

R.B. v Roman Catholic Diocese of Brooklyn

2023 NY Slip Op 34075(U)

November 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 512416/2021

Judge: Sabrina B. Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Plaintiff has brought the instant

**SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY**

PRESENT: HON. SABRINA B. KRAUS PART 57

Justice

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INDEX NO. 512416/2021

R.B.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002
003

ROMAN CATHOLIC DIOCESE OF BROOKLYN,
FRANCISCAN BROTHERS, INC., a/k/a FRANCISCAN
BROTHERS OF BROOKLYN, a/k/a CONGREGATION OF
THE RELIGIOUS BROTHERS OF THE THIRD ORDER
REGULAR OF ST. FRANCIS, and SAINT FRANCIS
PREPARATORY SCHOOL,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 14 – 20; 35-37
were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50 - 60
were read on this motion to/for RENEW/REARGUE/RESETTLE

BACKGROUND

Plaintiff has brought the instant action pursuant to the New York Child Victims Act, CPLR 214-g. Plaintiff alleges he was sexually abused by Brother Noel, a religious brother, clergyman, and teacher of the Franciscan Brothers, while Plaintiff was a student at St. Francis Preparatory School in approximately 1959-1960.

PENDING MOTIONS

On July 12, 2021, Defendants moved for an order pursuant to CPLR §3024(b) striking certain alleged scandalous and prejudicial paragraphs from the complaint.

On October 11, 2021, Defendants moved for leave to reargue the court's August 10, 2021, decision and order allowing Plaintiff to proceed under a pseudonym.

The motions are consolidated herein for consideration and determined as set forth below.

DISCUSSION

Motion Sequence No. 2

Pursuant to CPLR §3024(b), a party may “move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading.” In deciding such a motion, the question for the Court is whether there is a viable reason for the allegations at issue to appear in the complaint. *Soumayah v. Minnelli*, 41 A.D.3d 390, 392 (1st Dep’t 2007); *Irving v. Four Seasons Nursing & Rehabilitation Ctr.*, 121 A.D.3d 1046, 1048 (2d Dep’t 2014).

The allegations at issue in the Complaint concern an alleged longstanding policy of the Holy See (the Vatican) involving the concealment of allegations and reports of clergy-on-child sexual abuse to avoid scandal and accountability. The Complaint details a pattern and scheme in which the Franciscan Brothers and other Catholic organizations allegedly implemented the Holy See’s strict secrecy/concealment policy in an agency relationship, in which the Holy See established the policy as principal and the Franciscan Brothers in this case enforced the policy as its agent.

The Complaint references a 1922 policy document, predating the allegations of child sexual abuse here, which discusses this secrecy policy, along with other directives issued by the Holy See that reinforced this policy over the ensuing decades. The allegations are that the secrecy policy facilitated clergy-on-child sexual abuse by forbidding its disclosure to law enforcement, the Catholic faithful or the public:

The Holy See’s policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse

created a shroud of secrecy insulating clergymen from consequence. Through this policy and others, the Holy See and its agents, including Defendants, knowingly allowed, permitted and encouraged child sex abuse by clergy.

The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. ... Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

The Complaint links the secrecy policy expressly to the Franciscan Brothers and its protection of Brother Noel from exposure as an alleged child sex abuser:

Upon information and belief, under this policy the Defendants protected BROTHER NOEL and avoided exposure of his acts of sexual exploitation and abuse of students. This policy and practice were designed to conceal sexual abuse by clergy and protect them from scandal.

The allegations set forth above are relevant to the liability of the Franciscan Brothers in this case. They are pertinent to the foreseeability of the clergy-on-child sexual abuse alleged in the Complaint. They are particularly relevant for purposes of the reckless state of mind required for punitive damages. *See Randi A.J. v. Long Island Surgi-Center*, 46 A.D.3d 74, 81 (2d Dep't 2007)

In *W.F. v. Roman Catholic Diocese of Paterson*, case no. 20-7020, 2021 WL 2500616 (D.N.J. June 7, 2021), a case brought under the New Jersey Child Victims Act, the plaintiff alleged child sexual abuse by a Brother of the defendant Catholic Order at a summer camp operated by the Order. The Court held that the complaint's allegations of the policy and pattern of concealment were relevant, noting that the "Church-wide policy that mandated secrecy," among the other facts plead, "support the inference that the harm plaintiff allegedly suffered was foreseeable." *Id.*, *13. As to the defendant's motion to strike these allegations as scandalous and immaterial pursuant to Fed.R.Civ.P. 12(f),2 the Court denied the motion, holding that these allegations were proper:

As discussed, the allegations in the Complaint pertaining to the Holy See's policy of secrecy for allegations of sexual abuse bear a rational relationship to Plaintiff's claims. Given their logical relationship to Plaintiff's cause of action, these allegations are not wholly irrelevant

nor unduly prejudicial. As such, striking these allegations from the pleading is unwarranted.

Here the allegations concerning the secrecy policy have a logical relationship to the sexual abuse alleged against Brother Noel and Defendants' liability for this abuse, as such the motion to strike the allegations from the pleading is denied.

Motion Sequence No. 3

The motion for leave to reargue is denied. The court finds no issues of law or fact that were misapprehended by the court in the underlying order. Longstanding New York law supports the court's authority to allow Plaintiff to proceed using a pseudonym because, among other factors, the matter is highly sensitive and personal, there is a very real risk of re-victimization and social stigmatization to the Plaintiff, and there is no prejudice to Defendant.

WHEREFORE it is hereby:

ORDERED that the motions are denied in their entirety; and it is further

ORDERED that counsel appear for a virtual compliance conference on January 31, 2024, at 2pm.

This constitutes the decision and order of the court.

11/6/2023
DATE



HON. SABRINA B. KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: