

Vione v Fifth Ave. Presbyt. Chuch

2008 NY Slip Op 30989(U)

March 31, 2008

Supreme Court, Nassau County

Docket Number: 0510-07/

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

RACHEL VIONE,

Plaintiff,

- against -

FIFTH AVENUE PRESBYTERIAN CHURCH,
PRESBYTERY OF NEW YORK CITY, THOMAS
K. TEWELL,

Defendant.

TRIAL / IAS PART 32
NASSAU COUNTY

Index No. 10510/07

Motion Sequence No. 001 & 002

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	_____
Replying Affidavits	_____
Briefs: Plaintiff's / Petitioner's	<u>7</u>
Defendant's / Respondent's	<u>3, 4, 5, 6</u>

The defendants Fifth Avenue Presbyterian Church and Thomas K. Tewell move for an order pursuant to CPLR 3211 (a) (7), or in the alternative pursuant to CPLR 3211 (a) (7) dismissing the first, second and fifth causes of action in the plaintiff's complaint. The defendant Presbytery of New York City moves for an order pursuant to CPLR 3211 (a) (2) and (7) dismissing the complaint and all causes of action against it on the ground the complaint fails to state a cause of action against it, and the Court lacks subject matter jurisdiction as the causes of action relate to it. The plaintiff opposes both motions.

The Reverend Randolph L. C. Weber, an Associate Pastor at Fifth Avenue Presbyterian Church since 1991, states, in a supporting affidavit dated September 26, 2007, to

the motion by the defendants Fifth Avenue Presbyterian Church and Thomas K. Tewell, he is familiar with the preparation for ministry process of the Presbyterian Church. Reverend Weber states the ministry applicants are taken “under care” of their home church, which is a relationship with emotional and spiritual support provided by a seminarian’s home church during the seminarian’s preparation for the ministry in the Presbyterian Church. Reverend Weber points out the home church has no power, aside from making a recommendation to select an applicant as an “Inquirer,” or later, as a “Candidate.” Reverend Weber notes only the Presbytery of New York City, and not the Fifth Avenue Presbyterian Church nor any other individual church, has the power to remove an individual’s name from its roll of “Inquirers” or “Candidates.” Reverend Weber asserts the under care process begins when a seminarian is selected by the Presbytery of New York City as an “Inquirer,” and after a period of study becomes a “Candidate” for the ministry. Reverend Weber avers, apart from the year the plaintiff was an intern, the plaintiff did not receive any financial remuneration, fringe benefits nor any other compensation from Fifth Avenue Presbyterian Church, nor did the plaintiff perform any services for Fifth Avenue Presbyterian Church following internship, preach to the congregation, assist in an administrative nor clerical capacity, supervise the staff, nor provide pastoral care to the members of Fifth Avenue Presbyterian Church. Reverend Weber reports he is regularly required to perform those tasks as an Associate Pastor of Fifth Avenue Presbyterian Church. Reverend Weber claims the only requirement for the plaintiff, on behalf of Fifth Avenue Presbyterian Church, was to meet periodically with members of the Ministerial Candidates Committee to discuss the plaintiff’s spiritual preparation. Reverend Weber notes this requirement was not for the benefit of Fifth Avenue

Presbyterian Church, but rather allowed members of the Ministerial Candidates Committee to provide spiritual and emotional support to the plaintiff in the plaintiff's pursuit of the ministry. Reverend Weber alleges Fifth Avenue Presbyterian Church expected the plaintiff to participate in the life of Fifth Avenue Presbyterian Church, but it was up to the plaintiff how to participate, to wit by attending worship or participating in church-related activities, such as the "Couples Club." Reverend Weber insists Fifth Avenue Presbyterian Church did not control any of the plaintiff's activities while the plaintiff was "under care," as the plaintiff always maintained the freedom to complete preparation for the ministry as the plaintiff desired. Reverend Weber also asserts, throughout the time the plaintiff was "under care" at Fifth Avenue Presbyterian Church, the defendant Dr. Tewell served as the Senior Pastor of Fifth Avenue Presbyterian Church, and the plaintiff did not provide any services for him, and he never compensated the plaintiff.

The Associate Executive Presbyter of the defendant Presbytery of New York City states, in a supporting affidavit dated September 28, 2007, to the motion of the defendant Presbytery of New York City, he is the Presbytery staff officer relating to the Presbytery's Committee on Preparation for Ministry which is responsible for the Presbytery's relationship with persons seeking ordination as ministers within the Presbyterian Church (U.S.A.), and is familiar with the Presbytery's requirements which apply to persons seeking ordination, and in particular familiar with the circumstances of the plaintiff's relationship to the Presbytery in seeking ordination. The Associate Executive Presbyter asserts the plaintiff was never a Presbytery employee, never received compensation from the Presbytery, nor engaged in any activities which could remotely be characterized as an employment relationship with the

Presbytery for purposes of the New York State and New York City Human Rights laws. The Associate Executive Presbyter states the Presbytery's actions, taken with respect to the plaintiff, related to the core of the Presbytery's ecclesiastical function, and were in furtherance of the religious principles of the Presbyterian Church, and are protected from the plaintiff's claims under such laws, and under the Free Exercise Clause of the First Amendment of the United States Constitution. The Associate Executive Presbyter provides, in detail, the structure of the Presbyterian Church, and the plaintiff's status and removal as a candidate for the ministry, including a probe concerning allegations the plaintiff had a relationship with the defendant Thomas Tewell while the plaintiff was serving as an intern at Fifth Avenue Presbyterian Church, and the plaintiff's claim of retaliation by the Presbytery. The Associate Executive Presbyter contends the Committee recommendation, and the Presbytery approved of that recommendation for the termination of the plaintiff's candidacy were appropriate as an ecclesiastical decision, based on all of the circumstances because the Presbytery concluded the plaintiff evinced an inability to set and maintain professional boundaries, and a lack of maturity and responsibility essential for an ordained minister.

The plaintiff states, in an opposing affidavit dated November 15, 2007, during the time the plaintiff was under care, being paid a \$5000.00 stipend by the defendant Fifth Avenue Presbyterian Church while Tewell, a clergyman, directly supervised the plaintiff, who was in the Joint Apprenticeship Program, and controlled work assignments for the Church, which has a Committee on the Preparation for Ministry, and oversaw Reverend Tewell and the plaintiff as a candidate in the Program. The plaintiff states Reverend Reverend Tewell requested the plaintiff accompany him on overnight trips outside the State, and at various

dinners, and on retreats, when the plaintiff had no reason to travel with Reverend Tewell.

The plaintiff alleges on January 13, 2005, Reverend Tewell propositioned her when he stated he previously saw the plaintiff's silhouette, "it was a good thing I was wearing a robe." The plaintiff claims Reverend Tewell stated he followed the plaintiff on a prior occasion to a bathroom and watched her, and while the plaintiff was in the bathroom, putting on makeup, and Reverend Tewell stated he realized how much he loved the plaintiff. The plaintiff avers Reverend Tewell daily said similar things to the plaintiff. The plaintiff asserts Reverend Tewell left voicemail recordings which are in the possession of the Presbytery of New York City. The plaintiff contends her estranged husband filed a case in the New York State Supreme Court which arose from the same marital counseling offered by Reverend Tewell to both spouses.

This Court has reviewed and considered all of the parties' papers submitted with respect to this motion. The plaintiff concedes, in a legal brief dated November 16, 2007, the plaintiff cannot maintain any retaliation claims arising out of the Presbytery of New York City striking the plaintiff's name from the rolls, to wit the third and fourth causes of action, so the third and fourth causes of action are dismissed. This Court is constrained, as a matter of law, to dismiss the plaintiff's assertion the Presbytery of New York City was an "aider and abettor regarding the plaintiff's complaint of sexual harassment, and the *ad damnum* clause, even though certain paragraphs, to wit 60 to 67, do not explicitly mention the Presbytery of New York City. The complaint and the plaintiff's affidavit in opposition here contain no factual which implicate the Presbytery of New York City in the sexual harassment allegations. The Court finds the defendant Presbytery of New York City has met its burden

with respect to CPLR 3211 (a), but the defendants Fifth Avenue Presbyterian Church and Thomas K. Tewell have not.

Accordingly, the motion by defendants Fifth Avenue Presbyterian Church and Thomas K. Tewell is denied, and the motion by the defendant Presbytery of New York City is granted on the ground the complaint fails to state a cause of action against the defendant Presbytery of New York City.

So ordered.

Dated: March 31, 2008

ENTER:



J. S. C.
HON. ANTONIO I. BRANDVEEM

FINAL DISPOSITION

NON FINAL DISPOSITION XXX

ENTERED

APR 03 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**