

G.B. v Archdiocese of N.Y.

2023 NY Slip Op 30974(U)

March 27, 2023

Supreme Court, New York County

Docket Number: Index No. 950309/2021

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

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G.B.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. DOMINIC'S FAMILY SERVICES, SISTERS OF ST. DOMINIC OF BLAUVELT NEW YORK, DOMINICAN FRIARS PROVINCE OF ST. JOSEPH, CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK

Defendant.

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INDEX NO. 950309/2021

MOTION DATE 11/19/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 54, 55, 56

were read on this motion to/for DISMISSAL.

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 June 11, 2021, alleging that Plaintiff was placed in St. Dominic's Home in or around 1959 when he was about 3 years of age and thereafter was sexually assaulted by an Unknown Priest assigned to St. Dominic's and "Uncle Brucie", a counselor assigned to St. Dominic's. Arising from same, plaintiff pleads causes of action of Negligence 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 Roderick Cassidy, together with supporting documentation containing relevant deeds and certificates of incorporation, purporting to show that the Archdiocese did not have any ownership or control over St. Dominic’s, and the Sisters of St. Dominic and did not have any legal relationship with the St. Dominic’s, and the Sisters of St. Dominic or its employees or agents, including plaintiff’s alleged abusers.

As discussed in *J.D. v. The Archdiocese of New York*, 2023 NY Slip Op 01588 (1st Dept. 2023), “Although the deeds for the property upon which defendant [school] is located and the Certificates of Incorporation for defendant [independent religious order] constitute documentary evidence for the purposes of a CPLR 3211(a)(1) inquiry (*see generally Yoshiharu Igarashi v Shohaku Higashi*, 289 AD2d 128 [1st Dept 2001]), they do not conclusively resolve the allegations in the complaint that plaintiff’s alleged abuser...was an agent of the Archdiocese, that the Archdiocese exercised supervision and control over [alleged abuser’s] appointment or employ, and

that there were special relationships between plaintiff, the Archdiocese, and [alleged abuser] (*see Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]). The affidavit of the Associate General Counsel for the Archdiocese does not constitute sufficient documentary evidence for the purpose of a pre-answer CPLR 3211(a)(1) motion (see *Johnson v Asberry*, 190 AD3d 491 [1st Dept 2021]; *Flowers v 73rd Townhouse LLC*, 99 AD3d 431 [1st Dept 2012]). In any event, the affidavit consists mainly of legal conclusions and denials.” Defendants seek dismissal of this action CPLR § 3211(a)(7) arguing that because plaintiff fails to identify his alleged abuser, his complaint fails as a matter of law.

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges. LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004], *Leon v. Martinez*, 84 N.Y.2d 83, 87-88[1994]). 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).

A necessary element of a claim based upon negligent hiring, retention, and supervision of an employee “is that the employer knew or should have known of the employee’s propensity for the conduct which caused the injury.” *Doe v. Rohan*, 17 A.D. 509, 512 (2d Dep’t 2005); see also *Ehrens v. Lutheran Church*, 385 F.3d 232, 235 (2d Cir. 2004). The First Department has held that conclusory allegations of notice are insufficient to sustain a negligent supervision claim because

they do not show that the defendant knew or should have known of the propensity of the perpetrator to commit the tortious acts alleged. See *Naegele v. Archdiocese of New York*, 39 A.D.3d 270, 270 (1st Dep’t 2007). In support of its motion, defendant cites *Sheila C. v. Povich*, 11 A.D.3d at 130, as in this action the complaint is “is devoid of any allegations concerning this essential element, or the identity of the employees involved...” However, in that action, the Court found that plaintiff failed to establish that additional discovery was necessary.

At this point in time, the identity of the alleged abuser is unknown; however, plaintiff sufficiently pled that the abuse occurred by a priest, assigned to Immaculate Conception and as such, the identity of this priest may or may not be revealed through discovery. As expressly and unambiguously alleged in Plaintiff’s Complaint: was a student and parishioner at Immaculate Conception and was in the custody, care, and control of Immaculate Conception when the abuse occurred. At least a minimum of discovery will be necessary before the parties’ significant disputes on the identity of the priest can be reconciled, specifically as to if there are any records of a priest assigned to Immaculate Conception who was alleged to have engaged in the complained of sexual assaults and if defendant was aware of any other complaints about said priest, assuming he can be identified.

ORDERED that defendant, Archdiocese’s motion seeking dismissal of this action as against the Archdiocese is DENIED in its entirety.

3/27/2023
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: