

**SWNY 5 Doe v Roman Catholic Archdiocese of N.Y.**

2025 NY Slip Op 32639(U)

June 4, 2025

Supreme Court, New York County

Docket Number: Index No. 950205/2021

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ADAM SILVERA** PART **01**

*Justice*

-----X

SWNY 5 DOE,

Plaintiff,

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,  
CHURCH OF THE INCARNATION, INCARNATION  
SCHOOL, FATHER JOHN PADDACK, DOES 1 THROUGH  
5

Defendant.

-----X

INDEX NO. 950205/2021

MOTION DATE 03/01/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26 were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth below, this Court grants the motion by defendants Church of the Incarnation and Incarnation School (“Defendants”), seeking to dismiss the claims of the plaintiff, SWNY 5 Doe (“Plaintiff”), for breach of fiduciary duty and fraudulent concealment and to strike portions of Plaintiff’s complaint.

I. Dismissal of Claims

The Court grants the portion of Defendants’ motion seeking to dismiss Plaintiff’s claims for breach of fiduciary duty and fraudulent concealment due to Plaintiff’s failure to plead such causes of action.

A defendant may move to dismiss a plaintiff’s claim for “fail[ure] to state a cause of action.” CPLR § 3211(a)(7). In deciding if the plaintiff has failed to state a cause of action, the court must “give the pleading a liberal construction, accept the allegations as true, and accord the plaintiff every favorable reasonable inference.” *Brown v Riverside Church in the City of N.Y.*, 231 AD3d 104, 108 (1st Dep’t 2024).

To state causes of action for breach of fiduciary duty and fraudulent concealment, the plaintiff must establish that a fiduciary relationship existed between the plaintiff and the defendant. *See Schroeder v Pinterest Inc.*, 133 AD3d 12, 23 (1st Dep't 2015) (breach of fiduciary duty); *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 179 (2011) (fraudulent concealment). A fiduciary relationship exists when one, the fiduciary, “is under a duty to act for or to give advice for the benefit of another[, the beneficiary,] upon matters within the scope of the relation[ship].” *Oddo Asset Mgt. v Barclays Bank PLC*, 19 NY3d 584, 592-593 (2012), quoting *Roni LLC v Arfa*, 18 NY3d 846, 848 (2011). The fiduciary must have “de facto control and dominance” over the beneficiary. *Doe v Roman Catholic Diocese of Rochester*, 12 NY3d 764, 765 (2009), quoting *Marmelstein v Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue*, 11 NY3d 15, 21 (2008). “[B]are allegation[s]” of “control and dominance” are “insufficient.” *See id.* at 766.

Here, Plaintiff has not shown facts sufficient to suggest that a fiduciary relationship existed between Plaintiff and Defendants. Plaintiff relies on facts suggesting a close relationship between Plaintiff and his alleged abuser to impute a fiduciary relationship onto Plaintiff and Defendants. *See* Memorandum of Law in Opposition to Church of the Incarnation and Incarnation School’s Motion to Dismiss (“Opposition”) at 3-4. But “to establish ... a fiduciary relationship with an institutional church defendant,” like Defendants, Plaintiff “must come forward with facts demonstrating that his ... relationship with the institution was somehow unique or distinct from the institution’s relationship with other parishioners generally.” *See G.T. v Roman Catholic Diocese of Brooklyn, N.Y.*, 211 AD3d 413, 414 (1st Dep’t 2022), quoting *Doe v Holy See (State of Vatican City)*, 17 AD3d 793, 795 (3d Dep’t 2005). Plaintiff fails to do so, relying instead on bare allegations that Plaintiff reposed his trust in Defendants as spiritual

advisors. *See* Complaint (NYSCEF Doc. No. 2) ¶ 52. In this sense, Plaintiff was no different from parishioners generally; as such, Plaintiff has failed to establish the existence of a fiduciary relationship between Plaintiff and Defendants.

Thus, Plaintiff's claims against Defendants for breach of fiduciary duty and for fraudulent concealment must be dismissed.

## II. Striking Portions of Complaint

The Court grants Defendants' motion to strike paragraphs 11 through 14 of Plaintiff's complaint, as such paragraphs are irrelevant to Plaintiff's causes of action.

"A party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." CPLR § 3024(b). A matter is unnecessary if it is not "relevant to a cause of action." *Soumayah v Minnelli*, 41 AD3d 390, 392 (1st Dep't 2007).

Here, Plaintiff's allegation that "[t]he Catholic Church has a long and well-documented history of child sexual abuse by priests," citing to an investigation in Boston and another in Pennsylvania that allegedly led to New York's Child Victims Act, *see* Complaint ¶¶ 11-14, is not relevant to Plaintiff's causes of action. Although Plaintiff argues that the investigations are relevant to "the notice [that the Catholic Church and] its institutions had of the problem of sexual abuse," Opposition at 13, that argument is irrelevant to Plaintiff's remaining causes of action.

After dismissal of Plaintiff's claims for breach of fiduciary duty and fraudulent concealment, Plaintiff's remaining claims are for negligence and gross negligence in hiring, supervising, and retaining the alleged abuser. *See* Complaint ¶¶ 44-50. In such cases, the relevant notice is *notice of the alleged abuser's* "propensity to engage in the injury-causing conduct." *See Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 158-159 (2023). Plaintiff fails to explain how the Boston and Pennsylvania investigations are relevant to the alleged abuser

specifically. At best for Plaintiff, the investigations “show that the Archdiocese, as a religious order, may have had general knowledge of the fact that some priests had issues with sexual abuse.” *Doe v R.C. Archdiocese of N.Y.*, 2024 NYLJ Lexis 398, \*6-7 (Sup Ct, NY County, Jan. 26, 2024, No. 950231/2021). Such “[a]llegations[,] regarding other priests in different ecclesiastical territories[,] do nothing to bolster [P]laintiff’s causes of action herein and are thus unnecessarily prejudicial” and irrelevant. *See id.*

Thus, Defendants’ motion to strike paragraphs 11 through 14 of Plaintiff’s complaint is hereby granted, and any response or reference to paragraphs 11 through 14 in defendant Roman Catholic Archdiocese of New York’s answer, *see* NYSCEF Doc. No. 14, is hereby stricken.

Accordingly, it is

ORDERED that the portion of Defendants’ motion to dismiss Plaintiff’s causes of action for breach of fiduciary duty and fraudulent concealment is hereby granted, and such causes of action are dismissed against Defendants only; and it is further

ORDERED that paragraphs 11 through 14 of Plaintiff’s complaint are stricken; and it is further

ORDERED that any response or reference to paragraphs 11 through 14 in defendant Roman Catholic Archdiocese of New York’s answer is hereby stricken; and it is further

ORDERED that, within 30 days of entry, Plaintiff shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



6/4/2025  
DATE

ADAM SILVERA, 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