

**Ark287 Doe v Archdiocese of N.Y.**

2023 NY Slip Op 31383(U)

April 24, 2023

Supreme Court, New York County

Docket Number: Index No. 950338/2020

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART 18**

*Justice*

-----X

ARK287 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ORDER OF THE  
AUGUSTINIAN RECOLLECTS, TAGASTE MONASTERY,  
DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO  
PLAINTIFF

Defendant.

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INDEX NO. 950338/2020

MOTION DATE 04/23/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendants ORDER OF THE AUGUSTINIAN RECOLLECTS a/k/a and d/b/a ORDER OF THE AUGUSTIAN RECOLLECTS PROVINCE OF ST. AUGUSTINE and TAGASTE MONASTERY (defendants) move to dismiss the complaint pursuant to CPLR 3211 (a) (5) as time-barred and pursuant to subdivision (7) for failing to state a claim.

“[A] claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice” (Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig., 30 NY3d 377, 400 [2017]). Based on the legislative materials describing the purpose and justification for the Child Victims Act (CVA), this Court agrees with many other courts that have decided that the CVA is a reasonable response to remedy innumerable injustices of past child sexual abuse and does not run afoul of the due process protections afforded by the State Constitution (see PB-36 Doe v Niagara Falls City

School Dist., 72 Misc 3d 1052, 1058-60 [Sup Ct, Niagara County 2021]; Kaul v Brooklyn Friends School, index no. 512634/2020, 2022 WL 987843 [Sup Ct, Kings County March 31, 2022] [citing cases]).

In determining dismissal under CPLR Rule 3211 (a) (7), the “complaint is to be afforded a liberal construction” (Goldfarb v Schwartz, 26 AD3d 462, 463 [2d Dept 2006]). The “allegations are presumed to be true and accorded every favorable inference” (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “[T]he sole criterion is 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” (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]).

“It is well established that before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff” (Pulka v Edelman, 40 NY2d 781, 782 [1976]). “In the absence of duty, there is no breach and without a breach there is no liability” (id.). “The question of the scope of an alleged tort-feasor's duty is, in the first instance, a legal issue for the court to resolve” (Waters v New York City Hous. Auth., 69 NY2d 225, 229 [1987]).

There is generally no duty to control the harm-producing conduct of a third party (i.e., the tortfeasor) absent a special relationship either between the defendant and the plaintiff or the defendant and the tortfeasor (see Pulka, 40 NY2d at 783; Hamilton v Beretta U.S.A. Corp., 96 NY2d 222, 233 [2001], op after certified question answered, 264 F3d 21 [2d Cir 2001]).

“The key in each is that the defendant's relationship with either the tortfeasor or the plaintiff places the defendant in the best position to protect against the risk of harm” (Hamilton,

96 NY2d at 233; see, e.g., 532 Madison Ave. Gourmet Foods v Finlandia Ctr., 96 NY2d 280, 289 [2001] [“Landowners, for example, have a duty to protect tenants, patrons and invitees from foreseeable harm caused by the criminal conduct of others while they are on the premises, because the special relationship puts them in the best position to protect against the risk”]). “That duty, however, does not extend to members of the general public”; thus, circumscribing liability “because the special relationship defines the class of potential plaintiffs to whom the duty is owed” (532 Madison Ave. Gourmet Foods., 96 NY2d at 289).

The Court finds that the complaint adequately alleges both that defendants had custody and control over plaintiff, thereby alleging a duty of care owed directly to plaintiff; as well as a special relationship between defendants and its employee, the alleged abuser, and therefore adequately stating the negligent training, supervision, and/or retention claims (see Sheila C. v Povich, 11 AD3d 120, 129 [1st Dept 2004] [“The negligence of the employer . . . arises from its having placed the employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in making its decision concerning the hiring and retention of the employee”]; see Roe v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church, 198 AD3d 698, 699-702 [2d Dept 2021], quoting Johansmeyer v New York City Dept. of Educ., 165 AD3d 634, 634-37 [2d Dept 2018]; see also Doe v Congregation of the Mission of St. Vincent De Paul in Germantown, 2016 NY Slip Op 32061[U], \*6 [Sup Ct, Queens County 2016]).

Movants argue that the complaint is vague and conclusory about, inter alia, where the abuse occurred and/or about Father Rodriguez’s propensity to abuse. However, the Court finds that the allegations in the complaint, which are to be taken as true, adequately state that movants knew or should have known of the abuse or of Rodriguez’s propensity to abuse and failed to take

appropriate action with respect to him or minors on their premises or within their custody.

Discovery from defendants is likely to shed light these issues, among others (see generally Doe v Intercontinental Hotels Group, PLC, 193 AD3d 410, 411 [1st Dept 2021]). Therefore, it cannot be said, at this juncture, that the complaint fails to allege a claim as a matter of law.

Accordingly, it is hereby ORDERED that the motion is denied without prejudice; and it is further

ORDERED that defendants shall file and serve an answer to the complaint within (20) days after service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and their compliance conference order (NYSCEF Doc No 64).

This constitutes the decision and order of the Court.

4/24/2023  
DATE

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ALEXANDER M. TISCH, 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