

M.O. v Archdiocese of N.Y.

2023 NY Slip Op 32621(U)

July 25, 2023

Supreme Court, New York County

Docket Number: Index No. 950108/2020

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
 M. O., INDEX NO. 950108/2020
 Plaintiff, MOTION DATE N/A, N/A
 MOTION SEQ. NO. 002 003

- v -

ARCHDIOCESE OF NEW YORK, THE CATHOLIC
 CHARITIES OF THE ARCHDIOCESE OF NEW YORK,
 LINCOLN HALL A/K/A LINCOLN HALL BOYS HAVEN,
 DOES 1-10

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 29, 32, 34, 35, 37

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 22, 23, 24, 25, 30, 33, 36, 38

were read on this motion to/for DISMISSAL

Upon the foregoing documents, defendant Lincoln Hall a/k/a Lincoln Hall Boys Haven (Lincoln Hall) moves to dismiss the complaint pursuant to CPLR 3211 (a) (7) and, in effect, pursuant to CPLR 3024(b) to strike scandalous and/or prejudicial matter from the complaint (motion sequence no. 002). Defendant Archdiocese of New York and The Catholic Charities of the Archdiocese of New York (Archdiocese) (together with Lincoln Hall, movants or defendants) move on the same grounds for the same relief as Lincoln Hall, also arguing that the failure to identify the alleged abuser fails to state a claim (motion sequence no. 003).

Plaintiff was sent to Lincoln Hall, “a residential school and juvenile detention facility for boys of disadvantageous backgrounds” in or around 1985-1986. The complaint alleges he was sexually assaulted by an unidentified priest in the chapel of Lincoln Hall.

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]). Additionally, “[w]hether 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]).

Contrary to defendants’ contentions, the Court finds that the allegations concerning the alleged abuser(s) are not vague or conclusory, sufficient to warrant dismissal of the complaint. The complaint alleges that plaintiff was in defendant’s custody and/or control, placed in the group home, and was therefore owed a duty of care (see generally Mirand v City of New York, 84 NY2d 44, 49-50 [1994]; Sokola v Weinstein, — Misc 3d —, 2023 NY Slip Op 23047, *9, n 10 [Sup Ct, NY County Feb. 7, 2023]). “Plaintiff’s inability to identify his assailant . . . does not preclude him from recovery” (Jones v Hiro Cocktail Lounge, 139 AD3d 608, 609 [1st Dept 2016], citing Burgos v Aqueduct Realty Corp., 92 NY2d 544, 550-51 [1998]). The Court finds this particularly applicable where, as here, a negligence claim is asserted based on a duty of care owing directly from defendants to the plaintiff (see generally Sokola v Weinstein, — Misc 3d —, 2023 NY Slip Op 23047, *3 [Sup Ct, NY County Feb. 7, 2023], citing, inter alia, Pulka v Edelman, 40 NY2d 781, 782 [1976]; Hamilton v Beretta U.S.A. Corp., 96 NY2d 222, 233 [2001], op after certified question answered, 264 F3d 21 [2d Cir 2001]). This is because defendant Lincoln Hall’s “duty to students arises from its physical custody over them. When that

custody ceases, and the child passes out of [it's] authority such that the parent is free to reassume control, the school's custodial duty ceases" (Colon v Board of Educ. of City of N.Y., 156 AD2d 131 [1st Dept 1989], citing Pratt v Robinson, 39 NY2d 554, 560 [1976]; see Stephenson v City of New York, 19 NY3d 1031, 1034 [2012]). Because the complaint alleges that plaintiff was in Lincoln Hall's physical custody, it was "under a duty to adequately supervise" plaintiff and may "be held liable for foreseeable injuries proximately related to the absence of adequate supervision" (Mirand v City of New York, 84 NY2d 44, 49 [1994]). Such "foreseeable injuries" are adequately alleged for purposes of a motion to dismiss as discussed *infra*.

Further, the complaint asserts that the alleged abusers were under defendant's supervision and/or control – if true, it would be sufficient to give rise to a negligent hiring, retention, supervision, and/or direction claim, as set forth in the complaint. If not true, because of a lack of an employment relationship or sufficient level of control over the alleged abuser, then the claim would be unsuccessful (see, e.g., Jones v Hiro Cocktail Lounge, 139 AD3d 608, 609 [1st Dept 2016] ["Since the assailant was not identified, plaintiff could not demonstrate that [defendants] knew of the assailant's propensity to commit such attacks"]; see generally Sokola v Weinstein, — Misc 3d —, 2023 NY Slip Op 23047, *3-4 [stating elements for negligent hiring, retention and/or supervision claim, including requisite employment relationship]). However, that fact has yet to be proven or disproven. Indeed, as plaintiff notes in opposition, the abusers' identities may be revealed through minimal discovery (see generally Doe v Intercontinental Hotels Group, PLC, 193 AD3d 410, 411 [1st Dept 2021] [noting such facts may be supplemented in a bill of particulars]; see also O'Brien v Archdiocese of New York, index no 950092/2020, NYSCEF Doc No 30 [Sup Ct, NY County August 13, 2021] [Silver, J.] [denying motion to dismiss on

similar grounds]). Accordingly, the Court declines to dismiss the complaint on the basis that the alleged abuser is not identified by name.

The Court rejects Lincoln Hall's putative argument that plaintiff is attempting to hold it "strictly liable for the acts of employees" (see NYSCEF Doc No 19, affirmation in support at 6-8). "Although an employer cannot be held vicariously liable for torts committed by an employee who is acting solely for personal motives unrelated to the furtherance of the employer's business, the employer may still be held liable under theories of negligent hiring and retention of the employee" (D.T. v Sports & Arts in Schs. Found., Inc., 193 AD3d 1096, 1097-98 [2d Dept 2021]).

"[T]o state a claim for negligent hiring, retention or supervision under New York Law, a plaintiff must plead, in addition to the elements required for a claim of negligence:¹ (1) the existence of an employee-employer relationship; (2) 'that the employer knew or should have known of the employee's propensity for the conduct which caused the injury'; and (3) 'a nexus or connection between the defendant's negligence in hiring and retaining [or supervising] the offending employee and the plaintiff's injuries'" (Sokola v Weinstein, — Misc 3d —, 2023 NY Slip Op 23047, *3 [Sup Ct, NY County Feb. 7, 2023] [Tisch, J.], quoting Kenneth R. v Roman Catholic Diocese of Brooklyn, 229 AD2d 159, 161 [2d Dept 1997] and Roe v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church, 198 AD3d 698, 701 [2d Dept 2021]; see Gonzalez v City of New York, 133 AD3d 65, 70 [1st Dept 2015] ["what the plaintiff must demonstrate is a connection or nexus between the plaintiff's injuries and the defendant's malfeasance"]]).

¹ To state a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (Solomon v City of New York, 66 NY2d 1026, 1027 [1985]).

Defendants argue that the complaint fails to include sufficient allegations that defendants had the requisite notice or knowledge of the priest's propensity to sexually abuse minors. However, acknowledging that the Court is required to accept the allegations as true (see Engelman v Rofe, 194 AD3d 26, 33-34 [1st Dept 2021]) and that "[t]here is no statutory requirement" that this cause of action "be pleaded with specificity" (Kenneth R., 229 AD2d at 161), the Court finds that the complaint sufficiently alleges the prior notice/propensity element (see, e.g., NYSCEF Doc No 2, complaint at ¶¶ 37-40; see also id. at ¶¶ 55-59). In any event, the allegations may be amplified in a bill of particulars and subsequent discovery (see Doe v Intercontinental Hotels Group, PLC, 193 AD3d 410, 411 [1st Dept 2021]). Indeed, "[t]he manner in which the defendant acquired actual or constructive notice of the alleged abuse is an evidentiary fact, to be proved by the claimant at trial. In a pleading, 'the plaintiff need not allege his [or her] evidence'" (Martinez v State, 215 AD3d 815, 819 [2d Dept 2023], quoting Mellen v Athens Hotel Co., 153 AD 891 [1st Dept 1912]


CPLR 3024 (b) provides that "[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." "Matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements" (Pisula v Roman Catholic Archdiocese of N.Y., 201 AD3d 88, 97 [2d Dept 2021]). "Whether to strike allegedly scandalous or prejudicial matter from a pleading in a given instance is left to the discretion of the trial court" (id.).

The defendants identified paragraphs 41 through 60 as allegedly scandalous or prejudicial. However, the Court finds that paragraphs 54 through 60 are neither scandalous nor prejudicial but are part of the elements of plaintiff's claims. Similarly, paragraphs 41 through 53, even if scandalous, are generic allegations as to how the Archdiocese knew of "problem[s] of Catholic clergy sexually molesting children" as far back as 1962, pre-dating the incident in this

matter, and may therefore be relevant to the issue of notice and/or the breach of its duty of care, as the allegations concern what the Archdiocese did or did not do when faced with credible accounts of child sex abuse by its clergy (see id. at 103-104; id. at 110; cf. id. at 107).

Accordingly, it is hereby ORDERED that the motions are denied; and it is further ORDERED that the movants shall each file and serve an answer to the complaint within twenty (20) days from 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 submit a first compliance conference order within sixty (60) days after issue is joined.

This constitutes the decision and order of the Court.

7/25/2023					
DATE			ALEXANDER M. TISCH, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input 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"/>
					<input type="checkbox"/>
					REFERENCE