

D.W. v Archdiocese of N.Y.

2023 NY Slip Op 30452(U)

February 9, 2023

Supreme Court, New York County

Docket Number: Index No. 950312/2021

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

-----X

D. W.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, CHURCH OF SAINT
 VITO - MOST HOLY TRINITY F/K/A ST. VITO CHURCH,
 DOMINICAN SISTERS OF SPARKILL F/K/A THE
 DOMINICAN CONGREGATION OF OUR LADY OF THE
 ROSARY

Defendant.

-----X

INDEX NO. 950312/2021

MOTION DATE 03/18/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, plaintiff’s motion for consolidation and defendant’s cross-motion seeking an Order pursuant to CPLR § 3024(b) striking the term Abuser from the Complaint are decided as follows:

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]).

As it relates to the use of “Abuser” in place of Monsignor John Goodwine’s name, “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 *Platt v. Roman Catholic Diocese of Brooklyn*, Index No. 518002/2021).

ORDERED that defendant’s motion seeking to strike the term “Abuser” used in plaintiff’s complaint under Index No. 951252/2021 is GRANTED, and the scandalous and prejudicial term is stricken from plaintiff’s complaint; and it is further

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with D.W. vs. ST. VITO PARISH, ST. VITO SCHOOL, and FEDERATION OF DOMINICAN SISTERS USA, INC., Index No. 951252/2021, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 950312/2021 and the consolidated action shall bear the following caption:

D.W.

Plaintiffs,

-against-

ARCHDIOCESE OF NEW YORK, CHURCH OF SAINT VITO - MOST HOLY TRINITY
F/K/A ST. VITO CHURCH, DOMINICAN SISTERS OF SPARKILL F/K/A THE
DOMINICAN CONGREGATION OF OUR LADY OF THE ROSARY, ST. VITO PARISH,
ST. VITO SCHOOL, and FEDERATION OF DOMINICAN SISTERS USA, INC.,

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, who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

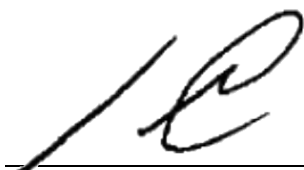
ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

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); 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, 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*; and it is further



2/9/2023

DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE