SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **CVA 1 / 57M**

Justice

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ARK253 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, JESUIT FATHERS AND BROTHERS A/K/A SOCIETY OF JESUS D/B/A U.S.A. MIDWEST PROVINCE OF THE SOCIETY OF JESUS F/K/A CHICAGO PROVINCE OF THE SOCIETY OF JESUS, SOCIETY OF JESUS A/K/A JESUIT FATHERS AND BROTHERS D/B/A THE NEW YORK PROVINCE OF THE SOCIETY OF JESUS A/K/A U.S.A. NORTHEAST PROVINCE OF THE SOCIETY OF JESUS, FORDHAM UNIVERSITY, JOHN XXIII ECUMENICAL CENTER, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950336/2020

MOTION DATE 10/28/2022, 11/16/2022

MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 105, 106, 107, 108, 109, 110, 111, 112, 124, 125, 126, 127, 130

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 115, 116, 117, 118, 119, 120, 121, 128, 132, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165

were read on this motion to/for DISMISS.

BACKGROUND

Plaintiff commenced this CVA action pursuant to a summons and complaint filed July 20, 2020. Defendants moved for dismissal pursuant to CPLR 3211(a)(1) & (7). Pursuant to a decision and order dated August 18, 2022, the Court (Love, J) granted the motions holding:

> In this Court's decisions on the issue of sufficient pleading in Child Victims Act cases, the Court has taken a very liberal stance on the issue of whether a negligence cause of action has been sufficiently pled. However, the subject complaint is utterly devoid of any information as to how plaintiff came into contact with Fr. Myers. Plaintiff further fails to detail where the alleged abuse occurred and makes no differentiation between the various defendants. Specifically, it is unclear how plaintiff was present at Fordham University and/or the John XXIII Ecumenical Center. It is unclear whether plaintiff was a student, a

> parishioner or some other class of persons. While the complaint does allege that "Defendants placed Fr. Meyers in positions where he had access to and worked with children as an integral part of his work" there is no indication what that work was or where he was assigned. As such, plaintiff has failed to state a cause of action.

(NYSCEF Doc 95). The Court granted Plaintiff leave to file a second amended complaint, which Plaintiff filed in September 2022.

The second amended complaint asserts three causes of action for negligence, negligent training and supervision of employees, and negligent retention of employees. Plaintiff makes the following allegations in the second amended complaint.

Father Maurice F. Meyers, S.J. ("Meyers") was a Roman Catholic cleric employed by the Archdiocese, the Jesuits, and Fordham. Meyers was a Jesuit priest who belonged to the Midwest Province, and was assigned to work at the John XXIII Ecumenical Center, which is a part of Fordham. Fordham is an entity that is owned and operated by the Northeast Province and within the geographical confines of the Archdiocese. Fordham is subject to the supervision, control, and oversight of Archbishop of the Archdiocese. Meyers remained under the direct supervision, employ, and control of Defendants.

Plaintiff came to know Meyers as a Jesuit priest working at Fordham, while Plaintiff's father was attending Fordham. From approximately 1973 to 1976, when Plaintiff was approximately 9 to 12 years old, Meyers engaged in unpermitted sexual contact with Plaintiff. The abuse occurred in the State of New York.

PENDING MOTIONS

On December 9, 2022, Fordham moved for an order pursuant to CPLR § 3211(a)(1) and 3211(a)(7) dismissing the action.

On December 16, 2022, The USA Northeast Province of the Society of Jesus, Inc. and the New York Province of the Society of Jesus, S/H/A Jesuit Fathers and Brothers A/K/A The U.S.A Northeast Province of the Society of Jesus (collectively "Province") moved for dismissal pursuant to CPLR 3211(a)(5) and 3211(a)(7).

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

DISCUSSION

Applicable Legal Standards

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 Dept, 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]).

> There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity (see, *Jones v. Trane,* 153 Misc.2d 822, 831, 591 N.Y.S.2d 927; cf., CPLR 3016; *Byrd v. Faber,* 57 Ohio St.3d 56, 61, 565 N.E.2d 584, 589). However, a complaint which contains bare legal conclusions and/or factual claims which are "flatly contradicted by documentary evidence" should be dismissed pursuant to CPLR 3211(a)(7) (*Corporate National Realty v. Philson, Ltd.,* 232 A.D.2d 518, 648 N.Y.S.2d 974; see, e.g., *Doria v. Masucci,* 230 A.D.2d 764, 646 N.Y.S.2d 363; *Lovisa Constr. Co. v. Metropolitan Transp. Auth.,* 198 A.D.2d 333, 603 N.Y.S.2d 886).

Kenneth R. v. Roman Cath. Diocese of Brooklyn, 229 A.D.2d 159, 162 (2ND Dept., 1997).

"Where, as here, a defendant moves pursuant to CPLR §3211(a)(1) to dismiss an action asserting the existence of a defense founded upon documentary evidence, the documentary evidence 'must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim.'" *Berger v. Temple Beth-El of Great Neck*, 303 AD2d 346, 347 (2d Dept. 2003).

To prevail on a defense founded on documentary evidence, the document relied upon "must definitively dispose of the plaintiffs claim." *United States Trust Co. v. Gill & Duffus, Inc*., 592 N.Y.S.2d 327 [1st Dept. [1993]). The documentary evidence submitted must be "unambiguous, authentic, and undeniable" (*Attias v. Costiera*, 120 A.D.3d 1281, 1282, [2d Dept. 2014]). "[A]ffidavits, deposition testimony, nor letters are considered documentary evidence within the intendment of CPLR 3211 [a][1]" (*Id*. at 1282).

Motion Sequence No 6

Fordham moves for dismissal primarily on the basis that it owed no duty to Plaintiff. Plaintiff essentially concedes this point by withdrawing her first cause of action for negligence as to Fordham. As such Fordham's motion is granted as to the first cause of action for negligence.

Fordham argues that such a duty is also required to sustain the cause of action for negligent supervision and retention. This is not necessarily so. There is generally no duty to control the harm-producing conduct of a third party (i.e., the tortfeasor) absent a special relationship either between the defendant and the plaintiff or the defendant and the tortfeasor (*Pulka v Edelman*, 40 N.Y.2d 781, 783 (1976); *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 233 [2001]).

In the case of the special relationship at issue here, between an employer and employee, the focus is not on the potential plaintiff, but on the employer and its relationship with the defendant-tortfeasor (*see Waterbury v. New York City Ballet, Inc.*, 205 A.D.3d 154, 161, 168 N.Y.S.3d 417 [1st Dept. 2022]). This is because the negligence of the employer arises from its having placed the employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in making its decision concerning the hiring and retention of the employee (*Roe v. Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church*, 198 A.D.3d 698, 699-702 [2d Dept. 2021], quoting *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d 634, 634-37 [2d Dept. 2018]; *Doe v. Congregation of the Mission of St.Vincent De Paul in Germantown*, 2016 N.Y. Slip Op. 32061[U] at *6, 2016 WL 6299392 [Sup. Ct., Queens County 2016]). Thus, "the duty of care in supervising an employee extends to any person injured by the employee's misconduct" (*Waterbury*, 205 A.D.3d at 162).

Additionally, the claims as to what Fordham knew or should have known are sufficiently pled at this early pre-answer stage of the action where Plaintiff has not yet had the benefit of discovery, and the facts are within the exclusive knowledge and control of defendants.

As to Fordham's claim for dismissal based on documentary evidence the documents that relied upon are insufficient to warrant dismissal as a matter of law. Such documents did not conclusively resolve the allegations in the complaint regarding control, agency, supervision and employment [*J.D. v. Archdiocese of New York*, 214 A.D.3d 561 (2023)], nor do the affidavits relied upon by the movants constitute sufficient documentary evidence for the purpose of a pre-answer CPLR §3211(a)(1) motion (*Id*).

Based on the foregoing Fordham's motion to dismiss the second and third causes of action is denied.

Motion Sequence No. 7

Plaintiff does not oppose dismissal of the cause of action for negligence as to movants.

The motion to dismiss based on CPLR §3211(a)(5) is denied. The complaint alleges that from approximately 1973 to 1976, when Plaintiff was approximately 9 to 12 years old, Father Meyers engaged in unpermitted sexual contact with Plaintiff in violation of at least one section of New York Penal Law Article 130 and or 265.05.

Movant argues this assertion is insufficient to bring the action within the conduct required for CPLR 214-g. "CPLR 214–g, enacted as part of the CVA, provides a revival window for civil claims or causes of action alleging intentional or negligent acts or omissions that seek to recover damages for injuries suffered as a result of 'conduct which would constitute a sexual offense as defined in article [130] of the penal law committed against a child less than eighteen years of age.'"

Anonymous v. Castagnola, 210 A.D.3d 940, 941 (2nd Dept., 2022).

The details of the alleged sexual acts perpetrated by Meyers on Plaintiff are obviously of a sensitive nature. The allegation in the complaint is sufficient to bring the action within the context of the CVA. To the extent that movant wants a more detailed description of the specific sexual abuse Meyers is alleged to have committed as to Plaintiff, movant will be able to make a demand for a bill of particulars.

Finally, as to the motion pursuant to CPLR §3211(a)(7) movants allege that the complaint fails to adequately plead the relation of employee and employer and fails to specifically plead allegations as to notice.

The Complaint alleges that both the Midwest Province and the Northeast Province employed Meyers. These allegations demonstrate an employment relationship between the Northeast Province and Meyers sufficient to preclude dismissal at this early stage. Plaintiff does signal the types of evidence it will be able to obtain on this issue once granted discovery. For example, Plaintiff alleges the following additional facts based on publicly available documents.

Meyers entered the Midwest Province on August 27, 1930. The Midwest Province openly admits that Meyers was accused of multiple allegations of sexual abuse beginning in at least 1956, spanning to at least 1964. At least some of these accusations occurred while Meyers was employed by the Russian Center of Fordham University in the Bronx, NY. The Midwest Province also admits that Fr. Meyers was employed by the John XXIII Ecumenical Center, Fordham University in the Bronx, NY in the 1970s, during the years Plaintiff was abused. According to Fordham University's website, Fordham is part of the Jesuits' Northeast Province, and the Fordham Jesuit Community is one of the largest concentrations of Jesuits found in the world. The Northeast Province's list of clerics credibly accused of sexually abusing a minor

takes responsibility for approximately 7 clerics employed by Fordham schools. The Northeast Province oversees much of what happens at Fordham and, some even serve as members of the Board of Trustees. In fact, currently 28 Northeast Province Jesuits are active in Fordham's administration and faculty, including the President, the Dean of Fordham College at Lincoln Center, the Vice President for Mission Integration and Planning, the Executive Director of Campus Ministry, and over a dozen tenured members of the faculty. The Northeast Province and Midwest Province are collectively and interchangeably referred to herein as, "Jesuits."

However, these additional facts, which address both issues raised by movants in their 3211(a)(7) motion, need not be included in the complaint which does specifically already allege the employer employee relationship as well as allegations of notice.

As noted above, given the early stage of this action and the fact that the information on these issues is exclusively within the knowledge of defendants the allegations in the complaint are sufficient at this stage.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motions are granted to the extent of dismissing the first cause of action for negligence as to all movants and otherwise denied; and it is further

ORDERED that defendants are directed to serve an answer to the second amended complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a virtual preliminary conference on May 2, 2025, at 12:30 PM.

This constitutes the decision and order of this Court.

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3/31/2025
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
[ ] GRANTED [ ] DENIED [X] GRANTED IN PART [ ] OTHER