

<b>J.B. v Roman Catholic Diocese of Brooklyn, N.Y.</b>
2022 NY Slip Op 34114(U)
September 21, 2022
Supreme Court, Kings County
Docket Number: Index No. 501853/2020
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

J.B., Plaintiff, INDEX NO. 501853/2020, MOTION DATE 12/16/2020, MOTION SEQ. NO. 003, 004

- v -

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK, ST. THOMAS THE APOSTLE R.C. CHRUCH, and ST. THOMAS THE APOSTLE R.C. ACADEMY,

DECISION + ORDER ON MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 38, 57, 58, 74

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 40, 41, 44, 62, 63, 73

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

In this tort action filed pursuant to the Child Victims Act ("CVA"), Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") moves pursuant to CPLR 3211(a)(5) and (a)(7) for dismissal of Plaintiff J.B.'s complaint in full (Motion Seq. 003).

Defendants the Roman Catholic Church of St. Thomas Apostle, In the Borough of Queens, In the City of New York s/h/a St. Thomas the Apostle R.C. Church (the "Parish") and St. Thomas the Apostle R.C. Academy (the "Academy") (collectively, the "Parish Defendants"), also move for the same relief (Motion Seq. 004). Plaintiff opposes both motions.

Motion Seqs. 003 and 004 are consolidated for joint disposition.

Plaintiff J.B.<sup>1</sup> alleges that between 1973 and 1978, he was abused by Father A. Ferro (“Fr. Ferro”) while he was a student at the Academy in the rectory of the Parish and other locations, including after school hours at the Academy. Plaintiff’s complaint asserts causes of action for: Negligent Hiring, Retention, and Supervision, Negligent, Reckless, and Willful Misconduct, Negligent Infliction of Emotional Distress, Premises Liability, Breach of Fiduciary Duty, Breach of Duty *In Loco Parentis*, and Breach of Statutory Duties to Report pursuant to the Social Services Law and New York Education Law.

The Diocese moves for dismissal of Plaintiff’s complaint, arguing that all claims in the complaint predicated on *respondeat superior* are time-barred as the CVA only revived claims based on intentional or negligent acts. To the extent that the claims are not time-barred, the Diocese makes arguments as to why each cause of action should be dismissed for failure to state a cause of action against it. The Diocese argues that the claims for negligent or willful misconduct and negligent hiring, retention and supervision should be dismissed due to lack of notice, and that the claim for negligent infliction of emotional distress should be dismissed as duplicative. The Diocese separately argues that Plaintiff’s premises liability claim is misplaced in this litigation, and that it owed no fiduciary duty to Plaintiff under *in loco parentis*, nor was it obligated to report Plaintiff’s alleged abuse under the Social Services and Education Law statutes cited.

In their motion, Parish Defendants adopt and incorporate the arguments raised by the Diocese. Parish Defendants reiterate that all claims predicated on *respondeat superior* are untimely, and further argue that any claim here would necessarily fall outside of Fr. Ferro’s scope of employment. School and Parish Defendants also argue that the complaint fails to state a

---

<sup>1</sup> Plaintiff was granted permission to proceed using a pseudonym.

cause of action for negligent hiring as Plaintiff has introduced no basis to support that School and Parish Defendants were on notice of Fr. Ferro's alleged propensity for abuse.

In opposition, Plaintiff argues that both motions should be denied. Plaintiff argues that Defendants' claim that the CVA excluded vicarious liability is based on a misreading of the statute. Plaintiff further argues that all causes of action in the complaint are sufficiently pled but notes that he would request leave to amend should the Court find that a replead is necessary.

### DISCUSSION

#### *Claims Subject to Revival*

As a preliminary matter, the Court discusses the argument raised by all Defendants that the CVA did not revive claims based on various liability.

CPLR §214-g revives "every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of" specific child sexual abuse offenses.

Defendants argue that claims against them for alleged misconduct other than their own intentional or negligent misconduct should remain time-barred, including any *respondeat superior* claim, based on the acts of an alleged individual perpetrator. Upon a review of the statutory language, the court denies this portion of Defendants' respective motions. The argument that the CVA did not revive claims based upon the acts and omissions of an employee or agent acting within the scope of his or her authority or any other claim against a party alleging intentional or negligent acts as a result of child sexual abuse, ignores the revival statute's use of different words to describe (1) against whom a cause of action is brought or liability is sought (that is, a "party"), and (2) by whom the tortious act was committed (that is, a "person"). The Legislature expressly revived "every" claim or cause of action brought against a "party" so long

as the claim alleges intentional or negligent conduct by a “person” causing injury as a result of specific child sexual abuse offenses. The statute clearly differentiates between two different nouns (“party” and “person”) and two different prepositions respectively (“against” and “by”). Thus, it is clear that the Legislature’s intention was that in some instances the “party” held liable, such as defendants, and the “person” committing the negligent or intentional tort, such as an employee or agent, would be different. As such, in this court’s view, it is axiomatic that CPLR §214-g revives respondeat superior claims.

Accordingly, Defendants’ applications to dismiss claims premised on such grounds is denied.

#### ***Dismissal of Individual Causes of Action***

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), a court’s role is deciding “whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (see *Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]).

When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (see CPLR §3026; *Siegmund Strauss, Inc.*, 104 AD3d 401, supra). In deciding such a motion, the court must “accept the facts as alleged in the complaint as true, accord plaintiffs ‘the benefit of every possible favorable inference,’” and “determine only whether the facts as alleged fit into any cognizable legal theory” (*Siegmund Strauss, Inc.*, 104 AD3d 401, supra; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not” presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], aff’d 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], lv denied 89 NY2d 802 [1996], and the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; see also *Leon*, 84 NY2d at 88, supra; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]) “[In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint’s allegations against the defendant’s contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims” (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Rather, where a motion to dismiss is directed at the sufficiency of a complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: “The scope of a court’s inquiry on a motion to dismiss under CPLR §3211 is narrowly circumscribed” (*1199 Housing Corp. v International Fidelity Ins. Co.*, NYLJ January 18, 2005, p. 26 col.4, citing *P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [1st Dept 2003]), the object being “to

determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action” (id. at 376; see *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (see *Leon*, 84 NY2d at 87-88, supra; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept. 2002]).

The Court will address each of the grounds upon which Defendants seek dismissal in turn.

#### **Negligent Hiring, Retention, and Supervision**

Defendants each argue that Plaintiff’s cause of action for negligent hiring should be dismissed for failure to state a claim since there are no specific factual allegations detailing how Defendants knew of Fr. Ferro’s alleged propensity to commit sexual abuse of minors at the time that he was hired or during his employment. Instead, Defendants argue that the Complaint merely contains conclusory statements about what Defendants should have known about Fr. Ferro.

A claimant can maintain a cause of action for negligent retention by adequately alleging that the “employer knew or should have known of the employee’s propensity for the conduct which caused the injury” and nevertheless continued the employee’s service (*Bumpus v. New York City Tr. Auth.*, 47 AD3d 653, 654 [2d Dept. 2008] [internal quotation marks and citation omitted]; see also *Jackson v. New York Univ. Downtown Hosp.*, 69 AD3d 801, 801–02 [2d Dept. 2010]; *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 161 [2d Dept. 1997], cert. denied 522 U.S. 967 [1997], lv. dismissed 522 91 NY2d 848 [1997] [Appellate Division, Second Department modified Kings County Supreme Court’s decision and granted motion to dismiss plaintiff’s claim

that the Roman Catholic Diocese of Brooklyn was negligent in hiring and failing to establish proper guidelines and procedures for screening and investigating priests since there is “no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee” [*id.* at 163]).

However, “[t]here is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159 [2d Dept 1997]). Liability for negligent hiring is based not on the tortious conduct of the employee but on the negligence of the defendant-employer for failures involving the risk of harm by the employee to others (*see, e.g. Ford v Gildin*, 200 AD2d 224 [1st Dept 1994]).

The complaint accurately states that Defendants had a duty to hire individuals that could be safely entrusted to come in close contact with minors while under their supervision. Plaintiff then alleges that Defendant “knew or should have known” of Mr. Williams’ propensity to commit the alleged conduct and yet negligently hired Fr. Ferro without using reasonable care in his hiring and made no effort to oversee his duties or investigate his activities. While Defendants argue these allegations are unsupported, Plaintiff is not required to provide extensively detailed allegations at this juncture in the litigation, and Defendants have introduced no evidence conclusively establishing that the allegations are false. Plaintiff has thus sufficiently alleged, at this juncture, that Defendants may have had knowledge of Fr. Ferro’s propensity to sexually abuse Plaintiff and other minors. Additionally, although the allegations under this cause of action somewhat overlap with Plaintiff’s negligent, reckless, and willful misconduct claim, this cause of action is not duplicative because, as discussed *infra*, the misconduct claim seeks to hold Defendants liable to

safely supervise Plaintiff, while the instant claim seeks liability for Defendants' hiring and retention of Fr. Ferro.

Accordingly, the branches of both motions seeking dismissal of Plaintiff's negligent hiring, retention, and supervision claim are denied as premature at this juncture in the litigation.

### **Negligent, Reckless, and Willful Misconduct**

Defendants each argue that Plaintiff's cause of action for negligent, reckless, or willful misconduct should be dismissed to the extent it is predicated on vicarious liability, and also argue that Plaintiff has alleged no intentional misconduct on their part.

To prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." (*Pasternak v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "Religious entities have (a) duty to prevent injuries inflicted by persons in their employ whom they have reason to believe will engage in injurious conduct". (*Kenneth R.*, 654 NYS2d at 796).

Here, Plaintiff's complaint alleges that Defendants breached their duty of care by failing to properly investigate the background and character of Fr. Ferro and failing to train clergy members or their other staff to identify signs of potential abuse and other grooming behaviors. Although Defendants cannot be held vicariously liable for the intentional torts committed by Fr. Ferro, they can be held vicariously liable for negligence committed in allowing such abuse to take place when a duty of reasonable care existed to safely manage the minor children that spent time with their clergy and no other adult supervision. As stated *supra*, while Defendants argue they had no notice of Fr. Ferro's alleged actions, discovery will be necessary for Defendants to conclusively establish a lack of knowledge as a matter of law.

While Defendants also argue that Plaintiff has not alleged any reckless or intentional misconduct, the complaint alleges that Defendants knew for decades that many minors were abused in their care and yet “covered up acts of abuse by Fr. Ferro, and concealed facts concerning Fr. Ferro’s sexual misconduct from Plaintiff and his family” and thus acted with “utter disregard” and “depraved indifference” to the potential injuries suffered by Plaintiff and other similarly situated minors. While these allegations have yet to be substantiated, Plaintiff has sufficiently alleged facts and allegations to support his cause of action for negligent, reckless, or willful misconduct.

Thus, Defendants are not entitled to dismissal of Plaintiff’s negligent, reckless, or willful misconduct claim at this juncture.

#### **Negligent Infliction of Emotional Distress**

Defendants also seek dismissal of Plaintiff’s Negligent Infliction of Emotional Distress claim (NIED). Defendants argue that Plaintiff does not articulate a basis for holding them liable under this tort, and that the claim is duplicative of Plaintiff’s other negligence-based causes of action.

Typically, a cause of action for NIED “must be premised on conduct that unreasonably endangers the plaintiff’s physical safety or causes the plaintiff to fear for his or her physical safety” (*Padilla v. Verczky-Porter*, 66 AD3d 1481, 1483 [4th Dept 2009]). “Generally, a cause of action for infliction of emotional distress is not allowed if essentially duplicative of tort or contract causes of action.” (*Wolkstein v. Morgenstern*, 275 AD2d 635, 637 [1st Dept 2000]).

Here, the allegations set forth under Plaintiffs’ NIED claim are duplicative of the negligence causes of action- namely, that Defendants knew or should have known Plaintiff would be subject to sexual abuse by Fr. Ferro, causing Plaintiff to suffer as a result. Given that

Plaintiff may recover for emotional distress caused by Fr. Ferro's alleged conduct under his negligent hiring and retention claim, the NIED claim is unnecessary (*see Wilczynski v Gates Community Chapel of Rochester, Inc.*, 2022 WL 446561, \*3, 2022 US Dist LEXIS 26113, \*8-9 [WD NY, Feb. 14, 2022, No. 6:20-CV-06616 (EAW)] [dismissing an NIED claim as duplicative of the negligence, negligent supervision, hiring, and retention claims]). As such, Defendants' applications to dismiss Plaintiff's NIED claims are granted.

Accordingly, the branches of the motions seeking to dismiss Plaintiff's NIED claim are granted.

### **Premises Liability**

Plaintiff asserts a cause of action for premises liability based on Defendants' ownership and control over the premises where the abuse is alleged to have occurred. Defendants each argue that this claim is improper in a sexual abuse case.

"In a premises liability case, the plaintiff must establish: (1) the existence of a defective condition, and (2) the defendant either created or had actual or constructive notice of the defect" (*see Ingram v. COSTCO Wholesale Corp.*, 117 A.D.3d 685 [2d Dept. 2014]).

Here, "Plaintiff has failed to establish that the facts as alleged in this case for sexual abuse extend to a claim for premises liability, or to provide any authority establishing that claims of sexual abuse extend to premises liability. Based upon the foregoing, that branch of defendants' application seeking to dismiss plaintiff's second cause of action [for premises liability] is granted" (*see Albanese v. The Jewish Board of Family and Children's Services, Inc. et al.* (Sup. Ct. Westchester Cnty., Index No. 56668/2020)).

Additionally, Plaintiff's premises liability cause of action is impermissibly duplicative of his negligence-based claims (*see Wilson v. Diocese of New York Episcopal Church*, No. 96-cv-2400, 1998 WL 82921 [SDNY 1998]).

Accordingly, the branches of the motions seeking to dismiss Plaintiff's premises liability claim are granted.

### **Breach of Fiduciary Duty and Breach of Duty *In Loco Parentis***

Defendants each argue that Plaintiff's causes of action alleging breach of fiduciary duty and breach of duty *in locok parentis* should be dismissed as Defendants did not owe the alleged duties and lacked notice of the alleged conduct.

Courts have articulated that a fiduciary duty exists when a plaintiff's relationship with an institution, oftentimes a church, extends beyond that of other similarly situated individuals (*see Doe v. Holy See [State of Vatican City]*, 17 AD3d 793, 795 [3d Dept 2005]). In other words, a fiduciary relationship between a plaintiff and an institution may exist where the plaintiff comes forward with facts demonstrating that the relationship between the plaintiff and the institution is unique or distinct from the institution's relationship with others generally (*id.*). That said, a fiduciary relationship is not applicable to all individuals, and can be established upon a showing that an individual's relationship with the institution resulted in "de facto control and dominance" when the individual was "vulnerable and incapable of self-protection regarding the matter at issue" (*Marmelstein v. Kehillat New Hempstead*, 11 NY3d 15, 22 [2008]).

Here, Plaintiff alleges that a "fiduciary relationship" existed with each Defendant as Defendants were entrusted with his well-being and safety as a child. However, to state a valid cause of action for breach of a fiduciary duty, a plaintiff cannot rely on bare allegations that a fiduciary relationship existed. By simply alleging that a fiduciary duty arose because Plaintiff

was a minor and under the supervision and care of defendant, Plaintiff has failed to state a cause of action for breach of fiduciary duty. To be sure, assuming every fact alleged to be true and liberally construing the pleading in Plaintiff's favor, the allegations for breach of fiduciary duty are still insufficient as a matter of law. Additionally, Plaintiff's breach of fiduciary duty claim, as pleaded in the complaint, is duplicative of Plaintiff's negligence-based causes of action that the Court has determined will move forward.

Accordingly, the branches of the motions seeking to dismiss Plaintiff's breach of fiduciary duty claim are granted.

Turning to Plaintiff's claim for a breach of duty *in loco parentis*, the Court notes that there is a branch of case law under which schools are tasked with a duty to adequately supervise the students in their charge and are liable for foreseeable injuries proximately related to their failure to provide adequate supervision (*see Nash v Port Wash. Union Free School Dist.*, 83 AD3d 136, 149-150 [2d Dept. 2011]; *Doe v Department of Educ. of City of N.Y.*, 54 AD3d 352 [2d Dept. 2008]; *see also Palmer v City of New York*, 109 AD3d 526, 527 [2d Dept. 2013], *citing Mirand v City of New York*, 84 NY2d 44, 49 [1994]; *McLeod v City of New York*, 32 AD3d 907 [2d Dept. 2006]). Based on the doctrine that school districts act *in loco parentis* with respect to their minor students (*see Barragan v City Sch. Dist. of New Rochelle*, 120 AD3d 728 [2d Dept. 2014]; *Stinson v Roosevelt U.F.S.D.*, 61 AD3d 847, 847-848 [2d Dept. 2009]) because they take physical custody of them (*see Giresi v City of New York*, 125 AD3d 601, 602-603 [2d Dept. 2015]), schools are responsible for supervising their students with the same degree of care as a parent of ordinary prudence would exercise in comparable circumstances (*id.*, *citing Mirand v City of New York*, 84 NY2d 44, 49 [1994]). "The concept of *in loco parentis* is the fountainhead of the duty of care owed by a school to its students" (*Williams v. Weatherstone*, 23 NY3d 384, 403

[2014] [citing *Mirand v. City of New York*, 84 NY2d 44, 49 [1994] [(t)he duty owed derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians”)].

It does not appear, however, that the doctrine of *in loco parentis* can simply be applied to churches by way of analogy to schools, as Plaintiff suggests. That would discount the instant application as to the Diocese on that basis alone. Nevertheless, even if the doctrine were applied to Parish Defendants, *in loco parentis* defines the duty owed within the context of a negligence cause of action but does not create an independent cause of action.

Accordingly, the branches of the motions seeking to dismiss Plaintiff’s breach of duty *in loco parentis* claim are granted.

**Breach of Statutory Duties Pursuant to New York Social Services Law §§ 413, 420 and Education Law Article 23-B**

Plaintiff’s final cause of action is premised on the notion that Defendants breached their statutory duties to report abuse under Social Services Law §§ 413 and 420, as well as Education Law Article 23-B.

Pursuant to Social Services Law §413, school officials, which include but are not limited to school teachers, school guidance counselors, school psychologists, school social workers, school nurses, school administrators or other school personnel required to hold a teaching or administrative license or certificate, are required to report “when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.” Social Services Law §420(2) states that “Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such

failure.” “The Legislature enacted Social Services Law §420 which expressly allows a private cause of action for money damages upon the failure of any person, official or institution required by title 6 to report a case of suspected child abuse or maltreatment” (*Rivera v. County of Westchester*, 31 Misc 3d 985, 994 [Westchester Co Sup Ct 2006]). “An injured child may assert a cause of action for damages under Social Services Law § 420 for alleged violations of sections 413 and 417, which were enacted to protect children from physical abuse” (*Young v. Campbell*, 87 AD3d 692, 694 [2nd Dept 2011], lv denied 18 NY3d 801 [2011]).

Section 23-B of the Education Law, titled “Child Abuse in an Education Setting” places a duty on school employees and officials to report allegations “that a child has been subjected to child abuse by an employee . . . in an educational setting.” NY Educ. Law § 1126. Section 23-B was extended to private schools in 2018.

Here, the Court finds that as a religious institution, the Diocese is entitled to dismissal of this cause of action as it is not an educational institution subject to the Education Law or a mandated reporter under the Social Services Law. “The complaint does not allege that any member or employee of the Diocese is a mandated reporter [of the Social Services Law]” *Monaghan v. Roman Catholic Diocese of Rockville Centre*, 165 A.D.3d 650, 653 (2d Dept 2018).

Although Parish Defendants, in contrast to the Dioceses, are actively involved in education and thus may be subject to these statutes, a close reading indicates that Parish Defendants were not required to report the alleged abuse.

The 1972 amendment of the Family Court Act, in relevant part, provides that a

“[p]erson legally responsible’ includes the child’s custodian, guardian, any other person responsible for the child’s care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the

conduct of such person causes or contributes to the abuse or neglect of the child”

(L 1972, ch 1015, § 2 [g]; *see also* L 1973, ch 1039, § 412 [3] [SSL defining “[p]erson legally responsible” for a child . . . as defined by the Family Court Act]).

The question then is whether Fr. Ferro fell under the definition of “other person legally responsible for” the care of Plaintiff and other students at the school to trigger the Social Services Law’s reporting obligation. The complaint alleges that Fr. Ferro was a “priest employed by the Diocese” who was “assigned to supervise and/or monitor the work performed by Plaintiff and other minor boys at the [Parish Academy]”.

In this regard, the courts have consistently held that the Family Court Act definition of “other person legally responsible” for a child’s care pertains to “parental responsibility or its functional equivalent *within a family setting* in terms of the propriety of care being rendered to the child” (*In re Jessica C.*, 132 Misc 2d 596, 600 [Fam Ct, Queens County 1986] [emphasis added]). The definition “was not intended to include those unrelated to the family context; performing child care services outside of the household such as doctors, *teachers*, and baby-sitters” (*see id.* [emphasis added]). “A baby-sitter or child care provider who provides such services outside the parental home is not a ‘person legally responsible’” (*In re Robert J.*, 178 AD2d 1004, 1004 [4th Dept 1991]). The definition pertains to a person who “acts as the functional equivalent of a parent in a familial or household setting,” and does not pertain to “persons who assume fleeting or temporary care of a child . . . or those persons who provide extended daily care of children in institutional settings, such as teachers” (*In re Yolanda D.*, 88 NY2d 790, 796 [1996]).

Here, Plaintiff does not allege that Fr. Ferro was an equivalent of a parent in the context of a family or a household. The allegation is that Fr. Ferro was an employee of the Diocese who supervised Plaintiff at the Academy after school hours. Accordingly, Fr. Ferro was not a person

legally responsible for a child's care within the definition of the Family Court Act, and, therefore, under the Social Services Law, the Academy was not required to report the alleged conduct.

Additionally, the statutory obligation under the Education Law was promulgated only in 2000, when the Legislature amended the Education Law (L 2000, ch 180, section 1, 1126). The same obligation in a private school setting became mandatory in 2018 (*see* L 2017, ch 363; *see also* *PC-41 Doe v Poly Prep Country Day Sch.*, 2021 WL 4310891, \*18, 2021 US Dist LEXIS 181254, at \*43 ["Section 1125 [of the Education Law] was amended in 2018 such that staff-on-student abuse in private schools thereafter fell within the scope of Section 1126," which regulates reporting obligations]).

As such, the branches of Defendants' motions seeking dismissal of Plaintiff's claim that Defendants breached their statutory duty to report abuse under Social Services Law §§ 413 and 420, and Education Law 23-B are granted.

### CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion of Defendant The Roman Catholic Diocese of Brooklyn, New York (the "Diocese") pursuant to CPLR 3211(a)(5) and (a)(7) for dismissal of Plaintiff J.B.'s complaint in full (Motion Seq. 003) and the motion of Defendants the Roman Catholic Church of St. Thomas Apostle, In the Borough of Queens, In the City of New York s/h/a St. Thomas the Apostle R.C. Church (the "Parish") and St. Thomas the Apostle R.C. Academy (the "Academy") (collectively, the "Parish Defendants") for the same relief (Motion Seq. 004) are both granted to the extent that:

- (i) the third cause of action for negligent infliction of emotional distress is dismissed;

- (ii) the fourth cause of action for premises liability is dismissed;
- (iii) the fifth cause of action for breach of fiduciary duty is dismissed;
- (iv) the sixth cause of action for breach of duty *in loco parentis* is dismissed;
- (v) the seventh cause of action for breach of statutory duties to report is dismissed;

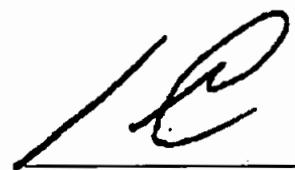
and the motions are otherwise denied; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order, along with notice of entry, on all parties within 10 days; and it is further

ORDERED that Defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

This constitutes the Decision and Order of the Court.

2022 DEC -5 AM 10:41  
 KINGS COUNTY CLERK  
 FILED

  
 \_\_\_\_\_  
 LAURENCE L. LOVE, J.S.C.

09/21/2022  
 \_\_\_\_\_  
 DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE