

M.C. v Archdiocese of N.Y.

2022 NY Slip Op 34474(U)

November 22, 2022

Supreme Court, New York County

Docket Number: Index No. 951041/2021

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. C.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, MONASTERY CHURCH
OF THE SACRED HEART, SACRED HEART HIGH
SCHOOL, CAPUCHIN FRANCISCANS TERTIARY
PROVINCE OF ST. MARY OF N.Y., THE PROVINCE OF
ST. MARY OF THE CAPUCHIN ORDER, CAPUCHIN
FRIARS OF NORTH AMERICA, CONGREGATION OF
SISTERS OF ST. AGNES OF FOND DU LAC, WISCONSIN

Defendants.

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INDEX NO. 951041/2021
MOTION DATE 04/29/2022
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 32, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 69, 70, 71, 77, 78, 79, 80

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

The following reads on the pre – answer motion of Defendant – Congregation of Sisters of St. Agnes of Fond Du Lac, Wisconsin’s motion to dismiss, CPLR 3211(a)(8) – the court has not jurisdiction of the person of the defendant; and Plaintiff’s “cross – motion pursuant to CPLR 3211(d) for limited discovery on the issue of personal jurisdiction” (see NYSCEF Doc. No. 43).

Plaintiff alleges violations of the Child Victims Act, CPLR 214-g, with causes of action for (i) negligence, and (ii) negligent hiring, retention, supervision, and/or direction. Per the Complaint, “Plaintiff began attending the grade school within the Parish in or around 1953 when Plaintiff was approximately eight (8) or nine (9) years old. In or around the year 1959, when Plaintiff was approximately fourteen (14) years old, Plaintiff began attending the School, which

was the high school within the Parish, and under the auspices of the Archdiocese, Capuchin Franciscans, and the Sisters of St. Agnes” (see NYSCEF Doc. No. 24 Pars. 94).

Defendant’s affirmation states, “[t]he alleged abuse occurred while Plaintiff attended youth activities and/or church activities at the Parish and the School in New York, New York. As per the State of Wisconsin Department of Financial Institutions, Sisters of Saint Agnes is incorporated as a non – stock corporation. According to the [Department of Financial Institutions], Sisters of Saint Agnes’ registered agent, Sister Jeremy Quinn, C.S.A. and its principal place of business are both located at 320 County Road K, Fond du Lac, Wisconsin, 54937. An affidavit executed by Sister Jeremy Quinn, C.S.A. General Secretary and member of the Sisters of Saint Agnes’ Board of Directors is annexed hereto” (see NYSCEF Doc. No. 22 Par. 7, 10 – 12).

Sister Jeremy Quinn affirms, “[t]he Congregation of Sisters of St. Agnes has no direct or affiliated religious institutions, congregations, churches, ministries, parishes, organizations, branches, offices, seminaries or schools in the State of New York. The Congregation of Sisters of St. Agnes neither owns nor leases any real or personal property in the State of New York. The Congregation of Sisters of St. Agnes does not maintain any bank accounts, investments, assets or intangible property in the State of New York. The Congregation of Sisters of St. Agnes neither pays taxes nor is subject to taxes to or from the State of New York or any subdivision thereof. The Congregation of Sisters of St. Agnes does not have a resident sister, religious member, employee, personnel or representative soliciting charitable donations, or conducting marketing or advertising activities on behalf the Congregation of Sisters of St. Agnes in the State of New York” (see NYSCEF Doc. No. 26 Pars. 4 – 9).

Defendant's memorandum of law states, "[p]ursuant to CPLR 302(a)(3)(ii) Plaintiff must be able to show: (1) that Sisters of Saint Agnes committed a tortious act outside of New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) Sisters of Saint Agnes expected or should reasonably have expected the act to have consequences in New York, and (5) Sisters of Saint Agnes derived substantial revenue from interstate or international commerce. *See LaMarca v. Pak-Mor Mf. Co.*, 95 NY2d 210, 214 [NY 2000]" (see NYSCEF Doc. No. 23 P. 10).

Plaintiff's affirmation in opposition affirms, "[t]his civil action comes before the Court after Plaintiff was sexually abused by a teacher from the School in Yonkers, New York in 1960. [I]n a similar action filed in New York Supreme Court against the Sisters of St. Agnes, the Sisters of St. Agnes made a nearly identical motion on personal jurisdiction grounds. *See Ark345 Doe v. Archdiocese of New York, et al*, Index No. 950436/2020 (New York County 2020). In response to the Sisters of St. Agnes motion to dismiss, plaintiff annexed an expert opinion on the issue of whether the Sisters of St. Agnes 'transacted business and/or had a substantial connection with the State of new York. Within the expert opinion of Dr. Haselberg, plaintiff contends that the Sisters of St. Agnes have a substantial presence in New York 'resulting from its participation in UNANIMA, a non – governmental organization that is a coalition of congregations of religious sifers that advocate at the United Nations in New York on behalf of women and girls.' Here, there is extensive evidence the Sisters of St. Agnes created an ongoing relationship in the State of New York through their operation and management of the Leo House, their continuous effort to send employees of the Sisters of St. Agnes to work at the Leo House, their continuous effort to send employees of the Sisters of St. Agnes to work in the Catholic School system in New York, including the School, and their continuous effort to send

employees of the Sisters of St. Agnes to administer Sisters of St. Agnes duties and responsibilities in New York” (see NYSCEF Doc. No. 43 P. 3, 4, 9).

Plaintiff submits the affidavit of Jennifer Haselberger, “a canon lawyer. I’ve also been asked for my opinion ... whether the Congregation was negligent in their retention, supervision, and training of Sister Hilda. According to the obituary published on the CSA website, Sister Hilda made her first profession of vows in 1942, following which she spent more than thirty years in service in the State of New York. The obituary notes that she served as receptionist at Leo House for twelve years, served at Sacred Heart High School in Yonkers for seventeen, and finally was assigned to Holy Family Parish in the Bronx. She did not return to Wisconsin until 2004. According to canon law, Sister Hilda’s assignments in New York required the establishment of religious houses, or convents, for sisters of the CSA” (see NYSCEF Doc. No. 50 Pars. 6, 11, 13).

Defendant Replies, “contrary to Plaintiff’s assertions, Sisters of Saint Agnes did not operate or manage Sacred Heart, where Father Donahue was employed. The Plaintiff also discusses Sisters of Saint Agnes’ role at Leo House, A Catholic guesthouse for travelers in New York City. First, although some members of Sisters of Saint Agnes have lived and worked at Leo House, Father Donahue never did. Further, like Sacred Heart Sisters of Saint Agnes does not currently and has never ‘operated and managed’ Leo House” (see NYSCEF Doc. No. 80 Ps. 2 – 3).

Defendant concludes, “the ‘contacts’ that Plaintiff alleges Sisters of Saint Agnes has had with New York are untrue and unsupported by sufficient evidence. The members of Sisters of Saint Agnes that worked in New York are not employees of the Congregation. More

importantly, Father Donahue was not an employee of Sisters of Saint Agnes” (see NYSCEF Doc. No. 80 P. 9).

Through all the information presented Plaintiff has not shown the minimum contacts of Saint Agnes of Fond Du Lac with the State of New York. The affidavit of Dr. Haselberger mentions a Sister Hilda throughout their affidavit (see NYSCEF Doc. No. 50 Par. 13). An alleged tortious act occurred within the State of New York and the connections to the out of state resident in Wisconsin has not been established nor will future evidence detail the connection with the State of New York.

ORDERED that the motion of defendant Congregation of Sisters of St. Agnes of Fond Du Lac to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

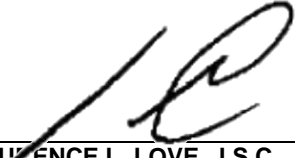
ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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).

<u>11/22/2022</u> 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"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE