

SWKI 1 Doe v Watchtower Bible & Tract Socy. of Pa.
2023 NY Slip Op 33177(U)
August 24, 2023
Supreme Court, Kings County
Docket Number: Index No. 512105/21
Judge: Mark I. Partnow
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

At an IAS Term, Part CVA 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of August, 2023.

PRESENT:

HON. MARK I. PARTNOW,

Justice.

-----X
SWKI 1 DOE,

Plaintiff,

-against-

Index No. 512105/21

MS# 5 273

WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., GOVERNING BODY OF JEHOVAH'S WITNESSES, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, JEHOVAH'S WITNESSES KINGDOM HALLS, ELDER VERDAJO a/k/a ELDER JOHN DOE, and DOES 1 through 5,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	19-20, 27-28
Opposing Affidavits (Affirmations) _____	25, 32
Affidavits/ Affirmations in Reply _____	_____
Other Papers: _____	_____

Upon the foregoing papers, defendant Governing Body of Jehovah's Witnesses (Governing Body) moves for an order, pursuant to CPLR 3211 (a) (2), (7) and (8), dismissing the complaint of plaintiff SWKI 1 Doc. Defendants Watchtower Bible and Tract Society of New York, Inc. and Christian Congregation of Jehovah's Witnesses

(collectively, JW defendants) move for an order, pursuant to CPLR 3211 (a) (7), dismissing plaintiff's complaint.

Plaintiff commenced this action pursuant to the Child Victim's Act (CVA) alleging that she was sexually abused while participating in preaching activities or "field service" as a congregant of the Jehovah's Witness faith. Plaintiff alleges that she began to participate in field service in 1984 when she was approximately 14 years old. As a minor, plaintiff was paired with an "Elder," defendant Elder Verdajo a/k/a Elder John Doe, to accompany her during field service. Plaintiff alleges that in performing field service, the Jehovah's Witness minor and his/her assigned Elder spend significant one-on-one time alone together. Plaintiff asserts that she and Elder Verdajo would meet in the early morning before field service began, with Elder Verdajo picking plaintiff up in his car or arranging to meet plaintiff at the premises of defendant Jehovah's Witnesses Kingdom Halls. Plaintiff alleges that she was subjected to sexual abuse in Elder Verdajo's car, which continued from approximately 1984 to 1986. Plaintiff also detailed one occasion of alleged abuse which took place while plaintiff was submerged in water during her baptismal ceremony. Plaintiff states that as a result of the alleged abuse, she suffered emotional distress and chronic mental health issues, drug addiction and alcoholism which have required and/or will require counseling and other treatment.

Plaintiff sets forth causes of action against Elder Verdajo for assault, battery and intentional infliction of emotional distress. As to the remaining defendants, including the Governing Body and the JW defendants, plaintiff sets forth causes of action for negligence, gross negligence, breach of fiduciary duty and fraudulent concealment.

Following service of the complaint, the Governing Body and the JW defendants brought the instant motions to dismiss.

In determining whether a complaint is sufficient to withstand a motion pursuant to CPLR 3211 (a) (7), “the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). The court must accept the facts alleged in the complaint to be true and “determine only whether the facts as alleged fit within any cognizable legal theory (*Dye v Catholic Med. Ctr. of Brooklyn & Queens*, 273 AD2d 193, 193-194 [2d Dept 2000]). The court “is not concerned with determinations of fact or the likelihood of success on the merits” (*Detmer v Acampora*, 207 AD2d 477, 477 [2d Dept 1994] *see Stukuls v State of New York*, 42 NY2d 272, 275 [1977]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]). Although a complaint may be inartfully drawn, illogical or even informal, it will be “deemed to allege whatever cause of action can be implied from its statement by fair and reasonable intendment” (*Shields v School of Law, Hofstra Univ.*, 77 AD2d 867, 868 [2d Dept 1980]; quoting *Lupinski v Village of Ilion*, 59 AD2d 1050, 1050 [4th Dept 1977]). However, bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference (*see Doria v Masucci*, 230 AD2d 764, 765 [2d Dept 1996]). “[C]onclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss” (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). When the allegations in a complaint are

vague or conclusory, dismissal for failure to state a cause of action is warranted (*see Schuckman Realty, Inc. v Marine Midland Bank, N.A.*, 244 AD2d 400, 401 [2d Dept 1997]; *O’Riordan v Suffolk Chapter, Local No. 852, Civil Service Employees Association, Inc.*, 95 AD2d 800, 800 [2d Dept 1983]).

Governing Body

The basis for the Governing Body’s motion to dismiss is that the Governing Body is not a legal or jural entity, but rather is a group of eight individuals who are involved exclusively with ecclesiastical matters within the Jehovah’s Witnesses religion. The Governing Body maintains that even if it were considered to be an “an unincorporated association” capable of being sued, the claims against the Governing Body must be dismissed because plaintiff has not alleged, and cannot allege, that all individual members of the current Governing Body (who were not members of the Governing Body when the alleged abuse took place) authorized or ratified the alleged abuse. While plaintiff does not characterize the Governing Body as an unincorporated association in her complaint, she takes that posture in her opposition papers.

In *Martin v Curran* (303 NY 276, 282 [1951]), the Court of Appeals held that because a voluntary, unincorporated membership association has no existence independent of its members, suits against association officers, whether for breaches of agreements or for tortious wrongs, were limited “to cases where the individual liability of every single member can be alleged and proven.” Viewing the Governing Body as an unincorporated association, plaintiff here was required to plead and prove that each member of the Governing Body authorized or ratified the alleged wrongful conduct. Plaintiff has not alleged in her complaint that the individual members of the present

Governing Body authorized or ratified any decision to pair Elder Verdajo with plaintiff or the alleged abuse. Accordingly, plaintiff has not set forth any cognizable cause of action against the Governing Body, and the instant action is subject to dismissal as to this defendant. While this court is not bound by decisions of courts of coordinate jurisdiction (*see Mountain View Coach Lines, Inc. v Storms*, 102 AD2d 663 [2d Dept 1984]), its decision herein with respect to the Governing Body is consistent with those made in other CVA cases in Supreme Court, Kings County (*J.B. v Interlaken Congregation of Jehovah's Witnesses*, 2023 NY Slip Op 31338[U] [Sup Ct, Kings County 2023]; *Aldridge v Governing Body of Jehovah's Witnesses*, Sup Ct, Kings County, December 7, 2022, Love, J., index No. 519063/20).

Accordingly, the Governing Body's motion to dismiss the complaint pursuant to CPLR 3211 (a) (7) is granted.

JW Defendants

Plaintiff's claim for negligence is predicated on an assumed, express and/or implied duty to provide a reasonably safe environment for plaintiff and all minor persons who were likely to come within the influence or supervision of Elder Verdajo, "in his role as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer" (Complaint, NYSCEF Doc No 2, para 32). Plaintiff maintains that this duty of care was breached by defendants, including the JW defendants, by means which include negligently hiring, retaining, directing and supervising Elder Verdajo when they knew or should have known that he posed a threat of sexual abuse to children; failing to investigate the background of Elder Verdajo before placing him into close contact with plaintiff; failing to warn plaintiff, her parents and/or legal guardians of Elder Verdajo's

conduct despite having actual and constructive knowledge of sexual abuse; assigning or allowing Elder Verdajo to have contact with plaintiff despite having constructive and/or actual knowledge of sexual abuse; and failing to implement and maintain effective policies and procedures to prevent sexual abuse and abuse of children.

Plaintiff alleges in her complaint that when children belonging to the Jehovah's Witness faith participate in field service, they are usually paired with an Elder. Construing the complaint liberally and granting every favorable inference, it is plausible that minors were not expected to conduct field service activities on their own and that the JW defendants followed a protocol where a certain Elder was assigned or approved to accompany minors in what essentially would be a supervisory or protective role. Thus, the court finds that plaintiff has sufficiently pleaded that the JW defendants owed a duty to assure that the Elders accompanying minors were not predisposed to commit sexual abuse or other harmful conduct to the minor congregants to which they are assigned. Plaintiff alleges a breach of this duty by the JW defendants in that that they were aware of Elder Verdajo's predilection to sexually abuse minors but nonetheless placed him with plaintiff for field service activities. Affording plaintiff the benefit of every positive inference, as is required on a motion to dismiss, it may be inferred that the JW defendants exercised some control over Elder Verdajo as to his assignment to accompany a minor for field service and the ability to remove him from such assignment. The court therefore finds that the complaint sufficiently pleads a cause of action sounding in negligence against the JW defendants (*see Conti v Watchtower Bible & Tract Society of N.Y., Inc.*, 235 Cal App4th 1214, 1233-1235, 186 Cal Rptr3d 26, 43-44 [2015]; *J.B.*, 2023 NY Slip

Op 31338[U], at *3; *Tarry v Watchtower Bible and Tract Soc.*, Sup Ct, Kings County, June 5, 2023, Garson, J., index No. 520406/19)

“To constitute gross negligence, a party’s conduct must smack of intentional wrongdoing or evince a reckless indifference to the rights of others” (*Dolphin Holdings, Ltd. v Gander & White Shipping, Inc.*, 122 AD3d 901, 902 [2d Dept 2014], quoting *Ryan v IM Kapco, Inc.*, 88 AD3d 682, 683 [2d Dept 2011]; see *John v Varughese*, 194 AD3d 799, 802 [2d Dept 2021]). In addition to the negligence claim, plaintiff sufficiently states a cause of action for gross negligence by alleging that the JW defendants’ acts and omissions “were committed with complete and reckless disregard for, and with willful, wanton, and actual conscious indifference to, the rights, safety, and welfare of Plaintiff and the general public.”

Whether formal or informal, a fiduciary relationship is one which is “founded upon trust or confidence reposed in one person in the integrity and fidelity of another” (*Apple Records v Capitol Records*, 137 AD2d 50, 57 [1st Dept 1988]). It only exists however, when one of the parties is “under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation” (*Marmelstein v Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue*, 11 NY3d 15, 21 [2008], quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005] [citations omitted]). A fiduciary relationship arises when one has reposed trust and confidence in the integrity and fidelity of another who thereby assumes control and responsibility (see *Board of Managers of Fairways at North Hills Condominium v Fairway at North Hills*, 193 AD2d 322, 325 [2d Dept 1993]). The inquiry into whether such a relationship exists is therefore fact-specific, and focuses largely on whether there exists reliance, de facto control and

dominance within the relationship (*Marmelstein*, 11 NY3d at 21; *AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 11 NY3d 146, 158 [2008]; *Northeast Gen. Corp. v Wellington Adv.*, 82 NY2d 158, 173 [1993]). Where a parishioner plaintiff seeks to establish the existence of a fiduciary relationship with an institutional church defendant, the plaintiff may not merely rely on the church's status in general, but must come forward with facts demonstrating that his or her relationship with the institution was somehow unique or distinct from the institution's relationship with other parishioners generally (*see Doe v Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]).

Plaintiff alleges that a fiduciary relationship with the JW defendants exists “based on the fact that Plaintiff trusted her physical, mental, psychological, and spiritual care to the priests, officers, directors, officials, employees, volunteers, servants, and/or all those acting as agents of, or on behalf of, [movants], who held themselves out as beholden to a spiritual and interpersonal duty to provide advice, benefit, and guidance to Plaintiff.” However, while a duty of care may exist on the part of the JW defendants with respect to the pairing of minors and Elders on field service activities, plaintiff's general assertions are inadequate to show that this duty rises to the level of a fiduciary. A fiduciary relationship is not adequately pleaded by merely stating, as plaintiff does here in conclusory fashion, that a relationship of trust existed (*see Mermelstein*, 11 NY3d at 21).

A cause of action to recover damages for fraudulent concealment requires, in addition to the elements of a cause of action to recover damages for fraudulent misrepresentation, “an allegation that the defendant had a duty to disclose material information and that it failed to do so” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d

173, 179 [2011], quoting *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 376 [1st Dept 2003]). The elements of fraudulent misrepresentation are “a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (Mandarin Trading Ltd., 16 NY3d at 178 [internal quotation marks omitted]; see *Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]). A fraud claim must be stated with sufficient particularity (see CPLR 3016 [b]).

In the complaint, plaintiff alleges that the JW defendants engaged in a conscious, deliberate plan to conceal from the public the sexual abuse committed by Elder Verdajo; conceal the identity of Elder Verdajo; conceal from appropriate law enforcement officials the sexual abuse committed by Elder Verdajo against plaintiff and/or other minors; attack the credibility of plaintiff and/or other victims of Elder Verdajo; and impede or otherwise prevent plaintiff and other victims from pursuing legal action against Elder Verdajo. Accepting these allegations as true, they do not properly state a cause of action for fraudulent concealment on behalf of plaintiff as there is no allegation that the alleged abuse was concealed from plaintiff and that plaintiff relied on the concealment of the alleged abuse to her detriment. To the extent that the allegations are intended to constitute a claim for failure to report in violation of Social Services Law [SSL] §§ 413 and 420, there is no allegation that any specific employee or member of the JW defendants was a mandated reporter within the meaning of SSL 413 (1) (a).

Accordingly, it is

ORDERED that the motion to dismiss the complaint as to the Governing Body (MS # 2) is granted, the complaint dismissed against said defendant and the action is severed accordingly; and it is further

ORDERED that the motion to dismiss the complaint as to the JW defendants (MS # 3) is granted to the extent that plaintiff's causes of action for breach of fiduciary duty and fraudulent concealment are dismissed as to the JW defendants; and it is further

ORDERED that the dismissal motion of the JW defendants (MS # 3) is denied in all other respects; and it is further

ORDERED that any relief not expressly granted herein, has been considered, and is denied.

The foregoing constitutes the decision and order of the court.

ENTER,

J. S. C.

**HON. MARK I PARTNOW
SUPREME COURT JUSTICE**