

<b>PC-39 Doe v St. Agatha Home for Children</b>
2023 NY Slip Op 30284(U)
January 20, 2023
Supreme Court, New York County
Docket Number: Index No. 950559/2020
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*

-----X

PC-39 DOE,

Plaintiff,

- v -

ST. AGATHA HOME FOR CHILDREN, THE NEW YORK  
FOUNDLING, THE SISTERS OF CHARITY OF SAINT  
VINCENT DEPAUL OF NEW YORK, THE CATHOLIC  
CHARITIES OF THE ARCHDIOCESE OF NEW YORK,  
ARCHDIOCESE OF NEW YORK, ROCKLAND COUNTY,  
ROCKLAND COUNTY DEPARTMENT OF SOCIAL  
SERVICES, STEPHEN JOHNSON

Defendant.

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INDEX NO. 950559/2020

MOTION DATE 03/25/2021

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants, The Archdiocese of New York and The Catholic Charities of the Archdiocese of New York’s (“Archdiocese”) motion seeking an Order dismissing this action pursuant to CPLR § 3211(a)(1), based on documentary evidence, and pursuant to CPLR § 3211(a)(7) is decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint August 10, 2020 alleging that plaintiff “was a foster child when she was repeatedly sexually abused by Defendant Stephen Johnson a/k/a Steve Johnson, a counselor at a St. Agatha Home for Children in Suffern, New York, who was hired, retained, supervised, placed, directed, and otherwise authorized to act by Defendants, St. Agatha Home for Children a/k/a The New York Foundling and The New York Foundling Hospital, The New York Foundling f/k/a The New York Foundling Hospital, The Sisters of Charity of Saint Vincent De Paul of New York, The Catholic Charities of the

Archdiocese of New York, the Archdiocese of New York, Rockland County, and/or Rockland County Department of Social Services. Said abuse is alleged to have occurred between 1980 and 1983. Arising from same, plaintiff asserts causes of action for 1. Negligent Hiring, Retention, and Direction, 2. Negligent, Reckless and Willful Misconduct, 3. Negligent, Reckless and Willful Misconduct against the municipal defendants, 4. Negligent Infliction of Emotional Distress, 5. Premises Liability, 6. Breach of Fiduciary Duty, 7. Breach of a Duty *in loco parentis*, 8. Breach of Statutory Duties to Report, 9. Battery, 10. Assault, and 11. Intentional Infliction of Emotional Distress.

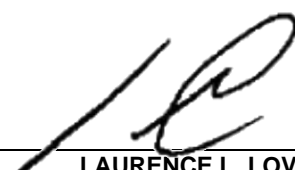
The Archdiocese of New York and The Catholic Charities of the Archdiocese of New York seek dismissal of this action pursuant to CPLR §3211(a)(1). Dismissal under CPLR §3211(a)(1) is warranted where the documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Financial Services, LLC v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept. 2002]; see *Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept. 2014]). When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR §3211(a)(7), the court’s role is “to determine whether [the] pleadings state a cause of action” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]). To determine whether a claim adequately states a cause of action, the court must “liberally construe” it, accept the facts alleged in it as true, accord it “the benefit of every possible favorable inference” (*id.* at 152; see *Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881 [2013]; *Simkin v Blank*, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (see *Hurrell-Harring v State of New York*, 15 NY3d 8 [2010]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept. 2004]; CPLR §3026).

Here, the Archdiocese has shown through documentary evidence that it had no supervisory authority over The New York Foundling and/or St. Agatha Home nor any of its employees, including the alleged abuser, Stephen Johnson. The Sisters of Charity of St. Vincent de Paul was incorporated on January 26, 1849 and purchased the property where St. Agatha Home was located on December 3, 1875. On March 2, 1977, Saint Agatha Home for Children merged with the New York Foundling Hospital. The Archdiocese has never owned, operated or managed the property. As established by the affidavit of Itohan Omoregie, Special Counsel to the New York Foundling, the Foundling is independent of the Archdiocese, and same has no supervisory authority over the Foundling. As further discussed in the affidavit of associate general counsel for the Archdiocese, Roderick Cassidy, “the Archdiocese did not hire, retain, employ, oversee, or control the staff or employees at the New York Foundling Hospital or St. Agatha Home. Neither entity were agents of the Archdiocese and had no relationship with the Archdiocese of New York. The Archdiocese did not play any role in assigning, maintaining, and/or appointing Plaintiff in the care of St. Agatha Home” and further establishes that the Sisters of Charity of Saint Vincent de Paul are an independent religious order which was and is separate and distinct from the Archdiocese over which the Archdiocese does not have supervisory authority. The affidavit of Talia Lockspeiser, Associate Executive Director for Catholic Charities of the Archdiocese of New York, further establishes that “Catholic Charities did not create, oversee, supervise, manage, control, direct, own, or operate Foundling at any time relevant to the allegations in the Complaint” and “Catholic Charities did not hire, retain, employ, oversee, or control the staff or employees at New York Foundling or St. Agatha Home, including Plaintiff’s alleged abuser Stephen Johnson” as the Foundling is a separate and distinct entity from Catholic Charities and not a subsidiary.

In light of the proffered evidence, the Archdiocese of New York and The Catholic Charities of the Archdiocese of New York have established that they had no connection to the allegations alleged, and therefore had no duty to plaintiff. Considering the documentary evidence submitted, and the lack of evidence rebutting it, dismissal is warranted since defendant has made a *prima facie* showing entitling it to judgment in its favor and plaintiff has failed to raise an issue of fact. Accordingly, it is hereby

ORDERED that the instant motion is granted in favor of defendant Archdiocese of New York and The Catholic Charities of the Archdiocese of New York, dismissing this action as against said defendants; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in defendant Archdiocese of New York and The Catholic Charities of the Archdiocese of New York's favor accordingly. This constitutes the decision and order of the court.

1/20/2023			
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	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE