

**I.E. Doe v Archdiocese of N.Y.**

2023 NY Slip Op 33860(U)

October 17, 2023

Supreme Court, New York County

Docket Number: Index No. 951391/2021

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*

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I.E. DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, THE SOCIETY OF ST.  
VINCENT DE PAUL OF THE ARCHDIOCESE OF NEW  
YORK, THE ROMAN CATHOLIC DIOCESE OF  
BROOKLYN, HEARTSHARE ST. VINCENT'S SERVICES,  
CITY OF NEW YORK, JOHN AND JANE DOES 1-10

Defendant.

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**INDEX NO. 951391/2021**  
**MOTION DATE 08/08/2023**  
**MOTION SEQ. NO. 005**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 81, 82, 83, 84, 85, 86, 89, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for RENEW.

**BACKGROUND**

Plaintiff commenced this action pursuant to CPLR § 214-g (“CVA”) seeking redress for alleged sexual abuse that he experienced in two different foster care placements. Plaintiff alleges that in or around 1981, he was placed into his second foster care placement, a residential facility known as St. Vincent’s Home for Boys (“St. Vincent’s”). St. Vincent’s was founded by Defendant the Society of St. Vincent de Paul, Archdiocese of New York (the “Society”). Plaintiff alleged that currently, and at the time of Plaintiff’s abuse, the Archdiocese of New York (the “Archdiocese”) exercised direct authority and control over the Society.

At St. Vincent’s, Plaintiff met Monsignor Harris (“Harris”), who had been assigned to work at St. Vincent’s by Defendant Roman Catholic Diocese of Brooklyn (“Diocese”). In or around 1981, Harris allegedly began to sexually abuse Plaintiff when Plaintiff was a resident at

St. Vincent's. The alleged abuse continued on at least five occasions. On each occasion of abuse, an employee of St. Vincent's brought Plaintiff to Harris, and on each occasion of abuse, Harris' assistant was present outside of that room in which Harris was sexually abusing Plaintiff.

Plaintiff alleges that Harris sexually abused other boys at St. Vincent's during the time in which Harris was abusing him, and at least one other lawsuit under the CVA has been filed based on such abuse.

### **THE PENDING MOTION**

On November 30, 2022, this court (Love, J) entered a Decision and Order on the Archdiocese's Motion to Dismiss, which *inter alia* granted the Archdiocese's Motion to Dismiss Plaintiff's Fifth Cause of Action for Intentional Infliction of Emotional Distress ("IIED") as duplicative. The Court held:

"A cause of action for intentional infliction of emotional distress should not be entertained where the conduct complained of falls well within the ambit of other traditional tort liability" (see *DiOrio v. Utica City School District Board of Education*, 305 AD2d 1114 [4th Dept. 2003]). Plaintiff asserted causes of action for negligent supervision / hiring / retention / training, and hence the Intentional Infliction of Emotion Distress cause of action is duplicative. (NYSCEF Doc # 60).

On that same date, the Appellate Division, Second Department, issued two decisions reversing two trial court's dismissal of IIED claims on 3211 motions in CVA actions. Those cases, *Eskridge v. Diocese of Brooklyn, et al.*, 210 A.D.3d 1056, and *Novak v. Sisters of the Heart of Mary*, 210 A.D.3d 1104. In each of those cases, the Appellate Division held that the cause of action for IIED was not duplicative of the negligence causes of action.

Plaintiff now moves for leave to renew that part of the court's November 30, 2022, decision which dismissed the causes of action as duplicative. For the reasons set forth below, the motion is denied.

## DISCUSSION

CPLR § 2221 permits a party to move for leave to renew its opposition to a motion. 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.” CPLR § 2221(e)(2). Authority that changes or clarifies the “decisional law” of a case can be the basis for the grant of leave to renew and reconsideration of a prior decision. *See, e.g., Puello v. City of New York*, 118 A.D.3d 492, 492 (1st Dept. 2014); *Roundabout Theatre Co., Inc. v. Tishman Realty & Const. Co., Inc.*, 302 A.D.2d 272, 272-273 (1st Dept. 2003). A motion for leave to renew is “addressed to the sound discretion of the Supreme Court.” *HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718, 720 (2d Dept. 2012).

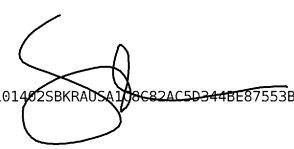
“The elements of intentional infliction of emotional distress are (1) extreme and outrageous conduct; (2) the intent to cause, or the disregard of a substantial likelihood of causing, severe emotional distress; (3) causation; and (4) severe emotional distress.” *Brunache v. MV Transp., Inc.*, 151 A.D.3d 1011, 1014 (2d Dep’t 2017). As held by this court in dismissing the claim “(a) cause of action for intentional infliction of emotional distress should not be entertained where the conduct complained of falls well within the ambit of other traditional tort liability.” *Xiaokang Xu v. Xiaoling Shirley He*, 147 A.D.3d 1223, 1226 (3d Dep’t 2017).

Even accepting as true the allegations in the Summons and Complaint and according the plaintiff the benefit of every possible favorable inference, the Archdiocese’s alleged conduct was not so outrageous or extreme as to support an IIED cause of action. *See Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 298-303 [1983]; *Petkewicz v. Dutchess Cty. Dep’t of Cmty. &*

*Family Servs.*, 137 A.D.3d 990, 990 [2d Dep’t 2016]; *Borawski v. Abulafia*, 117 A.D. 3d 662, 664 [2d Dep’t 2014]).

Unlike the claims in *Eskridge* and *Novak* the complaint in this action does not allege that defendants had knowledge of the abuse and took steps to conceal the abuse. Thus, in this case the cause of action was duplicative of the negligence claims.

Based on the foregoing, Plaintiff’s motion for leave to renew is denied.



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10/17/2023  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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