SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57TR**

Justice

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A. T.,

Plaintiff,

- v -

THE ARCHDIOCESE OF NEW YORK, SISTERS OF CHARITY OF ST. LOUIS OF NEW YORK STATE, INC.,ST. JOSEPH BY-THE-SEA HIGH SCHOOL

Defendant.

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INDEX NO. 950057/2020

MOTION DATE 12/01/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for DISMISS.

BACKGROUND

Plaintiff commenced this action seeking damages under the Child Victims Act, alleging that when he was a student at St. Joseph's By the Sea High School, he was sexually abused by then Principal, Father Joseph Ansaldi. The alleged abuses took place between 1983 and 1984.

The Sisters of Charity of Saint Vincent De Paul of New York, ("SCNY") moves for dismissal based on failure to state a cause of action.

The motion is granted to the extent set forth below.

ALLEGED FACTS

Between approximately 1983 and 1984, Plaintiff was sexually abused by Father Joseph Ansaldi ("Ansaldi"). This occurred when Plaintiff was 14 to 15 years old, at St. Joseph-by-the-Sea High School ("St. Joseph"). Ansaldi worked at St. Joseph. Members of SCNY were administrators, teachers, and secretaries there, while Plaintiff was a student.

It is further alleged that Ansaldi molested multiple children before arriving at St. Joseph. As he had done at another school, Ansaldi used his position at St. Joseph to commit abuse, including subjecting Plaintiff to spankings and oral sex on school premises.

Ansaldi's wrongful conduct occurred in St. Joseph's hallways and his office. Ansaldi repeatedly reached into Plaintiff's pockets to touch his body in the hallways, even when teachers and students were present. Ansaldi would lock Plaintiff in his office, close the blinds, and molest him. An SCNY nun, Ansaldi's secretary, was right outside that locked door. She did nothing to intervene while Plaintiff was being subjected to oral sex by a priest.

Plaintiff also alleges that Defendants, including SCNY and the Archdiocese of New York ("Archdiocese"), hired, retained, supervised, placed, and directed Ansaldi, and otherwise authorized him to act and that Defendants, including SCNY, negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Ansaldi, permitted abuse to occur, failed to supervise Ansaldi, failed to timely investigate his misconduct, and caused Plaintiff profound harm.

DISCUSSION

On 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]). The standard is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st

Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997]).

On a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, supra), and the 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 into any cognizable legal theory" (*Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

"In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

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, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept. 2002]).

The Third and Fifth Causes of Action Are Dismissed Without Opposition

In its opposition papers, Plaintiff agreed to withdraw as duplicative his third cause of action for Negligent Infliction of Emotional Distress and his fifth cause of action for breach of fiduciary duty (see p.10, FN 3 NYSCEF Doc # 70). Based on the foregoing these causes of action are dismissed as against all defendants.

The Negligence Causes of Action

The first cause of action asserts liability as against SCNY and the other defendants based on negligent hiring, retention, supervision and direction. The second cause of action addresses negligence in general in addition to allegations of reckless and willful misconduct.

"In any common-law negligence case brought pursuant to New York law, 'a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom'" (*Ferreira v City of Binghamton*, 38 NY3d 298, 308 [2022], *quoting Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]).

To state a claim for negligent hiring, retention or supervision under New York law, a plaintiff must plead, in addition to the elements required for a claim of negligence: (1) the existence of an employee-employer relationship; (2) "that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept 1997]; *Sheila C. v Povich*, 11 AD3d 120, 129-30 [1st Dept 2004]); and (3) "a nexus or connection between the defendant's negligence in hiring and retaining [or supervising] the offending employee and the plaintiff's injuries" (*Roe v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church*, 198 AD3d 698, 701 [2d Dept 2021]; *Gonzalez v City of New York*, 133 AD3d 65, 70 [1st Dept 2015]; *see Waterbury v New York City Ballet, Inc.*, 205 AD3d 154 [1st Dept 2022]).

SCNY seeks dismissal of the second cause of action based on its claim that Ansaldi was not its employee and that the complaint does not specifically plead the basis of SCNY's notice.

Paragraph 20 of the complaint asserts that at all relevant times Ansaldi was employed by The Archdiocese. There is no specific alternative allegation that Ansaldi was not employed by

the Archdiocese but was instead employed by SCNY, however there are general allegations that Defendants collectively employed and supervised Ansaldi.

Given that this is a 3211 motion, the Court must make every favorable inference for the Plaintiff. Though it seems unlikely that Plaintiff will be able to establish that Ansaldi was an employee of SCNY, that is not the standard on a motion to dismiss for failure to state a cause of action.

As to the issue of notice, there is no statutory requirement that a cause of action for negligent hiring, retention and/or supervision be pled with specificity. *Kenneth R. v. Roman Catholic Diocese*, 229 A.D.2d 159 (2nd Dept. 1997). Plaintiff is not required to establish at this early stage the specific facts which give rise to putting SCNY on notice.

SCNY alleges that it owed no duty to Plaintiff and relies heavily in its moving papers on *Novak v. Sisters of the Heart of Mary*, No. 515756/2020, 2021 WL 4441893, at *1 (N.Y. Sup. Ct. Sep. 20, 2021), however that decision was reversed by the Appellate Division, Second Department which held:

> 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" (*Destiny S. v. John Quincy Adams Elementary Sch.,* 98 A.D.3d 1102, 1102, 951 N.Y.S.2d 217; *see Nancy Ann O. v. Poughkeepsie City School Dist.,* 95 A.D.3d 972, 973, 944 N.Y.S.2d 251). "The duty owed derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians" (*Visiko v. Fleming,* 199 A.D.3d 1431, 1432, 158 N.Y.S.3d 483 [internal quotation marks omitted]; *see BL Doe 3 v. Female Academy of the Sacred Heart,* 199 A.D.3d 1419, 1422–1423, 158 N.Y.S.3d 474).

Novak v. Sisters of Heart of Mary, 210 A.D.3d 1104, 1105 (2022).

Based on the foregoing, the motion to dismiss the first and second causes of action is denied.

The Fourth Cause of Action for Premises Liability Is Dismissed as Duplicative

> Under a theory of premises liability, it is the duty of a property owner "to protect plaintiff from foreseeable harm caused by third persons" (*Taft v. Connell*, 285 A.D.2d 992, 992, 727 N.Y.S.2d 572 [4th Dept. 2001]; *see also, Nallan v. Helmsley-Spear Inc.*, 50 N.Y.2d 507, 519, 429 N.Y.S.2d 606, 407 N.E.2d 451 [1980]). Such duty is limited to conduct on the premises, which the owner had the opportunity to control and of which the owner was reasonably aware (*Taft* at 992, 727 N.Y.S.2d 572). This doctrine has been applied "not only in cases where the assailant was a stranger to the defendant, but also, as in the case here, where the underlying act was committed by an employee of the establishment" (*JG v. Goldfinger*, 161 A.D.3d 640, 640, 79 N.Y.S.3d 1 [1st Dept. 2018]).

PB-36 Doe v. Niagara Falls City Sch. Dist., 72 Misc. 3d 1052, 1055–56 (N.Y. Sup. Ct. 2021), *aff'd,* 213 A.D.3d 82 (2023), *reargument denied,* 215 A.D.3d 1299 (2023).

The court finds that this cause of action as pled is duplicative of the cause of action for negligence and is therefore dismissed (*Id.*).

The Sixth Cause of Action for In Loco Parentis is Dismissed

As held by the Appellate Division, Second Department:

> Here, to the extent that the plaintiff purports to have alleged a cause of action against the district to recover damages for breach of a duty in loco parentis, this is not a cognizable cause of action under New York law. Rather, the concept of in loco parentis forms the basis of the duty owed by a school district to students within its charge in the context of a negligent supervision claim (*see Mirand v. City of New York,* 84 N.Y.2d 44, 49, 614 N.Y.S.2d 372, 637 N.E.2d 263; *see also Boyle v. Brewster Cent. Sch. Dist.,* 209 A.D.3d 619, 619–620, 175 N.Y.S.3d 343; *Giresi v. City of New York,* 125 A.D.3d 601, 602–603, 3 N.Y.S.3d 88).

Doe v. Hauppauge Union Free Sch. Dist., 213 A.D.3d 809, 810 (2023).

Based on the foregoing, the concept is encompassed in the duty aspect of the negligence cause of action but does not form an independent cause of action. As such the sixth cause of action is dismissed.

Breach of Statutory Duty to Report

Plaintiff's seventh cause of action alleges that SCNY breached a statutory duty to report abuse. New York Social Services Law ("SSL") §§ 413 and 420 require reports to be made when there is reasonable cause to suspect child abuse. The Complaint alleges that SCNY had a statutory duty to report abuse and failed to do so. SCNY does not dispute its role as a mandated reporter. Instead, SCNY asserts that because Plaintiff did not report the abuse they were not on notice of the abuse.

However, as discussed above the complaint does allege that SCNY knew or should have known of the abuse and therefore the motion to dismiss this cause of action at this early stage of the litigation is denied.

CONCLUSION

WHEREFORE it is hereby:

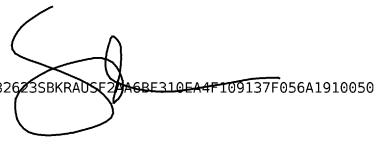
ORDERED that the motion of SCNY is granted to the extent of dismissing the third, fourth, fifth, and sixth causes of action, and is otherwise denied; and it is further

ORDERED that, within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



9/22/2023
DATE

SABRINA KRAUS, J.S.C.

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