

E.C.Q. v City of New York

2023 NY Slip Op 33853(U)

October 27, 2023

Supreme Court, New York County

Docket Number: Index No. 950327/2021

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** **57TR**

Justice

-----X

E. C. Q.,

Plaintiff,

- v -

CITY OF NEW YORK, ARCHDIOCESE OF NEW YORK,
THE DOMINICAN CONGREGATION OF OUR LADY OF
THE ROSARY A/K/A DOMINICAN SISTERS OF SPARKILL,
ST. AGNES CONVENT & ORPHANAGE

Defendant.

-----X

INDEX NO. 950327/2021

MOTION DATE 04/20/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78, 79, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for RENEWAL.

Plaintiff initiated this action on June 14, 2021 pursuant to the New York Child Victims Act. The Complaint alleges that Plaintiff was sexually assaulted by Nelson Figueroa, John Mendoza, Roland Mendoza, Robert Rosario, and Anthony Asiolla at St. Agnes Convent & Orphanage (the “Facility”), an orphanage within the territory of the Archdiocese of New York (“Archdiocese”) that is run by the Dominican Sisters of Sparkhill (the “Order”).

The Complaint further alleges that the Archdiocese controls all Catholic activities within its territory, including those of the Order at the Facility. The Archdiocese moved to dismiss based on documentary evidence, asserting that it is separate from and unaffiliated with the Order and the Facility.

The court issued a decision and order granting the Archdiocese’s motion to dismiss dated January 18, 2023. The court held in pertinent part:

Here, the Archdiocese has shown through documentary evidence that it had no affiliation with St. Agnes nor any of its employees, including the alleged abusers. A deed dated April 30, 1884 establishes that the property at issue is owned by The Dominican Convent of our Lady of the Rosary. Said deed establishes that the Archdiocese did not own the property where the alleged abuse occurred. Likewise, the Dominicans are an independent religious order. Religious orders, such as the Dominicans, which operate within the Archdiocese's geographical territory, are independent from the Archdiocese and have autonomy of life and governance. The Archdiocese does not and does not have any supervisory authority over the Dominicans, including with respect to the day-to-day operations of St. Agnes. The Archdiocese affixes the Affidavit of Roderick Cassidy, Esq., the Associate General Counsel for the Archdiocese of New York, in further support of its motion. That affidavit avers that the Archdiocese did not own the property where the alleged abuse occurred, and that Dominicans are wholly independent from the Archdiocese and that the Archdiocese had no supervisory control over St. Agnes and the alleged abusers. In light of the proffered evidence, the Archdiocese has established that it had no connection to the allegations alleged, and therefore had no duty to plaintiff.

Plaintiff moves for leave to renew the motion to dismiss of pursuant to CPLR § 2221(e).

Plaintiff's motion is based upon the decision of the Appellate Division, First Department in *J.D. v. Archdiocese of New York et al.*, 183 N.Y.S.3d 851 (1st Dep't 2023). Plaintiff argues this decision represents a change in the law that would change the court's prior determination on the Archdiocese's motion to dismiss in this action.

Under CPLR § 2221(e), a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion."¹

A motion for leave to renew is appropriate where a change in the law has occurred, or some new fact comes to the fore not previously known to the Court. *See Opalinski v. City of New York*, 164 A.D.3d 1354, 1355 (2d Dep't 2018); *Sicoli v. Riverside Center Parcel 2 Bit Assocs., LLC*, 150 A.D.3d 607, 607 (1st Dep't 2017). A clarification of the decisional law is a sufficient

¹ The court is ruling on this motion as Judge Love has been elevated to the Appellate Division and is thus "unable to hear" the motion [CPLR §2221(a)].

change in the law to support renewal (*see* CPLR 2221[e][2]; *Roundabout Theatre Co. v. Tishman Realty & Constr. Co.*, 302 A.D.2d 272). *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 (2009).

In *J.D.* the First Department reversed the lower court's dismissal of the Archdiocese in an analogous case, holding that the deed and affidavits submitted did not conclusively resolve whether the alleged abuser was an agent of the Archdiocese, or whether the Archdiocese exercised control over the alleged abuser. The Appellate Division also held that the affidavit of the Associate General Counsel for the Archdiocese, also submitted on the original motion herein, did not constitute sufficient documentary evidence for the purposes of a pre-answer CPLR §3211(a)(1) motion.

This holding is directly applicable to the facts in this case where the court relied on a deed and similar affidavit to determine that dismissal was warranted pursuant to CPLR §3211(a)(1).

WHEREFORE it is hereby:

ORDERED that Plaintiff's motion seeking leave to renew is granted; and it is further

ORDERED that upon renewal the portion of the Court's prior decision dated January 18, 2023, which granted dismissal of this action as against the Archdiocese is hereby vacated; and it is further

ORDERED that the prior motion by the Archdiocese seeking dismissal of this action is DENIED in its entirety; and it is further

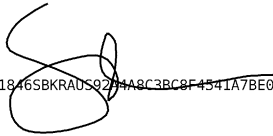
ORDERED that, within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on all Defendants, and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that the Archdiocese is directed to submit an answer within 20 days of service of this decision with notice of entry; 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/supctmanh); and it is further

ORDERED that counsel appear for a virtual compliance conference on January 5, 2024 at 12:00 pm.

This constitutes the decision and order of the court.


202310271418465BKRAUS927148C3BC8F4541A7BE63890B87302C

10/27/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE