

M.R. v City of New York

2023 NY Slip Op 33814(U)

October 16, 2023

Supreme Court, New York County

Docket Number: Index No. 950027/2020

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

M. R.,

Plaintiff,

- v -

CITY OF NEW YORK, ADMINISTRATION FOR
CHILDREN'S SERVICES, THE NEW YORK FOUNDLING,
SISTERS OF CHARITY NEW YORK, CATHOLIC
CHARITIES OF THE ARCHDIOCESE OF NEW YORK,
ARCHDIOCESE OF NEW YORK

Defendant.

-----X

INDEX NO. 950027/2020
MOTION DATE 10/03/2022
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 91, 92¹

were read on this motion to/for RENEW.

BACKGROUND

Plaintiff initiated the instant lawsuit pursuant to the New York Child Victims Act seeking damages for alleged sexual abuse and assault she suffered as a child after being placed in foster care.

Plaintiff alleges she was sexually abused in or around 1955 to 1968 after she was placed in Foster Care with Vincent and Elsie Manniello by New York Foundling (“Foundling”).

Plaintiff alleges that she was placed into foster care in approximately 1950 by the City of New York and Bureau of Child Welfare, the predecessor entity of Defendant Administration of Children’s Services (“ACS”) and that ACS referred her to Foundling for foster care placement.

¹ Additionally, the court was provided with and considered the unredacted affirmation in support and exhibit “A” to said affirmation which was provided under separate cover based on a confidential designation.

The complaint alleges that the abuse started shortly after Plaintiff's placement with the Manniello family and identifies the alleged abusers as Vincent Manniello, Plaintiff's foster father and Plaintiff's foster brothers.

Plaintiff alleges that Foundling is a not-for-profit New York corporation organized under the laws of the State of New York. On July 6, 1891, The Foundling Asylum of the Sisters of Charity in the City of New York changed their name to The New York Foundling Hospital. The Archdiocese is a geographical ecclesiastical territory which encompasses ten counties in lower New York State.

PENDING MOTION

On August 12, 2020, Catholic Charities and Archdiocese filed a motion to dismiss pursuant to CPLR §§ 3211(a)(1), based on documentary evidence, and (a)(7), for failure to state a cause of action, or alternatively granting summary judgment pursuant to CPLR § 3212.

On August 16, 2021, the court (Silver, J) issued a decision and order granting the motion and dismissing the action as against Catholic Charities of The Archdiocese Of New York ("Catholic Charities"), and the Archdiocese Of New York ("Archdiocese") see NYSCEF Doc. 52.

The court held in pertinent part:

.... plaintiff opposes defendants' motion by making conclusory assertions that Foundling was subject to the Archdiocese and Catholic Charities' control and direction because Catholic Charities' present website refers to Foundling as one of 90 agencies in a federation of social services agencies to which Catholic Charities provides resources and support. Such evidence, however, does not require a different finding by the court where there is ample evidence contesting defendants' supervision and control. To be sure, there is an immense difference berth between providing resources and support for a social services agency and having control over it or the ability to direct it. This court would have to make a speculative leap to reach such a conclusion, especially where the documentary evidence submitted demonstrates that Foundling was a legally distinct and independent entity that did not have a principal-agent relationship with either the Archdiocese or Catholic Charities.

Plaintiff now moves for leave to renew pursuant to CPLR §2221(e) citing facts and documentation not previously available. Plaintiff also asks the court to consider recent related Appellate Case law suggesting that the original decision granting dismissal was in error.

For the reasons stated below, leave to renew is granted and upon renewal the motion to dismiss is denied.

DISCUSSION

Under CPLR § 2221(e), a motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion.”²

A motion for leave to renew is appropriate where a change in the law has occurred, or some new fact comes to the fore not previously known to the Court. *See Opalinski v. City of New York*, 164 A.D.3d 1354, 1355 (2d Dep’t 2018); *Sicoli v. Riverside Center Parcel 2 Bit Assocs., LLC*, 150 A.D.3d 607, 607 (1st Dep’t 2017).

Records that are recently received relevant to a material issue have been found by courts to satisfy the CPLR §2221(e) requirements. *See Preferred Mut. Ins. Co. v. DiLorenzo*, 183 A.D.3d 1091 (3d Dep’t 2020); *Matter of Olsen v. County of Nassau*, 14 A.D.3d 705 (2d Dep’t 2005).

On August 18, 2022, Plaintiff received discovery in a related³ action that disclosed facts as pertain to the relationship between the defendants. Specifically, Plaintiff argues that the

² The court is ruling on this motion as Judge Silver has retired and is thus “unable to hear” the motion [CPLR §2221(a)].

³ The discovery is from *NR v City of New York et al* Index No 950198/2019 in which was commenced by plaintiff’s sister.

discovery produced disclosed that Foundling board meetings were often presided over by Cardinal Spellman, the Archbishop of the Archdiocese of New York, Mon. Michael Dwyer, the Catholic Charities Director of the Division of Childcare, or Mon. Daniel McGuire, the Co-Administrator of Foundling and a priest of the Archdiocese. When Cardinal Spellman was unable to attend a board meeting, he would appoint an official to represent him at the meeting. The meetings were often held at the office of Catholic Charities. The discovery established a financial connection between Foundling and the Archdiocese and made decisions regarding Foundling's daily operations.

Plaintiff argues that facts adduced from said production demonstrate that the Archdiocese and Catholic Charities misrepresented their relationship with Foundling/Sisters of Charity from 1957-1968 in the affidavits filed in support of the Motion to Dismiss and refute that the Archdiocese and Catholic Charities had no control or supervision over Foundling/Sisters of Charity.

Defendants argue that the records fail to demonstrate in any way that either the Archdiocese or Catholic Charities had any connection or involvement in Plaintiff's placement in foster care in 1950 in the home of the Manniello family; however, the underlying decision focused on the relationship between movants and Foundling.

The Court finds that Plaintiff's motion satisfies the requirements of CPLR § 2221(e) because Plaintiff is offering facts not offered on the prior motion, which Plaintiff subsequently came into possession of that potentially refute the averments in the affidavits provided by the Archdiocese and Catholic Charities, which the court relied on in its determination granting dismissal.

Additionally, after the Court granted the Archdiocese's motion in this action, the First Department reversed the lower court's dismissal of the Archdiocese in an analogous case, *J.D. v. Archdiocese of New York*, 183 N.Y.S.3d 851 (1st Dep't 2023), holding that evidence and affidavits submitted did not conclusively resolve whether the alleged abuser was an agent of the Archdiocese. Plaintiff asks the court to consider the *J.D.* decision on this renewal motion. It is well settled that "(a) clarification of the decisional law is a sufficient change in the law to support renewal (see CPLR 2221[e][2]; *Roundabout Theatre Co. v. Tishman Realty & Constr. Co.*, 302 A.D.2d 272, 756 N.Y.S.2d 12)." *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 (2009).

In *J.D. v. Archdiocese of New York*, the Appellate Division held that the affidavit of the Associate General Counsel for the Archdiocese, also submitted on the original motion herein, did not constitute sufficient documentary evidence for the purposes of a pre-answer CPLR 3211(a)(1) motion. The same is true here, where multiple affidavits, in addition to that of the Associate General Counsel, were submitted to the court.

Moreover, as held in *JD* the certificate of incorporation submitted here is insufficient to utterly refute the allegations that Foundling was subject to the Archdiocese and Catholic Charities' control and direction, particularly in light of the additional alleged facts adduced from discovery.

WHEREFORE it is hereby:

ORDERED that Plaintiff's motion seeking leave to renew is granted; and it is further

ORDERED that upon renewal the portion of the Court's prior decision dated August 13, 2021, which granted dismissal of this action as against the Archdiocese and Catholic Charities is hereby vacated; and it is further

ORDERED that the prior motion by said parties seeking dismissal of this action is DENIED in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on all Defendants, and on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that the Archdiocese and Catholic Charities are directed to submit an answer within 20 days of service of this decision with notice of entry; and it is further

ORDERED that such service upon the Clerk 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 at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.



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10/16/2023
DATE

SABRINA KRAUS, 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