

ARK570 Doe v Diocese of Brooklyn

2023 NY Slip Op 34205(U)

November 15, 2023

Supreme Court, Kings County

Docket Number: Index No. 519805/2021

Judge: Mark I. Partnow

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At an IAS Term, Part CVA 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of November, 2023.

P R E S E N T:
HON. MARK I. PARTNOW,

Justice.

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ARK570 DOE,

Index No. 519805/2021

Plaintiff,

MS#2.

-against-

DIOCESE OF BROOKLYN a/k/a THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK; CAPUCHIN FRANCISCAN FRIARS a/k/a CAPUCHIN FRANCISCAN FRIARS PROVINCE OF THE SACRED STIGMATA OF ST. FRANCIS; ST. JUDE a/k/a ST. JUDE SHRINE CHURCH; OUR LADY OF TRUST CATHOLIC ACADEMY; AND DOES 1 – 5,

Defendants.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

19-20, _____

Opposing Affidavits (Affirmations) _____

28-30, _____

Affidavits/ Affirmations in Reply _____

31 _____

Other Papers: _____

Upon the foregoing papers, Defendants, Capuchin Friars a/k/a Capuchin Franciscan Friars Province of the Sacred Stigmata of St. Francis (the Capuchins) move (motion sequence #2) for an order, pursuant to CPLR 3211 (a) (7), dismissing the complaint of plaintiff ARK570 Doe (the Plaintiff) as against the Capuchins.

Plaintiff commenced this action pursuant to the Child Victim's Act (CVA) alleging that he was sexually abused on multiple occasions between 1975 and 1978, when Plaintiff was approximately 10 to 13 years old, as a student at Our Lady of Trust Catholic Academy (Our Lady) and as a parishioner at Saint Jude's Church (St. Jude's). Specifically, Plaintiff alleges that he was sexually abused as a child by Father Felix Miritello (Fr. Miritello) who the Plaintiff alleges was employed by the Capuchins and the Diocese and was under their supervision, employ and control at St. Jude while the Plaintiff was a student there.

In determining whether a complaint is sufficient to withstand a motion pursuant to CPLR 3211 (a) (7), "the 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]). The court must accept the facts alleged in the complaint to be true and "determine only whether the facts as alleged fit within any cognizable legal theory (*Dye v Catholic Med. Ctr. of Brooklyn & Queens*, 273 AD2d 193, 193-194 [2d Dept 2000]). The court "is not concerned with determinations of fact or the likelihood of success on the merits" (*Detmer v Acampora*, 207 AD2d 477, 477 [2d Dept 1994] *see Stukuls v State of New York*, 42 NY2d 272, 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]). Although a complaint may be inartfully drawn, illogical or even informal, it will be "deemed to allege whatever cause of action can be implied from its statement by fair and

reasonable intendment”” (*Shields v School of Law, Hofstra Univ.*, 77 AD2d 867, 868 [2d Dept 1980]; quoting *Lupinski v Village of Ilion*, 59 AD2d 1050, 1050 [4th Dept 1977]).

Negligence

The portion of the Capuchin’s motion to dismiss the first cause of action for negligence is denied. The Capuchin’s argue that they had no duty to protect the Plaintiff from Fr. Miritello. In opposition, Plaintiff argues that the Capuchins had a duty of care the Plaintiff from foreseeable harm based on their special relationship and that this has been sufficiently alleged in the complaint. In support, Plaintiff contends that the Capuchins owed a duty to Plaintiff by taking physical custody of Plaintiff as a Catholic student and had a duty to properly supervise Plaintiff and other children participating in programs under its care. Specifically, Plaintiff argues that the Capuchins failed to protect the Plaintiff from the foreseeable abusive conduct of Fr. Miritello, and that the Capuchins knew or should have known of this danger.

Affording Plaintiff the benefit of every positive inference, as is required on a motion to dismiss, it may be inferred that the Capuchins exercised some control over Fr. Miritello as to his assignment and the ability to remove him from such assignment. The Plaintiff is not alleging that the Capuchins are vicariously liable under *respondeat superior* for Fr. Miritello, but rather it is that the Capuchins owed a duty of care to the Plaintiff because of the special relationship he had as a person entrusted to care for the Plaintiff. “To establish a cause of action sounding in negligence, a plaintiff must establish the existence of a duty on defendant's part to plaintiff, breach of the duty and damages”

(*Davila v. Orange County*, 215 AD3d 632 [2d Dept 2023]). The court therefore finds that the complaint sufficiently pleads a cause of action sounding in negligence against the Capuchins (see *Conti v Watchtower Bible & Tract Society of N.Y., Inc.*, 235 Cal App4th 1214, 1233-1235, 186 Cal Rptr3d 26, 43-44 [2015]; *J.B.*, 2023 NY Slip Op 31338[U]).

Contrary to the contentions of the Capuchins, the complaint sufficiently alleged that the Capuchins owed a duty of care to the plaintiff (see *Digiorgio v. The Roman Catholic Diocese of Brooklyn*, No. 520009/2019, 2021 WL 1578326 (N.Y. Sup. Ct. Apr. 22, 2021)). A such, the portion of the Capuchins motion to dismiss Plaintiff's cause of action for negligence pursuant to CPLR 3211(a)(7) is denied.

Negligent Training and Supervision

The portion of the Capuchins motion to dismiss the second cause of action is denied. The Capuchins argue that this claim should be dismissed as the Plaintiff failed to state a cause of action for negligent training and supervision. In support the Capuchins argue that there was never a nexus between the Capuchins and Fr. Miritello. In opposition, Plaintiff argues that the complaint sufficiently alleges an employment relationship between the Capuchins and also sufficiently alleges a claim for negligent training and supervision.

In evaluating such allegations, courts have emphasized that “[c]auses of action alleging negligent hiring, negligent retention, or negligent supervision are not statutorily required to be pleaded with specificity” (*Davila*, 215 AD3d at 635, quoting *Doe v Enlarged City Sch. Dist. of Middletown*, 195 AD3d at 596; see *Boyle*, 208 AD3d at 755).

“The manner in which the defendant acquired actual or constructive notice of [the employee's propensity to commit the alleged] abuse is an evidentiary fact, to be proved by the [plaintiff] at trial” (*Martinez v State of New York*, 215 AD3d 815, 819 [2d Dept 2023]) but, in a pleading, “ ‘the plaintiff need not allege his [or her] evidence’ ” (*id.*, quoting *Mellen v Athens Hotel Co.*, 153 App Div 891, 891 [1st Dept 1912]; *see also Sokol v Leader*, 74 AD3d 1180, 1182 [2d Dept 2010]; *cf. Doe v Hauppauge Union Free Sch. Dist.*, 213 AD3d 809, 811 [2d Dept 2023]).

Here, the Court finds that the complaint sufficiently alleges an employment relationship between the Capuchins and Fr. Miritello. Thus, the Court finds that the portion of the Capuchin's motion to dismiss Plaintiff's cause of action for negligent training and supervision pursuant to CPLR 3211(a)(7) is denied.

Negligent Retention

The portion of the Capuchins motion to dismiss the third cause of action is denied. A claimant can maintain a cause of action for negligent retention by adequately alleging that the “employer knew or should have known of the employee's propensity for the conduct which caused the injury” and nevertheless continued the employee's service (*Bumpus v. New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept. 2008] [internal quotation marks and citation omitted]; *see also Jackson v. New York Univ. Downtown Hosp.*, 69 AD3d 801, 801-02 [2d Dept. 2010]); Here, the Plaintiff alleges sufficient facts to permit an inference that Capuchins should have known that Fr. Miritello would present a danger pursuant to the CVA at the time of his assignment and thereafter sufficient to

satisfy the standard set forth by CPLR 3211(a)(7). What is more, and as stated above, “[c]auses of action alleging negligence based upon negligent hiring, retention, or supervision are not statutorily required to be pleaded with specificity” (*Belcastro v. Roman Cath. Diocese of Brooklyn, New York*, 213 AD3d 800, 801, 184 N.Y.S.3d 367, 369 [2d Dept 2023]).

Accordingly, it is

ORDERED, that the motion of Defendant Capuchins to dismiss the action (motion sequence #2) is denied in its entirety.

The foregoing constitutes the decision and order of the court.

ENTER,



Mark I. Partnow, J. S. C.

HON. MARK I PARTNOW
SUPREME COURT JUSTICE