
TO: Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses ("Religious Defendants"), by and through their attorney of record, Kathleen DeSoto, Garlington Lohn & Robinson PLLP, 350 Ryman St., Missoula, MT 59807.

Pursuant to Rule 14 of the Montana Rules of Civil Procedure, Plaintiffs move the Court to strike Defendants' Third-Party Complaint against Marco Nunez.

Defendants' claim against Nunez is not a valid third-party claim under Montana Rule of Civil Procedure 14(a)(1). Nunez is not liable to Defendants for Plaintiffs' pleaded claims.

This motion is based upon this Notice and Motion, the Memorandum in Support, and the records and files in this action.

I. INTRODUCTION

Plaintiffs move to strike Defendants' Third-Party Complaint against Marco Nunez.¹ Plaintiffs were sexually molested by Maximo Nava Reyes ("Reyes") while Plaintiffs were young girls. Plaintiffs allege in their complaint that Defendants had knowledge that Reyes had sexually abused children and failed to take reasonable steps to help protect Plaintiffs from further abuse by Reyes. Importantly, Plaintiffs haven't asserted claims based on abuse by persons other than Reyes.

¹ Defendants' Third-Party Complaint is improperly brought pursuant to Montana Code Annotated § 27-1-703(6). (Defs. Complaint at 2). This statute applies where multiple parties may have proximately caused the same injury. Further, subsection (6) applies only to persons with whom the claimant has settled or whom the claimant has released from liability. Neither applies here. Nevertheless, Defendants' Third-Party Complaint is improper even if it were properly brought pursuant to Rule 14.

During their respective depositions in this case, both Plaintiffs testified that prior to the abuse by Max Reyes, they had previously been abused by a man named Marco Nunez. Defendants now improperly attempt to join Marco Nunez into this lawsuit.

Defendants Third-Party Complaint is improper. Plaintiffs haven't asserted any claims for the abuse by Nunez. The Nunez abuse occurred at separate times and at separate locations than the acts that form the basis of Plaintiffs' complaint. Therefore, Nunez is not secondarily or derivatively liable to the Defendants. For these reasons Defendants' Third-Party Complaint is improper and should be stricken.

II. ARGUMENT

In their complaint, Plaintiffs seek damages from the various Jehovah's Witness Defendants resulting from Defendants' deficient policies and procedures related to handling reports of child sexual abuse perpetrated by *Reyes*. Plaintiffs do not allege that Defendants had knowledge of *Nunez's* abuse of the Plaintiffs or that Defendants should be held responsible for *his* abuse. Nevertheless, Defendants erroneously claim that Nunez is somehow liable to Defendants and that he should be joined in this lawsuit. Defendants Third-Party Complaint is improper under Mont. R. Civ. Pro. 14 and should be stricken.

Rule 14(a) states that a defendant may be allowed to bring into a lawsuit any "person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the **plaintiff's claim against the third-party plaintiff.**" Mont. R. Civ. Pro. 14 (emphasis added). "This Rule is essentially identical to Federal Rule 14(a). The federal courts have ruled that a third-party claim may only be asserted when the third-party's liability is dependent on the main claim or when the third-party is secondarily liable to the defendant." *Mills v. Mather*, 1996 ML 64, 7. "If the third-

party claim is separate or independent from the main claim, it will be denied.” *Id. quoting* Wright, Miller & Kane, Federal Practice and Procedure Section 1446 at pp. 355-58 (1990).

Here, Defendants’ Third-Party claims are completely separate and independent from Plaintiffs’ claims. Plaintiffs have not asserted claims for abuse by Nunez. As Defendants point out in their Third-Party Complaint, Nunez abused Plaintiffs years before Max Reyes did. Defs. Complaint at 6-7. Thus, because the actions and events giving rise to Plaintiffs’ Complaint and Defendants’ Third-Party Complaint took place at different times and at different locations, Defendants’ Third-Party Complaint should be denied. *See Amspacher v. Bldg. Sys. Transp. Co.*, No. SAG-17-324, 2018 U.S. Dist. LEXIS 28363, at *10 (D. Md. 2018) (holding that third-party complaint was improper where it attempted to bring in a driver from a separate car wreck even though the injuries were similar and overlapping). *See id.*; *see also Tesch v. United States*, 546 F. Supp. 526, 530 (E.D. Pa. 1982) (holding that contribution was not appropriate when the original complaint and third-party complaint were “separate and distinct causes of action committed by different persons, . . . at clearly severable times with neither party having the opportunity to guard against the other's acts.”) Here, Plaintiffs’ claims against Defendants have nothing to do with the acts of Marco Nunez and thus he cannot be secondarily or derivatively liable to Defendants for the Plaintiffs’ claims.

Thus, because Defendants cannot show that there exists a valid legal basis to assert that Nunez is liable to Defendants for the damages sustained by Plaintiffs for the claims raised in their Complaint, Defendants’ Third-Party Complaint is improper and should be stricken. Indeed, if permitted, Defendants’ strategy would produce an absurd result. If Defendants were allowed to implead Nunez in this case, it would mean that every person who ever caused Plaintiffs *any* mental anguish in their life would be proper parties to this case well. That is not what Rule 14 permits.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that Defendants' Third-Party Complaint should be stricken.

DATED: This 3rd day of May, 2018.

Attorney for Plaintiffs:

A handwritten signature in black ink, appearing to read "Ross L.", written over a horizontal line.

By: _____
Ross Leonoudakis

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served by the means set forth below on this the 3rd day of May, 2018.

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Ross Leonoudakis

Accordingly, Defendants' Third-Party Claim against Marco Nunez is hereby dismissed with prejudice.

IT IS SO ORDERED

DATED this ____ day of _____, 2018.

Hon. James A. Manley
District Judge

C: Counsel of Record