

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

D19748
O/hu

_____AD3d_____

Submitted - May 21, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-10576

DECISION & ORDER

Sheila McGovern, respondent, v St. Cyril and
Methodius Roman Catholic Church, et al., appellants.

(Index No. 11803/07)

Mulholland, Minion & Roe, Williston Park, N.Y. (Taryn M. Fitzgerald of counsel),
for appellants.

Levine & Grossman, Mineola, N.Y. (Scott D. Rubin of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Nassau County (McCormack, J.), dated October 17, 2007, which denied, with leave to renew, their motion for summary judgment dismissing the complaint insofar as asserted against the defendant Roman Catholic Diocese of Rockville Centre, and to change the venue of the action from Nassau County to Suffolk County.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied, with leave to renew, that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against the defendant Roman Catholic Diocese of Rockville Centre (hereinafter the Diocese) pending further discovery. In opposition to the defendants' showing of the Diocese's prima facie entitlement to summary judgment, the plaintiff submitted evidence from which it appeared that discovery may lead to facts essential to justify opposition to the motion (*see* CPLR 3212[f]; *cf. Panasuk v Viola Park Realty, LLC*, 41 AD3d 804, 805). An award of summary judgment dismissing the complaint

June 24, 2008

Page 1.

McGOVERN v ST. CYRIL AND METHODIUS ROMAN CATHOLIC CHURCH

insofar as asserted against the Diocese would be premature, since substantial discovery remains outstanding (*see* CPLR 3212[f]; *Rengifo v City of New York*, 7 AD3d 773; *Lantigua v Mallick*, 263 AD2d 467, 468).

Furthermore, since venue in Nassau County was based on the residence of the Diocese, and since an award of summary judgment dismissing the complaint against the Diocese would be premature, the Supreme Court properly denied that branch of the defendants' motion which was to change the venue of the action from Nassau County to Suffolk County.

SKELOS, J.P., SANTUCCI, COVELLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court