

**ARK97 v Archdiocese of N.Y.**

2023 NY Slip Op 33883(U)

October 30, 2023

Supreme Court, New York County

Docket Number: Index No. 950074/2019

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

*Justice*

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ARK97,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE CATHOLIC  
CHARITIES OF THE ARCHDIOCESE OF NEW YORK,  
BROTHERS OF THE CHRISTIAN SCHOOLS, LINCOLN  
HALL BOYS' HAVEN, DOES 1-5 WHOSE IDENTITIES ARE  
UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 950074/2019  
MOTION DATE 10/05/2023  
MOTION SEQ. NO. 003 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for RENEWAL.

**BACKGROUND**

This Child Victims Act (“CVA”) lawsuit was brought by a survivor who was allegedly sexually abused as a child by Brother Gabriel (“Gabriel”) and Brother Andrew (“Andrew”) at Lincoln Hall. The complaint sets forth claims for negligence, negligent training and supervision, and negligent retention against defendants.

The Complaint alleges that Lincoln Hall employed Gabriel and Andrew and: that Lincoln Hall learned or should have learned that Gabriel and Andrew were not fit to work with children; that Lincoln Hall became aware or should have become aware of Gabriel and Andrew’s propensity to commit sexual abuse; that Lincoln Hall was aware of the risk to Plaintiff’s safety; and that Lincoln Hall had knowledge of Gabriel and Andrew’s propensity for the type of behavior that caused Plaintiff’s injuries.

Plaintiff further alleges that notwithstanding said actual or constructive knowledge, Lincoln Hall retained Gabriel and Andrew in a position where they had access to children and could foreseeably cause harm, failed to properly supervise Gabriel and Andrew, and failed to conduct an appropriate investigation of Gabriel and Andrew.

### **PENDING MOTION**

Pursuant to a decision and order dated September 7, 2022, the court (Love, J) issued an order denying Lincoln Hall's motion to dismiss pursuant to CPLR §3211(a)(7). Lincoln Hall argued that the complaint should be dismissed because it did not allege any facts to support the allegation that Lincoln Hall knew or should have known of the alleged abuser's propensity to commit the type of acts alleged in the complaint. The court held that there is no statutory requirement that causes of action in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity, citing *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 150 (2nd Dept. 1997).

On October 5, 2023, Lincoln Hall moved for renewal arguing there was a change in law that would affect the court's determination on the prior motion. The motion was fully briefed and marked submitted. For the reasons stated below, the motion is denied.

### **DISCUSSION**

Under CPLR § 2221(e), a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion."<sup>1</sup>

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<sup>1</sup> The court is ruling on this motion as Judge Love has been elevated to the Appellate Division and is thus "unable to hear" the motion [CPLR §2221(a)].

A motion for leave to renew is appropriate where a change in the law has occurred, or some new fact comes to the fore not previously known to the Court. *See Opalinski v. City of New York*, 164 A.D.3d 1354, 1355 (2d Dep't 2018); *Sicoli v. Riverside Center Parcel 2 Bit Assocs., LLC*, 150 A.D.3d 607, 607 (1st Dep't 2017).

Movant argues that recent decisions establish a heightened pleadings standard for cases of this type. *See, Moore Charitable Foundation v PJT Partners, Inc.*, 40 NY3d 150 (June 13, 2023); *Doe v. Hauppauge Union Free Sch. Dist.*, 213 A.D.3d 809 (2d Dept 2023); *Easterbrooks v. Schenectady Cnty.*, 218AD3d 969 (3d Dept. 2023).

The standard to sufficiently plead notice to survive a motion to dismiss pursuant to CPLR §3211(a)(7) in a cause of action involving negligent supervision or retention is well established and has been recently reiterated by both the First and Second Departments. *See e.g., J.D. v. The Archdiocese of New York*, 214 AD3d 561(1st Dept. 2023) and *Novak v. Diocese of Brooklyn, et al*, 210 A.D.3d 1104 (2022).

To survive a motion to dismiss pursuant to CPLR §3211(a)(7) in such a case, a plaintiff need only allege that an employer knew or should have known of its employee or agent's harmful propensities, that it failed to take necessary action, and that this failure caused damage to others. The cause of action does not need to be pleaded with specificity. *See Novak, supra; Kenneth R. v. Roman Cath. Diocese of Brooklyn*, 229 A.D.2d 159,162 (2d Dept 1997) ("There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity").

The court disagrees with movant's assertion that *Moore* and *Easterbrooks* represents a change in the law in this regard.

"Here, at the pleading stage of the litigation where the plaintiff's allegations in the complaint are treated as true and are accorded the benefit of every possible favorable

inference, the complaint is sufficiently pled as to the causes of action to recover damages for negligence, including the negligent hiring, retention, and supervision of the priest (see *Doe v Enlarged City Sch. Dist. of Middletown*, 195 AD3d at 596), and inadequate supervision of the plaintiff.”

*Novak* 210 AD3d at 1105.

The court further notes that *Moore* was not a 3211 decision but involved appellate review of a decision after trial, and that in *Doe v. Hauppauge Union Free Sch. Dist.*, the plaintiff was sexually abused by a teacher employed at Hauppauge High School, when the plaintiff was attending a party at the teacher’s home – off school grounds. 213 A.D.3d 809 (2d Dept. 2023).

As the court does not find that the case law relied upon by movant is applicable to the case at bar or creates a new heightened standard the motion for renewal is denied.

WHEREFORE it is hereby:

ORDERED that the motion for renewal is denied; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 10, 2024, at 2 pm; 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](http://www.nycourts.gov/supctmanh)); and it is further

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

10/30/2023

DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: