SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS **PART** 57

Justice

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INDEX NO. 520096/2021

ARK625 DOE,,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

DIOCESE OF BROOKLYN a/k/a THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK; SISTERS OF ST. JOSEPH OF CARONDELET a/k/a THE SISTERS OF SAINT JOSEPH a/k/a CONGREGATION OF THE SISTERS OF SAINT JOSEPH OF BRENTWOOD, NY; FRANCISCAN BROTHERS OF BROOKLYN a/k/a CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS a/k/a FRANCISCAN BROTHERS GENERALATE a/k/a FRANCISCAN BROTHERS, INC, BROOKLYN, NY; ST. FRANCIS XAVIER; ST. FRANCIS XAVIER CATHOLIC ACADEMY; and DOES 1-5 whose identities are unknown to Plaintiff

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 42 - 68 were read on this motion to/for JUDGMENT - SUMMARY

BACKGROUND

Plaintiff brought this lawsuit pursuant to the New York Child Victims Act ("CVA") which revived previously time-barred claims for child sex abuse. Plaintiff's Complaint asserts claims for negligent retention, negligent training and supervision, and negligence against Defendant Franciscan Brothers of Brooklyn a/k/a Congregation of the Religious Brothers of the Third Order

Regular of St. Francis a/k/a Franciscan Brothers Generalate a/k/a Franciscan Brothers Inc., Brooklyn, NY ("Franciscan Brothers"). Plaintiff's claims against Franciscan Brothers stem from alleged abuse by a doctor at St. Francis Xavier ("St. Francis Xavier"), a parish and school run by defendant where Plaintiff was a parishioner and student.

PENDING MOTION

On July 20th, 2022, Franciscan Brothers moved for an order pursuant to CPLR §3212 granting summary judgment dismissing the action in its entirety, or for an order pursuant to CPLR §3211(a)(7) dismissing the action for failure to state a cause of action. The motion was fully briefed and marked submitted.

For the reasons stated below, the motion is also denied in its entirety.

ALLEGED FACTS

The following facts are alleged in the complaint.

At all times material, Doctor John Doe ("Dr. Doe") was employed by the Diocese, the Sisters of St. Joseph, the Franciscan Brothers, and St. Francis Xavier. Defendants placed Dr. Doe 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 St. Francis Xavier in Brooklyn, in the Diocese. Plaintiff and Plaintiff's family came in contact with Dr. Doe as an agent and representative of Defendants, and at St. Francis Xavier.

Plaintiff participated in youth activities and/or church activities at St. Francis Xavier. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church, and their agents, including Dr. Doe. During and these activities, Plaintiff was dependent on Defendants and Dr. Doe. Defendants had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

From approximately 1952 to 1960, when Plaintiff was approximately 5 to 13 years old, Dr. Doe 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.

The culture of the Catholic Church over Plaintiff created pressure on Plaintiff not to report the abuse Plaintiff suffered.

DISCUSSION

Summary Judgment is Denied

A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment (*see Video Voice, Inc. v. Local T.V., Inc.,* 114 A.D.3d 935; *Bank of Am., N.A. v. Hillside Cycles, Inc.,* 89 A.D.3d 653; *Venables v. Sagona,* 46 A.D.3d 672, 673). Where, as here a party has moved for summary judgment prior to any depositions being taken, summary judgment is properly denied as premature because discovery may lead to relevant evidence. *Martinez v. 305 W. 52 Condo.*, 128 A.D.3d 912, 914 (2015).

Moreover, the moving papers fail to make out a *prima facie* case for summary judgment and Defendant's assertions are contradicted by other evidence in the record. Defendant moves for dismissal, broadly asserting that it had no connection with St. Francis Xavier or the abuser in this case, but its assertions are not enough to warrant summary dismissal of the complaint. Additionally, Defendant's assertions are refuted by the Catholic Church's own records demonstrating that the Franciscan Brothers of Brooklyn staffed St. Francis Xavier during the time that Plaintiff was abused.

The affidavit submitted by the Franciscan Brothers does not resolve all factual issues in the complaint. "What the Court of Appeals has consistently said is that evidence in an affidavit

used by a defendant to attack the sufficiency of a pleading will seldom if ever warrant the relief the defendant seeks unless such evidence establishes conclusively that plaintiff has no cause of action." *Basis Yield Alpha Fund v. Goldman Sachs Group, Inc.*, 115 A.D.3d 128, 134 (1st Dep't 2014). In a recent case, the First Department held that such evidence did not conclusively resolve the allegations in the complaint regarding control, agency, supervision and employment [*J.D. v. Archdiocese of New York*, 214 A.D.3d 561 (2023)].

The Motion to Dismiss for Failure to State a Cause of Action is Denied

New York's pleading standard is notice pleading. CPLR § 3013 provides:

> Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

"The allegations of a complaint generally need not be set forth in detail; it is sufficient if the parties are (1) put on notice of the underlying transactions or occurrences, and (2) the material elements of the cause of action are stated." *Mid-Hudson Valley Fed. Credit Union v. Quartararo & Lois, PLLC*, 64 N.Y.S.3d 389, 393 (3d Dep't 2017), *aff'd*, 31 N.Y.3d 1090 (2018). Furthermore, "[a] complaint need not, and should not, anticipate and refute defenses." *Sabater ex rel. Santana v. Lead Indus. Ass'n, Inc.*, 704 N.Y.S.2d 800, 804 (Sup. Ct. Bronx Cnty. 2000). Here, Plaintiff's Complaint meets both requirements.

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]). Additionally, "[w]hether 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]).

Plaintiff's Complaint more than sufficiently puts Defendant on notice of the underlying occurrences and the material elements of each cause of action for purposes of pleading. The Complaint alleges that "from approximately 1952 to 1960, when Plaintiff was approximately 5 to 13 years old, Dr. Doe 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…" and that "this action is brought pursuant to the New York Child Victims Act, CPLR § 214-g". These allegations are sufficient at the pleading stage. See *JAS# 4 Doe, v. Enlarged City School District of Middletown et al.*, 195 A.D.3d 595 (2d Dep't 2021).

Additional details regarding the specifics of the alleged abuse can be disclosed in the bill of particulars and disclosure devices, but are not required at the pleading stage.

Plaintiff asserts three causes of action for negligence, negligent retention and negligent training and supervision.

To state a claim for negligent training and supervision, "it must be demonstrated that the employer 'knew or should have known of the employee's propensity for the conduct which caused the injury and that the allegedly deficient supervision or training was the proximate cause of such injury." *Hicks v. Berkshire Farm Ctr. & Services for Youth*, 999 N.Y.S.2d 879 (3d Dep't 2014).

With regard to negligent retention, "[t]he employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting

the hiring and retention of the employee." *Johansmeyer v New York City Dept. of Educ.*, 85 N.Y.S.3d 561, 565 (2d Dep't 2018). The elements of each of these claims were pled in the Complaint.

To establish a *prima facie* case of negligence in New York, "a plaintiff must demonstrate that the defendant owed a duty of reasonable care, a breach of that duty, and a resulting injury proximately caused by that breach." *Elmaliach v. Bank of China Ltd.*, 971 N.Y.S.2d 504 (1st Dep't 2013). "The threshold question in tort cases is whether the alleged tortfeasor owed a duty of care to the injured party." *Id.* The questions of foreseeability and causation are "generally and more suitably entrusted to fact finder adjudication." *Palka v. Servicemaster Mgmt. Serv. Corp.*, 83 N.Y.2d 579, 585 (1994). While Defendant argues there is a lack of a duty alleged in the complaint, the court disagrees.

The complaint alleges that Defendant had a duty to protect against foreseeable harm by third parties like this abuser, that Defendant had a duty to protect Plaintiff because of a special relationship with Plaintiff and that Defendant owed a duty to protect all children who participated in its programs from generally foreseeable dangers.

Based on the foregoing, the court finds that the complaint does state a cause of action for each of the three claims asserted.

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; 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 counsel appear for a virtual compliance conference on January 29, 2024 at 10:00 AM; and it is further

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

November 2, 2023
DATE

HON. SABRINA B. KRAUS, 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