

**ARK292 Doe v Archdiocese of N.Y.**

2024 NY Slip Op 34570(U)

November 26, 2024

Supreme Court, New York County

Docket Number: Index No. 950344/2020

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 CVA 1 / 57M

Justice

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INDEX NO. 950344/2020

ARK292 DOE,

MOTION DATE 09/23/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

ARCHDIOCESE OF NEW YORK, ST. MARY'S, PARISH OF ST. MARY AND ST. JOSEPH, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for PROTECTIVE ORDER

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 Fr. Gentile, against the Archdiocese and the defendants St. Mary's Parish, and Parish of St Mary and St. Joesph.

On August 27, 2024, after conference with the court, the Archdiocese was directed to either provide the following documents or move for a protective order: any document referencing sexual abuse or boundary violations by Fr. Gentile regardless of when that record was made; (2) any records pertaining to Fr. Gentle's inclusion on the April 26, 2019 list of Archdiocesan Clergy Credibly Accused of Sexual Abuse of a Minor or the Subject of Eligible IRCP Compensation Claims; and (3) any record and/or document referring to the Archdiocese of New York's investigation into allegations or reports of sexual misconduct by Fr. Gentile regardless of when that record and/or document was created.

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]).

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]).

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]).

In CVA actions discovery of a priest’s clergy file, including psychological counseling related to sexual abuse of children, names of other victims who were abused by the same priest, information regarding a Defendant’s response to allegations of child sexual abuse claims when there is a pattern of conduct related to systematic abuse, and IRCP records or other programs designed to resolve claims of sexual abuse have all been held appropriately ordered for production during discovery. See eg *Harmon v. Diocese of Albany*, 204 A.D.3d 1270 (2022); *McNierney v. Archdiocese of New York*, 221 A.D.3d 489 (2023); *Lisiecki v. Roman Cath. Archdiocese of New York*, 222 A.D.3d 483 (2023).

All of the documents in plaintiff’s demand are reasonably calculated to lead to the discovery of evidence bearing upon not only whether the Archdiocese knew or should have known of the dangerous propensities of Fr. Gentile, but also whether it acted reasonably to protect Plaintiffs.

Additionally, while the CMO limited initial productions of discovery, the CMO is a floor not a ceiling and both sides reserved the right to seek to discovery beyond the limitations set forth therein. All alleged instances of sexual abuse or complaints about sexual abuse are

potentially relevant to the alleged abuser's modus operandi as defendants have denied in their pleadings that the abuse occurred.

If upon the production of the documents, there are redactions that the parties are unable to resolve, defendant may submit the redacted documents for an in camera inspection by the court.

WHEREFOR, it is hereby

ORDERED defendant Archdiocese motion for a protective order is denied; and it is further

ORDERED defendant Archdiocese to produce responses to Plaintiffs supplemental demand for discovery dated August 21, 2024, with 30 days of service of notice of entry of this decision and order; and it is further


ORDERED within 30 days of the documents having been produced, and the parties are unable to resolve any issues with redactions defendant may submit to the court hard copies of both the redacted and unredacted documents along with a privilege log and three page letter brief regarding the same, thereafter within five days of the defendant's submission, plaintiff may submit a responsive three page letter brief; 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 defendants as well as 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/suptmanh](http://www.nycourts.gov/suptmanh)).

This constitutes the decision and order of the court.

11/26/2024  
DATE

  
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SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input 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