

SWNY 9 Doe v Roman Catholic Archdiocese of N.Y.

2025 NY Slip Op 32640(U)

July 9, 2025

Supreme Court, New York County

Docket Number: Index No. 950436/2021

Judge: Adam Silvera

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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. ADAM SILVERA PART 1

Justice

-----X	INDEX NO. <u>950436/2021</u>
SWNY 9 DOE,	MOTION DATE <u>01/10/2022</u>
Plaintiff,	MOTION SEQ. NO. <u>002</u>

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK,
CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW
YORK, DOES 1 THROUGH 5

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 were read on this motion to/for DISMISSAL.

Upon the foregoing documents and for the reasons set forth below, this Court denies in its entirety the motion of the defendants, Roman Catholic Archdiocese of New York and Catholic Charities of the Archdiocese of New York (herein after referred to as "Moving Defendants"), to dismiss the complaint of the plaintiff, M.S. (hereinafter referred to as "Plaintiff"), or, alternatively, to grant summary judgment dismissing the complaint. *See* Notice of Motion at 1.

I. Dismissal

The Court denies the portion of Moving Defendant's motion to dismiss Plaintiff's complaint on the grounds that the documentary evidence establishes that Plaintiff does not have a viable claim. A defendant may move to dismiss a plaintiff's complaint based on a documentary-evidence defense or on the plaintiff's alleged failure to state a claim. *See* CPLR § 3211(a)(1), (7). In such cases, "the court must 'accept the facts as alleged in the complaint as true'" and give the plaintiff "the benefit of every possible favorable inference," unless the alleged facts are "plainly contradicted by documentary evidence." *Bishop v Maurer*, 33 AD3d 497, 498 (1st Dep't

2006), quoting *Morgenthau & Latham v Bank of New York Co., Inc.*, 305 AD2d 74, 78 (1st Dep't 2003). If the facts alleged by the plaintiff are not plainly contradicted by the Moving Defendants' documentary evidence, then the court need only decide if the alleged facts "'fit ... any cognizable legal theory.'" *See Morgenthau*, 305 AD2d at 78, quoting *Leon v Martinez*, 84 NY2d 83, 87-88 (1994).

Here, Plaintiff levies several causes of action against the defendants: negligence, gross negligence, breach of fiduciary duty, breach of non-delegable duty, and fraudulent concealment. *See* Complaint (NYSCEF Doc. No. 2) (the "Complaint") ¶¶ 22-45. Based upon the allegations in the complaint, Plaintiff alleges, *inter alia*, that Moving Defendants negligently approved applications of prospective foster parents, negligently partnered with foster parents which Moving Defendants should have known was a threat of sexual harm to children, negligently assigned children to foster parents that posed such threat of sexual harm, and negligently supervised the foster parents. To plead negligent supervision in a child sexual abuse case, a plaintiff must plead all the elements of negligence and more: (1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, (3) that the defendant's breach proximately injured the plaintiff, (4) that the defendant had notice of the alleged abuser's propensity for child abuse, (5) that the defendant could have and should have controlled the alleged abuser, and (6) that the alleged abuser's sexual abuse occurred through the defendant's property or resources, which the alleged abuser had access to only because of the abuser's relationship to the defendant. *See Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 (2023).

Moving Defendants claim that they did not owe Plaintiff a duty because it did not own, operate, or control the foster homes, and that they did not have a relationship with any of the

individuals who allegedly abused Plaintiff. In support of that claim, Moving Defendants submit, purportedly as documentary evidence, an affidavit from Roderick J. Cassidy, Esq. – the General Counsel for the Archdiocese of New York, and Talia Lockspeiser – the Associate Executive Director for the Catholic Charities of the Archdiocese of New York. *See* Affirmation in Support of Pre-Answer Motion to Dismiss, Exh. B (Cassidy’s affidavit); *id.* Exh. C (Lockspeiser’s affidavit).

For starters, Cassidy and Lockspeiser’s affidavits are not documentary evidence under CPLR § 3211(a)(1).¹ *See Wright v City of New York*, 223 AD3d 547, 548 (1st Dep’t 2024); *Celentano v Boo Realty, LLC*, 160 AD3d 576, 577 (1st Dep’t 2018); *Correa v Orient-Express Hotels, Inc.*, 84 AD3d 651 (1st Dep’t 2011). Moreover, Plaintiff alleges that defendant Catholic Charities is affiliated with and controlled by defendant Roman Catholic Archdiocese of New York, and that defendant Catholic Charities has acknowledged that it provides foster care placement in New York. *See Bishop*, 33 AD3d at 498; *Celentano*, 160 AD3d at 577 (noting that documents establishing ownership “are insufficient to refute . . . allegations that [the defendant controlled] the premises” at issue). Thus, the Court must accept as true the rendition of the facts in the Complaint and accord Plaintiff the benefit of all favorable inferences. *See Bishop*, 33 AD3d at 498.

With that liberal pleading standard in mind, the Complaint adequately pleads a negligent supervision claim against Moving Defendants. The Complaint alleges that Moving Defendants owed a duty of care to Plaintiff as foster care facilitators, that Moving Defendants breached that duty, Plaintiff was injured, and that Plaintiff’s foreseeable injury was proximately caused by

¹ Even if Cassidy and Lockspeiser’s affidavits were documentary evidence, affidavits in support of motions to dismiss for failure to state a claim “will seldom[,] if ever[,] warrant [dismissal] unless . . . the affidavits establish conclusively that [the] plaintiff has no cause of action.” *See Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 (1976).

Moving Defendants. *See* Complaint ¶¶ 23-27; that Moving Defendants negligently assigned Plaintiff to foster parents that they should have known posed a threat of sexual harm to Plaintiff, *see id.* ¶ 26.c.; that Plaintiff was sexually abused while in the care of the foster parents where she was placed, *see id.* ¶¶ 15-21; that Moving Defendants failed to do anything to protect Plaintiff from the abuse, *see id.* ¶¶ 26.e.-p.; and that defendant Catholic Charities was Defendant Roman Catholic Archdiocese of New York’s agent, *see id.* ¶ 14. Plaintiff’s allegations are sufficient to give rise to a duty on Moving Defendants’ part, as they “sufficiently placed [Moving Defendants] on notice of [Plaintiff’s] claim” and. “pre-answer[,] ... [P]laintiff was not required to allege additional specific facts.”² *See D.F. v General Conference of the United Methodist Church*, 235 AD3d 532, 534 (1st Dep’t 2025), citing *SHC-MG-25 Doe v Archdiocese of N.Y.*, 223 AD3d 579, 580 (1st Dep’t 2024), and *Ark 55 v Archdiocese of N.Y.*, 222 AD3d 572, 572 (1st Dep’t 2023); *Doe v Young People’s Chorus of New York City*, — AD3d —, 2025 NY Slip Op 03157, *2-3 (1st Dep’t 2025) (same); *J.P. v General Conference of the United Methodist Church*, 235 AD3d 545, 545-546 (1st Dep’t 2025) (same); *see also* CPLR § 3013 (“Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”). “Plaintiff can amplify [the] allegations in [the] bill of particulars.” *See Doe*, 2025 NY Slip Op 03157, *3.

Thus, because Plaintiff adequately pled negligence and the documentary evidence does not refute Plaintiff’s claim, Moving Defendants’ motion to dismiss must be denied.

² Plaintiff alleges that defendant Catholic Charities was controlled by and operated under the authority of defendant Roman Catholic Archdiocese of New York, *see* Complaint ¶ 14, and “[n]otice to an agent ... constitutes notice to a principal,” *Ford v Grand Union Co.*, 268 NY 243, 252 (1935). Accepting Plaintiff’s allegations of Moving Defendants’ relationship and control as true, Moving Defendants would have owed a duty to Plaintiff. In addition, whether an agency relationship exists is a fact question for the jury, and it would be improper for the Court to resolve the question as a matter of law at this early stage of the litigation. *See Bostany v Trump Org. LLC*, 73 AD3d 479, 480 (1st Dep’t 2010); *Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 (1st Dep’t 1976).

II. Summary Judgment

The Court denies as premature Moving Defendants’ motion, in the alternative to dismissal, for summary judgment. Generally, a party may move for summary judgment “after issue has been joined[.]” See CPLR § 3212(a). But pre-joinder summary judgment is permitted when, upon adequate notice to the parties, the court—not a party—decides that summary judgment is appropriate. See id. § 3211(c); SHG Resources, LLC v SYTR Real Estate Holdings LLC, 201 AD3d 610, 611 (1st Dep’t 2022). “[T]he rule barring a pre-joinder motion for summary judgment is strictly applied.” SHG Resources, LLC, 201 AD3d at 611, citing City of Rochester v Chiarella, 65 NY2d 92, 101 (1985).

Here, Defendant “moved ... for summary judgment” before answering, so the motion “is premature and must be denied.” See id. The Court does not find that summary judgment is appropriate in this case. For that reason, the Court declines to convert Defendant’s motion to dismiss into a motion for summary judgment under CPLR § 3211(c).

Thus, Moving Defendant’s motion for summary judgment must be denied.

Accordingly, it is

ORDERED that the Moving Defendants’ motion is denied in its entirety; 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.

7/9/2025
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