

SHC-MG-21 Doe v Archdiocese of N.Y.

2023 NY Slip Op 33911(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 950655/2020

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

SHC-MG-21 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, IONA PREPARATORY SCHOOL, A/K/A, IONA GRAMMAR SCHOOL

Defendant.

-----X

INDEX NO. 950655/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56, 59, 60

were read on this motion to/for DISMISSAL

BACKGROUND

On September 11, 2020, Plaintiff filed a complaint against The Archdiocese of New York ("Archdiocese"); and Iona Preparatory School, a/k/a Iona Grammar, ("Iona Prep") asserting (1) negligent hiring, retention, supervision, and/or direction; (2) negligence/gross negligence; (3) breach of fiduciary duty; and (4) Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 421. These claims arise from the numerous instances of alleged sexual abuse inflicted upon Plaintiff when he was a minor by Brother James J. Thompson, C.F.C. ("Brother Thompson"), while Brother Thompson was under the supervision of all defendants.

PENDING MOTIONS

On April 30, 2021, the Archdiocese moved to dismiss the complaint or alternatively for summary judgment.

On June 30, 2021, Plaintiff moved for leave to file a First Amended Complaint and serve a supplemental summons.

For the reasons set forth below, the motion to dismiss is denied and the cross-motion is granted.

DISCUSSION

Plaintiff asserts counsel learned that Iona Grammar was a distinct entity from Iona Prep at the time Plaintiff was abused, and that Iona Grammar merged with Iona Prep in 2012. Plaintiff seeks leave of this Court to file and serve his First Amended Complaint adding Ioana Grammar as a defendant. Further, because the Archdiocese argued Plaintiff has not pleaded enough facts to show the Archdiocese has a legal responsibility to Plaintiff and that Plaintiff has not alleged enough facts to support Plaintiff's breach of fiduciary duty cause of action, Plaintiff also seeks leave to file and serve his First Amended Complaint to assert additional facts to support his causes of action.

"A party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." CPLR 3025 (b). Such leave is to "be freely given upon such terms as may be just." *Id.* "In the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit." *NYAHS A Servs., Inc., Self-Ins. Trust v. People Care Inc.*, 156 A.D.3d 99, 102 (3d Dept 2017). A movant "need not establish the merits of the proposed amendment." *Id.*

Plaintiff is not stating additional causes of action; he is adding facts in support of the four causes of action stated in his initial complaint. Plaintiff's initial complaint had already given

notice to the Defendants of his common legal and factual bases, which are that Plaintiff was a minor student attending Iona Grammar, which was under the authority of Archdiocese when he was sexually abused by Brother Thompson, who was under the supervision of the Defendants while the Defendants had duties to protect Plaintiff. The aforementioned supplemental facts do not result in prejudice or surprise given that Plaintiff has added no new claims. The Defendants cannot show that they have “incurred some change in position or hindrance in the preparation of [their] case which could have been avoided had the original pleading contained the proposed amendment.” *Whalen v. Kawasaki Motors Corp.*, U.S.A., 92 N.Y.2d 288, 293 (1998).

“In order to add new defendants, plaintiffs [are] required to seek leave pursuant to CPLR 3025 (b) and 1003 to serve an amended summons and complaint purporting to join” new party defendants. *Halliday v. Town of Halfmoon*, 235 A.D.2d 709, 711 (3d Dep’t 1997). CPLR 1003 provides that parties “may be added at any stage of the action by leave of court.” This provision “must be read in conjunction with the last sentence of CPLR 305 (a) and CPLR 3025 (a) – (b).” *Lilley v. Greene Cent. Sch. Dist.*, 187 AD3d 1384 (3rd Dept, 2020)(citing Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1003:2 at 368).

Accordingly, in applying for leave to add new defendants the movant, just as in amending the pleading to add supplemental facts, “need not establish the merits of the proposed amendment and, in the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.” *Id.*

Given that Iona Prep has asserted the failure to join a necessary party as a defense, and that Iona Prep merged with Iona Grammar in 2012, adding “Iona Grammar” as a defendant would in no way result in prejudice or surprise. Neither Iona Prep nor the Archdiocese can

demonstrate that joining these parties, all of which may have had a role in assigning and supervising Brother Thompson to Iona Grammar at the relevant time, would prejudice them.

“Prejudice is more than the mere exposure of [a] party to greater liability. Rather, there must be some indication that the party has been hindered in the preparation of [its] case or has been prevented from taking some measure in support of its position.” *Lilley* at 1389.

As the court is granting leave to for Plaintiff to serve and file an amended complaint, the motion to dismiss the original complaint is denied as moot. The motion for summary judgment made prior to joinder of issue is denied as premature.

WHEREFORE it is hereby:

ORDERED that Plaintiff’s motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that Defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

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

SHC-MG-21 DOE,
Plaintiff,

v.

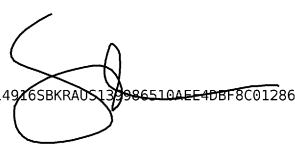
ARCHDIOCESE OF NEW YORK; IONA GRAMMAR SCHOOL;
and IONA PREPARATORY SCHOOL,
Defendants.

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office 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).

ORDERED that counsel are directed to appear for a virtual compliance conference on January 24, 2024, at 12:00 PM.


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SABRINA KRAUS, J.S.C.

11/1/2023
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE