

Ark261 Doe v Archdiocese of N.Y.
2022 NY Slip Op 33064(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 950293/2020
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

ARK261 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, IONA PREPARATORY
SCHOOL, DOES 1-5 WHOSE IDENTITIES ARE
UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950293/2020

MOTION DATE 04/27/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49

were read on this motion to/for DISMISSAL.

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. Iona Preparatory School has submitted an answer (see NYSCEF Doc. No. 17).

“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 Iona Preparatory School or its faculty, staff, employees, or students. The Archdiocese did not own the property where Iona preparatory School was located; did not employ, supervise or train the faculty, staff, or any other employees at Iona Preparatory School; and did not provide funding or insurance coverage to Iona Preparatory School. [T]he Archdiocese did not hire, retain, employ, oversee, supervise or control the staff or employees at Iona Preparatory School including Br. [...]. Br. [...] was not an employee or agent of the Archdiocese and had no relationship with the Archdiocese. The Archdiocese did not play any role in assigning, and/or appointing Br. [...] to

any position at Iona Preparatory School. Moreover, because Iona Preparatory School was not a part of, and is independent from, the Archdiocese, the Archdiocese did not make any representations regarding the safety of Iona Preparatory School or its faculty, staff and employees, and did not have any relationship with the students, or parents or guardians of students, at Iona Preparatory School” (see NYSCEF Doc. No. 24 Pars. 4 – 6).

Archdiocese of New York also submits the affidavit of Brother Kevin M. Griffith, Trustee of Iona Preparatory School. Bro. Kevin M. Griffith affirms, “[t]he Archdiocese of New York did not and does not provide funding or insurance coverage to Iona Prep. The 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. In sum, the Archdiocese of New York had no relationship to members of the Edmund Rice Christian Brothers North America Province, and Iona Preparatory School” (see NYSCEF Doc. No. 26 Pars. 10 – 11, 13 – 14).

Archdiocese of New York further submits an Iona Preparatory School Deed (see NYSCEF Doc. No. 22).

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. 37 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. 38 P. 5 – 6).

Plaintiff further submits letters from various Archbishops and Archdioceses (see NSYCEF Doc. No. 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 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

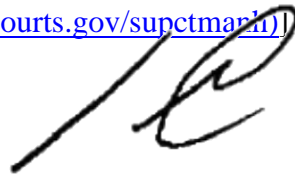
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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/supctman1)



9/7/2022
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