

161 A.D.3d 625
 Supreme Court, Appellate Division,
 First Department, New York.

Lawrence **BOLIAK**, et al., Plaintiffs–Appellants,
 v.
 Father Michael P. **REILLY**, et
 al., Defendants–Respondents.
 National Employment Lawyers
 Association of New York, Amicus Curiae.

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 ENTERED: MAY 24, 2018

Synopsis

Background: Employees of Roman Catholic high school brought action against school officials asserting claims under New York City Human Rights Law for age and gender discrimination, hostile work environment, retaliation, as well as a defamation claim. The Supreme Court, New York County, [Erika M. Edwards, J., 2017 WL 4236170](#), denied employees' motion to amend their complaint, and they appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] employees were not required to submit an affidavit of merit or make any other evidentiary showing in support of their motion to amend;

[2] employees stated causes of action for gender and age discrimination through a hostile work environment; and

[3] chairman could not be held liable, either vicariously or as an aider and abettor, for the alleged hostile work environment created by school's principal.

Affirmed as modified.

West Headnotes (3)

[1] Parties

➔ [Application and proceedings thereon](#)

Employees of Roman Catholic high school, who brought action against school officials asserting claims under New York City Human Rights Law for age and gender discrimination, hostile work environment, retaliation, as well as a defamation claim, were not required to submit an affidavit of merit or make any other evidentiary showing in support of their motion to amend their complaint to add school's board of trustees and board chairman as defendants.

[Cases that cite this headnote](#)

[2] Civil Rights

➔ [Hostile environment; severity, pervasiveness, and frequency](#)

Civil Rights

➔ [Harassment; work environment](#)

Allegations that employees of Roman Catholic high school were subjected by school's principal to a barrage of vulgar, misogynous, and ageist remarks and epithets, which school's vice principal and dean allegedly echoed, condoned, and amplified, stated causes of action under New York City Human Rights Law for gender and age discrimination through a hostile work environment.

[Cases that cite this headnote](#)

[3] Civil Rights

➔ [Employment practices](#)

Current chairman of board of trustees of Roman Catholic high school was not alleged to have been a member of the board at any relevant time, when school's principal allegedly subjected school employees to a barrage of vulgar, misogynous and ageist remarks and epithets, which other school officials allegedly echoed, condoned, and

amplified, and thus, chairman could not be held liable under New York City Human Rights Law, either vicariously or as an aider and abettor, for the alleged hostile work environment created by principal.

Cases that cite this headnote

Attorneys and Law Firms

****33** Bergstein & Ullrich, LLP, New Paltz (Stephen Bergstein of counsel), for appellants.

Law Office of Mark E. Goidell, Garden City (Mark E. Goidell of counsel), for Father Michael P. Reilly, respondent.

Kelly Drye & Warren LLP, New York (David Zalman and John Callagy of counsel), for Robert Richard, Greg Manos, St. Joseph by the Sea High School, Cardinal Timothy Dolan and the Archdiocese of New York, respondents.

Harrison, Harrison & Assoc., Ltd., New York (Julie Salwen of counsel), for amicus curiae.

Friedman, J.P., Gische, Andrias, Kern, Oing, JJ.

Opinion

***625** Order, Supreme Court, New York County (Erika M. Edwards, J.), entered September 25, 2017, which, insofar as appealed from as limited by the briefs, denied plaintiffs' cross motion for leave to serve a second amended complaint, inter alia, adding Board of Trustees of defendant St. Joseph by the Sea High School and board chairman Dr. Theodore Strange as defendants, unanimously modified, on the law, to grant the motion except as to adding Dr. Strange as a defendant, and otherwise affirmed, without costs.

[1] Plaintiffs were not required to submit an affidavit of merit or make any other evidentiary showing in support of their motion (see *Berkeley Research Group, LLC v. FTI Consulting, Inc.*, 157 A.D.3d 486, 490, 69 N.Y.S.3d 26 [1st

Dept. 2018]; ****34** *Hickey v. Steven E. Kaufman, P.C.*, 156 A.D.3d 436, 66 N.Y.S.3d 474 [1st Dept. 2017]).

***626** [2] The allegations that plaintiffs were subjected by defendant Father Reilly to a barrage of vulgar, misogynous and ageist remarks and epithets, which defendants Robert Richard and Greg Manos echoed, condoned, and amplified, state causes of action under the New York City Human Rights Law (Administrative Code of City of N.Y. § 8–107) for gender and age discrimination through a hostile work environment (see *Hernandez v. Kaisman*, 103 A.D.3d 106, 114–115, 957 N.Y.S.2d 53 [1st Dept. 2012], citing *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 80, 872 N.Y.S.2d 27 [1st Dept. 2009], *lv denied* 13 N.Y.3d 702, 2009 WL 2622097 [2009]). The allegations also state causes of action for retaliation (see *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 51–52, 948 N.Y.S.2d 263 [1st Dept. 2012]).

[3] With the exception of Dr. Strange, the defendants named in the proposed complaint are subject to potential liability for Reilly's alleged discriminatory conduct either vicariously or as aiders and abettors (see Administrative Code § 8–107[13][a]–[b]; *Priore v. New York Yankees*, 307 A.D.2d 67, 74, 761 N.Y.S.2d 608 [1st Dept. 2003], *lv denied* 1 N.Y.3d 504, 775 N.Y.S.2d 781, 807 N.E.2d 894 [2003]; see also *Malena v. Victoria's Secret Direct, LLC*, 886 F.Supp.2d 349, 367 [S.D. N.Y.2012]). Dr. Strange is alleged to be the board's “current” chairman; since he is not alleged to have been a member of the board at any relevant time, the proposed complaint is palpably insufficient as to him.

The proposed complaint states a cause of action against **Reilly** and Manos for defamation of plaintiff Lawrence **Boliak** (see *Davis v. Boenheim*, 24 N.Y.3d 262, 272, 998 N.Y.S.2d 131, 22 N.E.3d 999 [2014]; *O'Neill v. New York Univ.*, 97 A.D.3d 199, 212, 944 N.Y.S.2d 503 [1st Dept. 2012]).

All Citations

161 A.D.3d 625, 78 N.Y.S.3d 32, 356 Ed. Law Rep. 735, 2018 N.Y. Slip Op. 03745