

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----- X Index No.: 70307/2021E

ANDRE DEJESUS,

Plaintiff,

- Against -

THE GOVERNING BODY OF JEHOVAH’S
WITNESSES, WATCH TOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, WATCH TOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.,
AND CRESTON KINGDOM HALL OF JEHOVAH’S
WITNESSES,

Defendants.

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:
: **AFFIRMATION IN SUPPORT**
: **OF MOTION TO DISMISS**

EDWARD J. GUARDARO, JR., an attorney duly admitted to practice law before the courts of the State of New York, affirms under the penalties of perjury as follows:

1. I am a member of the firm Fullerton Beck, LLP., attorneys of record for defendants Watch Tower Bible And Tract Society Of Pennsylvania, and Watch Tower Bible And Tract Society of New York, Inc. (“These Defendants”). I am fully familiar with the matters stated herein by virtue of my review of the file maintained in this office. I submit this affirmation in support of These Defendants’ pre-answer motion, pursuant to CPLR 3211(a)(7), to dismiss the complaint against them for failure to state a claim.

PRELIMINARY STATEMENT

2. This action has been brought pursuant to the Child Victims Act (“CVA”) and falls within the class of formerly time-barred claims that have been revived by CPLR 214-g. This

amended Statutory provision revived time-barred claims and extends the statute of limitations for civil sex abuse actions. The provisions do not, however, alter the longstanding substantive legal principles that limit claims and recoveries in such cases.

3. In this matter, Plaintiff, an approximately 45 to 46 year-old resident of New York State, alleges that, when he was 9 or 10 years old, he was sexually abused in the home of a baseball coach who was a member of co-defendant Creston Kingdom Hall of Jehovah's Witnesses (Kingdom Hall). (Exh. A p 43, 48, 51). It is alleged that the abuser, a John Kenny or Kennedy (name uncertain to Plaintiff) was an elder of the co-defendant local congregation who provided religious, educational and recreational instruction to the Plaintiff. (Exh. A ¶41). It is admitted that the abuse occurred exclusively in the abuser's home in the Bronx. (Exh. A, ¶ 52).¹

4. The Complaint alleges four causes of action:

i) negligence, based upon a special relationship (Exh. A ¶ 82) in that the abuser's attacks "were undertaken, or enabled by, or during the course, or within the scope of abuser's employment, appointment, or agency with the Defendants" (Exh. A ¶ 78) and includes allegations of failure to properly train and supervise elders, teachers, and agents and includes a claim for breach of fiduciary duty (Exh. A ¶¶ 58, 59, 83, 85, 86);

ii) negligent hiring, retention, supervision, or direction based upon an allegation that Defendants hired the abuser for positions that required him to work closely with, mentor, supervise, and counsel young boys and girls (Exh. A ¶¶ 96, 98);

iii) "Breach of Statutory Duty to Report Abuse Under Soc. Serv. Law §§ 413 and 420", (Exh. A ¶ 112); and

¹ A copy of the complaint is attached as Exhibit A.

iv) Premises Liability for the failure to manage and act reasonably to control property and guests to prevent injury from amongst other things, foreseeable sexual assault. It is alleged that Defendants owned or controlled the property on which Plaintiff was harmed (the abuser's private apartment) and that they therefore were under a duty to protect Plaintiff. (Exh. A ¶ 118).

5. Plaintiff alleges that all abuse occurred on "defendants" property but admits the abuse occurred at the home of the abuser in the Bronx. No allegation is made that the Defendants owned any property in the Bronx. (Exh. A ¶ 52).

6. Plaintiff asks for punitive damages for all counts. (Exh. A ¶¶ 93, 110, 115, 123).

7. Plaintiff's claims against These Defendants are based upon their alleged association with the abuser, who plaintiff claims, was instructed and encouraged by, inter alia, These Defendants, to work with children. As a member of the congregation, it is alleged the abuser was an employee of These Defendants and used his position as baseball coach to molest Plaintiff.

8. As more fully set forth, infra, and in the accompanying Memorandum of Law, the claims against These Defendants must be dismissed. The allegations in the complaint fail to state a cause of action. Plaintiff alleges that These Defendants, religious organizations, had a duty of care to protect its rank-and-file members from each other. To date, no court, in any jurisdiction, has recognized such a duty. To the contrary, all courts, which have been asked to impose a duty of such care, have uniformly rejected the notion that any such a duty exists. See, Conti v. Watchtower Bible & Tract Society of New York, Inc., 235 Cal. App. 4th 1214, 186 Cal. Rptr. 3d 26, 37-41 (Cal. App. 2015), Beers v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, 153 Idaho 680, 316 P.3d 92, 99-100 (Idaho 2013), Westminster Presbyterian Church of Muncie v. Cheng, 992 N.E.2d 859, 867-868 (Ind. App. 2013), Bryan R. v. Watchtower

Bible and Tract Society of New York, Inc., 1999 ME 144, 738 A.2d 839, 847 (Me. 1999), Meyer v. Lindala, 675 N.W.2d 635, 640-641 (Minn. App. 2004), Berry v. Watchtower Bible and Tract Society of New York, 152 N.H. 407, 879 A.2d 1124, 1129-1130 (N.H. 2005), Clifford v. Licking Baptist Church, 2010 Ohio 1464, 2010 WL 1254632 at 5 (Ohio App. 2010), Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, 141 Wash. App. 407, 167 P.3d 1193, 1212 (Wn. App. 2007).

9. Plaintiff's complaint fails to articulate a claim upon which relief can be granted. Religious organizations are voluntary associations whose members unite for spiritual reasons. Religious organizations do not supervise or control their congregants' personal conduct and private behavior toward one another. The importance of preventing child sexual abuse, cannot, and there is no legal to basis for it to, override fundamental legal principles and rights. Notwithstanding the alleged acts of the abuser, under the facts and circumstances alleged here, Watchtower is not responsible for the actions of an alleged member of a local congregation who attacks other congregants and Plaintiffs' complaint against These Defendants must be dismissed.

STATEMENT OF FACTS

A. The Parties

10. By way of background, Jehovah's Witnesses is a religious organization composed of over 8.6 million Christians in 240 countries who follow the beliefs and practices of first-century Christians as set forth in the Bible. There are 119,712 congregations worldwide and approximately 13,000 congregations in the United States. See, <https://www.jw.org/en/jehovahs-witnesses/worldwide/>; <https://www.jw.org/en/jehovahs-witnesses/worldwide/US/>. According to

the allegations in the complaint, Plaintiff is a 45 to 46 year old male resident of New York. (Exh. A ¶ 9).

11. The Governing Body of Jehovah's Witnesses is alleged to be a non-profit religious corporation, organized exclusively for charitable and religious purposes, licensed to do business in the State of New York (Exh. A ¶ 10, 11). The Jehovah's Witnesses is alleged to be a "millenarian restorationist Christian denomination" directed by the Governing Body as the ruling council of the denomination. The Governing Body is alleged to be responsible for the administration of the denomination's operations and public ministry on a global scale. (Exh. A ¶ 16).

12. Watch Tower Bible and Tract Society of Pennsylvania is alleged to be a non-profit religious corporation, organized exclusively for charitable, religious, and educational purposes authorized to do business in the State of New York. (Exh. A ¶ 12, 13).

13. Watch Tower Bible and Tract Society of New York, Inc. is alleged to be a non-profit religious corporation authorized to do business in New York. (Exh. A ¶ 14, 15).

14. It is alleged that the Kingdom Hall was a non-profit religious corporation, authorized to conduct business in New York with its principal place of business in the Bronx. It is also alleged that the Kingdom Hall closed after the sexual abuse described in the complaint. (Exh. A ¶¶ 24, 25, 26).

B. Plaintiff's Allegations as to the Structure and Internal Workings of Jehovah's Witnesses

15. The complaint alleges that The Governing Body specifically, along with its committees, supervises the denomination's branch offices, each of which allegedly oversee the

activities of the denomination in a particular geographical area. It is alleged that branch committees are directly appointed by the Governing Body and are in turn responsible for supervising the administrative functions of congregations falling within their jurisdiction. The United States branch office is also alleged to serve as the denomination's international headquarters. (Exh. A ¶ 16).

16. It is further alleged that congregations are divided into circuits consisting of 20 congregations. Circuit overseers are alleged to be directly appointed by the Governing Body and act as circuit representatives, responsible for supervising the activities of the circuit which they are tasked with representing. (Exh. A ¶ 17). Plaintiff alleges that Watch Tower Bible and Tract Society of Pennsylvania is the main legal entity of the Jehovah's Witnesses and supports the denomination's work, including dissemination and publishing the denomination's religious texts, educational and Bible instruction, and charitable works. (Exh. A ¶ 18). Plaintiff claims that as of 1976, the Governing Body, Watchtower Bible and Tract Society of Pennsylvania, and Watchtower Bible and Tract Society of New York Inc. oversaw and continue to oversee a variety of liturgical, sacramental, educational, and faith formation programs, including but not limited to the Kingdom Hall, (Exh. A ¶ 20) continue to seek out children for its activities, (Exh. A ¶ 21) and that the Governing Body, Watch Tower Bible and Tract Society of Pennsylvania, and Watch Tower Bible And Tract Society Of New York, Inc control the activities of children at Kingdom Hall. (Exh. A ¶ 22).

C. Plaintiffs' Allegations of Supervision

17. It is alleged that all the Defendants' negligent supervision is based upon the doctrine of in loco parentis and that all the Defendants had custody of the Plaintiff at the time he was abused.

(Exh. A ¶¶ 45, 46, 47) This allegation is specified as being based upon the fact that through his “positions” with Defendants, the abuser was put in direct contact with Plaintiff. It is alleged that the abuser used his positions of authority and trust to sexually abuse and assault Plaintiff (Exh. A ¶¶ 48-49) after baseball games, in the abuser’s home, which was located off of Fordham Road in Bronx. (Exh. A ¶ 52).

D. Plaintiffs’ Allegations Against These Defendants

18. Although separately set forth in the complaint, the claims against Watchtower can be grouped in four categories.

i. Duty to Protect/Negligent Hiring

19. It is alleged that These Defendants had a duty to protect Plaintiff from the abuser’s assault because he was somehow in their custody and control while in the abuser’s home in the Bronx. No mention is made of Plaintiff’s guardians and if they consented to allow the Plaintiff to accompany the abuser to his home or how many times the Plaintiff was in the abuser’s home.

20. It is alleged that These Defendants owed Plaintiff a duty of reasonable care because they sought out youth or their parents or guardians for participation in their programs, encouraged youth and their parents or guardians to have the youth participate in their programs; undertook custody of youth; promoted their facilities and programs as being safe for children; held their agents, out as safe to work with children; encouraged youth and their parents or guardians to spend time with their agents; and encouraged their agents, to spend time with, interact with, and welcome children. (Exh. A ¶ 62). This allegedly created a foreseeable risk of harm to Plaintiff. (Exh. A ¶ 63).

ii. Negligent Supervision/Retention/Agency

21. The Complaint alleges that the abuser was an agent of These Defendants and thus they had a duty to properly supervise and a duty to review its employees and agents, breached that duty and as a result the plaintiff was harmed. (Exh. A ¶ 64).

22. Through his positions for These Defendants, it is repeatedly alleged that the abuser was put in direct contact with Plaintiff. It is alleged that the abuser used his positions of authority and trust to sexually abuse and assault Plaintiff (Exh. A ¶¶ 48-49) in the abuser's home in the Bronx. (Exh. A ¶¶ 52, 68, 69).

iii. Negligent Training/Failure to Train/Investigate

23. The Complaint alleges that These Defendants (as well as the other Defendants) are liable for the sexual abuse of Plaintiff due to a breach of a duty to properly train and make policies for the prevention of child abuse, failure to adequately inform families and children of the risks of child sexual abuse, failure to investigate risks of child sexual abuse, failure to properly train the workers at institutions and programs within the Kingdom Hall, failure to protect children in their programs from child sexual abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train their employees properly to identify signs of child molestation by fellow employees, failure by relying on mental health professionals, or failure by relying on people who claimed that they could treat child molesters. (Exh. A ¶¶ 65, 66).

24. It is also alleged that all the Defendants failed to properly investigate credible allegations against the abuser. (Exh. A ¶ 69).

iv. Prior Knowledge of sexual assault

25. Although no specific prior acts are alleged, the complaint states that all Defendants “knew or should have known” that the abuser sexually abused children, including Plaintiff. (Exh. A ¶¶ 76, 77, 97, 103, 105). The Complaint also alleges that all the Defendants concealed their knowledge of the abuser’s criminal activity (Exh. A ¶ 66) and failed to warn Plaintiff. (Exh. A ¶ 66).

v. Breach of Statutory Duty to Report

26. It is also alleged that all the Defendants breached a duty to Plaintiff by failing to report known or suspected abuse of children by the abuser to the police and law enforcement in violation of New York Social Services Law 413 and 420. (Exh. A ¶¶ 67, 70, 112-115).

vi. Premises liability

27. It is alleged that Defendants were negligent in their use and maintenance of their property and that despite the fact of admitting the assaults took place in abuser’s private home, the Defendants breached their duty to provide plaintiff with a safe and secure environment. (Exh. A ¶¶ 117-123).

28. For the reasons set forth in the accompanying Memorandum of Law, all claims against These Defendants must be dismissed. These Defendants had no duty to protect Plaintiff from abuse under the circumstances of this matter. In addition, there is no properly pled claim of negligent supervision since Plaintiff was not in the custody and control of These Defendants at the time of the attacks. In addition, Plaintiff’s attempt to expand the limits of duty relative to a premises

liability claim by entering a cause of action for failure to provide a safe environment must fail. No such cause of action exists and a recent Second Department decision confirms this. See, Michael R. v. Westchester Day Sch., 196 A.D.3d 657 (2d Dep't 2021), Laurence K. v. Westchester Day Sch., 196 A.D.3d 637 (2d Dep't 2021), Steven B. v. Westchester Day Sch., 196 A.D.3d 624 (2d Dep't 2021) ("Contrary to the plaintiff's contention, the Supreme Court properly directed the dismissal of the cause of action alleging negligent failure to provide a safe and secure environment, which, in effect, alleged liability under a theory of premises liability, as the complaint alleged that the sexual abuse occurred at Rosenfeld's apartment and not on WDS's premises Moreover, the court properly directed the dismissal of that cause of action as duplicative since it arose from the same facts as the negligent supervision and negligent retention causes of action and does not allege distinct damages" [internal citation omitted]).

WHEREFORE, for the foregoing reasons, it is respectfully requested that the complaint against Watchtower Bible and Tract Society of Pennsylvania and Watchtower Bible and Tract Society of New York, Inc. be dismissed in its entirety.

Dated: White Plains, New York
March 11, 2022

FULLERTON BECK, LLP

By: 
Edward J. Guardaro, Jr., Esq.

CERTIFICATION PURSUANT TO RULE 202.8-B

PLEASE TAKE NOTICE, that Pursuant to Uniform Civil Rule § 202.8-b, I certify that the accompanying Affirmation in Support, contains 2761 words, including the parts of the document that are exempted by Rule 202.8-b. This certificate was prepared in reliance on the word-count function of the word processing system used to prepare the document.

Dated: White Plains, New York
March 11, 2022

FULLERTON BECK, LLP


Edward J. Guardaro, Jr., Esq.