

<b>R.D. v St. Agnes Home &amp; Sch. for Children</b>
2026 NY Slip Op 30518(U)
February 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 519339/2020
Judge: Sabrina B. Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART CVA - 1

Justice

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INDEX NO. 519339/2020

R.D.,

MOTION SEQ. NO. 007

Plaintiff,

MOTION DATE 1/16/26

ST. AGNES HOME AND SCHOOL FOR CHILDREN f/k/a
ST. AGNES HOME AND SCHOOL FOR BOYS;
DOMINICAN CONVENT OF OUR LADY OF THE ROSARY;
ARCHDIOCESE OF NEW YORK; CITY OF NEW YORK;
NEW YORK CITY ADMINISTRATION FOR CHILDREN'S
SERVICES f/k/a BUREAU OF CHILD WELFARE; THE
ROMAN CATHOLIC DIOCESE OF BROOKLYN;
HEARTSHARE ST. VINCENT'S SERVICES, f/k/a ST.
VINCENT'S HOME FOR THE BOYS; CATHOLIC
CHARITIES OF THE ARCHDIOCESE OF NEW YORK;
CATHOLIC HOME BUREAU; CATHOLIC GUARDIAN
SERVICES f/k/a CATHOLIC GUARDIAN SOCIETY AND
HOME BUREAU; DOMINICAN FATHERS PROVINCE OF
ST. JOSEPH a/k/a DOMINICAN FRIARS PROVINCE OF
ST. JOSEPH a/k/a ORDER OF PREACHERS PROVINCE
OF ST JOSEPH; THE DOMINICAN FOUNDATION OF
DOMINICAN FRIARS, PROVINCE OF ST JOSEPH, INC.;
CATHOLIC CHARITIES DIOCESE OF BROOKLYN,
CATHOLIC CHARITIES NEIGHBORHOOD SERVICES;
HEARTSHARE HUMAN SERVICES OF NEW YORK a/k/a
HEART SHARE HUMAN SERVICES OF NEW YORK
ROMAN CATHOLIC DIOCESE OF BROOKLYN; CATHOLIC
GUARDIAN SOCIETY OF THE DIOCESE OF BROOKLYN;
SISTERS OF THE ORDER OF ST. DOMINIC a/k/a
SISTERS OF ST. DOMINIC OF AMITYVILLE, AMITYVILLE
DOMINICAN SISTERS, INC., FEDERATION OF
DOMINICAN SISTERS USA, INC; and GEORGE
MCCLLOUD,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 161-170, 174-177
were read on this motion to/for DISMISS

### **BACKGROUND**

Plaintiff commenced this action under the Child Victim's Act ("CVA") seeking damages for alleged repeated instances of sexual abuse by multiple abusers while he was in the foster care system and in the custody and care of the Defendants, from approximately 1970, when he was about nine years old, until approximately 1977, when he was about sixteen years old.

### **PENDING MOTION**

On January 14, 2026, The Dominican Foundation of Dominican Friars, Province Of St Joseph, Inc ("Dominican") moved for an order pursuant to CPLR §3212 granting it summary judgment and dismissal of all claims against it, on the basis that the Dominican Foundation did not come into existence until well after the alleged sexual abuse and after the Boys Home closed in 1979. The motion was fully briefed and marked submitted. For the reasons stated below, the motion is granted.

### **ALLEGED FACTS**

Plaintiff alleged that he was sexually abused in approximately 1970 – 1973 by co-residents while in foster care at St. Agnes Home for Boys in Sparkill, New York. The Complaint asserts causes of action sounding in common law negligence. Plaintiff alleges, *inter alia*, that St. Agnes was operated under the control of and for the benefit of the Dominican and that the Dominican participated in the management, control and/or operation of St. Agnes Boys Home. Plaintiff further alleged that the Dominican served St. Agnes Boys' Home.

Dominican denied these allegations in its answer, and provides a Certificate of Incorporation, showing the Dominican was formed in the year 2008 (NYSCEF Doc No 164). Dominican is a registered 501(c)(3) organization with the express purpose of supporting the Dominican Friars of the Province of Saint Joseph.

Because the Dominican Foundation did not come into existence until 2008, it did not—and could not—have participated in the management, control and/or operation of nor served St. Agnes Boys Home in the years 1970 – 1973, when the alleged abuse occurred.

### DISCUSSION

To establish entitlement to summary judgment, the moving party is required to “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Summary judgment must be granted where a party has tendered evidentiary proof in admissible form demonstrating the absence of any material issues of fact. *See Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center, supra*. As stated by the Court of Appeals, “...when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated.” *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 (1974).

It is well established that to defeat a motion for summary judgment, a triable issue of fact must be shown to be “real, not feigned, since a sham or frivolous issue will not preclude summary relief.” *Fender v. Prescott*, 101 A.D.2d 418, 425 (1st Dept. 1984), *aff’d*, 64 N.Y.2d 1077 (1985); *see also Towners Org. v. Glockhurst Corp.*, 160 A.D.2d 597 (1st Dept. 1990) (“[M]ere surmise, suspicion and accusation are insufficient to defeat summary judgment”). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions, are insufficient to successfully oppose a motion for summary judgment. *See Gilbert Frank Corporation v. Federal Insurance Company*, 70 N.Y.2d 966 (1988); *Cabrera v. Rodriguez*, 71 A.D.3d 553 (1st Dept. 2010).

Where there is no legal merit to a cause of action, or where a question of fact is not raised, summary judgment should be granted. *See Land.Com, Inc. v. Kleiner*, 29 A.D.3d 744 (2d Dept. 2006) (citing *Fresh Meadow Country Club, Inc. v. Village of Lake Success*, 158 A.D.2d 581 (2d Dept. 1990)).

“Liability for negligence may result only from the breach of a duty running between a tortfeasor and the injured party” (*Kimmell v Schaefer*, 89 N.Y.2d 257, 263 [1996]). “[T]he existence of a duty is an issue of law for the courts” (*id.*). Here, the Dominican Foundation has met its *prima facie* burden for summary judgment dismissing the complaint insofar as asserted against it through admissible evidence establishing that it could not have owed or breached any duty to Plaintiff because it did not come into existence until 2008—decades after the tortious conduct in this case allegedly took place.

Notably plaintiff does not oppose the motion.

The only opposition comes from a co-defendant Catholic Home Bureau and Catholic Guardian Services f/k/a Catholic Guardian Society and Home Bureau (“Catholic Home”), who asserts that the motion should be denied as premature because no “meaningful” discovery has taken place.

The Court holds that as Catholic Home has asserted no claims against Dominican, and Plaintiff does not oppose the motion, Catholic Home lacks standing to oppose dismissal of the action as against Dominican. *Augustine v. Halcyon Constr. Corp.*, 71 Misc. 3d 715, 716, (2021); *Jones v. Erie County Medical Center*, 73 Misc.3d 855 (2021).

This comports with common sense. Plaintiff should not be forced to pursue claims against a defendant it concedes lack merit.

This holding is further supported by the fact that Catholic Home would lack standing to appeal this Court's grant of summary judgment to Dominican as it would not be aggrieved by such order. (CPLR §5511; *Mixon v. TBV, Inc.*, 76 A.D.3d 144, 157 (2<sup>nd</sup> Dept 2010)(*defendants were not aggrieved by order granting co-defendants motion for summary judgment because motion sought relief only against the plaintiffs*).

WHEREFORE it is hereby:

ORDERED that the motion of defendant The Dominican Foundation of Dominican Friars, Province Of St Joseph, Inc to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

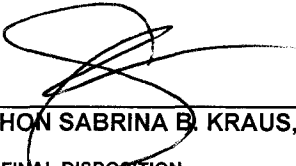
ORDERED that the caption be amended to reflect the dismissal; and it is further

ORDERED that the caption be further amended to reflect the action has been discontinued as to the Sisters of the Order of St. Dominic and Amityville Dominican Sisters. Inc. (NYSCEF Doc 173) and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

This constitutes the decision and order of this court.

2/6/2026 DATE			
		HON SABRINA B. KRAUS, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE	