

ARK61 v Archdiocese of N.Y.

2023 NY Slip Op 33815(U)

October 23, 2023

Supreme Court, New York County

Docket Number: Index No. 950053/2019

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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ARK61,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SOCIETY OF JESUS
A/K/A U.S.A. NORTHEAST PROVINCE OF THE SOCIETY
OF JESUS A/K/A THE NEW YORK PROVINCE OF THE
SOCIETY OF JESUS A/K/A SOCIETY OF JESUS OF
U.S.A. NORTHEAST PROVINCE A/K/A THE SOCIETY OF
JESUS JESUIT FATHERS AND BROTHERS, FORDHAM
PREPARATORY SCHOOL, DOES 1-5 WHOSE
IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 131, 132, 133

were read on this motion to/for

DISMISS

**DECISION + ORDER ON
MOTION**

BACKGROUND

The instant action arises out of allegations that Plaintiff was sexually assaulted as a child by Fernand Beck (“Beck”), a teacher employed by the Archdiocese of New York (“Archdiocese”), the 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”), and Fordham Preparatory School (“Fordham Prep”), an institution run by the Archdiocese and the Jesuits. The Amended Complaint states causes of action for negligence, negligent training and supervision, and negligent retention. This court has already upheld Plaintiff’s Complaint in all respects with one exception: the original complaint did not specifically allege that the sexual abuse occurred in New York. To this point, the court held that “... 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.” *ARK61 Doe v. Jesuits*, (NYSCEF Doc. #111)

Plaintiff’s Amended Complaint alleges that the abuse occurred in New York.

Jesuits now seek to dismiss based on an alleged failure to state a cause of action and the expiration of the statute of limitations in large part rehashing arguments the court has already rejected in this action.

For the reasons set forth below, the motion is denied in its entirety.

ALLEGED FACTS

Beck was a lay teacher employed by the Archdiocese, Jesuits and Fordham Prep. Beck remained under the direct supervision, employ, and control of defendants who placed Beck in positions where he had access to and worked with children as an integral part of his work.

Plaintiff was raised in a devout Roman Catholic family and attended Fordham Prep in Bronx, in the Archdiocese. Plaintiff, as a youth, participated in activities at Fordham Prep. Plaintiff developed great admiration, trust and respect for the Roman Catholic Church, including defendants and their agents. During these activities, Plaintiff, as a minor, was dependent on defendants and Beck. Defendants had custody of Plaintiff and accepted the entrustment of Plaintiff.

From approximately 1981 to 1982, when Plaintiff was approximately 15 to 16 years old, Beck allegedly engaged in unpermitted sexual contact with Plaintiff in New York State. The abuse complained of herein occurred on defendants’ property and/or with the use of their chattels.

DISCUSSION

The Motion to Dismiss Pursuant to CPLR §3211(a)(5)

Jesuits move to dismiss pursuant to CPLR §3211(a)(5) which *inter alia* provides for dismissal where the cause of action may not be maintained because of the statute of limitations. Jesuits argue that by its terms, CPLR 214-g only revives claims that constitute a “sexual offense” as defined in article 130 of the New York State Penal Law and that any complaint that fails to assert that the conduct at issue falls within the definition of “sexual offense” upon a minor that is otherwise time-barred is defective.

In his July 1, 2021 decision denying Jesuits’ motion on this basis the Hon George Silver held in pertinent part “ ... the court finds that CPLR 214-g plainly revives the claims at issue in this lawsuit. A finding to the contrary would run athwart of the Legislature’s intent when adopting CPLR §214-g. As such, defendants’ application for dismissal under CPLR §3211(a)(5) are denied.” (See NYSCEf Doc 47).

Under §214-g, a plaintiff is required to allege “injury...suffered...as a result of conduct which would... constitute a sexual offense as defined in ... the penal law.” *Id.* The section also requires that the Plaintiff have been a minor at the time of the offense. *Id.* Plaintiff argues that as it is illegal in the State of New York for an adult to engage in sexual contact with a 15- to 16-year-old, the allegation is sufficiently pled to come within the purview of the CVA. Jesuits do not address this argument in reply and thus tacitly concede the point. Even if they had not, the court finds that the complaint as pled falls within the revival statute of the CVA and the motion to dismiss based on alleged expiration of the statute of limitations is denied.

Movants Remaining Arguments have already been rejected by the Decisions of Justice Silver and Justice Love Denying Movant's 3211§(a)(7) Motion and Reargument

This Court previously denied the Jesuits' Motion to Dismiss for Negligent Retention Hiring and Supervision. Nothing about the amendment specifying that the conduct took place in New York State requires a different result. The motion is denied for the reasons previously stated.

This Court previously held that the Complaint "alleged in more than a generalized manner that defendants knew or should have known of [Mr. Beck's] propensity to commit such conduct." In addition to alleging that the Jesuits should have known of the danger posed by Mr. Beck, the Amended Complaint alleges that the Jesuits had actual knowledge of the danger.

Causes of action alleging negligence based upon negligent hiring, retention, or supervision are not statutorily required to be pleaded with specificity (*see Boyle v. North Salem Cent. Sch. Dist.*, 208 A.D.3d at 745, 172 N.Y.S.3d 621; *Doe v. Enlarged City Sch. Dist. of Middletown*, 195 A.D.3d at 596, 144 N.Y.S.3d 639; *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d at 162, 654 N.Y.S.2d 791).

Novak v. Sisters of Heart of Mary, 210 A.D.3d 1104, 1105 (2nd Dept 2022).

As to the request to dismiss the cause of action for common law negligence, this Court previously examined the exact same allegations and held that discovery would be necessary before the parties' disputes on this issue could be resolved.

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

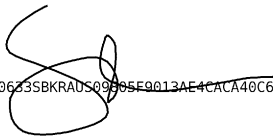
ORDERED that counsel are directed to appear for a virtual compliance conference on January 4, 2024, at 11:00 AM; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.


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10/23/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: