J.R. v Metropolitan N.Y. Synod of the Evangelical Lutheran Church in Am.
2023 NY Slip Op 33122(U)
August 29, 2023
Supreme Court, Kings County
Docket Number: Index No. 514253/2021
Judge: Alexander Tisch

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

P R E S E N T:

HON. ALEXANDER M. TISCH, J.S.C.

J.R.,

Plaintiff(s),

- against -

METROPOLITAN NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA and EPIPHANY LUTHERAN CHURCH,

Defendant(s).

INDEX NO.: 514253/2021

DECISION & ORDER

MOTION SEQ. NO. 002

The following NYSCEF Document numbers 24-33, 37 read on this motion to dismiss

Upon the foregoing papers, defendant METROPOLITAN NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA (MNYS) moves to dismiss the complaint insofar as asserted against it pursuant to CPLR 3211 (a) (7), (5) and, in effect, (1).

Plaintiff commenced this action to recover damages for personal injuries sustained from alleged sexual abuse inflicted by Willian Schiemann, a pastor at co-defendant Epiphany Lutheran Church (Church), from 1957 to 1960 when plaintiff was approximately 14 to 17 years old.

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]). Not every piece of evidence in the form of a document is properly deemed "documentary evidence." The appellate courts have noted this distinction, finding that legislative history and supporting cases make it clear that "judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are 'essentially undeniable,' would qualify as 'documentary evidence' in the proper case" (Fontanetta v Doe, 73 AD3d 78, 86 [2d Dept 2010]; Amsterdam Hosp. Grp., LLC v Marshall-Alan Assocs., Inc., 120 AD3d 431, 432 [1st Dept 2014]).

In support of its motion. MNYS submits its articles of incorporation, dated September 21, 1987, and argues that, because it was not in existence at the time of the abuser in 1957-1960, it could not have had a duty of care to plaintiff, either based on a relationship between it and plaintiff or between it and the alleged abuser.

However, the single document does not conclusively negate potential liability as the movant failed to eliminate questions now raised by the same evidence as to whether MNYS was completely newly formed, unrelated to any potential predecessor entity and its assets.

"[A]s a general rule, 'a corporation which acquires the assets of another is not liable for the torts of its predecessor'" (Dutton v Young Men's Christian Assn. of Buffalo Niagara, 207 AD3d 1038, 1039 [4th Dept 2022], lv to appeal denied, 210 AD3d 1456 [4th Dept 2022], quoting Schumacher v Richards Shear Co., 59 NY2d 239, 244 [1983]). "There are exceptions, however, and thus '[a] corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation

was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations'" (Dutton, 207 AD3d at 1039, quoting Schumacher, 59 NY2d at 245).

There is nothing in the record addressing any one of these exceptions. Indeed, much of it may be a fact-intensive analysis, requiring discovery (see generally Dutton, 207 AD3d at 1039-1040; Matter of New York City Asbestos Litig., 15 AD3d 254, 255-256 [1st Dept 2005]).

"On a motion to dismiss a cause of action pursuant to CPLR 3211 (a) (5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff. Further, plaintiff's submissions in response to the motion must be given their most favorable intendment" (Norddeutsche Landesbank Girozentrale v Tilton, 149 AD3d 152, 158 [1st Dept 2017], quoting Benn v Benn, 82 AD3d 548, 548 [1st Dept 2011]).

Defendant argues that plaintiff's claims are barred because it was not in existence at the time of the complaint and that the CVA is unconstitutional as applied to defendant.

CPLR 214-g provides for a revival of certain personal injury claims that would have been barred by the then-statute of limitations if the injury was allegedly caused by certain conduct committed against a minor and constituted either (1) "a sexual offense as defined in article one hundred thirty of the penal law"; (2) "incest as defined in section 255.27, 255.26 or 255.25 of the penal law"; or (3) "the use of a child in a sexual performance as defined in section 263.05 of the penal law."

Given the analysis above for failing to state a claim, the Court finds it irrelevant whether MNYS was incorporated in 1950, 1987, or yesterday as the allegations in the complaint clearly implicate the type of claim that is revived under the CVA (see, e.g., NYSCEF Doc No 2 at ¶¶ 28-29, 51, 61, 67).

Lastly, "a claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice" (Matter of World Trade Ctr.

Lower Manhattan Disaster Site Litig., 30 NY3d 377, 400 [2017]). Based on the legislative materials describing the purpose and justification for the Child Victims Act (CVA), this Court agrees with many other courts that have decided that the CVA is a reasonable response to remedy innumerous injustices of past child sexual abuse and does not run afoul of the due process protections afforded by the State Constitution (see PB-36 Doe v Niagara Falls City School Dist., 72 Misc 3d 1052, 1058-60 [Sup Ct, Niagara County 2021]; Kaul v Brooklyn Friends School, index no. 512634/2020, 2022 WL 987843 [Sup Ct, Kings County March 31, 2022] [citing cases]).

Accordingly, it is hereby ORDERED that the motion is denied; and it is further

ORDERED that defendants shall file and serve an answer to the complaint within (20) days after service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and submit a first compliance conference order within 60 days after issue is joined.

This constitutes the decision and order of the Court.

8/29/2023
DATE

ALEXANDER TISCH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE