

**J.S. v Church of the Blessed Sacrament**

2023 NY Slip Op 30973(U)

March 27, 2023

Supreme Court, New York County

Docket Number: Index No. 950074/2020

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

J. S.,

Plaintiff,

- v -

CHURCH OF THE BLESSED SACRAMENT, NEW  
ROCHELLE, CONGREGATION OF CHRISTIAN  
BROTHERS, THE ARCHDIOCESE OF NEW YORK, THE  
CHRISTIAN BROTHERS ORGANIZATION, INC., THE  
CHRISTIAN BROTHERS

Defendant.

-----X

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 49, 50, 51, 52, 53, 54, 57, 58, 59

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 55

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendant Archdiocese of New York’s (“Archdiocese”) motion dismissing Plaintiff’s Third Cause of Action for Negligent Infliction of Emotional Distress pursuant to CPLR 3211 (a)(7), dismissing Plaintiff’s Fourth Cause of Action for Premises Liability pursuant to CPLR 3211(a)(7), dismissing Plaintiff’s Fifth Cause of Action for Breach of Fiduciary Duty pursuant to CPLR 3211 (a)(7), dismissing Plaintiff’s Seventh Cause of Action for Breach of Statutory Duties to Report pursuant to CPLR 3211(a)(7) under motion sequence 002, and co-defendant Church of the Blessed Sacrament’s (“Church”) motion for same under motion sequence 003 is decided as follows:

Plaintiff commenced the instant action by filing a Summons and Complaint on March 13, 2020, pursuant to the Child Victims Act, CPLR 214-g, alleging that from approximately 1954-

1955, when Plaintiff was about 15 years old, ‘Brother O’Hara,’ a teacher and Brother at Blessed Sacrament High School, engaged in unpermitted, forcible and harmful sexual contact with plaintiff. Plaintiff alleges causes of action sounding in 1) Negligent Hiring, Retention, Supervision, and Direction, 2) Negligent, Reckless, and Willful Misconduct, 3) Negligent Infliction of Emotional Distress, 4) Premises Liability, 5) Breach of Fiduciary Duty, 6) Breach of Duty *In Loco Parentis*, and 7) Breach of Statutory Duties to Report.

“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]).

First, moving defendants seek dismissal of Plaintiff’s Third Cause of Action for Negligent Infliction of Emotional Distress. In general, such a cause of action “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 Count III are duplicative of the Negligence Causes of Action. As such, defendants’ motions to dismiss Count III must be granted.

Next, moving defendants seek dismissal of Plaintiff’s Fourth Cause of Action for Premises Liability. As discussed in *Fay v. Troy City Sch. Dist.*, 197 A.D.3d 1423, 1424 (3d Dept. 2021), “The conduct complained of in the causes of action for premises liability...falls entirely within the scope of plaintiff’s separate causes of action for negligence, negligent supervision and negligent retention (see *Steven B. v. Westchester Day School*, 196 A.D.3d 624, 625, 148 N.Y.S.3d 384 [2021]). As such, defendants’ motions to dismiss Count IV must be granted.

Moving defendants further seek dismissal of Plaintiff's Fifth Cause 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*).

Here, Plaintiff has alleged that a fiduciary duty was owed to all parishioners on account of defendants' positions as caretakers and moral authorities. However, 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 defendants and

Plaintiff. Accordingly, Plaintiff has failed to state a cause of action for breach of fiduciary duty, and defendants' motion to dismiss Count V must be granted.

Lastly, moving defendants seek dismissal of Plaintiff's Seventh Cause of Action for Breach of Statutory Duties to Report. the Diocese and Church breached their statutory duty 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]). As defendants Archdiocese and Church are not mandated reporters under the statute it therefore cannot be held statutorily liable.

ORDERED that the portion of Defendant Archdiocese’s motion 002 and Church’s motion 003 seeking the dismissal of Plaintiff’s Third Cause of Action for Negligent Infliction of Emotional Distress is GRANTED; and it is further

ORDERED that the portion of Defendant Archdiocese’s motion 002 and Church’s motion 003 seeking the dismissal of Plaintiff’s Fourth Cause of Action for Premises Liability is GRANTED; and it is further

ORDERED that the portion of Defendant Archdiocese’s motion 002 and Church’s motion 003 seeking the dismissal of Plaintiff’s Fifth Cause of Action for Breach of Fiduciary Duty is GRANTED; and it is further

ORDERED that the portion of Defendant Archdiocese’s motion 002 and Church’s motion 003 seeking the dismissal of Plaintiff’s Seventh Cause of Action for Breach of Statutory Duties to Report is GRANTED.

3/27/2023

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: