc. No. 22).

“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]).

“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]).

Before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff (see *Pulka v. Edelman*, 40 NY2d 781, 782 [1976]; *Martinez v. City of New York*, 90 AD3d 718, 719 [2d Dept. 2011]).

“To establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the [defendant] knew or should have known of the employee’s propensity for the conduct which caused the injury” (see *Shor v. Touch-N-Go Farms, Inc.*, 89 A.D.3d 830, 831 [2d Dept. 2011]).

“[A] necessary element of [negligent hiring, negligent retention, and negligent supervision] is that the employer knew or should have known of the employee’s propensity for the conduct which caused the injury” (see *Kenneth R. v. Roman Catholic Diocese*, 229 A.D.2d 159, 161 [2d Dept. 1996]).

Defendant Archdiocese’s affirmation states, “although Loyola School was and is physically located within the geographic boundaries of the Archdiocese, the documents referenced above and annexed hereto show that Loyola School was not affiliated or associated with the Archdiocese at any time relevant to the allegations in the complaint. Instead, the certified property records show that on July 23, 1963, Loyola School conveyed the real property it owned in Manhattan to the New York Province of the Society of Jesus (“Jesuits”). Finally, as discussed the Certificates of Incorporation for the New York Province of the Society of Jesus show that it was and is independent of the Archdiocese and does not have any common trustees” (see NYSCEF Doc. N. 26 Par. 10).

Defendant Archdiocese submits the Society of Jesus Certificate of Incorporation (see NYSCEF Doc. No. 29), and the Loyola School deed (see NYSCEF Doc. No. 30).

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 Loyola School or its faculty, staff, employees, or students. The Archdiocese did not own the property where Loyola School was located; did not employ, supervise, or train the faculty, staff, or any other employees at Loyola School; and did not provide funding or insurance coverage to Loyola School” (see NYSCEF Doc. No. 31 Pars. 2, 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 abuser at issue. The Archdiocese’s liability cannot be conclusively determined until Plaintiff has had an opportunity to conduct discovery” (see NYSCEF Doc. No. 42 Par. 5).

Plaintiff provides the affidavit of Thomas Doyle (see NYSCEF Doc. No. 43) and Father William Woestman (see NYSCEF Doc. No. 48). 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. 43 P. 7).

The affidavit of Father William Woest man affirms, “a member in perpetual vows of the Missionary Oblates of Mary Immaculate. During my time as Provincial, the Minnesota bishops tended to be active managers of the ministries within their jurisdiction. They were in frequent contact, by telephone and mail, with the Oblates who served as pastors within their dioceses about the parish, the parishioners, and parish buildings and finances” (see NYSCEF Doc. No. 48 Pars. 1, 6).

Defendant Archdiocese’s Reply states, “[p]laintiff fails to meet its burden to rebut the documentary evidence. Plaintiff is unable to rebut the documentary evidence showing that the Archdiocese did not own, operate or control Loyola School and that the Archdiocese did not supervise, control, have authority over, or employ the faculty or staff” (see NYSCEF Doc. No. 58 Par. 2).

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]).

“Roman Catholic Church of St. Ignatius Loyola’s” memorandum of law in support of the cross – motion to dismiss states, “[p]laintiff’s complaint must contain factual allegations concerning Loyola’s awareness that ... had a propensity to commit acts of sexual abuse” (see NYSCEF Doc. No. 36 P. 7).

Plaintiff’s complaint alleges “known ... abuse,” “should have learned,” and “should have known” about abuse in the complaint (see NYSCEF Doc. No. 1 Pars. 40 – 45).

Loyola School’s motion sequence number 003, pre – answer motion to dismiss states in their memorandum of law, “[h]ere, Plaintiff’s general ‘negligence’ claim and his/her separate claims alleging negligent training and supervision, and negligent retention, must all be dismissed because Plaintiff does not allege any facts concerning Loyola’s awareness of any propensity of ... to commit acts of sexual abuse” (see NYSCEF Doc. No. 6 P. 14).

“The allegations of a complaint generally need not be set forth in detail; it is sufficient if the parties are 1) put on notice of the underlying transaction or occurrences, and 2) the material elements of the cause of action are stated” (see *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 64 N.Y.S.3d 389, 393 [3d Dept. 2017]).

Plaintiff’s memorandum of law in opposition states, “Plaintiff’s complaint contains numerous allegations that Defendants knew or should have known about ... propensity for child sexual abuse (Compl Pars. 41-43)” (see NYSCEF Doc. No. 57 P. 6).

“The threshold question in tort cases is whether the alleged tortfeasor owed a duty of care to the injured party” (see *Elmaliach v. Bank of China Ltd.*, 971 N.Y.S.2d 504 [1st Dept. 2013]).

It is now

ORDERED that the motion of defendant Archdiocese 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

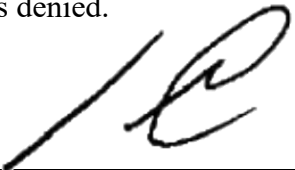
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the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

ORDERED that Loyola Church’s cross – motion to dismiss is denied; and it is further

ORDERED that Loyola School’s motion to dismiss is denied.

5/31/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE