

**SWNY 6 Doe v Roman Catholic Archdiocese of N.Y.**

2023 NY Slip Op 30870(U)

March 20, 2023

Supreme Court, New York County

Docket Number: Index No. 951221/2021

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*

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SWNY 6 DOE,

Plaintiff,

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,  
CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW  
YORK, CATHOLIC CHARITIES OF STATEN ISLAND F/K/A  
MISSION OF THE IMMACULATE VIRGIN FOR THE  
PROTECTION OF HOMELESS AND DESTITUTE  
CHILDREN A/K/A MOUNT LORETTO, ST. DOMINICS  
FAMILY SERVICES F/K/A ST. DOMINICS HOME,  
DOMINICAN SISTERS OF BLAUVELT, FATHER DESIREE  
DOE (FULL NAME UNKNOWN), DOE RELIGIOUS ORDER  
1, SISTERS OF ST. FRANCIS OF THE NEUMANN  
COMMUNITIES F/K/A SISTERS OF ST. FRANCIS OF THE  
MISSION OF THE IMMACULATE VIRGIN, FATHER JOHN  
MCLAUGHLIN (FIRST NAME UNKNOWN), DOE  
RELIGIOUS ORDER 2, DOES 1 THROUGH 5

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 38, 39, 42, 43

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 40, 41, 44, 45

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant, the Sisters of St. Francis of the Neumann Communities f/k/a Sisters of St. Francis of the Mission of the Immaculate Virgin’s (“SOSF”) motion seeking an Order pursuant to CPLR 3211(a)(7) dismissing plaintiff’s causes of action for gross negligence, breach of fiduciary duty and fraudulent concealment; defendant, Catholic Charities of Staten Island

**DECISION + ORDER ON  
MOTION**

f/k/a Mission of the Immaculate Virgin for the Protection of Homeless and Destitute Children a/k/a Mount Loretto's ("Catholic Charities") motion seeking the above relief and further seeking dismissal of plaintiff's cause of action for breach of a non-delegable duty and striking certain prejudicial language pursuant to CPLR §3024(b); and defendant, the Archdiocese of New York and Catholic Charities of the Archdiocese of New York's motion seeking the same relief are decided as follows:

This action was commenced by filing of the Summons and Complaint on August 11, 2021, alleging that in approximately 1959-1965, when Plaintiff was approximately 6-12 years of age, while a resident of Defendant St. Dominic's Home, from approximately 1959 to 1965, Plaintiff was sexually abused by Defendant Father Desiree. Thereafter, plaintiff was transferred to Mount Loretto in Staten Island, New York, where he was allegedly sexually abused by defendant, Father John McLaughlin. Arising from same, plaintiff pleads causes of action as against Father Desiree for 1) Assault; 2) Battery; 3) Intentional Infliction of Emotional Distress; as against the institutional defendants arising out of Desiree's conduct, 4) Negligence; 5) Gross Negligence; 6) Breach of Fiduciary Duty; 7) Breach of Non-Delegable Duty; 8) Fraudulent Concealment; as against Father McLaughlin 9) Assault; 10) Battery; 11) Intentional Infliction of Emotional Distress; as against the institutional defendants arising out of McLaughlin's conduct, 12) Negligence; 13) Gross Negligence; 14) Breach of Fiduciary Duty; 15) Breach of Non-Delegable Duty; and 16) Fraudulent Concealment.

"On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions . . . are not

entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

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]).

As discussed in *Ryan v. IM Kapco, Inc.*, 88 A.D.3d 682, 683 (2d Dept 2011), “To constitute gross negligence, a party’s conduct must ‘smack[ ] of intentional wrongdoing’ or ‘evinced[ ] a reckless indifference to the rights of others’ (*Sommer v. Federal Signal Corp.*, 79 N.Y.2d at 554)

‘Stated differently, a party is grossly negligent when it fails ‘to exercise even slight care’ or ‘slight diligence’ (*Goldstein v. Carnell Assoc., Inc.*, 74 A.D.3d at 747) (Internal citations omitted). Here, movants argue that plaintiff has failed to detail what acts the movants allegedly performed or how they recklessly disregarded the consequences of said acts. While movants are correct in their allegation that plaintiff merely restates the bare elements of gross negligence, in plaintiff’s pleading of its negligence causes of action, plaintiff specifically pleads, *inter alia*, that said defendants covered up the alleged acts of Father Desiree and Father McLaughlin’s conduct, and minimized, ignored, or excused such conduct over the course of decades. These allegations are sufficient to allege gross negligence.

Moving defendants further seek dismissal of plaintiff’s causes of action for Breach of Fiduciary Duty. Courts have articulated that a fiduciary duty exists when a plaintiff’s relationship with a church extends beyond that of an ordinary parishioner (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3rd Dept 2005]). That said, a fiduciary relationship is not applicable to all parishioners, and can be established upon a showing that a congregant’s relationship with a church entity resulted in “de facto control and dominance” when the congregant was “vulnerable and incapable of self-protection regarding the matter at issue” (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). The existence of a fiduciary duty is a fact-specific question to be determined by the fact-finder, such that breach of fiduciary duty claims should not generally be dismissed before the parties have the opportunity to conduct discovery (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, *supra*).

In order 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 plaintiff was a minor and under the supervision and care of defendant, plaintiff has

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 plaintiff's favor, the allegations for breach of fiduciary duty are insufficient as a matter of law. Plaintiff's breach of fiduciary duty, as pleaded in the complaint, is no different from plaintiff's negligence causes of action. Such bare allegations are insufficient to demonstrate the existence of a unique relationship between defendant and plaintiff. Accordingly, plaintiff has failed to state a cause of action for breach of fiduciary duty, and defendant's motion is granted pursuant to CPLR §3211(a)(7).

Movants further seek dismissal of plaintiff's causes of action alleging a non-delegable duty. Sai causes of action are premised solely on the fact that moving defendants were entrusted with the care of Plaintiff while he was a minor child and as such were in the best position to prevent the abuse that Plaintiff allegedly suffered. Same is duplicative of plaintiff's negligence causes of action.

Plaintiff's causes of action for fraudulent concealment must be dismissed as they are inadequately plead. "The required elements of a common – law fraud claim are a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (see *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y.3d 569, 578-579 [2018]). A cause of action for fraudulent concealment requires, in addition to the four foregoing elements, an allegation that the defendant had a duty to disclose material information and that it failed to do so" (see *Gomez-Jimenez v. New York Law School*, 103 A.D.3d 13, 17-18 [1st Dept. 2012]). A duty to disclose arises only where "a fiduciary or confidential relationship exists between plaintiff and defendant" (see *Mandarin Trading, Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179

[2011]).

Plaintiff's complaint fails to specify the distinct representation(s) that was made to Plaintiff. In *Gregor v. Rossi*, 120 AD3d 447, 992 N.Y.S.2d 17 (1st Dept 2014), the Appellate Division, First Department, held that plaintiff's claims for fraud and constructive fraud should be dismissed because the complaint failed to provide the requisite particularity required by CPLR §3016(b) with respect to the fraud element of a false allegation "because the words used by defendants and the date of the alleged false representations are not set forth." Here, as in *Gregor v. Rossi*, Plaintiff's complaint is devoid of any details about the purported representations, the words used by Defendant, and the dates of the alleged false representations. Additionally, Plaintiff's complaint fails to plead with any particularity that Defendant knew or should have known of any alleged sexual abuse by the alleged abusers prior to the alleged sexual abuse of Plaintiff. The complaint only states that the Plaintiff did not disclose the alleged sexual abuse, without further details. Furthermore, as stated above, Plaintiff has failed to adequately plead that there is a fiduciary duty between Plaintiff and Defendant. In the absence of such details, Defendant's application for dismissal of Plaintiff's fourth cause of action premised on fraudulent concealment is granted.

In reviewing a motion pursuant to CPLR 3024(b), "the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action" (see *Soumayah v. Minnelli*, 41 A.D.3d 390, 392 [1st Dept. 2007]; see *Wegman v. Dairylea Coop.*, 50 A.D.2d 108, 111 [4th Dept. 1975]). Matters that are unnecessary to the viability of the cause of action and would cause undue prejudice to defendants should be stricken from the pleading or bill of particulars (see *Irving v. Four Seasons Nursing & Rehabilitation Ctr.*, 121 A.D.3d 1046, 1048 [2d Dept. 2014]).


To be sure, the Catholic Church’s history of concealment of alleged sexual abuse by priests by official church policy is highly scandalous. However, same also clearly bears a rational relationship to plaintiff’s claims regarding Father Desiree and Father McLaughlin and Defendant, Archdiocese’s liability for this abuse *See, W.F. v. Roman Catholic Diocese of Paterson*, case no. 20-7020, 2021 U.S. Dist. LEXIS 111062 (D.N.J. June 7, 2021).

ORDERED that defendants’ motions are GRANTED to the extent that and Plaintiff’s Sixth, Seventh, Eighth, Fourteenth, Fifteenth and Sixteenth causes of action are dismissed; and it is further

ORDERED that the Clerk of the Clerk is directed to enter judgment dismissing plaintiff’s Sixth, Seventh, Eighth, Fourteenth, Fifteenth and Sixteenth Causes of Action; and it is further

ORDERED that the branch of defendants Catholic Charities of Staten Island f/k/a Mission of the Immaculate Virgin for the Protection of Homeless and Destitute Children a/k/a Mount Loretto and the Archdiocese of New York and Catholic Charities of the Archdiocese of New York motions seeking to strike certain prejudicial language pursuant to CPLR §3024(b) are denied.

This constitutes the decision and order of the court.

3/20/2023					
DATE			LAURENCE L. LOVE, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	