

JA-501 Doe v Archdiocese of N.Y.

2025 NY Slip Op 32244(U)

June 5, 2025

Supreme Court, New York County

Docket Number: Index No. 952165/2023

Judge: Shlomo S. Hagler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SHLOMO S. HAGLER PART 17

Justice

-----X

JA-501 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, 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, REGIS HIGH SCHOOL, and DOES 1-5 whose identities are unknown to plaintiff,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 41, 42, 43, 44, 45, 46, 47, 48, 55, 56, 57, 58, 59, 60, 61, 69, 74, 75, 76, 77, 78, 79

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 49, 50, 51, 52, 53, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 82

were read on this motion to/for DISMISS

In this action seeking damages for negligence, negligent retention, training, and supervision, and for violation of New York City's Victims of Gender-Motivated Violence Protection Law (the VGM) (Administrative Code of NYC § 10-1101 et seq.), defendant Regis High School moves pursuant to CPLR 3211 (a) (1), (5) and (7) to dismiss the amended complaint and to strike certain portions of the amended complaint pursuant to CPLR 3024 (b) (Mot. No. 004). Defendant 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 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 (the Province) moves pursuant to CPLR 3211 (a) (5) and (7) to dismiss the amended complaint (Mot. No. 005). Plaintiff opposes both motions. The motions are consolidated for disposition.

BACKGROUND

Plaintiff commenced this action seeking to hold defendants liable for, inter alia, their alleged negligent retention, training, and supervision of non-party Father Robert Voelkle (Fr. Voelkle), a Roman Catholic cleric. Plaintiff alleges that he first came in contact with Fr. Voelkle when plaintiff was a student at defendant Regis High School. According to the amended complaint, Fr. Voelkle sexually abused and assaulted plaintiff “in approximately 1976 or[sic] 1980, when Plaintiff was approximately 16 to 19 years old,” during which time Fr. Voelkle was working at Regis High School and employed by defendants (Amended Complaint at ¶¶ 17, 22).

Plaintiff alleges that defendants knew or should have known that Fr. Voelkle had a propensity to commit sexual abuse and, nevertheless, enabled him to do so by continuing to employ him in a position of power and authority through which he had access to students and young adults as an integral part of his work. According to the amended complaint, defendants’ actions created a foreseeable risk of harm to plaintiff as a “vulnerable individual participating in the programs and activities offered by defendants” (*id.* at ¶ 51).

The amended complaint asserts causes of action against defendants to recover damages for negligence (first cause of action), negligent training, retention, and supervision (second and third cause of action), and for violations of the VGM (fourth cause of action). Regis High School now moves to dismiss the amended complaint and to strike certain portions of the amended complaint as prejudicial. The Province also moves to dismiss the amended complaint. Regis High School and the Province (hereinafter together the moving defendants) argue that all of plaintiff’s claims are either time-barred and/or insufficiently pleaded.

TIMELINESS OF PLAINTIFF'S CLAIMS

On a motion to dismiss pursuant to CPLR 3211 (a) (5), the moving defendant must demonstrate “prima facie, that the time within which to commence the cause of action has expired” (*MTGLQ Invs., LP v Wozencraft*, 172 AD3d 644, 644 [1st Dept 2019]). If the defendant satisfies this burden, “[t]he burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is inapplicable or whether the action was commenced within the statutory period, and the plaintiff must aver evidentiary facts establishing that the action was timely or . . . raise an issue of fact as to whether the action was timely” (*id.* at 645 [internal quotation marks and citations omitted]).

The Causes of Action for Negligence and Negligent Training, Retention and Supervision

Negligence and negligent training, retention, and supervision claims must normally be brought within the 3-year statute of limitations under CPLR 214. Plaintiff’s claims are untimely under this provision. The Adult Survivors Act (the ASA), however, created a revival period for alleged sexual abuse survivors to bring otherwise time-barred claims during a year-long window which expired on November 23, 2023 (*see* CPLR 214-j). Since plaintiff commenced this action on or about November 2, 2023, it was brought within the ASA’s one-year revival period.

The ASA is limited to claims involving “conduct which would constitute a sexual offense as defined in [Penal Law article 130] committed against such person who was eighteen years of age or older, or incest as defined in section 255.26 or 255.27 of the penal law committed against such person who was eighteen years of age or older” (CPLR 214-j). Since the ASA only applies to claims of alleged abuse against persons who were 18 years of age or older at the time of the abuse, any claims based on alleged conduct that occurred prior to that date are not revived by the ASA. Thus, the negligence and the negligent training, retention, and supervision claims are

dismissed as time-barred to the extent that they are based on alleged conduct that occurred prior to plaintiff's 18th birthday.¹

The moving defendants argue that the claims based on alleged conduct that occurred when plaintiff was 18 years of age or older are also not revived by the ASA because plaintiff fails to adequately plead the criteria for revival under the ASA. Contrary to defendants' contention, the allegations in the amended complaint are sufficient to support the applicability of the ASA. Plaintiff pleads that Fr. Voelkle "sexually assaulted" him (Amended Complaint at ¶ 46) and "engaged in unpermitted sexual contact with [him] in violation of at least one section of New York Penal Law Article 130 or a predecessor statute that prohibited such conduct at the time of the abuse" (*id.* at ¶ 22). Such allegations meet the notice pleading standards of CPLR 3013 and, at this stage of the litigation, adequately support the applicability of the ASA. The moving defendants cite no authority mandating that claims under the ASA must be pleaded with greater specificity, and a more detailed account of the sexual abuse, assault, and unpermitted sexual contact may be obtained by making a demand for a bill of particulars (*see Doe v Archdiocese of N.Y.*, 2025 NY Misc LEXIS 3907, *7-8 [Sup Ct, NY County 2025, Index No. 950336/2020] [concluding that similar allegations were sufficient to plead the criteria required for revival under the CVA]; *ARK444 Doe v Archdiocese of N.Y.*, 2024 NY Slip Op 32082 [U], ** 5-6 [Sup Ct, NY County 2024] [same]; *see generally Foley v D'Agostino*, 21 AD2d 60, 65-66 [1st Dept 1964]). Accordingly, claims based on alleged conduct that occurred when plaintiff was 18 years of age or older are not time-barred.

¹ The claims based on conduct that occurred prior to plaintiff turning 18 years of age are also not revived by the Child Victims Act (the CVA). The CVA permitted a plaintiff who was sexually abused as a minor to file a claim during a two-year filing window from August 14, 2019 to August 14, 2021 (*see* CPLR § 214-g), which was later tolled for 90 days from August 14, 2021 until at least November 12, 2021 by certain executive orders issued during the COVID-19 pandemic (*see Bethea v Children's Vil.*, 225 AD3d 580, 581 [2d Dept 2024]; *Doe v Archdiocese of N.Y.*, 221 AD3d 451, 452 [1st Dept 2023]). Since the instant action was not commenced until November 2023, the CVA does not revive such claims.

The VGM Cause of Action

In 2000, the New York City Council enacted the VGM (2000 NYC Local Law No. 73) with the stated purpose of filling “the void left” by the United States Supreme Court’s decision in *United States v Morrison* (529 US 598 [2000]), which struck down the federal civil rights remedy for gender-motivated crimes contained in the Violence Against Women Act as an unconstitutional exercise of congressional power (Administrative Code § 10-1102). To accomplish this purpose, the VGM created “an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence” (Administrative Code § 10-1102). The private right of action created by the VGM allows victims of a crime of violence “committed because of gender or on the basis of gender, and due at least in part, to animus based on the victim’s gender” to seek relief in any court of competent jurisdiction in the form of compensatory and punitive damages, injunctive and declaratory relief, attorney’s fees, and costs (Administrative Code §§ 10-1103, 10-1104).

Prior to being amended by the City Council in 2022, the VGM allowed victims to seek relief only against the individual who committed the gender-based violent crime (Administrative Code former § 10-1104). In 2022, the City Council amended the VGM to its current version (2022 NYC Local Law No. 21), which now allows victims to seek relief not only from the perpetrator, but also from those who “direct[], enable[], participate[] in, or conspire[] in the commission” of the crime (Administrative Code § 10-1104).

In addition, the 2022 amendment modified the statute of limitations provision of the VGM. As originally enacted in 2000, the statute of limitations for filing a cause of action under the VGM was 7 years from the time the alleged crime of violence motivated by gender occurred (Administrative Code former § 10-1105). The post-amendment version provides for the same 7-

year statute of limitations (Administrative Code § 10-1105),² but also includes the following “revival” language:

“Notwithstanding any provision of law that imposes a period of limitation to the contrary, any civil claim or cause of action brought under this chapter that is barred because the applicable period of limitation has expired is hereby revived and may be commenced not earlier than six months after, and not later than two years and six months after, September 1, 2022”

(Administrative Code § 10-1105).

Plaintiff asserts that since he commenced this action within the 2022 amendment’s revival window (between March 1, 2023 and March 1, 2025), his VGM cause of action is revived and timely. Plaintiff asserts in this regard that the original VGM and the 2022 amendment are remedial in nature, and therefore, entitled to a presumption in favor of retroactivity. As such, plaintiff contends, they should be applied retroactively so as to allow victims to file actions during the revival window regardless of when the underlying conduct occurred.

The moving defendants disagree, arguing that by its terms, the 2022 amendment only revives causes of action “brought under this chapter” and since the VGM did not exist before 2000, plaintiff’s VGM cause of action, which is based on conduct that occurred between 1976 and 1980, cannot be revived by the 2022 amendment. The moving defendants assert that since both the VGM and the 2022 amendment established new causes of action, the presumption in favor of retroactivity does not apply and there is no indication in the text that law was intended to have a retroactive effect.

² The original version of the law also provided: “If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the [CPLR], a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to seven years after the inability to commence the action ceases” (Administrative Code former § 10-1105). The 2022 amendment extended this to “nine years after the inability to commence the action ceases” (Administrative Code § 10-1105). No argument is made that this provision applies here.

At the time these motions were submitted for decision, there was no appellate authority directly on point. Therefore, the parties relied on federal district court cases and/or decisions by our state trial courts to support their respective positions. While these motions were pending, however, the Appellate Division, First Department in *S.S. v Rockefeller Univ. Hosp.* resolved the issue, holding that neither the original VGM nor the 2022 amendment apply retroactively (*S.S. v Rockefeller Univ. Hosp.*, __ AD3d __, 2025 NY Slip Op 03290, 2025 WL 1559583 [1st Dept 2025]). The claims in that case were based on alleged sexual abuse that occurred between 1966 and 1982 and, therefore, the court concluded that the claims could not be brought under the VGM or revived by the 2022 amendment.

Thus, VGM cause of action is dismissed as asserted against the moving defendants.

FAILURE TO STATE A CAUSE OF ACTION

The claims remaining are those seeking to recover damages for negligence (first cause of action) and for negligent training, retention, and supervision (second and third cause of action), only insofar as they are based on alleged sexual abuse and assault that occurred when plaintiff was over the age of 18. The moving defendants assert that such claims are insufficiently pleaded and, therefore, must be dismissed pursuant to CPLR 3211 (a) (7).

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), the court must afford “the pleading a liberal construction and must accept the facts as alleged . . . as true, accord [the nonmoving party] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Thus, [w]hether [the nonmoving party] can ultimately establish its allegations is not part of the calculus” (*Taxi Tours Inc. v Go N.Y. Tours, Inc.*, 41 NY3d 991, 993 [2024] [internal quotation marks and citations omitted]).

The Negligence Cause of Action

The negligence cause of action is based upon allegations that defendants knew or should have known that Fr. Voelkle posed a risk of sexual abuse to students and young adults and that they nevertheless placed him in a position where he had access to those individuals as an integral part of his work. These allegations are the same as those upon which the negligent training, retention, and supervision claims are based. Thus, the negligence cause of action must be dismissed inasmuch as no independent source of duty can be discerned from the allegations (*see D.F. v General Conference of the United Methodist Church*, 235 AD3d 532, 534 [1st Dept 2025] [“plaintiff’s negligence cause of action falls within the ambit of his cause of action for negligent hiring, retention, supervision, or direction, and the negligence claim therefore should have been dismissed as duplicative. Both causes of action are based on the same factual allegations that appellants employed his boxing instructor, knew or should have known that the boxing instructor had a propensity to commit sexual abuse, and failed to protect plaintiff from foreseeable harms by properly supervising the boxing instructor led to plaintiff’s injuries”] [internal quotation marks and citations omitted]; *M.D. v YMCA of the USA*, 235 AD3d 530, 530-531 [1st Dept 2025] [“to the extent plaintiff’s negligence claim is based on allegations that YMCA USA knew or should have known that the judo instructor posed a risk of sexual abuse to children, and did nothing to prevent the alleged abuse, those allegations are duplicative because they fall within the ambit of the complaint’s cause of action for (negligent hiring, retention, supervision, and/or direction). Thus . . . , the negligence claim is, in fact, duplicative of the claim for (negligent hiring, retention, supervision, and/or direction), as no independent source() of duty can be discerned from the allegations of the complaint”] [internal quotation marks and citations omitted]).

Thus, the cause of action for negligence is dismissed as asserted against the moving defendants.

The Causes of Action for Negligent Training, Retention, and/or Supervision

To state a cause action for negligence related to an employer's retention and supervision of an employee, a plaintiff must allege the following:

“(1) the employer had actual or constructive knowledge of the employee's propensity for the sort of behavior which caused the injured party's harm; (2) the employer knew or should have known that it had the ability to control the employee and of the necessity and opportunity for exercising such control; and (3) the employee engaged in tortious conduct on the employer's premises or using property or resources available to the employee only through their status as an employee, including intellectual property and confidential information”

(*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023]). Additionally, “as in every tort action, the injuries alleged must have been proximately caused by the defendant's negligent supervision and retention. In other words, there must be a nexus between the actions or omissions of the employer and the harm the employee was able to inflict” (*id.* at 162). “The cause of action does not need to be pleaded with specificity” (*Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 160 [1st Dept 2022]).

Here, plaintiff adequately pleads all of the required components. With regard to the first element of constructive or actual notice, the amended complaint states that prior to the abuse endured by plaintiff, the moving defendants “became aware, or should have become aware of Fr. Voelkle's propensity to commit sexual abuse” (Amended Complaint at ¶¶ 30, 47) and that they had “knowledge” of or “should have known” of his “propensity for sexual abuse” (*id.* at ¶ 63). The Appellate Division, First Department has held in a number of recent cases that such allegations sufficiently plead the notice element so as to state a cause of action for negligent hiring, retention, supervision, and/or direction without additional specific facts (*see e.g. D.F.*,

235 AD3d at 534 [“plaintiff stated a cause of action for negligent hiring, retention, supervision, or direction, as the allegations that appellants ‘knew or should have known’ of the boxing instructor’s criminal proclivities sufficiently placed appellants on notice of the claim. At the pre-answer stage of the litigation, plaintiff’s allegations are sufficient to put appellants on notice of this claim, and plaintiff was not required to allege additional specific facts regarding notice”]; *J.P. v General Conference of the United Methodist Church*, 235 AD3d 545, 546 [1st Dept 2025] [“by alleging that appellants ‘knew or should have known’ of the pastor’s criminal proclivities, plaintiff sufficiently alleged notice so as to state a cause of action for negligent hiring, supervision, retention, and direction”]; *SHC-MG-25 Doe v Archdiocese of N.Y.*, 223 AD3d 579, 580 [1st Dept 2024] [allegation that defendants “knew or should have known of the priest’s predatory behavior” sufficient at pre-discovery stage to put defendants on notice of plaintiff’s claim]).

The plaintiffs in the above-mentioned cases brought their claims under the CVA’s revival window. The Appellate Division indicated that its rationale for not requiring additional specific facts was that the information concerning notice may be in the sole possession of the defendant given “the lengthy elapse of time from the alleged sexual assault, and the age of plaintiff at the time of the alleged assault” (*SHC-MG-25 Doe v Archdiocese of N.Y.*, 223 AD3d at 580, citing *Ark265 Doe v Archdiocese of N.Y.*, 221 AD3d 422 [1st Dept 2023]). The same rationale applies here notwithstanding that plaintiff’s claims are revived under the ASA. The alleged sexual abuse occurred over 40 years ago, when plaintiff was still in his late teens, and at this pre-answer stage of the litigation plaintiff has not yet had the benefit of discovery. The information regarding whether the moving defendants had notice of Fr. Voelkle’s propensity to commit sexual abuse is

in the defendants' sole possession and control. Thus, plaintiff's allegations of notice are sufficient to survive a motion to dismiss.

The allegations also satisfy the second element. In this regard, the amended complaint indicates that the moving defendants had control over Fr. Voelkle's access to students and young adults participating in their programs and whether he was in a position of authority, power, and control over foreseeable victims. The amended complaint further alleges that the moving defendants were aware of, or should have been aware of, Fr. Voelkle's propensity for sexual abuse and the potential for the type of harm plaintiff is alleged to have endured. It may be inferred from these allegations that the moving defendants knew of the need to control Fr. Voelkle and had the ability to do so.

As to the third element, the amended complaint alleges that the sexual abuse occurred on defendants' "property and/or with use of their chattels" (Amended Complaint at ¶ 57), and that Fr. Voelkle used his position of power and control as an employee of the moving defendants to access children and young adults participating in their programs. It may be inferred from these allegations that Fr. Voelkle engaged in the alleged sexual abuse on the moving defendants' premises or used property or resources available to him only through his status as an employee. These allegations also supply a nexus between the moving defendants' alleged negligence and plaintiff's alleged injuries. Plaintiff may or may not ultimately succeed after discovery in proving his allegations. However, a claim for negligent training, retention, and/or supervision has been sufficiently alleged.

REQUEST TO STRIKE PREJUDICIAL MATTER PURSUANT TO CPLR 3024 (b)

CPLR 3024 (b) permits "[a] party to move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." The moving defendants argue that the allegations of

sexual abuse and assault that occurred prior to plaintiff turning 18 years of age should be struck from the amended complaint on the grounds that they are prejudicial and irrelevant given that they cannot support a timely claim against them. The moving defendants' request is denied inasmuch as such allegations may be relevant to plaintiff's remaining claims in the context of a developed record (*see Pisula v Roman Catholic Archdiocese of N.Y.*, 201 AD3d 88, 105 [2d Dept 2021]).

CONCLUSION

For these reasons and after a thorough consideration of all issues, it is

ORDERED that motion sequence number 004 by defendant Regis High School to dismiss the amended complaint, and to strike certain portions of the amended complaint pursuant to CPLR 3024 (b), is granted only to the extent that (1) the causes of action for negligence (first cause of action) and for violation of the Victims of Gender-Motivated Violence Protection Law (fourth cause of action) are dismissed insofar as asserted against it, and (2) the causes of action for negligent training and supervision (second cause of action) and negligent retention (third cause of action) are dismissed insofar as asserted against it to the extent they are based on alleged conduct that occurred before plaintiff turning 18 years of age, and the motion is otherwise denied; and it is further

ORDERED that motion sequence number 005 by defendant 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 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 to dismiss the amended complaint is granted only to the extent that (1) the causes of action for negligence (first cause of action) and for violation of the Victims of Gender-Motivated Violence Protection Law (fourth cause of action) are dismissed

insofar as asserted against it, and (2) the causes of action for negligent training and supervision (second cause of action) and negligent retention (third cause of action) are dismissed insofar as asserted against it to the extent that they are based on alleged conduct that occurred before plaintiff turning 18 years of age, and the motion is otherwise denied.

June 5, 2025
DATE


SHLOMO S. HAGLER, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
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