

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - December 15, 2011

EVENT DATE: 12/16/2011

EVENT TIME: 10:30:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Steven R. Denton

CASE NO.: 37-2010-00092450-CU-PO-CTL

CASE TITLE: DORMAN VS. LA JOLLA CHURCH

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 10/04/2011

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. and LINDA VISTA SPANISH CONGREGATION'S motions for summary judgment or in the alternative summary adjudication as to the claims of plaintiff JOHN DORMAN within the Second Amended Complaint are DENIED.

A failure to discharge an agent guilty of oppressive acts toward patrons of the employer is in itself evidence tending to show ratification. McChristian v. Popkin (1946) 75 Cal.App.2d 249, 256. The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort, such as assault or battery. Baptist v. Robinson (2006) 143 Cal.App.4th 151, 169. A principal is liable when it ratifies an originally unauthorized tort. Murillo v. Rite Stuff Foods, Inc. (1998) 65 Cal.App.4th 833, 852.

Disputed facts exist demonstrating ratification. The evidence demonstrates that the Linda Vista church was aware of two instances of sexual abuse, but permitted Campos to remain active in the church and to have access to children. Defendant Watchtower reinstated Campos into the church despite apparent knowledge of three instances of sexual abuse.

The existence of an agency relationship is a question of fact. Leno v. Young Men's Christian Assn. (1971) 17 Cal.App.3d 651, 658. "An agency relationship may be informally created. No particular words are necessary, nor need there be consideration. All that is required is conduct by each party manifesting acceptance of a relationship whereby one of them is to perform work for the other under the latter's direction." Malloy v. Fong (1951) 37 Cal.2d 356, 372. An agent's appointment may be implied from the conduct of the parties, and that conduct may often be active or inactive, and consciously or perhaps unconsciously directed to that end. Brand v. Mantor (1935) 6 Cal.App.2d 126, 130. Consideration is not essential to the creation of an agency. Leno v. Young Men's Christian Assn., *supra*. (volunteer SCUBA instructor).

The evidence presented by plaintiff suggests that Campos was employed by the Linda Vista church as a volunteer proselytizer, i.e., as a "Baptized Publisher" (the equivalent of an ordained minister). The church recorded the hours devoted to proselytizing and provided instruction in how to perform this function. The evidence suggests that the church controlled every aspect of this endeavor including what to say, what to wear, recruiting territory, etc. Congregants performed this function with other members. They were grouped and assigned territory by church superiors. There is also disputed evidence suggesting that Campos was elevated to the position of "Pioneer" while a member of the Linda Vista

church. This is further evidence of work performed on behalf of the principal (although Manuela Dorman's statement as to what she heard from other congregants is inadmissible hearsay, her personal observations and belief are admissible).

"A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent." C.C. § 2351. It is undisputed that Linda Vista Church Elders are agents of Watchtower. Thus, ratification by the local church is imputed to its principal. Further, Watchtower authorized the local church to employ its members to proselytize and controlled many aspects of these activities. As a result, disputed facts exist suggesting that Campos was an authorized subagent such that Watchtower may also be liable.

An employer can be held liable for negligent hiring or retention if it knows the employee is unfit, or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness. Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 395-396. Liability for negligent supervision or retention is premised on knowledge by the principal that the agent or servant was a person who could not be trusted to act properly. Id. It is disputed whether Elders of the Linda Vista Church were made aware of an incident in 1982 (one or two years prior to plaintiff Dorman's abuse) that should have put them on notice as to Campos' propensity to sexually abuse young boys. Thus, disputed facts exist suggesting that a duty was owed. Defendants argue that Juarez does not apply because Campos was not in a leadership position and the abuse did not occur at official church events. However, as discussed above, disputed facts exist suggesting an agency relationship even though Campos was not a Ministerial Servant or an Elder when this abuse occurred. In addition, Juarez does not state that the abuse must occur at a sanctioned event for an action to lie against the employer. In fact, Campos was introduced to plaintiff through the church, he proselytized with plaintiff's family and he also taught "bible study" to plaintiff. Thus, it is disputed whether defendant's breach of this duty provided the means for the abuse to occur regardless of where it occurred.

Similarly, the disputed facts support the existence of a general duty obligating defendant Linda Vista Church to protect plaintiff Dorman from sexual abuse by a known or suspected abuser. A tort involves a violation of a legal duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. Id. at 400. Thus, in order to prove facts sufficient to support a finding of negligence, a plaintiff must show that defendant had a duty to use due care, that this duty was breached, and that the breach was the proximate or legal cause of the resulting injury. Id. at 401. In Rowland v. Christian (1968) 69 Cal.2d 108 the court set forth a multi-element assessment in determining whether a particular defendant owed a tort duty to a given plaintiff. Id. These factors include: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with resulting potential liability. Id. Duty is a shorthand statement of a conclusion, rather than an aid to analysis in itself. Dillon v. Legg (1968) 68 Cal.2d 728, 734. "Duty" is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection. Id. The goal of applying the Rowland factors is the ascertainment of whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. Juarez v. Boy Scouts of America, Inc., supra.

Regarding foreseeability, as in scouting, the possibility exists that pedophiles will be attracted to church membership "to gain legitimate access to young boys in order to seduce the more susceptible ones into sexual activity." Id. at 403. In addition, the evidence suggests Linda Vista Elders were already aware of one prior incident in which Campos attempted to sexually abuse a different congregant. Thus, this factor strongly supports imposition of a duty.

It is undisputed that plaintiff Dorman suffered harm. Given defendant's knowledge of a prior incident of sexual abuse, there is a close relationship as between this harm and the Linda Vista Church's conduct

(e.g., the failure to expel Campos in 1982).

Defendant Linda Vista Church and its Elders are morally blameworthy given their failure to take meaningful action after the 1982 incident. Also, there is little evidence that defendant church made any concerted attempt to prevent sexual abuse in general by, for example, educating congregation members.

Regarding policy, civilized society has a common goal of safeguarding children and preventing child sexual abuse. *Id.* at 407. The final two factors address the burdens of imposing a duty. There is little burden involved with expelling a known perpetrator of child sexual abuse.

Finally, defendant Watchtower argues in its reply brief that this action is barred by the "ecclesiastical abstention doctrine." See Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich (1976) 426 U.S. 696, 708-710. However, this doctrine is not applicable. This action does not entail adjudication of church doctrine. This is not a religious dispute.

Plaintiff does not oppose summary adjudication of the cause of action for Breach of Fiduciary Duty and/or Confidential Relationship. As a result, the Court finds that a fiduciary duty or confidential relationship does not exist. See Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257, 273.

The evidentiary objections submitted by the parties are overruled except that the objections to the declaration of Manuela Dorman at page 2, lines 24 and 25 (first two sentences of the paragraph) are sustained.

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., LINDA VISTA SPANISH CONGREGATION and PLAYA PACIFICA SPANISH CONGREGATION fka LA JOLLA SPANISH CONGREGATION'S motions for summary judgment as to the claims of plaintiff JOEL GAMBOA within the Second Amended Complaint are DENIED. The alternative motions for summary adjudication are DENIED, except that summary adjudication of the tenth cause of action for Breach of Fiduciary Duty and/or Confidential Relationship is GRANTED. C.C.P. § 437c. The analysis provided by the Court in relation to the motions directed at plaintiff Dorman's claims apply to these motions as well, and are incorporated by reference.

This action was filed after plaintiff Gamboa's 26th birthday. Thus, he is required to file this action "within three years of the date he discovered or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse." C.C.P. § 340.1(a). The delayed discovery provisions of section 340.1 relate to injuries occurring after the age of majority. Lent v. Doe (1995) 40 Cal.App.4th 1177, 1185-1186. Also, that plaintiff did not repress the memories of the abuse inflicted upon him does not mean he cannot take advantage of the delayed discovery provisions of section 340.1. *Id.* Nothing in section 340.1 requires that memories of abuse be repressed as a prerequisite to a delayed discovery claim. *Id.* To satisfy delayed discovery plaintiff need only allege the onset of psychological injury or illness after the age of majority and that he commenced his action within three years of the time he discovered or reasonably should have discovered such psychological injury or illness was caused by the childhood sexual abuse. *Id.* Defendants' Separate Statements of Undisputed Facts, numbers 60-63 demonstrate that plaintiff never blocked out or repressed the abuse. He spoke about the abuse in 1995, while still a minor. This evidence is not sufficient to meet defendants' burden of demonstrating that plaintiff Gamboa's action is not revived by section 340.1. Defendants' Separate Statements do not address injuries incurred after reaching the age of majority, and when plaintiff discovered (or should have discovered) the connection between the sexual abuse and his psychological injuries.

Plaintiff does not oppose summary adjudication of the cause of action for Breach of Fiduciary Duty and/or Confidential Relationship. As a result, the Court finds that a fiduciary duty or confidential relationship does not exist. See Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257,

273.

The evidentiary objections submitted by the parties are overruled except that the objections to the declaration of Manuela Dorman at page 2, lines 24 and 25 (first two sentences of the paragraph) are sustained.

AS A COURTESY TO THE COURT, IT IS REQUESTED THAT COUNSEL CONTACT EACH OTHER, AND THEREAFTER NOTIFY THE COURT ONLY IF ALL PARTIES AGREE TO SUBMIT TO THE TENTATIVE RULING. PLEASE CONTACT THE COURT AS SOON AS PRACTICABLE IF THE PARTIES ARE SUBMITTING.