

<b>D.P. v Riverside Church in the City of N.Y.</b>
2022 NY Slip Op 33901(U)
November 14, 2022
Supreme Court, New York County
Docket Number: Index No. 950624/2021
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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**INDEX NO. 950624/2021**

D. P.,

**MOTION DATE 03/07/2022**

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

RIVERSIDE CHURCH IN THE CITY OF NEW YORK,  
RIVERSIDE HAWKS

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Defendant – Riverside Church in the City of New York and Riverside Hawks (“Riverside Church and Hawks”) pre – answer motion to dismiss the verified complaint with prejudice, 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) negligent supervision, (ii) negligent failure to warn, (iii) negligent failure to provide a safe and secure environment, (iv) negligent failure to train coaches and staff relating to sexual abuse and train minor team members relating to sexual abuse, and (v) negligent retention.

The Court notes that the Riverside Church in the City of New York and the Riverside Hawks have the same corporate headquarters and will be viewed as one – in – the – same.

“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]).

CPLR 3211(a)(5), “[a] party may move for judgment dismissing ... res judicata.” “Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action” (see *Mooney v. Manhattan Occupational, Physical & Speech Therapies, PLLC*, 166 A.D.3d 957 [2018]).

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]).

Riverside Church and Hawks affirms, “[i]n support of its motion, Riverside church submits ... a copy of a Summons and Complaint filed by the Plaintiff, on March 23, 2007, in the United States District Court, Southern District of New York against Riverside Church and Lorch. [T]he undersigned affirms that the Plaintiff in the instant action is the same person as the Plaintiff in the Federal Action. In the Federal Action, the Plaintiff alleges seven causes of action: (1) assault and battery, (2) intentional infliction of emotional distress, (3) equitable estoppel, (4) breach of fiduciary duty, (5) negligent hiring, (6) negligent supervision, and (7) negligent retention. Significantly, the Plaintiff’s prior Federal Action against Riverside Church arose out

of the same transaction or series of transactions as in the instant matter” (see NYSCEF Doc. No. 19 Pars. 13 – 16).

Plaintiff submits a “notice of motion” that states, “the undersigned will move this court ... for an order ... granting summary judgment to defendant Riverside Church, dismissing the fifth, sixth, seventh, eighth, and ninth causes of action asserted in the complaint against Riverside Church and otherwise dismissing the complaint against Riverside Church in that such causes of action are barred by the statute of limitations” There appears to be handwriting that states “motion denied as moot in view of stipulated dismissal” (see NSYCEF Doc. No. 34).

Defendant submits a stipulation where “that plaintiff’s complaint as against defendant Riverside Church is dismissed and that the action is dismissed as against said defendant with prejudice” (see NYSCEF Doc. No. 25).

Plaintiff affirms, “Defendant’s argument that res judicata applies omits a very important part of the prior lawsuit, specifically the basis for the aforementioned dismissal. The stipulation of dismissal was entered as a result of a motion by Riverside Church for summary judgment seeking to dismiss plaintiff’s causes of action against that defendant on the grounds that they are barred by the statute of limitations. This motion was denied as moot by Judge Greisa on February 2008” (see NYSCEF Doc. No. 30 Pars. 9 – 11).

Plaintiff submits an affidavit affirming that the rational behind the stipulation of discontinuance of the federal action in 2007 was the statute of limitations. “In 2007, I commenced a lawsuit against Ernest Lorch and Riverside Church. I was advised that my claims against the Riverside Church were untimely based on the law at that time. It is my understanding that this law allows victims with time barred cases like mine to bring this lawsuit despite already

having a previously filed lawsuit dismissed for statute of limitations reasons” (see NYSCEF Doc. No. 35 Pars. 5, 7, 11).

This Court has reviewed the documents submitted in the 2007 federal action that noticed the statute of limitations issue and stipulation of discontinuance which is silent as to the specific reason of such a discontinuance. However the court is also mindful of the purpose of the CVA law and as stated in the Case Management Order No. 2, “[i]n 2019, New York State enacted the [Child Victims Act] which, *inter alia*, (1) extended the statute of limitations on criminal cases involving certain sex offenses against children under 18 (see CPLR 30.10[f]); (2) extended the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (see CPLR 208[b]); and (3) opened a one – year window reviving civil action for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (see CPLR 214-g)” (see Case Management Order No. 2) (March 30, 2021, J. Silver)).

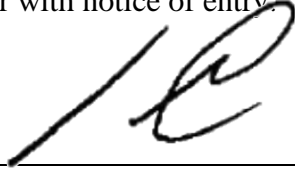
As the Federal case was discontinued in 2008 and makes no mention as to why same occurred this court must give every deference to the party seeking an opportunity to proceed with this case under the CVA on the merits.

The Child Victims Act revives the statute of limitations on “certain sex offenses,” and the 2007 Federal Action previously cited appears that many of plaintiff’s causes of action were barred by the statute of limitations. As the Child Victims Act has revived plaintiff’s causes of action, Defendant’s grounds for dismissal on res judicata grounds must be denied.

ORDERED that the motion of Defendant – Riverside Church and Hawks’ motion to dismiss is DENIED; and it is further

ORDERED that Defendants – Riverside Church and Hawks are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

11/14/2022  
 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