

Ezwena v St. Albans Cong. Church
2013 NY Slip Op 33768(U)
December 12, 2013
Supreme Court, Queens County
Docket Number: 13423/10
Judge: Augustus C. Agate
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24

Justice

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MARY EZWENA,

Plaintiff,

Index No: 13423/10

Motion

Dated: September 13, 2013

-against-

m# 4 & 5

ST. ALBANS CONGREGATIONAL CHURCH,
et al.,

Defendants.

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The following papers numbered 1 to 19 read on this motion by the defendant St. Albans Congregational Church for summary judgment dismissing the complaint insofar as asserted against it (No. 4); and separate motion by defendant United Church of Christ for summary judgment dismissing the complaint insofar as asserted against it (No. 5).

PAPERS
NUMBERED

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Upon the foregoing papers it is ordered that this motion by defendant St. Albans Congregational Church for summary judgment and separate motion by defendant United Church of Christ for summary judgment are jointly decided as follows:

This action arises out of an alleged sexual assault of the plaintiff by the Rev. Dr. Alfred Knighton Stanley at his home in Baldwin, New York, on June 5, 2009. At the time of the incident, plaintiff worked as an intern for the St. Albans Congregational Church ("St. Albans"). St. Albans is a member of defendant United Church of Christ ("United"), a Protestant religious denomination with approximately one million members in approximately 5,200 local churches in the United States.

Defendant Rev. Stanley was employed by St. Albans since 2007 and served as a minister.

Plaintiff states that she was a student at Yale Divinity College, but as a result of serious psychological problems, she was forced to leave. Plaintiff further states that she sought help from defendants St. Albans and United, and in January 2009, she became an intern at St. Albans, where she was assigned to work closely with Rev. Stanley. Plaintiff alleges that Rev. Stanley counseled her almost daily, and she confided in him as to certain troubles at her home. Plaintiff thereafter accepted an invitation from Rev. Stanley to move into his home, located at 43 Maplewood Court, Baldwin, New York. Plaintiff states that she moved into Rev. Stanley's home in order to have a peaceful and quiet environment to continue her ministerial studies and prepare for a return to Yale Divinity School, which was her ultimate goal. Rev. Stanley stated that he notified the Senior Pastor of St. Albans, Rev. Henry Simmons, before the plaintiff moved into his home. Plaintiff alleges that approximately one month after she moved into his home, Rev. Stanley called her into his bedroom to watch a theological television program and then raped her.

Plaintiff subsequently commenced the instant action. The first two causes of action of the complaint, which sound in battery and intentional infliction of emotional distress, are alleged against Rev. Stanley. The remaining causes of action allege that defendants St. Albans and United were negligent in failing to properly supervise Rev. Stanley, failing to provide a safe and secure working environment and by retaining Rev. Stanley as their employee despite their knowledge of his abusive behavior. Defendants now move for summary judgment and contend, *inter alia*, that they cannot be held liable for the assault on the plaintiff since such conduct was not within the scope of Rev. Stanley's employment.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993].) Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].)

Defendant United makes a prima facie showing that it had no employment relationship with Rev. Stanley. The admissible evidence establishes that Rev. Stanley was employed by St.

Albans, not United. Further, the evidence establishes that Rev. Stanley was never supervised by United. In his affidavit, Geoffrey Black, the General Minister and President of United, avers that each member congregation of United, including St. Albans, is a wholly autonomous and independent legal entity and is not governed or controlled by defendant United. He also avers that United has no control over the events occurring within its member local churches. Mr. Black avers that no entity within United, other than the local congregation, has the power to control the employment relationship of the minister with that congregation. Mr. Black cites sections of the United Constitution for support. In further support of United's position, Rev. Stanley avers in his affidavit that he was never employed by United nor was he ever an independent contractor for United. In addition, Rev. Stanley states that United never supervised his employment at St. Albans.

Plaintiff, in opposition, fails to raise a triable issue of fact as whether an employment relationship existed between United and Rev. Stanley. Inasmuch as no issue of fact as to this issue has been raised, United cannot be held liable for Rev. Stanley's alleged conduct.

The court will now address the motion by defendant St. Albans for summary judgment.

An act is considered to be within the scope of employment if it is performed while the employee is engaged generally in the business of the employer, or if the act may be reasonably said to be necessary or incidental to such employment. (*Pinto v Tenenbaum*, 105 AD3d 931, 931 [2d Dept 2013]; *Holmes v Gary Goldberg & Co., Inc.*, 40 AD3d 1033, 1034 [2d Dept 2007]; *Davis v Larhette*, 39 AD3d 693, 694 [2d Dept 2007].) "An employee's actions fall within the scope of employment where the purpose in performing such actions is to further the employer's interest, or to carry out duties incumbent upon the employee in furthering the employer's business. Conversely, where an employee's actions are taken for wholly personal reasons, which are not job related, his or her conduct cannot be said to fall within the scope of employment." (*Beauchamp v City of New York*, 3 AD3d 465, 466 [2d Dept 2004]; *Gui Ying Shi v McDonald's Corp.*, 110 AD3d 678 [2d Dept 2013].) In addition, an employer will not be held vicariously liable where an employee's tortious conduct could not have been reasonably expected by the employer. (*Yildiz v PJ Food Serv., Inc.*, 82 AD3d 971, 972 [2d Dept 2011].)

In the case at bar, defendant St. Albans cannot be held liable for plaintiff's assault under the doctrine of respondeat

superior. Rev. Stanley clearly was not acting within the scope of his employment when he sexually assaulted the plaintiff. Indeed, his actions were undertaken solely for personal motives and were unrelated to the furtherance of defendant's business. (see *N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]; *Judith M. v Sisters of Charity Hosp.*, 93 NY2d 932, 933 [1999]; *Evans v City of Mount Vernon*, 92 AD3d 829, 830 [2d Dept 2012]; *Yildiz v PJ Food Serv., Inc.*, 82 AD3d at 972 [2d Dept 2011]; *Kunz v New Netherlands Routes, Inc.*, 64 AD3d 956, 958 [3d Dept 2009].) Plaintiff has failed to raise any triable issue of fact as to whether Rev. Stanley's conduct fell within the scope of his employment.

Defendant also makes a prima facie showing that it did not negligently hire or retain Rev. Stanley. In order to prove a cause of action for negligent retention of an employee, plaintiff must establish that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury." (*Ronessa H. v City of New York*, 101 AD3d 947, 948 [2d Dept 2012]; *Kelly G. v Board of Educ. of City of Yonkers*, 99 AD3d 756, 757 [2d Dept 2012]; *Destiny S. v John Quincy Adams Elementary Sch.*, 98 AD3d 1102, 1102 [2d Dept 2012]; *Bumpus v New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept 2008].)

In the case at bar, there is absolutely no evidence whatsoever that defendant had any notice of any violent tendencies or propensities by Rev. Stanley. Indeed, plaintiff testified that prior to the incident, Rev. Stanley never acted in an inappropriate manner with her nor did she ever see him behave inappropriately with others. In addition, defendant St. Albans submits an affidavit from Rev. Simmons, who avers that prior to the sexual assault on the plaintiff, no complaint had ever been raised that Rev. Stanley inappropriately touched, harassed or sexually assaulted anyone or exhibited any type of conduct that was offensive in nature. Rev. Simmons also avers that prior to the incident, no disciplinary proceeding, claim or lawsuit had ever been filed against Rev. Stanley for any type of misconduct.

Defendant also makes a prima facie showing that it did not negligently supervise Rev. Stanley. Similar to the cause of action for negligent retention, a claim sounding in negligent supervision must establish that the employer had actual or constructive notice of the employee's propensity for the conduct which caused the injury. (*O'Neil v Roman Catholic Diocese of Brooklyn*, 98 AD3d 485, 487 [2d Dept 2012]; *S.C. v New York City Dept. of Educ.*, 97 AD3d 518, 519-520 [2d Dept 2012].) As discussed above, there is no evidence that defendants knew or had reason to know that Rev. Stanley had any propensities to engage

in any sexual misconduct. Plaintiff fails to raise an issue of fact as to any lack of supervision of Rev. Stanley by the defendants. Defendant's knowledge that plaintiff was residing with Rev. Stanley does not alter this result. Plaintiff voluntarily decided to live with Rev. Stanley, and there was nothing in his history that should have alerted defendant that plaintiff could be attacked at his home.

Furthermore, defendant makes a prima facie showing that it did not fail to provide a safe working environment for the plaintiff. Indeed, it is undisputed that the subject incident occurred at the private residence of Rev. Stanley during non-working hours. Defendant has presented evidence that it did not have any prior knowledge of inappropriate conduct by Rev. Stanley. Thus, defendant did not knowingly provide an unsafe work environment for the plaintiff when it assigned Rev. Stanley to her.

Accordingly, the motion by the defendant St. Albans Congregational Church for summary judgment is granted (No. 4), and the complaint against defendant St. Albans Congregational Church is dismissed.

The motion by the defendant United Church of Christ for summary judgment is granted (No. 5), and the complaint against defendant United Church of Christ is dismissed, and the action is severed and continued as against the remaining defendant.

Date: December 12, 2013

AUGUSTUS C. AGATE, J.S.C.