Ark269 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32538(U)
July 19, 2022
Supreme Court, New York County
Docket Number: Index No. 950301/2020
Judge: Laurence Love

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ARK269 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SALESIANS OF DON BOSCO, OUR LADY OF THE ROSARY, PARISH OF ST. JOHN BOSCO, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 950301/2020

MOTION DATE 02/10/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 23, 25, 26, 27

were read on this motion to/for DISMISS.

Upon the foregoing documents, the decision on defendant, Salesian Society (the "Salesians") motion to dismiss pursuant to CPLR 3211(a)(5) and (7) is as follows:

Plaintiff commenced the instant action by filing a summons and complaint in this Child Victims Act action on July 16, 2020 alleging that in approximately 1955, when Plaintiff was approximately 10 years old, Father Paul Sappino, S.D.B. ("Fr. Sappino") engaged in unpermitted sexual contact engaged in unpermitted sexual contact with Plaintiff in violation of a criminal statute which qualifies under the CVA, while plaintiff participated in youth activities and/or church activities at Our Lady of the Rosary in New York. Arising from same, plaintiff pleads causes of action of 1) Negligence, 2) Negligent Training and Supervision of Employees, and 3) Negligent Retention of Employees.

Salesian's first argument in support of its motion to dismiss is that CPLR 214-g, violates the Due Process clause of the New York Constitution. Since the submission of the instant motion, multiple courts have found that the claim revival provision of New York's Child Victims Act does not violate the due process clauses of the New York and United States Constitutions, See, *Farrell v. United States Olympic & Paralympic Comm*., No. 120CV1178FJSCFH, 2021 WL 4820251, at *7 (N.D.N.Y. Oct. 15, 2021), holding that "[A] claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice." *Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig*., 30 N.Y.3d 377, 400, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017). Multiple New York courts and two federal district courts in the Second Circuit have held that the CVA does not run afoul of due process because it remedies an injustice. See, e.g., *PC-41 Doe v. Poly Prep Country Day Sch.*, No. 20-CV-03628 (DG) (SJB), 2021 WL 4310891 *3, 2021 U.S. Dist. LEXIS 181254 *7 (E.D.N.Y. Sept. 22, 2021) (collecting cases); *Giuffre v. Dershowitz*, No. 19 Civ. 3377 (LAP), 2020 WL 2123214 *2, 2020 U.S. Dist. LEXIS 78596 *5-*6 (S.D.N.Y. Apr. 8, 2020); *PB-36 Doe v. Niagara Falls City Sch. Dist*., No. E172556/2020, 72 Misc.3d 1052, ——– – ——–, 152 N.Y.S.3d 242, ——– – ——–, 2021 N.Y. Slip. Op. 21188, *6-*7 (N.Y. Sup. Ct., Niagara Cnty. July 19, 2021); *ARK3 Doe v. Diocese of Rockville Ctr*., No. 900010/2019, 2020 N.Y. Misc. LEXIS 1964, *15 (N.Y. Sup. Ct., Nassau Cnty. May 11, 2020); *Torrey v. Portville Cent. Sch*., No. 88476, 66 Misc. 3d 1225(A), 2020 N.Y. Slip. Op. 50244(U), *11, 2020 WL 856432 (Cattaraugus Cnty. Feb. 21, 2020)."

"[O]n a motion to dismiss a cause of action pursuant to CPLR §3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff (*Benn v*

Benn, 82 AD3d 548, 548 [1st Dept 2011] *see also Brignoli v Balch, Hardy & Scheinman, Inc.*, 178 AD2d 290 [1st Dept 1991][defendant bears the burden of proof on an affirmative defense]). CPLR 214-g having been found repeatedly to be constitutional, the branch of defendant's motion seeking to dismiss plaintiff's complaint pursuant to CPLR §3211(a)(5) as time-barred, is denied in its entirety.

"On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." (*Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp*., 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (see *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal

for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc*., 104 AD3d 401, supra). In deciding such a motion, the court must "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 into any cognizable legal theory" (*Siegmund Strauss, Inc*., 104 AD3d 401, supra; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp*., 257 AD2d 76, 81 [1st Dept 1999], aff'd 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], lv denied 89 NY2d 802 [1996], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Leon*, 84 NY2d at 88, supra; *Ark Bryant Park Corp. v Bryant Park Restoration Corp*., 285 AD2d 143, 150 [1st Dept 2001]; "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co*., NYLJ January 18, 2005, p. 26 col.4, citing *P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if,

assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (id. at 376; see *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88, supra; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Plaintiff's complaint alleges causes of action for i. Negligence; ii. Negligent Training and Supervision of Employees, and iii. Negligent Retention of Employees. The Salesians contend that plaintiff has failed to sufficiently plead a separate duty of care owed beyond its duty to use reasonable care in hiring, retaining, supervising and training employees and do not owe a separate general duty to prevent conduct by its subordinate that is illegal, outside of its control, and unforeseeable (see *Kenneth R. v R.C. Diocese of Brooklyn*, 229 AD2d 159, 163 [2d Dept 1997]. Salesians further contend that "plaintiff fails to plead the essential elements of a negligent training, retention or supervision claim. In addition to the standard elements of negligence, Plaintiff must show that the defendant "knew, or should have known, of the [subordinate's] propensity for the sort of conduct which caused the injury," and that the "tort was committed on the employer's premises with the employer's chattels" (see Ehrens v Lutheran Church, 385 F3d 232, 235 [2d Cir 2004]."

However, contrary to these assertions "[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Instead, 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"

(*Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). "A necessary element of a cause of action alleging negligent retention or negligent supervision is that the 'employer knew or should have known of the employee's propensity for the conduct which caused the injury'" (*Bumpus v New York City Transit Authority*, 47 AD3d 653 [2d Dept 2008]).

Here, plaintiff alleges that the Salesians had a duty to protect plaintiff from alleged sexual abuse. In this respect, plaintiff has alleged in more than a generalized manner that defendants knew or should have known of Father Paul Sappino's propensity to commit such conduct (*contra Shor v. Touch-N-Go Farms, Inc.*, 89 AD3d 830, 831 [2d Dept. 2011][generalized claim that defendant "knew the risk of sexual abuse of minor parishioners by priests and other staff" is insufficient (*Shor v. Touch-N-Go Farms, Inc.*, 89 AD3d 830, 831 [2d Dept. 2011]). Moreover, discovery will be necessary before the parties' significant disputes on the issue of notice can be evaluated.

ORDERED that defendant, Salesian Society's motion seeking dismissal of this action is DENIED in its entirety.

7/19/2022
DATE

LAURENCE LOVE, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE