ARK667 Doe v Archdiocese of N.Y.
2023 NY Slip Op 34457(U)
December 5, 2023
Supreme Court, New York County
Docket Number: Index No. 951345/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ARK667 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, BROTHERS OF THE CHRISTIAN SCHOOLS, LINCOLN HALL, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 951345/2021

MOTION DATE 09/28/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

BACKGROUND

This Child Victims Act ("CVA") lawsuit was brought by a survivor who was allegedly sexually abused as a child by Br. Brendan, F.S.C., ("Brendan") at Lincoln Hall ("Defendant" or "Lincoln Hall"). Plaintiff's Complaint asserts claims for negligence, negligent training and supervision, and negligent retention.

The Complaint alleges that Lincoln Hall employed Brendan and that Lincoln Hall knew or should have known that Brendan was a danger to children before Brendan sexually assaulted Plaintiff. The complaint further alleges that Defendant learned or should have learned that Brendan was not fit to work with children and was aware or should have become aware of Brendan's propensity to commit sexual abuse. The complaint further alleges that notwithstanding said actual or constructive knowledge, Lincoln Hall retained Brendan, failed to

properly supervise him, failed to conduct an appropriate investigation of Brendan, and failed to take reasonable care in light of what it knew or should have known.

DISCUSSION

New York's pleading standard is fundamentally notice pleading – a very liberal standard. "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).

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]).

Movant argues that recent decisions establish a heightened pleadings standard for cases of this type. *See, Moore Charitable Foundation v PJT Partners, Inc.*, 40 NY3d 150 (June 13, 2023); *Doe v. Hauppauge Union Free Sch. Dist.*, 213 A.D.3d 809 (2d Dept 2023); *Easterbrooks v. Schenectady Cnty.*, 218AD3d 969 (3d Dept. 2023).

The standard to sufficiently plead notice to survive a motion to dismiss pursuant to CPLR §3211(a)(7) in a cause of action involving negligent supervision or retention is well established and has been recently reiterated by both the First and Second Departments. *See e.g., J.D. v. The Archdiocese of New York*, 214 AD3d 561(1st Dept. 2023) and *Novak v. Diocese of Brooklyn, et al*, 210 A.D.3d 1104 (2022).

To survive a motion to dismiss pursuant to CPLR §3211(a)(7) in such a case, a plaintiff need only allege that an employer knew or should have known of its employee or agent's harmful propensities, that it failed to take necessary action, and that this failure caused damage to others. The cause of action does not need to be pleaded with specificity. *See Novak, supra*; *Kenneth R. v. Roman Cath. Diocese of Brooklyn*, 229 A.D.2d 159,162 (2d Dept 1997) *Belcastro v Roman Catholic Diocese of Brooklyn*, N.Y., 213 AD3d 800, 801 [2d Dept 2023]).

The court disagrees with movant's assertion that *Moore* and *Easterbrooks* represents a change in the law in this regard.

> "Here, at the pleading stage of the litigation where the plaintiff's allegations in the complaint are treated as true and are accorded the benefit of every possible favorable inference, the complaint is sufficiently pled as to the causes of action to recover damages for negligence, including the negligent hiring, retention, and supervision of the priest (see Doe v Enlarged City Sch. Dist. of Middletown, 195 AD3d at 596), and inadequate supervision of the plaintiff."

Novak 210 AD3d at 1105.

The court further notes that *Moore* was not a 3211 decision but involved appellate review of a decision after trial, and that in *Doe v. Hauppauge Union Free Sch. Dist.*, the plaintiff was sexually abused by a teacher employed at Hauppauge High School, when the plaintiff was attending a party at the teacher's home – off school grounds. 213 A.D.3d 809 (2d Dept. 2023).

Similarly, in a recent decision from the Second Department issued after the *Moore Charitable Foundation* decision. In *Grabowski v. Orange County*, _ NY3d _, 2023 NY Slip Op

04580 (2d Dept., Sept. 13, 2023), the Court upheld New York's liberal pleading standard and found that the Plaintiff's CVA Complaint, "which asserted that the abuse was foreseeable, inter alia, because the County knew or in the exercise of reasonable case should have known of the foster father's propensity to engage in the sexual abuse of children, sufficiently alleged that the County had notice of the dangerous condition at issue such that the abuse could reasonably have been anticipated".

Here Plaintiff has yet to be provided with outstanding discovery and has at this stage of the of the litigation sufficiently pled the causes of action.

WHEREFORE it is hereby:

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

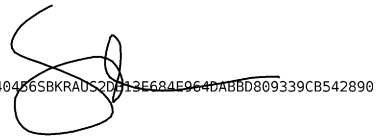
ORDERED that, within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

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 counsel appear for a virtual compliance conference on January 31, 2024, at 2:30 pm.

This constitutes the decision and order of this court.



12/5/2023
DATE

SABRINA 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