

ARK249 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32612(U)
July 28, 2022
Supreme Court, New York County
Docket Number: Index No. 950332/2020
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

-----X

ARK249 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS, FORDHAM UNIVERSITY, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950332/2020

MOTION DATE 03/22/2021,
03/31/2021

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 39, 40, 41, 42, 55, 56, 57

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on Jesuit Fathers and Brothers’ motion to dismiss, per CPLR 3211(a)(5) and 3211(a)(7); and the Archdiocese of New York’s motion to dismiss, per CPLR 3211(a)(1) and CPLR 3211(a)(7). Plaintiff alleges violations of the Child Victims Act (“CVA”), 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 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]).

Jesuit Fathers and Brothers’ affirmation affirms, “there are no claims alleging that the Province had any relevant relationship with the co – defendant, Fordham University, or with Father [...] in his role as an employee of Fordham University, such that the Province exercised any supervisory or administrative role or other control over Father [...]. (see NYSCEF Doc. No. 21 P. 7).

Plaintiff’s opposition argues, “the Complaint states that the Jesuits employed Fr. [...] was under the Jesuits’ ‘direct supervision, employ, and control when he committed the wrongful

acts,’ and that the Jesuits ‘placed Fr. [...] in positions where he had access to and worked with children[,]’ including Plaintiff. (Compl. ¶¶ 17, 18, 46, 54). Further, the Complaint alleges that Fordham University ‘was and continues to be under the direct authority, control, and province of ... the Jesuits.’ (Compl. ¶ 13). These allegations demonstrate an employment relationship sufficient to preclude dismissal. Discovery will provide evidentiary support regarding Defendant’s employment of Fr. [...]. But at this pre – discovery stage, the Complaint’s allegations must be taken as true and afforded every favorable inference” (see NYSCEF Doc. No. 42 Ps. 9 – 10).

Archdiocese of New York argues that documentary evidence warrants dismissal and provides affidavits and documents. The affidavit of Roderick J. Cassidy, Associate General Counsel for the Archdiocese of New York affirms, “[t]he Archdiocese did not own, operate, or control Fordham University. The Archdiocese did not own the property where Fordham University was located; did not employ, supervise, or train the faculty, staff, or any other employees at Fordham University; and did not provide funding or insurance coverage to Fordham University. [T]he Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Fordham university, including Father [...]. Father [...] was not an employee or agent of the Archdiocese. The Archdiocese did not play any role in assigning and/or appointing Father [...] to any position at Fordham University. Moreover, because Fordham University was not a part of, and is independent from, the Archdiocese, the Archdiocese did not make any representations regarding the safety of Fordham University or its faculty, staff, and employees and did not have any relationship with the students, or parents or guardians of students, at Fordham University” (see NYSCEF Doc. No. 34 Pars. 4, 6 – 7).

Defendant Archdiocese submits a Fordham University 1970 deed (see NYSCEF Doc. No. 31), along with an affidavit affirming, “[t]he only deed recorded on file in the Office of the City Register for Fordham University was dated July 22, 1970, which transferred title and ownership to Fordham Preparatory School the property on which it is located” (see NYSCEF Doc. No. 33 Par. 4).

Plaintiff submits the affidavit of Thomas Doyle, “[t]he Code describes the various offices, bodies and internal political structures of the Catholic Church. It 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. 44 P. 6).

Plaintiff further submits letters from the Archdiocese of Cincinnati and St. Paul (see NYSCEF Doc. Nos. 47 – 48), and the Archbishop of St. Paul (see NYSCEF Doc. No. 50).

Jesuit Fathers and Brothers do not submit any supporting documentation to refute that they did not “direct[ly] supervis[e], employ, and control” Father [...]. Dismissal is not warranted.

In opposition to the Archdiocese, 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.

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 motion of defendant – JESUIT FATHERS AND BROTHERS to dismiss the complaint is DENIED; and it is further

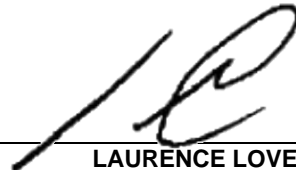
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

7/28/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE