

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - January 16, 2007

WILLIAM F. MASTRO, J.P.
GLORIA GOLDSTEIN
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2005-11237

DECISION & ORDER

R. (Anonymous), et al., respondents, v R. (Anonymous),
defendant, Roman Catholic Diocese of Brooklyn,
et al., appellants.

(Index No. 9095/05)

Conway, Farrell, Curtin & Kelly, P.C., New York, N.Y. (Jonathan T. Uejio of
counsel), for appellants.

Dell & Little, LLP, Garden City, N.Y. (John S. McDonnell of counsel), for
respondents.

In an action to recover damages for personal injuries, etc., the defendants Roman Catholic Diocese of Brooklyn, Bishop Thomas V. Daily, Monsignor Andrew Vaccari, and Monsignor Otto Garcia appeal from an order of the Supreme Court, Suffolk County (Molia, J.), dated October 24, 2005, which denied their motion pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint insofar as asserted against them.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint insofar as asserted against the appellants is granted.

The complaint alleged that the appellants were negligent in the hiring, retention, training, and supervision of the defendant R. (Anonymous) (hereinafter the defendant) who sexually abused the infant plaintiff on numerous occasions from May 2003 to October 2003. Allegedly, the sexual abuse took place while the defendant was visiting and staying with the plaintiffs in their home.

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The defendant is the infant plaintiff's paternal uncle. At the time of the alleged incidents, the defendant had been on an extended personal leave of absence from the appellants since September 1, 1995, was living as a layman, and had been relieved of his priestly faculties. The complaint also alleged that the appellants were vicariously liable for the defendant's sexual abuse of the infant plaintiff. The appellants moved pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint insofar as asserted against them. The court denied the motion.

Since the defendant's acts were committed for purely personal motives and were an obvious departure from his normal duties as a priest of the appellants, the appellants cannot be held vicariously liable for the defendant's acts as a matter of law (*see Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932; *Mataxas v North Shore Univ. Hosp.*, 211 AD2d 762, 763; *Kirkman v Astoria Gen. Hosp.*, 204 AD2d 401, 403; *Nicollette T. v Hospital for Joint Diseases/Orthopaedic Inst.*, 198 AD2d 54; *Heindel v Bowery Sav. Bank*, 138 AD2d 787, 788). Accordingly, the Supreme Court should have granted those branches of the appellants' motion which were to dismiss the causes of action which alleged that the appellants were vicariously liable for the defendant's acts.

The Supreme Court also improperly denied those branches of the appellants' motion which were to dismiss the remaining causes of action in the complaint insofar as asserted against them. Any nexus between the defendant's hiring and employment at the appellants and his alleged sexual abuse of the infant plaintiff was severed by time, distance and intervening independent actions (*see Hoffman v City of New York*, 301 AD2d 573; *Anonymous v Dobbs Ferry Union Free School Dist.*, 290 AD2d 464).

MASTRO, J.P., GOLDSTEIN, LIFSON and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court