

A.M. v Archdiocese of N.Y.
2024 NY Slip Op 35437(U)
April 8, 2024
Supreme Court, Bronx County
Docket Number: Index No. 70301/2021E
Judge: Michael A. Frishman
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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
A.M.,

Index No. 70301/2021E

Plaintiff,
- against -

Hon. MICHAEL A. FRISHMAN
Justice of the Supreme Court

THE ARCHDIOCESE OF NEW YORK, SACRED
HEART PARISH, SACRED HEART SCHOOL,
PARTNERSHIP SCHOOLS a/k/a THE PARTNERSHIP
FOR INNER-CITY EDUCATION a/k/a THE
ENDOWMENT FOR INNER-CITY EDUCATION,
THE MARIST BROTHERS, MARIST BROTHERS OF
THE SCHOOLS, THE MARIST BROTHERS, and
STEVEN MILAN,

Defendants.

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The following papers numbered 33-42, 45, 48-58, 61-62, 66 were read on these Motions to Dismiss (Seq. Nos. 002 and 003).¹

Sequence No. 002	<u>NYSCEF Doc. Nos.</u>
Notice of Motion, Affirmation in Support – Exhibits Annexed	33-42
Affirmation in Opposition, Memorandum of Law in Opposition - Exhibits Annexed	48-58
Affirmations in Support of Motion by Co-Defendants	45, 66
Reply Affirmation	61

Sequence No. 003	<u>NYSCEF Doc. Nos.</u>
Notice of Motion, Affirmation in Support – Exhibits Annexed	46-47
Affirmation in Opposition, Memorandum of Law in Opposition - Exhibits Annexed	48-58
Reply Affirmation	62

The motion of defendant, ARCHDIOCESE OF NEW YORK (hereinafter “Archdiocese”) (Seq. No. 002), seeking (i) an Order pursuant to CPLR § 3024(b), striking the term “abuser” as scandalous or prejudicial, and unnecessary, i.e. irrelevant; (ii) striking the purported historical and background

¹ These motions will be discussed together as they stem from the same surrounding circumstances and involve similar issues of law and fact.

information as scandalous or prejudicial, i.e. irrelevant; and (iii) dismissal of plaintiff's fifth cause of action for premises liability as against them pursuant to CPLR § 3211(a)(7) is heretofore granted.

The affirmation in support of co-defendant, ARCHDIOCESE's, motion to dismiss and strike as delineated above, by co-defendant THE MARIST BROTHERS and MARIST BROTHERS OF THE SCHOOLS, INC. (hereinafter "Marist Brothers") (Seq. No. 002), seeking (i) an Order pursuant to CPLR § 3024(b), striking the term "abuser" as scandalous or prejudicial, and unnecessary, i.e. irrelevant; (ii) striking the purported historical and background information as scandalous or prejudicial, i.e. irrelevant; and (iii) dismissal of plaintiff's fifth cause of action for premises liability as against them pursuant to CPLR § 3211(a)(7) is heretofore granted.

The affirmation in support of co-defendant, ARCHDIOCESE's, motion to dismiss and/or strike as delineated above, by co-defendant STEVEN MILAN (hereinafter "Mr. Milan") (Seq. No. 002), seeking (i) an Order pursuant to CPLR § 3024(b), striking the term "abuser" as scandalous or prejudicial, and unnecessary, i.e. irrelevant; (ii) striking the purported historical and background information as scandalous or prejudicial, i.e. irrelevant; and (iii) dismissal of plaintiff's fifth cause of action for premises liability as against them pursuant to CPLR § 3211(a)(7) is heretofore granted.

The motion of defendant SACRED HEART PARISH and SACRED HEART SCHOOL (hereinafter "Sacred Heart") (Seq. No. 003) seeking an Order (i) dismissing plaintiff's claim for premises liability; and (ii) striking all scandalous and prejudicial language from the Complaint pursuant to CPLR § 3024(b) is heretofore granted.

Pursuant to CPLR § 3024(b), "[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." Therefore, the Court is tasked with evaluating whether the language at issue is relevant to the causes of action asserted by plaintiff (*see Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007]). Undue prejudice would result if the language at issue is not relevant and does not advance the asserted causes of action and such language should be stricken from the pleading or bill of particulars (*see Irving v Four Seasons Nursing & Rehabilitation Ctr.*, 121 AD3d 1046, 1048 [2d Dept 2014]).

In this matter, plaintiff's repeated references to defendant, Steven Milan, as "abuser" or as "perpetrator" is not relevant to and does not advance any cause of action asserted by plaintiff herein. Similarly, plaintiff's asserted "background" paragraphs as contained in the Complaint outlining a history, pattern and practice and undue influence to intentionally cover up allegations of abuse is not relevant to and does not advance any cause of action asserted by plaintiff herein. Therefore, such language is deemed highly prejudicial and must be stricken from the Verified Complaint.

"On a motion to dismiss for failure to state a cause of action under CPLR § 3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions...are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claims, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*see Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

In determining a motion to dismiss a complaint pursuant to CPLR § 3211 (a)(7), a court's role is deciding "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" (see *African Diaspora Mar. Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; see also *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 pleadings, 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]; see also *Leviton Mfg. Co., Inc. v Blumberg*, 242 AD2d 205 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]).

When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR § 3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*). In deciding such a motion, the court must "accept the facts as alleged in the complaints 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 *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]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]; *affd* 94 NY2d 659 [2000]; *Kielbert v McKoan*, 228 AD2d 232 [1st Dept 1996]; *lv denied* 89 NY2d 802 [1996]), and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (see *Guggenheimer v Ginzburg*, 43 NY2d 269, 275 [1977]; see also *Leon*, 84 NY2d at 88, *supra*; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]). "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (see *Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (see *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11 [2005]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR § 3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co.*, 14 AD3d 383, 384 [1st Dept 2005]; citing *P.T. Bank Cent. Asia v ABN AMRO Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id.* at 376; citing *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88, *supra*; see also *Guggenheimer*, 43 NY2d at 275, *supra*; *Salles*, 300AD2d at 228, *supra*).

All defendants seek dismissal of plaintiff's premises liability claim arguing that the claim is duplicative of plaintiff's negligence causes of action and because it is based on the same conduct.

“In a premises liability case, the plaintiff must establish the existence of a defective condition, and that the defendant either created or had actual or constructive notice of the defect” (*see Ingram v COSTCO Wholesale Corp.*, 117 AD3d 685 [2d Dept 2014] [internal citations omitted]). Here, [p]laintiff has failed to establish the facts as alleged in this case for sexual abuse extend to a claim for premises liability.... Based upon the foregoing, that branch of defendants’ application seeking to dismiss plaintiff’s fifth cause of action [for premises liability] is granted (*see Albanese v The Jewish Board of Family and Children’s Services, Inc, et al.* [Sup. Ct. Westchester County, Index No. 56668/2020]). In addition, plaintiff’s premises liability cause of action is duplicative of plaintiff’s negligence-based claims (*see e.g. Wilson v Diocese of New York Episcopal Church*, No. 96-cv-2400, 1998 WL 82921 [SDNY 1998]; *see also Nouel v 325 Wadsworth Realty LLC*, 112 AD3d 493 [1st Dept 2013] [concluding that claim “couched as a premises liability claim” was “merely duplicative of [plaintiff’s] negligent hiring, retention, and supervision claims”]). As such, defendants’ applications to dismiss plaintiff’s premises liability claims are granted.

Accordingly, it is hereby,

ORDERED that the applications by Archdiocese, Marist Brothers, Steven Milan, and Sacred Heart, are heretofore granted and the scandalous and prejudicial term of “abuser” and “perpetrator(s)” when referencing any defendant is heretofore stricken from plaintiff’s Verified Complaint; And it is further

ORDERED that the applications by defendants’ herein are heretofore granted and the scandalous and prejudicial “background” information is heretofore stricken from plaintiff’s Verified Complaint; And it is further

ORDERED that the applications by defendants’ herein to dismiss plaintiff’s fifth cause of action asserted against them for premises liability is heretofore granted; And it is further

ORDERED that the Clerk of the Court, Bronx County, is heretofore directed to return plaintiff’s Verified Complaint for correction; And it is further

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ORDERED that once plaintiff's Verified Complaint is returned for correction, plaintiff is directed to file and serve a Complaint devoid of the term "abuser" or "perpetrator(s)" when referencing any defendant; And it is further

ORDERED that once plaintiff's Verified Complaint is returned for correction, plaintiff is directed to file and serve a Complaint devoid of the "background" information; And it is further

ORDERED that the Archdiocese shall serve a copy of this Order with Notice of Entry upon all parties herein within twenty (20) days of its entry.

This constitutes the Decision and Order of the Court.

Dated: 4/8/2024



Hon. Michael A. Frishman, J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION IS..... ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER