

**ARK524 DOE v Archdiocese of N.Y.**

2022 NY Slip Op 34377(U)

December 16, 2022

Supreme Court, New York County

Docket Number: Index No. 950643/2021

Judge: Laurence L. Love

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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. LAURENCE L. LOVE **PART** **63M**

*Justice*

-----X

ARK524 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, CONGREGATION OF  
THE BLESSED SACRAMENT, ST. JEAN BAPTISTE'S,  
DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO  
PLAINTIFF

Defendants.

-----X

**INDEX NO.** 950643/2021

**MOTION DATE** 01/20/2022,  
03/04/2022

**MOTION SEQ. NO.** 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on motion sequence no. 002 of Defendant – Archdiocese of New York’s (“Archdiocese”) to dismiss Plaintiff’s complaint per CPLR 3211(a)(7) – failure to state a cause of action, to dismiss Plaintiff’s claim for statutory liability for violations of Penal Law, to dismiss Plaintiff’s third cause of action based on breach of statutory duty to report under Social Services Law 413 and 420, to dismiss Plaintiff’s claim sounding in premises liability, and to strike all language relating to breach of *in loco parentis*; and the cross – motion of St. Jean Baptiste to dismiss the complaint per CPLR 3211(a)(7) – failure to state a cause of action, to dismiss Plaintiff’s claim for premises liability, to dismiss Plaintiff’s third cause of action for breach of statutory duty to report under Social Services Law 413 and 420, to dismiss Plaintiff’s

claim for statutory liability for violation of Penal Law, and to strike all language in Plaintiff's complaint relating to a breach of *in loco parentis*; and motion sequence no. 003 that reads on the Notice of Motion of Defendant – Congregation of the Blessed Sacrament, to “dismiss[] Plaintiff's Complaint against Defendant.”

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, (ii) negligent training and supervision of employees, and (iii) negligent retention of employees.

Defendant Archdiocese affirms, “[w]ithout knowledge of the identity of the alleged Fr. John Doe, Plaintiff cannot assert sufficient factual allegations to establish any relationship between the Archdiocese and Plaintiff's unidentified alleged abuser giving rise to a duty to control the alleged abuser, warn of or remove the alleged abuser, or giving rise to any notice of alleged abuse. Thus, Plaintiff has failed to allege an essential element of his cause of action for negligence and his complaint should be dismissed for failure to state a cause of action” (see NSYCEF Doc. No. 20 Par. 4).

Defendant – St. Jean Baptiste affirms, “[t]here is no doubt that the identity of the Plaintiff's alleged abuser is a material element of each of the Plaintiff's cause of action. Without the name of the alleged abuser, the Plaintiff's complaint fails to state a cause of action” (see NSYCEF Doc. No. 36 Par. 9).

Plaintiff cites *O'Brien*, “the identity of the abuser is unknown; however, plaintiff sufficiently pled that the abuse occurred by a priest on the premise of St. Anselm. The identity of this priest may or may not be revealed through discovery” (see *O'Brien v. Archdiocese of New York*, Index No.: 950092/2020 [J. Silver]).

Congregation of the Blessed Sacrament submits a memorandum of law in support of their motion to dismiss. “The complaint does not provide any information as to where the alleged abuse occurred. Plaintiff merely alleges, without elaboration, that ‘Father Doe engaged in unpermitted sexual contact with Plaintiff’ when ‘Plaintiff was approximately 13 to 14 years old’” (see NYSCEF Doc. No. 34 P. 10).

Plaintiff’s memorandum of law in opposition states, “[t]hroughout its motion, Defendant engages in a deliberate attempt to muddle the issues before the Court and confuse the causes of action pled in Plaintiff’s Complaint. Much of Defendant’s Motion raises arguments relating to claims of breach of in loco parentis, premises liability, vicarious liability, failure to provide a safe environment, failure to warn, or failure to adequately inform families and children of the risks of sexual abuse. But none of these causes of actions are brought by Plaintiff. Rather, each of Plaintiff’s claims sound in negligence and are well – supported by New York law. As alleged in Plaintiff’s Complaint, Plaintiff was a parishioner and student at St. John Baptiste and Defendant owed a duty to protect children who attended its school and church and participated in its programs” (see NYSCEF Doc. No. 46 P. 2, 6).

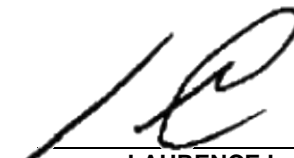
Plaintiff further affirms, “[o]ther Courts considering lawsuits under the Child Victims Act have found similar allegations to be sufficient to withstand dismissal at this early pleading stage” (see NYSCEF Doc. No. 47 Par. 5). Plaintiff exhibits *ARK3 Doe v. Diocese of Rockville Centre, et. al.* (see NYSCEF Doc. No. 48), and mentions *Digiorio v. The Roman Catholic Diocese of Brooklyn, Doe v. Enlarged City School Dist. of Middletown, ARK61 Doe v. Archdiocese of New York, and Torrey v. Portville Central Sch* (see NYSCEF Doc. No. 47 Par. 5).

A review of all the documents filed by the parties in this matter clarify that plaintiff’s opposition memorandum of law is essential correct and many of the causes of actions defendant seeks to dismiss simply are not present in this instance.

ORDERED that motion sequence no. 002 of Defendant – Archdiocese to dismiss Plaintiff’s complaint per CPLR 3211(a)(7) – failure to state a cause of action, to dismiss Plaintiff’s claim for statutory liability for violations of Penal Law, to dismiss Plaintiff’s third cause of action based on breach of statutory duty to report under Social Services Law 413 and 420, to dismiss Plaintiff’s claim sounding in premises liability, and to strike all language relating to breach of *in loco parentis* is DENIED; and it is further

ORDERED that the cross – motion of St. Jean Baptiste to dismiss the complaint per CPLR 3211(a)(7) – failure to state a cause of action, to dismiss Plaintiff’s claim for premises liability, to dismiss Plaintiff’s third cause of action for breach of statutory duty to report under Social Services Law 413 and 420, to dismiss Plaintiff’s claim for statutory liability for violation of Penal Law, and to strike all language in Plaintiff’s complaint relating to a breach of *in loco parentis* is DENIED; and it is further

ORDERED that motion sequence no. 003 of Defendant – Congregation of the Blessed Sacrament, to “dismiss[] Plaintiff’s Complaint against Defendant” is DENIED in its entirety.

<p><u>12/16/2022</u> DATE</p>	 <hr/> LAURENCE L. LOVE, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
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 checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE