

J.B. v Interlaken Congregation of Jehovah's Witnesses
2023 NY Slip Op 31338(U)
April 12, 2023
Supreme Court, Kings County
Docket Number: Index No. 516454/2021
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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
KINGS COUNTY

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

-----X

J.B.,

Plaintiff,

- v -

INTERLAKEN CONGREGATION OF JEHOVAH'S WITNESSES, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; THE GOVERNING BODY OF JEHOVAH'S WITNESSES; and CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES,

Defendants.

-----X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 18-20 were read on this motion to/for EXTEND TIME.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 30-31, 41-44 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 32-35, 39-40, 42, 45-47 were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendant The Governing Body of Jehovah's Witnesses (the "Governing Body") moves for dismissal of this Child Victims Act ("CVA") action pursuant to CPLR 3211(a)(2), (a)(8) and (a)(7) (Motion Seq. 004).

Defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") and Christian Congregation of Jehovah's Witnesses ("CCJW") (collectively, "Congregation

Defendants”) also move for dismissal of this action pursuant to CPLR 3211(a)(7) (Motion Seq. 005).¹

BACKGROUND

Plaintiff alleges that as a minor member of the Jehovah’s Witness faith in the 1990s, he was repeatedly sexually assaulted by non-party Robert Vann, a ministerial servant employed by Defendant Interlaken Congregation of Jehovah’s Witnesses (“Interlaken”). Plaintiff alleges that Watchtower and its successor, CCJW, finalized appointments of ministerial servants such as Mr. Vann and were responsible for exercising supervision and control. Plaintiff alleges that along with Congregation Defendants, the Governing Body was involved in employee oversight and established sexual abuse policies implemented throughout all Jehovah’s Witness congregations. Plaintiff alleges that all Defendants were on notice that Mr. Vann posed a foreseeable risk of sexual assault and yet failed to warn Plaintiff and took no action to remove him from his position. Plaintiff’s complaint asserts one count of negligence against each Defendant.

Congregation Defendants move for dismissal on the grounds that they had no duty to protect Plaintiff from a fellow congregant. Congregation Defendants dispute Plaintiff’s characterization of Mr. Vann as an employee and thus argue his activities were not controlled by the Church.

The Governing Body moves for dismissal on the grounds that the Court lacks subject matter jurisdiction over it as an entity. The Governing Body disputes Plaintiff’s characterization of it as a business organization and argues that Plaintiff cannot allege that the individual members who make up the current Governing Body authorized the alleged misconduct. The

¹ Plaintiff previously filed a motion seeking an extension of time to serve Defendants pursuant to CPLR 3102(d) (Motion Seq. 003). Since that motion was filed on August 24, 2021, affidavits of service have been uploaded to the record, and Defendants have filed the instant dismissal motions. As such, the Court deems Motion Seq. 003 moot.

Governing Body maintains that even assuming it is a proper defendant, the complaint asserts no allegations sufficient to plead notice or a duty on the part of its current or former members.

DISCUSSION

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court's role is deciding “whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (see *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]).

When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*). In deciding such a motion, the court must “accept the facts as alleged in the complaint as true, accord plaintiffs ‘the benefit of every possible favorable inference,’” and “determine only whether the facts as alleged fit into any cognizable legal theory” (*Siegmund Strauss, Inc.*, 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Congregation Defendants’ Motion for Dismissal

Congregation Defendants primarily argue that Plaintiff's negligence claims must be dismissed as the Congregations had no duty to protect Plaintiff from Mr. Vann's alleged abuse.

Congregation Defendants argue that in the Jehovah's Witness faith, "ministerial servants" are merely rank-and-file congregants. Rank-and-file congregants that are described as publishers are paired to "go door to door in neighborhoods to spread the church's spiritual teachings" (*Conti v Watchtower Bible & Tract Society of New York, Inc.*, 235 Cal. App. 4th 1214, 186 Cal. Rptr. 2d 26, 30 [Cal App. 2015]).

In *Conti*, the plaintiff alleged she was sexually abused by an adult member of the North Fremont Congregation of Jehovah's Witnesses, and that the Congregation took no steps to stop the abuse despite prior knowledge of her abuser's propensities. The California Appellate Court held the church had no duty to warn congregants of potential injury inflicted by other congregants because it does not have a special relationship within its congregants "solely by virtue" of their church membership (*id.* at 37-38). The court rationalized that "the burden would be considerable because the precedent could require a church to intervene whenever it has reason to believe that a congregation member is doing harm" (*id.* at 39).

In addition to *Conti*, Congregation Defendants also cite to *Bryan R. v Watchtower Bible and Tract Society of New York, Inc.*, 738 A2d 839 (1999 ME 144) (finding no duty for the church to protect a congregant from his next-door neighbor member), *Meyer v Lindala*, 675 NW2d 635 (Minn. App. 2004) (finding the church's duty to espouse religious faith doctrine to its congregants did not include a duty to warn of wrongdoing by individual congregants), *Berry v Watchtower Bible and Tract Society of New York, Inc.*, 152 NH 407, 879 AD3d 1124 (NH 2005) (finding no special relationship between plaintiffs and church by virtue of church membership, and the congregation elders thus had no duty to advise of potential abuse).

Here, Plaintiff does not argue that Mr. Vann was a regular member or leader of the Jehovah's Witness faith but rather maintains that he was a "ministerial servant" hired to perform administrative work. While as noted, Congregation Defendants argue that servants are merely congregants, the fact that ministerial servants are only classified as congregants does not mean that Congregation Defendants could not exercise any supervision or control over which congregants are chosen as servants. Affording Plaintiff the benefit of every positive inference, as is required on a motion to dismiss, it remains plausible that Congregation Defendants exercised some control over Mr. Vann and could have removed him from his position.

Additionally, regardless of whether Mr. Vann can be deemed an employee of Congregation Defendants, Plaintiff nevertheless alleges by virtue of his status as a servant, Congregation Defendants placed Mr. Vann in contact with him as a minor despite knowledge of Mr. Vann's propensity for abuse. Accepting these allegations as true and affording Plaintiff the benefit of every possible inference, Plaintiff has alleged affirmative conduct on behalf of Congregation Defendants that may give rise to a duty. Plaintiff's allegations potentially distinguish his case from the cases cited, where the abuse between congregants took place independently of any affirmative conduct by the church (*see, e.g., Berry* at 1129-1130 ("[th]ere is no allegation that the elders created an opportunity for [the perpetrator] to abuse his daughters]"). The Court finds that dismissal of Plaintiff's negligence claims would be premature, and discovery is warranted to ascertain the actions, if any, that Congregation Defendants took to place Mr. Vann in a position where he had contact with Plaintiff despite knowledge of his alleged propensity for abuse, and their alleged failure to alert Plaintiff once they were on notice of the abuse.

Regarding the branch of Congregation Defendants' motion arguing that Plaintiff is not entitled to pursue punitive damages, the Court notes that the remedy of punitive damages is only awarded in exceptional cases. "To recover punitive damages, a plaintiff must show, by clear, unequivocal and convincing evidence, egregious and willful conduct that is morally culpable, or is actuated by evil and reprehensible motives" (*Munoz v Poretz*, 301 AD2d 382, 384 [1st Dept 2003] [internal citations and quotation marks omitted]). "Even where there is gross negligence, punitive damages are awarded only in singularly rare cases such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public" (*Karen S. "Anonymous" v Streitferdt*, 172 AD2d 440, 441 [1st Dept 1991] [internal quotation marks and citation omitted]).

Here, the merits of Plaintiff's allegations that Congregation Defendants took no action to prevent his abuse, even after they were on notice of Mr. Vann's propensity, have not yet been adjudicated. Thus, it is unclear at this juncture whether Congregation Defendants' conduct amounts to egregious and willful misconduct sufficient to justify an award of punitive damages. Accordingly, Plaintiff is entitled to pursue punitive damages in connection with his claims against Congregation Defendants.

The Governing Body's Motion for Dismissal

The Court now addresses the Governing Body's motion for dismissal on the grounds that it does not have the legal capacity to be sued in this matter.

The Governing Body maintains that Plaintiff's claims are improper not only because current members did not serve on the Body at the time of the abuse, but also because its sole authority pertains to matters of faith within the Jehovah's Witnesses religion. The Governing Body contends that as its function is solely ecclesiastical, the claims against it constitute an inquiry into religious canon law that the First Amendment prohibits this Court from entertaining

(See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 US 696 (1976); see also *In the Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 31 AD3d 541 [2nd Dept 2006]).

The Governing Body dismisses Plaintiff's allegation that it is "an unincorporated association under New York law" as an unsupported legal conclusion. *Assuming arguendo* that Plaintiff's characterization is accurate, the Governing Body argues Plaintiff does not meet the pleading requirements for an action against an unincorporated association.

According to CPLR 1025 states, "actions may be brought [] against the president or treasurer of an unincorporated association on behalf of the association in accordance with the provisions of the general associations law." N.Y. General Associations Law § 13 (Action or Proceeding Against Unincorporated Association) provides that:

"An action or special proceeding may be maintained, against the president or treasurer² of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section."

In *Martin v Curran*, 303 NY 276, 280 (1951), the Court of Appeals stated that an unincorporated association, unlike a corporation or partnership, is "not an artificial person, and has no existence independent of its members." Therefore, a lawsuit against an unincorporated association must plead "proof of authorization or ratification [of the wrong doing] by all members of the group"...liability turns on whether "the individual liability of every single member can be alleged and proven" (*id.* at 280-282).

² The complaint does not name or allege the existence of a president or treasurer in the Governing Body.

Although the current Governing Body members could not have ratified the alleged misconduct in the early 1990s, Plaintiff argues that New York law allows for “a later iteration of an unincorporated association to be sued for prior acts by a different group.” However, in support, Plaintiff only relies on *Rankin v Killion*, 190 Misc 226 [Sup Ct., NY Cty. 1947], which that held an unincorporated association could be liable for contract obligations (i.e., debt) taken on by former members. Plaintiff cites to no caselaw suggesting that members can be liable for tortious acts of their predecessors, as is required under *Martin* (see *Kreutzer v East Islip Union Free Sch. Dist.*, 2015 N.Y. Slip Op. 32322 (Sup. Ct., Suffolk Cty. 2015) [“...the *Martin* decision makes no distinction between contract and negligence claims”]).

More critically, Plaintiff does not sufficiently articulate why the Governing Body should be deemed an “unincorporated association” by the Court, as opposed to merely a division of a non-profit religious organization (here, the Congregation). The Governing Body appears to thus be more akin to a group of managers or other type of division at a corporation that has no independent legal existence (See *Sheldon v Kimberly-Clark Corp.*, 111 AD3d 912 [2nd Dept 1985 [affirming the dismissal of a complaint against a division of the defendant corporation on the ground that it was not a “jural entity amendable to suit in its own right”]); *Justinian Capital SPC v WestLB AG, NY Branch*, 37 Misc3d 518 [Sup Ct., NY Cty. 2012] [dismissing an action against an entity that was “merely a division or group of asset managers”]).

Plaintiff argues that the Governing Body is nevertheless a proper individual defendant as by their own admissions, Congregation Defendants have affirmed that the Governing Body controls the operations of the religious enterprise. However, the evidence before the Court reflects that the Governing Body exerts ecclesial control related to the religious teachings of the

Jehovah's Witness church, and the Governing Body's areas of decision making are not properly before this Court. Even if the Governing Body also exerts some degree of control over secular matters, the Governing Body is still just one group of individuals within the Congregation's non-profit corporations, and thus cannot be sued as its own entity absent a justification for corporate veil piercing, which Plaintiff does not suggest.

Furthermore, while Plaintiff maintains that dismissal of the Governing Body from this action allows for an "otherwise culpable" entity to shield liability by virtue of its status, Plaintiff has named Congregation Defendants, corporations that do exist under New York law. If, as discussed *infra*, Plaintiff can substantiate his negligence claims against the Congregation Defendants, Plaintiff has a remedy against the proper culpable corporate bodies of the Jehovah's Witness religion, and joinder of the ecclesial leadership is unwarranted.

Accordingly, while this action shall continue against Congregation Defendants, the Governing Body's motion for dismissal is granted in full.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion of Plaintiff for an extension of time to serve Defendants pursuant to CPLR 3102(d) (Motion Seq. 003) is moot; and it is further

ORDERED that the motion of Defendant The Governing Body of Jehovah's Witnesses (the "Governing Body") for dismissal of this action pursuant to CPLR 3211(a)(2) and (a)(7) (Motion Seq. 004) is granted; and it is further

ORDERED that the motion of Defendants Watchtower Bible and Tract Society of New York, Inc. (“Watchtower”) and Christian Congregation of Jehovah’s Witnesses (“CCJW”) for dismissal of this action pursuant to CPLR 3211(a)(7) (Motion Seq. 005) is denied; and it is further

ORDERED that this action is severed and shall continue against the remaining Defendants; and it is further

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

ORDERED that counsel for the Governing Body shall serve a copy of this order with notice of entry within ten (10) days upon all parties and the Clerk of the Court and the Trial Support Office or Clerk of the General Clerk’s Office, as appropriate, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and submit a first compliance conference order within 60 days after issue is joined.

04/12/2023
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" 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