

<b>Ark334 Doe v Archdiocese of N.Y.</b>
2022 NY Slip Op 33066(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 950387/2020
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

ARK334 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, FRANCISCAN FRIARS  
OF THE ATONEMENT, ST. PAUL FRIARY, DOES 1-5  
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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**INDEX NO.** 950387/2020  
**MOTION DATE** 05/21/2021  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

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

were read on this motion to/for DISMISS.

The following read on Defendant – Archdiocese of New York’s 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.

“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]).

“A necessary element of a cause of action alleging negligent retention or negligent supervision is that the ‘employer knew or should have known of the employee’s propensity for the conduct which caused the injury’” (*Bumpus v New York City Transit Authority*, 47 AD3d 653 [2d Dept 2008]).

The affidavit of Roderick Cassidy, Associate General Counsel for the Archdiocese of New York affirms, “The Archdiocese did not create, oversee, supervise, manage, control, direct, or operate St. Paul Friary or its faculty, staff, employees, or students. The Archdiocese did not own the property where St. Paul Friary was located; did not employ, supervise, or train the faculty, staff or any other employees at St. Paul Friary; and did not provide funding or insurance coverage to St. Paul Friary. [T]he Archdiocese did not hire, retain, employ, oversee, supervise, provide, or control the staff or employees at St. Paul Friary, including Fr. [...]. Fr. [...] was not an employee or agent or servant of the Archdiocese. The Archdiocese did not play any role in assigning, and/or appointing Fr. [...] to any position at St. Paul Friary. Moreover, because St. Paul Friary was not a part of, and is independent from, the Archdiocese, the Archdiocese did not make any representations regarding the safety of St. Paul Friary or its faculty, staff and

employees, and did not have any relationship with the students, or parents or guardians of students, at St. Paul Friary (see NYSCEF Doc. No. 28 Pars. 4 – 6).

Defendant – Archdiocese of New York submits a St. Paul Friary Deed and Certificate of Incorporation of Friars of the Atonement (see NYSCEF Doc. Nos. 27 – 28).

Plaintiff’s affirmation in oppositions states, “[d]iscovery is necessary to demonstrate the extent of the Archdiocese’s relationship with its Co – Defendants and the abuser at issue. [P]olicies 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 NYSCEF Doc. No. 34 Pars. 5 – 6).

The affidavit of Thomas Doyle affirms, “I was ordained a Catholic priest. Canon law is the oldest continuously functioning legal system in the world. [Canon law] presents the duties, responsibilities and qualifications for the various offices and positions in the Church. It contains a section on procedural laws for settling disputes and providing due process. It contains a section of criminal behavior that lists certain actions that are considered church crimes” (see NYSCEF Doc. No. 35 P. 2, 5 – 6).

Plaintiff further submits various letters and documents from the Archdiocese of Minnesota, Cincinnati and Hawaii (see NYSCEF Doc. Nos. 37 – 42).

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 of New York.

Dismissal under CPLR §3211(a)(1) is warranted where the documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s

claim” (*Fortis Financial Services, LLC v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept. 2002]; see *Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept. 2014]).

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

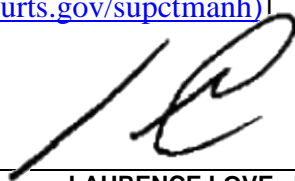
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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](http://www.nycourts.gov/supctmanh))]

9/7/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: