

John Doe v Archdiocese of N.Y.

2023 NY Slip Op 32624(U)

July 20, 2023

Supreme Court, New York County

Docket Number: Index No. 951126/2021

Judge: Laurence L. Love

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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

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JOHN DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. DOMINIC'S FAMILY
SERVICES, ST. DOMINIC'S HOME, CATHOLIC
CHARITIES OF THE ARCHDIOCESE OF NEW YORK,
JOHN W. AUSTIN

Defendant.

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INDEX NO. 951126/2021
MOTION DATE 07/06/2022
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, Plaintiff moves for an order pursuant to CPLR 3025(b) and 203(f) granting leave to amend the complaint to add Sisters of St. Dominic of Blauvelt (“the Sisters”) as a party (Motion Seq. 003). Defendant St. Dominic’s Family Services f/k/a St. Dominic’s Home (“St. Dominic’s”) opposes.

This is a Child Victims Act (CVA) action wherein Plaintiff alleges that when he was approximately nine years old in 1966, he was abused by Defendant John W. Austin while in the custody of St. Dominic’s. Plaintiff describes Austin as “volunteer” of St. Dominic’s who was under the control and direction of the other Defendants.

Defendants Archdiocese of New York (the “Archdiocese”) and Catholic Charities of New York (“Catholic Charities”) previously moved for dismissal in this action. In their Statement of Material Facts accompanying the motion, the Archdiocese and Catholic Charities

stated that the legal entity that owned, managed, and/or controlled St. Dominic's was the Sisters, and therefore Austin can be deemed an agent, servant, and/or employee of the Sisters.

Plaintiff now seeks to add the Sisters as a necessary party, arguing that he only did not include them before as he was unaware of their existence. St. Dominic's opposes the application, arguing that Plaintiff's action is now time-barred, and Plaintiff cannot rely on the relation-back doctrine as the Sisters are not united in interest with the existing defendants. St. Dominic's has also submitted an affidavit from the Sisters' prioress, Sister Michaela Connelly, in which Sister Connelly states that while St. Dominic's was founded by a congregation of nuns who later became the Sisters, St. Dominic's became an independent entity in 1962.

DISCUSSION

“In the absence of prejudice or surprise to the opposing party, a motion for leave to amend the complaint pursuant to CPLR 3025 (b) should be freely granted unless the proposed amendment is “palpably insufficient” to state a cause of action or is patently devoid of merit” (*Scofield v DeGroodt*, 54 AD3d 1017, 1018 [2d Dept 2008]). “Whether to grant such leave is within the motion court's discretion, the exercise of which will not be lightly disturbed” (*Pergament v Roach*, 41 AD3d 569, 572 [2d Dept 2007]).

Further, CPLR 203(f) provides that “a claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.”

To satisfy the relation-back doctrine under CPLR 203(c), a plaintiff must establish that “(1) the causes of action arose out of the same conduct, transaction, or occurrence; (2) the new party is united in interest with one or more of the original defendants, and by reason of that

relationship can be charged with such notice of the institution of the action that he or she will not be prejudiced in maintaining his or her defense on the merits; and (3) the new defendant knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been commenced against him or her as well.” (*Petruzzi v Purow*, 180 A.D.3d 1083, 1084 [2d Dept 2020]).

Here, it cannot be disputed that the causes of action Plaintiff seeks to assert against the Sisters arose out of the same occurrence underlying the causes of action asserted against existing defendants (i.e., Plaintiff’s alleged abuse).

The Sisters nevertheless argue that they are not united in interest as they did not own or manage St. Dominic’s, nor did they employ or supervise Austin. The Sisters also that they are “differently positioned than the existing defendants” and have “potential separate defenses separate and apart from other defendants.” However, the Sisters do not explain how they are differently situated or explain what their separate defenses are. The only evidence the Sisters have introduced to demonstrate that they did not manage St. Dominic’s is the aforementioned affidavit from Sister Connelly.

“Affidavits are not documentary evidence and are not appropriate proof on a CPLR 3211 (a)(1) motion to dismiss¹” (*Johnson v Asberry*, 190 AD3d 491, 492, [1st Dept 2021]) [internal citations omitted]). In a recent decision on another CVA matter, *J.D. v Archdiocese of N.Y.*, 183 NYS.3d 851 (App. Div. 2023), the First Department cited *Johnson* to hold that a defendant’s general counsel’s affidavit did not constitute documentary evidence and only consisted of legal conclusions and denials. The Second Department has also maintained that affidavits “are not to

¹ Although the instant motion is not a CPLR 3211 motion to dismiss, the Sisters are still relying on the affidavit to demonstrate that Plaintiff has no cause of action against them.

be examined for the purpose of determining whether there is evidentiary support for the pleading” (*Sokol v Leader*, 74 AD3d 1180, 1181 [2nd Dept 2010]).

Here, Sister Connolly’s affidavit is not accompanied by any primary documentation that would substantiate the statements therein. Additionally, the affidavit is directly contradicted by the statements made by the Archdiocese and Catholic Charities in their separate motion, which allege that the Sisters “operated St. Dominic’s in 1966 and at all times relevant to the Complaint².” Furthermore, despite Sister Connelly’s representation that the Sisters did not manage St. Dominic’s after 1962, the Court notes that the Sisters have been named as defendants in at least three other actions involving abuse at St. Dominic’s after 1962 in at least three other CVA actions (See *Joseph Paladino v. Archdiocese of New York, et al*, Index No. 58180/2021(Sup. Ct. Westchester County 2021); *Anonymous SY v. Archdiocese of New York et al*, Index No. 950023/2020 (Sup. Ct. N.Y. County 2020); *G.B. v. Archdiocese of New York et al*, Index No. 950309/2021 (Sup. Ct. N.Y. County 2021)). The Sisters have not moved for dismissal in any of those actions.

As such, the uncorroborated statements in Sister Connolly’s affidavit are insufficient to counter Plaintiff’s allegation that the Sisters managed St. Dominic’s at the relevant time period and may bear liability for his abuse. The Sisters also cannot claim surprise or prejudice, given that they produced an affidavit on behalf of the instant motion, and discovery in this case has yet to commence. Should discovery establish that they did not manage St. Dominic’s at the relevant time, the Sisters will have the opportunity to seek dismissal, but at this juncture, Plaintiff has demonstrated that he is entitled to leave to add the Sisters as a party under the relation-back doctrine.

² St. Dominic’s’ arguments on behalf of the Sisters here do not directly address the statements made by co-Defendants.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Plaintiff’s motion for an order pursuant to CPLR 3025(b) and 203(f) granting leave to amend the complaint to add Sisters of St. Dominic of Blauvelt (“the Sisters”) as a party (Motion Seq. 003) is granted; and it is further

ORDERED that the caption be amended to reflect the addition of the Sisters as a defendant and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Plaintiff 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 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

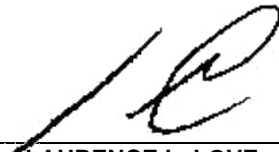
ORDERED that Plaintiff shall serve his amended complaint on all Defendants and the Sisters in accordance with the CPLR; and it is further

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.

This constitutes the decision and order of the Court.

7/20/2023

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE