

**A.S. v Segunda Iglesia Pentecostal Juan 3:16
Assamblea De Dios**

2023 NY Slip Op 33706(U)

October 17, 2023

Supreme Court, Westchester County

Docket Number: Index No. 61114/2021

Judge: Leonard D. Steinman

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This opinion is uncorrected and not selected for official publication.

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

-----X
A.S.,

Plaintiff,

-against-

**SEGUNDA IGLESIA PENTECOSTAL JUAN 3:16
ASSAMBLEA DE DIOS; NEW YORK MINISTRY
NETWORK; ASSEMBLIES OF GOD NATIONAL
YOUTH MINISTRIES; THE GENERAL COUNCIL
OF THE ASSEMBLIES OF GOD; NATIONAL ROYAL
RANGERS MINISTRIES; EDWIN DEJESUS,**

Defendants
-----X

LEONARD D. STEINMAN, J.

**Part CVA-R
Index No. 61114/2021
Mot. Seq. Nos. 002, 004**

DECISION AND ORDER

The following papers, in addition to any memoranda of law and/or statement of material facts, were reviewed in preparing this Decision and Order:

Moving Defendants' Notice of Motion (002), Affirmation & Exhibits.....	1
Plaintiff's Affirmation in Opposition & Exhibits.....	2
Moving Defendants' Reply & Affirmation.....	3
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Plaintiff alleges that in 1987, when he was approximately 10-11 years old, he was sexually abused by defendant Edwin Dejesus, a deacon/youth leader of Segunda Iglesia Pentecostal Juan 3:16 (hereinafter the "Church"), while on Church premises and camping trips sponsored by co-defendants in New York. Defendants The General Council of the Assemblies of God ("GCAG"), Assemblies of God National Youth Ministries ("Youth Ministries") and National Royal Rangers ("Royal Rangers")(collectively referred to as the "Moving Defendants") now move to dismiss the complaint as against them pursuant to CPLR 3211(a)(1), (2), (7) and (8). The Moving Defendants also seek a protective order pursuant to CPLR 3103 to prevent pre-answer disclosure.

For the reasons set forth below, the motion to dismiss is granted in part and denied in part and the motion for a protective order is denied as moot.

BACKGROUND

Plaintiff commenced this action on August 13, 2021 and amended his pleadings on March 3, 2022. In his amended complaint, plaintiff asserts that in 1987 and continuing until approximately 1991, plaintiff was sexually abused by Dejesus who acted as a deacon/youth leader/teacher of/at the Church and/or Youth Ministries and Royal Rangers.

Plaintiff alleges that the defendants knew or should have known of the sexual abuse and that the “dominating culture of the Church and [d]efendants over [p]laintiff pressured [p]laintiff not to report Dejesus’ sexual abuse....” Plaintiff asserts claims against the Moving Defendants for: negligence, negligent hiring, retention, supervision or direction and premises liability.¹

LEGAL ANALYSIS

On February 14, 2019, New York State enacted the Child Victims Act (L. 2019 c.11) (“CVA”) which, *inter alia*, (1) extended the statute of limitations on criminal cases involving certain sex offenses against children under 18 (see CPL 30.10[f]); (2) extended the time in which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (see CPLR 208 [b]); and (3) opened a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing August 14, 2019 (see CPLR 214-g). This “window” period was thereafter extended for an additional one year.

“A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint on the ground that a defense is founded on documentary evidence ‘may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law’.” *S & J Service Center, Inc. v. Commerce*

¹ Plaintiff also asserts claims for assault, battery and intentional infliction of emotional distress against Dejesus only.

Commercial Group, Inc., 178 A.D.3d 977, 978 (2d Dept. 2019), quoting *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 (2005).

Not every document is considered “documentary evidence” upon which a CPLR 3211(a)(1) motion may lie. For evidence to qualify as “documentary evidence” under the statute it must be unambiguous, authentic and undeniable. *Attias v. Costiera*, 120 A.D.3d 1281 (2d Dept. 2014).

On a motion to dismiss for failure to state a cause of action, pursuant to CPLR §3211(a)(7), the court must determine whether, from the four corners of the pleading, “factual allegations are discerned, which taken together, manifest any cause of action cognizable at law.” *Salvatore v. Kumar*, 45 A.D.3d 560 (2d Dept 2007)(internal quotations omitted). Further, the pleading is to be afforded the benefit of every possible favorable inference. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). 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 N.Y.3d 11, 19 (2005).

On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a)(7), ‘[w]e accept the facts as alleged in the complaint as true, accord plaintiff[] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.’ ‘At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration.’ Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.

Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 141-142 (2017) (citations omitted).

GCAG

Personal Jurisdiction (CPLR 3211(a)(8))

It is undisputed that GCAG is a Missouri corporation with its principal place of business in Missouri. GCAG argues that there is no basis to find that this court has general or long-arm jurisdiction over it pursuant to CPLR §§301 or 302, and therefore the court lacks personal jurisdiction.

In response to a pre-answer motion to dismiss under CPLR 3211(a)(8), a plaintiff need only make a *prima facie* showing that personal jurisdiction exists, although the plaintiff carries the ultimate burden of proof on this issue. *America/International 1994 Venture v. Mau*, 146 A.D.3d 40 (2d Dept. 2016). The *prima facie* showing may be made by the facts alleged in the complaint (and supporting affidavits) and the court must accept as true the facts alleged in a complaint and accord a plaintiff every possible favorable inference. *Nick v. Schneider*, 150 A.D.3d 1250, 1251 (2d Dept. 2017); *Paradigm Marketing Consortium, Inc. v. Yale New Haven Hospital, Inc.*, 124 A.D.3d 736 (2d Dept. 2015).

GCAG has sufficiently established that it is not subject to the general jurisdiction of New York under CPLR §301. Therefore, this court will examine whether plaintiff can assert long-arm jurisdiction over GCAG pursuant to CPLR §302.

CPLR §302(a) provides that a court may exercise personal jurisdiction over any non-domiciliary 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, except as to a cause of action for defamation of character arising from the act; or
3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, 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.

The plaintiff asserts that §§302(a)(1), (2) and (3) each separately confer jurisdiction over GCAG. The first amended complaint alleges that GCAG conducted business in the State including operating “for the benefit of the Church” and overseeing and controlling a variety of liturgical, educational, and faith formation programs including Youth Ministries and Royal Rangers. Plaintiff alleges that GCAG employed and supervised his abuser in New

York where plaintiff was abused and that GCAG knew or should have known that its negligent conduct could cause injury in New York.²

Plaintiff's allegations, in the light most favorable to him, have demonstrated *prima facie*, that GCAG, a Missouri corporation, transacted business and committed tortious conduct within the State of New York under CPLR 302(a)(1)-(3). *See WCVAWCK-Doe v. Boys & Girls Club of Greenwich, Inc.*, 216 A.D.3d 1 (2d Dept. 2023).

GCAG proffers no evidence or information with respect to its contacts in New York. The affirmation of defendants' counsel merely asserts that GCAG was incorporated in 1916 and "headquartered in Springfield, Missouri." The record provides no indication as to where GCAG was incorporated at the relevant time period. The affidavit of GCAG's General Secretary, Donna Barrett, who was not employed at the time of the alleged abuse, contains nothing with respect to whether GCAG had offices, employees or business dealings within the State at the time of the abuse.³

Because plaintiff has made a "sufficient start" towards establishing jurisdiction, GCAG's motion is denied without prejudice to renewal upon completion of discovery on the issue of whether long-arm jurisdiction may be established. *See Doe v. McCormack*, 100 A.D.3d 684 (2d Dept. 2012); *Shore Pharmaceutical Providers, Inc. v. Oakwood Care Center, Inc.*, 65 A.D.3d 623 (2d Dept. 2009).

CPLR 3211 (a)(1), (2) and (7)

A central issue to be determined is the nature of the connection between GCAG and the Church: more specifically, whether GCAG exercises control over the Church and if so, of what nature.

Religious organizations are generally categorized as congregational or hierarchical, depending upon the basis of governing power. *New York District of the Assemblies of God v.*

² Beyond the allegations in the amended complaint, plaintiff also points out that GCAG has admitted to having multiple affiliated churches within the State of New York and coordinating and supplying materials, resources and services to those affiliated churches.

³ GCAG's 1987 Constitution and Bylaws submitted in support of the instant motion reflect that the "Forty-Second General Council" was in Oklahoma, not Missouri where GCAG is headquartered.

Calvary Assembly of God, 64 A.D.2d 311 (3d Dept. 1978). A congregational church has been defined as “an independent organization governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government,” whereas a hierarchical church may be organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastic head. *Id.* at 313.

GCAG asserts that since it does not have a hierarchical structure or supervisory or governing control over local parishes, it cannot be liable for plaintiff’s abuse.

In her affidavit, Barrett seeks to describe the structure of GCAG and relationship between it and co-defendants. She attests that GCAG is a national fellowship, within which there are two classifications of churches: General Council affiliated churches and district affiliated churches. Citing to the Assemblies of God website, Barrett states that General Council affiliated churches enjoy “full autonomy, having developed to the point of where they are self-governing and self-supporting” whereas district affiliated churches have not developed to that point.⁴ Barret asserts that following the Church’s official affiliation with GCAC in 1984, the affiliation has been strictly ecclesiastical, involving only matters of “scriptural doctrine and conduct.”

Despite GCAG’s contentions that it is a congregationally organized religious society, its structure and involvement with and oversight and/or control over the Church remains unclear.⁵ On the Assemblies of God Website, the GCAG is described as the “national church” that, among other duties, organizes the mission programs, credentials ministers, oversees the church's colleges and seminary, and *provides “leadership for many national programs and ministries of the Assemblies of God.”* (emphasis added).⁶

⁴ <https://ag.org/About/About-the-AG/Structure>

⁵ In *Beachy v. Mississippi District Council for Assemblies of God*, the trial court denied a motion to dismiss determining that the GCAG is a hierarchal church fellowship. See *Beachy v. Mississippi District Council for Assemblies of God*, WL 5443303, – So.3d – (Miss. 2022).

⁶ Since GCAG asserts that Youth Ministries and Royal Rangers are national programs, it seemingly concedes that it provides the leadership for these programs to the churches that elect to implement them.

Further, although GCAG argues that it does not dictate local church structure, spiritual leadership or governance, GCAG's Constitution and Bylaws, Article XI, Section I, prescribes that,

(d) ***Subordinate in matters of doctrine and conduct.*** A General Council affiliated assembly shall recognize that a district council or The General Council of the Assemblies of God has the right to approve scriptural doctrine and ***conduct*** and to disapprove unscriptural doctrine and ***conduct*** and the ***authority to withdraw its Certificate of Affiliation if deemed necessary.*** (emphasis added).

GCAG argues that its control over the "conduct" of affiliate churches only refers to ecclesiastical conduct, but that is not defined in or clear from the text of its Constitution and Bylaws.

In all events, this dispute does not turn on the existence or contents of GCAG's Constitution and Bylaws, but what GCAG actually did or did not do with respect to the supervision of plaintiff and the hiring, retention, supervision or direction of Dejesus. And since GCAG's Constitution and Bylaws neither prove nor disprove plaintiff's factual allegations, dismissal is not warranted pursuant to CPLR 3211(a)(1). *See Roe v. Domestic and Foreign Missionary Society of the Protestant Episcopal Church*, 198 A.D.3d 698 (2021).

The complaint sufficiently alleges that that the Moving Defendants exercised enough control over the Church and/or Dejesus so as to infer that the Moving Defendants were responsible for the alleged negligent hiring and supervision of the alleged abuser. *Cf., A.M. v. Holy Resurrection Greek Orthodox Church of Brookville*, 190 A.D.3d 470 (1st Dept. 2021). Plaintiff has sufficiently stated his claims.⁷

Plaintiff's premises liability claim, however, is duplicative of plaintiff's negligence claims since they both arise from the same set of facts and the premises liability claim does not seek distinct damages. Both claims allege that defendants acted negligently in allowing

⁷ Even if the Moving Defendants' submissions were sufficient, which they are not, this court declines to convert the within motion to dismiss as one for summary judgment, as there is no evidence that the parties "deliberately charted a summary judgment course." *See Martinez v. Jrl Food Corp.* 194 A.D.3d 488 (1st Dept. 2021) *citing Wadiak v. Pond Management, LLC*, 101 A.D.3d 474 (1st Dept 2012).

plaintiff to be sexually abused. As a result, Third Cause of Action of the complaint is dismissed. *See Steven B. v. Westchester Day School*, 196 A.D.3d 624 (2d Dept. 2021).

With respect to GCAG's argument grounded on First Amendment considerations, the identical arguments have been addressed and explicitly rejected by CVA trial courts in both the Second and Third Departments. *See Maida v. Diocese of Brooklyn*, WL 2139769 (Sup. Ct., Kings Co. 2023.); *Harper Doe v. Diocese of Albany.*, Albany Co. Index No. 906168/2019, Decision and Order dated November 21, 2022 (Mackey, J.). It is true that the First Amendment proscribes courts from interfering in religious disputes or defining the standard of care that a religious practitioner owes a congregant when providing spiritual guidance. *See Langford v. Roman Catholic Diocese of Brooklyn*, 271 A.D.2d 494 (2000). However, courts can, and must, resolve issues where neutral principles of law can be applied without establishing church doctrine to resolve the dispute. *See generally Governing Body Commission of the International Society of Krishna Consciousness, et. al. v. Britten, et. al.*, (2d Dept. 2022); *see also Kelley v. Garuda*, 36 A.D.3d 593 (2d Dept. 2007).

Here, the court is not asked to evaluate or resolve an internal religious dispute. Rather, plaintiff in this action claims that he was sexually abused by Dejesus, a deacon/youth leader, and that the defendants knew or had reason to know of plaintiff's abuse and did nothing to prevent it. The First Amendment does not shield defendants from liability for negligence stemming from sexual abuse perpetrated by their employees and/or religious leaders. Therefore, the Moving Defendants' First Amendment argument fails.

The Moving Defendants' motion to dismiss plaintiff's negligence-based claims on CPLR 3211(a)(1), (a)(2) and (a)(7) grounds is denied.

Defendants Youth Ministries and Royal Rangers

The Moving Defendants contend that Youth Ministries and Royal Rangers are not legal entities, but rather religious programs created by GCAG that are made available for implementation by affiliated local churches at their own discretion, and therefore, are not entities that have the legal capacity to be sued.

It is premature to come to a conclusion as to whether Youth Ministries and Royal Rangers are juridical entities capable of being sued since no discovery on the issue has taken place. Barrett states in a conclusory fashion that that Youth Ministries and Royal Rangers are “programs” devised by GCAG to “provide spiritual and doctrinal resources for AG-affiliated churches in ministering to their youth.” But Barrett fails to provide any information with respect to the creation, structure and implementation of these “programs.”⁸ *Cf. Barr v. United Methodist Church*, 153 Cal. Rptr. 322, 326 (1979)(“the analysis of whether [United Methodist Church] is a jural entity involves a review of data relating to the creation, existence and operation of UMC”). It is not clear from the submissions of the parties what the status of the Youth Ministries or Royal Rangers is under New York Law.

In the alternative, defendants contend that even if Youth Ministries and Royal Rangers are unincorporated associations capable of being sued, which plaintiff argues is the case, they were improperly named as parties to this action. To the extent that Youth Ministries and Royal Rangers should have been sued in the name of an officer, that is a mere irregularity that can be corrected after plaintiff has had an opportunity for discovery. *See Miller v. Student Ass’n, State Univ. of New York at Albany*, 75 A.D.2d 843 (2d Dept. 1980). “The action ... is really against the association(s) itself. *Rankin v. Killion*, 190 Misc. 26, 27 (Sup. Ct. New York Co. 1947), *aff’d*, 273 A.D. 946 (1st Dept. 1948); *see also Smith v. Robilotto*, 27 A.D.2d 684, 685 (3d Dept. 1967)(although action, in form, was brought against two officers, action was “really against the association itself”).

At the conclusion of discovery, Youth Ministries and Royal Rangers may renew their motion to dismiss on the ground that they are not jural entities. The parties shall submit a proposed discovery schedule to the court via email to JudgeSteinmanRemote@nycourts.gov by October 30, 2023 and a conference shall be conducted on November 2, 2023 (TEAMS invitation to follow).

⁸ GCAG’s Constitution and Bylaws only references Royal Rangers once, in Article XIII, Section I(b)(2), which states that, “there shall be a national Men’s Ministries Committee which shall consist of...the commander of Royal Rangers...”. Youth Ministries is not mentioned.

Considering the foregoing, the Moving Defendants' motion for a protective order is denied as moot.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: October 17, 2023
Mineola, New York

ENTER:

LEONARD D. STEINMAN, J.S.C.