

W.D. v Archdiocese of N.Y.

2022 NY Slip Op 33002(U)

September 7, 2022

Supreme Court, New York County

Docket Number: Index No. 950340/2021

Judge: Laurence L. 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 L. LOVE PART 63M

Justice

-----X

W.D.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, USA NORTHEAST
PROVINCE OF THE SOCIETY OF JESUS, FORDHAM
PREPARATORY SCHOOL

Defendants.

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INDEX NO. 950340/2021

MOTION DATE 11/10/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

The following read on Defendant – Archdiocese of New York’s pre – answer motion to dismiss the complaint 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 – Archdiocese [of New York], (ii) negligence – [Fordham Preparatory] School, and (iii) negligence – Jesuits [USA Northeast Province of the Society of Jesus].

“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]).

The affidavit of Roderick J. Cassidy, General Counsel for the Archdiocese of New York affirms, “[t]he Archdiocese did not own, operate, or control Fordham Preparatory School. [T]he Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Fordham Preparatory School. [B]ecause Fordham Preparatory School was not a part of, and is independent from, the Archdiocese, the Archdiocese did not make any representations regarding the safety of Fordham Preparatory School or its faculty, staff, and employees and did not have any relationship with the students, or parents or guardians of students, at Fordham Preparatory School” (see NSYCEF Doc. No. 31 Pars. 4, 6 – 7).

The affidavit of Nancy Hark, Assistant Vice President of the Human Resources Department at Fordham University affirms, “[t]he Archdiocese does not create, oversee, supervise, manage, control, direct, or operate Fordham University. The Archdiocese of New

York does not own the property where Fordham University is located, does not employ the faculty, staff, or any other employees at Fordham University, and does not provide funding or insurance coverage to Fordham University” (see NYSCEF Doc. No. 30 Par. 6).

Defendant Archdiocese of New York further submits a 1969 Fordham deed (see NYSCEF Doc. No. 25) along with a Society of Jesus Certificate of Incorporation (see NYSCEF Doc. No. 29).

Plaintiff’s affirmation in opposition states, “discovery will reveal the true extent of the Archdiocese’s liability as it has in other Catholic Church cases” (see NYSCEF Doc. No. 38 P. 4). Plaintiff further submits the affidavit of Thomas Doyle, “[t]he Church’s internal regulatory system is not a theological document nor is it an article of faith that is part of the body of doctrine that Catholics are expected to believe. It is a collection of internal rules, regulations and norms that give concrete shape to the institutional Church. It is true that certain of the individual law or ‘canons’ are directly or indirectly related to, inspired by or founded on theological or religious concepts” (see NYSCEF Doc. No. 39 P. 6).

Further submissions from Plaintiff include various letters from Chancellors and Administrators from Minnesota and Cincinnati (see NYSCEF Doc. Nos. 40 – 45).

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 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 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).

9/7/2022
DATE


LAURENCE L. 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