

**ARK 631 Doe v Diocese of Brooklyn**

2023 NY Slip Op 33179(U)

June 7, 2023

Supreme Court, Kings County

Docket Number: Index No. 520168/2021

Judge: Mark I. Partnow

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At an IAS Term, Part CVA4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of June, 2023.

PRESENT:

HON. MARK PARTNOW,

Justice.

-----X  
ARK 631 DOE,

Plaintiff,

- against -

Index No. 520168/2021

DIOCESE OF BROOKLYN A/K/A THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK; FRANCISCAN BROTHERS OF BROOKLYN A/K/A CONGREGATION OF THE RELIGIOUS BROTHERS OF THE THIRD ORDER REGULAR OF ST. FRANCIS A/K/A FRANCISCAN BROTHERS GENERALATE A/K/A FRANCISCAN BROTHERS, INC., BROOKLYN, NY; NAZARETH REGIONAL HIGH SCHOOL A/K/A NAZARETH REGIONAL; ST. TERESA OF AVILA; CO-CATHEDRAL OF SAINT JOSEPH; AND DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF,

MS#2

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) \_\_\_\_\_

21-28

Opposing Affidavits (Affirmations) \_\_\_\_\_

29-35

Reply Affidavits (Affirmations) \_\_\_\_\_

36-38

Upon the foregoing documents, Defendant The St. Francis Monastery a/k/a The Congregation of Franciscan Brothers of Brooklyn s/h/a Franciscan Brothers of Brooklyn a/k/a

Congregation of the Religious Brothers of the Third Order Regular of St. Francis a/k/a Franciscan Brothers Generalate a/k/a Franciscan Brothers, Inc., Brooklyn, NY, (“St. Francis Monastery”), moves for summary judgment pursuant to CPLR §3212 dismissing the action in its entirety as against the St. Francis Monastery or in the alternative, dismissing the instant action pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

The Defendant, Diocese of Brooklyn a/k/a The Roman Catholic Diocese of Brooklyn, New York (“Diocese”) was created in approximately 1853 and has its principal place of business at 310 Prospect Park West in Brooklyn, New York (complaint at ¶6-7). The Diocese was and continues to be an organization which includes but is not limited to, civil corporations, decision making entities, officials, and employees authorized to conduct business and conducting business in the State of New York (complaint at ¶6). Later, the Diocese created a corporation called The Roman Catholic Diocese of Brooklyn, New York to conduct some of its affairs (complaint at ¶7). The Diocese operates its affairs as a corporate entity and as the organization known as the Diocese of Brooklyn (id.). The Diocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services (id.). In particular, the Diocese has several programs that seek out the participation of children including school and other educational programs (complaint at ¶8). According to the complaint, the Diocese through its officials has complete control over the activities and programs involving children (id.). The complaint further states that the Diocese has the power to appoint, train, supervise, monitor, remove, and terminate each and every person working with children within the Diocese (id.).

Defendant Franciscan Brothers of Brooklyn a/k/a Congregation of the Religious Brothers of the Third Order Regular of St. Francis a/k/a Franciscan Brothers Generalate a/k/a Franciscan Brothers, Inc., Brooklyn, NY (“Franciscan Brothers”) was and continues to be a Roman Catholic

religious order of priests and brothers affiliated with the Roman Catholic church and has its principal place of business at 135 Remsen Street in Brooklyn, New York (complaint at ¶9). The superior general is the top official of the Franciscan Brothers and is given authority over all matters dealing with the Franciscan Brothers (complaint at ¶10). The Franciscan Brothers operates as a business by engaging in numerous revenue producing activities and soliciting money in exchange for its services (id. at ¶ 10). The Franciscan Brothers have several programs in which they seek out the participation of children and the Franciscan Brothers through its officials has control over those activities involving children (complaint at ¶11). According to the complaint, the Franciscan Brothers has the power to appoint, supervise, monitor, and fire each person working with children within the Franciscan Brothers (id. at ¶11).

Defendant Nazareth Regional High School a/k/a Nazareth Regional (“Nazareth”) was and continues to be an organization authorized to conduct business in the State of New York, with its principal place of business at 475 East 57<sup>th</sup> Street in Brooklyn, New York. According to the complaint, Nazareth was and continues to be “under the direct authority, control, and province of Defendant Diocese and the Bishop of Defendant Diocese” (complaint at ¶13).

Defendant St. Teresa of Avila (“St. Teresa”) was an organization authorized to conduct business in the State of New York with its principal place of business located at 563 Sterling Place in Brooklyn, New York (complaint at ¶14). Defendant Co-Cathedral of Saint Joseph – St. Teresa of Avila (“Co-Cathedral”) was and continues to be an organization authorized to conduct business in the State of New York with its principal place of business located at 856 Pacific Street, Brooklyn, New York 11238 (complaint at ¶15). According to the complaint, St. Teresa merged with St. Joseph in a defacto merger or series of defacto mergers and Co-Cathedral continued the

missions and ministry of St. Joseph and St. Teresa and remained under the direct authority, control and province of the Diocese and the Bishop of the Diocese after the merger(s) (id. at ¶15).

Plaintiff was raised in a devout Roman Catholic family and attended St. Teresa and Nazareth high school in Brooklyn, in the Diocese (complaint at ¶25). “Mr. Steve” was a gym teacher and coach employed by the Diocese, Franciscan Brothers, and St. Teresa (complaint at ¶22). Todd Jamison (“Mr. Jamison”) was a basketball coach employed by the Diocese and Nazareth high school (complaint at ¶23). Plaintiff participated in youth activities and/or church activities at St. Teresa and Nazareth high school (complaint at ¶26). According to the complaint, from approximately 1985-1987, when Plaintiff was approximately 9 to 10 years old, Mr. Steve engaged in unpermitted sexual contact with Plaintiff and from approximately 1992-1993, when Plaintiff was approximately 16 to 17 years old, Mr. Jamison engaged in unpermitted sexual contact with Plaintiff. The complaint further adds that the culture of the Catholic Church discouraged Plaintiff from reporting the alleged abuse (complaint at ¶30).

The complaint asserts two causes of action: (1) negligence; (2) negligent hiring, supervision and retention.

#### DISCUSSION

St. Francis Monastery moves for summary judgment on the grounds that there is no relationship between St. Francis Monastery and the Plaintiff or between St. Francis Monastery and the codefendant schools or alleged sex abusers. In support, St. Francis Monastery provides the affidavit of Brother Gabriel O’Brien (“Brother O’Brien”) who is the superior general of the St. Francis Monastery. In his affidavit, Brother O’Brien states that “Mr. Steve” and Mr. Jamison were never employed and were never associated with the St. Francis Monastery. Additionally, the

affidavit states that the St. Francis Monastery does not own, operate or control the parish of St. Teresa of Avila and has never provided any services to them.

“A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment” (*Diller v. Mirto*, 211 AD3d 912,913 [2d Dept 2022]). “A party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party’s position may exist but cannot then be stated” (*id.*). Here, St. Francis Monastery’s motion is premature as there has been no discovery completed. As a result, the portion of St. Francis Monastery’s motion for summary judgment is denied.

In the alternative, St. Francis Monastery seeks dismissal of the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action. In determining a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), a court’s role is deciding “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” (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). “On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), a court must 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” (*Eskridge v Diocese of Brooklyn*, 210 AD3d 1056 [2d Dept 2022]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Boyle v North Salem Central School District*, 208 AD3d 744 [2d Dept 2022]). “Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss” (*Eskridge*, 210 AD3d at 1057; *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11 [2005]). It is the

movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88; *Guggenheimer*, 43 NY2d at 275; *Salles*, 300 AD2d at 228).

The Court will address each of the grounds upon which the St. Francis Monastery seeks dismissal in turn.

### **Negligence**

The portion of St. Francis Monastery's motion to dismiss the first cause of action is denied. St. Francis Monastery argues that they had no duty to protect the Plaintiff from the alleged abusers, Mr. Steve and Mr. Jamison. With the support of the affidavit provided by Brother Gabriel O'Brien, St. Francis Monastery contends that the Plaintiff, the Defendant schools, and the alleged abusers were not under the direct supervision and control of St. Francis Monastery and any claims made by Plaintiff in support of that proposition are conclusory. In opposition, Plaintiff argues that St. Francis Monastery had a duty to protect the Plaintiff from foreseeable harm based on their special relationship. In support, Plaintiff contends that St. Francis Monastery owed a duty to Plaintiff by taking physical custody of Plaintiff as a Catholic student and had a duty to properly supervise Plaintiff and other children participating in programs under its care. Specifically, Plaintiff argues that St. Francis Monastery failed to protect the Plaintiff from the foreseeable abusive conduct of Mr. Steve, and that the St. Francis Monastery knew or should have known of this danger.

"To establish a cause of action sounding in negligence, a plaintiff must establish the existence of a duty on defendant's part to plaintiff, breach of the duty and damages" (*Davila v. Orange County*, 215 AD3d 632 [2d Dept 2023]). "Schools are under a duty to adequately supervise the students in their charge and they will be ... liable for foreseeable injuries proximately related to the absence of adequate supervision" (*id.*). "Although a school cannot be held liable for injuries

that occur off school property and beyond the orbit of its authority, the school's duty continues and is breached if the student is released without further supervision into a foreseeably hazardous setting it had a hand in creating" (*id.*).

Here, the Court finds that Plaintiff adequately plead a cause of action for negligence. Contrary to the contentions of St. Francis Monastery, the complaint sufficiently alleged that St. Francis Monastery owed a duty to the plaintiff. As such, the portion of St. Francis Monastery's motion to dismiss Plaintiff's cause of action for negligence pursuant to CPLR 3211(a)(7) is denied.

#### **Negligent Hiring, Supervision and Retention**

The portion of St. Francis Monastery's motion to dismiss the second cause of action is denied. St. Francis Monastery argues that the complaint should be dismissed as the Plaintiff failed to state a cause of action for negligent hiring, supervision and retention. In support, St. Francis Monastery argues that there was never a nexus between the St. Francis Monastery and the Plaintiff as well as between St. Francis Monastery and the other co-defendants aside from the fact that the St. Francis Monastery happens to be situated within the Diocese of Brooklyn. Additionally, St. Francis Monastery argues that Plaintiff does not state where the alleged abuse took place or what activities Plaintiff was engaging in at the time. In opposition, Plaintiff argues that the complaint sufficiently alleges an employment relationship between St. Francis Monastery and Mr. Steve and that St. Francis Monastery knew or should have known about the alleged abuse.

An employer can be held liable under theories of negligent hiring, retention, and supervision where the complaint alleges that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Novak v. Sisters of Heart of Mary*, 210 AD3d 1104,1105 [2d Dept 2022]). Causes of action alleging negligence based upon negligent hiring, retention, or supervision are not statutorily required to be pleaded with



specificity (id.). Moreover, a school “has a duty to exercise the same degree of care toward its students as would a reasonably prudent parent, and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision” (id.).

Here, the Court finds that the complaint sufficiently alleges an employment relationship between Mr. Steve and the St. Francis Monastery. The complaint alleged that Mr. Steve was a gym teacher at the St. Teresa Parochial school which was under the direct supervision and control of the St. Francis Monastery. It also alleged that the St. Francis Monastery had knowledge that Mr. Steve was abusing students, including the plaintiff, or that he had the propensity to abuse, and that the sexual abuse of the plaintiff occurred during school activities and during times at which the plaintiff was under the and care, custody, and control of the St. Francis Monastery. Thus, the Court finds that the portion of St. Francis Monastery’s motion to dismiss Plaintiff’s cause of action for negligent hiring, retention and supervision pursuant to CPLR 3211(a)(7) is denied.

### CONCLUSION

Accordingly, it is

**ORDERED**, that the motion of Defendant St. Francis Monastery to dismiss the action is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. MARK J. PARDINI  
SUPREME COURT JUSTICE