

Doe v Archdiocese of N.Y.

2025 NY Slip Op 33777(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 950211/2019

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

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. 950211/2019

MOTION DATE 07/21/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 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

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 I (Plaintiff), is denied in its entirety.

Plaintiff claims that Defendant, through its alleged agents—the staff of the parish, Our Lady of Mount Carmel (OLMC), and the school, co-defendant 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.

To establish a claim for negligence, “a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom.” Pasternack v Lab. Corp. of Am. Holdings, 27 NY3d 817, 825 (2016) (quoting Solomon v City of New York, 66 NY2d 1026, 1027 [1985]). Further, as Plaintiff’s claim relates to the negligent hiring, retention, and supervision of Mr. Tremaroli, Plaintiff must also show that Defendant had notice of

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

When a defendant moves for summary judgment, as here, "the burdens of proof are virtually reversed." *See Lopez v Gem Gravure Co., Inc.*, 50 AD3d 1102, 1108 (2d Dept 2008, Lifson, J.P., dissenting). 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." *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). To make such a showing, "pointing to gaps in an opponent's evidence is insufficient." *See Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 (1st Dept 2016). Rather, a movant must "affirmatively demonstrate the merit" of its position. *Id.*, quoting *Dalton v Educational Testing Serv.*, 294 AD2d 462, 463 (2d Dept 2002). Even if Defendant were to make such a showing, summary judgment must be denied if Plaintiff's papers present admissible evidence establishing that material issues of fact remain. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986).

Viewing the evidence most favorably to Plaintiff, the party opposing summary judgment (*see Rollins v Fencers Club, Inc.*, 128 AD3d 401, 402 [1st Dept 2015]), material issues of fact exist regarding the issues of duty, control, and notice. As to duty, Defendant correctly asserts that it cannot be liable for negligence if it owed no duty of care to Plaintiff. Defendant argues that Plaintiff herein was not a student at OLMCS, but, rather, he was a player on the OLMC school basketball team. As such, Defendant argues that it owed no duty to a player on the school basketball team.

However, whether Defendant owed a duty to Plaintiff turns 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 Dept 2015). While Defendant asserts that it had no duty, Plaintiff contends that Mr. Tremaroli was part of the coaching staff for the OLMC Catholic Youth Organization (CYO) Team, which Plaintiff asserts is a program run by Defendant. *See* Defendant's Exhibit J, EBT tr. of John Musto, dated July 23, 2024 (Musto EBT), at 90; Plaintiff's Exh. 24, EBT tr. of Father Eric Rapaglia, dated June 7, 2022, at 34-35. Plaintiff also maintains that the basketball team practiced and played home games in the OLMCS gymnasium. *See* Plaintiff's Counter-Statement of Material Facts at ¶ 89.

Defining the relationships between Defendant, the Archdiocese of New York; Plaintiff; and Mr. Tremaroli involves a fact-specific inquiry that concerns, in particular, what control, if any, Defendant had over OLMC and OLMCS, the church and school where the alleged abuse occurred. *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.

Defendant also 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. However, Plaintiff's submissions in opposition establish that material issues of fact remain as to the degree of control Defendant exercised over OLMC and OLMCS. For example, the following deposition testimony

and supporting documentation demonstrate that Defendant may have had some control over OLMC and OLMCS during the time of the alleged abuse:

1. Defendant appointed, reassigned, and removed OLMC pastors. *See* Plaintiff's Exh. 2, EBT tr. of Bishop Gerald Walsh, dated Nov. 13, 2024 (Walsh EBT). at 18- 20.
2. Defendant admits it maintained a list of approved principals based on religious qualifications. *Id.* at 78-81.
3. Defendant issued certificates to schools within its jurisdiction certifying compliance with its training and authorizing teachers to teach at its schools. *See* Defendant's Exh. 1 at 180; Plaintiff's Exh., Teaching Certificate of Brother William Pudsey.
4. Defendant's corporate representative admitted that Defendant could investigate complaints made by OLMC parishioners. *See* Walsh EBT at 7, lines 8-11; at 44, lines 6-25.
5. Defendant supported OLMC and OLMCS financially during the time of Mr. Tremaroli's abuse, gifting OLMC over \$100,000 and insuring OLMC and OLMCS. *See* Walsh EBT at 72, lines 21-25; at 73, lines 1-18; at 84, lines 20-25; at 85, lines 1-15; Plaintiff's Exh. 17, Insuring Agreement dated September 1, 1981.
6. A former OLMCS principal suggested that Mr. Tremaroli was hired by OLMC's pastor, who operated OLMCS and who took direction from Defendant. *See* Musto EBT at 44, lines 20-25; at 45, lines 1-8; at 82, lines 10-20; at 83, lines 3-11.

In reply, Defendant argues that Defendant's ties to OLMC and OLMCS were purely ecclesiastical, and that it did not have control over the hiring, retention, and supervision of Mr. Tremaroli, a lay janitor and coach. Nevertheless, given the conflicting evidence presented, the distinction between ecclesiastical and lay control is insufficient for the purposes of the instant motion. *See e.g. Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

Moreover, material issues of fact exist with respect to whether Defendant had notice of Mr. Tremaroli's propensity for child abuse. It is well-settled that "[n]otice to an agent...constitutes notice to a principal." *Ford v Grand Union Co.*, 268 NY 243, 252 (1935). While Plaintiff establishes that the staff of OLMC and OLMCS had actual notice of such propensity through myriad complaints, Defendant fails to affirmatively demonstrate that these complaints did not constitute constructive notice to Defendant. Notably, Defendant did not produce any agreement delineating the scope of its relationship with OLMC or OLMCS. Therefore, it would be improper for this Court to seize the question of agency from the jury, as "the circumstances raise the possibility of a principal-agent relationship." *See Bostany v Trump Org. LLC*, 73 AD3d 479, 480 (1st Dept 2010), quoting *Fogel v Hertz Intl.*, 141 AD2d 375, 376 (1st Dept 1988); *Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 (1st Dept 1976).

Thus, as material issues of fact exist as to the critical issues of duty, control, and notice, Defendant's motion for summary judgment must be denied. The Court has considered the parties' remaining arguments and finds them unavailing.

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 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically

Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptctmanh); and it is further

ORDERED that the action is remanded to Judge Alexander M. Tisch for the scheduling of a pre-trial conference or trial, as appropriate.

The foregoing constitutes the Decision/Order of the Court.

9/30/2025
DATE



ADAM SILVERA, J.S.C.

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