

Ark268 Doe v Archdiocese of N.Y.
2022 NY Slip Op 32937(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 950299/2020
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

ARK268 DOE,

INDEX NO. 950299/2020MOTION DATE 04/20/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

ARCHDIOCESE OF NEW YORK, SALESIANS OF DON
BOSCO, SALESIAN CAMP, DOES 1-5 WHOSE
IDENTITIES ARE UNKNOWN TO PLAINTIFF

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

The following read on the Archdiocese of New York's pre – answer motion 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, (ii) negligent training and supervision of employees, and (iii) negligent retention of employees. Salesians of Don Bosco and Salesian Camp have submitted an answer (see NYSCEF Doc. No. 18).

“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]).

"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]).

Archdiocese of New York submits the affidavits of Roderick J. Cassidy, Associate General Counsel for the Archdiocese of New York. Roderick J. Cassidy affirms, "the Archdiocese did not create, oversee, supervise, manage, control, direct, or operate the Salesian Camp at any time relevant to the allegations in the Complaint. The Archdiocese did not own the property where the Salesian Camp was located; did not employ, supervise or train the faculty, staff, or any other employees at the Salesian Camp, and did not provide funding or insurance coverage to the Salesian Camp. [T]he Archdiocese did not hire, retain, employ, oversee,

supervise or control the staff or employees at the Salesian Camp including Br. [...]” (see NYSCEF Doc. No. 27 Pars. 4, 6).

Defendant Archdiocese of New York further submits a property deed to the Missionary Society of the Salesian Congregation, Inc. (see NYSCEF Doc. No. 25), and a Certificate of Incorporation for the Missionary Society of the Salesian Congregation of the State of New York (see NYSCEF Doc. No. 24).

Plaintiff’s affirmation in opposition states, “[d]iscovery is necessary to demonstrate the extent of the Archdiocese’s relationship with its Co – Defendants and the [...] at issue. The Archdiocese’s liability cannot be conclusively determined until Plaintiff has had an opportunity to conduct discovery. Specifically, policies that govern the structure of the Catholic Church place responsibility on dioceses, like the Archdiocese, for activities, programs, and employees working within its geographic territory. *See Affidavit of Thomas Doyle*” (see NSYCEF Doc. No. 33 Pars. 5 – 6).

Thomas Doyle’s affidavit states, “Canon Law is the oldest continuously functioning legal system in the world. It contains a section on procedural laws for settling disputes and providing due process” (see NYSCEF Doc. No. 34 P. 5 – 6).

Plaintiff further submits letters from various Archbishops and Archdioceses (see NSYCEF Doc. No. 36 – 41).

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.

ORDERED that the motion of defendant ARCHDIOCES 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 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).

<u>8/25/2022</u>				<u>LAURENCE LOVE, J.S.C.</u>	
DATE					
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION	
	☒	GRANTED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER	☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT	☐ REFERENCE