

Doe v Placa
2024 NY Slip Op 35426(U)
June 24, 2024
Supreme Court, Albany County
Docket Number: Index No. 911043-23
Judge: Denise A. Hartman
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN DOE,

Plaintiff,

DECISION AND
ORDER

-against-

(MOTION NOS. 1&2)

ALAN PLACA,

Index No. 911043-23

Defendant.

June 24, 2024

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

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Hartman, J.

Presently before the Court is plaintiff's motion to prosecute this action under a pseudonym (Motion #1), which defendant opposes. Also pending before the Court is defendant's motion to consolidate the present action with a pending 2019 action plaintiff commenced in Nassau County Supreme Court (Motion #2), which plaintiff opposes. For the reasons that follow, defendant's motion to consolidate the action with plaintiff's Nassau County action is granted, and plaintiff's motion to prosecute this action under a pseudonym is denied as academic.

Background

On November 16, 2023, plaintiff commenced this action pursuant to the CPLR 214-j (Adult Survivors Act), asserting causes of action of assault, battery, and intentional infliction of emotional distress against defendant Alan Place (Placa), as an agent, servant and/or employee of St. Pius X Seminary (St. Pius) and the Roman Catholic Diocese of Rockville Centre, New York (the Diocese), based on allegations of sexual abuse committed by Placa against plaintiff. In particular, plaintiff alleges that, on two specific instances in or about 1975 when plaintiff was approximately 15 years old, and in or about 1977, when plaintiff was approximately 18 years old, Placa raped and otherwise sexually abused plaintiff.

In support of his motion to consolidate pursuant to CPLR 602, Placa proffers, among other things, the summons and complaint from plaintiff's 2019 action presently pending in Nassau County Supreme Court (Nassau County Index No. 900001/2019). In that action, plaintiff asserted causes of action sounding in negligence; negligent supervision, hiring, and retention; and negligent infliction of emotional distress against St. Pius and the Diocese; as well as causes of action against Placa for assault, battery, and intentional infliction of emotional distress (*see* NYSCEF Doc No. 20). The causes of action asserted in plaintiff's 2019 complaint are based on the same allegations of rape and sexual abuse against Place that occurred in 1975, as contained in plaintiff's 2023 complaint.

Analysis

CPLR 602 (a) provides, in relevant part, that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion . . . may order the actions' consolidated[.]” “Trial courts have broad discretion when considering motions to consolidate actions pending in different courts, although consolidation is generally appropriate where those actions involve common questions of law or fact and the party opposing consolidation has not shown that it would result in prejudice to a substantial right” (*Santander Consumer USA, Inc. v Autorama Enterprises, Inc.*, 205 AD3d 1116, 1118 [3d Dept 2022]; *see Matter of Vigo S. S. Corp. [Marship Corp. of*

Monrovia], 26 NY2d 157, 162 [1970], *cert denied sub nom. Frederick Snare Corp. v Vigo S.S. Corp.*, 400 US 819 [1970]; *see Korn v Korn*, 190 AD3d 1043, 1044 [3d Dept 2021]). “The mere desire to have one’s dispute heard separately does not, by itself, constitute a substantial right” (*Matter of Vigo*, 26 NY2d at 162 [internal quotation marks and citation omitted]).

Plaintiff, represented by the same attorney, reasserts the same causes of action for intentional torts relating to the alleged 1975 incidents against Placa in the present matter as in the 2019 Nassau County Supreme Court action. And although he adds to the present complaint a non-specific claim that Placa sexually abused him in 1977 when plaintiff was approximately 18 years old, he alleges in both actions that Placa was an agent, servant and/or employee of St. Pius and the Diocese. Further, the negligence causes of action alleged against St. Pius and the Diocese in the 2019 Nassau County action arise from the same course of conduct, which allegedly continued into 1977.

The resolution of the two actions will necessarily involve consideration of common questions of law and fact (*see, e.g. Humiston v Grose*, 144 AD2d 907, 907-908 [4th Dept 1988]). Plaintiff’s single additional allegation in his present complaint that Placa, while still an agent, servant, and/or employee of St. Pius and the Diocese, committed further intentional torts 1977 when he was approximately 18 years old, does not change the foregoing analysis that

common issues of fact and law exist in both this action and plaintiff's Nassau County action. To that end, consolidation will promote judicial economy.

On the other hand, plaintiff has failed to demonstrate that consolidation will prejudice a substantial right. In this regard, plaintiff argues only that consolidation will delay resolution of his 2023 action due to the Diocese's bankruptcy, which he posits will take "months to years until that litigation is released from the [federal bankruptcy] stay" (NYSCEF Doc No. 22 at ¶ 3). But plaintiff has not demonstrated that he is unable to accomplish the same end by moving in Nassau County, pursuant to CPLR 603, to sever the causes of action against the non-bankrupt defendant. Plaintiff therefore has not established any need to bypass appropriate procedures in Nassau County to avoid prejudice of a substantial right. And in this Court's view, any determination regarding severance should be left to the sound discretion of the Nassau County Supreme Court, which is in a better position to evaluate the providence of severance in the larger context.

"[W]here actions commenced in different counties are joined pursuant to CPLR 602, the venue generally should be placed in the county where the first action was commenced" (*Niles v Long Is. R.R.*, 291 AD2d 538, 539 [2d Dept 2002]; see CPLR 602 [b]). Accordingly, this matter is consolidated with plaintiff's Nassau County action and venue is transferred to Nassau County Supreme Court (Nassau County Index No. 900001/2019).

Plaintiff's motion to prosecute this action under a pseudonym (Motion #1) as therefore academic; notably, plaintiff is prosecuting his Nassau County action under his own name. And, the parties' remaining contentions, to the extent not expressly addressed above, have been considered and found to be unavailing.

ORDERED that defendant's motion (Motion #2) to consolidate this action with Nassau County Index No. 900001/2019 pursuant to CPLR 602 is granted and the actions are hereby consolidated; and it is further

ORDERED that this action is transferred to the Nassau County Supreme Court; and it is further

ORDERED that plaintiff's motion to prosecute this action using a pseudonym (Motion #1) is denied.

This constitutes the Decision and Order of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for defendant shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
June 24, 2024


HON. DENISE A. HARTMAN
Acting Justice of the Supreme Court


06/24/2024

Papers Considered: *NYSCEF Doc Nos. 1-22.*