

Ark259 Doe v Archdiocese of N.Y.
2022 NY Slip Op 33063(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 950291/2020
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. LAURENCE LOVE</u>	PART	63M
	<i>Justice</i>		
-----X		INDEX NO.	<u>950291/2020</u>
ARK259 DOE,		MOTION DATE	<u>04/27/2021</u>
Plaintiff,		MOTION SEQ. NO.	<u>002</u>

- v -

ARCHDIOCESE OF NEW YORK, IONA GRAMMAR SCHOOL, IONA PREPARATORY SCHOOL, 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) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50 were read on this motion to/for DISMISSAL.

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. Defendant – Iona Preparatory School has answered (see NYSCEF Doc. No. 18), along with Iona Grammar School (see NYSCEF Doc. No. 54).

“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, and Brother Kevin M. Griffith, Trustee of Iona Preparatory School. Roderick J. Cassidy affirms, “the Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Iona Grammar School and Iona Preparatory School, or their faculty, staff, employees, or students. [T]he Archdiocese did not hire, retain, employ, oversee, supervise, provide, or control the staff or employees at Iona Grammar School and at Iona Preparatory School including Br. [...]. [B]ecause Iona Grammar School and Iona Preparatory School were not a part of, and are independent from, the Archdiocese, the Archdiocese did not make any representations regarding the safety of Iona Grammar School and Iona Preparatory School or their faculty, staff and employees” (see NYSCEF Doc. No. 27 Pars. 4 – 6).

Bro. Kevin M. Griffith affirms, “[t]he Archdiocese of New York did not hire, retain, employ, oversee, or control the staff or employees at the Iona Grammar School and Iona Preparatory School, including Br. [...]. Br. [...] was never an Archdiocesan cleric. The Archdiocese of New York did not play any role in assigning and/or appointing Br. [...] to any position that he may have held at Iona Grammar School and Iona Preparatory School. In sum, the Archdiocese of New York had no relationship to Br. [...]” (see NYSCEF Doc. No. 26 Pars. 11, 13 – 15).

Archdiocese of New York further submits a Certificate of Incorporation for Christian Brothers (see NYSCEF Doc. No. 23), an Iona Grammar School Deed (see NYSCEF Doc. No. 24), and a Iona Prep School Deed (see NYSCEF Doc. No. 25).

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. 38 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. 39 P. 5 – 6).

Plaintiff further submits letters from various Archbishops and Archdioceses (see NSYCEF Doc. No. 41 – 46).

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

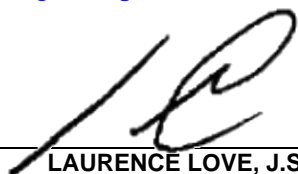
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

9/7/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER