

**Plaza v St. Helena's Parochial Elementary**

2020 NY Slip Op 35629(U)

July 29, 2020

Supreme Court, Bronx County

Docket Number: Index No. 28063/2017E

Judge: Rubén Franco

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - IAS PART 26

---

MARIA PLAZA,

Plaintiff,

-against-

ST. HELENA'S PAROCHIAL ELEMENTARY, ST. HELENA  
CHURCH, and ARCHDIOCESE OF NEW YORK,

Defendants.

---

Index No. 28063/2017E

**MEMORANDUM  
DECISION/ORDER**

**Rubén Franco, J.:**

In this personal injury action, all defendants move for summary judgment.

Plaintiff was a teacher at St. Helena's Parochial Elementary, located in Bronx County. On August 28, 2014, during the normal course of her employment, plaintiff fell backwards into a desk after a faulty window she was trying to open fell from its frame. Plaintiff sustained injuries to her lumbar and cervical spine, for which she received Workers' Compensation benefits.

In his affidavit, based on personal knowledge and experience, Father Thomas Derivan stated that he was the Pastor of St. Helena Church from 1996 to 2014, and that he was responsible for overseeing both St. Helena Church and St. Helena's Parochial Elementary and had the final authority for all management decisions at the church and the school, and that he personally made the decision to hire plaintiff as a teacher and appointed the Principal.

In his affidavit, based on personal knowledge and experience, Principal Richard Meller stated that he has been Principal of St. Helena's Parochial Elementary since 1997 and is responsible for managing the school's day-to-day operations. He avers that he was appointed as Principal by Father Derivan and that he has final authority of all management decisions at St. Helena's

Parochial Elementary. He notes that the school is an unincorporated ministry of St. Helena Church and has no separate legal status of its own.

Roderick Cassidy, Associate General Counsel of the Archdiocese of New York, submits an affidavit in support of the motion wherein he states that, based on his personal knowledge, review the records and files of the Archdiocese of New York, the deed for the school, and the Certificate of Incorporation for St. Helena Church, on the date of plaintiff's accident the Archdiocese of New York did not manage, control, operate, or supervise the day-to-day operations at St. Helena's Parochial Elementary, or employ any of its employees, including plaintiff. He explained that the Archdiocese of New York is a geographical ecclesiastical territory encompassing ten counties in lower New York State.

In opposition to the motion, plaintiff attempts to minimize the substance of defendants' affidavits and documents, however, she offers no evidence that contradicts defendants' showing, but argues that granting summary judgment would be premature.

A party moving for summary judgment must show prima facie an entitlement to judgment as a matter of law by tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]; *Friends of Thayer Lake LLC v Brown.*, 27 NY3d 1039, 1043 [2016]; *Pokoik v Pokoik*, 115 AD3d 428 [1<sup>st</sup> Dept 2014]; CPLR 3212 [b]). The inability to make such a demonstration must lead to denial of the motion, no matter how inadequate the opposition papers may be (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]; *Santiago v Filstein*, 35 AD3d 184, 186 [1<sup>st</sup> Dept 2006]). To defeat summary judgment, the party opposing the motion must show, also by producing evidentiary proof in admissible form, that there is a material question of fact that requires a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Kershaw v Hospital for*

*Special Surgery*, 114 AD3d 75, 82 [1<sup>st</sup> Dept 2013]; see *Hoover v New Holland N. Am., Inc.*, 23 NY3d 41, 56 [2014])). Admissible evidence includes affidavits by persons having knowledge of the facts (see *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 25 NY3d 498, 508 [2015]). The movant has the initial burden on the motion (see *Gammons v City of New York*, 24 NY3d 562, 569 [2014]; *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 137-138 [1<sup>st</sup> Dept 2012]; *Jaroslawicz v Prestige Caterers*, 292 AD2d 232, 233 [1<sup>st</sup> Dept 2002]). Summary judgment should be granted where it clearly appears that the issues are not genuine but feigned (see *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Garcia-Martinez v City of New York*, 68 AD3d 428, 429 [1<sup>st</sup> Dept 2009]).

A motion for summary judgment is not premature due to lack of discovery where the opponent does not demonstrate that discovery is necessary to obtain facts within the sole possession of the proponent (see *Merisel, Inc. v Weinstock*, 117 AD3d 459, 460 [1<sup>st</sup> Dept 2014]). It is not enough that discovery has not been completed or that further depositions are outstanding (see *Boyle v Caledonia-Mumford Cent. Sch.*, 140 AD3d 1619, 1621 [4<sup>th</sup> Dept 2016]). The summary judgment opponent must establish that the motion is premature because discovery may lead to relevant evidence, must specify the facts that are essential to justify their opposition, set forth some evidentiary basis to suggest that discovery may lead to relevant evidence, and demonstrate how further discovery may reveal material facts in the movant's exclusive knowledge (CPLR 3212 [f]; see *Vikram Constr., Inc. v Everest Natl. Ins. Co.*, 139 AD3d 720, 721 [2<sup>nd</sup> Dept 2016]). "The mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion (see *Erkan v McDonald's Corp.*, 146 AD3d 466 [1<sup>st</sup> Dept 2017]; *DaSilva v Haks Engrs., Architects & Land Surveyors, P.C.*, 125

AD3d 480 [1<sup>st</sup> Dept 2015]).” (*Singh v New York City Hous. Auth.*, 177 AD3d 475, 476 [1<sup>st</sup> Dept 2019].)

Here, plaintiff argues that discovery has not been completed including the depositions of defendants. Despite the considerable evidence provided by defendants, plaintiff’s contention that more is needed is merely an expression of hope, which is insufficient, particularly since plaintiff’s deposition testimony makes it clear that St. Helena Church and St. Helena’s Parochial Elementary operated as a single integrated entity, and that she had no interaction with Archdiocese of New York.

Workers’ Compensation Law § 11 provides in relevant part:

The liability of an employer prescribed by the last preceding section *shall be exclusive* and in place of any other liability whatsoever, to such employee, ... or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom.... (emphasis added.)

Workers’ Compensation Law § 29 (6), provides in part: “The right to compensation or benefits ... shall be the *exclusive remedy to an employee* ... when such employee is injured ... by the negligence or wrong of another in the same employ....” (emphasis added.)

Thus, “[w]here an employee is injured in the course of employment, his exclusive remedy against his employer is ordinarily a claim for workers’ compensation benefits” (*Valenziano v Niki Trading Corp.*, 21 AD3d 818, 820 [1<sup>st</sup> Dept 2005]). Generally, an employee cannot sue the employer to recover damages for injuries sustained during the course of the employment once the employer’s liability for providing Workers’ Compensation benefits is established. It is for the Workers’ Compensation Board, not the courts, to determine a worker’s employment status. (*id.*; *Nepomuceno v City of New York*, 137 AD3d 646 [1<sup>st</sup> Dept 2016].)

In *O'Rourke v Long* (41 NY2d 219, 224 [1976]), the Court noted that the "question [of] whether a particular person is an employee within the meaning of the workers' compensation statutes is 'usually ... a question of fact to be resolved by the [Workers'] Compensation Board' (*O'Rourke v Long*, 41 NY2d 219, 224 [1976], citing *Matter of Gordon v New York Life Ins. Co.*, 300 NY 652 [1950]; see also *Firestein v Kingsbrook Jewish Med. Ctr.*, 137 AD2d 34, 41 [(2<sup>nd</sup> Dept) 1988])" (*Santigate v Linsalata*, 304 AD2d 639, 640 [2<sup>nd</sup> Dept 2003]; see *Croston v Montefiore Hosp.*, 229 AD2d 330, 331 [1<sup>st</sup> Dept 1996]).

In *Aguirre v Roman Catholic Church of St. Helena* (277 AD2d 126, 127 [1<sup>st</sup> Dept 2000]), the Court determined that an employee of a parish school associated with St. Helena Church did "not create a triable issue of fact concerning the school's status as an unincorporated division of the church without separate legal status, in light of the undisputed evidence that the church owned the school property, that the pastor appointed the school's administrator (who was also the assistant pastor) and the school's principal, and that the church was obligated to make up any deficits (see, *Pappas v Greek Archdiocese*, 178 AD2d 104 [1<sup>st</sup> Dept 1991]; *Smith v Roman Catholic Diocese*, 252 AD2d 805 [3<sup>rd</sup> Dept 1998])."

In *Bravo v Church of Annunciation at Manhattanville* (2011 NY Slip Op 30043[U], \*3 [Sup Ct, NY County 2011]), the court held that the church met its burden of entitlement to summary judgment based on the exclusivity provisions of the Workers' Compensation Law by submitting affidavits from the church pastor and school principal. (See *Coneo v Washington Hgts. Hellenic Orthodox Church, Inc.*, 81 AD3d 525, 526 [1<sup>st</sup> Dept 2011]; *Pappas v Greek Archdiocese of N. & S. Am.*, 178 AD2d at 105; *Smith v Roman Catholic Diocese of Syracuse*, 252 AD2d at 807.)

Plaintiff does not dispute that her accident occurred during the course of her employment and that she has received Workers' Compensation benefits. Defendants submit three detailed affidavits from persons with knowledge and experience---Father Derivan, school Principal Meller, and Roderick Cassidy on behalf of the Archdiocese of New York, as well as the deed for the subject property, and the Certificate of Incorporation for St. Helena's Church. Defendants established that St. Helena's Parochial Elementary is an unincorporated division of St. Helena's Church with no separate legal status of its own; and, that at the time of the accident the Archdiocese of New York did not own, operate, or control St. Helena's Parochial Elementary or supervise or employ plaintiff, an employee of St. Helena's Parochial Elementary.

In contrast, plaintiff does not submit an affidavit, or any admissible evidence to show the existence of a question of fact on any issue in contention. Rather, plaintiff's deposition testimony is consistent with the evidence submitted by defendants and demonstrates that St. Helena's Church controlled St. Helena's Parochial Elementary to such a degree as to establish St. Helena's Church as the alter ego of St. Helena's Parochial Elementary for Workers' Compensation purposes.

In *Walker v Archdiocese of N.Y.* (270 AD2d 127, 128 [1<sup>st</sup> Dept 2000]), the Court determined that: "The action was properly dismissed as against the Archdiocese based upon the unrefuted affidavits of the Pastor of the Church of St. Peter's that the Church owns the premises on which defendant school is located, and of the Secretary of the Archdiocese that the Archdiocese does not own, operate or exercise control over the school." Similarly, in *Kruzhkov v Eglise St. Jean Baptiste* (169 AD3d 430, 431 [1<sup>st</sup> Dept 2019]), the Court decided that, "The complaint should be dismissed as against the Archdiocese, because the record demonstrates that the Archdiocese did not own, control or have any responsibility for the property abutting the pedestrian ramp on which

plaintiff ... allegedly slipped and fell." (See *Bautista v Archdiocese of N.Y.*, 164 AD3d 450, 451 [1<sup>st</sup> Dept 2018].)

Where there is no ownership, control, or responsibility for the property where the accident occurred, there is no duty owed to the plaintiff, a necessary element to find liability for negligence (*Balsam v Delma Eng'g Corp.*, 139 AD2d 292, 296-297 [1<sup>st</sup> Dept 1988]; see *Schmitt v Hunts Point Term. Produce Coop. Assn.*, 294 AD2d 124, 125 [1<sup>st</sup> Dept 2002]; *Turrisi v Ponderosa, Inc.*, 179 AD2d 956, 957 [3<sup>rd</sup> Dept 1992]).

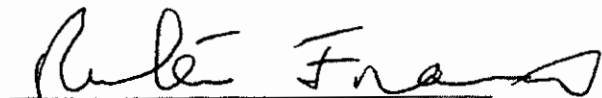
Plaintiff has not submitted evidence to counter defendants' showing that Archdiocese of New York had no connection to plaintiff's accident.

Defendants have established their entitlement to judgment as a matter of law and plaintiff has failed to show the existence of a question of fact regarding any of defendants' contentions.

Accordingly, defendants' motion for summary judgment is granted.

This constitutes the Decision and Order of the court.

Dated: July 29, 2020



Rubén Franco, J.S.C.

**HON. RUBÉN FRANCO**