

J.F. v Archdiocese of N.Y.

2025 NY Slip Op 31707(U)

March 28, 2025

Supreme Court, New York County

Docket Number: Index No. 950249/2019

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART CVA 1 / 57M

Justice

-----X

J. F.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. MATTHEW
CHURCH, ST. MATTHEW SCHOOL

Defendants.

-----X

INDEX NO. 950249/2019

**MOTION DATE 01/22/2025,
02/06/2025**

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 101, 102

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff commenced this CVA action alleging that from 1979 through 1981, he was sexually abused by Father Michael O’Hara, his basketball coach and seventh and eighth grade teacher, at St. Matthew School.

The complaint asserts a cause of action for negligence as to each of the defendants. Both defendants have moved for summary judgment. For the reasons set forth below, the motions are denied.

FACTS

The following facts are taken from the statements of fact and responses submitted by the parties, and unless otherwise noted are uncontested by any evidence in the record.

From 1978 through 1983, O'Hara was employed as a teacher and basketball coach at St. Matthew School, a Catholic School within the geographical and ecclesiastical bounds of the Archdiocese of New York.

Plaintiff enrolled at St. Matthew's School in the first grade and remained there until his eighth-grade graduation in 1981.

Plaintiff was first introduced to O'Hara on his last day of sixth grade at St. Matthew School. Thereafter, beginning in seventh grade, O'Hara was Plaintiff's teacher and basketball coach.

From 1979-1981 Plaintiff was abused by O'Hara. The abuse occurred at O'Hara's apartment and in the downstairs gymnasium at St. Matthew's School.

The first incident of inappropriate behavior by O'Hara towards Plaintiff occurred when O'Hara asked Plaintiff to retrieve something from the trunk of O'Hara's car. When Plaintiff opened the trunk of the car, there was a pornographic magazine sitting there. Plaintiff retrieved the item and when he brought it back to O'Hara, O'Hara apologized for leaving the magazine there for Plaintiff to see.

Shortly thereafter, O'Hara asked Plaintiff to help him bring some items up and into O'Hara's apartment. O'Hara lived close to the School. Once inside the apartment, O'Hara told Plaintiff he wanted to see Plaintiff with a hard on. Plaintiff did not know what a hard on was, O'Hara clarified that he wanted to see Plaintiff's penis. Unsure of how to respond to his teacher and basketball coach, Plaintiff followed O'Hara's instruction and undid his pants and showed O'Hara his penis. Then pulled his pants back up and they left O'Hara's apartment and O'Hara drove Plaintiff home.

O'Hara continued to bring Plaintiff to his apartment on a weekly basis. O'Hara would drive Plaintiff there after school. Often there were other boys in the car. O'Hara kept his car parked outside the classroom. On the occasions where O'Hara abused Plaintiff, he would drop Plaintiff off last. On other occasions a different boy would be dropped off last. Plaintiff later learned O' Hara also abused other boys who were in the car.¹

The sexual abuse at O'Hara's apartment escalated after the first visit. O'Hara provided Plaintiff with pornographic magazines and instructed Plaintiff to masturbate himself. O'Hara told Plaintiff that he was not masturbating properly. O'Hara masturbated Plaintiff and performed oral sex on him. Additionally, O'Hara showed Plaintiff pornographic movies and forced Plaintiff to perform oral sex on O'Hara approximately two occasions.

At the apartment, O'Hara showed Plaintiff pornographic photographs he had taken of other boys, including photos of W.K., K.C., and M.N., some of Plaintiff's classmates from St. Matthew.

O'Hara also sexually abused Plaintiff on the stage in the gymnasium at St. Matthew School on approximately six occasions. In each instance, Plaintiff would be excused from O'Hara's class and instructed by O'Hara to meet him behind the curtains on the stage. O'Hara would have Plaintiff lie down on a table on the stage and O'Hara would masturbate Plaintiff.

Plaintiff received so much attention from O'Hara that he was known by his classmates as the teacher's pet. O'Hara regularly excused Plaintiff from class and sent him on errands or to hang out at O'Hara's apartment. O'Hara took the boys on overnight trips and other excursions. Plaintiff was not abused by O'Hara on these trips.

¹ Plaintiff also later learned that despite O' Hara's promises to Plaintiff that he would not abuse Plaintiff's younger brother, O'Hara did in fact abuse Plaintiff's younger brother. However, as this abuse and the discovery of it came after Plaintiff's abuse, it is not relevant for purposes of this motion.

Towards the end of Plaintiff's eighth grade school year in 1981 the abuse stopped.

Plaintiff never told anyone about the abuse until long after it occurred. Plaintiff never told anyone he was going to O'Hara's apartment. At O'Hara's apartment Plaintiff and O'Hara were always alone. Plaintiff does not know what if anything others at the School observed.

In addition to the above, there is evidence in the record supporting facts defendants characterize as disputed, which primarily pertain to notice. They are as follows.

In or about 1966, a complaint of child sexual abuse was made against O'Hara by a child who was a member of the National Council of the Boy Scouts of America, Troop 115. Troop 115 met at and was associated with St. Thomas the Apostle Catholic Church ("St. Thomas") in West Hempstead, New York. A priest at St. Thomas wrote to the Scout Executive of the Nassau County Boy Scouts informing Boy Scouts that Scoutmaster of Troop 115, O'Hara, had given a boy a Playboy Magazine. O'Hara "proceeded to touch the boy impurely and invited the boy to do the same to him".

Thereafter, on August 23, 1966, the Nassau County Scout Executive wrote to the National Council of Boy Scouts of America, Director of Division of Personnel to put O'Hara on the Boy Scouts' "Red Flag List". The memorandum explains that a meeting was held with Reverend Dolan, the pastor of O'Hara's church, pertaining to O'Hara's history of molesting children. As a result, O'Hara was asked to resign from his position as Scoutmaster and was before the Board of Education with a determination to be made by the Catholic Church regarding his teaching position.

Despite O'Hara being forced to resign from his position as Scoutmaster in 1966 and the Catholic School's Board of Education meeting to discuss O'Hara's future as a teacher in the

Catholic School System, O'Hara's career as a parochial schoolteacher continued unabated, and he was employed as a teacher within parochial schools for over twenty years thereafter.

O'Hara completed his first application for employment as an elementary school teacher in the Archdiocese of New York in September of 1966. On said application O'Hara listed Father J. Dolan as a reference. Father J. Dolan was one of the priests who met with O'Hara after he was accused of child sexual abuse in 1966, and asked O'Hara to resign from his position as Scoutmaster of Troop 115.

In 1975, during O'Hara's tenure as camp director of Catholic Youth Organization ("CYO") Camp Hayes in Godeffroy, New York, O'Hara sexually abused campers. One of O'Hara's victims, James Clemente, reported the sexual abuse perpetrated by O'Hara to Archdiocesan priest Father Stinner. Instead of reporting to law enforcement or investigating the allegations of abuse, Father Stinner gave James Clemente penance and told him never to speak of the sexual abuse again.²

In 1979, Peter Clemente – brother of O'Hara victim James Clemente, wrote a letter to Cardinal Terence Cooke, Archbishop of the Archdiocese of New York, informing Cardinal Cooke that Peter Clemente had found several trash bags filled with child pornography in O'Hara's cabin at CYO Camp Hayes. In the letter, Peter Clemente disclosed to Cardinal Cooke that O'Hara threatened Peter Clemente and pointed a rifle at him after discovering Peter Clemente had gone into O'Hara's cabin at CYO Camp Hayes.

² The Court takes judicial notice that in 2002, the Archdiocese included Fr. Stinner's name on a list of priests credibly accused of sexual abuse of children. In 2005, Fr. Stinner was laicized. He died in August 2017. [Sexual Abuse Crisis | Archdiocese of New York](https://archny.org/ministries-and-offices/child-proteccion/list/) <https://archny.org/ministries-and-offices/child-proteccion/list/>.

DISCUSSION

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist, and the movant is entitled to judgment as a matter of law. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). To establish entitlement to summary judgment, the moving party is required to “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Only if the moving party satisfies this burden does the burden shift to the nonmoving party “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v. Prospect Hospital* 68 N.Y.2d 320, 324 (1986).

The Court must view the evidence “in a light most favorable to the party opposing the motion, giving [that party] the benefit of every favorable inference.” *International Rescue Committee v. Reliance Insurance Co.*, 230 A.D.2d 641 (1st Dep’t 1996)

It is well settled that a defendant's burden cannot be satisfied merely by pointing to gaps in the plaintiff's proof, and that movants herein are required to affirmatively demonstrate the merit of an alleged defense. *In re New York City Asbestos Litigation (Carriero)*, 174 A.D.3d 461 (1st Dept. 2019); *CM v West Babylon Union Free School District* 231 AD3d 809 (2nd Dept., 2024); *Doe v Orange-Ulster Bd. Of Coop. Educ. Servs.* 4 AD3d 387, 388-89 (2nd Dept., 2004).

In the following cases the Appellate Division, Second Department³ reversed the trial court’s award of summary judgment and dismissal of claims regarding sexual abuse by a teacher of a student, because defendants had not established an entitlement to judgment as a matter of

³ While this Court is of course mindful that this action is in the first department, most of the appellate case law at this time comes from the Second Department primarily because the CVA cases outside of New York City are at a more advanced stage.

law and questions regarding constructive notice and adequacy of supervision were questions of fact for the jury: *Sayegh v City of Yonkers* 228 Ad2d 690 (2024)(defendants failed to establish *prima facie* that they lacked constructive notice and failed to demonstrate their supervision of the teacher and plaintiff was not negligent); *Stanton v Longwood Central School District* 233 AD3d 1010 (2024); *CM v West Babylon Union Free School District* 231 AD3d 809 (2024); *MCVAWCD-DOE v Columbus Avenue Elementary School* 225 AD3d 845 (2024); *Kastel v Patchogue-Medford Union Free School District* 234 AD3d 741(2025); *Sallustio v Southern Westchester Board Cooperative Educational Services* 235 AD3d 680 (2025); *Brauner v Locust Valley Central School District* 234 AD3d 914 (2025).

In this case, viewing the evidence in the light most favorable to the Plaintiff, there is evidence that defendants either knew or should have known that O'Hara had abused minors and/or was acting inappropriately with the students at St. Matthew.

As far as actual notice, there was 1966 complaint, which Father Dolan was aware of, and then the Clemente brothers' complaints in 1975 to Father Stinner, and in 1979 to Cardinal Cooke.

As far as constructive notice, O'Hara engaged in grooming behavior and actual abuse of Plaintiff on school grounds. O'Hara was known to have a particular pet in each class. O'Hara regularly excused Plaintiff from class and sent him on errands or to hang out at O'Hara's apartment during the school day. O'Hara drove the boys home from school regularly, and parked his car outside the classroom windows. O'Hara took the boys on overnight trips and other excursions, which were not chaperoned or school sanctioned.

Given all of the above the Court finds that defendants have failed to make a *prima facie* showing that they are entitled to judgment as a matter of law. Defendants have failed to establish

that they lacked actual and/or constructive notice, or that they properly supervised O'Hara and Plaintiff during the school day. Defendants essentially rely on what they perceive to be a gap in Plaintiff's proof at trial.

Additionally, the Court finds it surprising that The Archdiocese argues it owed Plaintiff no duty of care, when their own witness, Sister Anastasio testified that the Pastor of a parochial school has final say over the employment of teacher, and the Archbishop of New York has the ultimate authority over religious education within the ecclesiastical bounds of the Archdiocese of New York. Sister Anastasio stated that the safety of students attending parochial schools within the geographical bounds of the Archdiocese was the highest priority of the Archdiocese of New York. The Sister further acknowledged that the School did not maintain records that referred to reports of sexual abuse.

The Department of Education of the Archdiocese of New York had policies that the schools within its boundaries were required to follow. The evidence in the record supports the claim that the Board of Education for the Archdiocese supervises and directs what happens in its parochial schools, much the same way as the Board of Education for public schools is responsible for oversight of individual schools.

A school or school district “owes a duty to adequately supervise the students in its care, and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision” (*Fernandez v. City of Yonkers*, 139 A.D.3d 895, 896, 31 N.Y.S.3d 595 [internal quotation marks omitted]; see *Doe v. Rohan*, 17 A.D.3d 509, 511, 793 N.Y.S.2d 170). “The standard for determining whether the school has breached its duty is to compare the school's supervision and protection to that of a parent of ordinary prudence placed in the same situation and armed with the same information” (*Wienclaw v. East Islip Union Free Sch. Dist.*, 192 A.D.3d 945, 946, 144 N.Y.S.3d 106 [internal quotation marks omitted])

MCVAWCD-DOE v. Columbus Ave. Elementary Sch., 225 A.D.3d 845, 847, 207 N.Y.S.3d 669, 671 (2024)

The Archdiocese argues that “(t)he question of duty is best expressed as whether the plaintiff’s interests are entitled to legal protection against the defendant’s conduct.” It cannot be disputed that the record contains evidence from which a jury could find that the Archdiocese had actual or constructive knowledge, including actual reports of abuse of other children prior to Plaintiff’s abuse. Therefore, the Archdiocese had an obligation to protect Plaintiff from O’Hara in the Schools it governed. There is also evidence from which a trier of fact could find that the Archdiocese did have custody and control over Plaintiff as it was in charge of overseeing the School.

Finally, the Archdiocese argues that it is not responsible for O’Hara’s conduct because he was not acting in furtherance of his employment.

“Although an employer cannot be held vicariously liable for torts committed by an employee who is acting solely for personal motives unrelated to the furtherance of the employer’s business, the employer may still be held liable under theories of negligent hiring, retention, and supervision of the employee” (*Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d 634, 635, 85 N.Y.S.3d 562 [citations and internal quotation marks omitted]). “To establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the employer knew or should have known of the employee’s propensity for the conduct which caused the injury” (*Shor v. Touch–N–Go Farms, Inc.*, 89 A.D.3d 830, 831, 933 N.Y.S.2d 686; see *Fuller v. Family Servs. of Westchester, Inc.*, 209 A.D.3d 983, 984, 177 N.Y.S.3d 141). “The employer’s negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring[,] ... retention[, or supervision] of the employee” (*D.T. v. Sports & Arts in Schs. Found., Inc.*, 193 A.D.3d 1096, 1097, 147 N.Y.S.3d 622 [internal quotation marks omitted]; see *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d at 635–637, 85 N.Y.S.3d 562).

MCVAWCD-DOE v. Columbus Ave. Elementary Sch., 225 A.D.3d 845, 846–47 (2nd Dept., 2024)

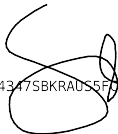
Here, the Archdiocese has failed to establish conclusively that they lacked actual or constructive notice, and therefore they could be responsible for the foreseeable acts of O’Hara as its agent or employee, and there is sufficient evidence in the record from which a jury could determine that O’Hara was an agent and employee of the Archdiocese.

WHEREFORE it is hereby:

ORDERED that the motions for summary judgment are denied; and it is further

ORDERED that the parties appear for a virtual pre-trial conference on April 16th, 2025, at 2:30 pm at which time a final trial date before this Court will be set.

This constitutes the decision and order of the Court.

202503281443475BKRAUS5F7E0EB355704043B72BAA151096AEA7


3/28/2025
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: