

C.S. v Archdiocese of N.Y.

2022 NY Slip Op 33757(U)

October 31, 2022

Supreme Court, New York County

Docket Number: Index No. 951299/2021

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

-----X

C. S.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, FRANCISCAN FRIARS
OF THE ATONEMENT

Defendants.

-----X

INDEX NO. 951299/2021

MOTION DATE 03/03/2022

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, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following reads on the motion of Defendant – Archdiocese of New York (“Archdiocese”), to dismiss the complaint per CPLR 3211(a)(1) – documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action, to dismiss Plaintiff’s cause of action for Intentional Infliction of Emotional Distress, and to strike all “reckless and wonton language and dismissing claim for punitive damages.”

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, and (ii) outrage and intentional infliction of emotional distress. Franciscan Friars of the Atonement submits an answer (see NYSCEF Doc. No. 33), and the Archdiocese appears through this motion to dismiss.

“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]).

The affidavit of Roderick J. Cassidy, General Counsel for the Archdiocese affirms, “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at the Franciscan Friars, including Father Lewis and Brother Sennett. The Franciscan Friars were not an agent 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 any employees of the Franciscan Friars to a position with access to minors, in assigning, maintaining and/or appointing Plaintiff or his abusers to the care or custody of the Franciscan Friars” (see NYSCEF Doc. No. 25 Par. 5).

Defendant submits a Deed for the Friars of the Atonement, Inc. (see NYSCEF Doc. No. 26), and a Certificate of Incorporation of the Friars of the Atonement, Inc. (see NYSCEF Doc. No. 27).

Plaintiff's affirmation in opposition states, "the motion [to dismiss] is both premature and insufficient. Plaintiff has had no opportunity to pursue discovery" (see NYSCEF Doc. No. 36 Pars. 6).

"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]). It is well established that before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff (see *Palsgraf v. Long Is. R. R. Co.*, 248 N.Y. 339 [1928]). "Commentators have pointed out that the duty to control others arises only in the following relationships: (1) '[t]he relationship between the defendant and the person who threatens the harm to the third person may be such as to require the defendant to attempt to control the other's conduct' or (2) 'there may be a relationship between the defendant and the person exposed to harm which requires the defendant to afford protection from certain dangers including the conduct of others' (Harper Kime, *Duty to Control the Conduct of Another*, 43 Yale LJ 886, 887 – 888)" (see *Pulka v. Edelman*, 40 NY2d 781 [1976]).

Defendant – Archdiocese's Reply states, "Plaintiff's failure in establishing how the Archdiocese knew or should have known of Father Lewis' and Brother Sennett's propensities for child sexual abuse is alone fatal to Plaintiff's negligence claim against the Archdiocese" (see NYSCEF Doc. No. 42 P. 4 – 5).

In conclusion, Plaintiff has not submitted any evidence that would put Archdiocese on notice of any duty owed. Defendant – Archdiocese puts forth an affidavit, along with a deed and article of incorporation, that shows a distinction between itself and the other named Defendant.

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

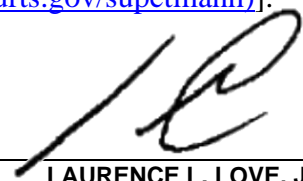
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

10/31/2022
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