

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DOUGLAS J. MCCLURE,)	
)	
Plaintiff,)	
)	
v.)	C. A. No.: 06C-12-235 CLS
)	
CATHOLIC DIOCESE OF)	
WILMINGTON, INC., a Delaware)	
Corporation; and ST. ANN'S)	
CATHOLIC CHURCH, a Delaware)	
Corporation,)	
)	
Defendants.)	

*Submitted: October 30, 2007
Decided: January 9, 2008*

*Upon Consideration of Plaintiff's Motion to Amend:
Granted, in part.*

MEMORANDUM OPINION

Thomas S. Neuberger and Stephen J. Neuberger, Esquires, of The Neuberger Firm, P.A., Wilmington, Delaware; Robert Jacobs and Thomas C. Crumplar, Esquires, of Jacobs & Crumplar, Wilmington, Delaware, Attorneys for Plaintiff.

Anthony G. Flynn, Neilli Mullen Walsh, Jennifer M. Kinkus, and Maribeth L. Minella, Esquires of Young, Conaway, Stargatt & Taylor, LLP, Wilmington, Delaware, Attorneys for the Catholic Diocese of Wilmington

Mark L. Reardon and Penelope B. O'Connell, Esquires, of Elzufon, Austin, Reardon, Tarlov & Mondell, P.A., Wilmington, Delaware, Attorneys for St. Ann's Catholic Church

SCOTT, J

Introduction

The question presented to the Court is whether plaintiff's motion to amend the complaint should be denied pursuant to Superior Court Civil Rule 12(f). The grounds for objection include failure to plead with specificity, redundancy, scandal, and immateriality.

Background

Plaintiff brought this suit in 2006 claiming damages from alleged sexual abuse he sustained as a minor, in the 1950s, by his priest. The initial complaint claims damages from assault, battery and negligence. On October 10, 2007, plaintiff moved the Court for permission to amend the complaint.

The amended complaint seeks to add several counts, which plaintiff claims is intended to reflect the recently enacted Child Victim's Act, 10 Del C. § 8145. Section (a) provides:

“a cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted sexual abuse.”

The statute provides a two-year window for plaintiffs, who had formerly been barred by the statute of limitations, to bring a cause of action. Plaintiffs may also bring a cause of action for gross negligence against an “institution, agency, firm, business, corporation, or other public or private legal entity that ow[n]ed a duty of care to the victim, or the accused.”

Discussion

Delaware allows liberal amendment of pleadings, unless there is serious prejudice to the opposing party, undue delay or bad faith.¹ An example of sufficient prejudice is when an amendment is sought the morning of trial.² The burden is on the objecting party to demonstrate prejudice.³ The Court must balance the hardships; even if prejudice can be found, it must examine the effect on the party seeking amendment if the amendment is not allowed.⁴ Superior Court Civil Rule 12(f) allows the Court to strike “redundant, immaterial, impertinent, or scandalous matter.” Such a motion is only granted if it is “clearly warranted” and any doubts are resolved in favor of the pleading.⁵

The amended complaint includes a total of eight counts. The two counts from the original complaint are assault and battery, and negligence. The added counts are gross negligence, assault and battery, breach of fiduciary duty, aiding and abetting, conspiracy, and fraud.

¹ *Hess v. Carmine*, 396 A.2d 173 (Del. Super. 1978).

² *Collins v. State Farm Mut. Auto. Ins. Co.*, 830 A.2d 1241 (Del. Super. 2003).

³ *Castetter v. Delaware Dept. of Labor*, 2002 WL 819244 (Del. Super.) citing *Rogers v. Delaware Power & Light Co.*, 95 A.2d 842, 845-6 (Del. Super. 1953).

⁴ *PNC Bank v. Tuner*, 659 A.2d 222 (Del. Super. 1995).

⁵ *Pack & Process Inc. v. Celotex Corp.*, 503 A.2d 646, 660 (Del. Super. 1985).

Defendant Diocese does not object to the counts of gross negligence, assault and battery (Count IV),⁶ breach of fiduciary duty, or aiding and abetting. The Diocese objects to the fraud charge on grounds that it is not pled with specificity. It also objects to the conspiracy charge because it names additional priests, on grounds that these priests did not cause harm to plaintiff. Further, the Diocese argues the recitation of church history within the paragraphs of this count is scandalous and impertinent.

Defendant St. Ann's Catholic Church objects to counts I and II as redundant. It also objects to the conspiracy count, arguing it contains immaterial and scandalous matter—and asks the Court to strike the count altogether or alternatively, to strike the portions which name additional priests and include the alleged history of the church.

Fraud

Superior Court Civil Rule 9 requires that an allegation of fraud be stated with particularity. The rule requires particularity such that the opposing party is on notice of the claims to be adjudicated.⁷ A complaint

⁶ But, it believes the additional counts of assault and battery and gross negligence are redundant.

⁷ *Ariba, Inc. v. Elec. Data Sys. Corp.*, 2003 WL 943249 at *7 (Del. Super.).

satisfies this requirement when it indicates the time, place, content, and speaker of the alleged false representations.⁸

Count VII of the amended complaint is the fraud count and it alleges that defendants made a knowing, false representation to plaintiff that “Carley was a religious authority and leader of integrity worthy of plaintiff’s trust.” It states that this was done with intent to induce plaintiff to engage and associate with Carly. This count of the complaint incorporates the previous paragraphs; notably paragraphs eight and nine which allege specific facts that, if true, would demonstrate defendants had knowledge of Carley’s alleged abuse but that they continued to employ him as a priest. The complaint also alleges that in the position of “a licensed priest, Carley was a person of great influence and persuasion and was deeply revered as an authority figure and as a purported holy man.”⁹

The requirement of pleading fraud with particularity is designed to put defendant on notice of what, specifically, it is accused of having done. The amended complaint, as a whole, provides defendants with specific information on what the alleged fraudulent acts are—namely, it alleges defendants knew Carley was abusing children and yet continued to hold him out to the community as an authority figure worthy of trust. By continuing

⁸ *Id.* at *2 citing *Browne v. Robb*, 583 A.2d 949, 955-6 (Del. 1990).

⁹ ¶ 20.

to do so, the complaint alleges, harm came to plaintiff. Fraud can be shown through silence when there is a duty to speak.¹⁰ The Court finds that the complaint, as amended, pleads sufficient facts for a claim of fraud.

Conspiracy

Defendant Diocese strenuously objects to the count adding a charge of conspiracy. Specifically, the amended complaint lists additional priests, other than McClure. The Diocese contends that they “will be denied their right to defend this case . . . because in the same proceeding they will have to defend every case.”¹¹ Defendant Diocese argues “there is no allegation that any of these priests had anything to do with plaintiff.”¹² Additionally, defendant Diocese objects on grounds of prejudice and undue burden. Defendant, St. Ann’s Catholic Church, also objects on grounds that the allegations within this count are immaterial, impertinent and scandalous.

The Court agrees that paragraph 104 of the amended complaint is subject to Superior Court Civil Rule 12(f) because the information contained within it is immaterial to the acts alleged. While the complaint alleges conspiracy and names these priests as part of the conspiracy, it does not allege any harms to plaintiff by these priests. The Court agrees that the

¹⁰ *Schmeusser v. Schmeusser*, 559 A.2d 1294, 1295 (Del. 1989).

¹¹ Response of Defendant Catholic Diocese of Wilmington, Inc. to Plaintiff’s Motion to Amend at ¶ 8.

¹² *Id.*

information is prejudicial to defendants. The additional priests are not alleged to have committed any harm to plaintiff. As such, paragraph 104 is stricken from the complaint.

Defendants object to the allegations of church history as immaterial and scandalous. The Court finds merit in this argument, in part. While Superior Court Civil Rule 9(b) requires that negligence be stated with particularity, the complaint does contain allegations that are immaterial. The following amended paragraphs are allowed as they provide sufficiently specific detail to plead gross negligence under our rules: 89, 90, 91, 92, 93, 98.

Redundancy

The Court notes there is a legal difference between negligence (count II) and gross negligence (count III). Moreover, the recently-enacted statute states “gross negligence” on the part of a legal entity must be found before damages can be awarded.¹³ As such, the counts are not redundant.

With regard to the redundancy between count I, assault and battery and count IV, assault and battery, there is a difference in the acts charged. In count I, the focus is on the alleged abuse by Carley while in count IV the

¹³ 10 Del. C. § 8145 (b).

focus is on an agency theory of liability for the institutional defendants as a result of Carley's actions. As such, the counts are not redundant.

Conclusion

Plaintiff is granted leave to amend the complaint in accordance with this opinion.

IT IS SO ORDERED.

/s/ Calvin L. Scott, Jr.
Judge Calvin L. Scott, Jr.