

ARK615 DOE v Archdiocese of N.Y.

2024 NY Slip Op 33289(U)

September 11, 2024

Supreme Court, New York County

Docket Number: Index No. 951075/2021

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART 18

Justice

-----X

ARK615 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE CAPUCHIN
FRANCISCAN FRIARS, THE CAPUCHIN FRANCISCAN
FRIARS, OUR LADY OF SORROWS, DOES 1-5 WHOSE
IDENTITIES ARE UNKNOWN TO PLAINTIFF,

Defendants.

-----X

INDEX NO. 951075/2021

MOTION DATE 04/01/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 89, 90, 91

were read on this motion to/for DISMISSAL

Plaintiff commenced the instant action seeking to recover damages for personal injuries sustained as a result of alleged sexual abuse by Father John Doe, whom plaintiff alleges was a Roman Catholic cleric employed by the Archdiocese of New York, The Capuchin Franciscan Friars (the "Capuchin Friars"), and the Province of St. Mary of the Capuchin Order (the "Province"). Plaintiff alleges Father John Doe sexually abused him during youth and/or church activities at Our Lady of Sorrows church and school from approximately 1939 to 1941, when plaintiff was approximately eight to ten years old.

Plaintiff asserts three causes of action against all defendants: 1) negligence; 2) negligent training and supervision of employees; and 3) negligent retention of employees. The Archdiocese's motion to dismiss was denied as moot pursuant to the stipulation of partial discontinuance (Stipulation of Partial Discontinuance with Prejudice, NYSCEF Doc. No. 88) discontinuing the action against the Archdiocese and Our Lady of Sorrows (NYSCEF Doc. No. 89). The Court now issues this amended decision and order on Motion Number 002 to address

the remaining cross-motions to dismiss by the Capuchin Friars and the Province.¹ The Court will address each of the grounds upon which defendants seek dismissal in turn.

Failure to State a Claim

The Capuchin Friars and the Province both move to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(7). In a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), a court determines “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, 211 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, 402-03 [1st Dept 2013]). The pleadings must be liberally construed and 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” (*see* CPLR § 3026; *Siegmund Strauss, Inc.*, 104 AD3d at 402-03; *Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). 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, 48 [1st Dept 1990]).

The Capuchin Friars and the Province argue the complaint fails to state a cause of action because plaintiff does not name the individual who allegedly abused him. Plaintiff's failure to specifically identify the alleged abuser is not a fatal insufficiency warranting dismissal of the complaint (*Jones v Hiro Cocktail Lounge*, 139 AD3d 608, 609 [1st Dept 2016] [“Plaintiff's inability to identify his assailant ... does not preclude him from recovery”], citing *Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 551 [1998]). The complaint alleges plaintiff was in defendants' custody and/or control and may therefore be owed a duty of care (*see Mirand v City of New York*, 84 NY2d 44, 49-50 [1994]; *Sokola v Weinstein*, 78 Misc 3d 842, 857, n 10 [Sup Ct, NY County 2023] [collecting cases]). This is particularly applicable where, as here, a negligence claim is asserted based on a duty of care owing directly from defendants to the plaintiff (*see*

¹ “The rule is that a cross motion is an improper vehicle for seeking relief from a nonmoving party” (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 88 [1st Dept 2013]). Here, plaintiff is not prejudiced by the defective nature of the cross-motions, as plaintiff had the opportunity, and did in fact, oppose each cross-motion on the merits (*id.*, citing *Sheehan v Marshall*, 9 AD3d 403, 404 [2d Dept 2004]).

Sokola, 78 Misc 3d at 845-846, citing, inter alia, *Pulka v Edelman*, 40 NY2d 781, 782 [1976]; *Hamilton v Beretta U.S.A. Corp.*, 96 NY2d 222, 233 [2001], *op after certified question answered*, 264 F3d 21 [2d Cir 2001]). Moreover, the complaint asserts Father John Doe was under defendants' supervision, employ and/or control, which is sufficient to support plaintiff's negligence claim (Complaint, NYSCEF Doc. No. 1, at ¶¶ 21, 33, 51, 59). Father John Doe's identity may be revealed through the discovery process (*see Doe v Intercontinental Hotels Group, PLC*, 193 AD3d 410, 411 [1st Dept 2021] [noting such facts may be supplemented in a bill of particulars]). Therefore, the Court declines to dismiss the complaint on the basis that Father John Doe is not identified by name.

The Capuchin Friars and the Province further argue the complaint insufficiently pleads the prior notice element required for the claims of negligent training and supervision, and negligent retention. However, acknowledging that the Court is required to accept the allegations as true (*Engelman*, 194 AD3d at 33) and "greater specificity is not required at this pre-answer stage in the litigation" (*Ark 55*, 222 A.D.3d at 572), the Court finds that the complaint sufficiently alleges the prior notice/propensity element (Complaint at ¶¶ 43-46, 60). Additionally, the allegations may be amplified in a bill of particulars and subsequent discovery (*Doe*, 193 AD3d at 411). "While the movant argues that plaintiff fails to allege specific facts that it had notice of the priest's criminal proclivities, at this pre-answer stage of the litigation, such information is in the sole possession and control of the movant" (*G.T. v Roman Catholic Diocese of Brooklyn, N.Y.*, 211 AD3d 413, 413 [1st Dept 2022]). Indeed, "[t]he manner in which the defendant acquired actual or constructive notice of the alleged abuse is an evidentiary fact, to be proved by the claimant at trial. In a pleading, the plaintiff need not allege his [or her] evidence" (*Martinez v State*, 215 AD3d 815, 819 [2d Dept 2023] [internal quotation marks and citations omitted]). Accordingly, the Court finds the complaint adequately alleges defendants knew or should have known of Father John Doe's propensity to sexually abuse minors.

Documentary Evidence

The Province also moves to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(1). A motion to dismiss a complaint based upon documentary evidence pursuant to CPLR § 3211(a)(1) "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). Not every piece of evidence in the form

of a document is properly deemed “documentary evidence.” It is well established that “judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case” (*Fontanetta v Doe*, 73 AD3d 78, 84-85 [2d Dept 2010] [internal quotation marks omitted]; *Amsterdam Hosp. Grp., LLC v Marshall-Alan Assocs., Inc.*, 120 AD3d 431, 432 [1st Dept 2014]).

As its documentary evidence, the Province submits a certificate of incorporation for the Province (Certificate of Incorporation, attached as Exhibit A to Aff. of Concepcion A. Montoya, Esq., NYSCEF Doc. No. 49) and a certificate of name change for the Province (Certificate of Name Change, attached as Exhibit B to Aff. of Concepcion A. Montoya, Esq., NYSCEF Doc. No. 50). The Province asserts that it was formed in 1952, after the Province of St. Joseph of the Capuchin Order, an organization founded in 1882, changed its name to become the Province (*see* Certificate of Name Change). The Province argues that because it was not a formed entity at the time of the alleged abuse, the causes of action against it should be dismissed.

In opposition, plaintiff provides the Official Catholic Directory from 1946 to show that Our Lady of Sorrows, the church where the alleged abuse occurred, was controlled by the Province of St. Joseph of the Capuchin Order (Excerpt of The Official Catholic Directory for the Year of Our Lord 1946, attached as Exhibits M to Aff. of Trusha Goffe, Esq., NYSCEF Doc. No. 52, at ¶ 11). Plaintiff also provides the Official Catholic Directory from 2021 to show that Our Lady of Sorrows is now controlled by the moving defendant, the Province (Excerpt of The Official Catholic Directory for the Year of Our Lord 2021, attached as Exhibits M to Aff. of Trusha Goffe, Esq., NYSCEF Doc. No. 52, at ¶ 11). Plaintiff argues the information in the official catholic directories raise questions regarding the relationship between the Province of St. Joseph of the Capuchin Order and the moving defendant, the Province.

Here, it cannot be said that the Province has met its burden in establishing that plaintiff has no claim against it as a matter of law. The Province must establish, through its documentary evidence, that it did not owe a duty to the plaintiff (*see Hansen v New York Archdiocese*, 227 AD3d 683, 684 [2d Dept 2024]). The certificate of incorporation for the Province of St. Joseph of the Capuchin Order and the certificate of name change for the Province do not “utterly refute” plaintiff’s allegations that Our Lady of Sorrows was owned, operated, managed, maintained, and controlled by the defendants, including the Province, and/or its predecessor[s], and that the

Province had control over Father John Doe (Complaint, at ¶¶ 5, 12, 13, 14, 15, 16; *Engelman*, 194 AD3d at 33).

Accordingly, it is hereby ORDERED that the motions are denied; and it is further ORDERED that the parties shall proceed with discovery as set out in the First Compliance Conference Stipulation and Order dated May 29, 2024 (First Compliance Conference Stipulation and Order, NYSCEF Doc. No. 94).

This constitutes the decision and order of the Court.

9/11/2024
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: