

**John Doe, XIII v Archdiocese of N.Y.**

2023 NY Slip Op 32231(U)

June 29, 2023

Supreme Court, New York County

Docket Number: Index No. 950065/2020

Judge: Laurence L. Love

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE PART 63M**

*Justice*

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JOHN DOE, XIII

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF MOUNT  
CARMEL CHURCH, OUR LADY OF MOUNT CARMEL  
SCHOOL

Defendant.

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INDEX NO. 950065/2020

MOTION DATE 06/22/2023

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 169, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for DISCOVERY.

Upon the foregoing documents as well as oral argument held June 22, 2023 it is the decision on Plaintiff’s Order to Show Cause, seeking an order 1) pursuant to CPLR § 3124, compelling Defendant Archdiocese of New York (“the “archdiocese”) to produce the discovery requested in Plaintiff’s Supplemental Notice for Discovery and Inspection dated July 21, 2022; 2) pursuant to CPLR § 3124, compelling the Archdiocese to produce the discovery set forth in Plaintiff’s Notice for Discovery and Inspection dated March 13, 2023; 3) pursuant to CPLR § 3124, compelling the Archdiocese to Produce the discovery set forth in Plaintiff’s Second Notice for Discovery and Inspection dated March 29, 2023 is as follows:

On or about September 22, 2022, the Court issued an Order consolidating pre-trial discovery on this action, among seventy (70) total actions (the “Tremaroli Actions”)., Order for Pretrial Discovery Consolidation of Actions, in which Paragraph 6 of said Order specifically states that “Discovery disclosed or taken in any Tremaroli action may be used in or shared with any other Tremaroli Action [...] to the extent such discovery is material relevant, and necessary

to the prosecution or defense of the claims that matter. In this vein, although plaintiff refers to three distinct discovery demands all are essentially seeking the same information, namely all personal files ie documents pertaining to the employment, agency or assignment of duties for eleven individuals by the archdiocese of New York including but not limited to correspondence, job description, personnel documents, letters of appointment, assignment, transfer or reassignment letter. Namely, Monsignor Louis Martorella, Monsignor John Ruvo, Father Anthony Pucci, Emilia Longo, Dominick Rella, Sister Aurelia, James Irwin, Brother Gilbert, Brother John, Brother Christopher and Rudy Tremaroli. Court notes, that Tremaroli is not a clergy member.

Plaintiff seeks said discovery claiming that the requested records are relevant to this cause of action as the requested records pertain to notice witnesses - Archdiocese of New York / Our Lady of Mount Carmel employees who allegedly received reports of child sexual abuse by Tremaroli and failed to engage in corrective measures to protect the children in the parish. Such an assertion is based upon claims of these various notice witnesses being provided information during certain time periods by plaintiffs or others on their behalf as outlined within plaintiff's chart as part of Reply papers to the instant Order to Show Cause.

It is plaintiff's contention that CPLR § 3101(a) mandates "full disclosure of all matter material and necessary" in the prosecution of an action. The words "material and necessary" establish a flexible standard, and are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy. *Allen v. Crowell-Gollier Publishing Co.*, 21 N.Y. 2d. 403, 406 (1968); *See also Roman Catholic Church of the Good Sheperd v. Tempco Sys*, 202 A.D. 3d 257 (1994); *Anonymous v. High School for Environmental Studies*, 32 A.D.3d 353 (1st Dep't 2006). Although Plaintiff acknowledges that their initial affirmation failed to address

the above-outlined relevancy of the records of the subject employees to this cause of action, that the status of each as a notice witness has been known to Defendant since at least December 2022, when Plaintiff served its Response to Common Demand for Verified Bill of Particulars. Plaintiff is at the very least seeking that the Court review the sought discovery via an in-camera review to determine what if any information is relevant.

The Court notes that plaintiff additionally makes the argument that discovery in this case should be analogized to discovery in a criminal prosecution, stating that, “some prosecutors knowingly withhold exculpatory evidence to protect their case, other prosecutors unwittingly withhold information because they fail to recognize the exculpatory or even relevant nature of evidence. To remedy both types of shortcomings, all prosecutors have an obligation to disclose everything to criminal defendants”. To be clear the Court finds such an analogy unavailing. Without passing comment on what prosecutors may or may not do, the instant case, as with all CVA cases are purely a Civil matter and subject to CVA CMOs and related civil discovery rules and standards not criminal.

The Court is also aware from representations made by both parties during oral argument that at least six of the eleven referenced alleged notice witnesses are deceased.

Defendant has objected to providing the sought discovery claiming same is nothing more than a fishing expedition which is not based on good faith or prior discovery that would serve as a basis to expand CPLR 3101(a). Defendant points out that Plaintiff must demonstrate that the Archdiocese knew or should have known of Tremaroli’s abuse or propensity to commit abuse of minors. Plaintiff’s claim is that Tremaroli was negligently hired, retained and/or supervised. All concede that there is no claim that the individuals purportedly charged with the hiring and/or supervision of Tremaroli, for whom personnel files are sought, were themselves negligently

hired or supervised (except possibly James Irwin). Thus, defendant argues that the personnel files of non-perpetrators purportedly charged with the duty to hire and supervise Tremaroli are not relevant, material, or necessary, as said documents would have no bearing on the issue of notice of Tremaroli's abuse or propensity to commit abuse. The Court notes that the Archdiocese has responded to such discovery demands pertaining to Rudy Tremaroli for whom the Archdioceses has represented that they are not in possession of any such discovery and therefore, cannot provide what it does not have. The Archdiocese has provided a redacted file and documents related to James Irwin as he is also an alleged abuser. The Court will address James Irwin below.

Defendant acknowledges that the CPLR provides for "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." See CPLR 3101(a). Under CPLR 3101, "there should be disclosure of any evidence that is material, necessary and arguably relevant." *Palermo Mason Const., Inc. v. Aark Holding Corp.*, 300 A.D.2d 460, 461 (2d Dept. 2002).. However, defendant argues that despite the broad scope of discovery, the CPLR does not entitle a party "to unlimited, uncontrolled, unfettered disclosure." *Geffner v. Mercy Med. Ctr.*, 83 A.D.3d 998, 998 (2d Dept. 2011). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims." *Mendives v. Curcio*, 174 A.D.3d 796, 797-98 (2d Dept. 2019); *Evans v. Roman*, 172 A.D.3d 501 (1st Dept 2019) (reversing order directing plaintiff to produce her phone and all the material stored on it because defendants failed to show their request was reasonably calculated to yield information material and necessary to its defense);

*Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 A.D.2d 420, 421 (2d Dept. 1989). A “bald allegation,” without more, “will not suffice to show relevancy.”

Defendant further argues that:

. Generally, an employer has an interest in maintaining the confidentiality of employee personnel files.” *Williams v. Fire Sprinkler Assocs.*, 2017 U.S. Dist. LEXIS 45033, at \*8 (E.D.N.Y. Mar. 27, 2017). “A party seeking discovery must bear the initial burden of demonstrating relevance and proportionality and provide an adequate factual basis to justify the discovery.” *Winfield v. City of N.Y.*, 2018 U.S. Dist. LEXIS 22996, at \*12 (S.D.N.Y. Feb. 12, 2018). *Averbach v. Cairo Amman Bank*, 2022 U.S. Dist. LEXIS 226977, at \*8 (S.D.N.Y. Dec. 16, 2022) (“It is the burden of the party seeking the documents to demonstrate that the documents are relevant and within the bounds of discovery permitted by Rule 26(b).”) “Information is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” *Vaigasi v. Solow Mgmt. Corp.*, 2016 U.S. Dist. LEXIS 18460, 2016 WL 616386, at \*11 (S.D.N.Y. Feb. 16, 2016); *6340 NB LLC v. Capital One, N.A.*, 2022 U.S. Dist. LEXIS 163127, at \*6 (E.D.N.Y. Sep. 9, 2022).” It is well-settled that in lawsuits such as this, premised on allegations of negligent hiring, supervision and/or retention, the only personnel files discoverable are those of the perpetrator/employee who allegedly perpetrated the abuse. See e.g. *Meder v. Miller*, 173 A.D.2d 392 (1st Dept. 1991) (personnel file of doctor discoverable in medical malpractice action where doctor, an anesthesiologist with an addiction to fentanyl, substituted saline for fentanyl during surgeries to steal the fentanyl to feed his addiction); *Okoro v. City of New York*, 2007 N.Y. Misc. LEXIS 9390 (Sup. Ct. Queens County 2007) (compelling personnel file of bus operator who assaulted a passenger on the bus because the assault was outside the scope of the bus operator’s scope of employment); *Chavez v. City of New York*, 99 A.D.3d 614 (1st Dept. 2012) (police officers’ personnel records were discoverable as they may contain information relevant and material to plaintiff’s negligent hiring, retention and supervision claims where underlying incidents involved questions of police officers’ acts (excessive force during arrest) directly resulting in harm to the plaintiff); *McFarlane v. County of Suffolk*, 79 A.D.3d 706 (2d Dept. 2010); *Okoro v. City of New York*, 2007 N.Y. Misc. LEXIS 9390 (Sup. Ct. Queens County 2007) (compelling personnel file of bus operator who assaulted a passenger on the bus because the assault was outside the bus operator’s scope of employment); see also *Neiger v. City of New York*, 72 A.D.3d 663 (2d Dept. 2010) (since the driver was acting within the scope of his employment when the accident occurred, the personnel records of the bus driver were not discoverable); *Jacobs v. City of New York*, 2010 Misc. LEXIS 2179 (Sup. Ct. New York County 2010) (holding that absent any dispute that the two officers were acting within the scope of their employment at the time they arrested plaintiff, personnel files are not discoverable); *Kourtalis v. City of New York*, 191 A.D.2d 480 (2d Dept. 1993) (complaints against officer irrelevant as defendant conceded officer was acting within scope of employment); *Jordan v. Blue Circle Atl.*, 296 A.D.2d 752, 753 (2d Dept. 2002) (where there is no cause of action for negligent hiring, the personnel records of the employee are not otherwise relevant and are not discoverable).

Defendant repeatedly, in their opposition papers and at oral argument, return to the salient undisputed fact that there is no allegation of negligent hiring, supervision or retention of those who allegedly supervised and/or worked with Tremaroli. Thus, the personnel files of non-perpetrators purportedly charged with the duty to hire and/or supervise Tremaroli are not relevant, material, or necessary, as said documents would have no bearing on the issue of notice of Tremaroli's abuse or propensity to commit abuse. See *Krystal G. v. Roman Catholic Diocese of Brooklyn*, 34 Misc.3d 531, at 544.

Defendant further references the specific CMOs for CVA cases which addresses discovery relating to allegations of sexual abuse against the alleged perpetrator. Where, as here, the alleged abuser is a lay employee of a parish school, the Standard Automatic Disclosures Directed at Defendants, Demand No. 3, mandate disclosure of: The personnel file of the alleged perpetrator, To the extent not included in the personnel file of the alleged perpetrator, defendants shall also provide (i) all records pertaining to the transfer of the alleged perpetrator between non-Catholic religious entities, medical institutions/departments, schools, troops or other locations; (ii) a list of all non-Catholic religious entities, medical institutions, schools, troops or the locations where the alleged perpetrator was assigned inclusive of the start and end dates; and (iii) all alleged "confidential," "secret," "ineligible volunteer," "perversion," human resources or similar files. The personnel files of the alleged perpetrator.

At the outset the Court is mindful of the fact that per the CMO's automatic and standard discovery requirements, the Defendants are already under an obligation to provide any documentation to plaintiff, from documents in their possession related to the alleged abuser. To require defendants to provide the files of non-abuser employees, even for a court in-camera review, would open the door for endless discovery on a significant portion of the five thousand

CVA related actions filed within the City of New York. Such a theory is essentially saying that almost anyone who worked at an institution wherein an alleged abuser was employed during a ten, twenty, thirty year employment history could be subject to review on the theory that something may appear in their files related back to a relevant matter. Same would just be a bridge too far. Plaintiff is entitled to extensive discovery per the CPLR and the CMOs governing CVA cases. However to authorize wholesale review of nine other employees files based on speculation is improper and unwarranted.

Specifically related to James Irwin, as he is listed as an alleged abuser, plaintiff is entitled to his records. To date, defendant has provided a heavily redacted file of Mr. Irwin to plaintiff. In this case the Court agrees that a in camera review of his un-redated personnel file by the court is warranted.

ORDERED that Plaintiff's Order To Show Cause is GRANTED to the extent that Defendant shall provide the redacted and unredacted file to the Court for review and determination on possible further disclosure within fifteen days Plaintiff's Order To Show Cause is Denied in all other aspects.

6/29/2023  
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"/>	GRANTED IN PART	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	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	