

**SWNY 12 DOE v Roman Catholic Archdiocese of  
N.Y.**

2022 NY Slip Op 33756(U)

October 31, 2022

Supreme Court, New York County

Docket Number: Index No. 950621/2021

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

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SWNY 12 DOE,

Plaintiff,

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
CHURCH OF ST. JOSEPH OF THE HOLY FAMILY,
FATHER WALLACE HARRIS, DOES 1 THROUGH 5

Defendants.

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INDEX NO. 950621/2021
MOTION DATE 02/18/2022
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, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on the motion of Defendant – Roman Catholic Archdiocese of New York’s (“Archdiocese”) motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, for the third (iii) cause of action – breach of fiduciary duty, the fourth (iv) cause of action – breach of non – delegable duty, and the fifth (v) cause of action for fraudulent concealment; along with

The cross – motion of the Church of St. Joseph of the Holy Family to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, for the third (iii) cause of action – breach of fiduciary duty, the fourth (iv) cause of action – breach of non – delegable duty, and the fifth (v) cause of action for fraudulent concealment.

Answers have been submitted by the Archdiocese (see NYSCEF Doc. No. 35), Father Wallace (see NYSCEF Doc. No. 37), and the Church of St. Joseph of the Holy Family (see NYSCEF Doc. No. 39).

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g with causes of action against Father [...] for (i) assault, battery, intentional infliction of emotional distress, causes of action against New York Archdiocese, St. Joseph of the Holy Family, and Does 1 through 5 for (i) negligence, (ii) gross negligence, (iii) breach of fiduciary duty, (iv) breach of non – delegable duty, and (v) fraudulent concealment.

“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]).

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]).

“A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation” (see *AG Capital Funding, LP v. State Street Bank and Trust*, 11 NY3d 146, 158 [2008]).

“Additionally, Plaintiff’s causes of action for breach of the fiduciary duty as pled here, is no different than the negligence causes of action. Plaintiff therefore fails to state a cause of action for breach of fiduciary duty” (see *Torrey v. Portville Central School*, 66 Misc.3d 1225(A), \*5 [Sup. Ct., Cattaraugus County, Feb. 21, 2020]).

“The Complaint does not identify the non – delegable duty and upon review of the allegations, they are duplicative of the negligence causes of action” (see *Torrey v. Portville Central School*, 66 Misc.3d 1225(A), \*5 [Sup. Ct., Cattaraugus County, Feb. 21, 2020]).

“The required elements of a common – law fraud claim are a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (see *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578 – 579 [2018]). “A cause of action for fraudulent concealment requires, in addition to the four foregoing elements, an allegation that the defendant had a duty to disclose material information and that it failed to do so” (see *Gomez-Jimenez v. New York Law School*, 103 A.D.3d 13, 17 – 18 [1st Dept. 2012]). A duty to disclose arises only where “a fiduciary or confidential relationship exists between plaintiff and defendant” (see *Mandarin Trading, Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179 [2011]). “Here, the Complaint not only failed to sufficiently allege a misrepresentation was made that was known to be false and was relied on by plaintiff but also that Portville owed a duty to plaintiff to disclose the alleged material information and failed to do so” (see *Torrey v. Portville Central School*, 66 Misc.3d 1225(A) [2020]).

Claims premised upon allegations of fraud must be pleaded with specificity per CPLR 3016(b). Defendant affirms, “Plaintiff only dedicated six paragraphs of his Complaint to the claim for fraudulent concealment and failed to plead specific allegations against each of the named Defendants, instead referring to Defendants, as a collective” (see NYSCEF Doc. No. 23 Par. 31).

“Plaintiff’s fraud claims are problematic even at this early pleading stage because plaintiff has not pleaded those claims with sufficient particularity (see *Pludeman*, 10 NY3d at 491, see also CPLR 3016[b]). Even if plaintiff had pleaded such claims with particularity, plaintiff’s claims of constructive fraud also fail because they are duplicative of plaintiff’s negligence theories. Indeed, ‘[i]t is only when the alleged fraud occurs separately from and subsequent to’ the sexual abuse ‘that a plaintiff is entitled to allege and prove a cause of action for intentional tort,’ such as fraud, ‘and then only where the fraud claim gives rise to damages separate and distinct from those flowing from’ the sexual abuse (see *Coopersmith v. Gold*, 172 AD2d 982 [3d Dept. 1991]) (see *J.D. v. The Roman Catholic Diocese of Brooklyn*, Supreme Court, Kings County, Index No. 519856/2019 [Hon. George Silver, D.C.A.J. April 28, 2021]).

As Defendants have shown that the third (iii) cause of action – breach of fiduciary duty, the fourth (iv) cause of action – breach of non – delegable duty, and the fifth (v) cause of action for fraudulent concealment are duplicative, it is now

ORDERED that the motion to dismiss is granted and the third (iii) cause of action – breach of fiduciary duty, the fourth (iv) cause of action – breach of non – delegable duty, and the fifth (v) cause of action for fraudulent concealment causes of action of the complaint are dismissed against the Archdiocese and the Church of St. Joseph of the Holy Family.

10/31/2022  
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"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE