

Ark263 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32537(U)
July 18, 2022
Supreme Court, New York County
Docket Number: Index No. 950294/2020
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

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ARK263 DOE,

Plaintiff,

- v -

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

Defendants.

-----X

INDEX NO. 950294/2020

MOTION DATE 03/25/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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) - based upon documentary evidence, and 3211(a)(7) - failure to state a cause of action. The complaint alleges abuse per the Child Victims Act ("CVA"), CPLR 214-g. Causes of action include (i) negligence, (ii) negligent training and supervision, and (iii) negligent retention.

"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]).

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]).

“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 submits a property deed for Rice High School (see NYSCEF Doc. No. 18) and a Certificate of Incorporation for the Congregation of Christian Brothers (see NYSCEF Doc. No. 19).

Defendant’s Affirmation states, “[a]s the documentary evidence submitted in support of this motion demonstrates that the subject property was owned solely by the Christian Brothers Institute, a not-for-profit corporation and that Rice High School was sponsored and operated by the Congregation of Christian Brothers. The Congregation of Christian Brothers is a membership corporation independent from the Archdiocese, the Archdiocese has established that it did not own Rice High School during the times relevant to the Complaint. Thus, the Archdiocese is an improper party to this action and Plaintiff’s claims against the Archdiocese should be dismissed” (see NYSCEF Doc. No. 16 Par. 9).

Archdiocese submits the affidavit of Roderick J. Cassidy, Associate General Counsel for the Archdiocese, “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Rice High School, including Brother ... Brother ... was not an employee or agent of the Archdiocese and had no relationship with the Archdiocese of New York. The Archdiocese did not play any role in assigning, maintaining, and/or appointing Brother ... to a position at Rice High School. Moreover, because Rice High School was not a part of – and was independent from – the Archdiocese, the Archdiocese did not make any representations regarding the safety of Rice High School, or its staff or employees, and did not have any relationship with the parishioners, parents, or guardians of parishioners or students at Rice High School” (see NYSCEF Doc. No. 6 – 7).

Plaintiff’s affirmation in opposition states, “[d]iscovery is necessary to demonstrate the extent of the Archdiocese’s relationship with its co – Defendant 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 geographic territory” (see NYSCEF Doc. No. 25 Pars. 5 – 6).

Plaintiff submits the affidavit of Thomas Doyle, which 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. 26 P. 7).

Plaintiff further provides a Decision from Minnesota (see NYSCEF Doc. No. 27), a document from “the school and the roman catholic church in Hawaii” (see NSYCEF Doc. No. 28), letters from the Chancellor of Cincinnati (see NSYCEF Doc. No. 29), and from an Archbishop to an Abbott (see NYSCEF Doc. No. 32).

Based upon the Certificate of Incorporation, the property deed for Rice High School and the accompanying Affidavit of Roderick Cassidy, the Archdiocese has demonstrated that it did not own or operate Rich High School and that it did not supervise the students or employees of the school. Further, because the evidence establishes that the Archdiocese had no involvement in the administration or maintenance of the school, and did not have supervision or control nor an employment relationship with the employees or agents of the school, Plaintiff cannot establish that the Archdiocese owed any duty to Plaintiff at the time of the alleged abuse.

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

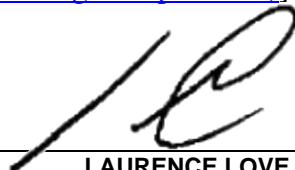
ORDERED that the action is severed and continued against the remaining Defendants; and it is further

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).

7/18/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: