

ARK301 Doe v Diocese of Brooklyn

2023 NY Slip Op 30717(U)

March 3, 2023

Supreme Court, Kings County

Docket Number: Index No. 512965/2020

Judge: Laurence L. Love

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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ARK301 DOE,

Plaintiff,

- v -

DIOCESE OF BROOKLYN a/k/a THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK; DICOESE OF BURLINGTON a/k/a THE ROMAN CATHOLIC DICOESE OF BURLINGTON, VERMONT; BROTHERS OF THE SACRED HEART a/k/a BROTHERS OF THE SACRED HEART PROVINCE OF NEW YORK a/k/a THE PROVINCE OF THE UNITED STATES OF THE BROTHERS OF THE SACRED HEART, INC. a/k/a BROTHERS OF THE SACRED HEART OF NEW JERSEY/NEW YORK, INC; MONSIGNOR MCCLANCY a/k/a MONSIGNOR MCCLANCY MEMORIAL HIGH SCHOOL; and DOES 1-5 whose identities are unknown to Plaintiff,

Defendant.

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INDEX NO. 512965/2020
MOTION DATE 06/02/2021, 12/03/2021
MOTION SEQ. NO. 002 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 67, 68, 69, 70, 76, 77, 78, 79

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 80, 81, 82, 83, were read on this motion to/for LEAVE TO FILE

Upon the foregoing documents, defendant The Roman Catholic Diocese of Burlington's ("Diocese of Burlington") motion seeking an Order pursuant to CPLR 3211(a)(8) dismissing this action against said defendant based upon lack of personal jurisdiction and Diocese's subsequent motion seeking leave to file a sur-reply are decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on July 21, 2020, which alleges approximately 1981 to 1984, when Plaintiff was approximately 14 to 17 years old, plaintiff attended Monsignor McClancy Memorial High School, within the Diocese of

Brooklyn, where he was sexually assaulted by Father Leo J. Courcy, Jr (“Courcy”). As this action relates to the Diocese of Burlington, plaintiff alleges that Courcy was ordained as a Priest by the Diocese of Burlington in May 1962 and served as a Priest in parishes of the Diocese of Burlington from approximately 1962 to February 1965. Thereafter the Diocese of Burlington received credible allegations of child sexual abuse by Courcy, who was placed on a leave of absence for a year before returning to active duty from approximately February 1966 to December, 1966. Thereafter, Courcy was sent to Jemez Springs, New Mexico, where a Catholic Order known as the Servants of the Paraclete operated a treatment center for pedophile priests, where he remained until June 1970 before serving as a priest in Amarillo, Texas and thereafter returning to active assignments in parishes in the Diocese of Burlington, in or about January, 1971. Plaintiff alleges that by the time of Courcy’s return to service in the Diocese of Burlington, that said Diocese “knew with substantial certainty that Father Courcy would engage in child sexual abuse in his assignments as a Priest.” Courcy was transferred to the Archdiocese of New York in or about the late 1970s, remaining under the supervision and control of the Archdiocese of Burlington.

Movant contends that plaintiff has failed to establish a basis for personal jurisdiction against the Diocese of Burlington pursuant to New York’s long-arm statute, *See*, CPLR §302(a)(3), and even if there is a jurisdictional basis, same would violate due process standards. In support of its motion, Diocese of Burlington submits the affidavit of Rev. Msgr. John McDermott, the Vicar General and Chancellor for the Diocese of Burlington, which repeatedly denies that same has any contacts with New York State, however said affidavit makes no mention of Courcy who is alleged in the complaint to be in service of the Diocese of Burlington.

Pursuant to CPLR §302(a)(3), “As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary,

or his executor or administrator, who in person or through an agent:... commits a tortious act without the state causing injury to person or property within the state...if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state..."

As correctly raised in plaintiff's opposition, "Where a third party complaint against a foreign principal arises out of the acts of his 'agent' in New York, those acts will suffice for the jurisdictional requirement of 'purposeful activity.'" *FSI Group v. First Federal Savings & Loan Ass'n*, 502 F. Supp. 356, 357 (S.D.N.Y. 1980); accord *Esso Exploration & Prod. Nig. V. Nigerian Nat'l Petroleum Corp.*, 397 F. Supp. 3d 323, 342 n. 10 (S.D.N.Y. 2019) ("[i]n determining whether a defendant has 'minimum contacts' with the forum...courts can take into account the activities of a defendant's co-venturer or agent to determine whether the defendant had minimum contacts with the forum state"). For purposes of specific jurisdiction and due process, the courts apply a "but for" test, i.e., due process is satisfied if the cause of action would not have arisen but for the agent's contacts with the forum. In plaintiff's complaint, and undisputed by movant, plaintiff alleges that Courcy was at all relevant times under the control of the Diocese of Burlington, who assigned him to New York for a period of fifteen years, which arguably represents a consistent course of conduct within the state.

In Reply, the Diocese of Burlington argues that plaintiff does not claim that Courcy's alleged abuse of him was for the benefit of the Diocese, does not allege that the Diocese of Burlington was in any way involved in Courcy's New York ministry or his specific assignments there and, that the Diocese of Burlington did not pay for, sponsor, house, or otherwise support Courcy while he was outside of Vermont and as such, jurisdiction may not be maintained, citing *Doe v. Roman Catholic Diocese of Erie, Pennsylvania*, 3:20-CV-02557, 2021 WL1062570 * 3

(N.D.N.Y. March 19, 2021) and *Powers-Barnhard v. Butler*, No. 5:19-cv-01208 (BKS/ATB), 2020 WL 4925333, at *7 (N.D.N.Y. Aug. 21, 2020). As discussed in *Powers-Barnhard*, Section 302(a)(2) “requires the assertion of a colorable cause of action for a tortious act.” *Modern Indus. Firebrick Corp. v. Shenango Inc.*, No. 11-cv-959, 2012 WL 2405236, at *6, 2012 U.S. Dist. LEXIS 87875, at *16, (W.D.N.Y. June 25, 2012). Section 302(a)(2) “has been narrowly construed to apply only when the defendant was actually physically present in New York when he performed the allegedly tortious act.” *Rescuecom Corp. v. Hyams*, 477 F. Supp. 2d 522, 531 (N.D.N.Y. 2006); see also *Bensusan Rest. Corp. v. King*, 126 F.3d 25, 28–29 (2d Cir. 1997). “For the purposes of personal jurisdiction, an agent is a person or entity that acts for the benefit of, and with the knowledge and consent of, the non-resident principal, and over which that principal exercises some control.” *Branham v. ISI Alarms, Inc.*, No. 12-cv-1012, 2013 WL 4710588, at *4, 2013 U.S. Dist. LEXIS 124933, at *12–13 (E.D.N.Y. Aug. 30, 2013)

The recently decided case of *Edwardo v. Roman Cath. Bishop of Providence*, 579 F. Supp. 3d 456, 470 (S.D.N.Y. 2022), involving sexual abuse committed by Father Philip Magaldi, a Rhode Island Priest, on a trip to New York City, is directly on point and concerns a similar pattern of abuse, holding:

...for an individual to be deemed an “agent” for purposes of Section 302(a)(2), particularly the first requirement that the purported agent act “for the benefit of” the principal. *CutCo Indus., Inc.*, 806 F.2d at 366. To establish that a purported agent acted “for the benefit of” a principal in this context, it is not enough that the purported agent merely engage in some activity that benefits the principal during the time the agent was in the state; rather, the purported agent’s tortious act itself must benefit the principal in order for the principal to be deemed responsible for the tort based upon an agency theory. See, e.g., *Barbarotto Int’l Sales Corp. v. Tullar*, 188 A.D.2d 503, 591 N.Y.S.2d 188, 189 (2d Dep’t 1992) (explaining that “[t]he activities of a representative of a nondomiciliary in New York may be attributed to it ... if it requested the performance of those activities and the activities benefit it” (emphasis added)); *E. N.Y. Sav. Bank v.*

Republic Realty Mortg. Corp., 61 A.D.2d 1001, 402 N.Y.S.2d 639, 641 (2d Dep't 1978) (noting that activities of a New York agent “will be attributed to the nondomiciliary [for jurisdictional purposes] if ... *those activities benefit it*” (emphasis added)); see also *Ramgoolie v. Ramgoolie*, No. 16 Civ. 3345 (VEC) (SN), 2016 WL 11281385, at *5 (S.D.N.Y. Dec. 20, 2016) (finding that Section 302(a)(2) could not serve as a basis for personal jurisdiction, even though a tortfeasor was defendant's agent in New York, because the agent's tortious acts were “committed for [his] own benefit,” rather than defendant's), report and recommendation adopted, 2017 WL 564680 (S.D.N.Y. Feb. 10, 2017). This understanding of the proper scope of analysis under Section 302(a)(2) is buttressed by the statute's plain language, which permits jurisdiction over a party who, itself, “through an agent ... commits a tortious act.” C.P.L.R. § 302(a)(2). A principal does not commit a tort “through an agent,” where an agent engages in tortious conduct that does not benefit the principal and did not, in any way, further the principal-agent relationship...

...the law requires the principal to know of and consent to the specific tortious conduct in order to be held liable for that conduct. *Doe v. Roman Cath. Diocese of Erie, Pa.*, No. 20 Civ. 257 (LEK) (ML), 2021 WL 5232742, at (N.D.N.Y. Nov. 10, 2021) (finding the court lacked personal jurisdiction over the Roman Catholic Diocese of Erie, Pennsylvania, where plaintiff's claims stemmed from sexual abuse in New York committed by parish basketball coach)

While this Court disagrees with the holding and would frankly prefer a different outcome as, accepting all of plaintiff's allegations as true, the Diocese of Burlington knew of Courcy's dangerous propensities and, in its control of Courcy, transferred him to New York, where he did allegedly abuse plaintiff, then the Diocese of Burlington should reasonably expect to be called into court in New York. Justice calls out for the Diocese of Burlington to be subject to discovery and address this matter on the merits rather than short circuiting the process. However, as *Edwardo* specifically holds that “Even ‘[i]f Plaintiff had sufficiently pleaded that [the employer] had direct knowledge of prior sexual misconduct on the part of [the perpetrator] ... that still would not give rise to respondeat superior liability in the absence of an allegation that the misconduct was part of

any actual responsibility [the perpetrator] had to [his employer].” Clearly, the Diocese of Burlington must enjoy the benefit of *Edwardo* ruling.

ORDERED that the Diocese of Burlington’s motion seeking leave to file a sur-reply is DENIED as same is unnecessary to consider in order to resolve the instant motion; and it is further

ORDERED that the motion of defendant Diocese of Burlington 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 and the Clerk of the General Clerk’s Office, 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)].

3/3/2023
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		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE