

**John Doe - 18608 v Archdiocese of N.Y.**

2025 NY Slip Op 32651(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 951336/2021

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 **01****

*Justice*

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JOHN DOE - 18608,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SALESIAN SOCIETY,  
 PROVINCE OF ST. PHILIP THE APOSTLE,  
 INC., SALESIANS NATIONAL SHRINE OF MARY HELP OF  
 CHRISTIANS PARISH CHURCH, DOES 1-10

Defendant.

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**INDEX NO.** 951336/2021  
**MOTION DATE** 03/30/2022  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68 were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth below, this Court denies in its entirety the motion of defendant Archdiocese of New York (“Defendant”), to dismiss the complaint of the plaintiff, John Doc - 18608 (“Plaintiff”), *see generally* Complaint (NYSCEF Doc. No. 1) (the “Complaint”), or, alternatively, to grant summary judgment for Defendant. *See* Notice of Motion at 1-2.

**I. Dismissal**

The Court denies the portion of Defendant’s motion to dismiss the Complaint, as Plaintiff adequately pled that Defendant owed Plaintiff a duty of care, and Defendant has not submitted documentary evidence refuting that 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 facts alleged 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 in the complaint are not plainly contradicted by documentary evidence, then the court need only decide if the facts alleged “fit ... any cognizable legal theory.” *See Morgenthau*, 305 AD2d at 78, quoting *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). And “the complaint is deemed to allege whatever can be fairly implied from its statements.” *Leo v Mt. St. Michael Academy*, 272 AD2d 145, 146 (1st Dep’t 2000).

Here, Defendant claims that Plaintiff’s complaint must be dismissed because the documentary evidence establishes that Defendant did not own or control co-defendants Salesian Society; Province of St. Philip the Apostle; and Salesians National Shrine of Mary Help of Christians Parish Church, where Plaintiff’s alleged abuse occurred. *See* Affirmation in Support (“Support”) ¶¶ 9-14, 19. As such, Defendant claims that it did not owe Plaintiff a duty of care. *See id.* In support of those claims, Defendant submits, purportedly as documentary evidence, several corporate documents and an affidavit from Roderick J. Cassidy, Defendant’s general counsel.<sup>1</sup> *See id.*, Exh. E (the “Cassidy Affidavit”); *id.*, Exh. F (Salesian Society’s certificate of incorporation); *id.*, Exh. G (alleged deed whereby Salesian Society purchased the property where the alleged abuse occurred); *id.*, Exh. H (amendments to Salesian Society’s certificate of incorporation) (together with Exhs. F and G, the “corporate documents”); *see also* Support ¶¶ 7, 9, 12, 26, 29-30.

<sup>1</sup> Plaintiff is correct that Defendant failed to append the Cassidy Affidavit to its moving papers. *See* Plaintiff’s Opposition to Defendant Archdiocese of New York’s Motion to Dismiss ¶ 7. That alone, according to Plaintiff, warrants denial of the instant motion. *See id.* Assuming without deciding that Plaintiff is incorrect and that the Court may consider the Cassidy Affidavit, which was appended in Defendant’s reply, the Court nonetheless does not find the Cassidy Affidavit persuasive. *See* n 2 and accompanying text, *infra*.

For starters, the Cassidy Affidavit is not documentary evidence under CPLR § 3211(a)(1).<sup>2</sup> 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, 651 (1st Dep’t 2011). And though the corporate documents constitute documentary evidence, they do not “plainly contradict[]” Plaintiff’s allegations that Defendant controlled the co-defendants, including the property where the alleged abuse occurred. 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, contrary to Defendant’s argument, the Complaint adequately pled that Defendant, through its agents, controlled the premises where Plaintiff’s abuse occurred and thus that Defendant owed Plaintiff a duty of care. See Complaint ¶¶ 31-35; 37-42. Plaintiff also alleged that Defendant owed a duty of care because of Defendant’s special relationships with both Plaintiff and the alleged abuser. See *id.* ¶¶ 45-46.

Plaintiff’s allegations “sufficiently placed [Defendant] on notice of [Plaintiff’s] claim” and, “pre-answer[,] ... [P]laintiff was not required to allege additional specific facts.” 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*

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<sup>2</sup> Even if the Cassidy Affidavit 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). And this is not the rare case in which dismissal is warranted, as the Cassidy Affidavit does not “plainly contradict[]” Plaintiff’s allegations. See *Bishop*, 33 AD3d at 498.

*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); 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 that Defendant owed a duty of care and Defendant’s documentary evidence did not refute Plaintiff’s claim, Defendant’s motion to dismiss must be denied.

## II. Summary Judgment

The Court denies as premature Defendant’s 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) (“CPLR 3211 (c) permits *the court*, on notice to the parties, to treat a motion to dismiss as a motion for summary judgment before issue is joined.” (emphasis added)). “[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.* For the reasons above, *see supra* § 1, the Court does not find that summary judgment is appropriate in this case. And for that reason, the Court declines to

convert Defendant’s motion to dismiss into a motion for summary judgment under CPLR § 3211(c).<sup>3</sup>

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


Accordingly, it is

ORDERED that the Defendant’s 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.

<u>7/10/2025</u> DATE	 ADAM SILVERA, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>3</sup> As such, the Court need not address Defendant’s argument that Plaintiff’s failure to specifically controvert Defendant’s statement of material facts means that such facts should be deemed admitted. *See* Reply Affirmation in Further Support ¶¶ 4-8, citing Uniform Civil Rules for the Supreme Court and the County Court (22 NYCRR) § 202.8-g (repealed May 6, 2025, effective July 7, 2025).