

**T.H. v Archdiocese of N.Y.**

2022 NY Slip Op 34150(U)

December 1, 2022

Supreme Court, New York County

Docket Number: Index No. 950712/2021

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

T. H.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SALESIAN SOCIETY,  
SALESIAN SOCIETY, PROVINCE OF ST. PHILIP THE  
APOSTLE, MARIAN SHRINE, CAMP DON BOSCO

Defendants.

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**INDEX NO.** 950712/2021  
**MOTION DATE** 06/13/2022  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

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 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 hiring, retention, supervision, or direction, (iii) breach of statutory duty to report abuse under Soc. Serv. Law 413 and 420, and (iv) premises liability. The complaint states, “Plaintiff attended Camp Don Bosco and the Marian Shrine for basketball camp over the summers” (see NYSCEF Doc. No. 1 Par. 79).

“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 highlights the affidavit of Roderick J. Cassidy and a deed for the Marian Shrine, purchased by the Salesian Society in 1945.

Roderick J. Cassidy, Associate General Counsel for the Archdiocese affirms, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate either the Marian Shrine, Camp Don Bosco, or the Salesian Society. The Archdiocese did not own the property where the Marian Shrine and Camp Don Bosco were located, and did not employ, supervise or train the faculty, staff or any other employees of Marian Shrine, Camp Don Bosco, or the Salesian Society. Importantly, the Archdiocese did not provide funding or insurance coverage to the Marian Shrine, Camp Don Bosco, or the Salesian Society” (see NYSCEF Doc. No. 41 Par. 4).

Dominic Tran, Vice Provincial for the Salesian Society affirms, “the Marian Shrine was separate from the Archdiocese of New York at all times relevant to the allegations in the Complaint. The Marian Shrine was operated by the Salesian Society, which was incorporated separately from the Archdiocese of New York. The Archdiocese of New York did not own the

property where the Marian Shrine was located and did not employ the permanent faculty, staff, or employees at the Marian Shrine. The Archdiocese was not responsible for providing financial assistance or insurance coverage to the Marian Shrine” (see NYSCEF Doc. No. 42 Pars. 5 – 6).

A deed has been submitted that shows property being transferred to Salesian Society (see NYSCEF Doc. No. 43).

Plaintiff’s memorandum of law in opposition cites the Religious Corporation Law. “Under the Religious Corporation Law 15(1), religious corporations, such as the Archdiocese, may take, administer and dispose of real and personal property and the Archdiocese is vested with the right to ‘take, administer and dispose of real and personal property for the benefit of ... any ... Church ... or educational institution existing or acting under or related to it.’ Therefore, defendant Archdiocese, by law, may have had a property interest in Marian Shrine Camp Bosco at the time of the plaintiff’s injury, creating at the very least, an issue of fact to be explored in discovery and determined by the jury” (see NYSCEF Doc. No. 50 P. 7).

Defendant – Archdiocese Replies, “Plaintiff in his opposition cites to no material facts which exist or may exist which would warrant denial of the Archdiocese’s motion. Unable to offer any evidence to rebut the documentary evidence offered by the Archdiocese, Plaintiff attempts to create a feigned issue of fact by asking this Court to look to sections of Religious Corporation law which are inapplicable to this matter” (see NYSCEF Doc. No. 52).

Through the documentary evidence submitted, the Archdiocese did not control or manage the Marian Shrine Camp in anyway.

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)].

12/1/2022  
DATE

  
LAURENCE L. LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: