

ARK683 Doe v Archdiocese of N.Y.
2022 NY Slip Op 33902(U)
November 15, 2022
Supreme Court, New York County
Docket Number: Index No. 951434/2021
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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ARK683 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE MARIST
BROTHERS, MOUNT ST. MICHAEL ACADEMY, DOES 1-5
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 951434/2021

MOTION DATE 03/18/2022

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, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on Defendant – Archdiocese of New York’s (“Archdiocese”) pre – answer motion to dismiss the complaint 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) negligence, (ii) negligent training and supervision of employees, and (iii) negligent retention of employees.

Defendant – The Marist Brothers and Mount St. Michael Academy have submitted an answer (see NYSCEF Doc. Nos. 20 – 21).

“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 cites *R.D. v. Archdiocese of New York* (519339/2020), *M.A. v. New York Foundling, Catholic Charities of the Archdiocese of New York, and the Archdiocese of New York* (950041/2021), *E.G. v. Archdiocese of New York, and Maryknoll Fathers and Brothers* (950115/2020), and *M.R. v. City of New York* (950227/2020) (see NYSCEF Doc. No. 23 Pars. 4 – 7).

Defendant affirms, “[t]he evidence proffered in those cases is the same as the documentary evidence the Archdiocese is proffering in this case, including a deed, certificate of incorporation, and affidavits, which show that the Archdiocese did not have ownership or control of the alleged abusers of Mount Saint Michael Academy” (see NYSCEF Doc. No. 23 Par. 2).

Defendant – Archdiocese submits a Certificate of Incorporation for The Marist Brothers (see NYSCEF Doc. No. 34), a property deed (see NYSCEF Doc. No. 36), and an affidavit from the General Counsel for the Archdiocese, Roderick J. Cassidy.

Roderick J. Cassidy affirms, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Mount St. Michael, including its facilities, staff, employees, or students. [...], the Archdiocese did not own the property where Mount St. Michael was located. Moreover, the Archdiocese did not employ, supervise, train, or retain the faculty, staff, or any other employees of Mount St. Michael; did not have custody over or supervise or control the students at Mount St. Michael, including Plaintiff, and did not provide funding or insurance coverage to Mount St. Michael” (see NYSCEF Doc. No. 39 Par. 4).

Plaintiff affirms, “policies that govern the structure of the Catholic Church place responsibility on dioceses, like the Archdiocese, for activities, programs, and employees working within its geographic territory. See Affidavit of Thomas Doyle” (see NYSCEF Doc. No. 43 Par. 6).

“I was ordained a Catholic priest. It is relevant and helpful to review the role of the Catholic Church’s internal norms and regulations, commonly referred to as Canon Law, in cases of alleged sexual abuses by Catholic clerics as well as other types of cases before civil courts in which the Catholic Church is a party. The Catholic Church is divided into geographic entities known as dioceses. The main authority figure in a diocese is the bishop who is personally appointed by the pope. The bishop’s fundamental obligations are to safeguard and promote the spiritual and moral welfare of the people entrusted to him. The essential unit of the diocese is the parish, which is generally geographic in nature” (see NYSCEF Doc. No. 44 P. 5).

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.

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

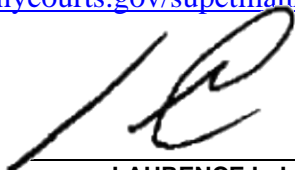
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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).

11/15/2022
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE