

<p>R.B. v City of New York</p>
<p>2022 NY Slip Op 33065(U)</p>
<p>September 7, 2022</p>
<p>Supreme Court, New York County</p>
<p>Docket Number: Index No. 950350/2021</p>
<p>Judge: Laurence Love</p>
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<p>This opinion is uncorrected and not selected for official publication.</p>

PRESENT: <u>HON. LAURENCE LOVE</u>	PART	63M
	<i>Justice</i>	
-----X		
R. B.,	INDEX NO.	<u>950350/2021</u>
Plaintiff,	MOTION DATE	<u>02/25/2022</u>
	MOTION SEQ. NO.	<u>002</u>

- V -

CITY OF NEW YORK, THE CHILDREN'S VILLAGE,
ARCHDIOCESE OF NEW YORK, CATHOLIC CHARITIES
OF THE ARCHDIOCESE OF NEW YORK, CAPUCHIN
FRANCISCANS PROVINCE OF ST. MARY, DOES 1-10

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56

were read on this motion to/for DISMISSAL.

The following read on Defendants' – Archdiocese of New York ("Archdiocese") and Catholic Charities of the Archdiocese of New York ("Catholic Charities") pre – answer motion i) to dismiss Plaintiff's complaint in its entirety per CPLR 3211(a)(7) – failure to state a cause of action; ii) to dismiss Plaintiff's complaint per CPLR 3211(a)(1) – defense is founded upon documentary evidence; and iii) to "strik[e] all reckless and wanton language and dismissing claim for punitive damages;" and

Defendant's – CITY OF NEW YORK cross – motion to dismiss, per CPLR 3211(a)(7) – failure to state a cause of action, the "complaint's claim for punitive damages, applying any relief granted to co-defendants regarding their motion to strike all reckless and wanton language equally to the City."

A Verified Answer has been submitted by The Children's Village (see NYSCEF Doc. No. 29), The Province of St. Mary of the Capuchin Order (see NYSCEF Doc. No. 33), and The City of New York submits a Verified Answer to the original complaint (see NYSCEF Doc. No. 27).

Plaintiff alleges abuse, from approximately 1975 until 1979, while in foster care at Children's Village in Dobb's Ferry, New York.

An amended complaint states causes of action for i) negligence against City of New York; ii) negligence against The Children's Village; iii) negligence against Archdiocese; iv) negligence against Catholic Charities; v) negligence against Capuchin Franciscans Province of St. Mary; and vi) negligence against Does 1 – 10.

“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]).

The affirmation in support states,

“Plaintiff’s allegations against the Archdiocese and Catholic Charities are based solely on the incorrect assumption that the Archdiocese and Catholic Charities exercised some degree of control over the Children’s Village and Plaintiff’s alleged abusers. However, as demonstrated below, the Archdiocese and Catholic Charities had absolutely no involvement in the allegations

underlying Plaintiff's claims. In support of this motion, the Archdiocese of New York affixes the Affidavit of Roderick Cassidy, Esq., the Associate General Counsel for the Archdiocese of New York ...; and Catholic Charities affixes the Affidavit of Associate Executive Director for Catholic Charities; Talia Lockspeiser [...]. These Affidavits aver that Children's Village is wholly independent from the Archdiocese and Catholic Charities and the moving Defendants had no supervisory control over Children's Village – the premises where the alleged abuse occurred – or Harrison, Mann, or Father Mayhan – the alleged abusers" (see NYSCEF Doc. No. 36 Pars. 5 – 6).

Archdiocese and Catholic Charities submit the Cassidy Affidavit (see NYSCEF Doc. No. 38) and the Lockspeiser Affidavit (see NYSCEF Doc. No. 39).

An Affirmation in Opposition on behalf of Co – Defendant – The Children's Village affirms, "the instant motion is devoid of merit and premature at this time as the Archdiocese and Catholic Charities have i) failed to proffer documentary evidence which resolves all factual issues as a matter of law, ii) failed to provide an affidavit on behalf of the Archdiocese from someone with personal knowledge in regard to the assignment of chaplains and other members of the clergy in the relevant time period, and iii) filed the instant application prematurely as necessary discovery remains outstanding" (see NYSCEF Doc. No. 45 Par. 3).

Defendants' Affirmation in Support affirms,

"[t]his case is indistinguishable from *R.D. v. Archdiocese of New York, et al.* (519339/2020)(Silver, J.S.C., September 22, 2021), ... , in which this Court dismissed the plaintiff's complaint against the Archdiocese where 'the Archdiocese has shown through documentary evidence that it did not oversee' the group home (St. Agnes) where plaintiff claimed he was abused and 'had no custody, control, or supervision over either entity's residents or employee.' In *R.D.*, the Archdiocese's showing was based on affidavits from Roderick Cassidy, Esq., General Counsel for the Archdiocese, and Sister Mary Murray, President of the Dominican Convent of our Lady of the Rosary, and a property deed for the premises where plaintiff's alleged abuse occurred. Similarly, here, the Archdiocese and Catholic Charities have made the same showing through affidavits from Mr. Cassidy, and Talia Lockspeiser, both

demonstrating that the Archdiocese and Catholic Charities did not own the property where Children's Village was located, and did not employ, supervise or train the faculty, staff, or any other employees of Children's Village. Therefore, Plaintiff's cause of action for negligence premised on the Archdiocese's and Catholic Charities' alleged breach of their purported duty to plaintiff should be dismissed for failure to state a cause of action" (see NYSCEF Doc. No. 36 Par. 9).

The Decision and Order in *R.D.* states, “[w]ith respect to plaintiff's claims that he was assaulted by George McLeod, the supervisor of St. Vincent's from 1976 through 1977 while plaintiff was a resident there, the Archdiocese submits yet another deed demonstrating that St. Vincent's was not owned or controlled by the Archdiocese. Moreover, since St. Vincent's is in Brooklyn, the Archdiocese underscores that St. Vincent's is outside its geographical territory. Defendant likewise submits the affidavit of Cassidy to demonstrate its lack of control and duty with respect to St. Vincent's and its residents" (see *R.D. v. Archdiocese of New York, et al.* (519339/2020 P. 3) (Silver, J.S.C., September 22, 2021)).

The difference between *R.D.* and this litigation is the distinction between “the supervisor” and a “priest/father/chaplain/brother.” Per the amended complaint, [t]o plaintiff's knowledge and belief, a Catholic priest, Father William “Bill” Mayhan . . . , was chaplain at Children's Village when plaintiff was a resident at the facility and provided leadership and Catholic religious services along with ‘Brother Timothy,’ who was a member of defendant Franciscans” (see NYSCEF Doc. No. 16 P. 9).

As there remains a distinction between “supervisor” in *R.D.*, and “priest/father/chaplain/brother” at bar, this court finds this case is distinguishable from *R.D.* As the amended complaint states “provided leadership and Catholic religious services” there remains a connection between plaintiff and defendants.

In reviewing a motion pursuant to CPLR 3024(b), “the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action” (see *Soumayah v. Minnelli*, 41 A.D.3d 390, 392 [1st Dept. 2007]; see *Wegman v. Dairylea Coop.*, 50 A.D.2d 108, 111 [4th Dept. 1975]). Matters that are unnecessary to the viability of the cause of action and would cause undue prejudice to defendants should be stricken from the pleading or bill of particulars (see *Irving v. Four Seasons Nursing & Rehabilitation Ctr.*, 121 A.D.3d 1046, 1048 [2d Dept. 2014]).

“Here, it is axiomatic that plaintiff’s unqualified repeated reference to defendant as an ‘abuser’ is highly prejudicial and does not advance any particular cause of action stated in plaintiff’s complaint. The Child Victims Act (“CVA”) (CPLR 214-g), the claim revival statute by which plaintiff asserts his allegations of sexual abuse, by its very nature presupposes that an alleged victim has suffered physical abuse. As such, repeated reference to a defendant as an ‘abuser’ does nothing to advance the causes of action asserted under the statute and is superfluous” (see *Platt v. Roman Catholic Diocese of Brooklyn*, Index No. 518002/2021).

An Affirmation in Support of Cross – motion on behalf of the City of New York affirms, “[t]he City takes no position with respect to Co – Defendants’ applications to dismiss the complaint for failure to state a cause of action as against the Archdiocese and Catholic Charities. However, to the extent the Court grants the motion, dismissal of the punitive damages and striking the reckless and wanton language in the complaint should apply equally with respect to the City” (see NYSCEF Doc. No. 48 Par. 3).

Co – Defendant City of New York cites case law (see NSYCEF Doc. No. 48 Par. 4). The Court of Appeals has held that the City of New York as a political subdivision of the State of New York, is immune from punitive damages (see *Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*,

70 N.Y.2d 382 [1987]). “Punitive damages are not recoverable against subdivisions of the State” (see *Volunteer Fire Assn. of Tappan, Inc. v. County of Rockland*, 101 A.D.3d 853 [2d Dept. 2012]).

An Affirmation in Opposition on behalf of Plaintiff affirms,

“[t]he motion should be denied because there is no basis for a pre-answer dismissal, particularly before Plaintiff has had any opportunity to obtain discovery on the factual issue of control that is central to the movants’ liability in this case. Plaintiff’s Amended Complaint is pleaded with sufficient facts [...]. Archdiocese Defendants have not eliminated material issues of fact regarding their responsibility for the acts of perpetrator – Prise, Father William ‘Bill’ Mayhan, a Catholic priest within the jurisdictional territory of the Archdiocese Defendants; [t]he Amended Complaint does not contain reckless and wanton language, and Punitive Damages are properly plead. As alleged in the Amended Complaint, The Archdiocese ‘controls all Catholic religious, charitable, pastoral and educational functions’ within its geographical boundaries in the greater New York metropolitan area. Archdiocese Defendants explicitly acknowledge that the church at Children’s Village was ‘located within the geographical boundaries of the Archdiocese’” (see NYSCEF Doc. No. 51 Par. 2 – 3, 8 – 9).

Plaintiff cites various case law. “Affidavits submitted by a [defendant] will almost never warrant dismissal under CPLR 3211 unless they establish conclusively that petitioner has no claim or cause of action” (see *Lawrence v. Miller*, 11 NY3d 588 [2008]). “In order for evidence to qualify as ‘documentary,’ it must be unambiguous, authentic and undeniable. Neither affidavits, deposition testimony nor letters are considered ‘documentary evidence’ within the intent of CPLR 3211(a)(1)” (see *Granada Condo. III Ass’n v. Palomino*, 78 AD3d 996 [2d Dept 2010]).

Plaintiff’s Affirmation in Opposition addresses the “reckless and wanton language.” “Archdiocese Defendants specifically cite *Brian Platt v. The Roman Catholic Diocese of Brooklyn, et al.* (Supreme Ct. Kings County 2021) (Index no. 518002/2021). In *Platt*, the court

specifically notes the repeated reference to a *defendant* as being highly prejudicial and in turn the basis to grant the motion to strike. Here, however, Plaintiff's sexual abusers, otherwise identified as and “[Perpetrators],” are not named defendants in this proceeding. Applying the standard in *Platt*, striking the word “Perpetrator” from the Amended Complaint would in turn require Plaintiff to have identified the Defendants as said “[Perpetrators].” At no point in this proceeding has Plaintiff identified the Archdiocese Defendants nor any other Defendant as such, and in turn the Defendants have not suffered any prejudice nor achieved the proper level of standing to request the relief sought herein” (see NYSCEF Doc. No. 51 Par. 55).

After all the papers and documents submitted, it is now

ORDERED that Archdiocese and Catholic Charities pre – answer motion i) to dismiss Plaintiff's complaint in its entirety per CPLR 3211(a)(7) – failure to state a cause of action is DENIED; and it is further

ORDERED that Archdiocese and Catholic Charities pre – answer motion to dismiss Plaintiff's complaint per CPLR 3211(a)(1) – defense is founded upon documentary evidence is DENIED; and it is further

ORDERED that Archdiocese and Catholic Charities pre – answer motion to “strik[e] all reckless and wonton language is GRANTED; and it is further

ORDERED that Archdiocese and Catholic Charities pre – answer motion to dismiss the claim for punitive damages, is DENIED; and it is further

ORDERED that Defendants' – CITY OF NEW YORK cross – motion to dismiss, per CPLR 3211(a)(7) – failure to state a cause of action, “applying any relief granted to co-defendants regarding their motion to strike all reckless and wanton language equally to the City,” is GRANTED; and it is further

ORDERED that Defendants' – CITY OF NEW YORK cross – motion to dismiss, per CPLR 3211(a)(7) – failure to state a cause of action, the “complaint’s claim for punitive damages” is GRANTED.



LAURENCE LOVE, J.S.C.

9/7/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

 DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

 OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

 REFERENCE