

ARK246 DOE v Archdiocese of N.Y.

2022 NY Slip Op 33231(U)

September 22, 2022

Supreme Court, New York County

Docket Number: Index No. 950328/2020

Judge: Laurence Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

ARK246 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS, FORDHAM UNIVERSITY, JOHN XXIII ECUMENICAL CENTER, JESUIT FATHERS AND BROTHERS A/K/A SOCIETY OF JESUS D/B/A U.S.A. MIDWEST PROVINCE OF THE SOCIETY OF JESUS F/K/A CHICAGO PROVINCE OF THE SOCIETY OF JESUS, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 55, 56, 66

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 94

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following reads 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; and Defendant – Fordham University’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, and (iii) negligent retention.

“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]).

“[T]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Instead, 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” (*Solomon v City of New York*, 66 NY2d

1026, 1027 [1985]). “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]).

Roderick J. Cassidy, Associate General Counsel for the Archdiocese of New York affirms, “the Archdiocese [of New York] did not hire, retain, employ, oversee, or control the staff or employees at Fordham University or the John XXIII Ecumenical Center. [B]ecause Fordham University and the John XXIII Ecumenical Center were not a part of – and independent from – the Archdiocese, the Archdiocese did not make any representations regarding the safety of Fordham University or the John XXIII Ecumenical Center or their faculty, staff, and employees, and did not have any relationship with the students, or parents or guardians of students, at Fordham University or the John XXIII Ecumenical Center” (see NYSCEF Doc. No. 32 Pars. 6 – 7).

Nancy Hark, Assistant Vice President of the Human Resources Department at Fordham University affirms, “[t]he Archdiocese did 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. 35 Par. 6).

Plaintiff’s memorandum of law in opposition states, “[d]iscovery is necessary to demonstrate the extent of the Archdiocese’s relationship with its co – Defendants and the abuser at issue” (see NYSCEF Doc. No. 41 Par. 5).

The affidavit from Thomas Doyle affirms, “[t]he investigation of reports of canonical crimes and the administrative and judicial processes to be used in the prosecution of a case are contained in the Fourth Book of the Code on procedure” (see NYSCEF Doc. No. 42 P. 9).

Plaintiff further submits various documents including letters from various Archbishops and Archdioceses (see NYSCEF Doc. Nos. 44 – 49).

Fordham University submits an affirmation, “[t]he last deed of record for the current Lot 11 states that the property was transferred from the New York Province of the Society of Jesus to ‘Reverend Michael C. McFarland, SJ, Reverend George E. Collins, SJ, and Reverend George M. Witt, SJ, as Trustees of the Religious Property Trust, a New York charitable trust established pursuant to that certain Trust Agreement dated as of April 17, 2013.’ The certificate of incorporation does not contain any reference to Fordham” (see NYSCEF Doc. No. 79 Pars. 11, 14).

Fordham University submits a title report and a certificate of incorporation of the John XXIII Ecumenical Center (see NYSCEF Doc. Nos. 82 – 83).

Plaintiff’s memorandum of law in opposition states, “[t]he property records shed no light on Fordham’s ability to oversee and supervise this particular cleric and his access to children” (see NYSCEF Doc. No. 89 P.2).

Fordham University’ Reply states, “[p]laintiff entirely fails to address the fact that the Amended Complaint is devoid of any allegations that establish why Fordham, a university, would have owed a duty of care to Plaintiff, a minor. While Plaintiff states that a school may owe a duty of care to a minor regardless of the school’s educational classification if the school takes custody of the minor, Plaintiff ignores the fact that the Amended Complaint does not

contain a single allegation regarding the relationship between Plaintiff and Fordham” (see NYSCEF Doc. No. 94 P. 3).

In this Court’s decisions on the issue of sufficient pleading in Child Victims Act cases, the Court has taken a very liberal stance on the issue of whether a negligence cause of action has been sufficiently pled. However, the subject complaint is utterly devoid of any information as to how plaintiff came into contact with Fr. Myers. Plaintiff further fails to detail where the alleged abuse occurred and makes no differentiation between the various defendants. Specifically, it is unclear how plaintiff was present at Fordham University and/or the John XXIII Ecumenical Center. It is unclear whether plaintiff was a student, a parishioner or some other class of persons. While the complaint does allege that “Defendants placed Fr. Meyers in positions where he had access to and worked with children as an integral part of his work” there is no indication what that work was or where he was assigned. As such, plaintiff has failed to state a cause of action.

As Defendants – Archdiocese of New York and Fordham University have shown the element of “duty owed” not being fulfilled nor the “knew or should have known” element of negligence and negligent retention, it is now

ORDERED that the Defendants’ motions to dismiss are GRANTED and the complaint is dismissed; and it is further

ORDERED that plaintiff is granted leave to serve and file an amended complaint so as to replead this action in its entirety within 20 days after service on plaintiff’s attorney of a copy of this order with notice of entry; and it is further

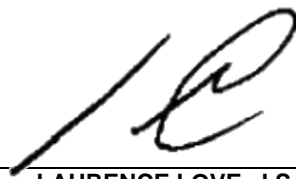
ORDERED that, in the event that plaintiff fails to serve and file an amended complaint in conformity herewith within such time, leave to replead shall be deemed denied, and the Clerk of the Court, upon service upon him (60 Centre Street, Room 141B) of a copy of this order with

notice of entry and an affirmation/affidavit by defendant’s counsel attesting to such non-compliance, is directed to enter judgment dismissing the action, with prejudice, and with costs and disbursements to the defendant as taxed by the Clerk; and it is further

ORDERED that such service upon the Clerk of the Court 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).

9/22/2022

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