

M.A. v City of New York
2021 NY Slip Op 32484(U)
November 10, 2021
Supreme Court, New York County
Docket Number: Index No. 950041/2021
Judge: Deborah A. Kaplan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBORAH A. KAPLAN PART CVA
Justice
INDEX NO. 950041/2021
M. A., MOTION DATE
Plaintiff, MOTION SEQ. NO. 002

- v -

CITY OF NEW YORK, THE NEW YORK FOUNDLING, SISTERS OF CHARITY OF SAINT VINCENT DE PAUL OF NEW YORK, CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK, ARCHDIOCESE OF NEW YORK

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 71, 72, 76, 77

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that the instant motion is granted.

Defendants ARCHDIOCESE OF NEW YORK (the "Archdiocese") and CATHOLIC CHARITIES COMMUNITY SERVICES ARCHDIOCESE OF NEW YORK ("Catholic Charities")(collectively, "defendants") move, pursuant to CPLR §§3211(a)(1) and (a)(7), to dismiss plaintiff M.A.'s ("plaintiff") complaint based on documentary evidence and plaintiff's purported failure to state a cause of action. Plaintiff opposes the application.

This action was brought under the Child Victims Act, and arises from allegations that plaintiff was sexually abused by her foster father Juan Estrada starting in 1967, her foster brother Frank Estrada in 1967 and 1969, and by an individual identified as James Robinson in 1974, while plaintiff she was a placed in the custody, care, and control of defendant New York Foundling ("Foundling"). Plaintiff contends that defendant City of New York ("City") and either Foundling or defendant SISTERS OF CHARITY ("Sisters"), were responsible for assigning plaintiff to the

care of her foster family. Plaintiff does not allege that either the Archdiocese or Catholic Charities had any role in such placement.

Dismissal under CPLR §3211(a)(1) is warranted where documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Financial Services, LLC v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002]; see *Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept 2014]).

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR §3211(a)(7), the court’s role is “to determine whether [the] pleadings state a cause of action” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]). To determine whether a claim adequately states a cause of action, the court must “liberally construe” it, accept the facts alleged in it as true, accord it “the benefit of every possible favorable inference” (*id.* at 152; see *Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881 [2013]; *Simkin v Blank*, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (see *Hurrell-Harring v State of New York*, 15 NY3d 8 [2010]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept. 2004]).

“Although on a motion addressed to the sufficiency of a complaint pursuant to CPLR §3211(a)(7), the facts pleaded are presumed to be true and accorded every favorable inference, allegations consisting of bare legal conclusions as well as factual claims either inherently or flatly contradicted by the documentary evidence are not entitled to such consideration” (*Stuart Lipsky, P.C. v Price*, 215 AD2d 102, 103 [1st Dept 1995]). When documentary evidence submitted in support of a motion to dismiss pursuant to CPLR § 3211 disproves an essential allegation of the complaint, dismissal is warranted even if the allegations, standing alone, could otherwise withstand

a motion to dismiss pursuant to CPLR §3211(a)(7) (*see Mill Fin., LLC v. Gillet*, 19 AD3d 98, 103 [1st Dept 2014]).

Here, based on the evidence submitted, it is clear that Catholic Charities is a legally distinct non-profit social services agency with its own Board of Trustees. Likewise, although Foundling is located within the geographical boundaries of the Archdiocese, Foundling was not an agent of either the Archdiocese or Catholic Charities at any time relevant to the allegations in the complaint. Indeed, Foundling was a distinct and independent entity from the Archdiocese and Catholic Charities. The Archdiocese and Catholic Charities did not own property where Foundling was located, did not have any involvement in the administration and did not employ, supervise or train any of Foundling's faculty staff, or other employees. Nor did defendants have any role in placing plaintiff in foster care. As neither the Archdiocese nor Catholic Charities had control over placing children referred to Foundling in foster care homes, it is axiomatic that dismissal is warranted.

Notably, plaintiff does not challenge the authenticity of the documentary evidence submitted in support of defendants' motion. Instead, plaintiff opposes defendants' motion by making conclusory assertions that Foundling was subject to the Archdiocese and Catholic Charities' control and direction because Catholic Charities' present website refers to Foundling as a social services agency to which Catholic Charities provides resources and support.

Such evidence, however, does not require a different finding by the court where there is ample evidence contesting defendants' supervision and control. To be sure, there is an immense difference both between providing resources and support for a social services agency and having control over it or the ability to direct it. This court would have to make a speculative leap to reach such a conclusion, especially where the documentary evidence submitted demonstrates that Foundling was a legally distinct and independent entity that did not have a principal-agent

relationship with either the Archdiocese or Catholic Charities. Moreover, the documentary evidence flatly contradicts plaintiff's conclusory allegations that the Archdiocese or Catholic Charities controlled or directed Foundling or plaintiff's alleged abusers.

Moreover, Foundling's partial opposition to defendants' application premised on a lack of disclosures at this juncture in the litigation is unpersuasive, since the documentary evidence that has been provided for the court's review conclusively demonstrates that Foundling was a distinct and independent entity from the Archdiocese and Catholic Charities.

Accordingly, defendants' instant motion seeking dismissal, is granted. Accordingly, it is hereby

ORDERED that defendants' instant motion is granted; and it is further

ORDERED that the Clerk of the Court, New York County, is directed to enter judgment dismissing defendants Archdiocese and Catholic Charities from this action.

This constitutes the decision and order of the court.

Nov 10, 2021
DATE


HON. DEBORAH A. KAPLAN, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: