

**Nugent v Diocese of Rockville Ctr.**

2011 NY Slip Op 30567(U)

March 1, 2011

Supreme Court, New York County

Docket Number: 009303-10

Judge: Arthur M. Diamond

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**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. ARTHUR M. DIAMOND**  
**Justice Supreme Court**

-----X  
**EILEEN NUGENT,**

**Plaintiff,**

**-against-**

**DIOCESE OF ROCKVILLE CENTRE,  
ST. MARTIN OF TOURS SCHOOL,,**

**Defendants,**

**TRIAL PART: 14  
NASSAU COUNTY**

**INDEX NO: 009303-10**

**MOTION SEQ. NO: 2, 3**

**SUBMIT DATE: 1/25/11**

-----X  
**The following papers having been read on this motion:**

**Notice of Motion..... 1**  
**Cross Motion.....2**  
**Opposition.....3**  
**Reply.....4**

The Plaintiff submits an application for an order, pursuant to CPLR. § 3025 (b), granting leave to amend her complaint by: 1.) bringing a sixth cause of action against William Murphy personally and in his representative capacity under the principle of respondent superior, in his capacity as Canonical Director of the Diocese of Rockville Centre and adding causes of action against him in negligence, negligent representation and fraudulent concealment; 2.) amending a cause of action against Kathleen A. Razzetti, as principal of St. Martin Tours School; 3.) adding Sister Joanne Callahan as an additional defendant in her representative capacity as Superintendent of Schools of the Diocese of Rockville Centre and 4.) adding a fifth cause of action for prima facie tort.

The Defendants oppose the application and cross move for an order: 1.) pursuant to CPLR § 3212, dismissing plaintiff's complaint in its' entirety with prejudice, for plaintiff's failure to prove negligent misrepresentation, wrongful conduct or any other breach of duty on the part of the defendants; 2.) granting an award of sanctions and/or attorneys fees, pursuant to Title 22 NYCRR sec. 130-1.1 for plaintiff's frivolous and merit less motion practice, as well as for plaintiff's unfounded, retaliatory, inappropriate and egregious statements made both by plaintiff's counsel and

plaintiff in their application to amend the subject complaint; and 3.) denying plaintiff's motion to amend the complaint, as such application is without merit, improper and barred by law.

The subject action arises from Plaintiff's alleged wrongful termination of her employment as a teacher in the Defendant, St. Martin of Tours Elementary School of the Diocese of Rockville Centre, in February 2010. Plaintiff worked at St. Martin of Tours School as a remedial Reading and Social Studies teacher from 1997 to February 2, 2010. Plaintiff contends she was wrongfully terminated for discussing a former male student's publicized rape conviction and for warning female students (on February 1, 2010) to tell their sisters and friends that they should stay away from this male student because he was dangerous. The principal of St. Martins of Tours School had previously held a staff meeting about this student's arrest, at which time she claims to have told the teachers in attendance not to discuss this student's personal record with other students, because he was still enrolled at their school and the matter was under investigation. The student subsequently withdrew from the school and was no longer a student at St. Martin of Tours' School when Plaintiff discussed the matter with female students. Plaintiff maintains she was unaware this policy applied to former students. Plaintiff insists she was genuinely concerned for the students' safety and only warned them to protect them from a sexual predator, as she believes she is statutorily required to do. The Defendants maintain Plaintiff violated the school Principal's directive regarding the confidentiality of students' records and prohibition against a teacher discussing another student's private record with other students. Defendants claim the reason listed for Plaintiff's termination was non-compliance with a directive concerning a student's privacy. Plaintiff states the grounds listed for her termination are "making inappropriate statements to students", which would lead a future employer to question her judgment. She argues the printed basis for her termination is misleading and prevents her from obtaining alternative employment as a teacher in either public or private schools. Plaintiff challenged her termination and the Superintendent of Schools, Sister Joanne Callahan, upheld the termination, while recognizing Plaintiff's actions as well-intended, but violative of the School's published directive,

#### **Decision and Order**

With respect to branches (1) and (2) of Plaintiff's application, though CPLR § 3025(b) provides that leave to amend shall be freely given, in this case the Defendant correctly refers this Court to a prior decision and order of the Hon. Daniel Palmieri, dated August 6, 2010, which dismissed Plaintiff's case against Bishop William Murphy and the school Principal, Kathleen A.

Razzetti, individually, with prejudice. Defendants correctly argue the application of the doctrine of res judicata to this final judgment of the Court, bars future actions between the same parties on the same cause of action. (See, *Parker v. Blauvelt Volunteers Fire Co.*, 93 NY 2d 343,347 (1999); and the Matter of *Reilly v. Reed*, 45 NY2d 24, 27 (1978). In response to Plaintiff's argument to the effect they seek to add new causes of action arising out of the same event, the Defendants argue it is well-established "once a claim is brought to final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or seeking a different remedy". (See, *O'Brien v. City of Syracuse*, 54 NY 2d 353, 357 (1981); *Parker*, supra and *99 Cents Concepts, Inc. v. Queens Broadway, LLC*, 70 AD 3d 656 (Second Dept, 2010). It is noted, Plaintiff withdrew the portion of this request which sought leave to add a cause of action against Bishop William Murphy for fraudulent concealment (see, Plaintiff's Affirmation in Opposition to Defendants' cross-motion, page 1). Thus, the Court denies branch (1) of Defendant's application with respect to Plaintiff's request to add the negligence and negligent misrepresentation causes of action against Bishop William Murphy, finding Plaintiff is precluded from bringing any additional claims based upon the same transaction or series of transactions, even if based upon different legal theories.

Branch (3) of Plaintiff's application, which seeks leave to amend the complaint to add Sister Joanne Callahan as an additional defendant in her capacity as Superintendent of Schools in the Education Department of the Diocese of Rockville Centre, is denied, there being no allegations to the effect her actions or failure to act went beyond her role as an agent or supervisor of the Diocese of Rockville Centre.

The fourth branch of Plaintiff's application, which seeks leave to amend the complaint to add a cause of action for prima facie tort, is also denied on the basis of res judicata (claim preclusion) and collateral estoppel (issue preclusion) for all the reasons set forth herein above in this order in the discussion of branches (1) and (2) of Plaintiff's application. Plaintiff is referred to pages nine and ten of Justice Palmieri's order dated August 6, 2010, wherein he specifically dismissed the cause of action grounded on prima facie tort. The plaintiff is bound by such determination, having failed to either timely appeal said order or move to renew or re-argue the same.

The Defendant's cross - motion for summary judgment, pursuant to CPLR § 3212, and the dismissal of Plaintiff's complaint with prejudice, is also denied. The CPLR § 3212 (b) provides in pertinent part: "...The motion shall be granted if, upon all the papers and proof submitted, the cause

of action or defense shall be established sufficiently to warrant the court as a matter of law to direct judgment in favor of any party....the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.” Plaintiff is entitled to every favorable inference relative to the factual allegations asserted under her negligent misrepresentation cause of action and the Court is not prepared at this juncture to determine the issues raised therein as a matter of law. There are outstanding conflicting issues of fact which cannot be determined on papers submitted to date.

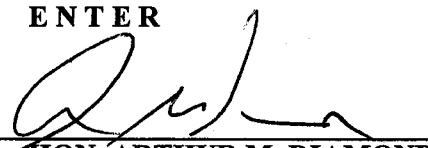
With respect to branch (2) of the Defendant’s cross-motion, the Uniform Rules for Trial Courts sec. 130-1.1(a) provides: “The Court, in its discretion, may award to any party or attorney, in any civil action or proceeding...costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees...”. Based upon the foregoing, together with Plaintiff’s disregard of the terms of Justice Palmieri’s prior decision and order in this action, the Court exercises its’ discretion in granting Defendants an award of counsel fees for their costs associated in having to respond to Plaintiff’s motion sequence 2 and in the preparation of branches (2) and (3) of Defendants’ cross-motion, upon the submission of proper papers, on notice to Plaintiff, including a detailed affirmation of services, in accordance with this order.

The Plaintiff is further directed, in any future submissions in this action, to refrain from including the names of any defendants which have already been dismissed from this action, pursuant to a prior order of the Court.

This constitutes the decision and order of this Court.

DATED: March 1, 2011

ENTER

  
HON. ARTHUR M. DIAMOND  
J. S.C.

**ENTERED**

MAR 02 2011

NASSAU COUNTY  
COUNTY CLERK'S OFFICE