

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

2024 NY Slip Op 30886(U)

March 12, 2024

Supreme Court, New York County

Docket Number: Index No. 950065/2020

Judge: Sabrina Kraus

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

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

*Justice*

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JOHN DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF MOUNT  
CARMEL CHURCH, OUR LADY OF MOUNT CARMEL  
SCHOOL

Defendant.

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**INDEX NO.** 950065/2020

**MOTION DATE** 11/20/2023

**MOTION SEQ. NO.** 008

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 239, 240, 241, 242, 243, 244, 245, 246, 247, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, Defendant Archdiocese of New York (the “Archdiocese”) moves for an order:

- (1) pursuant to CPLR 2221(a) to vacate the Court's October 26, 2023 Order on the basis that it violated the law of the case, as set forth in the Court's June 29, 2023 Order on the non-discoverability of personnel files of non-abuse perpetrators; and
- (2) pursuant to CPLR 3103(a) and (b) granting Defendant's motion for a protective order and staying the production of a new Archdiocese witness for a deposition on the issues outlined in plaintiff's fourth amended notice of deposition and staying production of personnel files of non-abuse perpetrators.

(Motion Seq. 008).

**BACKGROUND**

This action commenced pursuant to the Child Victims Act (“CVA”), along with 69 other CVA cases pending before this court, alleges that Rudy Tremaroli (“Tremaroli”), a janitor at Our Lady of Mount Carmel School (the “School”) within the Archdiocese of New York (the “Archdiocese”), sexually abused 70 plaintiffs at various locations in Bronx County, New York

between 1958 and 1992. All 70 matters have been consolidated under this index number for the purposes of discovery and motion practice.<sup>1</sup>

On July 17, 2023, the Archdiocese produced Sister Patricia Anastasio, the Associate Superintendent for Teaching Personnel with the Archdiocese's Superintendent of Schools' office for a deposition. Sister Anastasio was produced in response to Plaintiffs' fourth amended notice of deposition that provided the following topics for examination:

1. Any information regarding the Archdiocese of New York's control and supervision of Our Lady of Mt. Carmel Church and Our Lady of Mt. Carmel School.
2. Any records demonstrating the Archdiocese of New York's control and supervision of Our Lady of Mt. Carmel Church and Our Lady of Mt. Carmel School, including, but not limited to any records regarding the appointment or placement at Our Lady of Mt. Carmel Church or Our Lady of Mount Carmel School of: Monsignor Louis Martorella, Monsignor Ruvo, and Father Anthony Pucci, by the Archdiocese of New York.
3. Any information regarding a financial relationship or financial interactions between the Archdiocese of New York and Our Lady of Mt. Carmel Church and our Lady of Mt. Carmel School.
4. Any information regarding the appointment or placement of former Our Lady of Mt. Carmel School Principal James Irwin by the Archdiocese of New York's Department of Education, and any records demonstrating the same, which should be located within Superintendent Deegan's office;
5. Any information regarding the appointment or placement of former Our Lady of Mt. Carmel School Principal Sister Aurelia by the Archdiocese of New York's Department of Education, and any records demonstrating the same, which should be located within Superintendent Deegan's office.

Prior to the July 17, 2023, deposition, Plaintiffs had sought an order compelling the Archdiocese to produce personnel files for the following individuals: Monsignor Louis Martorella, Monsignor John Ruvo, Father Anthony Pucci, Emilia Longo, Dominick Rella, Sister Aurelia, James Irwin, Brother Gilbert, Brother John, Brother Christopher and Rudy Tremaroli.

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<sup>1</sup> For a detailed factual background and procedural history of this matter, see this Court's Decision and Order dated October 26, 2023 (NYSCEF doc No. 233).

By Decision and Order dated June 29, 2023, the Court (Hon. Laurence L. Love) largely denied<sup>2</sup> the motion, holding that “... the personnel files of non-perpetrators purportedly charged with the duty to hire and/or supervise Tremaroli are not relevant, material, or necessary, as said documents would have no bearing on the issue of notice of Tremaroli’s abuse or propensity to commit abuse.”

After Sister Anastasio’s deposition, in which she was directed not to answer numerous questions related to the Archdiocese’s control of Our Lady of Mount Carmel Church and School, Plaintiff moved by order to show cause for an order compelling the Archdiocese to produce a fully qualified and prepared witness pursuant to 22 NYCRR 202.20(d). Alternatively, Plaintiffs sought an order striking the Archdiocese’s Answers, or an order determining that the questions of the Archdiocese’s control of Our Lady of Mount Carmel Church and School be resolved in Plaintiffs’ favor and striking any of the Archdiocese’s affirmative defenses stating that it had no control (Motion Seq. 007).

On October 26, 2023, following briefing and oral argument, this Court issued its Decision and Order that is the subject of the instant motion to vacate. The Court reviewed the transcript and video of Sister Anastasio’s deposition and found that while she was knowledgeable about processes in Our Lady of Mount Carmel School, she was inadequately prepared to answer questions regarding the way the Archdiocese participated in the placement and direction of those at the school. Sister Anastasio was also directed not to answer at least 20 questions asked by Plaintiffs’ counsel. Some of the questions related to information in the personnel files previously sought by Plaintiffs. At oral argument, counsel for the Archdiocese confirmed that he

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<sup>2</sup> The Court did direct an *in camera* review of Irwin’s previously produced redacted file as Irwin himself is an alleged abuser.

intentionally did not prepare Sister Anastasio with information from the personnel files because he did not want to make said files subject to production to plaintiffs or provide a basis to revisit the Court's June 2023 order deeming the files non-discoverable.

Based on its review of the deposition transcript and the statements made by counsel for the Archdiocese, the Court held that at this juncture, the failure to turn over the previously requested files was hampering discovery. The Court observed that the Archdiocese cannot take the dual position of stating that files may be subject to a further document request based on the answers of its witness at deposition, while simultaneously not allowing its witness to discuss anything in the files. The Court thus directed that the Archdiocese produce a new witness fully prepared to discuss all topics in Plaintiffs' fourth amended notice of deposition, including the Archdiocese's role in placement and control at its schools. The Court also directed the Archdiocese to produce within 30 days personnel files for Monsignor Louis Martorella, Monsignor John Ruvo, Father Anthony Pucci, Emilia Longo, Dominick Rella, Sister Aurelia, Brother Gilbert, Brother John, and Brother Christopher (hereinafter, the "non-abuser personnel files")<sup>3</sup>, with any personal identifying or medical information redacted.

Shortly thereafter, on November 20, 2023, the Archdiocese filed the motion now before this Court, seeking vacatur of the Court's October 2023 decision on the grounds that it violated the law of the case doctrine with respect to the discoverability of the non-abuser personnel files. The Archdiocese also seeks a protective order staying the production of both the files and a new witness for deposition.

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<sup>3</sup> At a separate conference on this matter held February 27, 2024, counsel for the Archdiocese advised that only the files for Father Anthony Pucci, Monsignor John Ruvo, Monsignor Louis Martorella, and Sister Aurelia are in its possession. Thus only these four files will be subject to production.

## DISCUSSION

Under CPLR §2221(a), a trial court has discretion to “stay, vacate or modify” its own orders. Unlike a motion for leave to reargue under CPLR §2221(d), a motion to vacate is not subject to a time limitation and does not need to be based upon a showing that the trial court overlooked specific matters of fact or law. CPLR §5015 similarly permits “[t]he court which rendered a judgment or order” to “relieve a party from it upon such terms as may be just...upon the ground of...lack of jurisdiction to render the judgment or order.”

Trial courts are vested with broad discretion to issue appropriate orders to limit or grant discovery (*Venables v Rovegno*, 195 AD3d 876, 879 [2<sup>nd</sup> Dept 2021]). “[T]his discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind” (*id.*; *see also Cascardo v Cascardo*, 136 AD3d 729, 729-730 [2<sup>nd</sup> Dept 2016]). The supervision of disclosure and the settling of reasonable terms and conditions therefore rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed (*Berkowitz v 29 Woodmere Blvd. Owners’ Inc.*, 135 AD3d 798, 799 [2<sup>nd</sup> Dept 2016]).

“The right to disclosure, although broad, is not unlimited” (*Forman v Henkin*, 3 NY3d 656, 661 [2018]). The material sought must be “material and necessary,” meaning that it is “relevant to the prosecution or defense of an action” (*Matter of Kapon*, 23 NY3d at 38). It is within the court’s discretion to determine whether the disclosure sought is relevant (*see Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 747 [2000]). To that end, the “court [may] issue a protective order ‘denying, limiting, conditioning or regulating the use of any disclosure device’ where necessary ‘to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts’” (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*,

164 AD3d 401, 403 [1st Dept 2018], quoting CPLR 3103 [a]; *accord Jones v Maples*, 257 AD2d 53, 56-57 [1st Dept 1999]).

Issuance of a protective order is appropriate to preclude discovery of information that “is palpably improper in that it seeks irrelevant and/or confidential information, or is overly broad and burdensome” (*Ural v Encompass Ins. Co. of Am.*, 158 AD3d 845, 847 [2d Dept 2018]). Ultimately, “the method of discovery sought must result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Abrams v Pecile*, 83 AD3d 527, 528 [1st Dept 2011] [internal quotation marks and citation omitted]). “The burden of showing that discovery is improper is on the party seeking a protective order” (*Sage Realty Corp. v Proskauer Rose L.L.P.*, 251 AD2d 35, 40 [1st Dept 1998] [citation omitted]).

### ***The Law of the Case Doctrine***

The Court now addresses the Archdiocese’s argument that its October 2023 order violated the law of the case doctrine with respect to the earlier June 2023 order.

‘The doctrine of the ‘law of the case’ is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned’ ” (*Clark v Clark*, 117 AD3d 668, 669 [2<sup>nd</sup> Dept 2014], quoting *Martin v City of Cohoes*, 37 NY2d 162, 165 [1975]); *see also Erickson v Cross Ready Mix, Inc.*, 98 AD3d 717, 717 [2<sup>nd</sup> Dept 2012]). “[T]he ‘law of the case’ operates to foreclose re-examination of [the] question absent a showing of subsequent evidence or change of law’ ” (*J-Mar Serv. Ctr., Inc. v Mahoney, Connor & Hussey*, 45 AD3d 809, 809 [2<sup>nd</sup> Dept 2007], quoting *Matter of Yeampierre v Gutman*, 57 A.D.2d 898, 899 [2<sup>nd</sup> Dept 1977]).

“The doctrine ‘applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision’ ” (*Erickson*, 98 AD3d at 717, quoting *Baldasano v Bank of N.Y.*, 199

AD2d 184, 185 [1<sup>st</sup> Dept 2013]; *see also Ramanathan v Aharon*, 109 AD3d 529, 530 [2<sup>nd</sup> Dept 2013]). However, “[i]ts application is exclusively to questions of law” (*Brown v State of New York*, 250 AD2d 314, 320 [3<sup>rd</sup> Dept 1998]) and the doctrine does not apply to rulings, such as case management decisions, which are based on the discretion of the court (*see, People v. Evans*, 94 NY2d 499, 504–506 [2000]). The Court of Appeals described the doctrine in *Evans* as “necessarily amorphous in that it directs a court’s discretion, but does not restrict its authority” (*id.* at 503).

Here, as discussed, Judge Love’s June 2023 order denied Plaintiff’s request for production of the non-abuser personnel files on the grounds that they were irrelevant to Plaintiff’s negligent hiring claims regarding Tremaroli. During the July 2023 deposition of Sister Anastasio, the parties contacted Judge Love for an emergency conference regarding disputed questions, some of which pertained to issues of the Archdiocese’s control of the School.

Judge Love initially reiterated that while questions regarding individuals appointed by the Archdiocese to serve at the School were appropriate, “at this stage, I don’t believe it would be necessary to turn [the non-abuser personnel files] over” (EBT Transcript, NYSCEF doc No. 245, at 55). However, Judge Love later noted that deposition questioning could lead to production of the files:

“Well, the records itself, I mean, you know, as we said, we obviously had to go through the deposition. So depending on the questions and answers to the deposition, if [Plaintiffs’ counsel] is asking, you know, are there records that exist that will, you know, hypothetically confirm that certain individuals were assigned by the archdiocese to -- to work at that) location, I think it -- it’s certainly a reasonable question to ask, and depending on what comes out from that, I might potentially allow some limited access or exchange of those -- those specific files if they exist, limited to the issue of confirming that the archdiocese potentially assigned that -- that individuals to the -- to the site. . . . And if there is going to be a request for documents on some limited basis following this deposition, then we’ll certainly address that.”

(*Id.* at 56-57).

Judge Love also remarked that Sister Anastasio seemed unprepared (“I do find it troubling that there was no -- that this witness testifying knowing what -- a lot of what the subject matter of the questions were likely to be did not, you know, review any potential records to, you know, even be able to be in a position to answer those questions” [*id.* at 57]). Judge Love also noted that when he made his June 2023 ruling, he assumed that the witness produced “would have enough of the knowledge base to answer the questions in terms of whether it was from the personnel files of those individuals or just knowing what the procedures were...” (*id.* at 65). Judge Love concluded by stating that “if there's files left that I need to deal with after the deposition is concluded, I'm sure we'll address it” (*id.* at 66).

At oral argument held on this motion, this Court, after reviewing the July 2023 deposition transcript and video, echoed Judge Love’s remarks that Sister Anastasio did not seem qualified to discuss issues of control (“None of [Sister Anastasio’s experience] goes to establishing knowledge about whether the church and to what extent the Archdiocese is controlling the church.” [NYSCEF doc No. 246 at 34]). In response to the Archdiocese’s argument that the non-abuser personnel files cannot be discoverable because there are no negligent hiring claims asserted against them, Plaintiffs reiterated that the files are not being sought for any reason other than to ascertain the Archdiocese’s role in control and appointment of employees (“We’re not looking for anything other than documents that are relevant to the issue of control. That’s it.” [*Id.* at 17]).

The Court’s October 2023 decision to order the production of the non-personnel files is not a violation of the law of the case doctrine, but rather a redirection due to the evolving circumstances of discovery in this matter. In *Kaplan v Einy*, 209 AD2d 248 (1<sup>st</sup> Dept 1994), the

First Department addressed the matter of whether conflicting discovery orders violated the law of the case doctrine. *Kaplan* involved a plaintiff who fell down the elevator shaft in his residential building and sued the three building owners and elevator servicer. During plaintiff's initial deposition of the first building owner, counsel repeatedly refused to allow the owner to answer questions regarding the building's superintendent at the time of the accident and information regarding employees who may have knowledge. Plaintiff then moved to compel a further deposition of the owner, along with disclosure of accident reports, post-accident repairs and any engineer's inspections conducted by the owner's request prior to their purchase of the building. The trial court justice overseeing the case, Hon. Karla Moskowitz, referred the matter to a referee, who issued a report deeming discovery complete that did not address plaintiff's outstanding requests. Judge Moskowitz then confirmed the report without modifying it to address plaintiff's demands, an order that was subsequently appealed by plaintiff.

At a deposition held of the second building owner, plaintiff was again prevented from questioning in certain issues but also learned that a number of businesses operated out of the building that shared employees. Plaintiff then conducted a non-party deposition of one of the businesses and moved by order to show cause to compel further disclosure, including the continued deposition of the first building owner and production of photographs and post-accident repairs and reports. At this point, the case had been transferred to a new judge, Hon. Lorraine Miller, who issued an order granting the discovery sought by plaintiff. Defendants appealed, arguing that Judge Miller's order violated the law of the case doctrine as it granted relief previously denied by Judge Moskowitz.

The First Department reversed Judge Moskowitz's order, holding that the court should have reviewed the referee's report to determine whether it was incomplete with respect to the

outstanding discovery, and that under the broad standards of CPLR 3101, plaintiff's requests for the continued deposition of the first owner and disclosure of documents should have been granted. With respect to Judge Miller's order, the First Department noted that plaintiff's order to show cause was brought after plaintiff conducted the non-party and second building owner depositions and learned that information was withheld. Thus, "the situation had changed and the law of the case no longer bound Justice Miller." (*Id.* at 252). The First Department further held that "[e]ven if we were to conclude that Justice Miller was bound by the law of the case, we would affirm her order in the interest of achieving substantial justice" (*id.*).

Here, the Court's October 2023 order similarly cannot be deemed a violation of the law of the case because in the time following Judge Love's June 2023 order, it became clear that the questions of the Archdiocese's control cannot be sufficiently answered without information that may be contained in the non-abuser personnel files. In upholding plaintiff's production requests in *Kaplan*, the First Department acknowledged that the post-accident repair reports sought by Plaintiff could not be used as proof of negligence, but held the evidence "is admissible herein so that plaintiff will be able to ascertain the condition of the elevator prior to the admitted modifications, this being especially necessary in light of the fact that defendants refuse to state that their own photographs represent the condition of the elevator doors at the time of the incident" (*id.*). Likewise, the non-abuser personnel files here are not admissible as proof of the Archdiocese's negligence, but are being produced so that Plaintiffs can ascertain the nature of the Archdiocese's control of the School at the time of the abuse, an issue the Archdiocese's witnesses have so far been unable to sufficiently address.<sup>4</sup> The instant matter presents an even

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<sup>4</sup> The Archdiocese has argued that along with violating the law of the case doctrine, the October 2023 order was also improper because the motion before the Court at the time did not include a renewed request for production of the non-abuser personnel files. However, the Court determined that production was necessary to grant the relief that *was* sought under the motion, a deposition of a witness who could speak to the topics in fourth amended notice of

stronger case for why there has been no violation of law of the case than *Kaplan*, given that unlike the prior judge in that case who showed no sign of revisiting her order, here, Judge Love indicated several times on the record that he was open to considering some sort of production of information in the non-abuser personnel files notwithstanding his June 2023 order.

Even *assuming arguendo* that the October 2023 order is in contravention of the law of the case, the Court's determination that the non-abuser personnel files must be produced is still warranted under the interest of justice. As discussed *supra*, the Court has broad disclosure under CPLR 3101 to order "full disclosure of all matter material and necessary" for prosecution of an action. The Court of Appeals has interpreted the phrase "material and necessary" as used in the statute to essentially mean "relevant," holding that the phrase must be "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason." (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]).

The legislative history of the CVA supports a particularly broad construction of CPLR §3101 as applied to CVA cases. "Passage of the Child Victims Act will finally allow justice for past and future survivors of child sexual abuse, help the public identify hidden child predators through civil litigation discovery, and shift the significant and lasting costs of child sexual abuse to the responsible parties" (Senate Introducer's Mem in Support of 2019 N.Y. Senate Bill S2440). The revival of lawsuits for acts that occurred decades ago presents self-evident hurdles in discovery that challenge both plaintiffs and defendants, including a lack of documentation of records and witnesses who were employed during the relevant time. Nevertheless, the legislature determined that these cases must proceed through the civil litigation discovery system to effect

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deposition. Production of the files was also preferable to the Court than Plaintiffs' more drastic requests for alternate relief (i.e., an order striking the Archdiocese's answers or affirmative defenses).

long-delayed justice. Courts overseeing CVA cases must be afforded particularly broad discretion to ascertain whether materials that would normally not be necessary in current personal injury actions (such as the non-abuser personnel files) are necessary here to fill in gaps in the evidentiary record. As the First Department held in *Kaplan*, a discovery order that is contrary to the law of the case can still be warranted “in the interest of achieving substantial justice” (209 AD2d at 252).

As a final matter, the Court notes that at a conference held off the record on February 27, 2024, counsel for the Archdiocese reiterated the arguments raised herein and contended that, even if some relevant information may be contained in the non-abuser personnel files, the Court overstepped by ordering that the files be disclosed to Plaintiffs in their entirety. The Court asked if the Archdiocese would instead consent to the Court conducting an in-camera review of the files to determine which documents are relevant. After a phone conversation with his client, counsel advised the Court that the Archdiocese would not consent to an in-camera review. At the conclusion of the conference, the Court made another attempt to resolve this dispute by offering to vacate its October 2023 order if the Archdiocese and Plaintiffs stipulated to the production of a limited number of specific documents in the files (such as appointment letters). By email dated February 28, 2024, counsel for the Archdiocese stated that “[t]he parties could not come to an agreement regarding any stipulation concerning the pending motion (sequence 8) and we all prefer that the Court decide that motion.” Given the Archdiocese’s inability to compromise on an alternative plan that would move discovery more expeditiously, the Court is constrained to adhere to its determination that the files must be produced in their entirety.

In light of the Court’s determination not to vacate its October 2023 order, the balance of the Archdiocese’s motion seeking a protective order staying the production of the non-abuser

personnel files and a new witness for deposition is moot.

**CONCLUSION**

Based on the foregoing, it is hereby


ORDERED that the motion to vacate of Defendant Archdiocese of New York (the “Archdiocese”) (Motion Seq. 008) is denied in its entirety; and it is further

ORDERED that the parties shall appear at a conference before the Court on March 27, 2024 at 2:30pm (71 Thomas Street, RM 104) to discuss deadlines for production of the personnel files of Father Anthony Pucci, Monsignor John Ruvo, Monsignor Louis Martorella, and Sister Aurelia as redacted pursuant to the Court’s October 26, 2023 order; as well as a date for the deposition of a new Archdiocese witness; 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 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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SABRINA KRAUS, J.S.C.

3/12/2024  
DATE

CHECK ONE:

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APPLICATION:

CHECK IF APPROPRIATE: