

PC-2 Doe v Archdiocese of N.Y.

2024 NY Slip Op 32081(U)

June 12, 2024

Supreme Court, New York County

Docket Number: Index No. 950202/2020

Judge: Alexander M. Tisch

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

PRESENT: HON. ALEXANDER M. TISCH **PART** **18**

Justice

-----X

PC-2 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, CHURCH OF ST.
JOSEPH OF YORKVILLE, ST. JOSEPH'S SCHOOL -
YORKVILLE

Defendant.

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INDEX NO. 950202/2020

MOTION DATE 04/19/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50 were read on this motion to/for ORDER OF PROTECTION.

Plaintiff commenced this action pursuant to § 214-g of the CPLR, the Child Victims Act (CVA), for alleged emotional and physical suffering, as the result of sexual abuse by Msgr. Heide, against the Archdiocese and the defendants the Church of St. Joseph of Yorkville and St. Joseph's School – Yorkville.

In response to the second demand contained within the Standard Automatic Disclosures, the Archdiocese produced a copy of Msgr. Heide's personnel file. When producing Msgr. Heide's personnel file to the Plaintiffs, the Archdiocese redacted certain information that they allege was confidential and had absolutely no relevance to the issues in this litigation.

After conference with the court in April 2024, the Archdiocese was directed to file a motion for a protective order with respect to plaintiffs' requests for the following documents: (1) an unredacted copy of Msgr. Herman Heide's personnel file, including, but not limited to, Msgr. Heide's last will and testament and the congratulatory pamphlet; (2) all documents relating to

claims made against Herman Heide in the Archdiocese's Independent Reconciliation and Compensation Program (IRCP); and (3) all other files relating to Herman Heide.

The Archdiocese filed identical motions seeking protective orders in the following related actions where Msgr. Heide is an alleged perpetrator: *Fred Pohlman v. The Roman Catholic Archdiocese of New York*, et al., Index # 950193/2019; *John Byrne v. Archdiocese of New York*, et al., Index # 950137/2020; *PC-2 Doe v. Archdiocese of New York*, et al., Index # 950202/2020; *Vincent Kennedy v. Roman Catholic Archdiocese of New York*, et al., Index # 950196/2021; and *Thomas Barber v. Roman Catholic Archdiocese of New York*, et al., Index # 951047/2021.

Plaintiff submitted opposition and the court reserved decision.

DISCUSSION

Trial courts are vested with broad discretion to issue appropriate orders to limit or grant discovery (*Venables v Rovegno*, 195 AD3d 876, 879 [2nd 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 [2nd 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 [2nd 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]).

As to the documents requested by Plaintiff’s in this action, the court grants defendant Archdiocese’s motion for a protective order to the extent of requiring an *in camera* inspection for the personnel file and any other documents relating to Msgr. Heide, as well as the IRCP program files as they relate to Msgr. Heide. The court fails to see the relevance of the last will and testament of Msgr. Heide nor is an *in camera* inspection required for the congratulatory pamphlet, as the same was publicly available at the time it was created and should be exchanged, as it does not fall within any privilege.

Defendant Archdiocese of New York is directed to produce for the following documents for *in camera* inspection: unredacted copy of Msgr. Herman Heide’s personnel file and all

documents relating to claims made against Herman Heide in the Archdiocese's Independent Reconciliation and Compensation Program (IRCP), along with a privilege log.

WHEREFOR, it is hereby

ORDERED defendant Archdiocese motion is granted to the extent of directing the Archdiocese to produce to the court unredacted copy of the personnel file, IRCP documents and any other documents relating to Msgr. Heide, along with a privilege log, by July 12, 2024, for *in camera* inspection; and it is further

ORDERED plaintiffs may submit a 5-page letter brief responsive to defendants' privilege log by July 26, 2024; and it is further

ORDERED defendant Archdiocese shall produce the unredacted congratulatory pamphlet within 10 days of the date of this Decision and Order.

This constitutes the decision and order of the court.

6/12/2024

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: