

ARK466 DOE v Archdiocese of N.Y.

2023 NY Slip Op 32623(U)

July 14, 2023

Supreme Court, New York County

Docket Number: Index No. 950510/2021

Judge: Laurence L. Love

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

-----X

ARK466 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, DIOCESE OF
BRIDGEPORT, STATEN ISLAND ACADEMY, DOES 1-5
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

-----X

INDEX NO. 950510/2021

MOTION DATE 02/24/2022,
07/07/2023

MOTION SEQ. NO. 002 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 25, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 66, 83, 84

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, defendant, Diocese of Bridgeport’s motion seeking dismissal pursuant to CPLR 3211(a)(8) and plaintiff’s motion seeking leave to reargue this Court’s prior decision and order dismissing defendant, Archdiocese of New York from this case are decided as follows:

In an order dated November 21, 2022, this Court held that “[The Amendment to Charter of Staten Island Day School] clearly establishes that the New York Board of Regents granted Staten Island Academy its charters, not the Archdiocese. Furthermore, [The Amendment to Charter of Staten Island Day School] establishes that Staten Island Academy, an independent and secular school, is not organized under New York’s Religious Corporations Law, under which the Archdiocese is organized. Moreover, [The Bargain and Sale Deed] establishes that at no point did Staten Island Academy convey land to, or accept land conveyed from the Archdiocese. Therefore,

the Staten Island Academy, not the Archdiocese, owned, managed and operated the property where the alleged abuse occurred. The documentary and testimonial evidence establish that the Archdiocese had no presence at Staten Island Academy, was not associated with it, did not supervise it, did not control it and did not employ anyone there. Accordingly, Staten Island Academy was, is, and remains a completely separate and distinct entity from the Archdiocese”

Plaintiff now seeks leave to reargue said decision and Order, citing *J.D. v. The Archdiocese of New York*, 2023 NY Slip Op 01588 (1st Dept. 2023). A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A “motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered by the court” (see, *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]).

As discussed in *J.D.*, “Although the deeds for the property upon which defendant [school] is located and the Certificates of Incorporation for defendant [independent religious order] constitute documentary evidence for the purposes of a CPLR 3211(a)(1) inquiry (*see generally Yoshiharu Igarashi v Shohaku Higashi*, 289 AD2d 128 [1st Dept 2001]), they do not conclusively resolve the allegations in the complaint that plaintiff’s alleged abuser...was an agent of the Archdiocese, that the Archdiocese exercised supervision and control over [alleged abuser’s] appointment or employ, and that there were special relationships between plaintiff, the Archdiocese, and [alleged abuser] (*see Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]). The affidavit of the Associate General Counsel for the

Archdiocese does not constitute sufficient documentary evidence for the purpose of a pre-answer CPLR 3211(a)(1) motion (see *Johnson v Asberry*, 190 AD3d 491 [1st Dept 2021]; *Flowers v 73rd Townhouse LLC*, 99 AD3d 431 [1st Dept 2012]).

Said decision is irrelevant to this action. Here, plaintiff alleges that the abuse complained of, while allegedly perpetrated by a catholic priest incardinated by the Diocese of Bridgeport, it is indisputable that it occurred solely at Staten Island Academy, a school with no religious affiliation whatsoever, over which the Archdiocese of New York and the Diocese of Bridgeport could not possibly have any control. As such, there cannot possibly be special relationships between plaintiff, the Archdiocese, and [alleged abuser]. Additionally, the Diocese of New York's documentary evidence is sufficient to utterly refute the allegations against the Diocese of Bridgeport.

Diocese of Bridgeport moved for dismissal pursuant to CPLR 3211(a)(8). As described in plaintiff's complaint, "Defendant Diocese of Bridgeport a/k/a The Bridgeport Roman Catholic Diocesan Corporation ("Diocese of Bridgeport") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 250 Waldemere Avenue, Bridgeport, CT, 06604."

Movant contends that plaintiff has failed to establish a basis for personal jurisdiction against the Diocese of Bridgeport 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 Bridgeport submits the affidavit of Anne O. McCrory, the Chief Legal and Real Estate Officer for the Diocese of Bridgeport, which establishes that the Diocese of Bridgeport

has, since its founding in 1953, maintained its principal place of business in Bridgeport, Connecticut.

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 McBride was at all relevant times under the control of the Diocese of Bridgeport, and was present in New York with the knowledge of the Diocese, which arguably represents a consistent course of conduct within the state. However, the Court notes that in the 1973 Official Catholic Directory, McBride was listed as “Absent on Leave” which alone calls into question whether he was under the Control of the Diocese of Bridgeport.

In Reply, the Diocese of Bridgeport argues that plaintiff does not claim that McBride’s alleged abuse of him was for the benefit of the Diocese, does not allege that the Diocese of Bridgeport was in any way involved in McBride’s New York ministry or his specific assignments there and, that the Diocese of Bridgeport did not pay for, sponsor, house, or otherwise support Foster while he was outside of Connecticut 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)

As such it is hereby

ORDERED that the motion of defendant Diocese of Bridgeport 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)]; and it is further

ORDERED that plaintiff’s motion for leave to reargue is DENIED.

7/14/2023
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: