

JA-503 Doe v Archdiocese of N.Y.

2025 NY Slip Op 31710(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 952167/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

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JA-503 DOE,

Plaintiff,

- v -

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

Defendant.

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INDEX NO. 952167/2023

MOTION DATE 06/13/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff’s motion for an order pursuant to CPLR § 3025(b) for leave to amend the complaint is granted in part.

This action arises out of allegations that Father Robert Banome, an Archdiocesan priest, sexually abused plaintiff from approximately 1982 to 1991, when plaintiff was approximately 14 to 24 years old. The complaint alleges causes of action pursuant to Gender-Motivated Violence Protection Law and the Adult Survivors Act.

Plaintiff contends that they intend to correct a typographical error in its pleadings, specifically plaintiff seeks to substitute as a defendant St. Anthony a/k/a St. Anthony’s (“St. Anthony”) for the erroneously named defendants St. Joseph’s a/k/a St. Joseph and Parish of St. Simon Stock and St. Joseph (collectively “St. Joseph”).

Pursuant to CPLR 3025 (b), “[a] party may amend his or her pleading, . . . , at any time by leave of court . . . [and] [l]eave shall be freely given upon such terms as may be just including the granting of costs and continuances.” The Court of Appeals recognizes that “[a]s a general

rule, ‘leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit ..., and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.’” *Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] (internal citation omitted).

It is well established that a party seeking to invoke the *relation back* doctrine must establish that: first, the claims arose out of the same conduct, transactions, or occurrence; second, that the new party is united in interest with the original defendant, and will not suffer prejudice due to lack of notice; third, that the new party knew or should have known that but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against him as well (*Buran v Coupal*, 87 NY2d 173, 178, [1995] internal citations omitted).

As to the first cause of action, there is no dispute that it is timely. The Court also finds that the prejudice asserted is inadequate to stop the amendment in this matter. However, as to the second through fourth causes of action, plaintiff has not established that the substitution of parties is appropriate, as both parties acknowledge that those causes of action are time barred as against St. Anthony.

Here, plaintiff has failed to establish that the newly proposed defendant, St. Anthony, is united in interest with St. Joseph’s, failed to allege any mistake in identifying the party or diligent efforts made to ascertain the identities of the proposed defendant within the applicable statute of limitations. Further, plaintiff fails to allege that St. Anthony knew or should have known but for a mistake it would have been a named defendant in this action. This is clearly not a typographical error, as these parties are separate and distinct from each other as discussed above and with the other existing defendant, Archdiocese of New York.

Additionally, plaintiff has failed to establish that St. Anthony will not suffer any prejudice due to the lack of notice. Further, as the proposed amended complaint removes defendants St. Joseph's a/k/a St. Joseph and Parish of St. Simon Stock and St. Joseph, the matter is dismissed as to that defendant. Accordingly, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted in part, in that only the first cause of action of the proposed amended complaint annexed to the moving papers is deemed amended; and it is further

ORDERED that the proposed amended complaint shall be deemed served upon service of a copy of this order with notice of entry thereof to all parties who have appeared in the action; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be served upon St. Anthony a/k/a St. Anthony's, in accordance with the Civil Practice Law and Rules, within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the Clerk of the Court shall amend the caption to add the additional party St. Anthony a/k/a St. Anthony's and remove defendants St. Joseph's a/k/a St. Joseph and Parish of St. Simon Stock and St. Joseph from the caption; and it is further

ORDERED that all remaining parties shall serve and answer to the first cause of action to the amended complaint not more than 20 days following the service indicated above; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office 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)).

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4/9/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE