

Doe v Archdiocese of N.Y.

2025 NY Slip Op 32154(U)

June 4, 2025

Supreme Court, New York County

Docket Number: Index No. 950208/2019

Judge: Adam Silvera

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA **PART** **01**

Justice

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JOHN DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF MOUNT
CARMEL SCHOOL

Defendant.

-----X

INDEX NO. 950208/2019

MOTION DATE 09/19/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141

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

Upon the foregoing documents and for the reasons set forth below, the motion for summary judgment by defendant Archdiocese of New York (“Defendant”), seeking to dismiss the negligence claim of the plaintiff, John Doe (“Plaintiff”), is denied in its entirety.

Plaintiff claims that Defendant, vis-à-vis its alleged agents—the staff of the parish, Our Lady of Mount Carmel (“OLMC”), and the school, Our Lady of Mount Carmel School (“OLMCS”)—is liable for the negligent hiring, retention, and supervision of Rudy Tremaroli, a janitor who allegedly sexually abused Plaintiff at OLMCS. *See generally* Complaint (NYSCEF Doc. No. 2); Memorandum of Law in Opposition to Defendant’s Motion for Summary Judgment (“Opposition”). To establish at trial that Defendant is directly liable for negligently hiring, retaining, and supervising Mr. Tremaroli, Plaintiff must show (1) that Defendant owed Plaintiff a duty, (2) that Defendant breached that duty, (3) that Defendant’s breach proximately injured Plaintiff, (4) that Defendant had notice of Mr. Tremaroli’s propensity for child abuse, (5) that

Defendant could have and should have controlled Mr. Tremaroli, and (6) that Mr. Tremaroli's sexual abuse occurred through Defendant's property or resources, which Mr. Tremaroli had access to only because of his employment. *See Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 (2023).

When a defendant moves for summary judgment, however, as here, "the burdens of proof are virtually reversed." *See Lopez v Gem Gravure Co., Inc.*, 50 AD3d 1102, 1108 (2d Dep't 2008, Lifson, J.P., dissenting). Thus, here, Defendant bears the initial burden to show "entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). To make such a showing, Defendant must do more than "point[] to gaps in [the] opponent's evidence"; it must "affirmatively demonstrate the merit" of its position. *See Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 (1st Dep't 2016), quoting *Dalton v Educational Testing Serv.*, 294 AD2d 462, 463 (2d Dep't 2002). And even if Defendant were to make such a showing, summary judgment must be denied if Plaintiff's papers present admissible evidence establishing that a "material issue[] of fact" remains. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986).

Viewing the evidence most favorably to Plaintiff, as required on summary judgment, *see Rollins v Fencers Club, Inc.*, 128 AD3d 401, 402 (1st Dep't 2015), material issues of fact exist regarding the issues of duty, notice, and control (as well as agency, which is relevant to notice and control). As to duty, Defendant is correct that it cannot be liable for negligence if it did not owe Plaintiff a duty of care and that "the existence and scope of [Defendant's] duty is a legal question for the [C]ourt." *See Memorandum of Law in Support of the Archdiocese of New York's Motion for Summary Judgment ("Support")* at 10; *see also Moore Charitable Found.*, 40

NY3d at 158-159. But whether Defendant owes Plaintiff a duty depends on Defendant's relationship to Plaintiff and to Mr. Tremaroli. See *Pulka v Edelman*, 40 NY2d 781, 783 (1976); *Gonzalez v City of New York*, 133 AD3d 65, 67 (1st Dep't 2015). And Defendant's relationship to Plaintiff and to Mr. Tremaroli depends on its relationship to, and control of, OLMC and OLMCS. See *M.N. v Archdiocese of New York*, 2025 NY Misc LEXIS 3906, *14-16 (Sup Ct, NY County, Apr. 17, 2025, Kraus, J., index No. 950156/2019); *L.B. v Hanson Place Seventh-Day Adventist Church*, 2025 NY Misc LEXIS 1945, *3-7 (Sup Ct, Kings County, Apr. 2, 2025, Quiñones, J., index No. 520359/2021). As there are material issues of fact as to Defendant's control of OLMC and OLMCS, the question of duty cannot be resolved at this juncture.

As to notice, material issues of fact exist about Defendant's constructive notice. The staff of OLMC and OLMCS had actual notice, as myriad complaints to the staff about Mr. Tremaroli's abuse establish. See Opposition at 16-19 (citing complaints, prior to Plaintiff's abuse, from eight children). Because Defendant produced no agreement delineating the scope of its relationship with OLMC or OLMCS and because "the circumstances raise the possibility of a principal-agent relationship," it would be improper for this Court to seize the agency question from the jury. See *Bostany v Trump Org. LLC*, 73 AD3d 479, 480 (1st Dep't 2010), quoting *Fogel v Hertz Intl.*, 141 AD2d 375, 376 (1st Dep't 1988); *Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 (1st Dep't 1976). And as "[n]otice to an agent ... constitutes notice to a principal," *Ford v Grand Union Co.*, 268 NY 243, 252 (1935), if a jury found that OLMC and OLMCS were Defendant's agents, notice would be imputed onto Defendant.

As with duty and notice, material issues of fact exist about Defendant's control of OLMC and OLMCS. Defendant argues, among other things, that it did not have the requisite control of OLMC and OLMCS because it did not hire lay employees at OLMCS, like Mr. Tremaroli; it did

not own the property where Mr. Tremaroli abused Plaintiff; it is a distinct entity from OLMC and OLMCS; and it did not share payroll or bank accounts with OLMCS. *See* Support at 8-9; Reply Affirmation (“Reply”) ¶ 8. Still, Plaintiff is correct that the following facts, taken together, create an issue for the jury as to Defendant’s control of OLMC and OLMCS (and thus, ultimately, of Mr. Tremaroli):

1. Defendant appointed, reassigned, and removed OLMC pastors. *See* Opposition at 10.
2. As Defendant admits, it maintained a list of approved principals “based upon specific religious qualifications[.]” Reply ¶ 20.
3. Defendant issued certificates certifying compliance with Defendant’s training and authorizing teachers to teach at schools within Defendant’s jurisdiction. *See e.g.* Support at 10-11, citing *id.*, Exh. 18.
4. Defendant’s corporate representative admitted that Defendant could investigate complaints by OLMC parishioners. *See id.*, Exh. 2, Depo. Tr. of Bishop Gerald Walsh, dated Nov. 13, 2024, at 7, lines 8-11; at 44, lines 6-25.
5. Defendant supported OLMC and OLMCS financially during Mr. Tremaroli’s abuse, gifting OLMC over \$100,000 and insuring OLMC and OLMCS. *See id.* at 72, lines 21-25; at 73, lines 1-18; at 84, lines 20-25; at 85, lines 1-15.
6. A former OLMCS principal suggested that Mr. Tremaroli was hired by OLMC’s pastor, who operated OLMCS and who “took direction from [Defendant] regarding [such] operation.” *See* Support, Exh. at 44, lines 20-25; at 45, lines 1-8; at 82, lines 10-20; at 83, lines 3-11.

Defendant argues that none of this suggests that it had control over the hiring, retention, and supervision of Mr. Tremaroli, a lay janitor and coach, as Defendant’s ties to OLMC and OLMCS

were purely ecclesiastical. See Support at 8; Reply ¶¶ 8, 12, 14, 16, 21-22. But Defendant fails to explain why the ecclesiastical–lay distinction matters. And, in any event, given the conflicting evidence, whether Defendant controlled OLMC and OLMCS (and, ultimately, Mr. Tremaroli) is for a jury to decide, not for Defendant to self-servingly conclude. See *Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Thus, as material issues of fact exist touching on the issues of duty, control, notice, and agency, Defendant’s motion for summary judgment must be denied.

Accordingly, it is

ORDERED that Defendant’s motion for summary judgment, seeking to dismiss Plaintiff’s negligence claim, is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, Plaintiff shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

6/4/2025
DATE


ADAM SILVERA, J.S.C.

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