

PC-39 Doe v St. Agatha Home for Children

2023 NY Slip Op 33856(U)

October 27, 2023

Supreme Court, New York County

Docket Number: Index No. 950559/2020

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

PC-39 DOE,

Plaintiff,

- v -

ST. AGATHA HOME FOR CHILDREN, THE NEW YORK
FOUNDLING, THE SISTERS OF CHARITY OF SAINT
VINCENT DEPAUL OF NEW YORK, THE CATHOLIC
CHARITIES OF THE ARCHDIOCESE OF NEW YORK,
ARCHDIOCESE OF NEW YORK, ROCKLAND COUNTY,
ROCKLAND COUNTY DEPARTMENT OF SOCIAL
SERVICES, STEPHEN JOHNSON

Defendant.

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INDEX NO. 950559/2020
MOTION DATE 06/30/2023
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to/for RENEW.

BACKGROUND

Plaintiff initiated the instant action pursuant to the New York Child Victims Act.

The Complaint alleges that Plaintiff was sexually assaulted by Stephen Johnson (“Johnson”) at St. Agatha Home for Children (“St. Agatha”), a group home within the territory of the Archdiocese that was run by St. Agatha Home for Children a/k/a The New York Foundling and The New York Foundling Hospital. The Complaint further alleges that the Archdiocese oversaw, managed, controlled, directed, and operated parishes, churches, schools, group homes and charities within the Archdiocese, including Defendants St. Agatha, New York Foundling, Sisters of Charity, and Catholic Charities.

On January 15, 2021, the Archdiocese and Catholic Charities moved to dismiss based on documentary evidence, asserting that it is separate from and unaffiliated with the New York

Foundling Hospital or St. Agatha Home. The Court issued a decision and order granting the Archdiocese's motion on January 24, 2023. The Court held that the Archdiocese had shown through documentary evidence that it had no supervisory authority over the New York Foundling and/or St. Agatha, nor its employees, including the alleged abuser, Stephen Johnson and as a result, dismissal was appropriate pursuant to CPLR § 3211(a)(1).

Plaintiff moves for leave to renew is based upon the recent decision of the Appellate Division, First Department in *J.D. v. Archdiocese of New York et al.*, 183 N.Y.S.3d 851 (1st Dep't 2023) arguing the decision represents a change in the law that would change the Court's prior determination on the motion to dismiss.

The motion is granted for the reasons set forth below.

DISCUSSION

A motion for leave to renew may be granted where it demonstrates that there has been a change in the law that would change the prior determination. CPLR § 2221(e)(2) (McKinney). Such a motion is addressed to the sound discretion of the trial court. *Kugler v. Kugler*, 107 N.Y.S.3d 422, 424 (2019).

After the Court granted the motion to dismiss in this action, the First Department reversed the lower court's dismissal of the Archdiocese in a similar matter, *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 argues that the *J.D.* decision constitutes an intervening change in the law which would change the Court's prior determination. Defendants argue that the *JD* decision did not articulate a change in the law or a matter of first impression and that the motion should therefore be denied. However, 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).

As the Appellate Division decision is directly on point, the motion for renewal is granted and upon renewal the motion to dismiss by the Archdiocese and Catholic Charities is denied.

WHEREFORE, it is hereby:

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

ORDERED that the portion of this Court’s prior decision dated January 24, 2023, which granted dismissal of this action as against the Archdiocese of New York and Catholic Charities is hereby vacated; and it is further

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

ORDERED that the Archdiocese of New York and Catholic Charities are directed to serve and file an answer within 20 days of the date of this order; and it is further

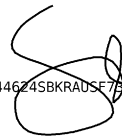
ORDERED counsel are directed to appear for a compliance conference on January 5, 2024, via MS Teams, at 2:30 pm; and it is further

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 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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10/27/2023
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