J.D. v Roman Catholic Diocese of Brooklyn
2021 NY Slip Op 31444(U)
April 28, 2021
Supreme Court, Kings County
Docket Number: 519856/2019
Judge: George J. Silver
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Index №. 519856/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

J.D.,

Index №. 519856/2019

Plaintiff,

-against-

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN,
et al.

Defendant

----------X

HON. GEORGE J. SILVER:

Defendant ROMAN CATHOLIC DIOCESE OF BROOKLYN (hereinafter the "Diocese") moves, pursuant to CPLR §§3211(a)(5), and (7) to dismiss plaintiff J.D.'s ("plaintiff") complaint as against it. Separately, defendant ST. FRANCIS OF ASSISI ROMAN CATHOLIC CHURCH ("Parish") moves to dismiss plaintiff's complaint as against it under the same provisions. Defendant BISHOP NICHOLAS DIMARZIO ("Bishop DiMarzio") moves for dismissal based on plaintiff's purported failure to establish a connection between the allegations alleged in this lawsuit, and any conduct on Bishop DiMarzio's part. Plaintiff opposes all three applications.

Plaintiff's complaint alleges that in 1973, when plaintiff was 10 years old, plaintiff was sexually abused by nonparty Father Joseph Schuck ("Fr. Schuck"), on the premises of Parish and its associated school. Plaintiff was also involved in youth groups and a Cub Scouts troop organized by Parish, and engaged in various scouting activities at which Fr. Schuck was present. Thirty years after the alleged abuse, in 2003, it emerged in two news articles that Fr. Schuck had allegedly sexually abused a minor in the late 1950s, many years before plaintiff was allegedly abused. Plaintiff now sues the Diocese, and in addition names Parish and Bishop DiMarzio as alleged tortfeasors.

The Diocese's Motion

In support of its motion to dismiss, the Diocese argues that insofar as plaintiff's cause of action for negligence alleges that it is vicariously liable for Fr. Schuck's alleged intentional torts, that cause of action is not revived by the Child Victims Act, (L. 2019 c.11) ("CVA") which, *inter alia*, (1) extends the statute of limitations on criminal cases involving certain sex offenses against children under 18 (*see* CPL §30.10[f]); (2) extends the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (*see* CPLR §208 [b]); and (3) opens a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing six months after the effective date of the measure, i.e. August 14, 2019 (*see* CPLR §214-g). Indeed, the Diocese argues that the legislature only revived claims based on the Diocese's

intentional or negligent acts. As such, the Diocese avers that plaintiff's cause of action for negligence is time-barred.

To the extent that the court finds a time-bar inapplicable, the Diocese argues that the court should dismiss plaintiff's complaint in its entirety insofar as plaintiff has failed to state sufficiently pleaded causes of action. The Diocese highlights that plaintiff's complaint purports to allege the following causes of action as against it: Negligence (Count I); Negligent Supervision, Monitoring, Training, and Retention (Count II); Breach of Fiduciary Duty (Count III); Constructive Fraud (Count IV); and Civil Conspiracy to Commit Fraud (Count V). The Diocese contends that Count I, for negligence, should be dismissed to the extent that it is improperly predicated on vicarious liability and that it asserts that Fr. Schuck was "a dangerous condition on the property." Additionally, the Diocese argues that Count I should be dismissed to the extent that it is duplicative of Count II. The Diocese submits that Count II, for negligent supervision, monitoring, training, and retention, should be dismissed because the complaint does not allege facts sufficient to show that the Diocese had actual or constructive notice of Fr. Schuck's alleged propensity to commit sexual abuse at any point in time until shortly before the news articles published thirty years after the alleged abuse. The Diocese avers that Count III, for breach of fiduciary duty, should be dismissed because it is not pleaded with particularity, and in any event, the Diocese owed plaintiff no such duty. As to Counts IV and V, the Diocese contends that plaintiff's allegations sounding in constructive fraud and civil conspiracy to commit fraud, respectively, should be dismissed because they too are not pleaded in detail, and because they are duplicative of plaintiff's negligence-based theories. In addition, the Diocese submits that Count V also fails because New York law does not recognize an independent cause of action for civil conspiracy.

Parish's Motion

In support of its motion, the Parish argues that plaintiff's complaint "does not allege, other than in a conclusory fashion, how the Parish had reason to suspect that Fr. Schuck was abusing plaintiff." In addition, the Parish avers that the complaint does not allege that anyone or anything brought the alleged abuse of plaintiff to the attention of either the Parish or the Diocese. Other than citing two news articles published in 2003, the Parish states that plaintiff does not identify how the Parish knew that Fr. Schuck had abused a child, or how the Parish had "covered up" that alleged abuse. The Parish also incorporates the arguments and authorities set forth in the Diocese's motion in support of its own motion to dismiss plaintiff's complaint in its entirety.

Bishop DiMarzio's Motion

Bishop DiMarzio, the current bishop of the Diocese, was appointed in 2003. In support of his application for dismissal, Bishop DiMarzio argues that by the time that he arrived in Brooklyn, Fr. Schuck was no longer with the Diocese, having decamped to Albany. As plaintiff's complaint does not allege any connection between Bishop DiMarzio and either Fr. Schuck or plaintiff, Bishop DiMarzio contends that plaintiff has not asserted any viable claims as against him. Accordingly, Bishop DiMarzio seeks dismissal of the complaint, joining arguments advanced by the Diocese and the Parish.

Plaintiff's Opposition

In opposition, plaintiff argues that defendants proffered grounds for dismissal of plaintiff's complaint are erroneous. Notably, plaintiff underscores that plaintiff is not required to provide specific details at this juncture to fully demonstrate the viability of plaintiff's various causes of action. Instead, plaintiff emphasizes that the allegations asserted within plaintiff's complaint should be afforded the benefit of every favorable inference. Here, plaintiff states that plaintiff has more than plausibly alleged that, at the age of 10, Fr. Schuck sexually abused him numerous times on school and church property during the school day without anyone preventing it, and that Fr. Schuck began exploiting his position as a diocesan priest to abuse children at least fifteen (15) years before he abused plaintiff. As such, plaintiff submits that plaintiff has presented adequate allegations at this stage to allege that defendants knew or should have known of Fr. Schuck's propensities.

Notably, with respect to plaintiff's breach of fiduciary duty claims, plaintiff argues that Catholicism and Catholic education permeated all aspects of plaintiff's life as a minor. Indeed, plaintiff alleges that plaintiff's devout Catholic mother "entrusted his education, care, supervision, and safety" to the Parish by having plaintiff attend Catholic school from 1st through 12th grade. Plaintiff also states that plaintiff was instructed in catechism classes, and that the bishop and diocesan priests were "moral authorities whom he was obliged to trust and respect." Plaintiff states that these associations indicate that defendants held a unique position of influence and authority over plaintiff's life, a relationship defendants accepted, cultivated, and encouraged.

As to the fraud claims, plaintiff argues that defendants can be held liable for failing to disclose material facts regarding Fr. Schuck's abusive nature. Indeed, plaintiff submits that a duty to disclose can arise not only where there is a fiduciary relationship, but also where there is a confidential relationship, where the party to be charged has superior knowledge of the key facts, or where the party to be charged has superior means of knowledge as to such facts. Here, plaintiff submits that defendants had access to enhanced information about potentially predatory priests, and had a duty disclose that information to individuals such as plaintiff.

In sum, plaintiff argues that there is no merit to defendants' motions.

DISCUSSION

"[O]n a motion to dismiss a cause of action pursuant to CPLR §3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff (*Benn v Benn,* 82 AD3d 548, 548 [1st Dept 2011] *see also Brignoli v Balch, Hardy & Scheinman, Inc.*, 178 AD2d 290 [1st Dept 1991][defendant bears the burden of proof on an affirmative defense]).

"On a motion to dismiss for failure to state a cause of action under CPLR §3211 (a)(7), we accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be

drawn from them do not allow for an enforceable right of recovery." (*Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 141-142 [2017] [internal citations omitted]).

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp*., 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thorn Rock Realty Co*., 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see* CPLR §3026; *Siegmund Strauss, Inc*., 104 AD3d 401, *supra*). In deciding such a motion, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs 'the benefit of every possible favorable inference,'" and "determine only whether the facts as alleged fit into any cognizable legal theory" (*Siegmund Strauss, Inc*., 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *aff'd* 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], *lv denied* 89 NY2d 802 [1996], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Leon*, 84 NY2d at 88, *supra*; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]; "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co*., NYLJ January 18, 2005, p. 26 col.4, *citing P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id*. at 376; *see Rovello v Orofino Realty Co*., 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon*, 84 NY2d at 87-88, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

CPLR §214-g

Here, as a threshold matter, prior to addressing the individual claims at issue in this lawsuit, the court tackles the argument that plaintiff's complaint should be dismissed in part, pursuant to CPLR §3211(a)(5), as time-barred since some of the specific torts alleged were not revived by CPLR §214-g. CPLR §214-g revives, in relevant part, "every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of" specific child sexual abuse offenses. Nevertheless, it is suggested here that any respondeat superior claim, based on acts of individual perpetrators, and any claim premised on conduct that is not intentional or negligent, such as recklessness or gross negligence, is time-barred.

Upon careful review of CPLR §214-g, the court denies the requested relief . The argument that the CVA did not revive claims based upon the acts and omissions of an employee or agent acting within the scope of his or her authority or any other claim against a party alleging intentional or negligent acts as a result of child sexual abuse ignores the revival statute's careful delineation between those whom a cause of action is brought against, and those alleged to have committed an act. As other courts have observed, the use of different words to describe (1) against whom a cause of action is brought or liability is sought (that is, a "party"), and (2) by whom the tortious act was committed (that is, a "person") is telling (*see Koeneke v. Holy Family Roman Catholic Church*, Index No. 900004/2019 [Nassau Cnty 2020]).

When codifying the CVA, the Legislature expressly revived "every" claim or cause of action brought against a "party" so long as the claim alleges intentional or negligent conduct by a "person" causing injury as a result of specific child sexual abuse offenses. The statute clearly differentiates between two different nouns ("party" and "person") and two different prepositions respectively ("against" and "by"). In doing so, the Legislature ecognized that in some instances the "party" held liable, such as the Diocese, and the "person" committing the negligent or intentional tort, such as an employee or agent, would be different. Here, viewing the Diocese as an employer and Fr. Schuck as the person who committed the torts alleged within the scope of his employment comports with the language of CPLR §214-g (*see Riviello v Waldron*, 47 NY2d 297 ([1979): "[W]e first note what is hornbook law: the doctrine of respondeat superior renders a master vicariously liable for at tort committed by his servant while acting within the scope of his employment" (*id*. at 302). Accordingly, the court finds that CPLR 214-g plainly revives respondeat superior claims.

The court further finds that CPLR §214-g also revives claims alleging negligence/gross negligence and breach of non-delegable duty. To reiterate, CPLR §214-g expressly revives every "claim or cause of action brought against any party" that alleges "intentional or negligent acts or omissions" stemming from child sexual abuse offenses. A finding to the contrary would run athwart of the Legislature's intent when adopting CPLR §214-g. As plaintiff highlights, "[i]n the spectrum of tortious conduct, general or ordinary negligence sits at one end of the scale, while intentional acts sit at the other. To suggest that the New York legislature intended to revive claims only on the opposite ends of the spectrum and exclude claims in the middle of those two extremes would bear a preposterous result." Furthermore, considering that courts within this state define

gross negligence as essentially the equivalent of intentional wrongdoing exposes the deficiencies within the Diocese's argument (*see Bennett v State Farm Fire and Cas. Co*., 161 AD3d 926, 929 [2d Dept 2018]["To constitute gross negligence, a party's conduct must smack of intentional wrongdoing or evince a reckless indifference to the rights of others"]). To the extent that gross negligence claims are based on either "negligent" or "intentional" acts, such claims are covered by the revival language within CPLR §214-g.

Accordingly, the portion of the respective motions seeking dismissal of certain claims articulated in plaintiff's pursuant to CPLR §3211(a)(5) as time-barred, is denied in its entirety.

Individual Claims

1. Negligence

Here, contrary to defendants' suggestions, plaintiff is not alleging that either the Diocese or the Parish is vicariously liable under respondeat superior for Fr. Schuck's actions. Moreover, plaintiff does not allege statutory violations for failure to make a mandatory report. Rather, the gravamen of plaintiff's negligence claim is that the Diocese and Parish owed a duty of care to plaintiff because, among other things, plaintiff was an invitee on property that defendants owned and/or operated. Plaintiff further underscores that the duty that was owed to him was breached by allowing a known perpetrator of sex abuse, Fr. Schuck, to work on the premises. Although the Diocese arguably cannot be held vicariously liable for the intentional torts committed by Fr. Schuck, it can be held vicariously liable for negligence committed in allowing such abuse to take place when a duty of reasonable care existed to safely manage educational facilities operated by its agents. Moreover, while the Parish argues that it had no notice of Fr. Schuck's actions, the Parish has failed to conclusively establish its lack of knowledge as a matter of law. Discovery will be necessary before the parties' significant disputes on the issue of notice can be reconciled. As such, defendants' motion to dismiss plaintiff's first cause of action is denied.

2. Negligent Hiring, Retention, Supervision

The Diocese and Parish next claim that plaintiff's cause of action for negligent supervision should be dismissed for failure to state a claim since there are no specific allegations that either entity knew of Fr. Schuck's propensity to commit sexual abuse of minors. Both entities argue that plaintiff's present allegations, absent more, are insufficient and amount to an attempt surmise that both the Diocese and Parish are strictly liable for Fr. Schuck's alleged misconduct. The Diocese and Parish also state that any claim of alleged abuse that did not take place on their property is too attenuated and must be dismissed.

However, contrary to these assertions "[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Instead, to prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). "A necessary element of a cause of action alleging negligent retention or negligent supervision is that the 'employer knew or should

have known of the employee's propensity for the conduct which caused the injury'" (*Bumpus v New York City Transit Authority*, 47 AD3d 653 [2d Dept 2008]).

Here, plaintiff alleges that the Diocese and Parish had a duty to protect plaintiff from alleged sexual abuse, especially when considering emergence of news reports in 2003that Fr. Schuck had allegedly sexually abused a minor in the late 1950s, many years before plaintiff was allegedly abused. In this respect, plaintiff has alleged in more than a generalized manner, that the Diocese and Parish overtly knew or should have known of Fr. Schuck's propensity to commit such conduct (*contra Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011][generalized claim that defendant "knew the risk of sexual abuse of minor parishioners by priests and other staff" is insufficient (*Shor v. Touch-N-Go Farms, Inc*., 89 AD3d 830, 831 [2d Dept. 2011]).

Accordingly, defendant's motion to dismiss the Second Cause of Action for negligent supervision is denied.

3. Breach of Fiduciary Duty

Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with a church extends beyond that of an ordinary parishioner (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3rd Dept 2005]). That said, a fiduciary relationship is not applicable to all parishioners, and can be established upon a showing that a congregant's relationship with a church entity resulted in "de facto control and dominance" when the congregant was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]). The existence of a fiduciary duty is a fact-specific question to be determined by the fact-finder, such that breach of fiduciary duty claims should not generally be dismissed before the parties have the opportunity to conduct discovery (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, *supra*). Here, plaintiff has not simply alleged that a fiduciary duty was owed to "all" parishioners, but rather argues that there was a duty owed to the specific parishioner at issue – namely, plaintiff. Key facts are put forward in support of that supposition, including plaintiff's attendance of grade school catechism classes that made him consider figures within the church as caretakers and moral authorities. As such, this case does not fall within the ambit of cases where a fiduciary relationship is plead without requisite support. Accordingly, plaintiff has sufficiently stated a cause of action for breath of fiduciary duty, and plaintiff's Third Cause of Action remains.

4. Constructive Fraud and Civil Conspiracy to Commit Fraud

To establish a prima facie case for fraud, a plaintiff must allege that 1) defendant made a representation as to a material fact; 2) such representation was false; 3) defendant intended to deceive plaintiff; 4) plaintiff believed and justifiably relied upon the statement and was induced by it to engage in a certain course of conduct; and 5) as a result of such reliance plaintiff sustained pecuniary loss (*Ross v. Louise Wise Services, Inc.,* 8 NY3d 478, 488 [2007]). CPLR §3016(b) provides that where a cause of action is based upon misrepresentation, fraud, breach of trust, and certain other claims the circumstances constituting the wrong shall be stated in detail. The purpose of this pleading requirement is to inform a defendant of the incidents which form the basis of the action (*Pludeman v. Northern Leasing Systems*, 10 NY3d 486, 491 [2008]).

Here, Count IV of the complaint purports to allege a cause of action for "constructive fraud" while Count V purports to allege "civil conspiracy to commit fraud." As articulated above, "[w]here a cause of action or defense is based upon . . . fraud, . . . the circumstances constituting the wrong shall be stated in detail" (*see* CPLR 3016[b]). To meet that pleading requirement, plaintiff alleges that the Diocese and Parish "were familiar with the acute problem of numerous priests sexually violating children," and held a position "of superior knowledge and influence." Accordingly, plaintiff surmises that the Diocese and Parish had a duty to speak and inform individuals like plaintiff about Fr. Schuck's actions. By deteriorating this obligation, plaintiff contends that the Diocese and Parish falsely assured the public, and thereby contravened their duty to inform the general public, parishioners, parents, and law enforcement authorities alike about abuse being perpetrated by their offending clerics. Absent from plaintiff's complaint is reference to the identity of those within the Diocese and Parish who exactly made purported misrepresentations and false assurances. Without such details, the Diocese argues that plaintiff's allegations on this front amount to nothing "but a swirling haze of innuendo untethered to facts."

Based on the governing precedent set forth above, plaintiff's fraud claims are problematic even at this early pleading stage because plaintiff has not pleaded those claims with sufficient particularity (*see Pludeman*, 10 NY3d at 491, *supra*; *see also* CPLR 3016[b]). Even if plaintiff had pleaded such claims with particularity, plaintiff's claims of constructive fraud also fail because they are duplicative of plaintiff's negligence theories. Indeed, "[i]t is only when the alleged fraud occurs separately from and subsequent to" the sexual abuse "that a plaintiff is entitled to allege and prove a cause of action for intentional tort," such as fraud, "and then only where the fraud claim gives rise to damages separate and distinct from those flowing from" the sexual abuse (*see Coopersmith v. Gold*, 172 AD2d 982, 984 [3d Dept 1991][reversing trial court and granting dismissal of fraud claim against psychiatrist for sexual abuse in a suit alleging malpractice premised on the same abuse]). Here, plaintiff's fraud allegations are pleaded in connection with the alleged sexual abuse and not separately from or after it. Moreover, the same damages are sought in Counts I, II, IV and V of the complaint. Accordingly, plaintiff's fraud claims cannot survive the instant application. Likewise, non-pecuniary damages are not recoverable via a fraud claim, as New York law does not allow recovery for non-economic damages, such as pain and suffering, in connection with alleged fraud (*see O'Neill v. O'Neill*, 694 NYS2d 772, 773 [2d Dept 1999]["[C]ompensatory damages in a fraud cause of action are limited to damages for pecuniary losses."]). The cases cited by plaintiff in opposition to this premise are lower court rulings that this court is not bound to follow. Additionally, plaintiff does not clearly delineate economic damages on account of the Diocese and Parish's purported fraud. Accordingly, the Diocese and Parish's application for dismissal of plaintiff's claims premised on fraud, is granted.

As for the civil conspiracy claims, the court notes that civil conspiracy, in and of itself, is not an independent tort. To be sure, "civil conspiracy to commit fraud" also known as conspiracy to defraud, can be aptly categorized as a variation of a fraud claim since New York law does not recognize a cause of action for civil conspiracy" (*see Project Cricket Acquisition, Inc. v. FCP Inv'rs VI, L.P.*, 159 A.D.3d 600, 601 [1st Dept 2018]). While a plaintiff can allege in a claim of fraud that parties conspired to commit fraud, the conspiracy to commit a fraud is not, of itself, a cause of action (*see Hoeffner v. Orrick, Herrington & Sutcliffe LLP*, 85 AD3d 457, 458 [1st Dept

2011]). Likewise, because civil conspiracy is not an independent tort, it cannot have its own independent measure of damages. Rather, any damages attributable to plaintiff's conspiracy claim exist only within those damages that may be assessed for fraud. And since this court has already dismissed plaintiff's cause of action for fraud, no damages lie here on account of the Diocese and Parish's purported civil conspiracy to commit fraud. Plaintiff's attempt to rehabilitate plaintiff's civil conspiracy claims by pointing to general Church-wide scandals, nationally and internationally, is unavailing since plaintiff cannot support specific allegations of civil conspiracy tethered to the actions of Fr. Schuck. As such, plaintiff's civil conspiracy to commit fraud cause of action is similarly dismissed in its entirety.

Bishop DiMarzio

With respect to plaintiff's allegations against Bishop DiMarzio, the complaint does not allege facts linking Bishop DiMarzio to Fr. Schuck's 1973 crimes or plaintiff's alleged injuries. Rather, the complaint alleges only that Bishop DiMarzio became bishop of the Diocese at some unstated time in 2003 or 2004, and that he affirmatively publicly disclosed the identity of priests accused of sex abuse in 2004, and again in 2014. Absent from the complaint is any reference to where Bishop DiMarzio was in 1973, and whether a position he may have held at the time places him within the ambit of plaintiff's allegations. No facts are offered asserting that Fr. Schuck knew or met Bishop DiMarzio, or that Bishop DiMarzio had any role in training or supervising Fr. Schuck. Indeed, Fr. Schuck left the Diocese more than twenty-five years before Bishop DiMarzio arrived. Bishop DiMarzio's perceived wrongdoing in connection with this lawsuit is premised entirely on his office as Bishop after 2003 notwithstanding that the wrongdoing alleged occurred thirty years earlier. These allegations are insufficient on their face and meritless as a matter of law. Likewise, because civil conspiracy claim is not an independent cause of action, plaintiff's allegations of civil conspiracy against Bishop DiMarzio fail for the same reasons articulated with respect to the Diocese and Parish (*Kovkov v. Law Firm of Dayrel Sewell, PLLC*,182 AD3d 418 [1st Dept 2020]; *McSpedon v. Levine*, 158 AD3d 618, 621 [2d Dept 2018]). In fact, the civil conspiracy cause of action is even more specious as to Bishop DiMarzio since none of the four independent torts alleged in Counts I to IV of the complaint are alleged against Bishop DiMarzio. Accordingly, plaintiff's complaint is dismissed in its entirety as to Bishop DiMarzio.

Based on the foregoing, it is hereby

ORDERED that the Diocese and Parish's respective applications for dismissal pursuant to CPLR §3211(a)(5) based upon a narrow reading of CPLR §214-g, are denied in their entirety; and it is further

ORDERED that Diocese and Parish's respective applications for dismissal of Counts I, II, and III of plaintiff's complaint are denied in their entirety; and it is further

ORDERED that the Diocese and Parish's respective applications for dismissal of Counts IV and IV of plaintiff's complaint are granted in their entirety; and it is further

ORDERED that Bishop DiMarzio's application for dismissal of plaintiff's complaint as against him, is granted in its entirety; and it is further

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ORDERED that in accordance with this court's decision and order, the Clerk of the Court is directed to amend the caption to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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J.D.,

Index №. 519856/2019

Plaintiff,

-against-

ROMAN CATHOLIC DIOCESE OF BROOKLYN, ST. FRANCIS OF ASSISI ROMAN CATHOLIC CHURCH, BOROUGH OF QUEENS, CITY OF NEW YORK

Defendants

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; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in accordance with this court's decision and order.

This constitutes the decision and order of the court.

Dated: 4-28-2021

GEORGE J. SILVER, J.S.C.