

ARK461 DOE v Archdiocese of N.Y.

2023 NY Slip Op 33857(U)

October 19, 2023

Supreme Court, New York County

Docket Number: Index No. 950571/2021

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

-----X

ARK461 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. PETERS'S, PARISH
OF STS. PETER AND PAUL AND ASSUMPTION, DOES 1-
5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

were read on this motion to/for

DISMISSAL

**DECISION + ORDER ON
MOTION**

BACKGROUND

Plaintiff commenced this action pursuant to the Child Victims Act (“CVA”) based on allegations that he was sexually abused as a child by a trusted priest at St. Peter’s, a parish in the Archdiocese of New York (“Defendant”). Defendant seeks dismissal of the complaint based on Plaintiff’s inability to identify the name of the priest who abused him as a child. For the reasons set forth below, the motion is denied.

ALLEGED FACTS

The following facts are alleged in the complaint.

Father John Doe (“Fr. Doe”) was a Roman Catholic cleric employed by the Archdiocese and St. Peter. Plaintiff was raised in a devout Roman Catholic family and attended St. Peter in Staten Island, NY, in the Archdiocese. Plaintiff and Plaintiff’s family came in contact with Fr. Doe as an agent and representative of Defendants, and at St. Peter.

Plaintiff participated in youth activities and/or church activities at St. Peter and developed great admiration, and respect for the Roman Catholic Church, including Defendants and their agent.

From approximately 1968 to 1970, when Plaintiff was approximately 7 to 9 years old, Fr. Doe engaged in unpermitted sexual contact with Plaintiff. Plaintiff's relationship to Defendants and Fr. Doe, as a vulnerable child, parishioner, and participant in church activities, was one in which Plaintiff was subject to the ongoing influence of Defendants and Fr. Doe. The culture of the Catholic Church created pressure on Plaintiff not to report the abuse Plaintiff suffered.

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 [1st Dept 1997]). 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]).

“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; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Salles*, 300 AD2d at 228).

Defendant argues that the entire complaint should be dismissed because the alleged perpetrator is unnamed. At this point in time, the identity of the alleged abuser is unknown. However, Plaintiff sufficiently pled that he was sexually abused at the tender age of approximately 7 to 9 years old by a priest under the supervision, employ, and control of Defendants. Plaintiff alleges that he attended St. Peters in the Archdiocese; participated in activities in the Archdiocese; and was in the custody, care, and control of the Archdiocese when the abuse occurred. Plaintiff alleges that Defendants knew or should have known that the priest in question was a danger to children before he sexually assaulted Plaintiff. Plaintiff further

alleges that Defendants knew or should have known that Defendants had numerous agents who had sexually molested children, and thus knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities. These allegations are sufficient to survive a motion to dismiss under New York's liberal pleading standard.

“The identity of this priest may or may not be revealed through discovery. Although the Archdiocese cannot be held vicariously liable for the intentional torts committed by an alleged perpetrator, the Archdiocese can be held vicariously liable for negligence committed in allowing such abuse to take place when a duty of reasonable care existed to safely manage the subject facilities. Discovery will be necessary before the parties' significant disputes on the identity of the priest []. As such, the defendant's motion to dismiss plaintiff's negligence cause of action is denied” *O'Brien v. Archdiocese of New York, et al.*, Supreme Court New York County, Index No. 950092/2020 [Hon. George J. Silver, D.C.A.J. August 13, 2021]). *See also Henriquez v. Roman Catholic Archdiocese of New York, et al.*, Supreme Court New York County, Index No. 950183/2021 [Hon. Laurence L. Love, J.S.C September 26, 2022]).

Accordingly, at this juncture, where this Court must view the evidence in the light most favorable to the Plaintiff, the Defendant's motion seeking dismissal of the entire complaint due to Plaintiff's inability to name the alleged perpetrator is denied.

WHEREFORE it is hereby:

ORDERED that the motion to dismiss is denied; 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, 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);

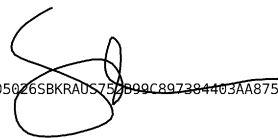
and it is further

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; and it is further

ORDERED that counsel are directed to appear for a virtual compliance conference on December 15, 2023, at 10:00 AM.



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10/19/2023
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: