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IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

KRISTINE PATICO KOUMENTAKOS,
ET AL

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Plaintiff

Case No. 13-C-08-073089 OT

VS.

METROPOLITAN HERMAN, ET AL

Defendant

MOTION FOR SUMMARY JUDGMENT

Comes now Defendants, The Diocese of Washington and New York (herinafter the "Diocese") and The Washington DC Deanery (hereinafter the "Deanery")¹ by and through counsel, Brault Graham LLC and Daniel L. Shea, Esq., and pursuant to Maryland Rule 2-501 move this court for the entry of Summary Judgment on their behalf on the grounds set forth below. In short, there are no genuine issues of material fact, and as a matter of law these Defendants may not be held liable for the alleged tortious actions of Defendant Raymond Velencia.

BACKGROUND

The Diocese, which is one of several dioceses in the Orthodox Church in America, is comprised of all the parishes within its designated geographical area. It is governed by its Diocesan Bishop. At the time of the events which are the subject of this matter, Metropolitan Herman served as Diocesan Bishop for The Washington and New York Diocese.

¹ The Deanery and the Diocese may sometimes be referred to herein as "these Defendants."

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The Washington Deanery consists primarily of a group of seven separate parish churches which are within the greater Washington metropolitan area.²

Additional information concerning this claim is set forth in the “Background” section of the Motion for Summary Judgment filed on behalf of Metropolitan Herman on November 12, 2008 which is incorporated herein by reference.

As set forth more fully in that motion, there are two fundamental bases upon which the Third Amended Complaint rests in the effort to attempt to impose liability upon several defendants, including the Diocese and the Deanery. The first stems from Mrs. Koumentakos’ termination from her employment at St. Mathew House on February 8, 2006. The second stems from the alleged improper dissemination by Father Velencia of information on November 1, 2007 as a result of his publication in an email of alleged confidential information given by plaintiffs to Father Velencia in confession or during counseling sessions.

I. Claims Involving these Defendants

As set forth in the Third Amended Complaint, the Diocese and the Deanery have each been named specifically in six (6) of the Third Amended Complaint’s twenty-two

² Because the Deanery is not a legally constituted entity, and because the plaintiffs’ claims in this action do not affect the common property rights and liability of the constituent parishes within the Deanery because there are no such common property rights or liabilities, the Deanery is not a proper defendant to this proceeding and it does not have the capacity to be sued. *Courts and Judicial Proceedings Article*, §6-406; Maryland Rule 2-202 Notwithstanding the Deanery’s lack of capacity to be sued in this action, the asserted claims fail for several additional reasons as set forth herein.

115, 120)⁸ As the affidavits of record demonstrate, these defendants have never been the employer of Father Raymond Velencia. As there is no genuine issue of material fact as to this circumstance, these defendants are entitled as a matter of law to the entry of summary judgment as to the claims of negligent hiring/retention.

C.

Punitive Damages are not Recoverable as to these Defendants

The synopsis of Maryland law regarding the recovery of punitive damages has been set forth in detail in the Motion for Summary Judgment filed on behalf of Metropolitan Herman. It is incorporated herein by reference.

There is no viable claim for punitive damages as to these defendants. No evidence of any element of actual malice--fraud, malice, evil motive, ill will, or intent to injure -- exists in this matter as relates to these defendants. Accordingly, plaintiffs' effort to seek an award of punitive damages against these defendants fails as a matter of law.

III. Conclusion

The record before the court demonstrates that there is no genuine issue of material fact as to the dispositive matters which are the subject of this motion.

There is no legally sufficient evidence of record which supports any contention that Father Raymond Velencia, either in the operation of SMHD or insofar as maintaining confidence in regards confessions he heard or counseling in which he and plaintiffs may

⁸ An allegation, of course, does not make a claim true or serve in any way as grounds to oppose a motion for summary judgment. The breadth of the allegation here, however, is pointed out because pleading in good faith in accordance with the *Maryland Rules* requires the existence of good grounds to support an allegation. Rule 1-311 (b). There is no good faith grounds to support the allegation that these defendants employed Fr. Velencia insofar as his personal encounters with plaintiffs as alleged here, much less insofar as the operation of SMHC, Inc. is concerned.

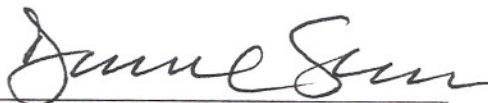
have participated, was acting as the agent for or was subject to the control of Diocese or the Deanery. There is no legally sufficient evidence to support any effort to impose liability upon these defendants. They are not and never have been the employer of Father Raymond Velencia.

Accordingly, as a matter of law, even if the court were to rule that the abstention authorities raised are applicable to the circumstances which are the subject of the Third Amended Complaint, these defendants may not be liable under theories of agency or negligent hiring /retention. For the foregoing reasons, the Diocese and the Deanery are entitled as a matter of law to the entry of summary judgment as to all claims against them.

Respectfully submitted,

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