

J.H. v Archdiocese of N.Y.

2023 NY Slip Op 32839(U)

August 14, 2023

Supreme Court, New York County

Docket Number: Index No. 950192/2021

Judge: Alexander M. Tisch

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

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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J. H.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, DIOCESE OF
BURLINGTON, CATHOLIC NEAR EAST WELFARE
ASSOCIATION,

Defendants.

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INDEX NO. 950192/2021
MOTION DATE 11/10/2021
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 52, 55, 56, 57, 58, 59, 60, 61, 62 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendant Roman Catholic Diocese of Burlington (hereinafter "Diocese") moves pursuant to CPLR 3211 (a) (8) to dismiss the complaint for lack of personal jurisdiction.

BACKGROUND

This matter stems from a revival action arising from child sexual abuse brought pursuant to the New York Child Victims Act, CPLR 214-g, in which plaintiff alleges that when he was a minor, he was sexually assaulted and abused by Father E. Foster (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 1). Plaintiff's complaint alleges that the Diocese of Burlington is a religious institution and organization with principal offices located at 55 Joy Drive, South Burlington, Vermont (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 4). Plaintiff further alleges that the Diocese controls all Catholic religious, pastoral and educational functions in Vermont, and that at all times relevant, Father E. Foster was an ordained Catholic priest under the supervision and control of the Diocese (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 6). Moreover, plaintiff alleges that Father Foster was

an ordained priest by the Diocese of Burlington in 1951, and that Father Foster proceeded to work as a priest in parishes of the Diocese of Burlington from 1951 to 1967 (NYSCEF Doc. No. 30 ¶ 5). However, according to plaintiff, in 1967, the Diocese of Burlington assigned Father Foster to work inside the territory of the Archdiocese of New York, where Father Foster performed work and services as a priest at Catholic Near East Welfare Association (CNEWA) in Manhattan, NY, until 1986 (NYSCEF Doc. No. 30 ¶ 3,5). Plaintiff alleges that when he was between the ages of 13 – 16 in New York City, Father Foster sexually assaulted him (NYSCEF Doc. No. 30 ¶ 3). Plaintiff's complaint alleges that the Archbishop of the Archdiocese, the Bishop of the Diocese, and the President of the CNEWA were aware that there was a widespread problem involving clergymen and sexual abuse regarding minors (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 44). Despite allegedly receiving credible allegations of child sexual abuse against clergy, said parties allegedly acted to conceal these allegations (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 45). Plaintiff alleges that such concealment involved transferring and reassigning clergy members known or suspected to abuse minors, just as Father Foster was transferred and reassigned, to deflect attention from reports or allegations of child sexual abuse (NYSCEF Doc. No. 2, plaintiff's complaint ¶ 54).

PARTIES CONTENTIONS

Defendant Diocese moves pursuant to CPLR 3211 (a) (8) to dismiss the complaint for lack of personal jurisdiction. Defendant argues, inter alia, that pursuant to CPLR § 302 (a) (1), the Diocese was neither domiciled nor present in New York, nor did it transact or solicit business in New York, therefore personal jurisdiction does not exist under this subsection, because a substantial relationship between the specified transaction and the claim asserted does not exist. Defendant further argues that under CPLR § 302 (a) (2) long arm jurisdiction is not applicable in

this matter because Father Foster did not act for the benefit of and with the knowledge and consent of the defendant when he allegedly committed the acts of sexual abuse. In opposition, plaintiff argues that the Diocese maintained contacts in New York through its agent Father Foster, and that the Diocese has minimum contacts with New York for purposes of due process, therefore, personal jurisdiction is proper against the defendant.

DISCUSSION

“Upon a CPLR 3211(a)(8) motion to dismiss for lack of personal jurisdiction, it is the plaintiff who bears the ‘ultimate burden of proof’ to establish a basis for such jurisdiction (Daniel B. Katz & Assoc. Corp. v Midland Rushmore, LLC, 90 AD3d 977, 978 quoting Cornely v Dynamic HVAC Supply, LLC, 44 AD3d 986, 986). However, to successfully oppose such a motion, the plaintiff need only make a prima facie showing that the defendant was subject to the personal jurisdiction of the court” (Am./Int’l 1994 Venture v Mau, 146 AD3d 40, 51 [2d Dept 2016]).

New York’s long arm statute, CPLR § 302, is a mechanism for establishing personal jurisdiction by acts of a non-domiciliary. CPLR § 302 (a) states that:

“a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or 2. commits a tortious act within the state...; or 3. 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, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce” (CPLR 302).

“To determine whether a non-domiciliary may be sued in New York, we first determine whether our long-arm statute (CPLR 302) confers jurisdiction over it in light of its contacts with this State. If the defendant's relationship with New York falls within the terms of CPLR 302, we determine whether the exercise of jurisdiction comports with due process” (LaMarca v Pak-Mor Mfg. Co., 95 NY2d 210, 214 [2000]).

CPLR §302 (a) (1)

CPLR § 302 (a) (1) states that a court may exercise jurisdiction over a non-domiciliary who “transacts any business within the state or contracts anywhere to supply goods or services in the state” (CPLR § 302 (a) (1)). Though plaintiff’s complaint alleges that all named defendants are “present and domiciled in the state of New York and/or transact business within the state of New York and/or regularly solicits business in the state of New York,” the Diocese argues that this claim is false because the Diocese was neither domiciled nor present in New York, and it did not transact or solicit business in New York. Plaintiff opposes and argues that personal jurisdiction is proper against the Diocese under CPLR § 302 (a) (1) because Father Foster was an employee of the Diocese and was on a long-term assignment in New York. Furthermore, as an employee of the Diocese and while stationed in New York, Father Foster was transacting business and providing services as an agent of the Diocese in New York, which qualifies as purposeful activity in New York on behalf of the Diocese and justifies that the Court find personal jurisdiction is proper against the Diocese.

“CPLR 302(a)(1) requires us to first determine if defendant purposefully availed itself of ‘the privilege of conducting activities’ in the state by transacting business in New York. A non-domiciliary defendant transacts business in New York when ‘on his or her own initiative[,] the non-domiciliary projects himself or herself into this state to engage in a sustained and substantial transaction of business’ (Paterno v Laser Spine Inst., 24 NY3d 370, 377 [2014] [citations, internal quotation marks and alterations omitted]). The primary consideration is the quality of the non-domiciliary’s New York contacts (see Fischbarg v Doucet, 9 NY3d 375, 380 [2007]). As relevant here, purposeful availment occurs when the non-domiciliary ‘seeks out and initiates contact with New York, solicits business in New York, and establishes a continuing relationship’ (Paterno, 24 NY3d at 377)” (D & R Glob. Selections, S.L. v Bodega Olegario Falcon Pineiro, 29 NY3d 292, 297–98 [2017]).

Interpreting CPLR § 302 (a) (1) as it relates to the Diocese's presence in New York, the Court finds that the Diocese did not project itself into the state of New York to engage in a sustained and substantial transaction of business as CPLR § 302 (a) (1) requires. For

“[r]egardless of whether by bricks and mortar structures, by conduct of individual actors, or by technological methods that permit business transactions and communications without the physical crossing of borders, a non-domiciliary transacts business when ‘on his [or her] own initiative ... [the non-domiciliary] project[s] himself [or herself]’ into this state to engage in a ‘sustained and substantial transaction of business’” (Paterno v Laser Spine Inst., 24 NY3d 370, 376–77 [2014]).

Personal jurisdiction is not proper against the Diocese under CPLR § 302 (a) (1) because the Diocese did not project itself into New York to transact business, and Father Foster's presence in New York serving as a priest, alone, is not enough to grant personal jurisdiction against the Diocese. For “[n]ot all purposeful activity, however, constitutes a “transaction of business” within the meaning of CPLR 302(a)(1)” (Fischbarg, 9 NY3d at 375). Additionally, “[t]o establish personal jurisdiction under section 302(a)(1), two requirements must be met: (1) The defendant must have transacted business within the state; and (2) the claim asserted must arise from that business activity” (Sole Resort, S.A. de C.V. v Allure Resorts Mgmt., LLC, 450 F3d 100, 103 [2d Cir 2006]). Even assuming arguendo that the Diocese did transact business within New York, which this Court does not find, the second prong to establish personal jurisdiction under CPLR § 302 (a) (1) cannot be met.

“New York courts have held that a claim ‘[aris[es] from’ a particular transaction when there is ‘some articulable nexus between the business transacted and the cause of action sued upon,’ (McGowan v Smith, 52 NY2d 268, 272 [1981]), or when ‘there is a substantial relationship between the transaction and the claim asserted,’ (Kreutter v McFadden Oil Corp., 71 NY2d 460, 467 [1988]). A connection that is ‘merely coincidental’ is insufficient to support jurisdiction (Johnson v Ward, 4 NY3d 516, 520 [2005]) (Id.).

Plaintiff's complaint alleges that Father Foster sexually abused him, however, that act does not share a substantial relationship between the alleged business transaction and the claim asserted. The alleged business activities plaintiff raises are that Father Foster was allegedly assigned by the Diocese to perform certain work and services in New York. However, these claims are unrelated to the claims of sexual abuse when Father Foster allegedly visited the plaintiff's parents' home and plaintiff's trips to New York. Thus, the Court finds that personal jurisdiction is not proper under CPLR §302 (a) (1) because the Diocese did not transact business within the state of New York, and even assuming that it did, plaintiff's claims of sexual abuse do not arise out of the duties Father Foster was allegedly assigned to perform while in New York.

CPLR § 302 (a) (2)

CPLR § 302 (a) (2) permits a court to exercise jurisdiction over a non-domiciliary who "in person or through an agent... commits a tortious act within the state" (see Edwardo v Roman Cath. Bishop of Providence, 579 F Supp3d 456, 468 [SDNY 2022] aff'd, 66 F 4th 69 [2d Cir 2023]). Defendant Diocese argues that personal jurisdiction is not proper under this subset because "[w]hether a defendant's representative is an 'agent' for purposes of § 302(a) hinges on whether the representative acted 'for the benefit of and with the knowledge and consent of [the] defendant and [the defendant] exercised some control over [the agent] in the matter'" (Emerald Asset Advisors, 895 F Supp2d at 430 quoting Kreutter v McFadden Oil Corp., 71 NY2d 460, 467, [1998]) (LaChapelle v Torres, 1 F3d 163, 169 [SDNY 2014]).

Defendant argues that plaintiff fails to meet the agency requirements under CPLR § 302 (a) (2) because plaintiff fails to allege that the Diocese participated in or directed the alleged abuse. Likewise, the Diocese argues that it was not involved in Father Foster's visits to the victim's parents' home or that it was part of plaintiff's trips to New York. Plaintiff argues in opposition that

Father Foster was transacting business and providing services in New York as an agent on behalf of the Diocese, and that his tortious conduct provides this Court personal jurisdiction over the Diocese. However, the Court finds otherwise.

As stated above, “[w]hether a defendant's representative is an ‘agent’ for purposes of § 302(a) hinges on whether the representative acted ‘for the benefit of and with the knowledge and consent of [the] defendant and [the defendant] exercised some control over [the agent] in the matter’” (LaChapelle 1 F3d at 169 [SDNY 2014]). Plaintiff argues that personal jurisdiction under CPLR 302 (a) (2) is sufficient simply because Father Foster was in New York serving the Diocese. However, this is not enough. Plaintiff must establish that the tortious acts Father Foster committed were committed for the benefit of and with the knowledge and consent of the Diocese, and that the Diocese exercised some control over those tortious acts.

“Under New York law, although an employee's tortious acts are imputable to the employer if done while the servant was doing his master's work, no matter how irregularly, or with what disregard of instructions, an employer is not liable for torts committed by the employee for personal motives unrelated to the furtherance of the employer's business” (Edwardo v Roman Cath. Bishop of Providence, 66 F4th 69, 74 [2d Cir 2023] quoting Swarna v Al-Awadi, 622 F3d 123, 144 [2d Cir. 2010]).


Though Father Foster was an employee of the Diocese, the alleged acts of sexual abuse are not imputable to the Diocese, as such acts are unrelated to the furtherance of the Diocese's business and are allegedly personal motives of Father Foster. Therefore, the Court finds that personal jurisdiction is not present under CPLR § 302 (a) (1).

Since the Court finds that personal jurisdiction is not present under CPLR § 302 (a) (1) and (2), it need not evaluate the claim under CPLR § 302 (a) (3) or determine if the exercise of jurisdiction comports with due process, as it finds that the Diocese's relationship with the state of New York does not fall within the terms of CPLR § 302.

Accordingly, it is hereby ORDERED that defendant Diocese of Burlington’s motion pursuant to CPLR 3211 (a) (8) to dismiss the complaint for lack of personal jurisdiction is granted, and the complaint and any crossclaims are dismissed in its entirety as against the 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.

This constitutes the decision and order of the Court.

<u>8/14/2023</u> DATE	 ALEXANDER M. TISCH, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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