

N.R. v City of New York
2023 NY Slip Op 30191(U)
January 10, 2023
Supreme Court, New York County
Docket Number: Index No. 950198/2019
Judge: Alexander M. Tisch
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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N. R.,

Plaintiff,

- v -

CITY OF NEW YORK, A MUNICIPAL CORPORATION,
NEW YORK CITY ADMINISTRATION FOR CHILDREN'S
SERVICES, THE NEW YORK FOUNDLING, SISTERS OF
CHARITY NEW YORK, CATHOLIC CHARITIES
COMMUNITY SERVICES ARCHDIOCESE OF NEW YORK,
ARCHDIOCESE OF NEW YORK

Defendant.

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INDEX NO. 950198/2019

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 40, 44, 45, 46, 47

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendants Archdiocese of New York (Archdiocese) and Catholic Charities Community Services Archdiocese of New York (Catholic Charities) move to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (7) or 3212.

Plaintiff's complaint alleges that she was sexually abused by her foster father Vincent Manniello from 1957 to 1971. The complaint alleges that she was placed in foster care by the co-defendants City of New York and the Bureau of Child Welfare, a predecessor entity of Administration for Children's Services, which referred her to co-defendant New York Foundling (Foundling) for foster care placement. As it concerns the movants, the complaint alleges the movants were owned, operated, maintained, controlled or employed by Foundling; that movants were in an agency relationship with Foundling such that Foundling acted on behalf of the movants, including on matters related to foster care services and placement of foster care

children, and that movants owed plaintiff a duty of care (see generally NYSCEF Doc No 2, complaint at ¶¶ 75-85).

In determining dismissal under CPLR Rule 3211 (a) (7), the “complaint is to be afforded a liberal construction” (Goldfarb v Schwartz, 26 AD3d 462, 463 [2d Dept 2006]). The “allegations are presumed to be true and accorded every favorable inference” (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “[T]he sole criterion is 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” (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). Additionally, “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]).

A motion to dismiss a complaint based upon documentary evidence pursuant to CPLR 3211 (a) (1) “may be appropriately granted where the documentary evidence utterly refutes the plaintiff’s factual allegation, conclusively establishing a defense as a matter of law” (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]; Leon v Martinez, 84 NY2d 83, 88 [1994]).

In support of their motion to dismiss, defendants submit Foundling’s certificates of incorporation, an affidavit from the Archdiocese’s General Counsel, Roderick Cassidy, an affidavit from the Associate Executive Director for Catholic Charities, Talia Lockspeiser, and, notably, an affidavit from Foundling’s President and Chief Executive Officer, Bill Baccaglioni, all of whom allege that the movants are separate and distinct from Foundling, and the movants never owned, supervised, or managed Foundling, nor any of its employees, staff, operations, and no control with placement of children in foster care homes (see NYSCEF Doc Nos 28-30). The

Court finds that the evidence is sufficient to meet its prima facie burden with respect to all causes of action as against the movants. Plaintiff's argument in opposition, that the Catholic Charities admittedly "offer[s] resources and support" by "e.g., issuing grants, providing advice and guidance" to Foundling, as one of ninety (90) other agencies in the "federation" of the Catholic Charities, is insufficient to withstand the motion to dismiss as it concerns these movants' relationship with Foundling (see, e.g., Dunn v Catholic Home Bur. for Dependent Children, 142 Misc 2d 316, 319-320 [Sup Ct, NY County 1989]; see also Kobre v United Jewish Appeal-Fedn. of Jewish Philanthropies of New York, Inc., 32 AD3d 218, 223 [1st Dept 2006]). Consequently, the Court finds that the complaint fails to state a claim in the absence of a cognizable duty upon the part of the movant.

Accordingly, it is hereby ORDERED that the motion of defendants ARCHDIOCESE OF NEW YORK and CATHOLIC CHARITIES COMMUNITY SERVICES 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 service of this order upon the Clerk of the Court and/or 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* (see section J).¹

This constitutes the decision and order of the Court.

1/10/2023					
DATE			ALEXANDER M. TISCH, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹ The *Protocol* is accessible at the "E-Filing" page on the court's website: www.nycourts.gov/supctmanh.