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| <b>ARK55 v Archdiocese of N.Y.</b>                                                                                                                                                                                             |
| 2022 NY Slip Op 33229(U)                                                                                                                                                                                                       |
| September 19, 2022                                                                                                                                                                                                             |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 950049/2019                                                                                                                                                                                           |
| Judge: Alexander M. Tisch                                                                                                                                                                                                      |
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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

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| <b>PRESENT:</b> <u>HON. ALEXANDER M. TISCH</u><br><div style="text-align: right; margin-right: 50px;"><i>Justice</i></div> <div style="text-align: right; margin-right: 50px;">-----X</div><br>ARK55,<br><br><div style="text-align: right;">Plaintiff,</div><br><div style="text-align: center;">- v -</div><br>ARCHDIOCESE OF NEW YORK, SOCIETY OF JESUS<br>A/K/A JESUIT FATHERS AND BROTHERS A/K/A U.S.A.<br>NORTHEAST PROVINCE OF THE SOCIETY OF JESUS<br>A/K/A THE NEW YORK PROVINCE OF THE SOCIETY OF<br>JESUS A/K/A SOCIETY OF JESUS OF U.S.A.<br>NORTHEAST PROVINCE A/K/A THE SOCIETY OF JESUS<br>JESUIT FATHERS, LOYOLA SCHOOL, DOES 1-5 WHOSE<br>IDENTITIES ARE UNKNOWN TO PLAINTIFF<br><br><div style="text-align: right;">Defendant.</div> <div style="text-align: right; margin-right: 50px;">-----X</div> | <b>PART</b> <span style="float: right;"><b>18</b></span><br><br><b>INDEX NO.</b> <u>950049/2019</u><br><br><b>MOTION DATE</b> <u>N/A</u><br><br><b>MOTION SEQ. NO.</b> <u>002</u> |
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## DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, 53, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendant Archdiocese of New York (ANY or defendant) moves to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (7) or, alternatively, pursuant to CPLR 3212.

Plaintiff's complaint alleges that "[f]rom approximately 1986 to 1988, when Plaintiff was approximately 14 to 16 years old, Fr. Farrand engaged in unpermitted sexual contact with Plaintiff" (NYSCEF Doc No 20 at ¶ 22). Plaintiff alleges that s/he was a student at Loyola (*id.* at ¶ 1); that Father Farrand was a Roman Catholic cleric employed by the defendants (*id.* at ¶ 18); and that plaintiff and his/her family came in contact with Farrand "as an agent and representative of Defendants, and at Loyola School" (*id.* at ¶ 20).

In determining dismissal under CPLR Rule 3211 (a) (7), the "complaint is to be afforded a liberal construction" (*Goldfarb v Schwartz*, 26 AD3d 462, 463 [2d Dept 2006]). The

“allegations are presumed to be true and accorded every favorable inference” (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). Additionally, “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]).

A motion to dismiss a complaint based upon documentary evidence pursuant to CPLR 3211 (a) (1) “may be appropriately granted where the documentary evidence utterly refutes the plaintiff’s factual allegation, conclusively establishing a defense as a matter of law” (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]; Leon v Martinez, 84 NY2d 83, 88 [1994]).

In support of its motion to dismiss, defendant submits the deed to where the school is located, the answer of co-defendant Society of Jesus (SOJ), wherein SOJ admitted that Father Farrand was a member of SOJ and a duly ordained priest, and the affidavit of defendant’s Associate General Counsel, Roderick Cassidy, which states, inter alia that SOJ is an “independent religious order which was and is separate and distinct from the Archdiocese”; “the Archdiocese did not and does not have any supervisory authority over the Society of Jesus or its employees” including Father Farrand; “the Archdiocese did not hire, retain, employ, oversee, supervise, or control the staff or employees at Loyola School, including Father John Farrand, S.J.”; that “Father Farrand was not an employee or agent or servant of the Archdiocese”; and defendant does not have any relationship with the students at Loyola (NYSCEF Doc No 44 at ¶¶ 3-7). The Court finds that the evidence is sufficient to meet its prima facie burden with respect to

all causes of action in the complaint, to wit negligence, negligent hiring and supervision, and negligent retention. Plaintiff's evidence in opposition is not sufficient to withstand the motion to dismiss as it relates to this defendant's relationship with the co-defendants. The Court also rejects the contention that discovery would be warranted on the issue. Accordingly, the Court finds that the complaint fails to state a claim in the absence of a cognizable duty upon the part of the movant.

Accordingly, it is hereby 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 service of this order upon the Clerk of the Court and/or 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* (see section J).<sup>1</sup>

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<sup>1</sup> The *Protocol* is accessible at the "E-Filing" page on the court's website: [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

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| <u>9/19/2022</u>      |                                     |  |                                                           |
| DATE                  |                                     | ALEXANDER M. TISCH, J.S.C.                                                          |                                                           |
| CHECK ONE:            | <input type="checkbox"/>            | CASE DISPOSED                                                                       | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
|                       | <input checked="" type="checkbox"/> | GRANTED                                                                             | <input type="checkbox"/> GRANTED IN PART                  |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER                                                                        | <input type="checkbox"/> OTHER                            |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN                                                          | <input type="checkbox"/> REFERENCE                        |
|                       | <input type="checkbox"/>            | DENIED                                                                              | <input type="checkbox"/> FIDUCIARY APPOINTMENT            |