

John Doe - 18987 v Children's Vil.

2023 NY Slip Op 31454(U)

April 21, 2023

Supreme Court, New York County

Docket Number: Index No. 950042/2021

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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JOHN DOE - 18987,

Plaintiff,

- v -

THE CHILDREN'S VILLAGE, THE CITY OF NEW YORK,
NEW YORK CITY ADMINISTRATION FOR CHILDREN'S
SERVICES, SAINT DOMINIC'S FAMILY SERVICES,
ARCHDIOCESE OF NEW YORK, CATHOLIC CHARITIES
COMMUNITY SERVICES

Defendant.

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INDEX NO. 950042/2021

MOTION DATE 04/08/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, Defendants Archdiocese of New York (the Archdiocese) and Catholic Charities Community Services (CCCS) (collectively, Archdiocese Defendants) move for dismissal of the instant Child Victims Act (CVA) action against them based on documentary evidence pursuant to CPLR 3211(a)(7) (Motion Seq. 001).

BACKGROUND

Plaintiff alleges that as a minor in the foster care system in the 1990s, he was sexually abused multiple times. Plaintiff alleges Defendants Saint Dominic’s Family Services (St. Dominic’s), Administration for Children’s Services, and the City of New York first placed him into a home where he was abused by his foster parent, “Millie.” Plaintiff claims Defendants then placed him in the care of Defendant the Children’s Village, where he was further assaulted. Plaintiff alleges that Archdiocese Defendants were also involved in his foster care placement, as CCCS oversees multiple agencies providing foster services, including Saint Dominic’s.

DISCUSSION

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]).

“To sustain a cause of action alleging negligence, ‘a plaintiff must demonstrate the existence of a duty, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries’” (*Schindler v Ahearn*, 69 AD3d 837, 838 [2d Dept 2010], quoting *Engelhart*

v County of Orange, 16 AD3d 369, 371 [2d Dept 2005]). If there is no duty of care owed by the defendant to the plaintiff, there can be no breach and, consequently, no liability can be imposed upon the defendant (*see Pulka v Edelman*, 40 NY2d 781 [1976], *Engelhart*, 16 AD3d at 371).

Whether a duty of care is owed by one person to another is a question of law (*see Purdy v Public Adm'r of County of Westchester*, 72 NY2d 1 [1988]; *Engelhart*, 16 AD3d at 371). In general, an entity has no duty to control a third party's conduct so as to prevent injury to another unless special circumstances exist in which the entity has sufficient authority and control over the conduct of that third party (*see id.*).

“On a motion to dismiss pursuant to CPLR 3211 (a) (1), the defendant has the burden of showing that the relied-upon documentary evidence “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383 [2002]). Allegations that are negated by such 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]).

Archdiocese Defendants’ Documentary Evidence

Archdiocese Defendants argue they are not proper parties to this action, and Plaintiff’s allegations are based solely on false conclusory assumptions that Archdiocese Defendants exercised control over St. Dominic’s or the Children’s Village. In support, the Archdiocese has submitted an affidavit from its general counsel, Roderick Cassidy, Esq., and CCCS has submitted an affidavit from its executive director for Catholic charities, Beatriz Diaz Taveras.

Both Mr. Cassidy and Ms. Taveras attest that neither the Archdiocese nor CCCS oversaw, supervised, managed, controlled or directed St. Dominic's or the Children's Village.

“Affidavits are not documentary evidence and are not appropriate proof on a CPLR 3211 (a)(1) motion to dismiss” (*Johnson v Asberry*, 190 AD3d 491, 492, [1st Dept 2021]) [internal citations omitted]). In another recent CVA matter, the Archdiocese relied on an affidavit from its general counsel in support of its argument that plaintiff's abuser, Father O'Brien, was not its employee or agent (*J.D. v Archdiocese of N.Y.*, 214 AD3d 561 [1st Dept 2023]). The First Department cited *Johnson* to hold that the affidavit did not constitute documentary evidence and only consisted of legal conclusions and denials.

The Second Department has also maintained that affidavits “are not to be examined for the purpose of determining whether there is evidentiary support for the pleading” and “will almost never warrant dismissal under CPLR 3211” (*Sokol v Leader*, 74 AD3d 1180, 1181 [2nd Dept 2010]). *See also Attias v Costiera*, 120 AD3d 1281, 1283 (2nd Dept 2014) (Affidavits submitted by defendants in support of motion “did not constitute documentary evidence within the meaning of CPLR 3211(a)(1), and should not have been relied upon by the Supreme Court in directing the dismissal of the complaint”).

Archdiocese Defendants have also submitted the property deeds and certificate of incorporation for St. Dominic's, which they argue demonstrate that they do not own St. Dominic's. While those submissions are documentary evidence, the fact that Archdiocese Defendants did not actually own the property is immaterial as the location of the assault is not dispositive for a negligence claim (*see, e.g., Roe v Domestic & Foreign Missionary Socy. Of the Prot. Episcopal Church*, 198 AD3d 698 [2nd Dept 2021]). In *J.D.*, the First Department held that a property deed and certificate of incorporation submitted “constitute documentary evidence for

the purposes of a CPLR 3211(a)(1) inquiry” but “do not conclusively resolve the allegations in the complaint. . .that the Archdiocese exercised supervision and control over Fr. O’Brien’s appointment and employ, and that there were special relationships between plaintiff, the Archdiocese, and Fr. O’Brien” (214 AD3d at 561). Here, Plaintiff has similarly alleged a special relationship with Archdiocese Defendants by virtue of their alleged control over St. Dominic’s and ability to prevent harm while he was in the foster system.

The primary documentation that, unlike the property deed and certificate of incorporation, would resolve Plaintiff’s claims, has not been submitted. Mr. Cassidy and Ms. Taveras both state in their affidavits that they have conducted a review of relevant communications and documents, but those materials have not been uploaded to the record. As such, the Court is unable to ascertain the veracity of Archdiocese Defendants’ self-serving claims that they had no duty. For instance, in opposition to Plaintiff’s allegation that St. Dominic’s is a listed agency under the Catholic Charities of New York (CCNY), Archdiocese Defendants contend that CCNY is a wholly separate corporation unaffiliated with CCCS. However, no documentation has been provided to substantiate this beyond the affidavits.

Archdiocese Defendants further argue that Plaintiff’s opposition to their dismissal motion does not sufficiently rebut the statements their affidavits and consists only of speculation. However, the merits of Plaintiff’s opposition have no bearing on the fact that Archdiocese Defendants have not met their *prima facie* burden pursuant to CPLR 3211.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion of Defendants Archdiocese of New York (the “Archdiocese”) and Catholic Charities Community Services (CCCS) (collectively, Archdiocese Defendants) for

dismissal of this action against them based on documentary evidence pursuant to CPLR 3211(a)(7) (Motion Seq. 001) is denied in its entirety; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this decision with notice of entry on all parties within 14 days; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and submit a first compliance conference order within 60 days.

4/21/2023

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