

ARK548 Doe v Archdiocese of N.Y.

2023 NY Slip Op 30828(U)

March 16, 2023

Supreme Court, New York County

Docket Number: Index No. 950763/2021

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

ARK548 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ORDER OF
PREACHERS PROVINCE OF ST. JOSEPH-EASTERN
DOMINICAN PROVINCE, DOMINICAN CAMP, DOES 1-5
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF,

Defendant.

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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

were read on this motion to/for

DISMISS

Upon the foregoing documents, the decision on defendant, The Archdiocese of New York's, ("Archdiocese") motion to dismiss pursuant to CPLR 3211(a)(1) and (7) is as follows:

Plaintiff commenced the instant action by filing a summons and complaint in this Child Victims Act action on July 30, 2021 alleging that from approximately 1975 to 1978, when Plaintiff was approximately 8 to 11 years old, plaintiff was enrolled at Dominican Camp, where Brother Ed, a Catholic priest of the Dominican Friar order, engaged in unpermitted sexual contact with Plaintiff in violation of a criminal statute which qualifies under the CVA. Arising from same, plaintiff pleads causes of action of Negligence as against all defendants.

Archdiocese seeks 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.

In support of its motion, Archdiocese submits the affidavit of Rev. Kenneth Letoile, O.P., the Prior Provincial for the Dominican Friars, Province of St. Joseph, the May 29, 1928, deed for the property where the Dominican Boy’s Camp was located, purchased by the The Dominican Foundation of Dominican Friars, Province of St. Joseph, Inc., the Certificate of Incorporation of the Dominican Friars, and the affidavit of Roderick Cassidy, Esq., the Associate General Counsel for the Archdiocese of New York. Here, the Archdiocese has shown through documentary evidence that it did not own, operate, or control the Dominican Boys’ Camp, did not own the property where the Dominican Boys’ Camp was located, did not employ supervise, or train the faculty, staff or any other employees at the Dominican Boys’ Camp and did not provide any insurance coverage to the Dominican Boys’ Camp., where the abuse alleged by Plaintiff occurred, and that the Archdiocese did not play any role in assigning and/or appointing Father Kopfman to any position at the Dominican Boys’ Camp. In light of the proffered evidence, the Archdiocese

has established that it had no connection to the allegations alleged, and therefore had no duty to plaintiff.

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. Further, the certificate of incorporation for the Dominican Friars shows that it was and is independent of the Archdiocese and do not have any common trustees. In addition, the affidavit of Rev. Kenneth Letoile, O.P. admits that although the Camp is within the geographical boundaries of the Archdiocese of New York, the Camp was not affiliated with the Archdiocese of New York at any time relevant to the allegations in the Complaint, that the Dominicans are an independent religious order. Religious orders, such as the Dominicans, which operate within the Archdiocese's geographical territory, are independent from the Archdiocese of New York and have autonomy of life and governance and that at the time of the alleged abuse, Father Kopfman was a cleric and a member of the Dominican order

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 The Archdiocese of New York 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).

3/16/2023
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