

<b>M.A.T. v Archdiocese of N.Y.</b>
2022 NY Slip Op 33865(U)
November 10, 2022
Supreme Court, New York County
Docket Number: Index No. 950726/2020
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

M. A. T.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK A/D/B/A CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, CITY OF NEW YORK, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES, CATHOLIC CHARITIES OF STATEN ISLAND, INC., MISSION OF THE IMMACULATE VIRGIN AT MOUNT LORETTO FOR THE PROTECTION OF HOMELESS AND DESTITUTE CHILDREN F/K/A MOUNT LORETTO CATHOLIC MISSION F/K/A ST. ELIZABETH'S HOME FOR CHILDREN, SISTERS OF ST. FRANCIS OF THE IMMACULATE VIRGIN, SISTERS OF ST. FRANCIS OF THE NEUMANN COMMUNITIES, XAVERIAN BROTHERS A/K/A CONGREGATION OF ST. FRANCIS XAVIER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 45, 46, 48, 51, 52, 53

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is

The following read on (i) the pre – answer motion of Defendant – Xaverian Brothers USA, Inc., s/h/a Xaverian Brothers a/k/a Congregations of St. Francis Xavier (“Xavier”), to dismiss per CPLR 3211(a)(1) – documentary evidence, CPLR 3211(a)(7) – failure to state a cause of action, and CPLR 2221 – leave to renew and/or reargue the instant motion after discovery; and (ii) the motion of Plaintiff to Consolidate, CPLR 602, with the litigation of *M.A.T. v. Catholic Charities, et. al.*, Index No.: 951289/2021.

Xavier has not submitted an answer

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, and (ii) negligent hiring, supervision, retention, and/or direction, against all Defendants.

“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]).

Defendant affirms, “Defendant submits correspondence with the Archdiocese memorializing its intention to withdraw from Mount Loretto’s campus by June 1962, the Archdiocese’s acknowledgement of Defendant’s position, and Defendant’s withdrawal from Mount Loretto’s campus by June 24, 1962. [...]. The proffered evidence refutes Plaintiff’s allegations that Defendant worked at, operated, owned or controlled Mount Loretto between 1968 and 1970. As Defendant was not a part of Mount Loretto’s staff or general campus after

June 1962, the evidence further refutes Plaintiff's allegations that Defendant knew or should have known of Plaintiff's alleged abuse at Mount Loretto between 1968 and 1970, but took no action to stop it" (see NYSCEF Doc. No. 27 Par. 21). Defendant submits various agreements and letters (see NYSCEF Doc. Nos. 32 – 37).

Plaintiff opposes with, "[t]he majority of Defendant's submissions are letter correspondences purportedly between members of the Xaverian Brothers and Mount Loretto exchanged throughout 1961 and 1962. While the substantive deficiencies in the letters will be discussed below, it must be stated at the outset that these letters cannot be considered on this motion because 'neither affidavits, deposition testimony, nor letters are considered documentary evidence within the intendment of CPLR 3211(a)(1)' (see *Attias v. Costiera*, 120 A.D.3d 1281 [2d Dept. 2014])."

Plaintiff further opposes with, "[t]he leaps in Defendant's logic are evident when it argues, '[a]ssuming the evidence establishes Defendant left Mount Loretto by June 1962, it stands to reason Defendant had no authority or ability to supervise, control, or oversee operations at Mount Loretto between 1968 and 1970' see Affidavit of Corey L. Shulman in Support ¶ 22. This is a meaningless statement of circular reasoning which essentially states that Defendant's submissions only refute Plaintiff's allegations if the Court assumes they refute Plaintiff's allegations. However, Defendant is entitled to no such 'assumption'" (see NYSCEF Doc. No. 45 P. 16).

Plaintiff has not shown documentary evidence nor refute the failure of plaintiff to state a cause of action. Defendant moves to renew/reargue but does not cite what motion to renew/reargue.

Plaintiff moves for Consolidation, CPLR 602. “On November 17, 2020, Plaintiff filed the summons and verified complaint for this matter in New York County Supreme Court, bearing index number 950726/2020, and referred to as ‘action #1’ in the caption. On August 12, 2021, Plaintiff filed the Summons and Verified Complaint for this matter in New York County Supreme Court, bearing index number 951289/2021, and referred to as ‘action #2’ in the caption” (see NYSCEF Doc. No. 57 Pars. 4 – 5).

“Where common questions of law or fact exist, a motion to consolidate or join for trial pursuant to CPLR 602 should be granted absent a showing of prejudice to a substantial right by the party opposing the motion” (see *Oboku v. New York City Transit Auth.*, 141 A.D.3d 708 [2d Dept. 2016]).

Opposition has not been submitted and a letter of support for consolidation has been submitted by the Sisters of St. Francis of the Neumann Communities and Sisters of St. Francis of the Immaculate Virgin (see NYSCEF Doc. No. 61).

ORDERED that the motion to dismiss of Xavier is DENIED in its entirety; and it is further

ORDERED that the motion to renew/reargue is DENIED; and it is further

ORDERED that Defendant – Xavier is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the motion to Consolidate is granted and the above-captioned action is consolidated in this Court with M.A.T. vs. CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, CATHOLIC HOME BUREAU, and CATHOLIC GUARDIAN SERVICES f/k/a CATHOLIC GUARDIAN SOCIETY AND HOME BUREAU, Index No. 951289/2021 , pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 950726/2020 and the consolidated action shall bear the following caption:

M.A.T.  
Plaintiff,

-against-

ARCHDIOCESE OF NEW YORK a/d/b/a CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, CITY OF NEW YORK, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES f/k/a BUREAU OF CHILD WELFARE, CATHOLIC CHARITIES OF STATEN ISLAND INC., MISSION OF THE IMMACULATE VIRGIN AT MOUNT LORETTO FOR THE PROTECTION OF HOMELESS AND DESTITUTE CHILDREN f/k/a MOUNT LORETTO CATHOLIC MISSION f/k/a ST. ELIZABETH'S HOME FOR CHILDREN, SISTERS OF ST. FRANCIS OF THE IMMACULATE VIRGIN, SISTERS OF ST. FRANCIS OF THE NEUMANN COMMUNITIES, and XAVERIAN BROTHERS a/k/a CONGREGATION OF ST. FRANCSI XAVIER, CATHOLIC HOME BUREAU, and CATHOLIC GUARDIAN SERVICES f/k/a CATHOLIC GUARDIAN SOCIETY AND HOME BUREAU,  
Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*.

11/10/2022  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" 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