

SWNY 3 DOE v Roman Catholic Archdiocese of N.Y.

2024 NY Slip Op 30389(U)

January 26, 2024

Supreme Court, New York County

Docket Number: Index No. 950231/2021

Judge: Alexander M. Tisch

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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SWNY 3 DOE,

Plaintiff,

- v -

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
THE CHURCH OF CATHERINE OF GENOA, RICARDO
FAJARDO, DOES 1 THROUGH 5

Defendants.

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INDEX NO. 950231/2021

MOTION DATE 09/10/2021,
02/17/2022

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 23, 28, 29, 30

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for DISMISSAL

Upon the foregoing documents, defendant The Church of St. Catherine of Genoa (“the Church”) moves in Motion Sequence 002 for an order pursuant to CPLR 3211(a)(7) dismissing plaintiff’s cause of action for fraudulent concealment.

Defendant The Roman Catholic Archdiocese of New York (“the Archdiocese”) moves for the same relief in Motion Sequence Number 003, along with an order pursuant to CPLR 3024(b) striking paragraphs 10-13 of plaintiff’s complaint.

BACKGROUND

This is an action commenced pursuant to the Child Victims Act (“CVA”) in which plaintiff alleges that when she was approximately 16 years old, she was sexually abused by defendant Ricardo Fajardo, a priest employed by the Archdiocese and assigned to work at the

Church. Plaintiff alleges that the Church was aware of Fajardo's proclivity for abuse yet took no action to prevent him from having repeated private contact with plaintiff and her family.

The Church now moves for partial dismissal of plaintiff's complaint as against it, arguing that her cause of action for fraudulent concealment fails to state a claim. The Archdiocese also seeks dismissal of the same cause of action against it, and also moves to strike paragraphs 10-13 of the complaint, arguing that the allegations in those paragraphs are prejudicial and immaterial.

DISCUSSION

In deciding a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is determining "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, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). The pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*), 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, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Fraudulent Concealment

Plaintiff asserts a claim for fraudulent concealment against both the Church and the Archdiocese, arguing that they engaged in a conscious plan to conceal Fajardo's abuse. "The required elements of a common – law fraud claim are a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (see *Ambac Assurance Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 578-579 [2018]). A cause of action for fraudulent concealment requires, in addition to the four foregoing elements, an allegation that the defendant had a duty to disclose material information and that it failed to do so" (see *Gomez-Jimenez v New York Law School*, 103 AD3d 13, 17-18 [1st Dept. 2012]. A duty to disclose arises only where "a fiduciary or confidential relationship exists between plaintiff and defendant" (see *Mandarin Trading, Ltd. v Wildenstein*, 16 NY3d 173, 179 [2011]).

Plaintiff fails to allege a fiduciary relationship between her and defendants. While plaintiff alleges Fajardo visited her family and that she spent time with him privately before the abuse, plaintiff has not alleged elements of "de facto control and dominance" between herself and Defendants that would establish the existence of a fiduciary relationship separate from Defendants' relationship with other parishioners (See *Marmelstein v Kehillat New Hempstead*, 11 NY3d 15, 21 [2008]). Without a fiduciary relationship and a duty to disclose, the fraudulent concealment claim fails.

The Archdiocese's Motion to Strike Paragraphs 10-13 of the Complaint

Paragraphs 10-13 of Plaintiff's complaint speak to historic documentation of the problem of clergy sexual abuse of minors in the Roman Catholic Church. Paragraph 10 discusses the 2002 reporting of the sexual abuse by the Boston Archdiocese in the Boston Globe. Paragraphs 11-12 discuss a grand jury investigation by the Pennsylvania Attorney General into patterns of abuse and coverup by several Pennsylvania state dioceses. Paragraph 13 concludes by alleging that such reports led New York to pass the CVA.

In reviewing a motion pursuant to CPLR § 3024 (b), "the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action" (*Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007]; see *Wegman v Dairylea Coop.*, 50 AD2d 108, 111 [4th Dept 1975]). "Matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements" (*Pisula v Roman Catholic Archdiocese of N.Y.*, 201 AD3d 88, 97 [2d Dept 2021]; see *Irving v Four Seasons Nursing & Rehabilitation Ctr.*, 121 AD3d 1046, 1048 [2d Dept 2014]). Whether the statement in controversy is "scandalous or prejudicial" depends upon a determination of whether the statement, when evaluated in context of the pleading as a whole, "is gratuitous and solely designed to inflame the reader or listener" (*Aronis v TLC Vision Centers, Inc.*, 49 AD3d 576 [2d Dept 2008]).

Plaintiff argues that the information contained in paragraphs 10-13 is proper as it demonstrates "the widespread sexual abuse that was taking place throughout the Catholic Church and being covered up in jurisdictions across the globe." However, the Court finds that the allegations regarding the Boston and Pennsylvania dioceses are too removed from the allegations here. Viewed in the light most favorable to plaintiff, the allegations show that the Archdiocese, as a religious order, may have had general knowledge of the fact that some priests had issues with

sexual abuse. However, such general knowledge is still not probative of the central questions in this action- namely, whether in New York, the Archdiocese had notice of Fajardo’s proclivities specifically such that they were negligent in his hiring and retention. Allegations regarding other priests in different ecclesiastical territories do nothing to bolster plaintiff’s causes of action herein and are thus unnecessarily prejudicial.

Accordingly, the Court grants this portion of the Archdiocese’s motion and strikes paragraphs 10-13 of the complaint.

CONCLUSION

Based on the foregoing, it is hereby


ORDERED that the motions of defendants The Church of St. Catherine of Genoa (“the Church”) and the Roman Catholic Archdiocese of New York (“the Archdiocese”) for partial dismissal of this action (Motion Seqs. 002 and 003) are both granted in their entirety; and it is further

ORDERED that plaintiff’s cause of action for fraudulent concealment is dismissed against both movants; and it is further

ORDERED that paragraphs 10-13 of the complaint are stricken pursuant to CPLR 3024(b); and it is further

ORDERED that counsel for the Archdiocese shall serve a copy of this order with notice of entry within 14 days of the date this order.

1/26/2024
DATE


ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
					OTHER
					REFERENCE