

**M.A.T. v Catholic Charities of the Archdiocese of
N.Y.**

2022 NY Slip Op 33525(U)

October 6, 2022

Supreme Court, New York County

Docket Number: Index No. 951289/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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M. A. T.,

Plaintiff,

- v -

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF NEW
YORK, CATHOLIC HOME BUREAU, CATHOLIC
GUARDIAN SERVICES F/K/A CATHOLIC GUARDIAN
SOCIETY AND HOME BUREAU

Defendant.

-----X

INDEX NO. 951289/2021

MOTION DATE 04/16/2022,
04/19/2022

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

The following read on,

Defendant – Catholic Home Bureau, and Catholic Guardian Services f/k/a Catholic Guardian Society and Home Bureau’s, motion sequence no. 002, to strike prejudicial language in Plaintiff’s Complaint, per CPLR 3024(b); and

Plaintiff – M.A.T.’s motion sequence no. 003, to consolidate two actions, per CPLR 602.

In reviewing a motion pursuant to CPLR 3024(b), “the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action” (see *Soumayah v. Minnelli*, 41 A.D.3d 390, 392 [1st Dept. 2007]; see *Wegman v. Dairylea Coop.*, 50 A.D.2d 108, 111 [4th Dept. 1975]). Matters that are unnecessary to the viability of the cause of action and would cause undue prejudice to defendants should be stricken from the pleading or bill of particulars (see *Irving v. Four Seasons Nursing & Rehabilitation Ctr.*, 121 A.D.3d 1046, 1048 [2d Dept. 2014]).

Defendant affirms, “the use of the term ‘abusers’ does not advance any particular cause of action stated in the complaint and is unnecessary. Therefore, the term ‘abusers’ should be struck from Plaintiff’s complaint” (see NYSCEF Doc. No. 21 Pars. 6 – 7).

Plaintiff affirms, “[t]he moving defendants’ motion should be denied in the first instance because the moving defendants have made no showing whatsoever that the use of the term ‘abusers’ when referring to the two non – party individuals alleged to have committed the sexual abuse giving rise to plaintiff’s claims would be prejudicial to the moving defendants” (see NYSCEF Doc. No. 31 P. 9).

Defendants’ Reply affirms, “[p]laintiff bears the burden of establishing that the alleged staff in fact abused plaintiff, and by repeating the term ‘abusers’ as the assailant’s name a jury has a significant chance of ignoring evidence and testimony that is contrary to the assertion ..., and rendering an erroneous judgment ..., thereby immensely prejudicing movants” (see NYSCEF Doc. No. 44 Par. 9). Defendants continue with Judge Kaplan’s decision the describes “the term ‘abusers as plaintiff utilizes it in the complaint is substantially prejudicial, as well as facially scandalous, and as such should be struck from the complaint” (see NYSCEF Doc. No. 44 Par. 9).

“Here, it is axiomatic that plaintiff’s unqualified repeated reference to defendant as an ‘abuser’ is highly prejudicial and does not advance any particular cause of action stated in plaintiff’s complaint. The Child Victims Act (“CVA”) (CPLR §214-g), the claim revival statute by which plaintiff asserts his allegations of sexual abuse, by its very nature presupposes that an alleged victim has suffered physical abuse. As such, repeated reference to a defendant as an ‘abuser’ does nothing to advance the causes of action asserted under the statute and is superfluous” (see *Schmid v. The Roman Catholic Diocese of Brooklyn*, Index No. 517618/2021 [J. Kaplan]).

Plaintiff affirms, “[o]n November 17, 2020, Plaintiff filed the summons and verified complaint for this matter in New York County Supreme Court, bearing index number 950726/2020. On August 12, 2021, Plaintiff filed the summons and verified complaint for this matter in New York County Supreme Court, bearing index number 951289/2021. [B]oth actions arise from the same instances of childhood sexual abuse of the then – infant Plaintiff” (see NSYCEF Doc. No. 27 Pars. 4 – 6).

“Where common questions of law or fact exists, a motion to consolidate or join for trial pursuant to CPLR 602 should be granted absent a showing of prejudice to a substantial right by the party opposing the motion” (see *Oboku v. New York City Transit Auth.*, 141 A.D.3d 708, 709 [2d Dept. 2016]).

Defendants have not submitted opposition on the consolidation motion.

ORDERED that defendants’ motion seeking to strike the term “abuser” used in plaintiff’s complaint is GRANTED, and the scandalous and prejudicial term is stricken from plaintiff’s complaint; and it is further

ORDERED that the Clerk of the Court, New York County, is directed to return plaintiff’s complaint for correction; and it is further

ORDERED that once plaintiff’s complaint is returned for correction, plaintiff is directed to file and serve a complaint devoid of the use of the term “abuser” when referring to defendants; and it is further

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with M.A.T. vs. Archdiocese of New York, et. al., Index No. 950726/2020, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 950726/2020 and the consolidated action shall bear the following caption:

M.A.T.

Plaintiff,

-against-

ARCHDIOCESE OF NEW YORK a/d/b/a
CATHOLIC CHARITIES OF THE
ARCHDIOCESE OF NEW YORK, CATHOLIC
HOME BUREAU, and CATHOLIC GUARDIAN
SERVICES f/k/a CATHOLIC GUARDIAN
SOCIETY AND HOME BUREAU, CITY OF NEW
YORK, NEW YORK CITY ADMINISTRATION
FOR CHILDREN'S SERVICES f/k/a BUREAU OF
CHILD WELFARE, CATHOLIC CHARITIES OF
STATEN ISLAND INC., MISSION OF THE
IMMACULATE VIRGIN AT MOUNT LORETTO
FOR THE PROTECTION OF HOMELESS AND
DESTITUTE CHILDREN f/k/a MOUNT
LORETTO CATHOLIC MISSION f/k/a ST.
ELIZABETH'S HOME FOR CHILDREN,
SISTERS OF ST. FRANCIS OF THE
IMMACULATE VIRGIN, SISTERS OF ST.
FRANCIS OF THE NEUMANN COMMUNITIES,
and XAVERIAN BROTHERS a/k/a
CONGREGATION OF ST. FRANCIS XAVIER

Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

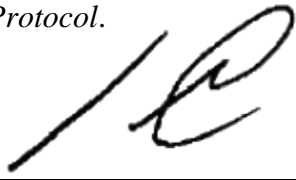
ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*.



10/6/2022
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE