

ARK574 Doe v Diocese of Brooklyn

2023 NY Slip Op 33178(U)

September 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 519755/2021

Judge: Alexander M. Tisch

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

PRESENT: HON. ALEXANDER M. TISCH

PART 18

Justice

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ARK574 DOE,

Plaintiff,

- v -

DIOCESE OF BROOKLYN a/k/a THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK; SISTERS OF THE HOLY FAMILY OF NAZARETH d/b/a SISTERS OF THE HOLY FAMILY OF NAZARETH – U.S.A., INC. f/k/a SISTERS OF THE HOLY FAMILY OF NAZARETH, INC.; LITTLE FLOWER HOUSE OF PROVIDENCE a/k/a LITTLE FLOWER CHILDREN & FAMILY SERVICES OF NEW YORK; and DOES 1-5 whose identities are unknown to Plaintiff,

Defendants.

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INDEX NO. 519755/2021

MOTION DATE 06/14/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25-86 were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant Sisters of the Holy Family of Nazareth d/b/a Sisters of the Holy Family of Nazareth – USA, Inc. f/k/a Sisters of the Holy Family of Nazareth, Inc. (hereinafter, the “Named Sister Defendant” or “NSD”) seeks an order pursuant to CPLR 3211(a)(1) and (a)(8), and, alternatively, pursuant to CPLR 3211(a)(1) and (a)(7), dismissing the complaint against it (Motion Seq. 002).

BACKGROUND

This is an action commenced pursuant to the Child Victims Act (“CVA”) in which Plaintiff alleges that as a minor in the foster system in the 1950s and 1960s, Plaintiff was subject to repeated abuse while a resident at Little Flower House of Providence a/k/a Little Flower Children & Family Services of New York (“Little Flower”). Plaintiff alleges the abuse was

perpetrated by Father John Doe, a Roman Catholic cleric employed by Defendant Diocese of Brooklyn (the Diocese), and Sister Geraldine, a Roman Catholic Sister employed by the Diocese and NSD. Plaintiff alleges NSD and the other named Defendants, who were also responsible for supervising Little Flower, took no action to stop the abuse and has asserted claims against them for Negligence, Negligent Training and Supervision, and Negligent Retention. Plaintiff's complaint describes NSD as a religious corporation and congregation that oversaw a variety of programs and activities involving children, and had the power to appoint, supervise, and monitor each person working with children.

In its motion for dismissal, NSD argues that it has not been properly named in this action, that the Court has no personal jurisdiction over it, and that the complaint fails to state a cause of action against it.

NSDs contends it is not a correct party as it is an independent and distinct civil entity from the religious institute that Plaintiff may have intended to sue, Sisters of the Holy Family of Nazareth, Holy Family Province (referred to by NSD and herein as the "Community"). NSD is a civil corporation formed in 2006. NSD has submitted its Articles of Incorporation and Bylaws, which reflect that its decision-making powers are vested in a board of officers and directors who control the corporation's affairs. As a separate legal entity that is distinct from its religious counterpart, NSD argues it is not a proper party to this action, and furthermore, is not subject to this Court's jurisdiction given that it is an Illinois corporation with no contacts or activities in New York. NSD argues that if Plaintiff intended to sue the Sisters of the Holy Family of Nazareth (the "Sisters") that are alleged to have worked at Little Flower, he should have named the Community as a party, as well as a representative natural person of the Community, which is required for non-legal and/or unincorporated entities such as the Community.

In opposition, Plaintiff argues the Court has jurisdiction over NSD as the merger documents introduced by NSD states that it may be served with process in the State of New York. Plaintiff contends there is “no meaningful distinction” between NSD and the Community for the purposes of this Court’s jurisdiction, as they are united in interest as the civil and canonical arms of the Sisters. Plaintiff requests permission to conduct limited jurisdictional discovery in the event the Court finds Plaintiff has not established jurisdiction over NSD.

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). 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; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

“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]).

The Court first addresses whether NSD is a proper party to this action.

As discussed *supra*, NSD is an Illinois civil non-profit corporation formed in 2006. NSDs have introduced documentation showing that there was a merger between five civil non-for profit corporations in 2007, with NSD as the surviving corporation (the “2007 Corporate Merger”). One of the corporations included in the merger was Sisters of the Holy Family of Nazareth, Inc. (“SHFN”) a former Connecticut civil nonprofit corporation, which was in existence at the time relevant to the allegations here. There was also an additional corporation based in New York (the “NY Corporation”) that did not participate in the 2007 Corporate Merger but later merged with USA, Inc. in 2011. However, Immaculate Heart, the canonical branch of the Sisters that provided services as Little Flower, moved from New York to Connecticut in 1962, leaving no province in New York. As such, any general support for the Sisters’ activities could only have been provided by SHFN.

While Plaintiff acknowledges the distinction between the civil and canonical arms of the Sisters, Plaintiff argues that NSD, as the surviving civil arm, is united in interest with the canonical arm and thus possess liability for the actions of the Sisters at the time of the complaint. Plaintiff cites to provisions of NSD's bylaws which state that the corporation's purpose is to "promote and support, directly or indirectly, by donation, loan or otherwise, the interests and purposes of the Sisters of the Holy Family of Nazareth, a religious institute within the Roman Catholic Church." Plaintiff concludes that as the Sisters' civil arm provided support to the Sisters' activities, NSD is liable as the successor corporation in existence today.

It is true that, as Plaintiff argues, a corporation can be held liable for the torts of its predecessor if "there was a consolidation or merger of seller and purchaser" or "the purchasing corporation was a mere continuation of the selling corporation" (*Schumacher v Richards Shear Co., Inc.*, 59 NY2d 239, 244-45 [1983]). However, the record here is devoid of evidence that SHFN, the predecessor in existence at the time of the allegations, could have been held liable for the Sisters' alleged negligence. Unlike NSD's 2006 bylaws, SHFN's bylaws, which governed SHFN's activity at the time and have been submitted for review, contain no language regarding promotion and support for the purposes of Immaculate Heart.

Even assuming arguendo that SHFN's bylaws contained similar language stating that it funded Immaculate Heart's purposes, there is nothing that suggests SHFN directed or controlled Immaculate Heart's activities, such that it could be liable for the alleged negligence of the Sisters assigned to work at Little Flower. It is well settled that sponsorship or promotion absent control is insufficient to support liability (*see, e.g., Mercer v City of New York*, 255 AD2d 368 [2d Dept 1998]). In another CVA action pending in this court, *M.A. v City of N.Y. et al.* (Index No. 950041/2021), the plaintiff alleged abuse by a foster parent she was assigned to by defendant

New York Foundling (“Foundling”), an agency that she alleged was staffed by defendant Sisters of Charity of Saint Vincent de Paul of New York (“Sisters of Charity”). Although she did not allege that they were involved in her foster placement, plaintiff also named as defendants the Archdiocese of New York (the “Archdiocese”) and Catholic Charities Community Services Archdiocese of New York (“Catholic Charities”), because Catholic Charities alleged provided resources and support to Foundling.

The court (Hon. Deborah A. Kaplan) granted a motion for dismissal made by the Archdiocese and Catholic Charities, finding, as relevant here, that Catholic Charities was a distinct legal entity separate from Foundling with its own board of directors (Index No. 950041/2021, NYSCEF doc No. 104). The court held that plaintiff’s evidence that Catholic Charities provided support to Foundling “does not require a different finding by the court where there is ample evidence contesting defendants’ supervision and control...[t]here 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” (*id.* at 3-4).

Here, NSD presents an even stronger case for dismissal than Catholic Charities in *M.A.*, given that as discussed, the documentary evidence presented does not indicate that SHFN, NSD’s predecessor, provided resources for Immaculate Heart at the time of the allegations. Even if that were the case, SHFN’s general financial support would be insufficient to establish liability for the actions and decisions made by Immaculate Heart’s separate leadership pursuant to their ecclesiastical authority. Plaintiff’s complaint also contains no specific allegations against the civil corporation itself; rather, Plaintiff groups NSD with the individual Sisters alleged to have been negligent.

Although Plaintiff acknowledges the civil and canonical distinction of the Sisters, Plaintiff maintains throughout his arguments that NSD is somehow a successor to Immaculate Heart, such that NSD and the presently-known Community are aligned for the purposes of this Court's jurisdiction. However, Plaintiff has provided no substantive arguments for these conclusory statements. Plaintiff appears to conflate the 2007 Corporate Merger that left NSD as the surviving civil arm with the 2007 Canonical Merger that combined Immaculate Heart and four other provinces to create the Community, notwithstanding the documentary evidence submitted that details the separate leadership structures and purposes of the civil and canonical branches. Indeed, Plaintiff's complaint describes NSD as *both* a non-profit religious corporation incorporated in Illinois, and a religious congregation. Plaintiff separately argues the corporation and congregation have each been named as parties because the caption names the Sisters of the Holy Family of Nazareth "d/b/a" USA, Inc. However, USA, Inc. is not a registered trade name for the Sisters' religious community; rather, it is the legal name of the current Illinois corporation.

Additionally, the court has already held in another recent CVA case that USA, Inc. is an independent legal entity separate from the Sisters as a religious body. In *T.B. v Diocese of Brooklyn, et al.* (Index No. 400079/2020), the plaintiff alleged he was abused by one of the Sisters who was working at a Catholic school, and named "Sisters of the Holy Family of Nazareth – USA, Inc." as a defendant (referred to by the court as "USA, Inc."). The court (Hon. George J. Silver) granted USA, Inc.'s motion for dismissal based on documentary evidence that demonstrated it "is a separate and independent legal entity from the Sisters of the Holy Family of Nazareth, a religious institute of the Roman Catholic Church of women living in community with their sisters, which is not a legal entity at all. More to the point, USA, Inc. is not the

successor-in-interest to the Sisters of the Holy Family of Nazareth nor is it liable for [the alleged misconduct]” (Index No. 400079/2020, NYSCEF doc No. 59, at 5). The court additionally found that the sisters working at the school were there pursuant to the church’s request, not at the direction of USA, Inc., and that USA, Inc. and the Sisters “are not agents of one another, do not obligate one another, and are not liable for one another’s action and omissions” (*id.*).

In view of the foregoing and based on the extensive documentary evidence provided here, it is clear that NSD is not a proper party and cannot bear liability for the alleged actions of the Sisters working at Little Flower. This Court thus need not reach Plaintiff’s arguments regarding whether general or specific jurisdiction can be exercised over NSD nor entertain the application in Plaintiff’s opposition for limited jurisdictional discovery. Even if jurisdiction could be established, the evidence already provided shows that NSD’s predecessor had no involvement or control over the Sisters that worked at Little Flower. As such, the negligence-based causes of action that comprise Plaintiff’s complaint are not cognizable against NSD. “The mere hope that discovery might provide some factual support for a cause of action is insufficient to avoid dismissal of a patently defective cause of action” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137 [2017]).

As such, the Court finds this action must be discontinued as against NSD.

CONCLUSION

Accordingly, it is

ORDERED that the motion of Defendant Sisters of the Holy Family of Nazareth d/b/a Sisters of the Holy Family of Nazareth – USA, Inc. f/k/a Sisters of the Holy Family of Nazareth, Inc. (“NSD”) for dismissal of this action against it (Motion Seq. 002) is granted; and it is further

ORDERED that this action is severed and shall continue as against the remaining parties; and it is further

ORDERED that counsel for NSD shall serve a copy of this order on all parties and the Clerk of the Court within 14 days; and it is further

ORDERED that the Clerk of the Court is directed to amend the caption accordingly; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "Electronic Filing" pages on the websites for Supreme Court, Kings County [https://ww2.nycourts.gov/courts/2jd/kings/civil/efile.shtml].

This constitutes the decision and order of the Court.

09/07/2023
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 type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE