

**John Doe v Archdiocese of N.Y.**

2023 NY Slip Op 33850(U)

October 26, 2023

Supreme Court, New York County

Docket Number: Index No. 950065/2020

Judge: Sabrina Kraus

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

**PRESENT:** HON. SABRINA KRAUS **PART** **57TR**

*Justice*

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JOHN DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF MOUNT  
CARMEL CHURCH, OUR LADY OF MOUNT CARMEL  
SCHOOL

Defendant.

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**INDEX NO.** 950065/2020

**MOTION DATE** 10/25/2023

**MOTION SEQ. NO.** 007

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232

were read on this motion to/for MISCELLANEOUS.

**BACKGROUND**

This action commenced pursuant to the Child Victims Act (“CVA”), along with 69 other CVA cases pending before this court, alleges that Rudy Tremaroli (“Tremaroli”), a janitor at Our Lady of Mount Carmel School (“OLMC School”) within the Archdiocese of New York, sexually abused 70 plaintiffs at various locations in Bronx County, New York between 1958 and 1992.

Plaintiffs assert in these cases that the Archdiocese had actual notice of Tremaroli’s dangerousness, including twenty separate reports of Tremaroli sexually abusing a child that were made to ten different employees or agents of the Archdiocese and reports by alleged victims of Tremaroli and their parents to two different Pastors of the Church and two different Principals of the School. Plaintiffs allege that both the Pastors and Principals are agents or employees of the

Archdiocese and assert one cause of action for common law negligence against each of the defendants in each action.

### **ALLEGED FACTS**

Plaintiffs allege Tremaroli was hired by the Defendants in the early to mid-1960s to operate a Catholic community center formerly known as "Ciati Hall" [now known as "Our Lady of Mount Carmel Center"] ("community center") located at 2380 Belmont Avenue, Bronx, New York 10458. The community center was owned, operated, maintained, staffed and/or controlled by the Defendants. Plaintiffs allege Tremaroli contemporaneously worked for the Defendants at Our Lady of Mount Carmel Church and Our Lady of Mount Carmel School, and that through his employment by the Defendants at the community center and Our Lady of Mount Carmel, Tremaroli gained access to hundreds of local children by hosting a youth program, movie nights and a summer camp.

Plaintiffs allege Tremaroli used these events as opportunity to befriend and groom young boys under the guise of providing legitimate services to the most vulnerable members of the community. To become close to the boys at the community center, Tremaroli would allegedly ask the boys whether they liked girls and whether they had kissed girls. Tremaroli would then tell the boys that he would teach them how to act around girls, how to kiss, and how to masturbate.

Plaintiffs allege Tremaroli sexually assaulted and abused hundreds of boys while working at the community center and summer camp owned, operated, and/or controlled by the Defendants. In the mid-1970s, the Defendants removed Tremaroli from the community center and reassigned him exclusively to Our Lady of Mount Carmel School. At this time, Tremaroli

served as the facilities manager and basketball coach. He was given a private office located in Our Lady of Mount Carmel School gym.

Plaintiffs allege Tremaroli continued to sexually assault and abuse young male students and members of the community while serving in his new capacity at Our Lady of Mount Carmel School. Tremaroli's *modus operandi* remained the same: he would befriend and groom students, members of the basketball team and young boys who would use the school's facilities before and after school and on the weekends, talk to them about their interest in girls, isolate the boys from their peers, and sexually assault and abuse them.

Tremaroli's alleged acts of sexual assault and abuse ranged from forcible kissing and touching of children's genitals to forcing children to perform oral sex and sodomy. Plaintiffs further allege, Tremaroli assisted in exposing his victims to another well-known pedophile. Tremaroli sexually assaulted one of his victims at Our Lady of Mount Carmel during an assembly honoring or otherwise involving alleged pedophile Reverend Bruce Ritter, a Catholic priest and founder of Covenant House who allegedly used charitable funds to support his sexual abuse of minors.

In approximately 1974, Plaintiffs allege one of Tremaroli's victims notified the Defendants of the ongoing sexual abuse. Despite notice of Tremaroli's sexual assaults of the neighborhood's defenseless children, the Defendants permitted him to remain an employee and gave him unfettered access to his victims.

In the middle to late 1980s, to convince a victim that his repeated sexual assaults were appropriate, Tremaroli bragged that he had seen the penises of most of the male students at Our Lady of Mount Carmel School for the past thirty (30) years. Tremaroli continued working for the Defendants at Our Lady of Mount Carmel School until his death.

## **PROCEDURAL HISTORY**

### ***Procedural History Specific to Index Number 950065/2020***

During the period of the pandemic, Plaintiff in this case moved to compel his deposition notwithstanding any pandemic stays as he had chronic conditions and was concerned that if he contracted COVID due to his comorbidities he might become quite ill. Defendants opposed having to move forward with Plaintiff's deposition as no responsive pleadings had been filed to the complaint and no discovery had taken place. Pursuant to a decision and order dated May 14, 2020, the court granted plaintiff's motion and ordered defendants to proceed with plaintiff's deposition within 60 days of the order.

Plaintiff's deposition took place over multiple dates.

On August 21, 2020, defendants filed their answers and issue was joined.

On April 26, 2021, plaintiff served a notice to take deposition of non-party witness, James Irwin ("Irwin"), who was a principal of the School, and whom Plaintiffs alleged was complicit with Tremaroli.

On June 30, 2021, the parties remotely deposed James Irwin. The deposition was stopped after approximately one-hour as Irwin was too tired to proceed. Irwin testified he could not remember even basic pedigree information.

On August 10, 2021, defendants moved for a protective order staying Irwin's continued deposition, deeming Irwin incompetent to testify, and precluding the use of his deposition transcript in any of the pending actions. The school "cross-moved" for the same relief.

Pursuant to a decision and order dated August 27, 2021, the court issued an order staying the continued deposition of Irwin until a decision as to his competency could be made, based on information to be provided by Irwin's doctor, Dr. Blair Ford.

On October 26, 2021, the court so-ordered a subpoena *duces tecum* as to Dr. Ford.

On December 17, 2021, The Archdiocese moved for a protective order staying the deposition of Dr. Ford, seeking a GAL for Irwin, and then severely limiting the records to be produced by Dr. Ford and related relief. The School “cross-moved” for the same relief and plaintiff cross-moved for an order directing that a conference be scheduled before the Court to facilitate and expedite the determination of Mr. Irwin’s competency to testify.

On March 24, 2022, the parties entered a stipulation agreeing that the court would order a copy of Irwin’s power of attorney be provided to the court. On April 27, 2022, the court issued a further order finding that after inspection of the power of attorney, it contained no privileged information and could be turned over to the parties.

On December 28, 2022, Irwin passed away.

On July 10, 2023, the court granted the motion for a protective order to the extent of holding that all testimony from Irwin’s unfinished deposition was stricken from the record.

### ***Procedural History Common to All 70 Actions***

All of these seventy cases were brought in the period from 2019 to 2021. The parties in all 70<sup>1</sup> cases are represented by the same plaintiffs’ and defense counsel.

Due to the similarity of the actions, the parties agreed to reduce duplicative discovery and motion practice and stipulated to consolidate the 70 actions (“Tremaroli Actions”) for pre-trial discovery and discovery motion practice only. On September 22, 2022, by order of this court, all 70 matters were consolidated for discovery and motion practice with filings to be made under index no. 950065/2020 (NYSCEF no. 135).

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<sup>1</sup> Initially there were seventy cases filed, some of those actions have since settled and at least three of the plaintiffs in this group have actions have since passed away, as a result some of the actions are stayed.

At a preliminary conference held on September 23, 2022, it was agreed that the depositions of each of the Plaintiffs would proceed, to be followed by the depositions of Defendants' corporate representatives, with the understanding that the Plaintiffs' depositions would proceed at a rate of two per week and be completed by June 2023.

The parties did not adhere to this schedule, with Plaintiffs blaming defendants for delays and defendants asserting they were moving forward in good faith.

A court conference was held on December 14, 2022, concerning these delays, in which Plaintiffs' counsel requested that the deposition of the Archdiocese proceed without regard to the continuing Plaintiffs' depositions. The Court asked the Archdiocese to consent to produce a witness for deposition however, the Archdiocese's would not agree to same.

On March 7, 2023, Plaintiffs moved by order to show cause for an order requiring the Archdiocese produce a witness for deposition. The Archdiocese opposed, insisting that Defendants should be allowed to complete the Plaintiffs' depositions before producing any witness.

By Decision and Order dated April 19, 2023, the court ordered the Archdiocese to produce a witness for deposition on or before July 14, 2023. (NYSCEF no. 156).

On May 10, 2023, Plaintiffs served a notice setting the date for deposition as July 12, 2023. Plaintiffs further provided notice to the Archdiocese describing the particular matters to which the Archdiocese's designated witness was expected to testify including: (i) the Archdiocese's control of the Church and the priests assigned to the Church; and (ii) the Archdiocese's control of the School and the principals assigned to the School.

On June 22, 2023, Plaintiffs moved for an order compelling the Archdiocese to comply with outstanding discovery requests. Plaintiffs were seeking personnel files ie documents

pertaining to the employment, agency or assignment of duties for eleven individuals by the Archdiocese, including correspondence, job description, personnel documents, letters of appointment, assignment, transfer or reassignment letter. The individuals at issue were, Monsignor Louis Martorella, Monsignor John Ruvo, Father Anthony Pucci, Emilia Longo, Dominick Rella, Sister Aurelia, James Irwin, Brother Gilbert, Brother John, Brother Christopher and Rudy Tremaroli. Many of these individuals were deceased.

Pursuant to a decision and order dated June 29, 2023, the court denied the motion in large part holding that "... the personnel files of non-perpetrators purportedly charged with the duty to hire and/or supervise Tremaroli are not relevant, material, or necessary, as said documents would have no bearing on the issue of notice of Tremaroli's abuse or propensity to commit abuse." While acknowledging discovery should be broad the court expressed concern about the feasibility of allowing such discovery given the volume of pending CVA cases holding:

To require defendants to provide the files of non-abuser employees, even for a court in-camera review, would open the door for endless discovery on a significant portion of the five thousand CVA related actions filed within the City of New York. Such a theory is essentially saying that almost anyone who worked at an institution wherein an alleged abuser was employed during a ten, twenty, thirty-year employment history could be subject to review on the theory that something may appear in their files related back to a relevant matter.

On July 5, 2023, one week before the deposition, the Archdiocese's attorney sent an email to the Court asserting that they were unable to produce a witness for a deposition on or before July 14, 2023 and requesting a court conference.

On July 6<sup>th</sup>, 2023, Plaintiffs filed a third amended notice of deposition which provided as enumerated topics for examination:

1. Any information regarding the Archdiocese of New York's control and supervision of Our Lady of Mt. Carmel Church and Our Lady of Mt. Carmel School.

2. Any records demonstrating the Archdiocese of New York's control and supervision of Our Lady of Mt. Carmel Church and Our Lady of Mt. Carmel School, including, but not limited to any records regarding the appointment or placement at Our Lady of Mt. Carmel Church or Our Lady of Mount Carmel School of: Monsignor Louis Martorella, Monsignor Ruvo, and Father Anthony Pucci, by the Archdiocese of New York.
3. Any information regarding a financial relationship or financial interactions between the Archdiocese of New York and Our Lady of Mt. Carmel Church and our Lady of Mt. Carmel School.
4. Any information regarding the appointment or placement of former Our Lady of Mt. Carmel School Principal James Irwin by the Archdiocese of New York's Department of Education, and any records demonstrating the same, which should be located within Superintendent Deegan's office;
5. Any information regarding the appointment or placement of former Our Lady of Mt. Carmel School Principal Sister Aurelia by the Archdiocese of New York's Department of Education, and any records demonstrating the same, which should be located within Superintendent Deegan's office;

A conference was held on July 10, 2023, in which the Archdiocese's attorney represented that a witness would be produced for deposition on July 17, 2023, at 11:00 a.m. There was discussion at the conference of the Archdiocese producing Michael J. Deegan ("Deegan") as the witness for the deposition, who is the Superintendent of Schools for the Archdiocese. Deegan had recently been produced for deposition as the Archdiocese's representative in another group of cases. Plaintiffs' attorney expressed concern at the conference that, while Deegan may be qualified to answer questions regarding the Archdiocese's control of the School and its principals, he would not be qualified to testify on the other major area of inquiry: the Archdiocese's control of the Church and the priests assigned there.

Plaintiffs' attorney stated expressly on the record that Plaintiffs would seek relief under CPLR 3126 in the form of an order deeming the Archdiocese's defense asserting lack of control

as resolved in favor of Plaintiffs if the witness(es) to be produced were unprepared to testify in both areas of inquiry.

On July 10, 2023, Plaintiffs filed a fourth amended notice of taking deposition laying out the same five areas of inquiry.

On July 17, 2023, the Archdiocese produced Sister Patricia Anastasio, the Associate Superintendent for Teaching Personnel with the Archdiocese's Superintendent of Schools' office for a deposition.

### **PENDING MOTION**

On October 25, 2023, Plaintiffs moved by order to show cause for an order directing:

- (i) that Defendant the Archdiocese of New York (the "Archdiocese") be compelled to produce one or more fully qualified and prepared witnesses to testify at deposition pursuant to 22 NYCRR 202.20(d) regarding all information known or reasonably available to the Archdiocese regarding the five enumerated topics in Plaintiffs' Fourth Amended Notice of Deposition, by a date certain, no later than September 25, 2023;
- (ii) that if the Archdiocese fails to so produce one or more fully prepared witnesses for deposition by such date September 25, 2023, the Archdiocese's Answers to Plaintiffs' Complaints shall be stricken pursuant to CPLR 3126(3); or alternatively,
- (iii) that the issues of the Archdiocese's control of Our Lady of Mount Carmel Church and Our Lady of Mount Carmel School, and its employment of the persons performing work and services at the Church and School, including without limitation, Monsignor Louis Martorella, Monsignor Ruvo, Father Anthony Pucci, Sister Aurelia, and James Irwin, be deemed resolved in favor of Plaintiffs for purposes of these actions pursuant to CPLR 3126(1), and that the Archdiocese be prohibited from offering evidence in support of its defense that it had no control of Our Lady of Mount Carmel Church and Our Lady of Mount Carmel School, or that it did not have an employment relationship with the persons providing work and services at these facilities, pursuant to CPLR 3126(2), and that such defense be stricken from each of the Archdiocese's Answers in these actions; and
- (iv) that Plaintiffs be awarded costs and sanctions against the Archdiocese and its attorney Matthew Lampert, Rivkin Radler pursuant to 22 NYCRR § 130-1.1, including (a) attorney's fees relating to the bringing of this order to show cause for the Archdiocese's and its counsel's misconduct in the deposition of its corporate representative, (b) attorney's fees incurred in preparation for and taking of the deposition of Sister Anastasio

on July 17, 2023, and (c) an appropriate monetary sanction in the Court's discretion to deter such misconduct obstructing discovery in the future.

The motion was fully briefed and on October 25, 2023, the court heard oral argument and reserved decision.

The motion is granted to the extent set forth below.

### **DISCUSSION**

The court has reviewed in detail the deposition transcript of Sister Anastasio, and has viewed the video of the deposition. The court agrees that counsel for the Archdiocese objected to questions so frequently and directed the witness not to answer on so many occasions that plaintiffs were deprived a full and fair opportunity to obtain the information needed. There was a total of 226 questions during Sister Anastasio's deposition, to which the Archdiocese's attorney interjected or interrupted in response 105 times, for an astounding rate of 46% of the questions. On at least 20 occasions the witness was directed not to answer the question.

Additionally, the court finds that Sister Anastasio was not adequately prepared or sufficiently knowledgeable to answer questions on the designated topics, she was familiar with the process in the schools, but not familiar with the way in which the Archdiocese participated in the placement and direction of those at the school.

Much of the dispute centered on the fact that this court had previously ordered that the Archdiocese need not produce certain personnel files. This was the basis for many of the directions to the witness not to answer questions. It was also part of the reason the witness was unprepared to answer many questions, as counsel for the Archdiocese did not wish to prepare the witness by showing her the personnel files because he did not want then to be compelled to produce those files.

Based on the foregoing, the court finds that at this point the failure to direct the Archdiocese to turn over the previously requested personnel files is hampering the discovery in this case. Initially, the Archdiocese had argued that prior to being directed to turn over the files there should be questioning at the deposition to determine if there was relevant information in the files. Then, at the deposition, the witness produced was directed not to answer those questions.

As such, the court finds both that the Archdiocese must turn over the files and produce a witness for further deposition. The witness produced must be prepared by the Archdiocese in advance of the deposition to answer questions on the topics outlined in the fourth amended notice of deposition. At argument, Plaintiff requested that the court order Cardinal Dolan appear for a deposition. The Archdiocese disagreed with the request, but asserted they had no other specific individual in mind to propose for a continued deposition should the court order one. While the court is not prepared to order Cardinal Dolan to appear for a deposition at this juncture, the court notes that the website of the Archdiocese identifies the position of Vicar General as being "... the equivalent of a chief operating officer..."<sup>2</sup> and that someone in such a position would presumably be sufficiently knowledgeable to address the prescribed issues of inquiry in this matter.

The court does not find that any conduct engaged in by counsel for the Archdiocese rises to the level of sanctionable behavior and finds that counsel was zealously representing his client and always acted in a civil manner during the deposition.

WHEREFORE it is hereby:

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<sup>2</sup> <https://archny.org/vg/>. Court may take judicial notice of reliable information on public websites *see eg Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 16 (2009).

ORDERED that Plaintiffs' motion is granted to the following extent:

ORDERED that within 30 days from the date of this order the Archdiocese produce to Plaintiffs personnel files for Monsignor Louis Martorella, Monsignor John Ruvo, Father Anthony Pucci, Emilia Longo, Dominick Rella, Sister Aurelia, Brother Gilbert, Brother John, and Brother Christopher; and it is further

ORDERED that any personal identifying information in such files for any individual that is not deceased, such as a teacher's employee number, social security number, day and month of birth may be redacted as well as any information pertaining to medical issues; and it is further

ORDERED that within 30 days of said production the Archdiocese produce a new witness, with knowledge and who has been prepared for further deposition on the issues outlined in the fourth amended notice of deposition; and it is further

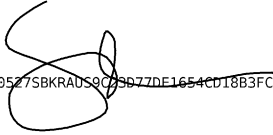
ORDERED that all other relief requested is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the parties appear for a virtual compliance conference on February 27, 2024 at 10:00 am; and it is further

ORDERED that this constitutes the decision and order of this court.

  
202310261205275BKRAUSQC79977DE1654CD18B3FC2FD382E0F4B

10/26/2023  
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE