

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.

Justice.

TRIAL/IAS PART 12
NASSAU COUNTY

CARRIE ATCHISON and CHRISTOPHER PAIGE,

Plaintiff(s),

-against-

MATTHEW MAIELLO as YOUTH MINISTER OF
ST. RAPHAEL ROMAN CATHOLIC CHURCH
and individually, REVEREND THOMAS HAGGERTY,
ST. RAPHAEL'S ROMAN CATHOLIC PARISH
CHURCH, BISHOP WILLIAM FRANCIS MURPHY,
ROMAN CATHOLIC DIOCESE OF ROCKVILLE
CENTRE, JOHN DOE and JANE DOE, RICHARD
ROE and JANE ROE, priests, clergy and administrators
whose names are unknown to plaintiffs,

MOTION #004
INDEX#11141/2003
MOTION DATE
December 4, 2006

Defendant(s).

The following papers read on this motion:

Notice of Motion.....1
Affirmation in Opposition.....1

Upon the foregoing papers, it is ordered that plaintiffs' motion pursuant to CPLR 3025 [b] and [b] to amend the complaint to affirmatively plead an Article 16 exception pursuant to CPLR 1602 [7] and [11] is determined as hereinafter set forth.

Initially, it is noted that plaintiffs have withdrawn that branch of the motion relating to CPLR 1602 [11].

The plaintiffs commenced this action alleging sexual abuse and battery, and intentional infliction of emotional distress against the defendant Maiello, while he was employed as a youth minister at St. Raphael's. The allegations against St. Raphael's, Rev. Thomas Haggerty, and the

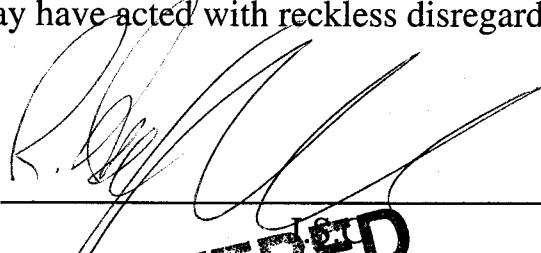
Diocese of Rockville Centre (Church defendants) are failure to properly investigate Maiello prior to hiring, failure to supervise, failure to provide a safe and secure environment, retention of Maiello, failure to investigate child abuse and respondent superior.

The plaintiffs now move to amend the complaint to affirmatively plead Article 16 exceptions CPLR 1602 [7]. CPLR 1602 [7] states that the Article 16 limitations shall not apply to any person held liable for causing claimants injury by having acted with reckless disregard for the safety of others.

"CPLR Rule 3025 subdivision (b), provides that a Court may grant leave to amend pleadings 'at any time'. . . . First, the proponent must allege legally sufficient facts to establish a prima facie cause of action . . . in the proposed amended pleading. If the facts alleged are incongruent with the legal theory relied on by the proponent the proposed amendment must fail as a matter of law . . . [citations omitted]. The next step is for the nisi prius court to test the pleading's merit. The merit of a pleading must be sustained, however, unless the alleged insufficiency or lack of merit is clear and free from doubt . . . [citation omitted]. . . ." *Detrinca v DeFillippo*, 165 AD2d 505, 568 NYS2d 586, 587-88.

In the instant matter, the Court finds that the plaintiffs have alleged facts sufficient to establish prima facie that the Church defendants may have acted with reckless disregard for the safety of others.

Dated: APR 2 2007


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APR 05 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE