SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L. LOVE** **PART** **63M**

Justice

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ARK250 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS, REGIS HIGH SCHOOL, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 950333/2020

MOTION DATE 09/20/2022, 05/08/2023

MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 107, 108, 109, 110, 111, 112, 113, 116, 118, 120, 121, 125, 126, 127, 128, 138, 139

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, plaintiff's motion seeking leave to reargue this Court's decision dated July 19, 2022, and The New York Province of the Society of Jesus and The USA Northeast Province of the Society of Jesus, Inc., i/s/h/a Jesuit Fathers and Brothers d/b/a The New York Province of the Society of Jesus a/k/a U.S.A. Northeast Province of the Society of Jesus ("Jesuits") motion to dismiss pursuant to CPLR 3211(a)(5) and (7) are decided as follows:

As described in this Court's prior Order, Plaintiff commenced the instant action by filing a summons and complaint in this Child Victims Act action on July 20, 2020 alleging that in approximately 1965, when Plaintiff was approximately 16 years old, Fr. Edward D. Horgan, S.J. engaged in unpermitted sexual contact with Plaintiff in violation of a criminal statute which qualifies under the CVA, while plaintiff was a student at Regis High School in New York. Arising

from same, plaintiff pleads causes of action of 1) Negligence, 2) Negligent Training and Supervision of Employees, and 3) Negligent Retention of Employees.

Defendant Jesuits sought dismissal of this action pursuant CPLR §3211(a)(7) and §3211(a)(5), arguing that plaintiff's claim fails to meet the pleading requirements of CPLR §214-g and is therefore untimely. Specifically, said defendants argued that Complaint is entirely devoid of any allegation of specific conduct that would fall within the definition of "sexual offense" within the Penal Law, as required by Section 214-g and that the Complaint fails to allege where such conduct occurred, or more specifically, that such conduct occurred in New York. In denying that branch of the motion, this Court held that contrary to movants' argument, the Complaint states that "Plaintiff and Plaintiff's family came in contact with Fr. Horgan as an agent and representative of Defendants, and at Regis High School" and that "In approximately 1965, when Plaintiff was approximately 16 years old, Fr. Horgan engaged in unpermitted sexual contact with Plaintiff in violation of at least one section of New York Penal Law Article 130 and/or § 263.05, or a predecessor statute that prohibited such conduct at the time of the abuse." As Regis High School is located in New York, it can be fairly implied that the alleged abuse occurred in New York, however, to the extent that the Complaint does not specifically state same, plaintiff will be granted leave to replead.

Plaintiff now moves for leave to reargue the portion of said Order directing plaintiff to supplement its pleading. A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc*., 112 AD2d 410 [2d Dept 1985]). A "motion to reargue is not an opportunity to present new facts or

arguments not previously offered, nor it is designed for litigants to present the same arguments already considered by the court" (see, *Pryor v. Commonwealth Land Title Ins. Co*., 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]). As plaintiff filed an amended complaint adding language specifying that the abuse occurred in New York state, said motion is Denied as moot.

The Jesuits' motion is functionally identical to its prior motion to dismiss, which was denied by this Court. Said defendants also seek dismissal arguing that plaintiff has failed to plead its negligence claims. 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]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by 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], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Leon*, 84 NY2d at 88, supra; *Ark Bryant Park Corp. v Bryant Park Restoration Corp*., 285 AD2d 143, 150 [1st Dept 2001]; "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co*., NYLJ January 18, 2005, p. 26 col.4, citing *P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (id. at 376; see *Rovello v Orofino Realty Co*., 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88, supra; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Moving Defendants contend that plaintiff has failed to sufficiently plead a separate duty of care owed beyond its duty to use reasonable care in hiring, retaining, supervising and training employees and do not owe a separate general duty to prevent conduct by its subordinate that is illegal, outside of its control, and unforeseeable (see *Kenneth R. v R.C. Diocese of Brooklyn*, 229 AD2d 159, 163 [2d Dept 1997]. Moving Defendants further contend that "plaintiff fails to plead the essential elements of a negligent training, retention or supervision claim. In addition to the standard elements of negligence, Plaintiff must show that the defendant "knew, or should have known, of the [subordinate's] propensity for the sort of conduct which caused the injury," and that the "tort was committed on the employer's premises with the employer's chattels" (see *Ehrens v Lutheran Church*, 385 F3d 232, 235 [2d Cir 2004]." Moving Defendants further contend that Plaintiff's conclusory allegations of notice are not sufficient to state a cause of action.

However, contrary to these assertions "[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Instead, to prevail on 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]). "A necessary element of a cause of action alleging negligent retention or negligent supervision is that the 'employer knew or should have known of the employee's propensity for the conduct which caused the injury'" (*Bumpus v New York City Transit Authority*, 47 AD3d 653 [2d Dept 2008]).

Here, plaintiff alleges that the Moving Defendants had a duty to protect plaintiff from alleged sexual abuse. In this respect, plaintiff has alleged in more than a generalized manner that defendants knew or should have known of Fr. Edward D. Horgan, S.J's propensity to commit such

conduct (*contra Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011][generalized claim that defendant "knew the risk of sexual abuse of minor parishioners by priests and other staff" is insufficient (*Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011]). Moreover, discovery will be necessary before the parties' significant disputes on the issue of notice can be evaluated.

ORDERED that plaintiff's motion and defendant, Jesuits motion are DENIED in their entirety.

7/31/23
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE