

PC-28 Doe v Archdiocese of N.Y.

2022 NY Slip Op 32824(U)

August 18, 2022

Supreme Court, New York County

Docket Number: Index No. 950296/2020

Judge: Laurence Love

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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

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PC-28 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF GOOD COUNSEL

Defendant.

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INDEX NO. 950296/2020

MOTION DATE 02/19/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISS

Upon the foregoing documents, defendant, Our Lady of Good Counsel's motion to dismiss plaintiff's Third and Fifth causes of action pursuant to CPLR 3211(a)(7) and defendants, Archdiocese of New York cross-motion for the same relief are decided as follows:

Plaintiff commenced the instant Child Victims Act action by filing a summons and complaint on July 16, 2020 alleging that from approximately 1980 through 1981 a teacher in the service of Defendant is said to have engaged in unpermitted, forceful and harmful sexual conduct with Plaintiff on the premises owned and operated by moving Defendant. Arising from same, plaintiff pled causes of action alleging : (1) negligent hiring, retention and supervision; (2) negligent, reckless and willful misconduct; (3) negligent infliction of emotional distress; (4) premises liability; (5) breach of fiduciary duty; (6) breach of duty in loco parentis; and (7) breach of statutory duties to report.

"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]).

Moving defendant seeks dismissal of plaintiff's third cause of action premised on negligent infliction of emotional distress ("NIED") In general, a cause of action for NIED "must be premised on conduct that unreasonably endangers the plaintiff's physical safety or causes the plaintiff to fear for his or her physical safety" (*Padilla v. Verczky- Porter*, 66 AD3d 1481, 1483 [4th Dept 2009]). "Generally, a cause of action for infliction of emotional distress is not allowed if essentially duplicative of tort or contract causes of action." (*Wolkstein v. Morgenstern*, 275 AD2d 635, 637 [1st Dept 2000]). Here, the allegations set forth under plaintiff's Third Cause of Action for NIED are duplicative of the negligence causes of action. As such, defendant's application to dismiss plaintiff's Fifth Cause of Action is granted.

Moving Defendant further contends that plaintiff has failed to allege a fiduciary duty between himself and Moving Defendants and that said cause of action is duplicative of plaintiff's negligence causes of action. Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with a church extends beyond that of an ordinary parishioner (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]). In other words, a fiduciary relationship between a plaintiff parishioner and church may exist where the plaintiff comes forward with facts demonstrating that the relationship between the plaintiff parishioner and the church is unique or distinct from the church's relationship with other parishioners generally (*id.*). That said, a fiduciary relationship is not applicable to all parishioners, and can be established upon a showing that a congregant's relationship with a church entity resulted in "de facto control and dominance" when the congregant was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). The existence of a fiduciary duty is a fact-specific question to be determined by the fact-finder, such that breach of fiduciary

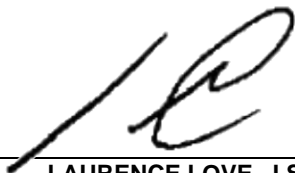
duty claims should not generally be dismissed before the parties have the opportunity to conduct discovery (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, *supra*).

Here, plaintiff pled that “there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and each of the defendants herein as Plaintiff was entrusted to OLL as a minor and was under the supervision and care of the defendants herein and/or its servant, Dutkowski.” The remaining contentions in support of plaintiff’s cause of action hinge on negligence, and as such are duplicative of plaintiff’s causes of action alleging negligence.

ORDERED that Moving Defendant’s applications for dismissal of the Third and Fifth causes of action of plaintiff’s complaint are GRANTED; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in accordance with this court’s decision and order.

8/18/2022
DATE


LAURENCE LOVE, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART |
| | | | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> | REFERENCE |