

ARK534 DOE v Archdiocese of N.Y.

2024 NY Slip Op 30887(U)

March 14, 2024

Supreme Court, New York County

Docket Number: Index No. 950725/2021

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 57M

Justice

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ARK534 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, PAULIST FATHERS, ST.
PAUL THE APOSTLE, DOES 1-5 WHOSE IDENTITIES
ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950725/2021

MOTION DATE 01/08/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44

were read on this motion to/for DISMISSAL.

BACKGROUND

Plaintiff instituted this lawsuit under the Child Victims Act (“CVA”) as a survivor who was allegedly sexually abused as a child by Father Robert P. Michele, C.S.P. (“Michele”). Plaintiff asserts causes of action for negligence, negligent retention, and negligent training and supervision.

ALLEGED FACTS

The following facts are alleged in the complaint.

Michele was a Roman Catholic cleric employed by the Archdiocese, the Paulist Fathers, and St. Paul the Apostle. Michele remained under the direct supervision, employ, and control of Defendants. Defendants placed Michele 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. Paul the Apostle in New York, in the Archdiocese. From approximately 1963 to 1964, when Plaintiff was approximately 5 to 6 years old, Michele 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.

Plaintiff's relationship to Defendants and Michele, as a vulnerable child, parishioner, student, and participant in church activities, was one in which Plaintiff was subject to the ongoing influence of Defendants and Michele. The culture of the Catholic Church over Plaintiff created pressure on Plaintiff not to report the abuse.

PENDING MOTIONS

On February 9, 2024, Paulist Fathers a/k/a Missionary Society of St. Paul The Apostle ("Paulist") moved pursuant to CPLR §3211(a)(7) for an order dismissing the action.

On March 11, 2024, St. Paul The Apostle a/k/a Church of St. Paul The Apostle ("St. Paul") moved for the same relief.

On March 11, 2024, the motions were fully briefed and marked submitted.

The motions are consolidated herein and determined as set forth below.

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]).

Movants both argue 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]).

As regards notice Plaintiff makes the following allegations:

Defendants knew or should have known that Michele was a danger to children before Michele sexually assaulted Plaintiff; Defendants they learned or should have learned that Michele was not fit to work with children; Defendants became aware or should have become aware of Michele's propensity to commit sexual abuse; Defendants had knowledge of Michele's propensity for the type of behavior that caused Plaintiff's injuries; Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities; that Defendants knew or should have known that they had numerous agents who had sexually molested children; notwithstanding this knowledge Defendants retained Michele in a position where he had access to children and could foreseeably cause harm; failed to properly supervise Michele, failed to properly supervise Plaintiff, and failed to conduct an appropriate investigation of Michele.

"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.

Similarly, in a recent decision from the Second Department issued after the *Moore Charitable Foundation* decision, *Grabowski v. Orange County*, 219 AD3d 1314 (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”.

Defendants would have the Court read *Moore* in a manner that overrules First Department precedent on the pleading requirements in CVA cases (*see eg ARK55 Doe v. Loyola School*, 222 A.D.3d 572 (1st Dept 2023); *G.T. v. R.C. Diocese of Brooklyn, New York*, 211 A.D.3d 413 (1st Dept 2022); *Waterbury v. New York City Ballet, Inc.* 205 A.D.3d 154 (1st Dept 2022) without pointing to anything in the decision that would indicate that was the intention of the Court of Appeals

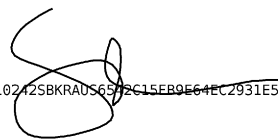
Here Plaintiff has yet to be provided with outstanding discovery and has at this stage of the of the litigation sufficiently pled the causes of action.

WHEREFORE it is hereby:

ORDERED that the motion and cross-motion are denied in their entirety; and it is further

ORDERED that counsel appear for a virtual compliance on April 9th, 2024, at 9:30 am.

This constitutes the decision and order of the Court.



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3/14/2024

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE