SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART 18 CVA**

Justice

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JOHN DOE,

Plaintiff,

- v -

ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, THE CHURCH OF ST. CLARE'S, RALPH LABELLE,

Defendants.

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INDEX NO. 950005/2020

MOTION DATE 06/10/2025

MOTION SEQ. NO. 004/005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 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, 142, 145, 147, 148

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 150-67, 169-74

were read on this motion to/for REARGUE- VACATE.

This is a case brought pursuant to the Child Victims Act. Plaintiff John Doe alleges he was sexually abused multiple times by defendant Ralph Labelle between 1981-1984. Labelle was, at that time, the priest in charge of altar servers at defendant St. Clare's Church (the Church) while plaintiff was a parishioner and altar server at the Church. Plaintiff has asserted three causes of action sounding in negligence against the defendant Roman Catholic Archdiocese of New York (the Archdiocese): Claim 1- negligence; Claim 3- negligent hiring, retention and supervision; and Claim 5- negligent infliction of emotional distress. In Motion Sequence Number 004, the Archdiocese moves for summary judgment dismissing the claims against it. Plaintiff cross-moves for sanctions, arguing the Archdiocese's motion is frivolous. Separately,

in Motion Sequence Number 005, the Archdiocese moves to reargue and vacate the July 30, 2025, So-Ordered Stipulation (NYSCEF Doc. No. 144).

I. MOTION FOR SUMMARY JUDGMENT

Under CPLR § 3212, summary judgment is an extreme remedy that should only be granted when there is no genuine issue of material fact. The moving party must establish its entitlement to judgment as a matter of law by submitting evidence demonstrating the absence of triable issues of fact. If the movant meets this burden, the opposing party must produce admissible evidence to raise a triable issue (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Since summary judgment is a drastic remedy which deprives a litigant of his day in court, the evidence adduced on the motion must be liberally construed in the light most favorable to the opposing party (*Starlite Media LLC v. Pope,* 128 AD3d 498, 498 [1st Dept 2015]; *Kesselman v. Lever House Restaurant*, 29 AD3d 302 [1st Dept 2006]).

The Archdiocese moves for summary judgment on the three causes of action sounding in negligence. The elements of a negligence claim are "first, the existence of a duty owing by the defendant to the plaintiff; second, defendant's failure to discharge that duty; third, injury to plaintiff proximately resulting from such failure" (*Peresluha v City of New York*, 60 AD2d 226, 230 [1st Dept 1977]). Negligent retention or negligent supervision claims are available "[w]hen an employer has notice of its employee's propensity to engage in tortious conduct, yet retains and fails to reasonably supervise such employee" and that negligence proximately causes injuries (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023]). That notice requirement can be satisfied by actual notice of similar prior acts by the employee. Negligent infliction of emotional distress claims require "a breach of a duty of care resulting directly in

emotional harm[,] even though no physical injury occurred" (*Brown v New York Design Ctr., Inc.*, 215 AD3d 1, 9 [1st Dept 2023]) The injury must be "a direct, rather than a consequential, result of the breach" (*id.*, quoting *Kennedy v McKesson Co.*, 58 NY2d 500, 506 [1983]). "Extreme and outrageous conduct is not an essential element" for the cause of action (*Brown*, 215 AD3d at 7).

The Archdiocese argues it is not liable pursuant to the negligence claims because the Archdiocese did not owe plaintiff a duty as, at the time of the abuse, plaintiff was not in the custody or control of the Archdiocese. Additionally, as far as the alleged abuser was an agent of the Archdiocese, the Archdiocese had no notice of his propensity to abuse children.

"It is well established that before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff" (*Pulka v Edelman*, 40 NY2d 781, 782 [1976]). "In the absence of duty, there is no breach and without a breach there is no liability" (*id.*). There is generally no duty to control the harm-producing conduct of a third party absent a special relationship either between the defendant and the plaintiff or the defendant and the tortfeasor (*see id.* at 783; *Hamilton v Beretta U.S.A. Corp.*, 96 NY2d 222, 233 [2001], op after certified question answered, 264 F3d 21 [2d Cir 2001]). "The key in each is that the defendant's relationship with either the tortfeasor or the plaintiff places the defendant in the best position to protect against the risk of harm" (*Hamilton*, 96 NY2d at 233; *see, e.g.*, *532 Madison Ave. Gourmet Foods, Inc. v Finlandia Ctr., Inc.*, 96 NY2d 280, 289, [2001] ["Landowners, for example, have a duty to protect tenants, patrons and invitees from foreseeable harm caused by the criminal conduct of others while they are on the premises, because the special relationship puts them in the best position to protect against the risk"]). "That duty, however, does not extend

to members of the general public;" thus, circumscribing liability "because the special relationship defines the class of potential plaintiffs to whom the duty is owed" (*532 Madison Ave. Gourmet Foods*, 96 NY2d at 289).

As far as the Archdiocese argues it cannot be liable because it did not own or control St. Clare's Parish at the time of the abuse, it cites the testimony of Deacon Bello that "[t]he archbishop does not engage in the day-to-day operations of the parish" (Transcript attached as Exhibit H to affirmative motion papers, NYSCEF Doc. No. 86, 24:5-6). However, the Archdiocese claims that "documentary and testimonial evidence demonstrates that there was never any relationship between the Archdiocese and Plaintiff such that the Archdiocese owed any duty to supervise Plaintiff," but fails to cite to either testimonial or documentary evidence other than Bello's testimony above (NYSCEF Doc. No. 95, p5). Movant has failed to bring evidence sufficient to make a prima facie case for its position.

In opposition, plaintiff has brought significant evidence with indicia of control by the Archdiocese. The witness for St. Clare's, Father Mastrolia, testified that the archbishop had "ultimate authority" over the Parish, that the Archdiocesan Chancery Office speaks for the Archbishop and has the authority to overrule the Monsignor who had local authority, and that St. Clare's School was required to follow policies and procedures set in place by the Archdiocese (Transcript of Mastrolia Dep., attached as Exhibit I to moving papers, NYSCEF Doc. No. 87, at 281-83, 289). Further, Ralph Labelle, the alleged abuser, testified at deposition that during the time he was assigned to St. Clare's, he was employed by the Archdiocese of New York. There are disputed issues of material fact as to whether the Archdiocese had control over St Clare's and Labelle.

Additionally, there is a special relationship at issue here, that between employer and employee. Therefore, the focus is not only on the relationship between the Archdiocese and the potential plaintiff, but on the Archdiocese as employer and its relationship with the defendant-tortfeasor (*see Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 161 [1st Dept. 2022]). "The negligence of the employer . . . arises from its having placed the employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in making its decision concerning the hiring and retention of the employee" (*Sheila C. v Povich*, 11 AD3d 120, 129 [1st Dept. 2004]; *see Roe v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church*, 198 AD3d 698, 699-702 [2d Dept. 2021], quoting *Johansmeyer v New York City Dept. of Educ.*, 165 AD3d 634, 634-37 [2d Dept. 2018]; *see also Doe v Congregation of the Mission of St. Vincent De Paul in Germantown*, 2016 N.Y. Slip Op. 32061[U] at *6, 2016 WL 6299392 [Sup. Ct., Queens County 2016] [hereinafter *Doe v. Congregation*]). Thus, "the duty of care in supervising an employee extends to any person injured by the employee's misconduct" (*Waterbury*, 205 AD3d at 162). "Broadly speaking, an employee is someone who works for another subject to substantial control, not only over the results produced but also over the means used to produce the results" (*Castro-Quesada v Tuapanta*, 148 AD3d 978, 979 [2nd Dept 2017], quoting *Matter of O'Brien v* Spitzer, 7 NY3d 239, 242 [2006] [internal quotations omitted]).

As far as the Archdiocese argues it had no knowledge of the alleged abuser's predilections, "an employer cannot avoid liability for negligent supervision and retention by shutting its eyes to the tortious practices and propensities of its employees—that is, by being doubly negligent. An employer "should know" of an employee's dangerous propensity if it has

reason to know of the facts or events evidencing that propensity and may be liable if it nonetheless places the employee in a position to cause foreseeable harm" (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 158 [2023] [internal quotations omitted]).

The Archdiocese argues plaintiff will rely on rumor and speculation, general claims that the defendants were aware of the risk of abuse from priests and allegations of conduct which, at the time, was common and accepted, even though it would raise concerns today, and that the Archdiocese had "no reasonable basis to find Labelle's acts could have reasonably been anticipated by the Archdiocese" (Memo of Law, NYSCEF Doc. No. 95, at 11).

In opposition, plaintiff provides deposition testimony of T.N., a plaintiff in another CVA action, who testified that before plaintiff was abused, T.N. had reported being abused by Labelle to Sister Jean Marie, a teacher at St. Clare (Deposition Transcript of T.N., attached as Exhibit 8 to Affirmation of Nathan Werksman, Esq., NYSCEF Doc. No. 112, at 113-115). According to T.N.'s testimony, upon hearing his report, Sister Jean Marie immediately took him to speak to the principal, Sister Mary Francis, who instructed T.N. to never speak the accusations again (id. at 115-16). Plaintiff also notes that in a decision ordering the Archdiocese to produce or unredact certain documents, the Court included a quotation from a report by the Archdiocese on accusations against Labelle, which states:

> "Upon investigation it has become clear that accusations against Father LaBelle extend even to the time before he was ordained. Throughout his priesthood there have been persistent concerns about his behavior with teenage boys"

(Decision and Order in *Beals v Roman Catholic Archdiocese of New York* dated 1/29/2025, attached as Exhibit 9 to Affirmation of Nathan Werksman, Esq., NYSCEF Doc. No. 113, at 16). There is also additional evidence which may satisfy the notice requirement, such as prior

complaints to St. Clare's faculty and administrators by victims and reports about Labelle bringing altar boys to his bedroom. There is at least a material issue of disputed fact as to the Archdiocese having notice of Labelle's alleged predilection for abusing children. Accordingly, the Archdiocese's motion for summary judgment dismissing the case on the basis of lack of notice fails.

II. CROSS-MOTION FOR SANCTIONS

Plaintiff cross-moves pursuant to 22 NYCRR § 103.1-1 for sanctions against the Archdiocese for filing what plaintiff contends is a frivolous motion. 22 NYCRR § 103.1-1(a, c) provides:

> "The court, in its discretion, may award to any party or attorney in any civil action . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part. . . .
>
> conduct is frivolous if . . . it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law [or] it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another."

The Archdiocese argues its dispositive motion is not frivolous because its arguments have merit. As discussed, this case is rife with issues of disputed material fact. The Archdiocese has brought a motion which is entirely without merit. Plaintiff proposes sanctions of $7,500, but fails to provide any basis for that amount. Plaintiff's cross-motion for sanctions is therefore granted, with sanctions in the amount of plaintiff's legal fees and expenses in defending against Motion Sequence Number 004.

III. MOTION FOR REARGUMENT AND TO VACATE

In Motion Sequence Number 005, the Archdiocese seeks reargument of the So-Ordered Stipulation dated July 30, 2025 (NYSCEF Doc. No. 144), which, over the Archdiocese's objection, limited the plaintiff's psychological independent medical examination (IME) to four hours. The So-Ordered Stipulation also provided that additional time could be allotted if the Archdiocese provided information about the specific tests that would be performed and how much time they would require. The Archdiocese now seeks leave to reargue the So-Ordered Stipulation, to vacate it, and for an order requiring the plaintiff to appear for additional time for a psychological IME. The Archdiocese also seeks an order precluding plaintiff from referencing the length of the IME or stating or implying the insufficiency of the examination based on the duration of the IME. Plaintiff does not object to the last request and agrees not to make any argument at trial that ADNY's expert's four-hour examination was insufficient to develop a reliable opinion.

The standards for reargument are well settled. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [quotations omitted]). Motions for reargument must be based upon facts or law overlooked or misapprehended by the court on the prior decision (*see* CPLR § 2221; *Mendez v Queens Plumbing Supply, Inc.*, 39 AD3d 260 [1st Dept 2007]; *Carillo v PM Realty Group*, 16 AD3d 611 [2d Dept 2005]). The determination to grant leave to reargue lies within the sound discretion of the court (*see Veeraswamy Realty v Yenom Corp.*, 71 AD3d 874 [2d Dept 2010]).

However, reargument is not a proper vehicle to present new issues that could have been, but were not raised, on the prior motion or to afford an unsuccessful party successive opportunities to rehash arguments previously raised and considered (*see People v D'Alessandro,* 13 NY3d 216, 219 [2009]; *Tounkara v Fernicola,* 63 AD3d 648, 649 [1st Dept 2009]; *Lee v Consolidated Edison Co. of N.Y.*, 40 AD3d 481, 482 [1st Dept 2007]).

The Archdiocese argues that this Court erred in not requiring the plaintiff to make a prima facie showing of harm before limiting the length of the IME, erred in requiring conditions for additional IME time which are not applicable to this type of examination, and erred by doing so without considering the opinion of a forensic psychiatrist. According to the case cited by the Archdiocese, *Lefkowitz v Nassau County Medical Center* (94 AD2d 18, 21-22 [2nd Dept 1983]), the plaintiff has the burden of showing a proposed test is prima facie potentially dangerous to the plaintiff's health. Then the burden shifts to the defendant to demonstrate the test's safety (*id.*). The Archdiocese did not, at the time of the conference which led to the So-Ordered Stipulation, which was held during the IME, state what the medical professional performing the IME wanted to do that would take more than four hours. They were offered the opportunity to consult their medical professional. No specific need, purpose, or plan for the additional time was identified. That is still the case, as the affidavit of Renee M. Sorrentino, M.D., provided by the Archdiocese, does not state what would be examined, inspected, or scrutinized during the requested additional time, or how that would be done.

Accordingly, the Court will not use its discretion to grant reargument. As far as this motion seeks additional IME time pursuant to the So-Ordered Stipulation, which contemplated

allowing additional time if a specific need is identified, that request is also denied, as the Archdiocese has failed to identify a specific need for more time with the plaintiff.

IV. CONCLUSION

For the reasons discussed above, it is hereby

ORDERED that the Archdiocese's motion for summary judgment (Motion Sequence Number 004) is DENIED and the cross-motion for sanctions is hereby GRANTED. Plaintiff is to attempt to settle an order granting plaintiff its attorneys' fees and costs in opposing the motion. If settling an order is unsuccessful, plaintiff may submit a proposed order with supporting materials on or before December 5, 2025 and the Archdiocese may oppose on or before December 12, 2025; and it is further

ORDERED that the Archdiocese's motion for reargument is also DENIED, except that plaintiff agrees not to reference the length of the IME, state or imply the examination was insufficient based on the duration of the IME, or to make any argument at trial that the Archdiocese's expert's four-hour examination was insufficient to develop a reliable opinion.

This constitutes the decision and order of the Court.

11/3/2025
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE