

M.T. v Diocese of Brooklyn

2022 NY Slip Op 32863(U)

August 18, 2022

Supreme Court, Kings County

Docket Number: Index No. 504804/2020

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. LAURENCE L. LOVE PART CVA

Justice

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M.T.,

Plaintiff,

- v -

THE DIOCESE OF BROOKLYN AND OUR LADY
HELP OF CHRISTIANS CHURCH

Defendant.

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-----X

M.T.,

Plaintiff,

- v -

OUR LADY HELP OF CHRISTIANS SCHOOL,
NEW YORK PROVINCE, SISTERS OF CHARITY,
HALIFAX, INC., THE SISTERS OF CHARITY OF
SAINT VINCENT DE PAUL OF NEW YORK a/k/a
THE SISTERS OF CHARITY OF SAINT VINCENT
DE PAUL, SISTERS OF CHARITY FEDERATION,
INC. f/k/a THE ELIZABETH SETON FEDERATION,
INC., SISTERS OF CHARITY (HALIFAX)
SUPPORTING CORPORATION, AND FATHER
GEORGE E. DUFFY

Defendant.

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For index number 504804/2020, the following e-filed documents, listed by NYSCEF document number
(Motion 002) 32 - 48

were read on this motion to/for CONSOLIDATE

For index number 520515/2021, the following e-filed documents, listed by NYSCEF document number
(Motion 002) 37 - 41, 45, 46, 69 - 71

were read on this motion to/for CONSOLIDATE

For index number 520515/2021, the following e-filed documents, listed by NYSCEF document number (Motion 004) 61 – 67, 74 - 84 were read on this motion to/for STRIKE

Upon the foregoing documents, plaintiff M.T. (“plaintiff”) moves pursuant to CPLR 602 to consolidate index number 504804/2020 (“Action 1”) with index number 520515/2021 (“Action 2”).¹ Defendants THE DIOCESE OF BROOKLYN (the “Diocese”) and OUR LADY HELP OF CHRISTIANS CHURCH (the “Parish”) oppose the motion. In addition, OUR LADY OF HELP CHRISTIANS SCHOOL (the “School”) moves pursuant to CPLR 3024 (b) to strike the term “Abuser” from the complaint. Plaintiff opposes the motion. On July 27, 2022, the court heard oral argument on the motions.

Case Management Order No. 1 (“CMO no. 1”), Section VI, permits the parties to stipulate to coordinated motion practice to preserve judicial resources. In accordance with CMO no. 1, the parties have entered a stipulation, so ordered by the court, involving sixty-two (62) separate actions that seek to consolidate the associated parallel action.² In other words, the parties’ stipulation addresses the consolidation of 31 separate couplets. In all sixty-two (62) actions, the plaintiffs are represented by Slater Slater Schulman LLP and Certain & Zilberg, PLLC. Defendants the Diocese, represented by Shaub Ahmuty Citrin & Spratt, LLP or Peknic, Peknic and Schaefer, and, if any, the related parishes, represented by Scahill Law Group, P.C., oppose those motions and have also moved in some of those matters to strike the term “Abuser.”³ In the submitted so ordered

¹ In Action 2, Defendants NEW YORK PROVINCE, SISTERS OF CHARITY, HALIFAX, INC. and SISTERS OF CHARITY (HALIFAX) SUPPORTING CORPORATION submit an affirmation in support of plaintiff’s motion to consolidate the two named actions.

² The parties entered into a stipulation on March 8, 2022, involving forty (40) separate actions, and then entered into a stipulation on April 12, 2022, adding an additional twenty-two (22) separate actions.

³ Defendants SISTERS OF THE ORDER OF ST. DOMINIC AND AMITYVILLE DOMINICAN SISTERS, INC. (together “SSD”), represented by the law firm Farrell Fritz, P.C., has also opposed consolidation in index number 520536/2021 (NYSCEF doc nos 53 – 57). The Court has considered defendants’ arguments and find them unavailing to deny consolidation in that action. Should SSD not have any relationship with the other defendants and, as they argue, are an improper party, defendants may make a pre-answer motion to dismiss upon consolidation.

stipulation, the parties agreed to a single oral argument to be heard on one pair of index numbers with the substance of the ruling binding on the sixty-two actions.⁴ The parties submitted the above index numbers to represent the coordinated motions practice. The stipulation is attached to this Decision and Order.

The two issues the parties seek to address are (1) whether plaintiff should file an amended complaint upon consolidation, and (2) whether the term “Abuser” should be struck from the complaint in those actions where the alleged abuser is referred to as such. Plaintiff seeks to consolidate the parallel actions pursuant to CPLR 602 for discovery and trial because they arise from the same set of facts and circumstances and are based on the same causes of action and theories of liability. The defendants oppose consolidation to the extent that the consolidation be conditioned upon the filing of an amended consolidated complaint but otherwise agree consolidation is appropriate. In addition, the defendants contend that the term “Abuser” when referred to the alleged abuser in the action is scandalous or prejudicial or both.

Plaintiff fails to specify whether they seek an organic consolidation or a joint trial pursuant to CPLR 602 (a), each being distinct. A consolidation creates one caption, one judgment, and one bill of costs, whereas a joint trial allows for each action to maintain their separate identities (*Padilla v Greyhound Lines, Inc.*, 29 AD2d 495, 497 [1st Dept 1968]; Siegel, NY Prac § 127 [6th ed 2022]). In this court’s view, consolidation is more appropriate here than a joint trial (*Inspiration Enterprises, Inc., v Inland Credit Corp.*, 54 AD2d 839, 839 [1st Dept 1976] [“A motion to consolidate is directed to the sound discretion of the court, and the court is given wide latitude in the exercise thereof.”]; *Whiteman v Parsons Trasnsp. Group of New York, Inc.*, 72 AD3d 677, 678 [2d Dept 2010] [directing a joint trial even though plaintiff moved to consolidate]). Plaintiff

⁴ In each matter the parties make identical arguments related to consolidation and to the term “Abuser.”

initiated Action 1 on February 26, 2020, against the Diocese and the Parish and initiated Action 2 on August 12, 2021, against several other defendants.⁵ Both sides agree that these matters should be joined but disagree on the mechanics. Impetative to the analysis on the facts before the court, Action 2 contains allegations against the Diocese and the Parish. For example, the complaint in Action 2 alleges that

9. At all times material to the Verified Complaint, the School was and continues to be a religious educational institution affiliated with, associated with, and /or operating under the control of [the Diocese], [the Parish], and Sisters of Charity.”

...

20. At all times material to the Verified Complaint, the Sisters of Charity was represented in the Diocese and served the Diocese, School, and [the Parish].

...

61. At all times material to the Verified Complaint, Abuser was an agent, servant, and/or employee of the Diocese.

62. At all times material to the Verified Complaint, Abuser was an agent, servant, and/or employee of the [the Parish].

(Action 2, NYSCEF doc no. 1).⁶

This court would be remiss to prevent the two defendants in Action 1 from answering the allegations in Action 2 (*see Gouldsbury v Dans Supreme Supermarket, Inc.*, 138 AD 675, 675 [2d

⁵ Plaintiff proceeded in this manner for all 31 pairs barring different filing dates.

⁶ In each couplet, plaintiff makes similar allegations against the Diocese and Parish in the action where the Diocese and Parish are not a named party.

Dept 1988] [finding that the trial court did not abuse its discretion to deny a motion to consolidate using a totality of the circumstances approach]. The defendants would face a significant amount of prejudice should they not answer such allegations since defendants who fail to answer a complaint are “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). And should such admission occur during a joint trial, the jury may very well be confused why the Diocese and the Parish are defending and denying the claims in one action and not the other related action that arises from, as the parties agree, the same facts with overlapping issues (*cf. Longo v Fogg*, 150 AD3d 724, 725 [2d Dept 2017] [“ . . . the appropriate procedure is a joint trial, particularly since each action contains a defendant not present in the other.”]; *Padilla*, 29 AD2d at 497-498 [finding a joint trial to be the appropriate mechanism over organic consolidation where one defendant was not named in the other two actions]). In rebuttal, the plaintiff asserts that serving an amended complaint and answer would delay this action to which the court is sympathetic. However, the fact is that the defendants are not causing the delay associated with filing an amended complaint upon consolidation, the delay is the result of plaintiffs’ litigation strategy in initiating these actions as two separate suits rather than one. Defendants should not be denied an opportunity to defend such allegations based an argument of delay when the delay is a result of the plaintiffs own doing.

As for the term “Abuser,” the court declines to stray from its prior decisions finding that the term “Abuser” when used to refer to an alleged abuser is scandalous and prejudicial (*e.g. Valero v The Archdiocese of New York*, Sup Ct, New York County, June 15, 2022, Love, J. Index No. 950684/2021). Pursuant to CPLR 3024 (b), “the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action” (*Soumayah v Minnelli*, 41 AD3d 390, 392

[1st Dept 2007]; *see Wegman v Dairylea Coop.*, 50 AD2d 108, 111 [4th Dept 1975]). Matters that are unnecessary to the viability of the cause of action and would cause undue prejudice to defendants should be stricken from the pleading or bill of particulars (*see Irving v. Four Seasons Nursing & Rehabilitation Ctr.*, 121 A.D.3d 1046, 1048 [2d Dept. 2014]).

Moreover, the complaint contains allegations, and with it being a document accessible to a jury, a jury could believe the term “Abuser” to be conclusory rather than just an allegation. To refute this, plaintiff submits a decision from an adjoining judicial district (*Steven Cherry v City of New York*, Sup Ct, Nassau County, July 12, 2022, Steinman, J. Index No. 900304/2021). The court declines to follow that finding. In any event, had the term been used generally, there may not be any prejudice to the defendants but when used in place of the name of the alleged abuser, such a term is certainly used to create a preconception of the alleged abuser’s guilt. As such, before this Court, the term “Abuser” when used to refer to the alleged abuser, rather than using the alleged abuser’s name or some other nonprejudicial term, is prejudicial and scandalous.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to consolidate is GRANTED in both Action 1 and Action 2; and it is further

ORDERED that each matter included in the attached stipulation is bound by the ruling of this Decision and Order and shall also be properly consolidated so that the 62 separate actions shall be consolidated into their respective 31 couplets; and it is further

ORDERED that defendant’s motion in Action 2 seeking to strike the term “Abuser” used in plaintiff’s complaint is GRANTED, and the scandalous and prejudicial term is stricken from plaintiff’s complaint; and it is further

ORDERED that any action included in the attached stipulation which contains a motion to strike the term “Abuser is bound by this Decision and Order; and it is further

ORDERED that the Clerk of the Court is directed to return plaintiff’s complaint for correction in those actions which contain a motion to strike the term “Abuser”; and it is further

ORDERED that plaintiff is directed to file and serve an amended consolidated complaint devoid of the use of the term “Abuser” when referring to the alleged abuser; and it is further

ORDERED that upon consolidation, plaintiff shall file and serve a consolidated amended complaint within 30 days from the date this decision and order was served with notice of entry; and it is further

ORDERED that defendants shall have 30 days from such service of the consolidated amended complaint in which to answer or otherwise respond to the consolidated amended complaint; and it is further

ORDERED that Index No. 504804/2020 and Index No. 520515/2021 are hereby consolidated, and the consolidated action shall proceed under Index No. 504804/2020; and it is further

ORDERED that the caption shall be amended, and the Clerk of the Court is directed to amend the caption as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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M.T.,

Plaintiff,

Index No. 504804/2020

against

THE DIOCESE OF BROOKLYN,

OUR LADY HELP OF CHRISTIANS CHURCH,
OUR LADY HELP OF CHRISTIANS SCHOOL,
NEW YORK PROVINCE, SISTERS OF CHARITY,
HALIFAX, INC., THE SISTERS OF CHARITY OF SAINT
VINCENT DE PAUL OF NEW YORK a/k/a THE
SISTERS OF CHARITY OF SAINT VINCENT DE
PAUL, SISTERS OF CHARITY FEDERATION, INC.
f/k/a THE ELIZABETH SETON FEDERATION, INC.,
SISTERS OF CHARITY (HALIFAX) SUPPORTING
CORPORATION, and FATHER GEORGE E. DUFFY,

Defendants.

-----X

; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the Court and all sides within 14 days of the date of this order; and it is further

ORDERED that the Clerk of the Court is directed to enter judgement in accordance with this decisions and order.

8/18/2022
DATE


LAURENCE L. LOVE, 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: