

I.E. Doe v Archdiocese of N.Y.
2022 NY Slip Op 34071(U)
November 30, 2022
Supreme Court, New York County
Docket Number: Index No. 951391/2021
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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

I.E. DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE SOCIETY OF ST.
VINCENT DE PAUL OF THE ARCHDIOCESE OF NEW
YORK, THE ROMAN CATHOLIC DIOCESE OF
BROOKLYN, HEARTSHARE ST. VINCENT'S SERVICES,
CITY OF NEW YORK, JOHN AND JANE DOES 1-10

Defendants.

-----X

INDEX NO. 951391/2021
MOTION DATE 05/13/2022
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 57 were read on this motion to/for DISMISSAL.

The following reads on Defendant – Archdiocese of New York’s (“Archdiocese”) motion to (i) dismiss the complaint, per CPLR 3211(a)(1) – documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action, (ii) to strike, CPLR 3024(b), any reckless and wanton language, and to dismiss Plaintiff’s claim for punitive damages, (iii) dismiss Plaintiff’s second, third, and fourth causes of action for negligent supervision, hiring, retention and training as duplicative, (iv) to dismiss Plaintiff’s fifth cause of action for Intentional Infliction of Emotional Distress as duplicative, or in the alternative (v) severing Plaintiff’s claims, CPLR 603, as to the Archdiocese.

Plaintiff alleges violations of the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence against the City of New York, (ii) negligent supervision against Archdiocese, The Roman Catholic Diocese of Brooklyn, The Society of St. Vincent de Paul of the Archdiocese of New York, and Heartshare St. Vincent’s Services, (iii) negligent hiring and

retention against Archdiocese, The Roman Catholic Diocese of Brooklyn, The Society of St. Vincent de Paul of the Archdiocese of New York, and Heartshare St. Vincent's Services, (iv) negligent failure to train against Archdiocese, The Roman Catholic Diocese of Brooklyn, The Society of St. Vincent de Paul of the Archdiocese of New York, and Heartshare St. Vincent's Services, (v) intentional infliction of emotional distress against Archdiocese, The Roman Catholic Diocese of Brooklyn, The Society of St. Vincent de Paul of the Archdiocese of New York, and Heartshare St. Vincent's Services, and (vi) sexual abuse and battery against Archdiocese, The Roman Catholic Diocese of Brooklyn, The Society of St. Vincent de Paul of the Archdiocese of New York, and Heartshare St. Vincent's Services.

DISMISSAL

“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 – Archdiocese affirms, “Plaintiff’s allegations against the Archdiocese, are based solely on bald and false conclusory allegations that the Archdiocese exercised some degree of control, supervision, or authority over St. Vincent’s at any time relevant to the Complaint. As demonstrated below, the Archdiocese had absolutely no involvement in the allegations underlying Plaintiff’s claims and did not own, supervise, control, St. Vincent’s, or their residents, or have involvement in their operations, including the placement of children. The deed to St. Vincent’s flatly contradicts Plaintiff’s conclusory allegations that the Archdiocese had control or authority over his second abuser, Monsignor [...], as it unequivocally and undeniably establishes that St. Vincent’s was not owned by the Archdiocese. A copy of the deed to 66 Boerum Place, Brooklyn, New York – where St. Vincent’s Home for the Boys was located – reveals that it was conveyed to St. Vincent’s Foundation, Inc. in 1976. Moreover, St. Vincent’s is not even within the geographical ecclesiastical territory of the Archdiocese” (see NYSCEF Doc. No. 20 Pars. 11 – 13).

Roderick J. Cassidy, General Counsel for the Archdiocese of New York affirms, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate St. Vincent’s, including its facilities, staff, or employees. The Archdiocese did not own the property where St. Vincent’s was located, and did not employ, supervise or train the faculty, staff, or any other employees of St. Vincent’s. The Archdiocese also did not provide funding or insurance coverage to St. Vincent’s. [T]he Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at St. Vincent’s and was not responsible for placing Plaintiff in Passereti’s foster home. Neither St. Vincent’s nor Passereti were agents of the Archdiocese and neither had any relationship with the Archdiocese of New York. The Archdiocese did not play any role in assigning, maintaining, and/or appointing Plaintiff to the care of the foster homes where he

allegedly sustained abuse. Further, the Diocese of Brooklyn is a separate and distinct corporate entity (see NYSCEF Doc. No. 23 Pars. 7 – 8).

Defendant submits a Deed for the Roman Catholic Diocese of Brooklyn (see NYSCEF Doc. No. 22).

Plaintiff's affirmation in opposition states, "the complaint alleges that at the time of the relevant acts, Msgr. [...] was an employee of, and acting as an agent of defendant Archdiocese [Complaint Par. 100]" (see NYSCEF Doc. No. 28 Par. 6).

The City of New York submits an opposition, "[t]he Complaint alleges that starting in approximately 1976, when Plaintiff was 11 years old, he was repeatedly sexually abused by his foster father, [...]. The complaint also alleges that starting in approximately 1981, Plaintiff, then aged 16, was repeatedly sexually abused by [...] while a resident at St. Vincent's Hall home for boys. It is significant to note that in addition to allegations surrounding the locations where the acts of sexual abuse took place, the complaint specifically alleges that at the time of the relevant acts, [...] and co – defendants The Society of St. Vincent de Paul of the Archdiocese of New York and Heartshare St. Vincent's Services were under the direct authority, control, and province of the moving Defendant, the Archdiocese" (see NYSCEF Doc. No. 33 Pars. 3, 6).

After review of the affidavits and exhibits there remains a question of how much control the Archdiocese had in this matter. Questions remain on the relationship between the Archdiocese and The Society of St. Vincent de Paul of the Archdiocese of New York and Heartshare St. Vincent's Services.

STRIKE PREJUDICIAL LANGUAGE

Defendant – Archdiocese affirms, "Plaintiff's complaint is littered with inadmissible, unnecessary, irrelevant, and impermissible language, assertions and allegations, which were

included for the sole purpose of prejudicing the Court and potential jury against the moving defendants” (see NYSCEF Doc. No. 20 Par. 40).

In reviewing a motion pursuant to CPLR 3024(b), “the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action” (see *Soumayah v. Minnelli*, 41 AD3d 390 [1st Dept. 2007]). Defendant – Archdiocese does not specifically explain what language is scandalous or prejudicial, which this court cannot apply to “relevant to a cause of action.”

PUNITIVE DAMAGES

“The application to dismiss plaintiffs’ request for punitive damages is denied, with the possibility of renewal before the trial judge. Punitive damages are awarded ‘[w]here the defendant’s wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime’ (*Prozeralike v Capital Cities Communications, Inc.*, 82 NY2d 466 [1993])” (see *J.D. v. Lawrence Svrcek*, Index No.: 400088/2020 [Hon. Kaplan]).

“Here, on the record before the court, there is insufficient evidence to conclude that Defendants’ conduct amounts to willful, intentional, or reckless misdoing sufficient to justify an award of punitive damages at this juncture. However, Plaintiffs may make the application that punitive damages are warranted directly to the trial judge upon presentation of a proposed pleading demonstrating the merits of their request (see *Mendoza v. Akerman Senterfitt LLP*, 128 AD3d 480, 483 [1st Dept. 2015])” (see *J.D. v. Lawrence Svrcek*, Index No.: 400088/2020 [Hon. Kaplan]).

DUPLICATIVE

Defendant – Archdiocese affirms, “Plaintiff asserts a claim for negligent hiring, supervision, retention and training while simultaneously asserting claims for general negligence.

It has been consistently held that a court may dismiss causes of action as duplicative where appropriate. Here, Plaintiff asserts a general negligence cause of action and negligent supervision/hiring/retention/training cause of action based on the same purported duty owed by Defendant to Plaintiff” (see NYSCEF Doc. No. 20 Pars. 45 – 46).

The first cause of action in the complaint states “negligence against Defendant City” (see NYSCEF Doc. No. 1 P. 10). Hence, the negligent supervision / hiring / retention / training causes of action against the Archdiocese are not duplicative.

“A cause of action for intentional infliction of emotional distress should not be entertained where the conduct complained of falls well within the ambit of other traditional tort liability” (see *DiOrio v. Utica City School District Board of Education*, 305 AD2d 1114 [4th Dept. 2003]). Plaintiff asserted causes of action for negligent supervision / hiring / retention / training, and hence the Intentional Infliction of Emotion Distress cause of action is duplicative.

SEVERANCE

Archdiocese seeks severance of this matter and the Court of Appeals has made caselaw on this matter. “Where complex issues are intertwined, ... it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time. Fragmentation increases litigation and places an unnecessary burden on court facilities by requiring two separate trials instead of one” (see *Shanley v. Callanan Industries, Inc.*, 54 NY2d 52, 57 [1981]).

It is now

ORDERED that the motion to dismiss the Complaint is DENIED; and it is further

ORDERED that the motion to dismiss the negligent supervision, hiring, retention and training as duplicative is DENIED; and it is further

ORDERED that the motion to dismiss is granted and the fifth cause of action for Intentional Infliction of Emotion Distress against Archdiocese of the complaint is dismissed; and it is further

ORDERED that the motion to strike, CPLR 3024(b), any reckless and wanton language is DENIED; and it is further

ORDERED that the motion to dismiss Plaintiff's claim for punitive damages is DENIED; and it is further

ORDERED that the motion to sever Plaintiff's claims, CPLR 603, against the Archdiocese is DENIED.

11/30/2022

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