

J.M. v Archdiocese of N.Y.

2022 NY Slip Op 33524(U)

October 5, 2022

Supreme Court, New York County

Docket Number: Index No. 950716/2021

Judge: Laurence L. Love

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

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

-----X

J.M.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, RICE HIGH SCHOOL

Defendants.

-----X

INDEX NO. 950716/2021

MOTION DATE 02/22/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following reads on the motion to dismiss of Defendant – Archdiocese of New York’s (“Archdiocese”), 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 against Archdiocese, and (ii) negligence against Rice High School.

“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]).

Before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff (see *Pulka v. Edelman*, 40 NY2d 781, 782 [1976]; *Martinez v. City of New York*, 90 AD3d 718, 719 [2d Dept. 2011]).

Defendant – Archdiocese’s Affirmation in Support states, “[i]n the instant case, although Rice High School was physically located within the geographic boundaries of the Archdiocese, the documents referenced above and annexed hereto show that Rice High School was not affiliated or associated with the Archdiocese at any time relevant to the allegations in the Complaint. Furthermore, the certificate of incorporation for the Christian Brothers shows that it was and is independent of the Archdiocese and that these entities do not have any common trustees” (see NYSCEF Doc. No. 23 Pars. 29 – 30).

Archdiocese also submits the affidavit of Roderick J. Cassidy, General Counsel for the Archdiocese. “The Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Rice High School at any time relevant to the allegations in the Complaint. The Archdiocese did not own the property where Rice High School was located; did not employ the

faculty, staff, or any other employees at Rice High School, and did not provide funding or insurance coverage to Rice High School” (see NYSCEF Doc. No. 29 Par. 5).

Plaintiff further submits a property deed (see NYSCEF Doc. No. 27), and a certificate of incorporation (see NYSCEF Doc. No. 28)

Plaintiff’s Affirmation in Opposition argues, “[t]he fact that Rice [High School] is located and operates within the boundaries of what the Archdiocese asserts as its territory and domain, by itself, is sufficient to demonstrate an issue of fact regarding control that precludes a pre – answer dismissal” (see NYSCEF Doc. No.33 Par. 11).

Plaintiff submits the affidavit of Thomas P. Doyle, “[i]t is relevant and helpful to review the role of the Catholic Church’s internal norms and regulations, commonly referred to as Canon Law. The Church’s internal regulatory system is not a theological document nor is it an article of faith that is part of the body of doctrine that Catholics are expected to believe” (see NYSCEF Doc. No. 34 P. 5 – 6).

Plaintiff further submits letters and handbooks from Archbishops and Chancery Administrators from Minneapolis and Cincinnati (see NYSCEF Doc. Nos. 35 – 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.

Defendant Archdiocese has shown that they did not have any control over Rice High School and hence a duty was not owed to Plaintiff.

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

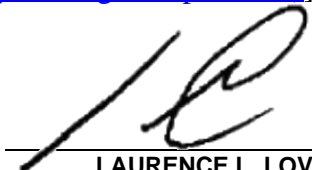
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

10/5/2022
DATE


LAURENCE L. 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