

McGovern v St. Cyril & Methodius R.C. Church

2007 NY Slip Op 33536(U)

October 17, 2007

Supreme Court, Nassau County

Docket Number: 1803-07/

Judge: James P. McCormack

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**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 51 NASSAU COUNTY**

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

SHEILA McGOVERN,

Plaintiff,

Index No. 011803/07

-against-

**ST. CYRIL AND METHODIUS ROMAN
CATHOLIC CHURCH and ROMAN CATHOLIC
DIOCESE OF ROCKVILLE CENTRE,**

**Motion Submitted: 10/4/07
Motion Sequence: 001**

Defendants.

x

The following papers read on this motion:

Amended Notice of Motion.....	XX
Answering Papers.....	XX
Reply.....	XX
Briefs: Plaintiff's/Petitioner's.....	
Defendant's Respondent's.....	

The defendant Roman Catholic Diocese of Rockville Centre (hereinafter "Diocese") moves this court for an order pursuant to CPLR 3212 granting summary judgment to the defendant, upon the grounds that the Diocese does not own, occupy or in any manner control the location of the plaintiff's accident. In addition, as part of the same motion, the defendant St. Cyril and Methodius Roman Catholic Church (hereinafter "St. Cyril") seeks to have the venue of this case transferred pursuant to CPLR §5010 to Suffolk County if the court were to grant the defendant's first application.

This action was commenced by the filing of a summons and complaint on or about June 27, 2007. The issue was joined by the service of an answer on July 31, 2007. The plaintiff alleges she sustained injuries in a trip and fall occurrence which took place on August 22, 2006 at St. Cyril and Methodius Roman Catholic Church, located in Deer Park, Suffolk County, New York.

The defendant Diocese maintains that it does not own, occupy or in any manner control the property owned and occupied by St. Cyril and Methodius Roman Catholic Church Corporation. To support that position the defendant supplied a "bare bones" affidavit of William Chapin which according to the defendant Diocese sets forth that the Diocese does not own, occupy, or in any manner control the property where the accident took place. In addition, the defendant St. Cyril seeks to have the venue of this case transferred to Suffolk County if the motion made by defendant Diocese is granted, because St. Cyril states the only basis for venue in Nassau County is fact that the residence of the Diocese of Rockville Centre is Nassau County.

The plaintiff, in opposition, points to the fact that this action was recently commenced and that no depositions have taken place and minimal document exchange has taken place. Despite that fact, the plaintiffs are in possession, and have provided to the court, a copy of a recently served accident report which despite the defendant Diocese's arguments regarding their "control" of the property, is on a Roman Catholic Diocese of Rockville Centre form. The plaintiff further argues the accident report and other documents exchanged conflict with

the arguments advanced by the defendant Diocese. In addition, the plaintiff has raised an issue regarding the fact that the third party administrator for the Diocese sent letters to the plaintiff after her accident and before the litigation had commenced requesting medical authorizations and a statement from the plaintiff. These letters were also provided to the court as exhibits to plaintiff's Affirmation in Opposition. Again, plaintiff argues, if the Diocese had no involvement with the property there would be no need for their third party administrator to seek medical authorizations regarding the extent of the plaintiff's injuries.

Although limited discovery has taken place in this case, it is clear to the court that a number of questions surround the involvement of the Diocese in the operation of the subject premises. Documents exchanged to date present a good faith basis for the Court to deny the instant motion and to allow discovery to continue in this matter. In determining this motion the court must view the evidence in the light most favorable to the non-moving party, the evidence presented by the non-moving party must be accepted as true and all inferences must be drawn in this plaintiff's favor. (*see, Perez v. Exel Logistics, Inc.*, 278 AD2d 213; *Sheryll v. L & J Hairstylists of Plainview*, 272 AD2d 603; *Rockowitz v. City of New York*, 255 AD2d 434). At this juncture the plaintiff should be allowed to continue discovery and inquire as to the relationship of the defendant Diocese to this property, if any. Accordingly, summary judgement is not appropriate at this juncture.

It is also worth noting that the court is perplexed as to how defendant St. Cyril and defendant Diocese can argue that their interests and relationship to the property are so

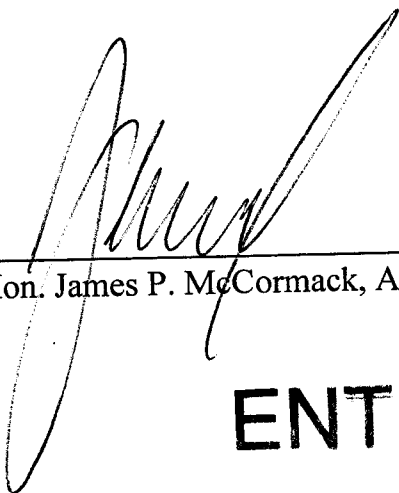
distinct while sharing the same counsel. The representation of these two parties seems to create a conflict of interest because if the court were to grant the motion of the Diocese, any potential liability in this matter would be shifted exclusively to the defendant St. Cyril. If counsel is primarily the counsel for the Diocese, it raises a question as to why the Diocese would pay to defend the defendant St. Cyril if they were uninvolved in the operation of the property. Conversely, if St. Cyril is paying the for counsel, it raises an issue as to why St. Cyril would pay to bring a motion to dismiss the charges against its co-defendant. If both St. Cyril and the Diocese are separately paying counsel it would raise serious ethics questions regarding the obvious conflict in the representation. Counsel for the Diocese and St Cyril cites to a case that they claim holds that parishes within a diocese were separate corporations and were not united in interest and that the affiliation between the two is insufficient to establish a unity of interest. (*Heenan v. Roman Catholic Diocese of Rockville Centre*, 158 AD 2d 587, 551 NYS 2d 555). If that case does in fact hold that the affiliation does not create a unity of interest, it is even more difficult to believe that one attorney could adequately represent the interests of both. The representation of both the Diocese and St. Cyril by one attorney even further indicates to the court that the two are united in interest, and questions regarding that unity of interest warrant continued discovery.

Accordingly, pursuant to CPLR 3212(f), the defendant Diocese's motion for summary judgement is denied at this time pending further discovery. Defendant St. Cyril's motion to change the venue is denied as moot. Parties are directed to appear for a

Preliminary Conference on November 20, 2007 10:00 a.m., before the Hon. James P. McCormack, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York.

The foregoing constitutes the Decision and Order of this court.

Dated: October 17, 2007
Mineola, N. Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED
OCT 29 2007
NASSAU COUNTY
COUNTY CLERKS OFFICE