

A.R. v Archdiocese of N.Y.

2022 NY Slip Op 34378(U)

December 14, 2022

Supreme Court, New York County

Docket Number: Index No. 951145/2021

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

A. R.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SACRED HEART
CHURCH

Defendants.

-----X

INDEX NO. 951145/2021

MOTION DATE 05/02/2022

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, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following read on Sacred Heart Church’s pre – answer motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, Plaintiff’s third (iii) cause of action for breach of statutory duty to report abuse under Social Services Law 413 and 420, fourth (iv) cause of action for premises liability, and to strike the term abuser from the complaint as scandalous or prejudicial per CPLR 3024(b).

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 Social Services Law 413 and 420, and (iv) premises liability.

“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]).

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]).

SOCIAL SERVICES

“Pursuant to Social Services Law 413, school officials, which include but are not limited to school teachers, school guidance counselors, school psychologists, school social workers, school nurses, school administrators or other school personnel required to hold a teaching or administrative license or certificate, are required to report ‘when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.’ Social Services law 420(2) states that ‘[a]ny person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure’” (see *Torrey v. Portville Central School*, 66 Misc.3d 1225(A) [2020]).

Defendant affirms, “[i]n 1973, the New York State Legislature enacted the Child Protective Services Act of 1973 which created the mandatory reporter system under Social Services Law 413, as well as the penalty for failing to report Social Services Law 420. At no point in time could Sacred Heart breach a statutory duty prior to the enactment to the statute imposing the alleged duty owed” (see NYSCEF Doc. No. 21 Par. 7).

The Complaint states, “[i]n or around the year 1970” (see NYSCEF Doc. No. 1 Par. 36). It is clear that the entirety of the alleged abuse occurred in 1970 and as the Social Services Law did not exist at the time of the alleged incident said cause of action is dismissed.

PREMISES LIABILITY

“Liability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises” (see *Jackson v. Board of Education*, 30 A.D.3d 57, 60 [1st Dept. 2006]); *Gibbs v. Port Auth. of N.Y.*, 17 A.D.3d 252 [2005]). “It is well established that a landowner has a duty to take reasonable precautions to secure its premises if it knows from past experience that there is a likelihood of conduct on the part of third persons which is likely to endanger the safety of users of the premises” (see *Ward v. Pyramid Co.*, 11 AD3d 1012 [4th Dept.]).

Plaintiff’s complaint states,” Defendants owned or controlled the property on which Plaintiff was harmed. As the owner and occupier of the property, Defendants were under a duty to manage and act reasonably to control property and guests to prevent injury from amongst other things, foreseeable sexual assault” (see NYSCEF Doc. No. 1 Par. 139).

“[P]laintiff’s Complaint casts [...] himself as a condition. The Complaint is devoid of any claim that there was a dangerous condition of the premises” (see *Potter v. Ukrainian Catholic Diocese of Stamford*, Index No.: 004328/2020, [J. MacRae]).

The facts of this case mirror *Potter* and hence the premises liability cause of action will be dismissed.

ABUSER

“Here, it is axiomatic that plaintiff’s unqualified repeated reference to defendant as an ‘abuser’ is highly prejudicial and does not advance any particular cause of action stated in

plaintiff's complaint" (see *Platt v. The Roman Catholic Diocese of Brooklyn*, Index No. 518002/2021, J. Kaplan [2021]).

It is now

ORDERED that the motion of Sacred Heart Church to dismiss is granted and the third (iii) cause of action of the complaint for breach of statutory duty to report abuse under Soc. Serv. Law 413 and 420 is dismissed; and it is further

ORDERED that the motion to dismiss is granted and the fourth (iv) cause of action for premises liability of the complaint is dismissed against Sacred Heart Church; and it is further

ORDERED that the motion of Sacred Heart Church to strike all scandalous and prejudicial language, and to strike the term "abuser" used in plaintiff's complaint per CPLR 3024 is GRANTED; and it is further

ORDERED that the scandalous and prejudicial term is stricken from Plaintiff's complaint; and it is further

ORDERED that Plaintiff is directed to file and serve a complaint devoid of the use of the term "abuser" when referring to Defendant; and it is further

ORDERED that Sacred Heart Church is 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:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE