

Ark282 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32540(U)
July 19, 2022
Supreme Court, New York County
Docket Number: Index No. 950313/2020
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

ARK282 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SISTERS OF CHARITY OF ST. VINCENT DE PAUL OF NEW YORK, ST. AGATHA HOME FOR CHILDREN, ST. AGATHA HOME OF THE NEW YORK FOUNDLING HOSPITAL, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

-----X

INDEX NO. 950313/2020
MOTION DATE 04/20/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on Defendant – Archdiocese of New York’s (“Archdiocese”) motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff alleges abuse per the Child Victims Act (“CVA”), CPLR 214-g. Plaintiff alleges (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]).

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 states, “[t]he evidence annexed hereto flatly contradicts Plaintiff’s allegations that the Archdiocese operated, managed or controlled either The New York Foundling Hospital or St. Agatha Home, where the abuse alleged by Plaintiff occurred, and that the Archdiocese employ or supervise the New York Foundling Hospital or St. Agatha Home staff or have any other involvement in the bare and conclusory allegations that give rise to this lawsuit against the Archdiocese, which are flatly contradicted by the documentary evidence” (see NYSCEF Doc. No. 23 Par. 2).

“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 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]). 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]). “[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 presents the affidavit of Itohan Omoregie, Esq., Special Counsel to the New York Foundling, and the affidavit of Roderick J. Cassidy, Associate General Counsel for the Archdiocese.

Itohan Omoregie affirms, “[a]lthough The New York Foundling may have been located within the geographical boundaries of the Archdiocese, in the late 1970s and all times relevant to the Complaint, Foundling was a distinct and independent entity from the Archdiocese. The Archdiocese of New York did not have control over Foundling’s placement of children in foster care. In sum at no time did the Archdiocese have any control or supervisory authority over Foundling” (see NYSCEF Doc. No. 28 Pars. 6 – 8).

Roderick J. Cassidy affirms, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate either the New York Foundling Hospital or St. Agatha Home, including their facilities, staff, or employees. The Archdiocese did not own the property where the New York Foundling Hospital or St. Agatha Home were located, and did not employ, supervise or train the faculty, staff, or any other employees of the New York Foundling Hospital or St. Agatha Home. Importantly, the Archdiocese did not provide funding or insurance coverage to either the New York Foundling Hospital or St. Agatha Home. As attested above, the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at the New York Foundling Hospital or St. Agatha Home. Neither entity were agents 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 Plaintiff in the care of St. Agatha Home. Moreover, because both the New York Foundling Hospital and St. Agatha Home were not a part of, and independent from, the Archdiocese, the Archdiocese did not make any representations

regarding the safety of the Plaintiff, and did not have any relationship with Plaintiff” (see NYSCEF Doc. No. 29 Pars. 5 – 7).

Plaintiff’s affirmation in opposition states, “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. 39 Par. 5).

The affidavit of Thomas Doyle affirms, “I was ordained a Catholic priest. Canon law is the oldest continuously functioning legal system in the world. [Canon law] presents the duties, responsibilities and qualifications for the various offices and positions in the Church. It contains a section on procedural laws for settling disputes and providing due process. It contains a section of criminal behavior that lists certain actions that are considered church crimes” (see NYSCEF Doc. No. 40 P. 2, 5 – 6).

Plaintiff further provides the Damien memorial School Employee Handbook (see NYSCEF Doc. No. 41), letters from the Archdiocese of Cincinnati (see NYSCEF Doc. Nos. 42, 46), and letters from the Archdiocese of Minneapolis (see NYSCEF Doc. No. 43, 45).

In opposition, plaintiff submits several affidavits and supporting documents raising issues of canon law, having no bearing on the instant action, which utterly fail to rebut movant’s showing. Considering the documentary evidence submitted, and the lack of evidence rebutting it, dismissal is warranted as against the Archdiocese.

Dismissal under CPLR §3211(a)(1) is warranted where the documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Financial Services, LLC v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept. 2002]; see *Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept. 2014]).

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

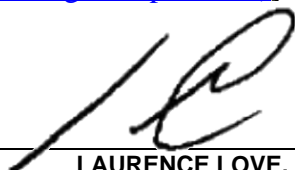
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

7/19/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE