

<b>Ark331 Doe v Archdiocese of N.Y.</b>
2022 NY Slip Op 32103(U)
June 28, 2022
Supreme Court, New York County
Docket Number: Index No. 950374/2020
Judge: Laurence Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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  
INDEX NO. 950374/2020  
AR331 DOE,  
MOTION DATE 04/01/2021  
Plaintiff,  
MOTION SEQ. NO. 001

- v -

ARCHDIOCESE OF NEW YORK, DOES 1-5 WHOSE  
IDENTITIES ARE UNKNOWN TO PLAINTIFF

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISS.

The following read on Defendant – Archdiocese of New York’s (“Archdiocese”) motion to dismiss, CPLR 3211(a)(1) and CPLR 3211(a)(7); or in the alternative to grant summary judgment per CPLR 3212.

Plaintiff alleges abuse (see NYSCEF Doc. No. 1 Par. 16) 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.

“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]).

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]).

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]).

Archdiocese’s affirmation in support states, “the documentary evidence submitted in support of this motion flatly contradicts Plaintiff’s allegations that the Archdiocese owned, operated, controlled or supervised ... University at any time relevant to the Complaint. Instead, the documentary evidence establishes that Fordham University was owned and operated by The Jesuits of Fordham, Inc. and the Society of Jesus, which are separate legal entities from the Archdiocese. The evidence further establishes that ... was a member of the Northeast Province of the Society of Jesus and not associated with the Archdiocese. Thus, Plaintiff’s claims against the Archdiocese should be dismissed because the Archdiocese has no connection to Plaintiff’s allegations and is therefore an improper party to this action” (see NSYCEF Doc. No. 7 Par. 22).

Archdiocese further submits, the affidavit of Roderick Cassidy, Esq., associate general counsel for the Archdiocese. Mr. Cassidy affirms, “[i]n 1968 – 1972, and at all times relevant to the Complaint, Fordham University, located in Bronx, New York, was not a part of the Archdiocese. The Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Fordham University or its staff or employees. The Archdiocese did not own the property where Fordham University was located; did not employ, supervise, or train the staff or employees at Fordham University; and did not provide funding or insurance coverage to Fordham University (see NYSCEF Doc. No. 9 Pars. 3 – 4).

Archdiocese further submits a Certified Copy of Property Deed between Fordham University and The Jesuits of Fordham, Inc. (see NYSCEF Doc. No. 11), a Certified Copy of the Certificate of Incorporation for the Jesuits of Fordham, Inc. (see NYSCEF Doc. No. 12), and a Certified Copy of the Certificate of Incorporation for the New York Province of the Society of Jesus (see NYSCEF Doc. No. 13).

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. 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. 22).

Plaintiff further provides various decisions and letters from different jurisdictions, including Minnesota and Cincinnati (see NYSCEF Doc. Nos. 23 – 29).

Defendant – 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. 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, including universities. Doyle’s six year old affidavit does not address the documentary and testimonial evidence proffered by the Archdiocese establishing the ownership and control of Fordham University. 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. 31 Pars. 3, 7).

As Archdiocese has shown no control, supervision, hiring, or retention of employees at Fordham University, a duty was not owed to plaintiff. The submitted documents of articles of

incorporation and deeds establish no oversight from Archdiocese to Fordham University.

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

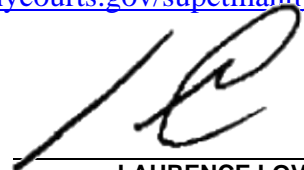
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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