Ark250 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32542(U)
July 19, 2022
Supreme Court, New York County
Docket Number: Index No. 950333/2020
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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ARK250 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS, REGIS HIGH SCHOOL, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 950333/2020

MOTION DATE 02/10/2021, 05/14/2021, 06/09/2021

MOTION SEQ. NO. 002 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 28, 29, 30, 31

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the decision on defendant, The USA Northeast Province of the Society of Jesus, Inc's s/h/a Jesuit Fathers and Brothers ("Jesuits") motion to dismiss pursuant to CPLR 3211(a)(5) and (7) under motion sequence 002, the decision on defendant, The Archdiocese of New York's, ("Archdiocese") motion to dismiss pursuant to CPLR 3211(a)(1) and (7) under motion sequence 003, and defendant, Regis High School's ("Regis") motion to dismiss under motion sequence 004 for the same reasons as those argued under sequence 002 is as follows:

Plaintiff commenced the instant action by filing a summons and complaint in this Child Victims Act action on July 20, 2020 alleging that in approximately 1965, when Plaintiff was approximately 16 years old, Fr. Edward D. Horgan, S.J. engaged in unpermitted sexual contact

with Plaintiff in violation of a criminal statute which qualifies under the CVA, while plaintiff was a student at Regis High School 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.

Archdisocese seeks dismissal of this action pursuant to CPLR §3211(a)(1). 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]). When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR §3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see *Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881 [2013]; *Simkin v Blank*, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (see *Hurrell-Harring v State of New York*, 15 NY3d 8 [2010]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept. 2004]; CPLR §3026.

Here, the Archdiocese has shown through documentary evidence that it had no affiliation with Regis High School nor any of its employees, including the alleged abuser, Fr. Edward D. Horgan, S.J. A deed dated August 8, 1913 establishes that the property at issue is owned by Regis High School Corporation. Said deed establishes that the Archdiocese did not own the property

where the alleged abuse occurred. Movant also submits the Regis High School Charter of Incorporation by the Board of Trustees of the New York State Department of Education, which establishes that the School was not and is not owned, operated, managed or controlled by the Archdiocese. Likewise, the Jesuits are an independent religious order that is separate and distinct from the Archdiocese. The Archdiocese affixes the Affidavit of Roderick Cassidy, Esq., the Associate General Counsel for the Archdiocese of New York, in further support of its motion. That affidavit avers that the Archdiocese did not own the property where the alleged abuse occurred and that Regis High School and the Jesuits are wholly independent from the Archdiocese and that the Archdiocese had no supervisory control over Regis High School and Fr. Edward D. Horgan, S.J., the alleged abuser. In their moving papers, the Jesuits admit that at the times relevant to Plaintiff's Complaint, Father Horgan was a member of the New York Province of the Society of Jesus, rather than the Archdiocese. In light of the proffered evidence, the Archdiocese has established that it had no connection to the allegations alleged, and therefore had no duty to plaintiff.

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.

Defendants Regis and Jesuits seek dismissal of this action pursuant CPLR §3211(a)(7) and §3211(a)(5), arguing that plaintiff's claim fails to meet the pleading requirements of CPLR §214-g and is therefore untimely. Specifically, said defendants argue that Complaint is entirely devoid of any allegation of specific conduct that would fall within the definition of "sexual offense" within the Penal Law, as required by Section 214-g and that the Complaint t fails to allege where such

conduct occurred, or more specifically, that such conduct occurred in New York. Contrary to movants' argument, the Complaint sates that "Plaintiff and Plaintiff's family came in contact with Fr. Horgan as an agent and representative of Defendants, and at Regis High School" and that "In approximately 1965, when Plaintiff was approximately 16 years old, Fr. Horgan engaged in unpermitted sexual contact with Plaintiff in violation of at least one section of New York Penal Law Article 130 and/or § 263.05, or a predecessor statute that prohibited such conduct at the time of the abuse." As Regis High School is located in New York, it can be fairly implied that the alleged abuse occurred in New York, however, to the extent that the Complaint does not specifically state same, plaintiff will be granted leave to replead.

Said defendants also seek dismissal arguing that plaintiff has failed to plead its negligence claims. 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]).

Moving Defendants 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]. Moving Defendants 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]." Moving Defendants further contend that Plaintiff's conclusory allegations of notice are not sufficient to state a cause of action.

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 Moving Defendants 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 Fr. Edward D. Horgan, S.J'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.

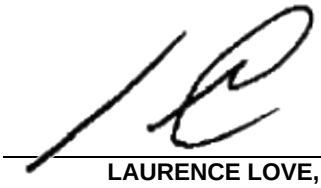
ORDERED that defendant, Archdiocese's motion (Seq. 003) seeking dismissal of this action as against the Archdiocese is GRANTED; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in defendant ARCHDIOCESE OF NEW YORK's favor accordingly; and it is further

ORDERED that to the extent that the complaint does not specify where the alleged abuse occurred, plaintiff is granted leave to serve and file an amended complaint in compliance with said requirement; and it is further

ORDERED that the amended complaint shall be served and filed within 20 days after service on plaintiff's attorney of a copy of this order with notice of entry; and it is further

ORDERED that defendants, The USA Northeast Province of the Society of Jesus, Inc's s/h/a Jesuit Fathers and Brothers and Regis High School's motions seeking dismissal of this action are DENIED in their entirety.



7/19/2022
DATE

LAURENCE LOVE, J.S.C.

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