

J.D. v Archdiocese of N.Y.

2022 NY Slip Op 32913(U)

August 18, 2022

Supreme Court, New York County

Docket Number: Index No. 950753/2020

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

J. D.,

Plaintiff,

- v -

THE ARCHDIOCESE OF NEW YORK, ROMAN CATHOLIC
CHURCH SAINT FRANCIS DE SALES

Defendants.

-----X

INDEX NO. 950753/2020

MOTION DATE 03/31/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is

The following reads on Defendant – Archdiocese of New York’s pre – answer motion to dismiss per CPLR 3211(a)(7) – failure to state a cause of action; or in the alternative to dismiss Plaintiff’s fourth cause of action for outrage and intentional infliction of emotion distress per CPLR 3211(a)(7) – failure to state a cause of action; and

The cross – motion by Defendant – Roman Catholic Church Saint Francis De Sales “for an Order be entered granting Cross – Movant the dismissal of Plaintiff’s Complaint.” Roman Catholic Church Saint Francis De Sales has submitted an answer; and

The cross – motion by Plaintiff “for an order for a default judgment against the defendant Archdiocese of New York’s for refusing to enter an answer and rather bringing a frivolous motion to dismiss and striking the answer of defendant Saint Francis De Sales.”

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, (ii) “negligent hiring,” (iii) negligent hiring, retention, supervision, and/or direction, and (iv) “outrageous conduct causing emotional distress.”

“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]).

“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 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]).

Defendant – Archdiocese of New York submits an affirmation, “Plaintiff’s Complaint is entirely devoid of any details regarding the identity of ‘the Priest.’ Instead, the Complaint is

replete with conclusory allegations that ‘the Priest’ was ‘a priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer’ of each of the named Defendants.

Defendant Archdiocese of New York does not submit an affidavit of anyone with personal knowledge nor certificates of incorporations.

Defendant – Roman Catholic Church Saint Francis De Sales affirmation in support continues with “said Complaint fails to identify and/or specify the individual who is said to have committed the underlying act from which the claim of negligence as against Defendants stems” (see NYSCEF Doc. No. 16 Par. 3).

The affidavit from Petitioner states, “[a]lthough I do not remember the name of the priest, I do have a photo of him (see exhibit ‘A’)” (see NYSCEF Doc. No. 20 Par. 3). Plaintiff submits a photo (see NYSCEF Doc. No. 21).

Defendant – Archdiocese of New York affirms, “there is nothing frivolous about the Archdiocese’s motion which has been brought in good faith upon facts that plaintiff admits – that he cannot identify the person who allegedly caused him harm” (see NYSCEF Doc. No. 24 Par. 11).

Plaintiff has substantiated the identity of the alleged abuser through a photograph and further discovery will lead to an identification. Plaintiff’s cross – motion for a default judgment has not been shown and the motion for sanctions is unwarranted.

It is now

ORDERED that Defendant – Archdiocese of New York’s pre – answer motion to dismiss per CPLR 3211(a)(7) – failure to state a cause of action; or in the alternative to dismiss Plaintiff’s fourth cause of action for outrage and intentional infliction of emotion distress per CPLR 3211(a)(7) – failure to state a cause of action is DENIED; and it is further

ORDERED that the cross – motion by Defendant – Roman Catholic Church Saint Francis De Sales “for an Order be entered granting Cross – Movant the dismissal of Plaintiff’s Complaint” is DENIED; and it is further

ORDERED that the cross – motion by Plaintiff “for an order for a default judgment against the defendant Archdiocese of New York’s for refusing to enter an answer and rather bringing a frivolous motion to dismiss and striking the answer of defendant Saint Francis De Sales” is DENIED.

8/18/2022

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