

SWNY 8 DOE v Roman Catholic Archdiocese of N.Y.
2022 NY Slip Op 33001(U)
September 7, 2022
Supreme Court, New York County
Docket Number: Index No. 950207/2021
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. LAURENCE L. LOVE</u>	PART	63M
	<i>Justice</i>		
-----X		INDEX NO.	<u>950207/2021</u>
SWNY 8 DOE,			9/27/2021,
	Plaintiff,	MOTION DATE	<u>9/21/2021</u>
	- v -	MOTION SEQ. NO.	<u>002 003</u>

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, OUR LADY OF MT. CARMEL CHURCH, OUR LADY OF MT. CARMEL SCHOOL, SISTER ANNA A/K/A SISTER JANE DOE, FATHER JOHN DOE, DOES 1 THROUGH 5

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 33, 36, 37, 39

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 32, 34, 35, 38

were read on this motion to/for DISMISS.

The following read on Defendant – Our Lady of Mount Carmel Church and Our Lady of Mount Carmel School’s (“Mount Carmel Church and School”) motion to dismiss (mot. seq. no. 002), CPLR 3211(a)(7) – failure to state a cause of action, the third cause of action – breach of fiduciary duty, and the fourth cause of action – fraudulent concealment; and

The Archdiocese of New York’s motion to dismiss, CPLR 3211(a)(7) – failure to state a cause of action, for the sixth cause of action – breach of fiduciary duty, and the seventh cause of action – fraudulent concealment.

Defendant Archdiocese of New York submits an answer (see NSYCEF Doc. No. 23) as does Mount Carmel Church and School (see NYSCEF Doc. No. 21).

Plaintiff alleges abuse per the Child Victims Act, CPLR 214-g, with causes of action against Sister [...] and Father John Doe with causes of action for (i) assault, (ii) battery, and (iii) intentional infliction of emotional distress; and causes of action against the Archdiocese of New

York, Mount Carmel Church and School, and Does 1 through 5 for (i) negligence, (ii) gross negligence, (iii) breach of fiduciary duty, and (iv) fraudulent concealment.

“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]).

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]).

FIDUCIARY DUTY

“[A] fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matter within the scope of the relation” (see *A.G. Capital Funding, LP v. State Street Bank and Trust*, 11 N.Y.3d 146, 158 [2008]).

Defendant – Mount Carmel Church and School argues, “[a]llegations that a fiduciary duty exists and/or that Plaintiff was a ‘minor child’ with nothing more is insufficient to establish a fiduciary duty, or any other higher duty, between Plaintiff and moving Defendants. Plaintiff has failed to allege any facts to demonstrate that Plaintiff’s relationship with these moving Defendants were unique in any way or different than any other parishioner/student at this Parish. In addition, the cause of action for breach of fiduciary duty is duplicative of Plaintiff’s other negligence claims and therefore should be dismissed” (see NYSCEF Doc. No. 18 Pars. 12 – 14).

Archdiocese of New York states, “Plaintiff has failed to allege any facts to demonstrate that Plaintiff’s relationship with the Archdiocese was ‘unique or distinct’ in any way or any different than any other Roman Catholic parishioner practicing their faith within the Archdiocese’s geographical territory” (see NYSCEF Doc. No. 27 Par. 16).

Plaintiff’s memorandum of law counters, “[t]he facts alleged here go far beyond Plaintiff’s youth or status as a student at the time of his sexual abuse, and establish that Plaintiff was in a unique position of vulnerability when compared with the Mt. Carmel Defendants’ relationship with other parishioners/students generally” (see NYSCEF Doc. No. 37 P. 7).

Plaintiff addresses the duplicative issue. “It is well established that a party may plead alternative theories, even on the basis of allegations that contradict each other” (see *Raglan Realty Corp. v. Tudor Hotel Corp.*, 540 N.Y.S.2d 240 [1st Dept. 1989]). “Plaintiff’s negligence and breach of fiduciary duty causes of action are brought under two distinct theories” (see NYSCEF Doc. No. 37 P. 11).

“Mere allegations that a fiduciary duty exists, with nothing more, are insufficient. Assuming every fact alleged to be true and liberally construing the pleading in Plaintiff’s favor, the allegations for breach of fiduciary duty are insufficiently pled. Additionally, Plaintiff’s cause of action for breach of the fiduciary duty as pled here, is no different than the negligence causes of action. Plaintiff therefore fails to state a cause of action for breach of fiduciary duty” (see *Torrey v. Portville Central School*, 66 Msc.3d 1225(A)*2 [2020]).

FRAUDULENT CONCEALMENT

To state a claim for fraudulent concealment, plaintiff must allege “1) a duty to disclose material facts; 2) knowledge of material facts by a party bound to make such disclosures; 3)

failure to discharge a duty to disclose; 4) scienter; 5) reliance; and 6) damages” (see *Tears v. Boston Sci. Corp.*, 344 F.Supp.3d 500, 515 (S.D.N.Y. 2018).

Defendant – Mount Carmel Church and School’s memorandum of law states, “Plaintiff never specifies the distinct representation that was made to Plaintiff or his guardians in his pleadings. Plaintiff fails to meet the pleadings requirement for fraud claims as provided by CPLR 3016(b) which states that where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail” (see NYSCEF Doc. No. 18 Par. 15).

Plaintiff argues, “[b]y virtue of her vaunted position within the Church, Sister [...] was affirmatively endorsed as someone who could be trusted as a woman God (sic) and moral conviction” (see NYSCEF Doc. No. 37 P. 12).

Archdiocese of New York states, “Plaintiff has failed to establish that any fiduciary, confidential, or special relationship existed between plaintiff and the Archdiocese, and, therefore, failed to establish any duty to disclose on the party of the Archdiocese. Thus, absent a duty to disclose, plaintiff has failed to state a cause of action for fraudulent concealment. Moreover, plaintiff has alleged no facts as evidence for the conclusory statements that the Archdiocese ‘engaged in a conscious, deliberate plan to conceal abuse’ from plaintiff or any others” (see NYSCEF Doc. No. 27 Par. 23).

CONCLUSION

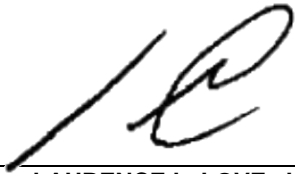
Through a read of all the papers plaintiff has failed the pleading requirements of a fiduciary duty and said cause of action is duplicative of the negligence cause of action. Further,

the fraudulent concealment cause of action has multiple elements that plaintiff has failed to fulfill.

ORDERED that the motion to dismiss is granted and the third cause of action – breach of fiduciary duty, and the fourth cause of action – fraudulent concealment against Mount Carmel Church and School are dismissed; and it is further

ORDERED that the motion to dismiss is granted and the sixth cause of action – breach of fiduciary duty, and the seventh cause of action – fraudulent concealment against Archdiocese of New York are dismissed.

9/7/2022
DATE


LAURENCE L. 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