

**ARK466 Doe v Archdiocese of N.Y.**

2022 NY Slip Op 33999(U)

November 21, 2022

Supreme Court, New York County

Docket Number: Index No. 950510/2021

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

ARK466 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, DIOCESE OF  
BRIDGEPORT, STATEN ISLAND ACADEMY, DOES 1-5  
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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**INDEX NO.** 950510/2021  
**MOTION DATE** 04/22/2022  
**MOTION SEQ. NO.** 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Defendant – Archdiocese of New York’s (“Archdiocese”) pre – answer motion to dismiss per CPLR 3211(a)(1) – documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff alleges violations of 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.

“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 Amendment to Charter of Staten Island Day School] clearly establishes that the New York Board of Regents granted Staten Island Academy its charters, not the Archdiocese. Furthermore, [The Amendment to Charter of Staten Island Day School] establishes that Staten Island Academy, an independent and secular school, is not organized under New York’s Religious Corporations Law, under which the Archdiocese is organized. Moreover, [The Bargain and Sale Deed] establishes that at no point did Staten Island Academy convey land to, or accept land conveyed from the Archdiocese. Therefore, the Staten Island Academy, not the Archdiocese, owned, managed and operated the property where the alleged abuse occurred. The documentary and testimonial evidence establish that the Archdiocese had no presence at Staten Island Academy, was not associated with it, did not supervise it, did not control it and did not employ anyone there. Accordingly, Staten Island Academy was, is, and remains a completely separate and distinct entity from the Archdiocese” (see NYSCEF Doc. No. 52 Par. 18).

Defendant submits The Amendment to Charter of Staten Island Day School (see NYSCEF Doc. No. 58) and a Bargain and Sale Deed (see NYSCEF Doc. No. 57).

Defendant Archdiocese submits the affidavit of Roderick J. Cassidy, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct or operate Staten Island Academy or its faculty, staff, employees, or students. The Archdiocese did not own the property where

Staten Island Academy was located, did not employ, supervise, or train the faculty, staff, or any other employees at Staten Island Academy, and did not provide funding or insurance coverage to Staten Island Academy” (see NYSCEF Doc. No. 59 Par. 6).

Plaintiff affirms in opposition, “[s]pecifically, policies that govern the structure of the Catholic Church place responsibility on diocese, like the Archdiocese, for activities, programs, and employees working within its geographic territory. See Affidavit of Thomas Doyle” (see NYSCEF Doc. No. 68 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. 69).

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](http://www.nycourts.gov/supctmanh)).

<u>11/21/2022</u> 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"/> 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	