

**SWNY 11 DOE v Roman Catholic Archdiocese of N.Y.**

2023 NY Slip Op 32962(U)

August 23, 2023

Supreme Court, New York County

Docket Number: Index No. 950618/2021

Judge: Alexander M. Tisch

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ALEXANDER M. TISCH**

**PART 18**

*Justice*

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**INDEX NO. 950618/2021**

SWNY 11 DOE,

01/14/2022,

Plaintiff,

**MOTION DATE 01/14/2022**

- v -

**MOTION SEQ. NO. 002 003**

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,  
NATIVITY OF OUR BLESSED LADY ROMAN CATHOLIC  
CHURCH A/K/A CHURCH OF THE HOLY ROSARY  
NATIVITY OF OUR BLESSED LADY A/K/A NATIVITY OF  
OUR BLESSED LADY PARISH A/K/A HOLY ROSARY  
NATIVITY OF OUR BLESSED LADY PARISH, FATHER  
JOHN MURRAY (FIRST NAME UNKNOWN), DOES 1  
THROUGH 5

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 25, 26, 32, 33

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 23, 24, 27, 28, 29, 30, 31

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendant ARCHDIOCESE OF NEW YORK, s/h/a ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK (Archdiocese) moves to dismiss the complaint insofar as asserted against it pursuant to CPLR 3211 (a) (7) and/or to strike prejudicial and/or scandalous matter pursuant to CPLR 3024 (b) (motion sequence no. 002). Defendant NATIVITY OF OUR BLESSED LADY ROMAN CATHOLIC CHURCH a/k/a CHURCH OF THE HOLY ROSARY NATIVITY OF OUR BLESSED LADY a/k/a NATIVITY OF OUR BLESSED LADY PARISH a/k/a HOLY ROSARY NATIVITY OF OUR BLESSED LADY PARISH (Church) moves for the same relief (motion sequence no. 003) (Archdiocese and Church collectively defendants or movants).

Plaintiff commenced the instant action seeking to recover damages for sexual abuse allegedly inflicted by Father “John” Murray, an ordained priest serving at the Church. The complaint alleges that plaintiff and his family frequently attended the Church and plaintiff served as an altar boy. Plaintiff was allegedly sexually abused by Murray on multiple occasions between 1955 to 1958, when plaintiff was approximately 7/8 to 10 years old. Insofar as asserted against the movants, the complaint alleges causes of action for negligence; gross negligence; breach of fiduciary duty; and fraudulent concealment.

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]).

#### NEGLIGENCE & NEGLIGENT HIRING, RETENTION, SUPERVISION AND/OR DIRECTION

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]).

“[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) 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, 78 Misc 3d 842, 846-847 [Sup Ct, NY County 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"]]).

Defendants argue that that the complaint insufficiently pleads the prior notice/propensity element. 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 this cause of action is "not statutorily required to be pleaded with specificity" (Belcastro v R.C. Diocese of Brooklyn, New York, 213 AD3d 800, 801 [2d Dept 2023]; see 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 ¶ 32). 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]; G.T. v Roman Catholic Diocese of Brooklyn, N.Y., 211 AD3d 413, 413-14 [1st Dept 2022] ["While the movant argues that plaintiff fails to allege specific facts that it had notice of the priest's criminal proclivities, at this pre-answer stage of the litigation, such information is in the sole possession and control of the movant"]]).

## SOCIAL SERVICES LAW § 413 AND § 420

Defendants argue that the complaint should be dismissed to the extent that it alleges failure to report abuse to governmental agencies and infers a claim premised upon Social Services Law §§ 413, 420.

Social Services Law § 413, which went into effect on September 1, 1973, provides that certain school officials “are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child” (*id.* § 413[1][a]; see L 1973, ch 1039). Social Services Law § 420(2) provides that “[a]ny person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.” For purposes of Social Services Law § 413, an “abused child” means “a child under eighteen years of age and who is defined as an abused child by the family court act” (*id.* § 412[1]). Family Court Act § 1012(e) defines an “abused child” as one harmed by a “parent or other person legally responsible for his [or her] care.” (*Hanson v Hicksville Union Free School Dist.*, 209 AD3d 629, 631 [2d Dept 2022]).

The Court agrees that the complaint’s reference to the laws is vague — had plaintiff intended to bring such a cause of action, it should have been separately stated. In any event, to the extent plausibly inferred, the Court finds that the claim is insufficiently stated as the movants are not “person[s] legally responsible” for plaintiff’s care (*see id.* [complaint failed to state such cause of action where alleged abuser was plaintiff’s teacher and guidance counselor]).

## BREACH OF FIDUCIARY DUTY

“Where a . . . parishioner plaintiff seeks to establish the existence of a fiduciary relationship with an institutional church defendant, the plaintiff may not merely rely on the church's status in general, but must come forward with facts demonstrating that his or her relationship with the institution was somehow unique or distinct from the institution's relationship with other parishioners generally” (*G.T.*, 211 AD3d at 414, quoting *Doe v Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]). A fiduciary relationship may be

established upon a showing that a congregant's relationship with a church entity resulted in "de facto control and dominance" when the congregant was "vulnerable and incapable of self-protection regarding the matter at issue" (Marmelstein v Kehillat New Hempstead, 11 NY3d 15, 22 [2008]). Here, the complaint only alleges that plaintiff was sexually abused by Murray at the Church where he and his family attended and where he served as an altar boy, which the Court finds as insufficient to demonstrate any unique relationship that differs from other parishioners. As such, the allegations fail to show a viable claim apart from the negligence claims.

#### FRAUDULENT CONCEALMENT

"To state a cause of action sounding in fraud, a plaintiff must allege that '(1) the defendant made a representation or a material omission of fact which was false and the defendant knew to be false, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) there was justifiable reliance on the misrepresentation or material omission, and (4) injury'" (McDonnell v Bradley, 109 AD3d 592, 592-93 [2d Dept 2013], quoting Selechnik v Law Off. of Howard R. Birnbach, 82 AD3d 1077, 1078 [2d Dept 2011]). "A cause of action to recover damages for fraudulent concealment requires, in addition to allegations of scienter, reliance and damages, an allegation that the defendant had a duty to disclose material information and that it failed to do so'" (McDonnell, 109 AD3d at 593, quoting High Tides, LLC v DeMichele, 88 AD3d 954, 957 [2d Dept 2011]).

Contrary to defendants' assertions, "a duty to disclose may arise when one party's superior knowledge of essential facts renders nondisclosure inherently unfair" "[e]ven in the absence of a fiduciary relationship" (Barrett v Freifeld, 64 AD3d 736, 738 [2d Dept 2009]). Because defendants' sole argument in support of dismissal is that the claim is not cognizable

without a fiduciary relationship, which is inaccurate, the Court finds that defendants failed to show entitlement to dismissal of the claim at this juncture.

CPLR 3024 (B)

CPLR 3024 (b) provides that “[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading.” “The first [inquiry] is whether the allegation that a party seeks to strike is, in fact, scandalous or prejudicial. If the nature and content of an allegation is not actually scandalous or prejudicial, the court’s analysis ends quickly and there is nothing to strike from the pleading” (Pisula v Roman Catholic Archdiocese of N.Y., 201 AD3d 88, 99 [2d Dept 2021]). The second inquiry for the Court is to “determine whether the allegation has been inserted into the pleading ‘unnecessarily’” (id. at 100). In other words, “[a]llegations about matters that are irrelevant to the viability of a cause of action or defense, which are also scandalous or prejudicial to the adversary party, may be stricken from the pleading” (id.). “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.).

Defendants claim that paragraphs 10 through 13 should be stricken, which allege that the Catholic Church, generally, has a “long and well-documented history of child sexual abuse by priests” and discusses a special report by the Boston Globe regarding the Boston Archdiocese and a grand jury investigation report concerning various dioceses in Pennsylvania (see NYSCEF Doc No 2).

As to the first inquiry, the Court finds that some of the allegations are arguably scandalous (see Pisula, 201 AD3d at 99 [“Allegations of sexual abuse are, by their nature, definition, and essence, scandalous and prejudicial on some obvious level”]). Regarding the second inquiry, the Second Department in Pisula further explained that, generally, “[i]n law,

relevance is sometimes tempered by whether the probative value of certain matter is outweighed by the prejudice that may be caused to a party” and “[w]here mere pleadings are concerned under CPLR 3024(b), as here, courts will engage in a similar exercise of weighing the relevance of scandalous or prejudicial matter to the transactions or occurrences alleged and the material elements of the causes of action or defenses” (*id.* at 100-101).

Here, the Court finds that the allegations are unnecessary and/or do not have any probative value with respect to the claims against the defendants in this matter, the Archdiocese of New York and/or this specific Church. Accordingly, that branch of the motions to strike those paragraphs are granted.


It is hereby ORDERED that the motions to dismiss the complaint insofar as asserted against the movants are granted to the extent of dismissing the breach of fiduciary duty claim only, and the motions are otherwise denied; and it is further

ORDERED that the branches of the motions to strike certain allegations in the complaint pursuant to CPLR 3024 (b) is granted; and it is further

ORDERED that the movants shall 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 a first compliance conference order within thirty (30) days after issue is joined.

This constitutes the decision and order of the Court.

8/23/2023	
DATE	ALEXANDER M. TISCH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN
APPLICATION:	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	