

M.A. v City of New York

2023 NY Slip Op 32679(U)

August 1, 2023

Supreme Court, New York County

Docket Number: Index No. 950041/2021

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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M. A.,

Plaintiff,

- v -

CITY OF NEW YORK, THE NEW YORK FOUNDLING,
SISTERS OF CHARITY OF SAIN VINCENT DE PAUL OF
NEW YORK, CATHOLIC CHARITIES OF THE
ARCHDIOCESE OF NEW YORK, ARCHDIOCESE OF NEW
YORK

Defendant.

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INDEX NO. 950041/2021

MOTION DATE 05/12/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Upon the foregoing documents, plaintiff’s motion seeking leave to renew this Court’s Order dated November 10, 2021, is decided as follows:

In an Order dated November 10, 2021, this Court granted defendants, Archdiocese of New York and Catholic Charities of the Archdiocese of New York’s motion to dismiss pursuant to CPLR 3211(a)(1), holding as follows:

This action was brought under the Child Victims Act, and arises from allegations that plaintiff was sexually abused by her foster father Juan Estrada starting in 1967, her foster brother Frank Estrada in 1967 and 1969, and by an individual identified as James Robinson in 1974, while plaintiff she was a placed in the custody, care, and control of defendant New York Foundling (“Foundling”). Plaintiff contends that defendant City of New York (“City”) and either Foundling or defendant SISTERS OF CHARITY (“Sisters”), were responsible for assigning plaintiff to the care of her foster family. Plaintiff does not allege that either the Archdiocese or Catholic Charities had any role in such placement.

Here, based on the evidence submitted, it is clear that Catholic Charities is a legally distinct non-profit social services agency with its own Board of Trustees. Likewise, although Foundling is located within the geographical boundaries of the Archdiocese, Foundling was not an agent of either the Archdiocese or Catholic Charities at any time relevant to the allegations in the complaint. Indeed, Foundling was a distinct and independent entity from the Archdiocese and Catholic Charities. The Archdiocese and Catholic Charities did not own property where Foundling was located, did not have any involvement in the administration and did not employ, supervise or train any of Foundling's faculty staff, or other employees. Nor did defendants have any role in placing plaintiff in foster care. As neither the Archdiocese nor Catholic Charities had control over placing children referred to Foundling in foster care homes, it is axiomatic that dismissal is warranted.

Notably, plaintiff does not challenge the authenticity of the documentary evidence submitted in support of defendants' motion. Instead, plaintiff opposes defendants' motion by making conclusory assertions that Foundling was subject to the Archdiocese and Catholic Charities' control and direction because Catholic Charities' present website refers to Foundling as a social services agency to which Catholic Charities provides resources and support. Such evidence, however, does not require a different finding by the court where there is ample evidence contesting defendants' supervision and control. To be sure, there is an immense difference both between providing resources and support for a social services agency and having control over it or the ability to direct it. This court would have to make a speculative leap to reach such a conclusion, especially where the documentary evidence submitted demonstrates that Foundling was a legally distinct and independent entity that did not have a principal-agent relationship with either the Archdiocese or Catholic Charities. Moreover, the documentary evidence flatly contradicts plaintiffs' conclusory allegations that the Archdiocese or Catholic Charities controlled or directed Foundling or plaintiffs' alleged abusers.

Plaintiff now moves for leave to reargue, citing *J.D. v. The Archdiocese of New York*, 214 A.D.3d 561 (1st Dept. 2023), which held "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.”

A motion to renew must be based upon new facts that were not offered in the prior motion, and the party must set forth a reasonable justification for the failure to present such facts in the prior motion (*see*, CPLR § 2221[e]; *Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle Inc.*, 271 AD2d 636 [2d Dept 2000]; *McNeill v. Sandiford*, 270 AD2d 467 [2d Dept 2000]; *Shapiro v. State*, 259 AD2d 753 [2d Dept 1999]); or the motion must demonstrate that there has been a change in the law that would change the prior determination (*see*, CPLR § 2221[e]; *Delvecchio v. Bayside Chrysler Plymouth Jeep Eagle Inc.*, *supra*).

Here, the facts of *J.D. v. Archdiocese* are inapplicable. In *J.D.* the documentary evidence submitted was insufficient to determine whether Father Eugene O'Brien, a Jesuit, was also an agent of the Archdiocese, whether the Archdiocese exercised supervision and control over Fr. O'Brien's appointment or employ, and whether there were special relationships between plaintiff, the Archdiocese, and Fr. O'Brien. Arguably, Fr. O'Brien, as a priest of a Catholic Order was under the supervision and control of the Archdiocese. Here, the allegations are that plaintiff was allegedly sexually abused by her foster father and foster brother at their home and thereafter sexually abused

by James Robinson at a group home in Brooklyn. Here, it is clear that the dismissed defendants certainly had no control or relationship whatsoever with the alleged abusers and it is equally clear that the Foundling was not an agent of either the Archdiocese or Catholic Charities.

ORDERED that plaintiff's motion is DENIED in its entirety.

8/1/2023
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