

Young v Brown

2011 NY Slip Op 34071(U)

August 15, 2011

Supreme Court, Westchester County

Docket Number: 13508/10

Judge: Lester B. Adler

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 8-15 2011
WESTCHESTER
COUNTY CLERK

TABITHA YOUNG,

Plaintiffs,

-against-

DECISION & ORDER

DAVID BROWN, HINDSIGHT BIBLICAL
COUNSELING, HINDSIGHT MINISTRIES, INC.,
AND TRINITY PRESBYTERIAN CHURCH,

Index No.: 13508/10

FILED
AUG 15 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendants.

ADLER, J.

The following papers numbered 1 to 11 were read on defendant Trinity
Presbyterian Church's motion to dismiss the complaint pursuant to CPLR §3211(a)(7)
and plaintiff's cross-motion to amend the complaint:

PAPERS

NUMBERED

Notice of Motion; Affirmation of Austin Jacobson, Esq.;	
Exhibits	1-5
Affirmation of Sarah J. Eagen, Esq. In Opposition and;	
Cross-Motion for Leave to Amend Complaint	
Affidavit of Tabitha Young; Exhibits	6-9
Reply Affirmation/Affirmation in Opposition to Cross-	
Motion of Austin Jacobson, Esq.	10
Reply Affirmation of Sarah J. Eagen, Esq.	11

On a pre-answer motion to dismiss pursuant CPLR §3211(a)(7), the complaint
must be liberally construed in the light most favorable to the plaintiff and all allegations
must be accepted as true (*Leon v. Martinez*, 84 N.Y.2d 83, 87, 614 N.Y.S.2d 972, 638
N.E.2d 511; *Granada Condominium III Assn. v. Palomino*, 78 A.D.3d 996, 996, 913
N.Y.S.2d 668; *Pacific Carlton Dev. Corp. v. 752 Carlton*, 62 A.D.3d 677, 679, 878

N.Y.S.2d 421). "Further, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint" (*Lucia v. Goldman*, 68 A.D.3d 1064, 1065, 893 N.Y.S.2d 90, quoting *McGuire v. Sterling Doubleday Enters.*, 19 A.D.3d 660, 661, 799 N.Y.S.2d 65 [internal quotations omitted]; *Well v. Yeshiva Rambam*, 300 A.D.2d 580, 753 N.Y.S.2d 512), and "upon considering such an affidavit, the facts alleged therein must also be assumed to be true" (*Kopelowitz & Co. v. Mann*, 83 A.D.3d 793, 921 N.Y.S.2d 108).

In paragraph 27 of the complaint, plaintiff alleges that defendant Trinity Presbyterian Church ("Trinity") breached its "pastoral duties" owed to plaintiff. This conclusory allegation is insufficient to establish the existence of a fiduciary duty (see *Marmelstein v. Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue*, 11 N.Y.3d 15, 21, 862 N.Y.S.2d 311, 892 N.E.2d 375).¹ Plaintiff has failed to articulate specific facts sufficient to "distinguish a viable claim of breach of a fiduciary duty from nonactionable seductive conduct" (*Id.* at 21-22). To the extent plaintiff is alleging clergy malpractice, no such cause of action is recognized in New York since it would "require courts to examine ecclesiastical doctrine in an effort to determine the standard of due care owed to parishioners undergoing ministerial counseling" (*Wende C. v. United Methodist Church*, 4 N.Y.3d 292, 299, 794 N.Y.S.2d 282, 827 N.E.2d 265). Therefore,

¹As stated by the Court of Appeals in *Marmelstein*, "[a] fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation" (*Marmelstein*, 11 N.Y.3d at 21, quoting *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19, 799 N.Y.S.2d 170, 832 N.E.2d 26 [internal quotations omitted]). In determining whether a fiduciary relationship has been established, "two essential elements of a fiduciary relation are * * * de facto control and dominance" (*Id.*, quoting *Northeast Gen. Corp. v. Wellington Adv.*, 82 N.Y.2d 158, 173, 604 N.Y.S.2d 1, 624 N.E.2d 129 [internal quotations omitted]).

plaintiff's complaint fails to state a cause of action insofar as asserted against defendant Trinity.

The Court's inquiry does not end here, however, since plaintiff has cross-moved to amend her complaint. It is well-established that, in the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is "palpably insufficient or patently devoid of merit" (*G.K. Alan Assoc. v. Lazzari*, 44 A.D.3d 95, 99, 840 N.Y.S.2d 378, *affd.* 10 N.Y.3d 941, 862 N.Y.S.2d 855, 893 N.E.2d 133; see also *Aurora Loan Services v. Thomas*, 70 A.D.3d 986, 897 N.Y.S.2d 140). In making such a determination, "[t]he legal sufficiency or merits of a proposed amendment to a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt" (*Sample v. Levada*, 8 A.D.3d 465, 467-468, 779 N.Y.S.2d 96).

Plaintiff seeks to amend her complaint to add a second cause of action against Trinity on the "doctrine of apparent authority, master servant, special employee and/or agency," and a third cause of action for "negligence." To the extent plaintiff is seeking to recover against Trinity based upon the theory of vicarious liability, the allegations in the proposed amended complaint fail to establish that the alleged conduct of co-defendant David Brown was within the scope of his employment (see *N.X. v. Cabrini Med. Ctr.*, 97 N.Y.2d 247, 739 N.Y.S.2d 348, 765 N.E.2d 844; *Naegele v. Archdiocese of N.Y.*, 39 A.D.3d 270, 833 N.Y.S.2d 79; *Oswaldo v. Rector Church Wardens & Vestrymen of the Parish of Trinity Church of N.Y.*, 38 A.D.3d 480, 834 N.Y.S.2d 94).

Even where no cause of action for vicarious liability exists, a defendant may still be liable under the theory of negligent supervision (*Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 161, 654 N.Y.S.2d 791 [citations omitted]). While the amended complaint does not specifically allege that Trinity knew or should have known of co-defendant Brown's alleged propensity for the conduct which caused plaintiff's injury (see *Id.*), in her affidavit in support of the cross-motion, plaintiff avers that Trinity acquired actual notice of co-defendant David Brown's alleged propensity to give in to "sexual temptation" (see *Id.* at 164). Consequently, plaintiff may have a cause of action sounding in negligent supervision and, "[p]ursuant to prevailing case law * * * imposition of such liability would not violate constitutional and statutory guarantees of free exercise of religion and separation of church and State" (*Id.*).²

In the proposed third cause of action, plaintiff alleges that Trinity, by offering counseling services, assumed a duty to plaintiff that the counseling would be performed "in accordance with the applicable standards in the counseling community," and further that Trinity "knew, or in the exercise of reasonable care should have known, that the counseling sessions were being conducted in an inappropriate, improper manner that deviated from the standard of care * * * ." Even assuming that such a duty existed, plaintiff has failed to identify the nature of the counseling involved and the standards applicable thereto. This is particularly important where, as here, the First Amendment is implicated. Specifically, "[t]he First Amendment forbids civil courts from interfering in

²It is the allegations in the proposed amended complaint as amplified by plaintiff's affidavit in support of the cross-motion which is the basis for the Court's finding. Accordingly, the factual allegations contained in the papers needs to be incorporated into the amended complaint

or determining religious disputes, because there is a substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs” (*Matter of Congregation Yetev Lev D’satmar v. Kahana*, 9 N.Y.3d 282, 286, 849 N.Y.S.2d 463, 879 N.E.2d 1282). “Civil disputes involving religious parties or institutions may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution” (*Id.* [citations omitted]). “The ‘neutral principles of law’ approach requires the court to apply objective, well-established principles of secular law to the issues” (*Id.*). If the nature of the counseling was religious, then the First Amendment would prohibit a court from making a determination on the issue of whether or not the counseling provided to plaintiff was conducted in accordance with the applicable standards (cf. *Marmelstein*, 11 N.Y.3d at 22, fn. 3).

Accordingly, it is hereby

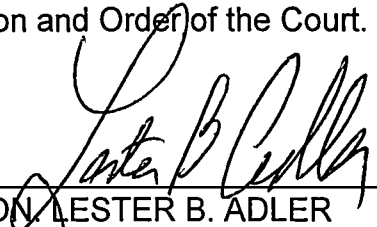
ORDERED, that defendant Trinity’s motion to dismiss the complaint insofar as asserted against it is DENIED; and it is further

ORDERED, that the plaintiff’s cross-motion to amend the complaint pursuant to CPLR §3025(b) is GRANTED to the extent that plaintiff is directed to serve and file an amended complaint in conformity with the Court’s decision herein within 10 days of the filing of this Order, and to the extent plaintiff moves for leave to amend the complaint in the proposed form annexed to the motion papers the cross-motion is DENIED; and it is further

ORDERED, that the parties appear in the Preliminary Conference Part, Room 800, on September 27, 2011 at 9:30 a.m. for a conference.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
August 15, 2011



HON. LESTER B. ADLER
SUPREME COURT JUSTICE

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