S.E. v Diocese of Brooklyn
2026 NY Slip Op 30248(U)
January 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 506289/2020
Judge: Joanne D. Quiñones
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At I.A.S. Part CVAP3 of the Supreme Court, held in and for the County of Kings at the Courthouse located at 360 Adams Street, Brooklyn, New York 11201, on the **20th** day of **January, 2026**.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART CVAP3

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S.E.,

Plaintiff,

Index No.: 506289/2020

- against -

DECISION & ORDER
Motion Sequence Nos. 6-7

DIOCESE OF BROOKLYN AND ST. PATRICK'S CHURCH,

Defendants.

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Recitation, as required by CPLR 2219 (a) of the papers considered in review of these motions:

Papers	NYSCEF Document Nos.
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed	202-250, 266-320
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed	251-262
Answering Affidavits (Affirmations) and Exhibits Annexed	321-336
Reply Affidavits (Affirmations) and Exhibits Annexed	337-342

APPEARANCES OF COUNSEL

Pfau Cochran Vertetis Amala PLLC, New York, NY (*Anelga Doumanian & Lesley A. O'Neill*), and *Marsh Law Firm PLLC*, New York, NY (*Cori J. Iacopelli*), for plaintiff.

Kelley Drye & Warren LLP, New York, NY (*Randall L. Morrison*), for Diocese of Brooklyn, defendant.

Scahill Law Group, P.C., Bethpage, NY (*Keri A. Wehrheim*), for St. Patrick's Church, defendant.

OPINION OF THE COURT

Plaintiff moves by notice of motion for an order granting partial summary judgment in its favor on the following issues: (1) deeming St. Patrick's Church (St. Patrick's) and Father S. agents of the Diocese of Brooklyn (the Diocese); (2) finding that each defendant knew or should have known that Father S. sexually abused children prior to Plaintiff's abuse; and (3) deeming certain incontrovertible facts or facts that are not in dispute established for all purposes in this action pursuant to CPLR 3212(g) (motion sequence no. 6).

The Diocese moves by notice of motion for an order granting partial summary judgment in its favor: (1) finding that Plaintiff's second alleged instance of abuse, which did not involve physical contact, is not actionable under the CVA; and (2) dismissing Plaintiff's intentional infliction of emotional distress (IIED) cause of action (motion sequence no. 7).

Defendant St. Patrick's neither moved nor cross-moved for relief. St. Patrick's submitted reply papers wherein it expressly stated that it is "is not advancing any new arguments but rather supporting those arguments that were asserted [by] the [Diocese]. As such, it is submitted that the Court consider same in the determination of the motions" (NYSCEF Doc No. 342, St. Patrick's Aff ¶ 5).

Background

On March 12, 2020, Plaintiff commenced this action under the CVA (*see* CPLR 214-g) by e-filing the summons and complaint with the Kings County Clerk (NYSCEF Doc No. 1). The complaint alleges that between 1988 and 1989, Plaintiff, then approximately eight to nine years old, was sexually abused by Father S., who was an employee and/or agent of the defendants (*see* NYSCEF Doc No. 1, Complaint ¶¶ 45, 51, 56). During the relevant period, it is alleged that Father S. "was a priest employed by St. Patrick's to serve Catholic families in its geographic jurisdiction," including Plaintiff (*id.* ¶ 17). According to Plaintiff, the defendants knew or should have known that Father S. "was sexually abusing S.E. and other children at St. Patrick's and elsewhere" because "one or more other persons complained to the defendants that Father [S.] had sexually abused children before he sexually abused [Plaintiff]" (*id.* ¶¶ 63-67).

Plaintiff, therefore, seeks damages under causes of action for negligence and IIED.

Discussion

A motion for summary judgment permits the moving party "to show, by affidavit or other evidence, that there is no material issue of fact to be tried, and that judgment may be directed as a matter of law, thereby avoiding needless litigation cost and delay" (*Brill v City of New York*, 2 NY3d 648, 651 [2004]). The movant bears the heavy burden in the first instance "of establishing its entitlement to judgment as a matter of law by tendering proof, in admissible form, sufficient to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Econobill Corp. v S & S Mach. Corp.*, 62 AD3d 940, 942 [2d Dept 2009]). CPLR 3212(b) specifically requires the motion to be accompanied by the affidavit of a person with knowledge of the facts, a copy of the pleadings, and by other available proof such as depositions and written admissions. If the movant makes the requisite showing, then the burden shifts to the opposing party

"to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial" (*Alvarez*, 68 NY2d at 324). In deciding the motion, the court must view the facts and evidence in the light most favorable to the non-moving party, and resolve all reasonable inferences in the non-moving party's favor (*see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]; *Ruggiero v DePalo*, 153 AD3d 870, 871-872 [2d Dept 2017]; *Gardella v Remizov*, 144 AD3d 977, 979 [2d Dept 2016]; *Adams v Bruno*, 124 AD3d 566, 567 [2d Dept 2015]).

The court's role on a motion for summary judgment is not to resolve issues of fact, but rather to decide whether sufficient questions of fact exist (*see Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910, 910 [2d Dept 2007]). Summary judgment is therefore improper "where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Baab v HP, Inc.*, 211 AD3d 783, 783 [2d Dept 2022] [internal quotation marks omitted], quoting *Abdenbi v Walgreen Co.*, 197 AD3d 1140, 1140 [2d Dept 2021]).

Conduct Constituting Sex Offense

Plaintiff's verified bill of particulars alleges two distinct instances of sexual abuse. The first is alleged to have occurred in the rectory "under the guise of teaching [Plaintiff] how to play the piano" (NYSCEF Doc No. 261, Diocese's Exhibit H at 4). During this incident, it is alleged that Father S. fondled Plaintiff's genitals with skin-to-skin contact (*see id.*). The second is alleged to have occurred after a baseball game when Father S. drove Plaintiff home alone, diverted to a deserted road, and, while parked in the vehicle, unzipped his pants and masturbated in Plaintiff's presence (*id.*). Plaintiff argues that the alleged sexual abuse would constitute a sex offense as defined by, but not limited to, Forcible Touching (Penal Law [PL] § 130.52), Sexual Abuse in the Third Degree (PL § 130.55), Sexual Abuse in the Second Degree (PL § 130.60), and Sexual Abuse in the First Degree (PL § 130.65) (*see* Diocese's Exhibit H at 4-5).

The Diocese moves for partial summary judgment on the ground that the second alleged incident does not constitute "sexual contact" within the meaning of Penal Law Article 130 and therefore is not actionable under the CVA. The Diocese argues that the CVA revived only those causes of action "based on acts that would constitute a violation of article 130 of the Penal Law." According to the Diocese, Plaintiff's allegation that Father S. masturbated in a vehicle in Plaintiff's presence without any *physical* touching falls outside the statutory definition of "sexual contact." In opposition, Plaintiff argues that the statutory definition of "sexual contact" encompasses conduct undertaken for the purpose of sexual gratification and is not categorically limited to physical contact with the victim.

CPLR 214-g is a revival statute which permitted the filing of

> 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 conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age ....

The phrase "conduct which would constitute a sexual offense" is not interpreted to require that the alleged inappropriate sexual behavior underlying a CVA claim meet the specific requirements of the Penal Law or any defenses thereto (*see Doe v Wilhelmina Models, Inc.*, 229 AD3d 128, 142 [1st Dept 2024]; *Anonymous v Castagnola*, 210 AD3d 940, 942 [2d Dept 2022]). Instead, "references to the Penal Law in CPLR 214–g serve to define the *nature* of acts covered" (*Samuel W. v United Synagogue of Conservative Judaism*, 219 AD3d 421, 422 [1st Dept 2023] [emphasis added]).

Thus, consistent with this framework, any contention by the Diocese that the sexual abuse alleged in a CVA claim must satisfy every element of an Article 130, incest, or sexual performance offense under the Penal Law is foreclosed by Second Department precedent, which squarely rejected limiting CVA claims to conduct that would expose the actor to criminal liability (*see Castagnola*, 210 AD3d at 942). References to the Penal Law in CPLR 214-g are not to be rigidly imposed into civil pleading or proof requirements, and the proper inquiry is whether the alleged conduct is of the type that the enumerated provisions seek to proscribe, rather than whether it would sustain a criminal conviction (*see Wilhelmina Models, Inc.*, 229 AD3d at 141-142; *S.H. v Diocese of Brooklyn*, 205 AD3d 180, 187 [2d Dept 2022]). By way of illustration, CVA claims have been found viable in instances where a violation of the Penal Law is clearly not established such as for "alleged acts of sexual assault committed by a minor who could not have been subjected to criminal liability at the time the alleged acts of sexual assault occurred" (*Castagnola*, 210 AD3d at 941), a cause of action based on conduct which does not satisfy the victim-age requirement enumerated in particular Penal Law sections (*see Wilhelmina Models, Inc.*, 229 AD3d at 140; *see also Schearer v Fitzgerald*, 217 AD3d 980, 982 [2d Dept 2023] [viable infancy defense does not bar revival of claims under CVA]), and for alleged abuse that occurred outside the state despite New York's criminal statutes' territorial limitations (*see Samuel W.*, 219 AD3d at 422).

That notwithstanding, an essential element of Forcible Touching, Sexual Abuse, and Sexual Misconduct is proof of some degree of physical contact of a sexual nature. Forcible Touching requires that a defendant, in relevant part, "*forcibly touch*[ ] the sexual or other intimate parts of another" or "subject[ ] another to *sexual contact*" (PL § 130.52 [emphasis added]). Sexual contact is defined as

> any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed

(PL § 130.00[3]). Sexual Abuse similarly requires "sexual contact" (PL §§ 130.55, 130.60, 130.65, 130.00[3]). Further, to the extent that Plaintiff contends in this motion that the alleged conduct satisfies the offense of Sexual Misconduct, that offense likewise requires vaginal, oral, or anal sexual contact (PL § 130.20).

Thus, even when the evidence is viewed in the light most favorable to Plaintiff, the second alleged incident does not involve any physical touching or sexual contact within the meaning of Article 130 of the Penal Law. Absent proof of some form physical contact, the conduct alleged does not satisfy the statutory elements required to support a claim predicated on Forcible Touching, Sexual Abuse, or Sexual Misconduct, and is not of the same nature of conduct proscribed by Article 130 of the Penal Law.

Plaintiff's attempt to characterize the alleged conduct as falling within the scope of Article 130 is further undermined by the Legislature's deliberate statutory framework. Conduct involving exposure of a person (*see* PL § 245.01) or public lewdness (*see* PL §§ 245.00, 245.03) is separately codified under Article 245 of the Penal Law as offenses against public sensibilities. Article 245 criminalizes the exposure of private or intimate parts in a public place or in circumstances likely to be observed by others, without requiring any physical contact whatsoever. Courts have consistently recognized that Article 245 addresses a fundamentally different category of wrongdoing than Article 130, which is concerned with sexual offenses involving physical invasion or contact with another person (*see People v McNamara*, 78 NY2d 626, 631-632 [1991] [explaining purpose of Article 245]).

Accordingly, Plaintiff is precluded from introducing into evidence at trial the second alleged incident as a separate actionable instance of conduct which would constitute a sexual offense. This determination, however, does not preclude Plaintiff from introducing evidence concerning the second incident at trial for any other admissible and relevant purpose. The court expresses no view

at this juncture as to the scope or manner in which such evidence may ultimately be presented at trial, which shall be addressed, if necessary, at an appropriate time.

Intentional Infliction of Emotional Distress (IIED)

Next, the Diocese contends that Plaintiff's only actionable allegation is an incident in which Father S. allegedly invited Plaintiff to his rectory apartment and fondled him, and that Plaintiff testified no one witnessed the incident, no one was aware of the invitation, and no disclosure was made until decades thereafter (*see* NYSCEF Doc No. 252, Diocese's Memo at 6). The Diocese argues that because it lacked any knowledge of the abuse, it could neither have intended to cause Plaintiff severe emotional distress nor concealed abuse of which it was unaware (*id.*).

Plaintiff counters that dismissal of the IIED claim is unwarranted because a reasonable jury could find that the Diocese acted intentionally or with reckless disregard when it knowingly permitted Father S. to retain unrestricted access to children, including Plaintiff, despite multiple prior complaints of inappropriate sexual behavior (*see* NYSCEF Doc No. 322, Plaintiff's Memo at 14-15). Plaintiff contends that controlling appellate authority recognizes a viable IIED cause of action where the defendant turns a blind eye to sexual abuse or conceals it (*id.* at 13-14).

To establish a cause of action for IIED, a plaintiff must demonstrate "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress" (*Howell v New York Post Co., Inc.*, 81 NY2d 115, 121 [1993]). The "extreme and outrageous conduct" at issue must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Murphy v Am. Home Products Corp.*, 58 NY2d 293, 303 [1983]).

Contrary to the Diocese's position, courts have not required that a defendant have contemporaneous knowledge or notice of the specific acts of abuse inflicted upon a particular plaintiff in order to impose IIED liability. Instead, it is sufficient where a defendant has knowledge of an abuser's sexual abuse of another child and nevertheless permits the abuser continued access to children, including the plaintiff (*see Georgiou v Sacred Patriarchal and Stravropegial Orthodox Monastery of St. Irene Chrysovalantou*, 242 AD3d 950, 952 [2d Dept 2025] [IIED sufficiently pled where defendant knew of abuser's prior sexual abuse of *another* child but permitted abuser to have access to children]).

Applying that standard here and viewing the evidence in the light most favorable to Plaintiff, the Diocese's alleged conduct in knowingly allowing Father S. continued and unrestricted access to

children, including Plaintiff, despite prior complaints of sexually inappropriate behavior, is sufficient to support Plaintiff's claim for intentional infliction of emotional distress. Plaintiff has also demonstrated a causal connection between that conduct and Plaintiff's alleged injuries insofar as the Diocese's alleged failure to restrict or properly supervise Father S. permitted him access to Plaintiff and enabled the sexual abuse underlying Plaintiff's severe emotional distress. The record further contains competent, admissible proof that the Diocese was on notice of Father S.'s propensity to sexually abuse minor children, as more thoroughly set forth below, and contains proof supporting each element of the IIED claim.

Accordingly, the branch of the Diocese's motion seeking dismissal of the IIED claim is denied.

Diocese's Authority over Father S. and St. Patrick's

Plaintiff moves for partial summary judgment on the ground that "the uncontroverted evidence demonstrates that both St. Patrick's and Father [S.] were agents of the Diocese, including between 1988 and 1989" (NYSCEF Doc No. 204, Plaintiff's Memo at 15).

Agency is defined as "a legal relationship between a principal and an agent. It is a fiduciary relationship which results from the manifestation of consent of one person to allow another to act on his or her behalf and subject to his or her control, and consent by the other so to act" (*Maurillo v Park Slope U-Haul*, 194 AD2d 142, 146 [2d Dept 1993]). The principal must in some manner – express, implied, or apparent – indicate that the agent is to act for him, and the agent must act or agree to act on the principal's behalf and be subject to his control (*see Faith Assembly v Titledge of New York Abstract, LLC*, 106 AD3d 47, 58 [2d Dept 2013]; Restatement [Second] of Agency § 1).

In support of its motion, Plaintiff submits extensive documentary evidence and deposition testimony. The collective effect of Plaintiff's evidence in support of summary judgment demonstrated that during the relevant period the Diocese promulgated policies for its parish schools (*see* NYSCEF Doc Nos. 236-238); collected annual financial assessments from St. Patrick's (*see* NYSEF Doc No. 239); required Diocesan approval for certain parish expenditures (NYSCEF Doc No. 240 [approval of any parish repair or expense that exceeds $5,000]); required Diocesan approval before renting or selling any parish premise (*see id.*); and retained authority to assign and remove priests, including Father S. (*see* NYSCEF Doc No. 323, Diocese's Memo at 3 ["It is undisputed that the bishop assigns priests to parishes"]; NYSCEF Doc No. 232, Plaintiff's Exhibit 29, Staab EBT at 69-71).

To the extent that Plaintiff relies on a 1954 Diocesan Handbook of Regulations for Elementary and High Schools, this evidence, even when coupled with the other handbooks for parish schools, is not dispositive of the agency issue presented here (*see* NYSCEF Doc No. 236, Plaintiff's Exhibit 33; NYSCEF Doc No. 204, Plaintiff's Memo at 10-13). Plaintiff testified at his deposition that he never attended the parochial grammar school operated by St. Patrick's, and his claims do not arise from, nor are they predicated upon, conduct occurring within the context of the school at St. Patrick's (*see* NYSCEF Doc No. 207, Plaintiff's Exhibit 4, Plaintiff's Redacted EBT at 19, 23, 68-78; *see also* Diocese's Exhibit E, Plaintiff's Unredacted EBT]). Therefore, the materials governing Diocesan oversight of parochial schools have limited probative value in assessing the nature and degree of control exercised by the Diocese over St. Patrick's *parish* operations or over Father S.'s ministerial activities during the relevant period. Notwithstanding, because St. Patrick's operated both a parish and a parochial school during the relevant period, these materials nevertheless bear some relevance to the court's agency analysis insofar as they reflect that the Diocese exercised heightened oversight over parishes that also maintained a school. In that limited respect, the handbooks support the inference that the Diocese exercised *some* level of control over St. Patrick's institutional operations, even if such evidence, standing alone, is insufficient to resolve the agency question.

Plaintiff also attached proof in the form of deposition testimony. For example, Father Robert Powers, St. Patrick's corporate representative, testified that "the pastor of a parish is in complete charge of a parish ... [s]ubject to the authority of the bishop" (NYSCEF Doc No. 206, Plaintiff's Exhibit 3, Powers EBT at 90-91). According to Father Powers, a bishop had the authority to terminate someone's position at St. Patrick's, such as Father S. and the pastor (*id.* at 91).

The deposition testimony of Jeffrey Staab, the Diocese's designated corporate representative on matters of diocesan governance, further supports Plaintiff's contention that Father S. functioned as an agent of the Diocese while serving as a parochial vicar (*see* NYSCEF Doc No. 232, Plaintiff's Exhibit 29, Staab EBT). Staab testified that priests are assigned to parishes by the bishop, and that the authority to appoint, transfer, and reassign most priests rests exclusively with the bishop (Staab EBT at 69-71). Staab further explained that an associate pastor, formally referred to as a parochial vicar, holds his assignment by virtue of the bishop's decision and serves within the parish pursuant to that appointment, rather than by independent authority or parish election (*id.* at 33-35).

Although Staab testified that a parochial vicar reports to and is supervised on a day-to-day basis by the parish pastor, he made clear that such supervision exists within, and is subordinate to,

the bishop's overarching authority (Staab EBT at 33-34). Staab acknowledged that the bishop possesses the unilateral power to remove or reassign a parochial vicar from a parish, and that while a pastor may object, the pastor lacks authority to prevent such a transfer (*id.* at 67-70). Effective June 20, 1986, approximately two years prior to the abuse at issue, Bishop Mugavero assigned Father S. as Parochial Vicar to St. Patrick's (*see* Plaintiff's Exhibit 8, Letter dated May 19, 1986). Father S. remained in his position as Parochial Vicar to St. Patrick's from June 20, 1986, to approximately September 20, 1990, when he took leave from his assignment (*see* Plaintiff's Exhibit 46, Diocese of Brooklyn Personal Data Form).

Where, as is the case here, "the circumstances raise the possibility of a principal-agent relationship, and no written authority for the agency is established, questions as to the existence and scope of the agency must be submitted to a jury" (*Time Warner City Cable v Adelphi Univ.*, 27 AD3d 551, 553 [2d Dept 2006]). Here, the deposition testimony of St. Patrick's and the Diocese's corporate representatives viewed alongside the Diocese's historical records, all of which were submitted by Plaintiff, raise triable issues of fact as to the requisite degree of control the Diocese exercised over Father S. and St. Patrick's (*see Fils-Aime v Ryder TRS, Inc.*, 40 AD3d 917, 918 [2d Dept 2007] [summary judgment properly denied where movant's own papers created questions of fact as to principal-agent relationship]).

Accordingly, Plaintiff's branch of relief seeking summary judgment that Father S. and St. Patrick's were agents of the Diocese is denied.

Actual and Constructive Notice

Plaintiff also moves for summary judgment on the ground that the defendants had notice of Father S.'s propensity to sexually abuse minor children prior to his alleged sexual abuse of Plaintiff.

Generally, a defendant is under no obligation to prevent third persons from harming others, even if the defendant can exercise such control (*see D'Amico v Christie*, 71 NY2d 76, 88 [1987]). Nevertheless, certain relationships, such as an employer-employee relationship, may give rise to a duty of care, and employers may also be held liable for torts committed by an employee acting solely for the employee's own personal motives under the theories of negligent hiring, retention, and supervision (*see id.*; *see also MCVAWCD-DOE v Columbus Ave. Elementary School*, 225 AD3d 845, 846 [2d Dept 2024]; *Fernandez v Rustic Inn, Inc.*, 60 AD3d 893, 896 [2d Dept 2009]). Necessary to a cause of action based on negligent hiring, retention, and supervision is proof that the defendant knew or should have known of the individual's propensity for the conduct which caused the injury (*see MCVAWCD-DOE*, 225 AD3d at 846, quoting *Shor v Touch-N-Go Farms, Inc.*, 89 AD3d 830, 831 [2d

Dept 2011]; *Nevaeh T. v City of New York*, 132 AD3d 840, 842 [2d Dept 2015]). Said differently, the notice element may be satisfied by actual or constructive knowledge of the subject individual's propensity to engage in the conduct which resulted in injury (*see Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 158-159 [2023]; *Belcastro v Roman Catholic Diocese of Brooklyn, N.Y.*, 213 AD3d 800, 801-802 [2d Dept 2023]).

The papers submitted in support of Plaintiff's motion for summary judgment establish multiple reports of inappropriate sexual behavior by Father S. with minor children prior to the abuse at issue. To illustrate, a memorandum dated September 6, 1979, authored by Monsignor Bevilacqua, documents an incident reported to have occurred on August 30, 1979, in which Father S. photographed nude boys in a shower at Jones Beach (*see* Plaintiff's Exhibit 11). Father S. admitted to taking the photographs. He characterized the conduct as an "irresponsible act," while simultaneously denying that his behavior had been "unusual or abnormal" (*id.*).

That same memorandum indicates that Monsignor Bevilacqua spoke with a parent of one of the children involved, who expressed concerns that Father S. "tended to center his whole life around children and never around adults" (Plaintiff's Exhibit 13). The parent further described observing Father S. in a swimming pool cradling a child with the child's back toward him while "nibbling" on the child's back, and recounted a separate incident in which Father S., while assisting boys out of a tree, consistently grabbed them by the buttocks rather than by their thighs (*id.*). Monsignor Bevilacqua further recorded parental complaints that Father S. "would over fondle their children." In response to these concerns, it was recommended that Father S. undergo intensive psychotherapy (*see* Plaintiff's Exhibit 13).

On September 23, 1986, Monsignor Garcia learned of an allegation against Father S. involving a minor from Most Holy Trinity Parish who reported that he had been sexually molested by Father S. (*see* Plaintiff's Exhibit 18).

On September 28, 1986, another child reported allegations concerning Father S. to Monsignor Garcia (*see* Plaintiff's Exhibit 17). The child reported that he stayed overnight in Father S.'s room at the rectory. After exiting the shower, the child observed Father S. standing in the bathroom with a camera and taking a photograph of him before providing the child with a towel. That night, Father S. and the child slept in the same bed. Prior to falling asleep, the child alleged Father S. put his hand in the child's underwear and fondled him. Upon waking up the next morning, the child found his underwear lowered from his waist and Father S.'s hand on his genitals. During a separate visit to Father S.'s room, the child reported that, while they were wrestling, Father

S. placed his hands on the child. When the child requested to go home, Father S. rubbed the child's leg with his hands during the car ride to the child's residence. The child also stated that Father S. would, at times, grab the child's hands and try to put them inside Father S.'s underwear.

On September 30, 1986, Monsignors Garcia and Brown met with Father S. regarding the allegations reported on September 28, 1986 (*see* Plaintiff's Exhibit 19). Monsignor Garcia documented that Father S. did not deny the allegations but instead asserted that his actions were not sexual in nature. When questioned as to why he had placed his hands on a child's genitals, Father S. "simply responded 'because it was pleasurable' " (*id.*). Father S. further admitted to engaging in similar conduct with another child (*id.*).

The foregoing examples are not exhaustive but are illustrative of the information known before the relevant period of abuse at issue in this action.

A professional evaluation dated November 14, 1986, documents that Father S., then age 22, had engaged in sexual contact with a 10-year-old child (*see* Plaintiff's Exhibit 24). That evaluation diagnosed Father S. with "pedophilia, fixated type with voyeuristic features" (*id.*). On January 30, 1987, another professional recommendation advised the Diocese that Father S. should avoid being alone with pre-teenage and teenage boys and refrain from activities presenting opportunities for sexual temptation, including inviting children into his room or being alone in theirs (*id.*).

According to the Diocese's own records, approximately twelve allegations of sexually inappropriate conduct involving Father S. and minors ranging in age from seven to 13 were formally reported and documented (*see* Plaintiff's Exhibit 28). The inappropriate conduct included taking photos of boys disrobed, sexual touching over and under the clothes of a child, masturbation, and oral sex (*see id.*). At least five of these incidents were reported prior to the abuse alleged by Plaintiff.

Plaintiff's papers clearly demonstrate that the Diocese had actual notice of Father S.'s propensity to engage in sexually inappropriate and abusive conduct involving minor children well before the abuse alleged by Plaintiff. The Diocese's records, as annexed by Plaintiff, contain repeated parental complaints, admissions by Father S. himself, multiple reports of sexual misconduct involving different children, and professional evaluations diagnosing pedophilia and recommending strict limitations on Father S.'s contact with minors.

In opposition, the Diocese failed to raise a triable issue of fact sufficient to defeat summary judgment on the issue of notice. To the extent the Diocese argues that Plaintiff did not disclose his abuse until years later, that contention misapprehends the governing standard. Actual or constructive notice does not require knowledge of the precise injury ultimately suffered by the

plaintiff, but rather knowledge of *prior similar* conduct sufficient to make the risk of such harm reasonably foreseeable (*see Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 158-159 [2023] [allegations that defendant had actual knowledge of prior similar acts satisfies notice requirement]; *MCVAWCD-DOE v Columbus Ave. Elementary School*, 225 AD3d 845, 847 [2d Dept 2024] [actual or constructive notice of prior similar conduct is generally required]; *Nevaeh T. v City of New York*, 132 AD3d 840, 842 [2d Dept 2015] [issue of fact as to defendant's knowledge of abuser's propensities based upon prior allegation of sexual abuse by another student]).

With respect to St. Patrick's, however, Plaintiff failed to eliminate all triable issues of fact. Although Monsignor Garcia testified at his deposition that, based on Diocesan practice during the relevant period, he believed the pastor of St. Patrick's would have been notified of the allegations concerning Father S., that testimony was expressly premised on assumption rather than personal knowledge (*see* NYSCEF Doc No. 225, Plaintiff's Exhibit 22, Msgr. Garcia EBT at 239-241). While such testimony provides some support for an inference that St. Patrick's may have been notified, it does not conclusively resolve the issue. Moreover, in a memorandum dated January 28, 1987 by Monsignor Garcia, he noted that Father McShane, the pastor of St. Patrick's at the time, had not yet been informed of the details of the allegations, but should be advised so that appropriate supervision could be implemented. This documentary evidence gives rise to a factual dispute as to whether, and when, St. Patrick's received notice, thereby precluding summary judgment on that issue.

Accordingly, Plaintiff is entitled to summary judgment on the issue of actual notice as against the Diocese. By contrast, Plaintiff has failed to eliminate triable issues of fact as to whether St. Patrick's received such notice, and summary judgment on that issue is therefore denied.

Uncontroverted Facts

Lastly, Plaintiff also seeks an order, pursuant to CPLR 3212(g), deeming certain facts established for all purposes in this action. The Diocese submits that all the relevant facts are in dispute.

CPLR 3212(g) permits a court, upon a motion for summary judgment, to identify facts that are not in dispute and deem them established for all purposes in this action. Here, however, Plaintiff has failed to set forth any particular facts alleged to be undisputed and instead broadly contends that any facts not expressly controverted should be deemed admitted. In opposition, the Diocese argues that Plaintiff's request improperly relies upon 22 NYCRR 202.8-g in the absence of a statement of material facts. That rule, however, was repealed by Administrative Order of the Chief

Administrative Judge of the State of New York (AO/103/25), dated May 6, 2025, effective July 7, 2025. As a result, a statement of material facts, as contemplated under the former 22 NYCRR 202.8-g, is no longer required.

Nevertheless, upon review of the motion papers, the court has identified a single instance in which the Diocese expressly conceded the absence of a factual dispute. Specifically, the Diocese asserted in their opposition that "[i]t is undisputed that the bishop assigns priests to parishes" (NYSCEF Doc No. 323, Diocese's Memo of Law at 3).

Accordingly, pursuant to CPLR 3212(g), the court deems the fact that "the bishop assigns priests to parishes" to be established for all purposes in this action. All remaining facts are disputed and shall be resolved by the factfinder at trial.

CONCLUSION

In accordance with the foregoing, it is hereby:

ORDERED that Plaintiff's notice of motion for partial summary judgment (motion sequence no. 6) is **granted to the extent indicated herein**; and it is further

ORDERED that the Diocese's notice of motion for partial summary judgment (motion sequence no. 7) is **granted to the extent** indicated herein; and it is further

ORDERED that Plaintiff is granted partial summary judgment finding that the Diocese had actual notice of Father S.'s propensity to sexually abuse minor children; and it is further

ORDERED that the Diocese is granted partial summary judgment precluding Plaintiff from admitting into evidence the second alleged incident as a separate actionable instance of conduct which would constitute a sexual offense; and it is further

ORDERED that, pursuant to CPLR 3212(g), the fact that the "the bishop assigns priests to parishes" shall be deemed established for all purposes in this action.

Plaintiff shall serve a copy of this decision and order, with notice of entry, upon the defendants within five (5) days of such entry. Plaintiff shall e-file an affidavit of said service within five (5) days of effectuating service.

Any issue raised and not decided herein is denied.

This constitutes the decision and order of the court.

Dated: **January 20, 2026**

E N T E R:

HON. JOANNE D. QUIÑONES
Justice of the Supreme Court