

J.D. v Roman Catholic Diocese of Brooklyn

2023 NY Slip Op 33992(U)

October 30, 2023

Supreme Court, Kings County

Docket Number: Index No. 519856/2019

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART CVA P2

Justice

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J.D.,

Plaintiff,

- v -

ROMAN CATHOLIC DIOCESE OF BROOKLYN and ST. FRANCIS OF ASSISI ROMAN CATHOLIC CHURCH, BOROUGH OF QUEENS, CITY OF NEW YORK

Defendants.

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INDEX NO. 519856/2019

MOTION DATE 08/05/2022

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 75, 76, 77, 78, 79, 86, 88, 88, 89, 90, 91, 92, 93, 94, 97, 98, 99, 109, 110, 111, 112

were read on this motion to/for IN CAMERA INSPECTION AND COMPEL

Upon the foregoing documents, plaintiff moves for an in camera inspection and to compel production of the personnel file of Father Joseph Schuck:

This Court conducted an in-camera inspection of a portion of the Roman Catholic Diocese of Brooklyn's ("Diocese") personnel file of Father Schuck, consisting of 18 pages.

As discussed in Melfe v Roman Catholic Diocese of Albany (196 AD3d 811 [3d Dept 2021]):

"CPLR 3101 mandates full disclosure of all matter material and necessary in the prosecution or defense of an action" (Palmatier v Mr. Heater Corp., 156 AD3d 1167, 1168 [2017] [internal quotation marks and citations omitted]; see Forman v Henkin, 30 NY3d 656, 661 [2018]). "The words, 'material and necessary', are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial" (Galasso v Cobleskill Stone Prods., Inc., 169 AD3d 1344, 1345 [2019] [internal quotation marks and citations omitted]; see Hayes v Bette & Cring, LLC, 135 AD3d 1058, 1059 [2016]). The party seeking the discovery bears the burden of proving that the discovery

request is reasonably calculated to yield material and necessary information (*see Catlyn & Derzee, Inc. v Amedore Land Devs., LLC*, 166 AD3d 1137, 1141 [2018]). “Supreme Court is vested with broad discretion in controlling discovery and disclosure, and generally its determinations will not be disturbed in the absence of a clear abuse of discretion” (*Gold v Mountain Lake Pub. Telecom.*, 124 AD3d 1050, 1051 [2015] [internal quotation marks and citations omitted]; *see Div-Com, Inc. v Tousignant*, 116 AD3d 1118, 1119 [2014]).

* * *

The party opposing the discovery request bears the burden of showing the requested items are exempt or immune from disclosure (*see NYAHS Servs., Inc., Self-Ins. Trust v People Care Inc.*, 155 AD3d 1208, 1209 [2017]), and the opposing party cannot satisfy this burden “with wholly conclusory allegations” (*Madison Mut. Ins. Co. v Expert Chimney Servs., Inc.*, 103 AD3d 995, 996 [2013] [internal quotation marks and citation omitted]).

Many of issues in this case are functionally identical to those discussed in *Harmon v Diocese of Albany* (204 AD3d 1270 [3d Dept 2022]) and *Harper Doe v Diocese of Albany* (Sup Ct Albany Cty, Index No. 906168/2019, Mackey, J., November 21, 2022).

Defendant argues that certain documents are protected from disclosure by the First Amendment, citing numerous cases for the proposition that there are constitutional limitations on the discoverability of internal church documents, where they relate to the internal ecclesiastical process of priest discipline and sacramental status. However, as discussed in *Harper Doe*,

The First Amendment proscribes courts from defining the standard of care that a religious practitioner owes a congregant when providing spiritual guidance (*see Langford v Roman Catholic Diocese of Brooklyn*, 271 AD2d 494, 495 [2000] [“any attempt to define the duty of care owed by a member of the clergy to a parishioner fosters excessive entanglement with religion”]; *see also Wisconsin v Yoder*, 406 US 205, 215 [1972] [“to have the protection of the Religion Clauses, the claims must be rooted in religious belief”]). However, courts can, and must, resolve issues where “neutral principles of law ... can be applied without establishing” church doctrine to resolve the dispute (*Kelley v Garuda*, 36 AD3d 593, 595 [2007], quoting *Presbyterian Church in U.S. v Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 US 440, 449 [1969]).

Here, while the documents at issue are internal church documents, they are not being sought for the purposes of evaluating an internal church dispute or employment matter. Plaintiff claims that he was sexually abused by Father Schuck, and that the Diocese was negligent in hiring and supervising Father Schuck. As such, the ultimate issue is whether defendant knew or should have known of Father Schuck's propensity to abuse children. The fact that defendant is associated with a religion and protected by the First Amendment, is irrelevant for the purposes of discovery central to this matter. Said defendant must be treated as this Court would treat any employer accused of such negligence.

As further discussed in *Harper Doe*,

Courts in other jurisdictions have explicitly rejected First Amendment arguments seeking to preclude the production of documents in child sexual abuse cases (*see, e.g., Roman Catholic Archbishop of Los Angeles v Superior Court*, 131 Cal.App.4th 417, 440 [2005]; *People v Campobello*, 348 Ill.App.3d 619, 627 - 631 [2004] [Catholic diocese must comply with government subpoena in sexual assault prosecution against priest, even if Canon 489 requires bishop to maintain secret archive for files relating to internal church discipline]; *Hutchison v Luddy*, 414 Pa. Super. 138, 152 [1992]; *Lopez v Watchtower Bible and Tract Society of New York, Inc.*, 246 Cal.App.4th 566, 598-599 [2016]; *Thopsey v. Bridgeport Roman Cath. Diocesan Corp.*, No. NNHCV106009360S [Conn. Super. Ct. Feb. 15, 2012]; *see also Society of Jesus of New England v. Commonwealth*, 441 Mass. 662, 667 -- 668 [2004] [the ecclesiastical abstention doctrine did not preclude enforcement of the Commonwealth's subpoena duces tecum, which sought documents from a religious order regarding the criminal defendant, a priest of that order, who was facing prosecution for sexual assault where the matter did not involve resolving a dispute within the church itself]).

The Court notes that a significant number of pages of Father Schuck's personnel file sought to be withheld on First Amendment grounds should be granted. Specifically, redactions as to Privilege Log JJS000003, JJS000005, JJS000006, JJS000007, JJS000008, JJS000011, JJS000012, JJS000013, JJS000020, JJS000021 and JJS 0000022 are granted in that those

documents contain only correspondence regarding ecclesiastical decisions of the Church or information regarding Father Schuck's retirement that is not relevant to the instant matter. JJS000001-JJS000002 and JJS000015-JJS000018 are identical documents as identified in the Diocese's memorandum of law except that latter includes a more detailed heading and an enclosure identified in the document as a tabella which is on JJS000017-JJS000018. The Diocese is correct in that this letter is correspondence regarding an internal church matter. However, some information contained in the letter is not. Paragraphs 2, 3, 4, and the first sentence of paragraph 5 (paragraph beginning with Father Schuck was born to sentence ending with Board) on pages JJS000001 and JJS000015 should not be redacted. Further, the tabella on pages JJS 000017 and JJS 000018 should not be redacted as it is a chart of information regarding allegations of sexual abuse. The sections on page JJS000018 entitled "Measures Adopted By The Diocese" and "Bishop's Votum" should be redacted as they pertain to ecclesiastical decisions only.

The Diocese also seeks to redact most of page JJS000135 as the document pertains to a subsequent remedial measure. The document is a letter from the Bishop of Brooklyn to Father Schuck regarding a disciplinary action. This letter is not a subsequent remedial measure as described in the case cited by the Diocese. In *Del Vecchio* the Court properly denied discovery regarding a repair (*see generally Del Vecchio v Danielle Assoc., LLC*, 94 AD3d 941 [2d Dept 2012]). Disciplinary records, however, particularly when there is an allegation of negligent supervision, are discoverable (*see Staten v City of NY*, 90 AD3d 893, 895 [2d Dept 2011]; *see also Levin v City of Rochester*, 203 AD3d 1540 [3d Dept 2022]). Therefore, JJS000135 should be turned over as part of discovery.


While defendant is correct that the issue of whether the church complied with its internal policies is beyond this Court's ambit, the evidence relied upon by defendant in reaching those decisions is not.

Accordingly, it is hereby ORDERED that plaintiff's motion to compel is granted in part to the extent set forth above; and it is further

ORDERED that defendant shall exchange the records detailed in this order within thirty days after service of a copy of the order with notice of entry.

This constitutes the decision and order of the Court.

10/30/2023
DATE


ALEXANDER M. TISCH, J.S.C.

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