

A.R. v North Am. Old R.C. Church

2023 NY Slip Op 31552(U)

January 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 504949/2020

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

INDEX NO. 504949/2020

A.R., MOTION DATE 02/04/2021

Plaintiff,

MOTION SEQ. NO. 001, 002

- v -

NORTH AMERICAN OLD ROMAN CATHOLIC CHURCH, NORTH AMERICAN OLD ROMAN CATHOLIC CHURCH - DIOCESE OF NEW YORK, NORTH AMERICAN OLD ROMAN CATHOLIC CHURCH - DIOCESE OF NEW YORK AND NEW ENGLAND, SACRED HEART OF JESUS CHURCH, and THE ROMAN CATHOLIC DIOCESE OF BROOKLYN,

DECISION + ORDER ON MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23-35, 52 were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38-50, 53-54, 57-65, 70-72 were read on this motion to/for DISMISS

In this tort action filed pursuant to the Child Victims Act ("CVA"), Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") moves pursuant to CPLR 3211(a)(1) and (a)(7) for dismissal of Plaintiff A.R.'s complaint in full (Motion Seq. 001).

Defendants the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church¹ (collectively, the

¹ This entity is named in the Complaints as "Sacred Heart of Jesus Church."

"NAORCC Defendants"), also move for the same relief (Motion Seq. 002). Plaintiff opposes both motions.

Plaintiff A.R.² alleges that between 1970 and 1973, he was abused by Joseph Nevilloyd, a pastor at church known as "Sacred Heart" or "Sacred Heart of Jesus"³ in Brooklyn, New York. Plaintiff alleges that he received tuition discounts to attend private schools run by the Diocese in exchange for his patronage at Sacred Heart. Plaintiff alleges that all defendants knew or should have known that Mr. Nevilloyd used his position at Sacred Heart to commit abuse but took no action to restrict his unfettered access to minors.

By stipulation dated January 20, 2021, Plaintiff voluntarily discontinued the complaint against the Diocese (NYSCEF Doc No 67).⁴ As such, the Diocese's motion is moot, and the instant decision discusses only whether NAORCC Defendants have established entitlement to dismissal.

NAORCC Defendants argue that documentary evidence shows Plaintiff has no cause of action against them, and that the actual name of the church Mr. Nevilloyd was employed at is the "Sacred Heart English Rite Church," which has no connection to the Roman Catholic Church and is thus unaffiliated with the NAORCC entities.

DISCUSSION

NAORCC Defendants, a group that encompasses both the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman

² Two related CVA actions filed by siblings, *W.G. v North American Old Roman Catholic Church et al* (Index No. 504256/2020) and *K.G. v North American Old Roman Catholic Church et al*, (Index No. 504288/2020) involve the same claims against the Diocese and NAORCC Defendants for Mr. Nevilloyd's alleged abuse. Given the overlapping claims, the Diocese and NAORCC Defendants filed identical motions to dismiss in all three actions.

³ As there is some dispute among the parties as to the full proper name of the church Plaintiff attended, the church is referred to herein as "Sacred Heart Church" unless otherwise specified.

⁴ Plaintiffs in the related actions, K.G. and W.G., did not discontinue their claims against the Diocese.

Catholic Church, argue that documentary evidence establishes they were named in this action based on mistaken identification, and that neither the “North American Old Roman Catholic Church Diocese of New York and New England” nor the “Sacred Heart of Jesus Church” have any affiliation with the church that Plaintiff attended. NAORCC Defendants claim the full name the church Plaintiff attended, in which Mr. Nevilloyd served as a pastor, is “Sacred Heart English Rite Church,” a separate religious society with no relation to the Sacred Heart of Jesus Old Roman Catholic Church.⁵

Regarding the first defendant, NAORCC, NAORCC Defendants have submitted certifications of incorporation that purport to indicate that Mr. Nevilloyd incorporated his church under two names “the Sacred Herat of Jesus English Rite Catholic Church Inc.,” and “Sacred Heart of Jesus Roman Catholic Church (Vernacular), Inc”. Thus, the churches were not affiliated with the Old Roman Catholic Church, but rather the American Catholic Church, and had no relation to the NAORCC. NAORCC Defendants have also introduced a Certificate of Consecration establishing Mr. Nevilloyd as a bishop in the American Catholic Church.

NAORCC Defendants argue that the second defendant, Sacred Heart of Jesus Old Roman Catholic Church, is similarly unaffiliated with Mr. Nevilloyd’s church as it has always been a separate entity unrelated to the American Catholic Church. Additionally, NAORCC Defendants argue this Court lacks jurisdiction over the church as a nonincorporated religious society.⁶

⁵ NAORCC Defendants assume that the entity captioned as “Sacred Heart of Jesus Church” in the complaint is meant to be the Sacred Heart of Jesus Old Roman Catholic Church.

⁶ As NAORCC Defendants characterize the church as a religious society “in association with the NAORCC” the argument that this Court lacks jurisdiction solely because the church is unincorporated appears to be without merit. (*see L & L Assoc. Holding Corp. v Charity United Baptist Church*, 34 Misc 3d 355, 357 [Nassau Dist Ct 2011] [“An ‘unincorporated church’ is generally subject to the same rights and liabilities as an ‘unincorporated association.’”] quoting 92 N.Y. Jur. 2d, Religious Organizations §13). An action against an unincorporated association can proceed as long as its president, treasurer, or analogous officer was served (*id.* at 358). Here, Bishop Ford, a Presiding Officer and Trustee of the NAORCC, was served with the complaint on behalf of all NAORCC Defendants.

In opposition, Plaintiff argues that NAORCC Defendants' motion for dismissal is an improper premature summary judgment motion based on self-serving affidavits and documents of uncertain authenticity. Plaintiff has also submitted an affidavit from his counsel's investigator, Marc Gorrie, who affirms that until the filing of this action, the NAORCC website stated that its diocese was "shepherded by Bishop Joseph M. Nevilloyd" until his passing in 1994. Mr. Nevilloyd was also listed under the NAORCC website's listing of deceased clergymen until February 2020. Additionally, NAORCC's exhibits do not speak to who participated in the consecration of Mr. Nevilloyd if not their own clergy. The documentation also reflects that in the 1980s, Mr. Nevilloyd ordained a current NAORCC bishop and official, Vincent Natoli, who later took part in the sale of Mr. Nevilloyd's church to create a new church in the same location that is currently attended by NAORCC parishioners.

In reply, NAORCC Defendants state that their website had previously "mischaracterized" Mr. Nevilloyd's relationship with the NAORCC, and the instant litigation prompted them to correct the misinformation. However, NAORCC Defendants do not fully articulate why their leadership previously believed Mr. Nevilloyd had a relationship with the NAORCC. Similarly, while NAORCC Defendants argue that Bishop Natoli was ordained by Mr. Nevilloyd in the 1980s, after the alleged misconduct at issue here occurred, they do not explain why Mr. Nevilloyd would have ordained a bishop in their church if he had no relationship with the same, nor do they delve into why Mr. Natoli was involved in the sale of Mr. Nevilloyd's church and the church's conversion into a current NAORCC location.

In view of the conflicting evidence presented and the confusion among the parties regarding the proper identities and relationship histories of the various entities and individuals at issue, the Court finds that dismissal of this action against NAORCC Defendants is premature at

this juncture, and proper discovery is first needed to ascertain the relationship, if any, that existed between Mr. Nevilloyd, the NAORCC, and Sacred Heart of Jesus Old Roman Catholic Church at the time the alleged misconduct occurred.

Accordingly, the motion filed by NAORCC Defendants is denied.

CONCLUSION

Based on the foregoing, it is

ORDERED that the motion of Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") pursuant to CPLR 3211(a)(5) and (a)(7) for dismissal of Plaintiff's complaint (Motion Seq. 001) is denied as moot; and it is further

ORDERED that the motion of Defendants the North American Old Roman Catholic Church Diocese of New York, Inc. a/k/a North American Old Roman Catholic Church Diocese of New York and New England (the "NAORCC") and Sacred Heart of Jesus Old Roman Catholic Church (collectively, the "NAORCC Defendants") for dismissal of the complaint (Motion Seq. 002) is denied in its entirety; and it is further


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

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

ORDERED that counsel for the Diocese 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 from entry of this order.

This constitutes the decision and order of the Court.

<u>01/11/2023</u> DATE					 ALEXANDER M. TISCH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<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