

**ARK75 v Archdiocese of N.Y.**

2022 NY Slip Op 34149(U)

December 2, 2022

Supreme Court, New York County

Docket Number: Index No. 950061/2019

Judge: Laurence L. Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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

ARK75,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, DOES 1-5 WHOSE  
IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

-----X

**INDEX NO.** 950061/2019

**MOTION DATE** 07/07/2022

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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

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”) 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 violations of the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, (ii) negligent training and supervision, (iii) and negligent retention.

“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 affirmation of Archdiocese affirms, “[t]he documentary evidence contradicts Plaintiff’s allegation that the Archdiocese exercised some degree of control over All Hallows. In truth, the Archdiocese had no control over All Hallows and the Archdiocese did not own, manage or operate All Hallows at any time relevant to the Complaint” (see NYSCEF Doc. No. 31 Par. 5).

The affidavit of Roderick J. Cassidy affirms, “I am the General Counsel for the Archdiocese of New York. [T]he Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at All Hallows, including Brother [...]. [...] was not an employee or agent of the Archdiocese and had no relationship with the Archdiocese. The Archdiocese did not play any role in assigning, maintaining, and/or appointing [...] to a position at All Hallows High School” (see NYSCEF Doc. No. 34 Pars. 1, 7).

The affidavit of Brother Kevin Griffith, Province Leader of the Edmund Christian Brothers North American Province affirms, “[i]n 1981 through 1983, the property where All Hallows High School is and was located was owned by the Christian Brothers’ Institute, which is affiliated with the Christian Brothers. At no time relevant to the claims in this action was the property where All Hallows High School is located owned and/or controlled by the Archdiocese” (see NYSCEF Doc. No. 36 Par. 7).

Archdiocese further submits a property deed for the Christian Brothers' Institute (see NYSCEF Doc. No. 33), and a Certificate of Incorporation for the Christian Brothers' Institute (see NYSCEF Doc. No. 30).

Plaintiff's affirmation in opposition affirms, "[t]he Archdiocese's motion asks this court to completely ignore the structure and hierarchy of the Roman Catholic Church, which requires that clerics working within the geographic boundaries of a diocese receive permission from that diocese's bishop" (see NYSCEF Doc. No. 38 P. 2).

Plaintiff submits the affidavit of Thomas P. Doyle J.C.D., "[t]he Church's internal regulatory system is not a theological document nor is it a theological document nor is it an article of faith that is part of the body of doctrine that Catholics are expected to believe. It is a collection of internal rules, regulations and norms that give concrete shape to the institutional Church. It is true that certain of the individual laws or "canons" are directly or indirectly related to, inspired by or founded on theological or religious concepts" (see NYSCEF Doc. No. 40 P. 6).

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

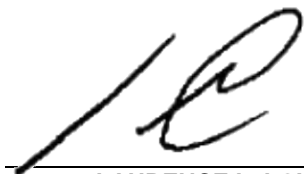
ORDERED that the action is severed and continued against the remaining defendants; and it is further

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 and the Clerk of the General Clerk’s Office, 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)].

12/2/2022  
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