

C.L. v Archdiocese of N.Y.

2022 NY Slip Op 33523(U)

October 11, 2022

Supreme Court, New York County

Docket Number: Index No. 950563/2021

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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INDEX NO. 950563/2021

C.L.,

MOTION DATE 02/03/2022

Plaintiff,

MOTION SEQ. NO. 002

- v -

ARCHDIOCESE OF NEW YORK, SALESIAN HIGH SCHOOL, SALESIANS OF DON BOSCO

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Defendant – Archdiocese of New York’s (“Archdiocese”) motion to dismiss the complaint 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 – Archdiocese, (ii) negligence – Salesian High School, and (iii) negligence – Salesians of Don Bosco.

“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’s affirmation states, “[t]he documentary evidence flatly contradicts Plaintiff’s allegations that the Archdiocese operated, managed or controlled Salesian High School, where the alleged abuse occurred, or the Salesian Society at any time relevant to the Complaint” (see NYSCEF Doc. No. 22 Par. 2).

The affirmation of Roderick J. Cassidy, General Counsel for the Archdiocese affirms, “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees, including Plaintiff’s abusers, at the Salesian High School or the Salesian Society. Neither entity were agents of the Archdiocese and had no relationship with the Archdiocese of New York. The Archdiocese did not play any role in assigning, maintaining, and/or appointing individuals, including Plaintiff’s alleged abuser, at Salesian High School” (see NYSCEF Doc. No. 24 Par. 6).

Defendant further submits a Certificate of Incorporation of “the missionary society of the Salesian Congregation of the State of New York” (see NYSCEF Doc. No. 25), and a deed of land to the “the missionary society of the Salesian Congregation, Inc.” (see NYSCEF Doc. No. 26).

Dominic Tran, Vice Provincial for the Salesian Society affirms, “[t]he Archdiocese of New York did not own the property where the Salesian High School was located, did not employ the faculty, staff, or any other employees at Salesian High School. The Archdiocese was not responsible for providing financial assistance or insurance coverage to Salesian High School” (see NYSCEF Doc. No. 28 Par. 7).

Plaintiff submits various letters and excerpts (see NYSCEF Doc. Nos. 39 – 44), and an affidavit from Thomas Doyle, a previously ordained Catholic priest.

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.

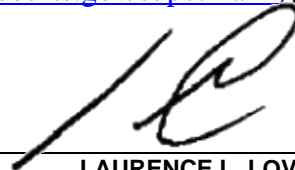
ORDERED that the motion of defendant Archdiocese to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly 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).

10/11/2022 DATE		 LAURENCE L. LOVE, 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"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE