RKJW1 Doe v Watchtower Bible & Tract Socy. of N.Y., Inc.
2023 NY Slip Op 34072(U)
November 16, 2023
Supreme Court, Kings County
Docket Number: Index No. 511805/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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

Justice

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INDEX NO. 511805/2021

RKJW1 DOE,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; THE GOVERNING BODY OF JEHOVAH'S WITNESSES; KINGS HIGHWAY CONGREGATION OF JEHOVAH'S WITNESSES, BROOKLYN, NEW YORK; and DOES 1-5 whose identities are unknown to Plaintiff,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25-28; 34 – 39; 41 were read on this motion to/for DISMISS.

BACKGROUND

This is a lawsuit concerning sexual abuse of a minor that was allegedly perpetrated by a trusted religious figure within the Jehovah's Witnesses organization, Ronald Mark Harding (Harding). Plaintiff brought suit pursuant to CPLR 214-g ("CVA"), which revived previously time-barred civil claims for childhood sexual abuse. Defendant Governing Body of the Jehovah's Witnesses ("Governing Body" or "Defendant") moves to dismiss Plaintiff's Complaint on the grounds that the Governing Body is not a legal entity and that Plaintiff's legal claims are not viable or not adequately pleaded.

For the reasons set forth below, the motion is denied.

ALLEGED FACTS

The following facts are alleged in the complaint.

Plaintiff was raised a Jehovah's Witness and was a congregant at Kings Highway Congregation of Jehovah's Witnesses ("Congregation") as a child. Plaintiff regularly attended meetings, services, and events organized by, and affiliated with, the Jehovah's Witness organization. Harding was a ministerial servant of Defendants. Plaintiff alleges that Harding was, by virtue of his appointment as a ministerial servant, an agent of Defendants.

As a ministerial servant in Congregation Harding had substantial authority over Plaintiff and other congregants. Harding used his position as a ministerial servant to gain access to Plaintiff and used that access to accomplish the acts of molestation of Plaintiff alleged herein. Defendants represented to Plaintiff and his family that Harding was a good mentor for children in the Congregation.

In connection with his responsibilities as a ministerial servant at Congregation, Harding had regular and frequent contact with children who attended the congregation. In approximately 1991-1994, when Plaintiff was approximately 11-14 years old, Harding allegedly engaged in repeated unpermitted sexual contact with Plaintiff.

Plaintiff alleges that Defendant Governing Body of the Jehovah's Witnesses is a group of eight individuals, that decides all actions related to the operation of the hierarchical religious entity known as the Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), a duly incorporated religious entity. Defendant Governing Body is sued here without an allegation as to its corporate legal status because that status is unknown to Plaintiff. Jehovah's Witnesses publications and organizational charts clearly show the concrete nature of the Governing Body as its own entity (See NYSCEF Doc # 36). The Governing Body also continues to carry the

responsibility of overseeing the preaching work, producing Bible study material, and arranging for the appointment of overseers to serve in various capacities in the organization. The Governing Body as a distinct entity is shown in Defendant Watchtower's public admission as well, as a body of elders entrusted with the spiritual oversight of Jehovah's Christian witnesses. Additionally, per Plaintiff's Complaint, the eight men comprising Defendant Governing Body set Jehovah's Witnesses organization policy in all relevant matters and control who is allowed to undertake leadership roles within the Jehovah's Witnesses organization.

The complaint asserts the following additional facts about the Governing Body.

At the time of the sexual abuse alleged in this complaint, the Governing Body's principal headquarters was located in Kings County, State of New York. During the dates of the sexual abuse of Plaintiff, the Governing Body established the sexual abuse policies implemented by Watchtower and all congregations of Jehovah's Witnesses in the United States; established the policies for appointing and supervising elders and ministerial servants within the Jehovah's Witness organization; participated in the appointment of elders and ministerial servants; and exercised supervision and control over elders and ministerial servants, including Harding.

The Governing Body claims to have no formal president or secretary but has a coordinator that was formerly referred to as a chairman. The coordinator of the Governing Body rotates on a yearly basis in alphabetical order. The members of the Governing Body at the time the complaint was filed were Kenneth E. Cook, Jr.; Samuel Frederick Herd; Geoffrey William Jackson; Mark Stephen Lett; Gerrit Losch; Anthony Morris III; D. Mark Sanderson; and David H. Splane. Plaintiff alleges each of these individuals were the current coordinator of the Governing Body at the time the suit was commenced.

DISCUSSION

This Court has Subject Matter Jurisdiction Over this Action and Movant Has failed to raise an issue as to Personal Jurisdiction

At the outset the Court notes that Defendant moves for dismissal based on lack of Subject Matter Jurisdiction and lack of personal jurisdiction. There are no arguments directly addressing these portions of the motion in the memoranda of law in support. Defendant's motion essentially argues that The Governing Body is not a jural entity subject to suit and that the complaint is not sufficiently pled.

Defendant while not specifically using the term subject matter jurisdiction does argue in its memoranda of law that this Court may not entertain claims that in effect require religious determinations that are ecclesiastical, regardless of the nature of the underlying dispute citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). However, there is no claim before the court in this action that requires such a determination.

It is irrelevant whether Harding was qualified to be a ministerial servant in the Jehovah's Witnesses organization as a matter of dogma and doctrine of the Jehovah's Witnesses faith. A fiduciary duty claim does not run afoul of entanglement doctrine. *Doe v R.C. Diocese of Rochester*, 857 NYS2d 866, 867 [4th Dept 2008], *rev'd on other grounds*, 12 NY3d 764 [2009]. Even where entanglement is a concern, cases involving religious actions may be decided by secular courts by applying "neutral principals" of law. *Hyung Jin Moon v Hak Ja Han Moon*, 431 F Supp 3d 394, 405-08 [SDNY 2019].

Courts have consistently rejected a general ban on lawsuits against religious institutions for torts committed by their religious agents. *See, e.g., Kenneth R. v R.C. Diocese of Brooklyn*, 654 NYS2d 791, 796 [2d Dept 1997], 654 NYS2d at 796 (holding that "[t]he First Amendment does

not grant religious organizations absolute immunity from tort liability"). Negligent conduct of a religious body is subject to secular scrutiny. *Id* at 793.

Based on the foregoing the court finds that it has subject matter jurisdiction over this action.

The Governing Body is Subject to Suit as An Unincorporated Association

The Governing Body is a recognized group of defined individuals alleged to be responsible for directing and controlling other entities as well as human individuals, and it meets the standard for an "unincorporated association" under New York law absent any further evidence of corporate existence. *See ATIFA v Shairzad*, 791 NYS2d 867 [Sup Ct 2004]; *Craine v NYSARC, Inc.*, 931 NYS2d 143, 144 [3d Dept 2011].

Plaintiff convincingly argues at this early stage of the litigation that as the Governing Body does not appear to be a wholly constituent part of the other defendants in this action, but acts in its own name and controls the actions of others, it is an unincorporated association and should be evaluated as such until evidence can be secured proving or disproving that assumption.

Plaintiff has pleaded that there is not only a group of identified individuals currently forming a small group within the Jehovah's Witnesses organization, but also that group controls the operations of the entire religious enterprise. Naming the entity as a defendant without specifying the particular officers of the group in the caption, nor claiming their particular role in the group, is not fatal, especially where Defendant Governing Body has produced no evidence of prejudice in the record due to Plaintiff naming the Governing Body as an entity directly. *See Gianunzio v Kelly*, 90 AD2d 623, 624 [3d Dept 1982]. Moreover, The Chairmanship of the Governing Body rotates annually according to an alphabetical arrangement (see NYSCEF Doc # 28), thus identifying the proper officer to name is not easily done.

The Complaint identifies eight individuals who serve as members on the current iteration of the Governing Body and served those individuals to effect service upon an entity of unknown corporate status through RPAPL § 735(1)(b). *See United Min. & Chem. Corp. v United Mechanics' Union, Local* 150 F, 252 NYS2d 581 [Sup Ct, NY County 1964] (service on an unincorporated entity is completed through service on its officers).

Where an unincorporated religious entity is to be sued, the "lawsuit must be maintained against a representative natural person, such as 'the president or treasurer' of the association (*see General Associations La*w §13 CPLR §1025), or 'another officer in a position equivalent to that of a president or treasurer.'" *L&L Assoc. Holding Corp. v Charity United Baptist Church*, 935 NYS2d 450 [NY Dist Ct 2011] (citing 92 N.Y. Jur. 2d, Religious Organizations §13); *see also Alexander, Practice Commentaries*, CPLR C1025:2, at 257 (if an unincorporated association lacks a president or treasurer, action may be brought against the association's most closely analogous officer).

Without knowing the precise status or nature of the roles played by the members of the Governing Body, service upon all of these individuals—service that Defendant Governing Body does not challenge here—has functionally effectuated service upon the Governing Body. The naming of the Governing Body itself in the caption is nothing more than an "irregularity," which may be disregarded. *Terranova v 10 & 40 Shore Blvd. Condominium*, 2017 NY Slip Op. 30516[U], [Sup Ct, Kings County 2017]; *Public Affairs Committee, Inc. v Wholesale & Dep't Store Union*, 223 NYS2d 717 [1st Dept 1962]). As long as an "equivalent officer" has been served, the lawsuit will continue.

Moreover, a later iteration of an unincorporated association may be sued for prior acts by a different group of members. *Rankin v Killion*, 73 NYS2d 502 [Sup Ct, NY County 1947]; *see also Children's Magical Garden, Inc. v Norfolk St. Dev., LLC*, 164 AD3d 73, 81 [1st Dept 2018].

To state a cause of action for an unintentional tort, including negligence and negligent hiring and retention, Plaintiff need not allege that the entire union membership authorized or ratified the negligent conduct. *Riordan v Garces,* 2019 NY Slip Op. 33666[U] at 15-16; *Piniewski v Panepinto*, 267 AD2d 1087, 1087 [4th Dept 1999]; *Torres v Lacey*, 163 NYS2d 451 [1st Dep't 1957]).

Based on the foregoing, the court finds that the complaint has sufficiently pled allegations that the Governing Body is a unincorporated association subject to suit herein.

The Allegations Pertaining to the Negligence Claims Are Sufficiently Pled

In determining dismissal under CPLR Rule 3211 (a) (7), the "complaint is to be afforded a liberal construction" (*Goldfarb v Schwartz*, 26 AD3d 462, 463 [2d Dept 2006]). The "allegations are presumed to be true and accorded every favorable inference" (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). "[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Additionally, "[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" *(EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

The complaint asserts causes of action for negligence, negligent training and supervision of employees, negligent retention of employees, and gross negligence.

The elements of a cause of action for negligence are a duty owed by the defendant to the plaintiff, a breach thereof, and injury proximately resulting therefrom (*Solomon v. City of New York,* 66 N.Y.2d 1026, 1027 [1985]).

The cause of action for negligent hiring and supervision contains elements that go beyond those required to establish negligence. To state a claim for negligent hiring, retention or supervision under New York law, a plaintiff must plead, in addition to the elements required for a claim of negligence: (1) the existence of an employee-employer relationship; and (2) "that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 161, 654 N.Y.S.2d 791 [2d Dept. 1997]).

> An employer can be held liable under theories of negligent hiring, retention, and supervision where it is shown that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Kenneth R. v. Roman Catholic Diocese of Brooklyn,* 229 A.D.2d 159, 160, 654 N.Y.S.2d 791; *see Boyle v. North Salem Cent. Sch. Dist.,* 208 A.D.3d 744, 172 N.Y.S.3d 621). Causes of action alleging negligence based upon negligent hiring, retention, or supervision are not statutorily required to be pleaded with specificity (*see Boyle v. North Salem Cent. Sch. Dist.,* 208 A.D.3d at 745, 172 N.Y.S.3d 621; *Doe v. Enlarged City Sch. Dist. of Middletown,* 195 A.D.3d at 596, 144 N.Y.S.3d 639).

Belcastro v. Roman Cath. Diocese of Brooklyn, New York, 213 A.D.3d 800, 801 (2023).

Defendant argues that the allegations of notice and duty are insufficiently pled to sustain the negligence claims and that the request for punitive damages should be dismissed.

The complaint repeatedly alleges that the Governing Body had knowledge—both actual and constructive—of its elders' and ministerial servants', including Harding's, propensities to sexually abuse minors and, did nothing to prevent or stop such abuse. Plaintiff has alleged that Harding sexually abused and molested Plaintiff from approximately 1991 through 1994. Plaintiff further alleges that during that time, the Governing Body established the sexual abuse policies

implemented by Watchtower and all congregations of the Jehovah's Witnesses, established the policies for appointing and supervising elders and ministerial servants within the Jehovah's Witnesses organization, participated in the appointment of elders and ministerial servants, and exercised supervision and control over elders and ministerial servants. Plaintiff further alleges that the Governing Body had control over disciplinary actions against elders and ministerial servants, including Harding, and had ultimate authority as to whether a candidate was elevated to the level of ministerial servant. Plaintiff further alleges that the Governing Body supervised, managed, directed, and exercised agency and control over Jehovah's Witnesses elders and ministerial servants, including Harding, and was responsible for placing Harding in a position of power and control over vulnerable minors, such as Plaintiff. Taken together, a reasonable inference could be drawn from these allegations is that Defendant Governing Body had constructive, if not actual, knowledge of Harding's propensities and conduct.

> Here, at the pleading stage of the litigation, where the plaintiff's allegations in the .... complaint are accepted as true and are accorded the benefit of every possible favorable inference, the causes of action to recover damages for negligent supervision, negligent hiring and retention, and negligent training ..... were sufficiently pleaded (*see Davila v. Orange County,* 215 A.D.3d at 635, 187 N.Y.S.3d 261; *Novak v. Sisters of the Heart of Mary,* 210 A.D.3d 1104, 1105, 180 N.Y.S.3d 187; *cf. Fuller v. Family Servs. of Westchester, Inc.,* 209 A.D.3d at 984, 177 N.Y.S.3d 141).

Kaul v. Brooklyn Friends Sch., No. 2022-04339, 2023 WL 7007010, at *2 (N.Y. App. Div. Oct. 25, 2023).

Moreover. The complaint sufficiently pleads that Defendant had a duty to protect Plaintiff from Harding.

> ... (I)n the case of the special relationship at issue here, between an employer and employee, the focus is not on the potential plaintiff, but on the employer and its

> relationship with the defendant-tortfeasor (*see Waterbury v. New York City Ballet, Inc.*, 205 A.D.3d 154, 161, 168 N.Y.S.3d 417 [1st Dept. 2022]). This is because "[t]he negligence of the employer ... arises from its having placed the employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in making its decision concerning the hiring and retention of the employee" (*Sheila C. v. Povich*, 11 A.D.3d 120, 129, 781 N.Y.S.2d 342 [1st Dept. 2004]; *see Roe v. Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church*, 198 A.D.3d 698, 699-702, 155 N.Y.S.3d 418 [2d Dept. 2021], quoting *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d 634, 634-37, 85 N.Y.S.3d 562 [2d Dept. 2018]; *see also Doe v. Congregation of the Mission of St. Vincent De Paul in Germantown*, 2016 N.Y. Slip Op. 32061[U] at *6, 2016 WL 6299392 [Sup. Ct., Queens County 2016] [hereinafter *Doe v. Congregation*]). Thus, "the duty of care in supervising an employee extends to any person injured by the employee's misconduct" (*Waterbury*, 205 A.D.3d at 162, 168 N.Y.S.3d 417).

Sokola v. Weinstein, 78 Misc. 3d 842, 845–46 (N.Y. Sup. Ct.), *appeal withdrawn*, 219 A.D.3d 1185 (2023).

Based on the foregoing, the court finds that the allegations of notice and duty are sufficiently pled in the complaint.

It is Premature to Rule on Entitlement to Punitive Damages

"To recover punitive damages, a plaintiff must show, by clear, unequivocal and convincing evidence, egregious and willful conduct that is morally culpable, or is actuated by evil and reprehensible motives". (*Munoz v Puretz*, 301 AD2d 382, 384 (1st Dept 2003). It is well established that "[w]hether to award punitive damages in a particular case, as well as the amount of such damages, if any, are primarily questions which reside in the sound discretion of the original trier of the facts." *Swersky v. Dreyer and Traub*, 219 A.D.2d 321, 328 (1st Dep't 1996).

Punitive damages may be assessed against an employer for an employee's conduct.

> "only where management has authorized, participated in, consented to or ratified the conduct giving rise to such damages, or deliberately retained the unfit servant,' such that it is complicit in that conduct. Complicity is evident when 'a superior officer in the course of employment orders, participates in, or ratifies outrageous conduct.'"

(*Borst v Lower Manhattan Dev. Corp.*, 162 AD3d 581, 582 [1st Dept 2018], quoting *Loughry v Lincoln First Bank, N.A.*, 67 NY2d 369, 378 [1986]).

Here, Plaintiff's allegations that Defendant knew of Harding's propensities to abuse minors and continued to place him in positions where he had access to minors, or that Defendant knew of the conduct and took steps to conceal it have not yet been adjudicated. Thus, it is unclear at this juncture whether Defendant's conduct amounts to egregious and willful misdoing sufficient to justify an award of punitive damages, As such, it is better left for the trier of fact to determine whether an award of punitive damages is warranted (*see e.g. Laurie Marie M. v Jeffrey T.M.*, 159 AD2d 52, 59-60 [2d Dept 1990], *affd* 77 NY2d 981, 982 [1991] ["the issue of punitive damages was properly submitted to the jury"]).

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety; 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; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that Defendant serve and file an answer within 30 days of the date of this order; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 5, 2024 at 10 AM.

This constitutes the decision and order of this court.

11/16/2023
DATE

HON. SABRINA KRAUS

CHECK ONE:		CASE DISPOSED		x	NON-FINAL DISPOSITION		
		GRANTED	x DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE