

LG 94 Doe v La Salle Sch.
2024 NY Slip Op 35207(U)
October 22, 2024
Supreme Court, Albany County
Docket Number: Index No. 906506-21
Judge: Justin Corcoran
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STATE OF NEW YORK
COUNTY OF ALBANY

SUPREME COURT

LG 94 DOE,

Plaintiff,

DECISION and ORDER

Index No. 906506-21

-against-

LA SALLE SCHOOL, THE ROMAN CATHOLIC
DIOCESE OF ALBANY, NEW YORK; BROTHERS
OF CHRISTIAN SCHOOLS, DISTRICT OF EASTERN
NORTH AMERICA INC., f/k/a and/or a/k/a and/or d/b/a
BROTHERS OF CHRISTIAN SCHOOLS DISTRICT OF
EASTERN NORTH AMERICA; INSTITUTE OF THE
BROTHERS OF THE CHRISTIAN SCHOOLS,
LASALLIAN REGION OF NORTH AMERICA;
CHRISTIAN BROTHERS MAJOR SUPERIORS
f/k/a and/or a/k/a and/or d/b/a CHRISTIAN
BROTHERS CONFERENCE; RENSSELAER COUNTY;
and RENSSSSELAER COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Defendants.

(Supreme Court, CVA Term)

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JUSTIN CORCORAN, J.S.C.

In this Child Victims Act action brought under CPLR 214-g, plaintiff moves to sever his claims against defendant the Roman Catholic Diocese of Albany, New York (hereinafter "the Diocese") from the above-captioned matter pursuant to CPLR 603 and permit plaintiff to proceed with his claims against the remaining non-bankrupt defendants.

Plaintiff commenced this action on July 29, 2021, alleging that he was a resident and student at LaSalle School when he was sexually assaulted by Joseph Romano, who was assigned to LaSalle School as a priest.¹ Plaintiff asserts causes of action against defendants sounding generally in negligence, alleging that defendants knew or should have known that Romano had a propensity to sexually abuse children, and that defendants failed to prevent foreseeable harm to plaintiff. Plaintiff also commenced a companion action in the Court of Claims against New York State on August 13, 2021. In the instant action, paper discovery is incomplete, and no depositions have been taken.

Plaintiff's motion is precipitated by the March 15, 2023 bankruptcy filing by the Diocese, resulting in an automatic stay of this action. *See* 11 USC §362(a). After filing this motion to sever, plaintiff moved in the United States Bankruptcy Court for the Northern District of New York for a modification of the automatic stay of proceedings (including discovery) against the Diocese and an amended order approving stipulations staying continued prosecution of CVA actions. By order dated August 23, 2024, Bankruptcy Court

¹ Romano, now deceased, is included on a list — maintained by the Diocese — of priests credibly accused of sexual misconduct with a minor while serving as a priest for the Diocese. He was removed from ministry in 2003.

granted plaintiff's application to modify the stay for the limited purpose of allowing plaintiff "to pursue his motion to sever his state court claims against [the Diocese] from the other claims asserted in the LG 94 Doe State Supreme Court Action...without prejudice to any future application by any party to the state court action for relief from or modification of the stay" in the event plaintiff's motion to sever was granted. By its terms, Bankruptcy Court's order was not to be construed as a decision on the merits of the motion to sever.

Plaintiff contends that the automatic stay does not extend to non-bankrupt parties, and that he should not be required to await the conclusion of the Diocese's bankruptcy proceeding before obtaining any remedy against the remaining solvent defendants. Plaintiff further contends that unwarranted delay is contrary to the public policy that victims be expeditiously afforded their day in court. *See* 2019 New York Senate Bill No. 2440, New York Two Hundred Forty-Second Legislative Session; *see also* 22 NYCRR §202.72 (in revived CVA action, discovery should be completed and note of issue filed within a year of the preliminary conference, and a trial scheduled within sixty days of note of issue being filed). Plaintiff cites the lengthy delays caused by other bankruptcies filed by Diocesan entities in New York State and notes that the Diocese here is in the early stages of its Chapter 11 process.²

Defendants argue that because plaintiff alleges the same negligent acts against every defendant, the intertwined factual and legal issues should be resolved in a single trial. *County of Chenango Indus. Development Agency v. Lockwood Greene Engineers, Inc.*, 111 AD2d 508, 510 (3d Dept. 1985) (severance inappropriate where "intricate involvement and interdependency of the various activities and decisions made by the multiple defendants"). Additionally, defendants maintain they would be prejudiced if forced to defend against claims concerning Romano without the opportunity to take discovery from the Diocese or

² *See In re: Diocese of Rochester*, Case No. 19-20905 (petition filed September 12, 2019, plan not confirmed); *In re: Diocese of Buffalo, N.Y.*, Case No. 20-10322 (petition filed February 28, 2020, plan not filed); *In re: The Roman Catholic Diocese of Syracuse, New York*, Case No. 20-30663 (petition filed June 19, 2020, plan not confirmed); *In re: The Roman Catholic Diocese of Rockville Centre, New York*, Case No. 20-12345 (petition filed October 1, 2020, plan not filed).

its affiliates related to defenses concerning notice and allocation of fault. Finally, defendants argue that any prejudice to plaintiff caused by the delay of the bankruptcy stay is outweighed by the potential for inconsistent verdicts and decisions, and that the entire case should be tried together in the interests of judicial economy.

CPLR 603 provides that "[i]n furtherance of convenience or to avoid prejudice, the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." "Severance is a matter of judicial discretion and a trial court's determination will not be disturbed absent abuse of discretion or prejudice to a party's substantial rights." *Matter of Santander Consumer USA, Inc. v. Autorama Enters., Inc.*, 205 AD3d 1116, 1118 (3d Dept. 2022).

Virtually all litigation against a debtor including efforts by creditors to obtain the debtor's property is stayed automatically upon the filing of a petition pursuant to 11 USC §362(a). Generally, the automatic bankruptcy stay does not extend to nonbankrupt co-defendants. *United States v. Lyons*, 292 AD2d 683, 684, n.1 (3d Dept.), lv denied 98 NY2d 606 (2002); *Torre v. Fay's Inc.*, 259 AD2d 896, 897 (3d Dept. 1999); *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 13 AD3d 89, 89 (1st Dept. 2004); see *Roman Cath. Diocese of Rockville Ctr. v. Ark 320 Doe (In re Roman Cath. Diocese of Rockville Ctr.)*, 651 BR 622 (Bankr SDNY 2023); 11 USC §362(a). The decision to sever the debtor from the pending action is "not limited to determining whether the bankrupt and non-bankrupt defendants share common issues of law and fact against the plaintiff, rather, it includes a balancing of the equities between the movant and the opponent of the severance." *Sargeant v. Walt Whitman Mall, LLC*, 57 Misc3d 1220(A) at 2 (Sup. Ct., Kings Cty 2017) citing *Katz v. Mount Vernon Dialysis, LLC*, 121 AD3d 856, 857 (2d Dept. 2014). "The balance of the equities lies with plaintiffs when one defendant has received an automatic stay pursuant to 11 USC §362(a)." *Moy v. St. Vincent's Hosp. & Med. Ctr. of NY*, 92 AD3d 651, 652 (2d Dept. 2012); see *Rapini v. New Plan Excel Realty Trust, Inc.*, 8 AD3d 1013, 1014 (4th Dept. 2004). The "damage to the plaintiffs is the hardship of being forced to wait for an indefinite time before their causes are heard...The defendants may be seriously inconvenienced by the resumption of the actions against them... however, the balance of the hardship weighs

in favor of the injured plaintiffs. New York cases are in accord, where actions against co-defendants are subject to automatic stays pursuant to the bankruptcy law.” *Lottes v. Slater*, 114 AD2d 580, 581-582 (3d Dept. 1985) (quotations and citations omitted).

On the other hand, the automatic stay may be extended to claims against non-debtors that will have an “immediate adverse economic consequence for the debtor’s estate,” such as claims to establish an obligation guaranteed by the debtor, claims against the debtor’s insurer, or actions where the debtor is the real party-defendant due to its relationship to another party. *Bank of NY Mellon v. DeMatteis*, 222 AD3d 1, 15 (2d Dept. 2023) (internal quotations and citations omitted); *Ryder v. Knopick*, 251 AD2d 732, 732-733 (3d Dept. 1998).

Defendants have not demonstrated that the automatic stay presently should extend to any non-debtor defendant. Moreover, it is unclear at this early stage of discovery whether intertwined facts or interdependent legal issues exist; for instance, the parties have yet to explore the relationship between the Diocese and the other defendants, and/or the degree of control each defendant exercised over Romano. The gravamen of the complaint against all defendants is the same, i.e., they failed to protect plaintiff from being sexually abused, and the defenses, including lack prior notice, may also be similar. However, defendants’ contention that the claims cannot, or should not, be independently resolved is speculative at this point.³ While the complaint alleges, in conclusory fashion, that this action “falls within one or more of the exceptions set forth in CPLR 1602,” nothing at this stage of the litigation prevents defendants from pursuing their rights under CPLR article 16. *See Artibee v. Home Place Corp.*, 132 AD3d 96, 99 (3d Dept. 2015) modified on other grounds 28 NY3d 739 (2017); *Vogric v. Pathmark Stores, Inc.*, 169 AD3d 1096, 1098 (2d Dept. 2019); *Drir v. U-9 Rest. Assoc., Inc.*, 168 AD3d 445, 445 (1st Dept. 2019); *Moy v. St. Vincent’s*

³ While defendants rely on the Court of Appeals’ guidance that a determination to grant a severance “should be exercised sparingly” (*Shanley v. Callanan Indus.*, 54 NY2d 52, 57 [1981]; *State Farm Fire & Cas. Co. v Dayco Prods.*, 19 AD3d 923, 924 [3d Dept 2005]), none of the cited cases involve a motion to sever an action against a bankrupt party in order to proceed against solvent co-defendants in a personal injury case, nor explain how the Court should weigh the equities in that posture. *See County of Chenango Indus. Dev. Agency v Lockwood Greene Engrs.*, 111 AD2d 509 (affirming trial court’s denial of severance motion in a contract case, as distinguished from “personal injury actions where, obviously, a delay would have been prejudicial to the plaintiffs”).

Hosp. & Med. Ctr. of NY, 92 AD3d 651, 652 (2d Dept. 2012); *Tancredi v A.C. & S., Inc. (In re NY City Asbestos Litig.)*, 6 AD3d 352, 352 (1st Dept. 2004).⁴ Finally, that severance may result in multiple litigation is "a direct byproduct of bankruptcy law. As such, the duplication to the extent it may exist, is congressionally created and sanctioned." *Lottes v. Slater*, 114 AD2d 582 citing *Lynch v. Johns-Manville Sales Corp.*, 710 F2d 1194, 1199 6th Cir. 1983).

The prejudice to plaintiff in being required to await the conclusion of the bankruptcy proceeding before obtaining any remedy outweighs any potential inconvenience to defendants. As with stays generally, postponing the remainder of the action "can easily be a drastic remedy, on the simple basis that justice delayed is justice denied." Patrick M. Connors, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C2201:7. Delay also undermines the purpose of the CVA, which is to "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 of Support of 2019 NY Senate Bill S2440, Bill Jacket, L 2019, ch 11 at 7-8. Given the uncertainty about when plaintiff's claims may be resolved against the Diocese, additional delay may hinder plaintiff's efforts to prove damages against the remaining defendants, whose assets may be dissipated in the interim. Accordingly, the Court deems severance is warranted, without prejudice to a future motion if discovery reveals (1) a basis to extend the stay to claims against the non-debtor defendants, (2) intricate involvement and interdependency of activities and/or decisions made by the debtor and other defendants, or (3) other significant prejudice resulting from severance, including (but not limited to) prejudice arising from an inability to obtain information about Romano's alleged propensity before the abuse alleged by plaintiff.

⁴ To the extent some federal cases, including *In re Brooklyn Navy Yard Asbestos Litig.*, 971 F2d 831, 846 (2d Cir. 1992), suggest a different rule, they rely on state law existing at the time. See *United States v. Fernandez-Antonia*, 278 F3d 150, 162 (2d Cir. 2002) ("when interpreting state statutes, federal courts defer to state courts' interpretation of their own statutes"). "Subsequent decisions of the New York Court of Appeals and various departments of the Appellate Division strongly suggest that this construction of CPLR Article 16 is no longer viable." *Bifaro v. Rockwell Automation*, 269 FSupp 2d 143 (WDNY 2003); see *Duffy v. County of Chautauqua*, 225 AD2d 261 (4th Dept 1996).

In accordance with the foregoing, it is

ORDERED that plaintiff's motion to sever the action pursuant to CPLR 603 is **GRANTED**, without prejudice to further application by defendant(s); and it is further

ORDERED that any and all causes of action listed in the complaint against the non-debtor defendants are hereby severed; and it is further

ORDERED that the caption shall be amended to read as follows:

"LG 94 DOE, Plaintiff,

-against-

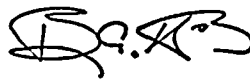
LA SALLE SCHOOL; BROTHERS OF CHRISTIAN SCHOOLS DISTRICT OF EASTERN NORTH AMERICA INC., f/k/a and/or a/k/a and/or d/b/a BROTHERS OF CHRISTIAN SCHOOLS DISTRICT OF EASTERN NORTH AMERICA; INSTITUTE OF THE BROTHERS OF THE CHRISTIAN SCHOOLS, LASALLIAN REGION OF NORTH AMERICA; CHRISTIAN BROTHERS MAJOR SUPERIORS f/k/a and/or a/k/a and/or d/b/a CHRISTIAN BROTHERS CONFERENCE; RENSSELAER COUNTY; and RENSSELAER COUNTY DEPARTMENT OF SOCIAL SERVICES, Defendants."

and it is further,

ORDERED that the remainder of the instant action shall proceed against all defendants except the Roman Catholic Diocese of Albany, New York.

ENTER.

Dated: October 22, 2024
Albany, New York


10/23/2024


Justin Corcoran
Justice of the Supreme Court

Papers Considered: Doc. Nos. 38-74 (motion #2) filed in the NYSCEF docket.

The Court has uploaded the original decision/order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Albany County Clerk. Plaintiff is not relieved from the applicable provisions of CPLR 2220 and §202.5b(h)(2) of the Uniform Rules of Supreme and County Courts insofar as they relate to service and notice of entry of the filed document upon all other parties to the action, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.