

John Doe v Archdiocese of N.Y.
2022 NY Slip Op 34266(U)
December 14, 2022
Supreme Court, New York County
Docket Number: Index No. 951126/2021
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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JOHN DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. DOMINIC'S FAMILY SERVICES, ST. DOMINIC'S HOME, CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, JOHN W. AUSTIN

Defendants.

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INDEX NO. 951126/2021

MOTION DATE 05/03/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 70 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Defendants – Archdiocese of New York’s (“Archdiocese”) and Catholic Charities of the Archdiocese of New York’s (“Catholic Charities”) 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.

St. Dominic’s submits an answer (see NYSCEF Doc. No. 16).

Plaintiff alleges violation of the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence – Archdiocese, (ii) negligence – St. Dominic’s Family Services, (iii) negligence – St. Dominic’s Home, (iv) negligence – Catholic Charities, (v) negligent hiring, retention and supervision – Archdiocese, (vi) negligent hiring, retention and supervision – St. Dominic’s Family Services, (vii) negligent hiring, retention and supervision – St. Dominic’s

Home, (viii) negligent hiring, retention and supervision – Catholic Charities, (ix) assault, (x) battery, and (xi) Intentional Infliction of Emotional Distress.

“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 affirms, “Plaintiff’s Complaint against moving defendants should be dismissed because moving defendants are improper parties to this lawsuit. The evidence annexed hereto clearly demonstrates that moving defendants did not operate, manage, or control either Saint Dominic’s Family Services or St. Dominic’s Home or John W. Austin, who allegedly abused Plaintiff in Austin’s New Jersey residence. Moreover, moving defendants did not employ or supervise Saint Dominic’s staff, including Plaintiff’s alleged abuser John W. Austin, nor did moving Defendants have any other involvement with the specific claims giving rise to this lawsuit” (see NYSCEF Doc. No. 22 Par. 2).

Roderick J. Cassidy, General Counsel for the Archdiocese affirms, “[t]he Archdiocese did not create, oversee, supervise, manage, control, direct, or operate St. Dominic’s, including its facilities, staff, volunteers, or employees, including John W. Austin. The Archdiocese did not own the property where St. Dominic’s was located, and did not employ, supervise or train the faculty, staff, or any other employees of St. Dominic’s. The Archdiocese did not provide funding or insurance coverage to St. Dominic’s. Moreover, the Archdiocese had no relationship with Austin, the individual who allegedly abused Plaintiff, at any time relevant to the allegations in the Complaint” (see NYSCEF Doc. No. 24 Par. 4).

Diane Aquino, President and CEO of Saint Dominic’s Family Services affirms, “[a]lthough St. Dominic’s may have been located within the geographical boundaries of the Archdiocese, in 1966, and at all times relevant to the Complaint, St. Dominic’s was a distinct and independent entity from the Archdiocese and Catholic Charities. Throughout the history of St. Dominic’s, neither the Archdiocese of New York nor Catholic Charities ever directly oversaw, supervised, managed, controlled, directed, or operated St. Dominic’s. The Archdiocese and Catholic Charities did not hire, retain, employ, oversee, or control the staff or employees or volunteers of St. Dominic’s, including the alleged abuser Austin” (see NYSCEF Doc. No. 25 Par. 4).

The affidavit of Talia Lockspeiser, Associate Executive Director for Catholic Charities affirms, “Catholic Charities did not create, oversee, supervise, manage, control, direct or operate St. Dominic’s at any time relevant to the allegations in the Complaint. Catholic Charities did not own the property where St. Dominic’s offices were located, did not employ any staff, or other employees of St. Dominic’s. Catholic Charities did not and does not have any supervisory authority over St. Dominic’s or Plaintiff’s alleged abuser” (see NYSCEF Doc. No. 26 par. 5).

Defendant further provides various deed and Certificate of Incorporation (see NYSCEF Doc. Nos. 27 – 29).

Plaintiff opposes with, “St. Dominic’s is an agency of Catholic Charities of the Archdiocese of New York, which boasts on its own website that, ‘[w]e are now a federation of 90 agencies that provide help and create hope for hundreds of thousands of New Yorkers in need.’ St. Dominic’s Family Services is in fact one of those 90 agencies, as is evidenced by its listing on Catholic Charities Archdiocese of New York’s website. Moreover, St. Dominic’s Family Services explicitly states on its own website that it is affiliated with both the Archdiocese of New York and Catholic Charities of the Archdiocese of New York. As such, moving Defendants are not as separate and distinct from St. Dominic’s as they proclaimed them to be and further discovery is needed to ascertain the extent of their connection” (see NYSCEF Doc. No. 42 Par. 24).

Plaintiff exhibits “St. Dominic’s Resources and Affiliations Webpage” (see NYSCEF Doc. No. 44), and St. Dominic’s Resources and Affiliations Webpage” (see NYSCEF Doc. No. 45).

Defendants’ Reply continues with, “CPLR 214-g requires that a revived action be based upon conduct that would constitute a sexual offense against a minor in violation of certain specific provisions of the New York State Penal Law. This requires that the predicate acts of criminal conduct occur in New York and is consistent with the Legislature’s intention to reach offenders who pose a persistent threat to public safety in New York. New York has the power to enact and enforce laws within its own territorial borders, it may not and cannot enact or enforce laws with respect to conduct in New Jersey” (see NYSCEF Doc. No. 50 P. 2).


Plaintiff’s affirmation counters with, “Plaintiff is a New York resident, was a New York resident when the sexual abuse at issue occurred, and the negligence of moving Defendant subjecting them to civil liability occurred in New York” (see NYSCEF Doc. No. 42 Par. 18).

Through all the documents exhibited and arguments presented there exists questions of fact that warrant denial of dismissal of two above named Defendants. Questions exists as to the relationship of St. Dominic’s Home to Catholic Charities and the Archdiocese, along with the location of the abuse in general.

ORDERED that Archdiocese and Catholic Charities motion to dismiss the complaint is DENIED in its entirety; and it is further

ORDERED that Defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

12/14/2022
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