

**Young v Brown**

2012 NY Slip Op 33563(U)

April 16, 2012

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 4-17 2012  
WESTCHESTER  
COUNTY CLERK

-----X  
TABITHA YOUNG,

Plaintiffs,

-against-

**SHORT FORM ORDER**

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

Index No.: 13508/10

Defendants.  
-----X

**FILED**  
APR 17 2012  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

ADLER, J.

The following papers numbered 1 to 45 were read on defendants David H.

Brown's ("Brown"), Hindsight Ministries, Inc.'s and Hindsight Ministries, Inc. d/b/a Hindsight Biblical Counseling's (collectively referred to as "Hindsight Ministries") motion to dismiss the amended complaint pursuant to CPLR §3211(a)(7) or, in the alternative, to dismiss the amended complaint pursuant to CPLR §3126 and defendant Trinity Presbyterian Church's ("Trinity") motion to dismiss the amended complaint pursuant to CPLR §3211(a)(7), and plaintiff's cross-motions to amend the complaint pursuant to CPLR §3025(b):

**PAPERS**

**NUMBERED**

Notice of Motion; Affirmation of Dennis J. Dozis, Esq.;	
Exhibits	1-9
Notice of Cross-Motion; Affirmation of Sarah J. Eagen, Esq.	
In Opposition; Affidavit of Tabitha Young; Supplemental	
Affidavit of Tabitha Young; Exhibits	10-21
Reply Affirmation/Affirmation in Opposition to Cross-	
Motion of Dennis J. Dozis, Esq.	22
Reply Affirmation of Sarah J. Eagen, Esq. to Defendants	
Brown and Hindsight Opposition to Cross-Motion	23

Notice of Motion; Affirmation of Renee Simon Lesser, Esq.; Exhibits	24-31
Notice of Cross-Motion; Affirmation of Sarah J. Eagen, Esq.; Affidavit of Tabitha Young; Supplemental Affidavit of Tabitha Young; Exhibits	32-43
Reply Affirmation/Affirmation in Opposition to Cross-Motion of Renee Simon Lesser, Esq.;	44
Reply Affirmation of Sarah J. Eagen, Esq. To Defendant Trinity Church's Opposition to Cross-Motion	45

On a pre-answer motion to dismiss pursuant CPLR §3211(a)(7), the allegations in the complaint should be accepted as true, and the motion should be granted only if the facts as alleged do not fit within any cognizable legal theory (*Leon v. Martinez*, 84 N.Y.2d 83, 87, 614 N.Y.S.2d 972, 638 N.E.2d 511). Initially, the Court notes that defendant Trinity's motion to dismiss the amended complaint is not procedurally barred by the single motion rule of CPLR §3211(e) since the second cause of action asserted in the amended complaint is not the same cause of action asserted in the original pleading (see *B.S.L. One Owners Corp. v. Key Int. Mfg., Inc.*, 225 A.D.2d 643, 640 N.Y.S.2d 135; cf. *Swift v. New York Med. Coll.*, 48 A.D.3d 671, 850 N.Y.S.2d 906).

Turning now to the merits of the respective motions to dismiss, notwithstanding the Decision and Order of this Court filed and entered on August 15, 2011, plaintiff has once again failed to identify the nature of the counseling involved and the standards applicable thereto in her amended complaint. "No doubt, these omissions are intended to avoid entanglement with First Amendment concerns" (*Marmelstein v. Kehillat New Hempstead*, 45 A.D.3d 33, 36, 841 N.Y.S.2d 493, *affd.* 11 N.Y.3d 15, 862 N.Y.S.2d 311,

892 N.E.2d 375).<sup>1</sup> Even assuming that plaintiff has “surmounted First Amendment barriers” (see *Marmelstein v. Kehillat New Hempstead*, 11 N.Y.3d at 21), while her cause of action against defendants Brown and Hindsight Ministries is denominated as one sounding in negligence, it is, in reality, “a cause of action for seduction which contemplates any conduct on the part of a man, without the use of force, in wrongfully inducing a woman to surrender to his sexual desires (*Coopersmith v. Gold*, 172 A.D.2d 982, 984, 568 N.Y.S.2d 250), which cause of action was abolished by Civil Rights Law §80-a.

In the absence of any actionable conduct on the part of defendants Brown and Hindsight Ministries, plaintiff’s claim of negligent supervision against Trinity must fall (*Wende C. v. United Methodist Church*, 6 A.D.3d 1047, 1053, 776 N.Y.S.2d 390, *affd.* 14 N.Y.3d 293, 299, 794 N.Y.S.2d 282, 827 N.E.2d 265, *cert. denied* 546 U.S. 818, 126 S.Ct. 346, 163 L.Ed.2d 57).

Accordingly, it is hereby

ORDERED, that defendants Brown’s and Hindsight Ministries’ motion to dismiss the complaint insofar as asserted against them is GRANTED; and it is further

ORDERED, that defendants Brown’s and Hindsight Ministries’ motion to dismiss the complaint pursuant to CPLR §3126 is DENIED as academic; and it is further

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

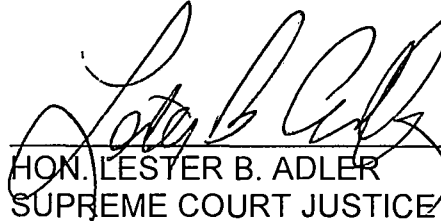
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<sup>1</sup>Plaintiff attempts to avoid First Amendment entanglement problems by alleging that while defendant Brown has received both a Masters degree and certificate in biblical counseling, he was not providing counseling to plaintiff as a member of the clergy.

ORDERED, that plaintiff's cross-motions to amend the complaint pursuant to CPLR §3025(b) are DENIED.

The foregoing constitutes the Order of the Court.

Dated: White Plains, New York  
April 16, 2012



HON. LESTER B. ADLER  
SUPREME COURT JUSTICE

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