

Anonymous SY v Archdiocese of N.Y.

2022 NY Slip Op 32912(U)

August 23, 2022

Supreme Court, New York County

Docket Number: Index No. 950023/2020

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

-----X

ANONYMOUS SY,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, ST. DOMINIC'S FAMILY SERVICES, SISTERS OF ST. DOMINIC OF BLAUVELT, NEW YORK

Defendants.

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INDEX NO. 950023/2020

MOTION DATE 08/10/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on the pre – answer motion of Archdiocese of New York and The Catholic Charities of the Archdiocese of New York, to dismiss per CPLR 3211(a)(1) – documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, and (ii) negligent hiring, retention, and supervision.

“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]).

The affidavit of Roderick J. Cassidy, Associate General Counsel for the Archdiocese of New York affirms, “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Saint Dominic’s, including ... St. Dominic’s was not an agent of the Archdiocese, was not controlled by the Archdiocese, was not supervised by the Archdiocese, and had no relationship with the Archdiocese” (see NYSCEF Doc. No. 31 Par. 6).

The affidavit of Diane Aquino, President and CEO of Saint Dominic’s Family Services affirms, “the Archdiocese of New York never directly oversaw, supervised, managed, controlled, directed, or operated St. Dominic’s. The Archdiocese did not hire, retain, employ, oversee, or control the staff or employees of St. Dominic’s” (see NYSCEF Doc. No. 32 Par. 4).

The affidavit of Talia Lockspeiser, Associate Executive Director for Catholic Charities affirms, “Saint Dominic’s was and is separate and distinct from Catholic Charities, and was not owned, controlled, supervised or operated by Catholic Charities in any way at any time relevant to the allegations in the Complaint. Catholic Charities did not own the property where Saint

Dominic's officers were located, did not employ any staff, or other employees of Saint Dominic's (see NYSCEF Doc. No. 33 Par. 5).

Defendants further provide a St. Dominic Deed of 1878 (see NYSCEF Doc. No. 34), an Asylum of Sisters Certificate of Incorporation (see NYSCEF Doc. No. 35) and a St. Dominic Deed of 1891 (see NYSCEF Doc. No. 36).

Plaintiff's opposition states "the motion is premature, and material questions of fact exist which require discovery to proceed" (see NYSCEF Doc. No. 42 Par. 2).

Plaintiff further submits the affidavit of Thomas Doyle, "Canon law requires that diocesan bishops and the superiors of religious institutes collaborate and cooperate with each other concerning the presence and work of religious order members in the diocese" (see NYSCEF Doc. No. 44 Par. 15).

In opposition, Plaintiff submits an affidavit and a Catholic Directory (see NYSCEF Doc. No. 43), 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 of New York and the Catholic Charities of the Archdiocese of New York.

ORDERED that the motion of defendants Archdiocese of New York and the Catholic Charities of the Archdiocese of New York to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

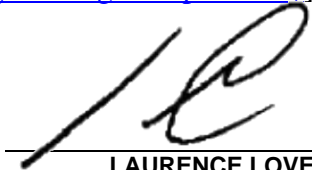
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

8/23/2022
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