

R.D. v St. Agnes Home & Sch. for Children

2023 NY Slip Op 33895(U)

October 30, 2023

Supreme Court, Kings County

Docket Number: Index No. 519339/2020

Judge: Sabrina B. Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. SABRINA B. KRAUS PART 57

Justice

-----X

INDEX NO. 519339/2020

R.D.,

MOTION DATE 10/30/23

Plaintiff,

MOTION SEQ. NO. 006

ST. AGNES HOME AND SCHOOL FOR CHILDREN
f/k/a ST. AGNES HOME AND SCHOOL FOR BOYS;
DOMINICAN CONVENT OF OUR LADY OF THE
ROSARY; ARCHDIOCESE OF NEW YORK; CITY
OF NEW YORK; NEW YORK CITY
ADMINISTRATION FOR CHILDREN'S SERVICES
f/k/a BUREAU OF CHILD WELFARE; THE ROMAN
CATHOLIC DIOCESE OF BROOKLYN;
HEARTSHARE ST. VINCENT'S SERVICES, f/k/a
ST. VINCENT'S HOME FOR THE BOYS;
CATHOLIC CHARITIES OF THE ARCHDIOCESE
OF NEW YORK; CATHOLIC HOME BUREAU;
CATHOLIC GUARDIAN SERVICES f/k/a
CATHOLIC GUARDIAN SOCIETY AND HOME
BUREAU; DOMINICAN FATHERS PROVINCE OF
ST. JOSEPH a/k/a DOMINICAN FRIARS
PROVINCE OF ST. JOSEPH a/k/a ORDER OF
PREACHERS PROVINCE OF ST JOSEPH; THE
DOMINICAN FOUNDATION OF DOMINICAN
FRIARS, PROVINCE OF ST JOSEPH, INC.;
CATHOLIC CHARITIES DIOCESE OF
BROOKLYN, CATHOLIC CHARITIES
NEIGHBORHOOD SERVICES; HEARTSHARE
HUMAN SERVICES OF NEW YORK a/k/a HEART
SHARE HUMAN SERVICES OF NEW YORK
ROMAN CATHOLIC DIOCESE OF BROOKLYN;
CATHOLIC GUARDIAN SOCIETY OF THE
DIOCESE OF BROOKLYN; SISTERS OF THE
ORDER OF ST. DOMINIC a/k/a SISTERS OF ST.
DOMINIC OF AMITYVILLE, AMITYVILLE
DOMINICAN SISTERS, INC., FEDERATION OF
DOMINICAN SISTERS USA, INC; and GEORGE
MCCLLOUD,

DECISION + ORDER ON
MOTION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 133 - 138 were read on this motion to/for DISMISS

BACKGROUND

Plaintiff commenced this action under the Child Victim’s Act (“CVA”) seeking damages for alleged repeated instances of sexual abuse by multiple abusers while he was in the foster care system and in the custody and care of the Defendants, from approximately 1970, when he was about nine years old, until approximately 1977, when he was about sixteen years old.

As to the Dominican Friars, plaintiff alleges that when he was approximately 9 years old in 1970, until he was 11 or 12 years old in 1973, he was subjected to abuse by unidentified “older residents” of the St. Agnes Boys Home. The complaint alleges that the Dominican Fathers Province of St. Joseph A/K/A Dominican Friars Province of St. Joseph A/K/A Order of Preachers Province of St. Joseph, The Dominican Foundation of Dominican Friars and Province of St. Joseph, Inc., (“Dominican Friars”) knew or should have known, in the exercise of appropriate care, that the regular and repeated sexual abuse of Plaintiff was occurring, and/or that the other, older residents of St. Agnes had propensities for the conduct causing injury to Plaintiff, particularly that they had the propensity to engage in the sexual abuse of children.

PENDING MOTION

On September 8th, 2023, Dominican Friars moved for an order pursuant to CPLR §3211(a)(7) to dismiss the complaint for failure to state a cause of action. The motion was fully briefed and marked submitted. For the reasons stated below, the motion is denied.

DISCUSSION

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]).

Plaintiff has alleged three causes of action against the Dominican Friars (1) Negligence, (2) Negligent Hiring, Retention, Supervision, and/or Direction, and (3) Breach of Statutory Duty to Report Abuse Under Soc. Serv. Law §§ 413 and 420.

Plaintiff does not oppose that portion of the motion which seeks to dismiss the cause of action for breach of statutory duty to report as such that cause of action is dismissed as to Dominican Friars.

The balance of the motion is based on the assertion that the Complaint does not contain facts and circumstances which permit an inference that Dominican Friars knew or should have known of the propensity of the resident or residents who allegedly abused plaintiff. Movant further 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) *Belcastro v Roman Catholic Diocese of Brooklyn, N.Y.*, 213 AD3d 800, 801 [2d Dept 2023]).

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).

Plaintiff's complaint does not involve one or two isolated off-premises assaults, nor does it contain "mere allegations" that the Dominican Friars knew or should have known of the abuse or his alleged abusers' propensities for abuse; instead, it alleges a years-long pattern and practice of Plaintiff being regularly and repeatedly subjected to abuse and attacks by multiple fellow residents of St. Agnes Boys Home, who, like Plaintiff, were under the supervision of the Dominican Friars, where each of the many instances of abuse occurred on the premises of St. Agnes, while Plaintiff was a minor resident living at St. Agnes and dependent on the Dominican Friars to care for him and provide a safe environment for him.

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 balance of the motion to dismiss for failure to state a cause of action is denied.

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that the Dominican Friars serve and file an answer to the complaint with twenty days of the date of this order; 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 counsel appear for a virtual compliance conference on January 11, 2024,
at 2:00 pm; and it is further

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

10/30/2023

DATE

HON SABRINA B. KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE