

ARK246 DOE v Archdiocese of N.Y.

2022 NY Slip Op 33522(U)

October 6, 2022

Supreme Court, New York County

Docket Number: Index No. 950328/2020

Judge: Laurence L. Love

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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**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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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.

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INDEX NO. 950328/2020

MOTION DATE 03/16/2021

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, 37, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 87

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following reads on a pre – answer motion to dismiss the complaint, per CPLR 3211(a)(5) – statute of limitations, and CPLR 3211(a)(7) – failure to state a cause of action, by Defendants – The USA Northeast Province of the Society of Jesus, Inc. and The New York Province of the Society of Jesus (“Jesuits”).

A previous September 22, 2022 Order dismissed the complaint against Archdiocese of New York and Fordham University with leave to serve and file an amended complaint (see NYSCEF Doc. No. 99).

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]).

Defendants contend that the CVA is barred by the statute of limitations and dismissal is warranted per CPLR 3211(a)(5).

The CVA is a claim revival statute that revives abuse claims of childhood survivors that were time – barred under the existing statute of limitations. “A claim – revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice” (see *World Trade Center v. Battery Park City Authority*, 30 N.Y.3d 377, 400 [2017]).

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]). “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]).

Defendants’ affirmation in support states, “[t]he complaint asserts that Father [...] ‘engaged in unpermitted sexual contact with Plaintiff’ but fails to allege where such conduct occurred, or more specifically, that such conduct occurred in New York” (see NYSCEF Doc. No. 20 Par. 28).

Defendants continue, “the Complaint fails to sufficiently plead any cause of action sounding in negligence as against the [Jesuits]. “[A]bsent from the complaint are any facts for the Court to infer that Fr. [...] was employed by the [Jesuits] or that the [Jesuits] owed plaintiff any duty for the intention tortious conduct of a non – member Roman Catholic Cleric” (see NYSCEF Doc. No. 20 Pars. 32 – 33).

Plaintiff’s opposition states, “[t]he Complaint further alleges that Fr. [...], was ... employed by the Archdiocese of New York, the Jesuits, Fordham University in the Bronx, New York, and John XXIII Ecumenical Center in the Bronx, New York. Moreover, the Complaint alleges that all four Defendants have their principal places of business in New York. These allegations sufficiently state that the wrongful conduct occurred in the State of New York” (see NYSCEF Doc. No. 54 P. 6).

Plaintiff cites *Hamilton*, “where there is a relationship either between defendant and third – party tortfeasor that encompasses defendant’s actual control of the third person’s actions, or between defendant and plaintiff that requires defendant to protect plaintiff from the conduct of others” (see *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 233 [2001]). “Here, the complaint alleges that the Jesuits had a special relationship with Fr. [...] which required the Jesuits to control Fr. [...]’s conduct” (see NYSCEF Doc. No. 54 P. 13).

Jesuits Reply states, “[a]lleging that the ‘unpermitted sexual contact’ occurred in the State of New York is relevant in determining if a claim has been properly commenced under the [Child Victims Act] [...]” (see NYSCEF Doc. No. 57 Pars. 15).

Jesuits continue, “this Court has previously held in granting dismissal in *S.H. v. Diocese of Brooklyn*, Index 517999/2019 (Sup. Ct. Kings. Cty., August 14, 2020), that claims of abuse that occurred outside of the State of New York are not subject to revival under the [Child Victims Act] based on a plain reading of the statute and consideration of the New York State Legislature’s intent” (see NYSCEF Doc. No. 57 Par. 17).

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.

Defendant – Jesuits have shown that there was no duty owed in the negligence element, and that the abuse did not occur in New York.


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).

10/6/2022
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: