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| Johnson v Classis of Nassau-Suffolk of the Refm. Church of Am. |
| 2008 NY Slip Op 31164(U) |
| April 3, 2008 |
| Supreme Court, Suffolk County |
| Docket Number: 0029256/2007 |
| Judge: John J.J. Jones |
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SHORT FORM ORDER



INDEX NO.: 0029256/2007

SUBMIT DATE: 1/23/2008

MTN. SEQ.#: 001

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.
Justice

MOTION DATE: 12/21/2007

MOTION NO.: MG

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AIMEE JOHNSON,

Plaintiff,

-against-

CLASSIS OF NASSAU-SUFFOLK OF THE REFORMED CHURCH OF AMERICA, NEW LIFE COMMUNITY CHURCH, CONSISTORY OF NEW LIFE COMMUNITY CHURCH, DANIEL HEEMSTRA, DANIEL HEEMSTRA as stated Clerk, CONRAD STRAUCH, CONRAD STRAUCH as President of CLASSIS OF NASSAU-SUFFOLK OF THE REFORMED CHURCH OF AMERICA and KARL BOERSMA and DARL BOERSMA as Chair Human Support Committee of the CLASSIS OF NASSAU-SUFFOLK OF THE REFORMED CHURCH OF AMERICA, JACKIE WAGENMAKER as Vice-President, CLASSIS OF NASSAU-SUFFOLK OF THE REFORMED CHURCH OF AMERICA,

Defendants.

-----X

CARWAY & FLIPSE

By: Adrienne Flipse Hausch, Esq.

Attys. for Plaintiff

194 Old Country Road

Mineola, NY 11501

CATALANO GALLARDO &

PETROPOULOS, ESQS.

By: Matthew K. Flanagan, Esq.

Attys. for Defendants

Classis of Nassau-Suffolk of the

Reformed Church of America, Conrad

Strauch, Conrad Strauch as President of

the Classis of Nassau-Suffolk of the

Reformed Church of America, Karl

Boersma and Karl Boersma as Chair of

Human Support Committee of the

Classis of Nassau-Suffolk of the

Reformed Church of America

100 Jericho Quadrangle, Suite 214

Jericho, NY 11753

Upon the following papers numbered 1 to 10 read on this motion for dismissal of the complaint against movants; Notice of Motion/Order to Show Cause and supporting papers 1-6; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 7-8; Replying Affidavits and supporting papers 9-10; Other _____; it is

ORDERED that this motion by defendants, Classis of Nassau-Suffolk of the Reformed Church of America (Classis), Conrad Strauch, Conrad Strauch, as President of Classis of Nassau-Suffolk of the Reformed Church of America, Karl Boersma, and Karl Boersma, as Chair of Human Support Committee of the Classis of Nassau-Suffolk of the Reformed Church of America (Officers), for an order pursuant to CPLR 3211 (a) (7) dismissing the complaint of plaintiff, Aimee Johnson, against them is granted.

Plaintiff commenced this action by the filing of a summons and complaint on or about October 2, 2007. Plaintiff claims to be a member of the New Life Church, which is a congregation of the Reformed Church in America that is governed by the Classis. It is alleged in the complaint that on October 2, 2004 plaintiff was baptized into the New Life Church by its pastor, defendant Daniel Heemstra. It is also alleged that during the service and in front of members and elders of the church and the Classis, Heemstra allegedly “kissed plaintiff on the lips in a salacious manner after plaintiff emerged from the water,” that Heemstra “invited plaintiff to meet him at a bar” after the service, and that he touched her sexually in the parking lot of the bar and told her that he wanted to have a sexual and romantic relationship with her. Heemstra is also alleged to have e-mailed messages with sexual content to plaintiff, at times using a computer owned by another pastor in the New Life Church. The Officers of the Classis are alleged in the complaint to have had “actual knowledge of the sexual relationship, promoted said sexual relationship and advised plaintiff and Heemstra to continue said sexual relationship.” Plaintiff seeks recovery of damages for breach of fiduciary duty against Heemstra under the first cause of action, for negligent supervision against New Life Church under the second cause of action, for negligent supervision against movants under the third cause of action, for intentional infliction of emotional distress against Heemstra under the fourth cause of action, for intentional infliction of emotional distress against movants and New Life Church under the fifth cause of action, and for negligent hiring against movants and New Life Church under the sixth cause of action. Defendants Classis and Officers now move for an order dismissing the complaint against them for failure to state a cause of action; plaintiff has opposed the motion.

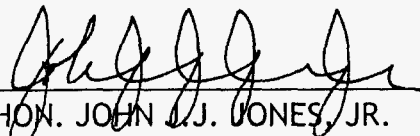
On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the complaint must be liberally construed and all allegations contained in it be accepted as true, and the plaintiff must be accorded the benefit of every possible favorable inference (*Bumpus v New York City Tr. Auth.*, 47 AD3d 653 [2d Dept 2008], citing *Leon v Martinez*, 84 NY2d 83, 87, 638 NE2d 511, 614 NYS2d 972). Applying these principles to this case, plaintiff has failed to set forth sufficient allegations to support her claims, since the allegations in the complaint of a consensual sexual relationship between Heemstra and plaintiff, two adults, are insufficient to support the plaintiff’s claims of tortious conduct. To state a claim for negligent supervision or retention under New York law, in addition to the standard elements of negligence, a plaintiff must show: (1) that the tort-feasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have known of the employee’s propensity for the conduct which caused the injury prior to the injury’s occurrence; and (3) that the tort was committed on the employer’s premises or with the employer’s chattels (*Ehrens v*

Lutheran Church, 385 F3d 232 [2d Cir 2004], citing *D'Amico v Christie*, 71 NY2d 76, 518 NE2d 898, 524 NYS2d 1 [1987]; *Kenneth R. v Roman Catholic Diocese*, 229 AD2d 159, 654 NYS2d 791 [2d Dept 1997]). The allegations in the complaint that movants had actual or constructive knowledge that Heemstra was engaged in a romantic and/or sexual relationship with plaintiff and the characterization of that relationship as "inappropriate," without more, are insufficient on their face, as there is no claim that plaintiff's capacity to engage in a consensual relationship was diminished by infancy, insanity or another disability. Furthermore, to the extent that plaintiff claims any impropriety in the manner in which her baptism was performed, the allegations are insufficient to demonstrate liability on the part of movants and, accordingly, dismissal of the third cause of action is warranted.

Likewise, plaintiff's claim under the fifth cause of action against movants must fail. To state a cause of action for negligent infliction of emotional distress, plaintiff's allegations must generally be premised upon conduct that unreasonably endangered her physical safety or caused her to fear for her own safety (see *Gaylord v Fiorilla*, 28 AD3d 713, 813 NYS2d 534 [2d Dept 2006]; see also *Kenneth S. v Berkshire Farm Center and Serv. for Youth*, 36 AD3d 1092, 829 NYS2d 715 [3d Dept 2007]). Here, the complaint fails to set forth any allegations whatsoever sufficient to support such a claim. Moreover, the complaint fails to support the claim in the sixth cause of action against movants for negligent hiring. There is no allegation in the complaint to support the claim that movants knew or should have known of a propensity on the part of Heemstra to commit the alleged acts, nor is there any common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee (see *Mason v Ben Roy Das, Inc.*, 34 AD3d 768, 825 NYS2d 515 [2d Dept 2006]; see also *Davidovici v Fritzson*, ___ AD3d ___, 2008 NYAppDiv LEXIS 1949 [2d Dept 2008]).

Accordingly, the complaint is dismissed against the movants, Classis of Nassau-Suffolk of the Reformed Church of America, Conrad Strauch, Conrad Strauch, as President of Classis of Nassau-Suffolk of the Reformed Church of America, Karl Boersma, and Karl Boersma, as Chair of Human Support Committee of the Classis of Nassau-Suffolk of the Reformed Church of America, and the action is severed and shall otherwise continue against the remaining defendants.

DATED: 3 April 2008



 HON. JOHN J. JONES, JR.
 J.S.C.

CHECK ONE: [] FINAL DISPOSITION

[X] NON-FINAL DISPOSITION

TO:

NEW LIFE COMMUNITY CHURCH
CONSISTORY OF NEW LIFE COMMUNITY CHURCH
380 Lakeland Avenue
Sayville, NY 11782

DANIEL HEEMSTRA
DANIEL HEEMSTRA as stated Clerk
Address unknown