

D.M. v City of New York

2025 NY Slip Op 32642(U)

July 9, 2025

Supreme Court, New York County

Docket Number: Index No. 950518/2021

Judge: Adam Silvera

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

PRESENT: HON. ADAM SILVERA PART **1**

Justice

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D. M.,

Plaintiff,

- v -

CITY OF NEW YORK, ARCHDIOCESE OF NEW YORK,
CATHOLIC CHARITIES COMMUNITY SERVICES,
ARCHDIOCESE OF NEW YORK, THE SISTERS OF
CHARITY OF SAINT VINCENT DE PAUL OF NEW YORK,
THE NEW YORK FOUNDLING F/K/A ST. AGATHA HOME,
DOES 1-10

Defendant.

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INDEX NO. 950518/2021

MOTION DATE 03/02/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 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, Archdiocese of New York and the Catholic Charities Community Services, Archdiocese of New York (hereinafter referred to as “Defendants”), to dismiss the complaint of the plaintiff, D.M. (hereinafter referred to as “Plaintiff”), or, alternatively, to grant summary judgment for Defendants. *See* Notice of Motion at 1.

I. Dismissal

The Court denies the portion of Defendants’ 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 defendant’s 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 a negligent supervision claim (couched as a general negligence claim) against Defendants. *See Complaint* (NYSCEF Doc. No. 1) (the “Complaint”) ¶¶ 24-61. To plead negligent supervision in a child sexual abuse case, a plaintiff must plead (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).

Defendants claim that it did not owe Plaintiff a duty because it did not control St. Agatha Home,¹ where Plaintiff’s alleged abuse occurred, or St. Agatha staff, including Plaintiff’s alleged abuser. *See Support* ¶ 7. In support of that claim, Defendants submit, purportedly as documentary evidence, several corporate documents, and affidavits from, *inter alia*, Roderick J. Cassidy, Esq. – the General Counsel for the Archdiocese of New York, Itohan Omoregie – Special Counsel to

¹ St. Agatha Home is now The New York Foundling. *See Affirmation in Support* (“Support”) ¶ 13. For simplicity, this Decision/Order refers to Foundling as St. Agatha, as it was known when Plaintiff’s alleged abuse occurred. *See Complaint* ¶¶ 7, 41.

The New York Foundling, and Maria Natale – Deputy Executive Director for Catholic Charities Community Services, Archdiocese of New York. *See id.*, Exh. H (St. Agatha’s deed); *id.*, Exh. I (The Foundling’s certificate of incorporation); *id.*, Exh. J (amendments to The Foundling’s certificate of incorporation); *id.*, Exh. K (St. Agatha’s certificate of merger) (together with Exhs. H, I, J, and k, the “corporate documents”); *id.*, Exh. L (Omoregiel’s affidavit); *id.*, Exh. M (Cassidy’s affidavit); *id.*, Exh. N (Natale’s affidavit).

For starters, Omoregiel, Cassidy, and Natale’s affidavits are not documentary evidence under CPLR § 3211(a)(1).² *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). And though the corporate documents constitute documentary evidence, they do not “plainly contradict[.]” Plaintiff’s allegations that Defendants controlled St. Agatha Home or St. Agatha staff. *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 Defendants. The Complaint alleges that Defendants controlled St. Agatha, that Defendants were involved in placing Plaintiff at St. Agatha, that Plaintiff was sexually abused while at St. Agatha by a staff member, that neither Defendants nor St. Agatha did anything to protect Plaintiff, and that St. Agatha was Defendants’ agent. *See Complaint*

² Even if such 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).

generally. Since “the employer-employee relationship gives rise to a duty to properly supervise and oversee the conduct of employees,” *see Moore Charitable Found.*, 40 NY3d at 162, and such duty does not “require a special relationship between [Defendants] and [Plaintiff],” *see Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 161 (1st Dep’t 2022), Plaintiff’s allegations are sufficient to give rise to a duty on Defendants’ part, as they “sufficiently placed [Defendants] on notice of [Plaintiff’s] claim” and, “pre-answer[.], ... [P]laintiff was not required to allege additional specific facts.”³ *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 negligent supervision and the documentary evidence does not refute Plaintiff’s claim, Defendants’ motion to dismiss must be denied.

II. Summary Judgment

The Court denies as premature Defendants’ motion, in the alternative to dismissal, for

³ That is the case even if the alleged abuser’s employer formally was St. Agatha, rather than Defendants. Plaintiff alleges that St. Agatha was Defendants’ agent, *see* Complaint ¶ 26, 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 Defendants’ control of St. Agatha as true, Defendants would have had a duty to control the alleged abuser. 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 nascent 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).

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

Thus, Defendants’ motion for summary judgment must be denied.

Accordingly, it is

ORDERED that the 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.

ADAM SILVERA, J.S.C.

7/9/2025
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE