

K.G. v North Am. Old Roman Catholic Church

2023 NY Slip Op 30385(U)

January 30, 2023

Supreme Court, Kings County

Docket Number: Index No. 504288/2020

Judge: Laurence L. Love

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. LAURENCE L. LOVE

PART

63M

Justice

-----X

K.G.,

Plaintiff,

- v -

NORTH AMERICAN OLD ROMAN CATHOLIC
CHURCH, NORTH AMERICAN OLD ROMAN
CATHOLIC CHURCH - DIOCESE OF NEW
YORK, NORTH AMERICAN OLD ROMAN
CATHOLIC CHURCH - DIOCESE OF NEW
YORK AND NEW ENGLAND, SACRED HEART
OF JESUS CHURCH, and THE ROMAN
CATHOLIC DIOCESE OF BROOKLYN,

Defendants.

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INDEX NO. 504288/2020
MOTION DATE 02/16/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26-36, 40-54, 58-86
were read on this motion to/for DISMISS

In *K.G. v North American Old Roman Catholic Church et al*, a tort action filed pursuant to the Child Victims Act ("CVA"), Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") moves pursuant to CPLR 3211(a)(1) and (a)(7) for dismissal of Plaintiff K.G.'s complaint in full. Defendants the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church¹ (collectively, the "NAORCC Defendants"), also move for the same relief. Plaintiff K.G. opposes both motions.

In the related CVA action *W.G. v North American Old Roman Catholic Church et al*, the Diocese and NAORCC Defendants move for identical relief (Index No. 504256/2020, Motion Seqs. 002 and 003).

¹ This entity is named in the Complaints as "Sacred Heart of Jesus Church."

In light of the overlapping parties and identical arguments submitted, Motion Seqs. 002 and 003 under both related actions are consolidated for joint disposition.

Plaintiffs K.G. and W.G, brother and sister,² allege that between 1970 and 1975, they were abused by Joseph Nevilloyd, a pastor at church known as “Sacred Heart” or “Sacred Heart of Jesus”³ in Brooklyn, New York. Plaintiffs allege that they received tuition discounts to attend private schools run by the Diocese, St. Fortunata and St. Gabriel’s, in exchange for their patronage at Sacred Heart. Plaintiffs claim that they demonstrated their patronage to the private schools by submitting documentation signed by Mr. Nevilloyd.

Plaintiffs’ complaints assert causes of action for: Negligent Hiring, Retention, and Supervision, Negligent, Reckless, and Willful Misconduct, Negligent Infliction of Emotional Distress, Premises Liability, Breach of Fiduciary Duty, Breach of Duty *In Loco Parentis*, and Breach of Statutory Duties to Report pursuant to the Social Services Law.

Both the Diocese and NAORCC Defendants argue that documentary evidence shows Plaintiffs have no cause of action against them. The Diocese argues that it did not own Sacred Heart Church and did not ordain, supervise, or employ Mr. Nevilloyd. NAORCC Defendants argue that the actual name of the church Mr. Nevilloyd was employed at is the “Sacred Heart English Rite Church,” and has no connection to the Roman Catholic Church and is thus unaffiliated with the NAORCC entities. The Diocese separately makes arguments as to why each cause of action should be dismissed for failure to state a cause of action against it.⁴ The Diocese argues that the claims for negligent or willful misconduct and negligent hiring, retention and supervision should

² Plaintiffs were previously granted permission to proceed using a pseudonym.

³ As there is some dispute among the parties as to the full proper name of the church Plaintiffs attended, the church is referred to herein as “Sacred Heart Church” unless otherwise specified.

⁴ NAORCC Defendants only move for dismissal based on documentary evidence and do not address Plaintiffs’ individual claims.

be dismissed due to lack of notice, and that the claim for negligent infliction of emotional distress should be dismissed as duplicative. The Diocese separately argues that Plaintiffs' premises liability claim is misplaced in this litigation, and that it owed no fiduciary duty to Plaintiffs under *in loco parentis*, nor was it obligated to report Plaintiff's alleged abuse under the Social Services Law.

DISCUSSION

Dismissal Against the Diocese Based on Documentary Evidence

In support of its argument for dismissal, the Diocese has submitted an affidavit from Richard J. Cea, who has represented the Diocese as general counsel since 1980. Mr. Cea affirms that the Diocese is a domestic religious corporation organized and existing under the Religious Corporation Law ("RCL"). Under the RCL, Roman Catholic churches are incorporated under Article 5 and churches outside the Roman Catholic faith are incorporated under separate articles. Although Sacred Heart Church used the term "Roman Catholic," its incorporation certificate reflects that it was incorporated under Article 2 and belonged to a subset sect referred to as the "Old Catholic Church," operating much like a Protestant denomination. Therefore, the Diocese never exercised either civil or even ecclesial jurisdiction over Sacred Heart Church. Mr. Cea further affirms that the Diocese never owned Sacred Heart Church, and that a search of employment records confirms Mr. Nevilloyd was a member of the Franciscan Order and was never ordained or incardinated by the Diocese as a Roman Catholic priest.

In opposition, Plaintiffs argue that the affidavits and exhibits provided are procedurally improper and of uncertain authenticity and contain conclusory statements that Plaintiff has not had the opportunity to challenge. Additionally, one of the certificates of incorporation suggests that Sacred Heart Church may have born the name "Roman Catholic" at one point.

More critically, Plaintiffs argue that *assuming arguendo* the Diocese is correct that it never possessed control or jurisdiction over Sacred Heart Church, liability for Mr. Nevilloyd's alleged tortious conduct may still attach. The Diocese does not dispute that Plaintiffs attended private schools that it operated, and that it gave Plaintiffs tuition discounts based on signed statements from Mr. Nevilloyd attesting that Plaintiffs attended his church. Plaintiffs have both submitted affidavits attesting that they grew up in a family of modest means and could not have attended the Diocese-run schools without tuition discounts. Plaintiffs attest that in exchange for the tuition discounts, they were required to provide proof that they regularly attended Catholic religious services. Plaintiffs believed that Sacred Heart Church was a Roman Catholic church given that the schools accepted Mr. Nevilloyd's weekly statements confirming they attended services, and no school officials ever informed them that Mr. Nevilloyd was not affiliated with the Diocese. Plaintiffs have also submitted an affidavit from James Faluszczak, a former Roman Catholic parish priest, who attests that it was common for students at Diocese-run schools to receive discounts even when they were parishioners of "Old Roman Catholic" parishes.

In reply, the Diocese disregards Plaintiffs' "tuition discount" argument as a transparent attempt to hold the Diocese liable. However, if all allegations in Plaintiffs' complaints are construed as true, the Diocese held out Mr. Nevilloyd as a qualified religious leader and profited from its agreement with Mr. Nevilloyd to send Sacred Heart Church parishioners to its schools. Plaintiffs have thus sufficiently alleged that Mr. Nevilloyd could plausibly be construed as an "agent" of the Diocese. Further discovery is needed to ascertain the extent and nature of the relationship that existed between Mr. Nevilloyd and the Diocese-run schools that Plaintiffs attended, and why the schools accepted Mr. Nevilloyd's statements if he was completely unaffiliated with the Diocese.

Accordingly, the Diocese's application for dismissal from this action is denied as premature at this juncture.

Dismissal Against NAORCC Defendants Based on Documentary Evidence

NAORCC Defendants, a group that encompasses both the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church, argue that documentary evidence establishes they were named in this action based on mistaken identification, and that neither the "North American Old Roman Catholic Church Diocese of New York and New England" nor the "Sacred Heart of Jesus Church" have any affiliation with the church that Plaintiffs attended. NAORCC Defendants claim the full name the church Plaintiffs attended, in which Mr. Nevilloyd served as a pastor, is "Sacred Heart English Rite Church," a separate religious society with no relation to the Sacred Heart of Jesus Old Roman Catholic Church.⁵

Regarding the first defendant, NAORCC, NAORCC Defendants have submitted certifications of incorporation that purport to indicate that Mr. Nevilloyd incorporated his church under two names "the Sacred Herat of Jesus English Rite Catholic Church Inc," and "Sacred Heart of Jesus Roman Catholic Church (Vernacular), Inc". Thus, the churches were not affiliated with the Old Roman Catholic Church, but rather the American Catholic Church, and had no relation to the NAORCC. NAORCC Defendants have also introduced a Certificate of Consecration establishing Mr. Nevilloyd as a bishop in the American Catholic Church.

NAORCC Defendants argue that the second defendant, Sacred Heart of Jesus Old Roman Catholic Church, is similarly unaffiliated with Mr. Nevilloyd's church as it has always been a

⁵ NAORCC Defendants assume that the entity captioned as "Sacred Heart of Jesus Church" in the complaint is meant to be the Sacred Heart of Jesus Old Roman Catholic Church.

separate entity unrelated to the American Catholic Church. Additionally, NAORCC Defendants argue this Court lacks jurisdiction over the church as a nonincorporated religious society.⁶

In opposition, Plaintiffs argue that NAORCC Defendants' motion for dismissal is an improper premature summary judgment motion based on self-serving affidavits and documents of uncertain authenticity. Plaintiffs have also submitted an affidavit from their counsel's investigator, Marc Gorrie, who affirms that until the filing of this action, the NAORCC website stated that its diocese was "shepherded by Bishop Joseph M. Nevilloyd" until his passing in 1994. Mr. Nevilloyd was also listed under the NAORCC website's listing of deceased clergymen until February 2020. Additionally, NAORCC's exhibits do not speak to who participated in the consecration of Mr. Nevilloyd if not their own clergy. The documentation also reflects that in the 1980s, Mr. Nevilloyd ordained a current NAORCC bishop and official, Vincent Natoli, who later took part in the sale of Mr. Nevilloyd's church to create a new church in the same location that is currently attended by NAORCC parishioners.

In reply, NAORCC Defendants state that their website had previously "mischaracterized" Mr. Nevilloyd's relationship with the NAORCC, and the instant litigation prompted them to correct the misinformation. However, NAORCC Defendants do not fully articulate why their leadership previously believed Mr. Nevilloyd had a relationship with the NAORCC. Similarly, while NAORCC Defendants argue that Bishop Natoli was ordained by Mr. Nevilloyd in the 1980s, after the alleged misconduct at issue here occurred, they do not explain why Mr. Nevilloyd would

⁶ As NAORCC Defendants characterize the church as a religious society "in association with the NAORCC" the argument that this Court lacks jurisdiction solely because the church is unincorporated appears to be without merit. (An 'unincorporated church' is generally subject to the same rights and liabilities as an 'unincorporated association.'" *L & L Assoc. Holding Corp. v Charity United Baptist Church*, 34 Misc. 3d 355, 357 (Nassau Dist. Ct. 2011), quoting 92 N.Y. Jur. 2d, Religious Organizations §13). An action against an unincorporated association can proceed as long as its president, treasurer, or analogous officer was served (*id.* at 358). Here, Bishop Ford, a Presiding Officer and Trustee of the NAORCC, was served with the complaints on behalf of all NAORCC Defendants.

have ordained a bishop in their church if he had no relationship with the same, nor do they delve into why Mr. Natoli was involved in the sale of Mr. Nevilloyd's church and the church's conversion into a current NAORCC location.

In view of the conflicting evidence presented and the confusion among the parties regarding the proper identities and relationship histories of the various entities and individuals at issue, the Court finds that dismissal of this action against NAORCC Defendants is premature at this juncture, and proper discovery is first needed to ascertain the relationship, if any, that existed between Mr. Nevilloyd, the NAORCC, and Sacred Heart of Jesus Old Roman Catholic Church at the time the alleged misconduct occurred.

Accordingly, the motion filed by NAORCC Defendants under both actions is dismissed, and the Court now turns to address the Diocese's separate arguments for dismissal of Plaintiffs' individual claims.

Dismissal of Individual Causes of Action

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (see *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal

for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, supra). In deciding such a motion, the court must “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 into any cognizable legal theory” (*Siegmund Strauss, Inc.*, 104 AD3d 401, supra; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not” presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], aff’d 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], lv denied 89 NY2d 802 [1996], and the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Leon*, 84 NY2d at 88, supra; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001][“In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint’s allegations against the defendant’s contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims” (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: “The scope of a court’s inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed” (*1199 Housing Corp. v International Fidelity Ins. Co.*, NYLJ January 18, 2005, p. 26 col.4, citing *P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being “to determine if,

assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action” (id. at 376; see *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88, supra; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept. 2002]).

The Court will address each of the grounds upon which the Diocese seek dismissal in turn.

Negligent Hiring, Retention, and Supervision

The Diocese argues that Plaintiffs’ causes of action for negligent hiring should be dismissed for failure to state a claim since the Diocese did not employ Mr. Nevilloyd, and there are no specific factual allegations detailing how Defendants knew of Mr. Nevilloyd’s alleged propensity to commit sexual abuse of minors at the time in question.

A claimant can maintain a cause of action for negligent retention by adequately alleging that the “employer knew or should have known of the employee’s propensity for the conduct which caused the injury” and nevertheless continued the employee’s service (*Bumpus v. New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept. 2008] [internal quotation marks and citation omitted]; see also *Jackson v. New York Univ. Downtown Hosp.*, 69 AD3d 801, 801–02 [2d Dept. 2010]; *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept. 1997], cert. denied 522 U.S. 967 [1997], lv. dismissed 522 91 NY2d 848 [1997] [Appellate Division, Second Department modified Kings County Supreme Court’s decision and granted motion to dismiss plaintiff’s claim that the Roman Catholic Diocese of Brooklyn was negligent in hiring and failing to establish proper guidelines and procedures for screening and investigating priests since there is “no common-law duty to institute specific procedures for hiring employees unless the employer knows

of facts that would lead a reasonably prudent person to investigate the prospective employee”] [*id.* at 163]).

However, “[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Liability for negligent hiring is based not on the tortious conduct of the employee but on the negligence of the defendant-employer for failures involving the risk of harm by the employee to others (*see, e.g. Ford v Gildin*, 200 AD2d 224 [1st Dept 1994]).

Here, as discussed *supra*, Plaintiffs have alleged that the Diocese held out Mr. Nevilloyd as an agent of their church and a qualified religious leader and have alleged that the Diocese was on notice that Plaintiffs were spending time in Mr. Nevilloyd’s custody given the signed statements he issued their schools. Under the instant causes of action, Plaintiffs allege that that Defendants “knew or reasonably should have known” of Mr. Nevilloyd’s propensity to commit the alleged conduct and thus should have known there was a risk in allowing Mr. Nevilloyd to be around minors unsupervised, yet negligently retained Mr. Nevilloyd as a representative without using reasonable care and made no effort to oversee his duties or investigate his activities. While the Diocese argues these allegations are unsupported, Plaintiffs are not required to provide extensively detailed allegations at this juncture in the litigation, and the Diocese has introduced no evidence conclusively establishing that the allegations are false. Plaintiffs have thus sufficiently alleged, at this juncture, that the Diocese may have had knowledge of Mr. Nevilloyd’s propensity to sexually abuse Plaintiffs and other minors. Additionally, although the allegations under this cause of action somewhat overlap with Plaintiffs’ negligent, reckless, and willful misconduct claims, this cause of action is not duplicative because, as discussed *infra*, the misconduct claim seeks to hold

Defendants liable to safely supervise Plaintiffs, while the instant claim seeks liability for Defendants' hiring and retention of Mr. Nevilloyd.

Accordingly, the branches of both motions seeking dismissal of Plaintiffs' negligent hiring, retention, and supervision claims are denied as premature at this juncture in the litigation.

Negligent, Reckless, and Willful Misconduct

The Diocese argues that Plaintiffs' causes of action for negligent, reckless, or willful misconduct should be dismissed to the extent predicated on vicarious liability, and also argue that Plaintiffs have alleged no intentional misconduct on their part.

To prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." (*Pasternak v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "Religious entities have (a) duty to prevent injuries inflicted by persons in their employ whom they have reason to believe will engage in injurious conduct". (*Kenneth R.*, 654 NYS2d at 796).

Here, Plaintiffs' complaints allege that Defendants breached their duty of care by failing to properly investigate the background and character of Mr. Nevilloyd despite holding him out as a reputable religious leader and failed to train the members of their schools attended by Plaintiffs to identify signs of potential abuse and other grooming behaviors. Although the Diocese cannot be held vicariously liable for the intentional torts committed by Mr. Nevilloyd, it can be held vicariously liable for negligence committed in allowing such abuse to take place when a duty of reasonable care existed to safely manage the minor children that attended their schools and spent unsupervised time with Mr. Nevilloyd and other purported representatives of the Diocese. As stated *supra*, while the Diocese argue they had no notice of Mr. Nevilloyd's alleged actions,

discovery will be necessary for the Diocese to conclusively establish a lack of knowledge as a matter of law.

While the Diocese also argues that Plaintiffs have not alleged any reckless or intentional misconduct, the complaints allege that the Diocese knew that many minors were abused by representatives and yet refused to investigate or take any other action, thus acting with reckless indifference to the potential injuries suffered by Plaintiffs and other similarly situated minors. While these allegations have yet to be substantiated, Plaintiffs have sufficiently alleged facts and allegations to support their causes of action for negligent, reckless, or willful misconduct.

Thus, the Diocese is not entitled to dismissal of Plaintiffs' negligent, reckless, or willful misconduct claims at this juncture.

Negligent Infliction of Emotional Distress

The Diocese also seeks dismissal of Plaintiffs' Negligent Infliction of Emotional Distress claim (NIED). The Diocese argues that Plaintiffs do not articulate a basis for holding them liable under this tort, and that the claim is duplicative of Plaintiffs' other negligence-based causes of action.

Typically, a cause of action for NIED "must be premised on conduct that unreasonably endangers the plaintiff's physical safety or causes the plaintiff to fear for his or her physical safety" (*Padilla v. Verczky-Porter*, 66 AD3d 1481, 1483 [4th Dept 2009]). "Generally, a cause of action for infliction of emotional distress is not allowed if essentially duplicative of tort or contract causes of action." (*Wolkstein v. Morgenstern*, 275 AD2d 635, 637 [1st Dept 2000]).

Here, the allegations set forth under Plaintiffs' NIED claims are duplicative of the negligence causes of action- namely, that Defendants knew or should have known Plaintiff would be subject to sexual abuse, causing Plaintiffs to suffer as a result. Given that Plaintiffs may recover

for emotional distress caused by Mr. Nevilloyd's alleged conduct under their negligent hiring and retention claims, the NIED claims are unnecessary (*see Wilczynski v Gates Community Chapel of Rochester, Inc.*, 2022 WL 446561, *3, 2022 US Dist LEXIS 26113, *8-9 [WD NY, Feb. 14, 2022, No. 6:20-CV-06616 (EAW)] [dismissing an NIED claim as duplicative of the negligence, negligent supervision, hiring, and retention claims]). As such, the Diocese's application to dismiss Plaintiffs' NIED claims are granted.

Accordingly, the branches of the motions seeking to dismiss Plaintiffs' NIED claims are granted.

Premises Liability

Plaintiffs asserts a cause of action for premises liability based on Defendants' ownership and control over the premises where the abuse is alleged to have occurred. The Diocese argues it did not own the premises and that this claim is improper in a sexual abuse case.

"In a premises liability case, the plaintiff must establish: (1) the existence of a defective condition, and (2) the defendant either created or had actual or constructive notice of the defect" (*see Ingram v. COSTCO Wholesale Corp.*, 117 A.D.3d 685 [2d Dept. 2014]).

Here, "Plaintiff has failed to establish that the facts as alleged in this case for sexual abuse extend to a claim for premises liability, or to provide any authority establishing that claims of sexual abuse extend to premises liability. Based upon the foregoing, that branch of defendants' application seeking to dismiss plaintiff's second cause of action [for premises liability] is granted" (*see Albanese v. The Jewish Board of Family and Children's Services, Inc. et al.* (Sup. Ct. Westchester Cnty., Index No. 56668/2020).

Additionally, Plaintiffs declined to oppose this argument in their oppositions to the Diocese's motions. The Court thus deems this cause of action abandoned, and the branches of the Diocese's motions seeking to dismiss Plaintiffs' premises liability claim are granted.

Breach of Fiduciary Duty and Breach of Duty *In Loco Parentis*

The Diocese argues that Plaintiffs' causes of action alleging breach of fiduciary duty and breach of duty *in loco parentis* should be dismissed as the Diocese did not owe the alleged duties and lacked notice of the alleged conduct.

Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with an institution, oftentimes a church, extends beyond that of other similarly situated individuals (see *Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]). In other words, a fiduciary relationship between a plaintiff and an institution may exist where the plaintiff comes forward with facts demonstrating that the relationship between the plaintiff and the institution is unique or distinct from the institution's relationship with others generally (*id.*). That said, a fiduciary relationship is not applicable to all individuals, and can be established upon a showing that an individual's relationship with the institution resulted in "de facto control and dominance" when the individual was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]).

Here, Plaintiffs allege that a "fiduciary relationship" existed with each Defendant. However, to state a valid cause of action for breach of a fiduciary duty, a plaintiff cannot rely on bare allegations that a fiduciary relationship existed. By simply alleging that a fiduciary duty arose because Plaintiffs were minors and under the supervision and care of Defendants, Plaintiffs have failed to state a cause of action for breach of fiduciary duty. To be sure, assuming every fact alleged to be true and liberally construing the pleading in Plaintiffs' favor, the allegations for

breach of fiduciary duty are still insufficient as a matter of law. Additionally, Plaintiffs' breach of fiduciary duty, as pleaded in the complaint, is duplicative of Plaintiffs' negligence-based causes of action that the Court has determined will move forward.

Accordingly, the branches of the motions seeking to dismiss Plaintiffs' breach of fiduciary duty claim are granted.

Turning to Plaintiffs' claim for a breach of duty *in loco parentis*, the Court notes that there is a branch of case law under which schools are tasked with a duty to adequately supervise the students in their charge and are liable for foreseeable injuries proximately related to their failure to provide adequate supervision (*see Nash v Port Wash. Union Free School Dist.*, 83 AD3d 136, 149-150 [2d Dept. 2011]; *Doe v Department of Educ. of City of N.Y.*, 54 AD3d 352 [2d Dept. 2008]; *see also Palmer v City of New York*, 109 AD3d 526, 527 [2d Dept. 2013], *citing Mirand v City of New York*, 84 NY2d 44, 49 [1994]; *McLeod v City of New York*, 32 AD3d 907 [2d Dept. 2006]). Based on the doctrine that school districts act *in loco parentis* with respect to their minor students (*see Barragan v City Sch. Dist. of New Rochelle*, 120 AD3d 728 [2d Dept. 2014]; *Stinson v Roosevelt U.F.S.D.*, 61 AD3d 847, 847-848 [2d Dept. 2009]) because they take physical custody of them (*see Giresi v City of New York*, 125 AD3d 601, 602-603 [2d Dept. 2015]), schools are responsible for supervising their students with the same degree of care as a parent of ordinary prudence would exercise in comparable circumstances (*id.*, *citing Mirand v City of New York*, 84 NY2d 44, 49 [1994]). "The concept of *in loco parentis* is the fountainhead of the duty of care owed by a school to its students" (*Williams v. Weatherstone*, 23 NY3d 384, 403 [2014] [*citing Mirand v. City of New York*, 84 NY2d 44, 49 [1994] ["(t)he duty owed derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians"]]).

It does not appear, however, that the doctrine of *in loco parentis* can simply be applied to churches by way of analogy to schools, as Plaintiff suggests. That would discount the instant application as to the Diocese on that basis alone. Nevertheless, the doctrine of *in loco parentis* defines the duty owed within the context of a negligence cause of action but does not create an independent cause of action.

Accordingly, the branches of the motions seeking to dismiss Plaintiffs' breach of duty *in loco parentis* claim are granted.

Breach of Statutory Duties pursuant to New York Social Services Law §§ 413 and 420

Plaintiffs' final causes of action are premised on the notion that Defendants breached their statutory duties to report abuse under Social Services Law §§ 413 and 420.

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 "Any 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." "The Legislature enacted Social Services Law §420 which expressly allows a private cause of action for money damages upon the failure of any person, official or institution required by title 6 to report a case of suspected child abuse or maltreatment" (*Rivera v. County of Westchester*, 31 Misc 3d 985, 994 [Westchester Co Sup Ct 2006]). "An injured child may assert a cause of action for damages under Social Services Law § 420 for alleged violations of sections 413 and 417, which

were enacted to protect children from physical abuse” (*Young v. Campbell*, 87 AD3d 692, 694 [2nd Dept 2011], lv denied 18 NY3d 801 [2011]).

Here, the Court finds that as a religious institution, the Diocese is entitled to dismissal of this cause of action as it is not an educational institution subject to the Education Law or a mandated reporter under the Social Services Law. “The complaint does not allege that any member or employee of the Diocese is a mandated reporter [of the Social Services Law]” *Monaghan v. Roman Catholic Diocese of Rockville Centre*, 165 A.D.3d 650, 653 (2d Dept 2018).

As such, the branches of the Diocese’s motions seeking dismissal of Plaintiffs’ claims that Defendants breached their statutory duty to report abuse under Social Services Law §§ 413 and 420 are granted.

CONCLUSION

Based on the foregoing, it is

ORDERED that the motion of Defendant The Roman Catholic Diocese of Brooklyn, New York (the “Diocese”) pursuant to CPLR 3211(a)(5) and (a)(7) for dismissal of Plaintiff’s complaint in *K.G. v North American Old Roman Catholic Church et al* (Index No. 504288/2020, Motion Seq. 002) is granted to the extent that:

- (i) the third cause of action for negligent infliction of emotional distress is dismissed;
- (ii) the fourth cause of action for premises liability is dismissed;
- (iii) the fifth cause of action for breach of fiduciary duty is dismissed;
- (iv) the sixth cause of action for breach of duty *in loco parentis* is dismissed;
- (v) the seventh cause of action for breach of statutory duties to report is dismissed;

and the motion is otherwise denied; and it is further

ORDERED that the motion of Defendants the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church (collectively, the "NAORCC Defendants") for dismissal of the complaint is denied in its entirety; and it is further

ORDERED that the motion of Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") pursuant to CPLR 3211(a)(5) and (a)(7) for dismissal of Plaintiff's complaint in the related action *W.G. v North American Old Roman Catholic Church et al* (504256/2020, Motion Seq. 002) is granted to the extent that:

- (i) the third cause of action for negligent infliction of emotional distress is dismissed;
- (ii) the fourth cause of action for premises liability is dismissed;
- (iii) the fifth cause of action for breach of fiduciary duty is dismissed;
- (iv) the sixth cause of action for breach of duty *in loco parentis* is dismissed;
- (v) the seventh cause of action for breach of statutory duties to report is dismissed;

and the motion is otherwise denied; and it is further

ORDERED that the motion of Defendants the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church (collectively, the "NAORCC Defendants") for dismissal of the complaint in the related action *W.G. v North American Old Roman Catholic Church et al* (Index No. 504256/2020, Motion Seq. 003) is denied in its entirety; and it is further

ORDERED that counsel for Plaintiffs shall serve a copy of this order, along with notice of entry, on all parties under both related actions within 10 days; and it is further

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

This constitutes the Decision and Order of the Court.

1/30/23
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

2023 FEB -3 AM 10: 01

KINGS COUNTY CLERK
FILED