

Appellate Division, First Judicial Department

Renwick, J.P., Friedman, Scarpulla, Mendez, Rodriguez, JJ.

17569

J.D.,

Plaintiff-Appellant,

Index No. 950231/19

Case No. 2022-01595

-against-

THE ARCHDIOCESE OF NEW YORK,  
Defendant-Respondent,

FORDHAM PREPARATORY SCHOOL et al.,  
Defendants.

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Herman Law, New York (Jeffrey Herman of counsel), for appellant.

Leahey & Johnson, P.C., New York (Peter J. Johnson of counsel), for respondent.

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Order, Supreme Court, New York County (George J. Silver, J.), entered on or about September 24, 2021, which granted so much of the motion of defendant The Archdiocese of New York (the Archdiocese) to dismiss the complaint as against it pursuant to CPLR 3211(a)(1), unanimously reversed, on the law, without costs, the motion denied and the complaint reinstated.

Although the deeds for the property upon which defendant Fordham Preparatory School is located and the Certificates of Incorporation for defendant USA Northeast Province of The Society Of Jesus constitute documentary evidence for the purposes of a CPLR 3211(a)(1) inquiry (*see generally Yoshiharu Igarashi v Shohaku Higashi*, 289 AD2d 128 [1st Dept 2001]), they do not conclusively resolve the allegations in the complaint that plaintiff's alleged abuser, Father Eugene O'Brien, was an agent of the Archdiocese, that the Archdiocese exercised supervision and control over Fr. O'Brien's

appointment or employ, and that there were special relationships between plaintiff, the Archdiocese, and Fr. O'Brien (see *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]). The affidavit of the Associate General Counsel for the Archdiocese does not constitute sufficient documentary evidence for the purpose of a pre-answer CPLR 3211(a)(1) motion (see *Johnson v Asberry*, 190 AD3d 491 [1st Dept 2021]; *Flowers v 73rd Townhouse LLC*, 99 AD3d 431 [1st Dept 2012]). In any event, the affidavit consists mainly of legal conclusions and denials.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 23, 2023

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas  
Clerk of the Court