

K.S. v Archdiocese of N.Y.

2024 NY Slip Op 34022(U)

November 8, 2024

Supreme Court, New York County

Docket Number: Index No. 950244/2021

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.

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

PRESENT:	<u>HON. SABRINA KRAUS</u>	PART	CVA 1/ 57M
	<i>Justice</i>		
	-----X	INDEX NO.	<u>950244/2021</u>
K.S.,		MOTION DATE	<u>10/04/2024</u>
Plaintiff,		MOTION SEQ. NO.	<u>005</u>

- v -

ARCHDIOCESE OF NEW YORK, THE DOMINICAN
FOUNDATION OF DOMINICAN FRIARS PROVINCE OF
ST. JOSEPH, INC., THE DOMINICAN BOYS' CAMP

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114

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

BACKGROUND

Plaintiff commenced the instant action alleging that in approximately 1952 to 1956, when she was approximately five (5) to nine (9) years old, plaintiff was enrolled in the day camp program at Dominican Boys Camp, where Father William Kopfman (“Kopfman”), a Catholic priest of the Dominican Friar order, engaged in unpermitted sexual contact with Plaintiff in violation of a criminal statute which qualifies under the CVA.

The alleged acts of sexual assault and abuse took place at the Camp, specifically at Kopfman’s camp cabin as well as in the alumni hall on campus as well as in a vehicle owned by Defendants. The alleged acts of sexual assault and abuse perpetrated by Kopfman against Plaintiff included but were not limited to digital vaginal penetration.

Plaintiff was allegedly summoned to Kopfman’s room by a camp counselor who would be sent by Kopfman to find Plaintiff and bring her to his room. Kopfman would sometimes go to

Plaintiff's school and pick her up from school and sexually abuse Plaintiff on those occasions. The alleged acts of sexual assault and abuse perpetrated by Kopfman against Plaintiff occurred numerous times over the course of four summers.

PENDING MOTIONS

On October 28, 2024, Plaintiff moved for leave to amend the caption of the Summons and Complaint pursuant to CPLR §§ 305(c) and 3025(b), to correct a misnomer and redesignate the Dominican Fathers Province of St. Joseph ("DF") as a named defendant in the place and stead of The Dominican Foundation of Dominican Friars, Province of St. Joseph, INC. ("Foundation") and related relief.

On the same date Foundation cross-moved for summary judgment and dismissal of the complaint.

On November 4, 2024, the motions were fully briefed and marked submitted.

For the reasons set forth below, the motion is denied, and the cross-motion is granted.

DISCUSSION

Plaintiff alleges that the Foundation was properly served with the summons and complaint at 141 East 65th Street in Manhattan on June 9, 2021. On August 13, 2021, the Foundation joined issue by filing an answer. The answer asserts fifteen affirmative defenses including failure to state a cause of action, that the claim for punitive damages is unconstitutional, and that defendant's employees and agents did not take part in the acts complained of. The answer did not specifically assert that Plaintiff had sued the wrong entity.

On August 27, 2021, the Archdiocese filed a motion to dismiss. In support of its motion, the Archdiocese submitted a deed for the Camp property. On November 5, 2021, the Foundation filed an Affirmation in relation to the motion highlighting that the deed identified the purchaser

as DF and asserting that the Foundation did not exist at the time of the land's purchase in 1928. Annexed to the Affirmation was a copy of the Certificate of Incorporation for the Foundation dated July 30, 2008. The Certificate identified the purpose of the Foundation to "promote, support and assist the work of the Dominican Fathers, Province of St. Joseph." The Foundation did not move for dismissal based upon the allegations made in its Affirmation.

In connection with the motion to amend, Plaintiff's counsel concedes that DF should have been named in the Summons and Complaint, not the Foundation.

CPLR 305(c) provides "[a]t any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced." Such an amendment is permitted "... where there is some apparent misdescription or misnomer on the process actually served which would justify the conclusions that the plaintiff issued the process against the correct party, but under a misnomer, and that the process fairly apprised the entity that plaintiff intended to seek a judgment against it" (*Medina v. City of New York*, 167 A.D.2d 268, 269–270 [1st Dept 1990]).

"(T)he purpose of a CPLR 305(c) amendment is to correct the misnaming of an existing defendant, not to add a new defendant" (*Potamianos v. Convenient Food Mart, Inc.*, 197 A.D.2d 734, 735–36 [3d Dept 1993]). "Mistakes in a defendant's name or identity are a frequent source of litigation under CPLR 305(c). In such cases, the analytical issue is whether the plaintiff is merely seeking to amend the summons to correct the name of a defendant over whom jurisdiction has been acquired, which lies within the remedial scope of CPLR 305(c), or whether the plaintiff is actually trying to add a different defendant. If it is the latter, either a new action must be commenced against the new defendant or a supplemental summons must be filed and

served on the new defendant” (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C305:4).

Here, rather than seeking to correct a misnomer, Plaintiff seeks to add an entirely new defendant, which is not permitted as a CPLR 305(c) amendment. The Foundation and DF are separately incorporated entities, with distinct and separate corporate existences. Accordingly, since Plaintiff seeks to add a new party, Plaintiff may not simply substitute one party in the “place and stead” of another party by means of CPLR 305(c), and Plaintiff’s motion must be denied.

Additionally, the cross-motion for summary judgment is granted. Summary judgment is appropriately awarded where it is established that a plaintiff has sued the wrong entity. *61st & Park Ave. Corp. v. Port Morris Tile & Marble Corp.* (208 A.D.2d 397 [1994]); *Ioviero v. Ciga Hotels, Inc.* (101 A.D.2d 852 [2d Dept 1984]).

In view of the forgoing, Plaintiff’s motion for a stay is denied as moot.

WHEREFORE IT IS HEREBY:

ORDERED that Plaintiff’s motion to amend the caption and for related relief is denied; and it is further

ORDERED that the cross-motion for summary judgment is granted and the complaint is dismissed as against THE DOMINICAN FOUNDATION OF DOMINICAN FRIARS PROVINCE OF ST. JOSEPH, INC, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

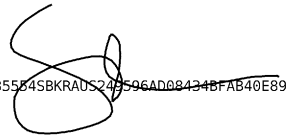
ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Defendant shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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)].

11/8/2024
DATE


202411081355645BKRAUS249596AD084246FAB40E893C10D0F835
HON. SABRINA B. KRAUS, JSC

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE