

<b>C.S. v City of New York</b>
2022 NY Slip Op 32938(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 950735/2020
Judge: Laurence Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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INDEX NO. 950735/2020

C. S.,

MOTION DATE 04/14/2021

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

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 40, 41

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following read on Defendants – CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK and ARCHDIOCESE OF NEW YORK’S pre – answer motion to dismiss per CPLR 3211(a)(1) – documentary evidence and CPLR 3211(a)(7) – failure to state a cause of action. Plaintiff proceeds via the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence – against City of New York, (ii) negligence – against The New York Foundling, (iii) negligence – against Sisters of Charity of Saint Vincent De Paul of New York, (iv) negligence – against Catholic Charities of the Archdiocese of New York, and (v) negligence – against Archdiocese of New York.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We 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 within any cognizable legal theory” (see *Leon v. Martinez*, 84 N.Y.2d 83 [1994]).

On a motion to dismiss based upon documentary evidence, defendant must present evidence which “utterly refutes” plaintiff’s allegations and establishes a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314 [2002]).

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]).

“In order 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” (see *Pasternack v. Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]).

The affidavit of Roderick J. Cassidy, Associate General Counsel for the Archdiocese of New York affirms, “I base this affidavit upon my review of the Archdiocese’s records and files, as well as my personal knowledge. The Archdiocese did not create, oversee, supervise, manage, control, direct, or operate Foundling or its staff, employees, foster parents or foster children. [T]he Archdiocese did not hire, retain, employ, oversee, supervise, provide, or control the staff, employees, or foster parents at Foundling, including [...] and Mr. and Mrs. [...]” (see NYSCEF Doc. No. 27 Pars. 2, 4).

The affidavit of Talia Lockspeiser, Associate Executive Director for Catholic Charities of the Archdiocese of New York affirms, “I base this affidavit upon my review of the Complaint,

Catholic Charities' records and files, as well as my personal knowledge. Catholic Charities did not create, oversee, supervise, manage, control, direct or operate Foundling at any time relevant to the allegations in the Complaint. Catholic Charities did not hire, retain, employ, oversee, or control the staff or employees at the New York Foundling, Sisters of Charity, Plaintiff's foster parents, or her alleged abuser, [...]" (see NYSCEF Doc. No. 28 Pars. 2, 6, 8).

Defendant submit a Certified Copy of the Certificate of Incorporation for Foundling (see NYSCEF Doc. No. 23), and a Certified Copy of Certificate of Incorporation for the Sisters of Charity (see NYSCEF Doc. No. 25).

Defendants' Reply Memorandum states, "Plaintiff failed to respond to Movants' Statement of Undisputed Facts pursuant to 22 NYCRR §202.8-g(c) and therefore admitted each of the facts set forth by Movants" (see NYSCEF Doc. No. 41 P. 2).

ORDERED that the motion of defendants ARCHDIOCESE OF NEW YORK and CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW YORK to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

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

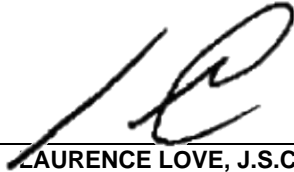
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General

Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

8/25/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE