

J.M. v Archdiocese of N.Y.

2022 NY Slip Op 34478(U)

February 7, 2023

Supreme Court, New York County

Docket Number: Index No. 950239/2021

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

J.M.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SALESIANS OF DON BOSCO, SALESIAN JUNIOR SEMINARY

Defendants.

-----X

INDEX NO. 950239/2021

MOTION DATE 01/31/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

The following reads on Defendant – Archdiocese of New York’s (“Archdiocese”) pre – answer motion to dismiss per CPLR 3211(a)(1) – documentary evidence, and CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff alleges abuse per the Child Victims act, CPLR 214 – g, with causes of action for (i) negligence against Archdiocese, (ii) negligence against Salesians of Don Bosco, and (iii) negligence against Salesian Junior Seminary for alleged incidents which occurred in and around 1971 and 1972.

“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]).

Archdiocese submits the affidavit of Roderick J. Cassidy, General Counsel for the Archdiocese. “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at Salesian Junior Seminary, the camp located therein, or the Salesian Society. Neither entity were agents of the Archdiocese and had no relationship with the Archdiocese of New York. The Archdiocese did not play a role in assigning, maintaining, and/or appointing individuals, including Plaintiff’s abusers, at Salesian Junior Seminary, the camp located therein, or the Salesian Society” (see NYSCEF Doc. No. 27 Par. 6).

Archdiocese submits a Certificate of Incorporation for “The Missionary Society of the Salesian Congregation of the State of New York” (see NYSCEF Doc. No. 28), a Property Deed for “The Missionary Society of the Salesian Congregation, Inc.” (see NYSCEF Doc. No. 29).

Plaintiff submits the affidavit of Thomas P. Doyle, “[t]he Church’s internal regulatory system is not 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. 43 P. 6).

Plaintiff further submits various letters from Archdiocese’s and an affidavit from a “Provincial of the Missionary Oblates of Mary Immaculate. Due to the passage of time, I cannot now recall specific interactions with the Bishop or other officials of the Diocese of Duluth about Fr. Vincent Fitzgerald or about most other members of the Central Province who served in the Diocese during my time as Provincial (February 1975 – February 1978)” (see NYSCEF Doc. No. 47 Par. 4).

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

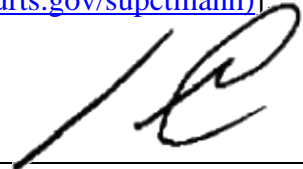
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General

Clerk’s Office (60 Centre Street, Room 119), 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 at the address www.nycourts.gov/supctmanh]

2/7/2022
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