PC-38 Doe v St. Peter & Paul R.C. Church
2026 NY Slip Op 31875(U)
April 29, 2026
Supreme Court, Kings County
Docket Number: Index No. 513684/2020
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 **29th** day of **April, 2026**.

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

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PC-38 DOE,

Plaintiff,

- against -

ST. PETER AND PAUL ROMAN CATHOLIC CHURCH, THE MERGED PARISHES OF SAINTS PETER AND PAUL AND EPIPHANY PARISH, THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, AND DOES 1-10 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF,

Defendants.

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Index No.: 513684/2020

DECISION & ORDER
Motion Sequence Nos. 6-7

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	140-174
Notice of Motion, Affidavits (Affirmations), Exhibits Annexed	175-202
Answering Affidavits (Affirmations) and Exhibits Annexed	203-260
Reply Affidavits (Affirmations) and Exhibits Annexed	261-264
Letter Correspondence	265-267, 270, 275-277
Oral Argument Transcript	271-272

APPEARANCES OF COUNSEL

Phillips & Paolicelli, LLP, New York, NY (*Michael McConnell, Diane Paolicelli, & Victoria E. Phillips*), for plaintiff.

Shaub, Ahmuty, Citrin & Spratt, LLP, Great Neck, NY (*Timothy Gallagher*), for defendant Diocese of Brooklyn.

Scahill Law Group, P.C., Bethpage, NY (*Keri A. Wehrheim*), for defendants St. Peter and Paul Roman Catholic Church and The Merged Parishes of Saints Peter and Paul and Epiphany Parish.

OPINION OF THE COURT

Defendant, The Roman Catholic Diocese of Brooklyn (the Diocese), moves by notice of motion for an order: (1) granting summary judgment in its favor and dismissing the complaint in its entirety; or, alternatively striking Plaintiff's demand for punitive damages and the portion of the complaint alleging this action is exempt from Article 16 of the CPLR (motion sequence no. 6).

Separately, defendants St. Peter and Paul Roman Catholic Church and The Merged Parishes of Saints Peter and Paul and Epiphany Parish (collectively, St. Peter and Paul) move for identical relief (motion sequence no. 7).

Background

On July 29, 2020, Plaintiff commenced this action under the Child Victims Act (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 1982 to 1983, Plaintiff, then approximately 13 to 14 years old, was sexually abused by Father Roden, who was an employee and/or agent of the defendants (*see* NYSCEF Doc No. 1, Complaint ¶ 6). During the relevant period, it is alleged that Plaintiff attended churches in the Diocese, including St. Peter and Paul, and that Father Roden was an employee of both the Diocese and St. Peter and Paul (*id.* ¶¶ 5, 30, 35). According to Plaintiff, the sexual abuse occurred on the premises of St. Peter and Paul as well as off campus on church outings (*id.* ¶¶ 10, 37-38, 61). Plaintiff, therefore, seeks damages under causes of action for negligent hiring, retention, supervision and direction; and negligent, reckless, and willful misconduct.[1]

Plaintiff's complaint also alleges that between the late 1970s and early 1980s he was sexually abused by two additional Roman Catholic priests, known to him as Fathers George and Peter, in an apartment shared by those priests (*id.* ¶¶ 11-12). In opposition to the instant motions, Plaintiff submitted that "Defendants produced no discovery revealing these priests' identities, and Plaintiff [is] no longer pursuing those claims" (NYSCEF Doc No. 260, Plaintiff's Memo at 7 n 3; *see* NYSCEF Doc Nos. 271-272, 2/19/26 tr at 5-6).

[1] Plaintiff voluntarily discontinued the third (negligent infliction of emotional distress), fourth (premises liability), fifth (breach of fiduciary non-delegable duty), sixth (breach of duty *in loco parentis*), and seventh (breach of statutory duties to report) causes of action (*see* NYSCEF Doc No. 89).

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]).

Unidentified Priests

The branches of the motions by the Diocese and St. Peter and Paul seeking dismissal of Plaintiff's claims, insofar as they are premised upon alleged abuse by the two unidentified priests known to Plaintiff as "Father George" and "Father Peter," are granted to the extent set forth herein. In opposition to these motions, Plaintiff expressly represents that he is "no longer pursuing those claims" and is "not intending at trial ... to introduce evidence concerning [the unidentified priests]" because Plaintiff was unable "to identify them and [Plaintiff] think[s] [he has] a sufficient case with

Father Roden" (NYSCEF Doc No. 260, Plaintiff's Memo at 7 n 3; NYSCEF Doc Nos. 271-272, 2/19/26 tr at 5-6).

Accordingly, the references in the first and second causes of action to the two unidentified priests known to Plaintiff as Fathers George and Peter are stricken, as Plaintiff is no longer pursuing those claims to the extent they pertain to those unidentified priests. Any other references in the complaint to those unidentified priests are likewise stricken and shall be removed. Within 10 days of entry of this decision and order, Plaintiff shall e-file an amended complaint consistent with this decision and order.

Actual and Constructive Notice

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 an 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]).

By way of background, Plaintiff's verified bill of particulars alleges that the defendants had actual and constructive notice of Father Roden's alleged abuse (*see* NYSCEF Doc No. 147, Diocese's Exhibit F, Verified Bill of Particulars ¶¶ 10-11). Plaintiff alleges that other persons reported sexual abuse involving defendants' clergy, including Father Roden, that were contemporaneous with or predated Plaintiff's alleged abuse. Plaintiff further alleges that Father Roden's abuse of minors was "open and obvious" to the defendants and their employees, agents, and representatives. Here, it is undisputed that prior to 2012, Plaintiff had not reported Father Roden's abuse to anyone (*see*

NYSCEF Doc No. 149, Diocese Exhibit H, Plaintiff's EBT at 148-149, 173). Plaintiff nevertheless testified that two other individuals were aware of the alleged abuse based on their own contemporaneous sexual encounters with Father Roden. According to Plaintiff, his brother, PC-40 Doe,[2] was aware of the abuse because both were sexually abused at the same time (*id.*). Plaintiff also testified that his friend, PC-23 Doe,[3] was sexually abused with him at the St. Peter and Paul rectory, separate and apart from PC-40 (*id.* at 175).

Notice to the Diocese

Against that factual backdrop, the Diocese contends that the record contains no proof that it had actual or constructive notice of Father Roden's propensity for child sexual abuse. In advancing that argument, the Diocese relies principally on the absence of any contemporaneous complaint, the lack of any preexisting allegation in Father Roden's clergy file, and its position that the conduct alleged was not so open, obvious, or recurrent as to charge it with notice.

The Diocese first argues that the record does not support a finding of actual notice because no contemporaneous complaint was made by either Plaintiff or any other victim concerning Father Roden's alleged abuse. In support, the Diocese points to testimony from the other alleged victims indicating that none reported the abuse to either defendant or, in some instances, to any adult at all. PC-40 Doe, who alleges that Father Roden abused him between approximately 1981 and 1983, never contacted anyone affiliated with either defendant to report the alleged abuse (NYSCEF Doc No. 169, Diocese's Exhibit BB, PC-40 Doe EBT at 145-146, 173-74). PC-23 Doe, who alleges abuse between approximately 1981 and 1982, likewise never informed the defendants or any other adult of the alleged abuse and testified that he knew only of the abuse he claims he and Plaintiff experienced (NYSCEF Doc No. 168, Diocese's Exhibit AA, PC-23 Doe EBT at 94, 113, 121, 138-139, 142-143, 219-220). Similarly, Angel Huertas, who testified that Father Roden touched his buttocks and rubbed his leg sometime between 1981 and 1982, stated that he never reported the alleged abuse to anyone at the Diocese or St. Peter and Paul, was unaware of any witnesses to it, and did not disclose it to anyone when he was a child (NYSCEF Doc No. 152, Diocese's Exhibit K, Huertas EBT at 34-36, 38-40, 81). The Diocese further relies on the absence of any preexisting complaint in Father Roden's clergy file. The Diocese asserts that the only allegation reflected in the

[2] PC-40 Doe has a CVA action pending under Index No. 513720/2020, captioned *PC-40 Doe v St. Peter and Paul Roman Catholic Church et al.*
[3] PC-23 Doe has a CVA action pending under Index No. 512225/2020, captioned *PC-23 Doe v St. Peter and Paul Roman Catholic Church et al.*

clergy file concerns an anonymous complaint made in 2006,[4] decades after the events at issue, which the Diocese investigated and deemed unfounded (*see* NYSCEF Doc No. 157, Diocese's Exhibit P, Ritty EBT; NYSCEF Doc No. 161, Diocese's Exhibit T at RPR000526; *see also Pisula v R.C. Archdiocese of New York*, 201 AD3d 88, 103 [2d Dept 2021] ["Negligence can only be determined by what was known before and at the time of the accident, and cannot be inferred from subsequent acts"]).

Although this proof may be sufficient, in the first instance, to satisfy the Diocese's prima facie burden on the issue of actual notice, the Diocese's own papers reference an additional complaint made by Erasmo Ortega. In that regard, Ortega alleges that Father Roden abused him from approximately 1973 to 1976 at Transfiguration Church and during a retreat in or around Westchester County (*see* NYSCEF Doc No. 151, Diocese's Exhibit J, Ortega Aff ¶ 2). Ortega further testified that, in approximately 1975 or 1976, he reported the abuse to Father Bryan Karvelis, then the pastor of Transfiguration (*id.* ¶ 3; NYSCEF Doc No. 162, Ortega EBT at 107-108, 117-123, 210-211, 219-220). According to Ortega, he described the sexual conduct in detail to Father Karvelis including "everything from [ ] grabbing [Ortega's] penis, making [Ortega] grab [Father Roden's] penis from behind, jerking [Father Roden] off, the oral sex everything. [Ortega] told [Father Karvelis] this is what he is doing. [Father Karvelis] said not to tell nobody" (Ortega EBT at 121, 219-220). Ortega also alleged that after his report to Father Karvelis, Father Roden's sexual abuse continued and "[t]hat's when it got worse" (*id.* at 122, 220).

The Diocese argues that, even assuming Ortega made such a report, Father Karvelis' alleged knowledge should not be imputed to the Diocese because Transfiguration and the Diocese were separately incorporated entities, no Diocesan policy in the 1970s required pastors to take any specific course of action regarding child sexual abuse allegations, and Karvelis, as pastor, had discretion to respond to such a complaint as he deemed appropriate (Diocese's Memo at 15-17).

Accordingly, the dispositive issue here is not merely whether Ortega reported Father Roden's conduct to Father Karvelis, but whether Father Karvelis' alleged knowledge may be imputed to the Diocese. Stated differently, even if Ortega's testimony is credited and Father Karvelis in fact received a detailed report of abuse in the mid-1970s, the report is relevant to actual notice only if Father Karvelis was acting in such a capacity that his knowledge may be imputed to the Diocese. That issue, as framed by the parties, is governed by ordinary principles of agency law.

[4] The anonymous complaint reported that "a couple of years" prior to October 2006, while at Our Lady of Sorrows Parish, Father Roden put his hand on the girl's shoulder, grabbed the strings of her "brassiere" through her blouse, and pulled the string "as if playing with her brassiere, while talking to her" on multiple occasions.

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). Moreover, the "acts of agents, and the knowledge they acquire while acting within the scope of their authority are presumptively imputed to their principals" as a general rule (*Kirschner v KPMG LLP*, 15 NY3d 446, 465 [2010]). An exception to the rule of imputation is applicable when the agent has "totally abandoned his principal's interest" and acts entirely for his own or another's purposes (*id.* at 466-467, quoting *Center v Hampton Affiliates, Inc.*, 66 NY2d 782, 784-785 [1985]).

Here, Michael Ritty, the Diocese's corporate representative, and Father Roden testified to an extensive relationship between the Diocese and associated parishes, including a structure in which priests remained subject to Diocesan authority and operated within a Diocesan chain of command that extended to the Bishop. For example, Ritty testified that priests make a promise of obedience to their bishops that requires a priest to "respect the wishes of the bishop as the priest continues to minister in the diocese," and that Fathers Roden and Karvelis, like all priests, would have made that same promise (NYSCEF Doc No. 157, Diocese's Exhibit P, Ritty EBT at 41-42). Ritty further testified that the Bishop could assign a priest "wherever he sees fit," that the Bishop's Office assigned Father Roden to various positions throughout his career, and that the Bishop could institute "just about any policy" he wanted, including a policy requiring priests to report sexual misconduct to the Diocese for investigation or action (*id.* at 40, 170-171). Ritty was also asked whether, during the relevant period, either a pastor or the Diocese could implement a policy prohibiting priests from taking children on outings unless a second adult was present (*id.* at 169-170). In response, he testified that he "wouldn't know" whether a pastor had such authority in the 1980s, but definitively answered "yes" when asked whether the Diocese had that authority (*id.*). He further testified that, although a priest could question a transfer, the priest was not free to disregard the Bishop's directive simply because he preferred to remain at a particular parish (*id.* at 43). He explained that even a pastor remained subject to specific diocesan procedures if the Bishop wished to remove him before the end of his specified term (*id.*).

Father Roden's testimony likewise supports an inference that Transfiguration was not operating in isolation from the Diocese (*see* NYSCEF Doc No. 159, Diocese's Exhibit R, Roden EBT). He testified that the "chain of command" at Transfiguration in the 1970s was as follows: "It goes principal in communication with the pastor, and then the superintendent of schools, probably a vicar, the local vicar, episcopal vicar for the area would be in the chain of command. Then the very last stop in the chain would be the bishop" (*id.* at 159). Father Roden further testified that, if a matter reached the Bishop, the Bishop would have the power to remove the individual from working with children, and that the Bishop and the Diocese assigned priests, including Father Roden (*id.* at 159-160).

Taken together, that testimony is insufficient to conclusively establish that the Diocese did not exercise meaningful direction and control over Father Karvelis and Transfiguration, or that Father Karvelis' conduct and knowledge were, as a matter of law, wholly separate from the Diocese. Imputation of knowledge to the Diocese depends upon the existence of an agency relationship and whether the conduct at issue fell within the scope of that authority. 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]). Moreover, separate incorporation, standing alone, is not dispositive of the question of control. Accordingly, the Diocese's proof does not conclusively resolve whether Father Karvelis was acting as the Diocese's agent for purposes of receiving and transmitting the 1970s complaint (*see Kwitko v Camp Shane, Inc.*, 224 AD3d 895, 895 [2d Dept 2024]).

As to constructive notice, the Diocese has not demonstrated the absence of triable issues of fact. Although it argues that Father Roden's alleged abuse was neither sufficiently frequent nor sufficiently apparent to charge it with constructive notice, the Diocese's own submissions describe repeated conduct over an extended period that, if credited, could support the opposite inference. The Diocese acknowledges Plaintiff's account that the abuse occurred at St. Peter and Paul on multiple occasions between 1981 and 1982 (*see* Diocese's Memo at 17-18; Diocese's Exhibit H, Plaintiff's EBT). These include incidents of abuse at times where other adults were allegedly nearby and could see Father Roden touching him, and the Diocese further acknowledges Plaintiff's claims that Father Roden took boys on outings, gave them money, and isolated them in the rectory. Plaintiff's abuse occurred on approximately 11 to 13 separate occasions (*see* Plaintiff's EBT at 153-154). When asked who saw Father Roden behaving inappropriately with children, Plaintiff

explained, "[t]he People in the rectory and in the church. There was people all over the place ... They just turned their face" (*id.* at 298-299). That testimony, if credited, describes not a single isolated incident of abuse, but recurring conduct in settings where others were present and could allegedly observe what was happening.

The testimony of the other alleged victims further underscores the existence of a factual dispute on this issue. PC-23 Doe testified that other adults would see him visit Father Roden at the rectory and that "there was always somebody" in the rectory or in the church (PC-23 Doe EBT at 218-219). Similarly, PC-40 recalled that each time he visited Father Roden at the rectory, "some adult [would] open the door," and that, although there was an individual there to sign visitors in and out, he was never asked to sign in because "they knew" (PC-40 Doe EBT at 162-166).

When the Diocese's proof is viewed collectively in the light most favorable to Plaintiff, this evidence permits a reasonable inference that Father Roden's interactions with minor boys were sufficiently visible and repeated such that the Diocese should have known of his alleged propensity for child sex abuse. The admissible proof indicates more than just a single isolated incident or wholly off-premises conduct and is therefore sufficient to warrant denial of summary judgment considering the alleged frequency, duration, and visibility of the abuse. While the Diocese's contentions – that the abuse did not occur on "Diocesan property," that the adults allegedly nearby were not identified as employees of the Diocese, and that certain acts such as giving money, hugging, or taking Plaintiff on outings were, standing alone, insufficient red flags – may furnish arguments for a factfinder at trial, they do not conclusively negate constructive notice (Diocese's Memo at 17-18; *see Stanton v Longwood Cent. School Dist.*, 233 AD3d 1010, 1015 [2d Dept 2024] [District's motion for summary judgment denied where District's evidence "established a frequency of sexual abuse that occurred at times and in places such that a factfinder could determine that the district had constructive notice"]).

For these reasons, the Diocese failed to sustain its burden to demonstrate its prima facie entitlement to judgment as a matter of law regarding actual and constructive notice.

Notice to St. Peter and Paul

With respect to St. Peter and Paul, it similarly argues that it lacked actual and constructive notice.

Under New York law, the ordinary imputation rule attributes an agent's knowledge to its principal, but the rule does not impute knowledge from principal to agent. The Court of Appeals

and Second Department have repeatedly framed the rule such that, "knowledge acquired by an agent acting within the scope of his agency is imputed to his principal" and the principal is bound even if the information is never actually communicated upward (*Center*, 66 NY2d at 784; *see Kirschner*, 15 NY3d at 465-466; *Plotkin v Republic-Franklin Ins. Co.*, 177 AD3d 790, 792-793 [2d Dept 2019]). New York law does not, however, recognize the reverse proposition as a general rule. If a party seeks to charge the alleged agent with knowledge known by the principal, that conclusion must rest on proof that the agent actually knew the information, participated in the conduct, or is otherwise bound under some separate doctrine distinct from agency imputation principles. Therefore, assuming arguendo that the Diocese had knowledge of the report made to Transfiguration, that knowledge could not then be imputed to St. Peter and Paul based solely on a principal-agent relationship between the two entities, if established.

Similarly, the imputation rule does not permit the court to impute knowledge acquired by a pastor of one separately incorporated parish to another, distinct parish merely because they are both within the same Diocese. Even accepting Ortega's account that he reported Father Roden's abuse to Father Karvelis in the 1970s, the proof reflects that Father Karvelis was the pastor of Transfiguration, not St. Peter and Paul, and that Transfiguration and St. Peter and Paul were separately incorporated parishes during the relevant period. Therefore, any knowledge Father Karvelis is alleged to have acquired in his capacity as pastor of Transfiguration, if at all, on behalf of that separate parish, not on behalf of St. Peter and Paul. As such, St. Peter and Paul met their prima facie burden of entitlement to summary judgment on the issue of actual notice. In opposition, Plaintiff failed to identify any cognizable basis to impute Transfiguration's purported knowledge to St. Peter and Paul.

Constructive notice, however, warrants a different conclusion. The sworn allegations, viewed in the light most favorable to Plaintiff, describe conduct over time in parish settings and in the presence of others, which is sufficient to raise a triable issue as to whether St. Peter and Paul should have known of Father Roden's alleged propensity for child abuse. Under these circumstances, St. Peter and Paul's arguments that particular acts may appear innocuous in isolation, or that the surrounding witnesses were not specifically identified, do not conclusively negate constructive notice as a matter of law. Therefore, because the evidence permits an inference that the alleged abuse occurred with sufficient frequency, duration, and visibility to charge St. Peter and Paul with notice, that branch of St. Peter and Paul's motion for summary judgment on the issue of constructive notice must be denied (*see Stanton*, 233 AD3d at 1014-1015).

Negligent Hiring

St. Peter and Paul specifically argues that it was not negligent in the hiring of Father Roden because at the time Father Roden was hired, nothing in his personnel file or otherwise would lead a prudent person to investigate further. The Diocese did not specifically argue the same point in their papers but generally argue for dismissal of the negligent hiring cause of action.

A negligent hiring cause of action imposes liability upon an employer for tortious conduct by an employee " 'when the employer has [ ] hired ... the employee with knowledge of the employee's propensity for the sort of behavior which caused the injured party's harm' " (*Sandra M. v St. Luke's Roosevelt Hosp. Ctr.*, 33 AD3d 875, 878 [2d Dept 2006], quoting *Kirkman by Kirkman v Astoria Gen. Hosp.*, 204 AD2d 401, 403 [2d Dept 1994]). This court recognizes that consistent with long-standing common-law principles, an employer does not have a duty "to institute *specific* procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee" (*Kenneth R. v R.C. Diocese of Brooklyn*, 229 AD2d 159, 163 [2d Dept 1997] [emphasis added]). Notwithstanding, courts have found a "triable issue of fact [where the question is] whether the defendant took the *appropriate* measures to evaluate [an employee's] employment and fitness at the time [of hiring]" (*see D.T. v Sports and Arts in Schs. Found., Inc.*, 193 AD3d 1096, 1097-1098 [2d Dept 2021] [emphasis added]; *Pratt v Ocean Med. Care, P.C.*, 236 AD2d 380, 381 [2d Dept 1997] [summary judgment not proper where questions raised as to the adequacy of employer's screening process]).

The defendants, in support of their motion for summary judgment, failed to provide any facts regarding the circumstances which led to Father Roden being hired with authority over children at St. Peter and Paul or the inquiry, if any, conducted at that time. Accordingly, the defendants did not meet their prima facie burden of demonstrating, as a matter of law, that they are entitled to summary judgment on the negligent hiring claim (*see Johansmeyer v New York City Dept. of Educ.*, 165 AD3d 634, 636 [2d Dept 2018] [summary judgment denied where defendant's own papers raised issue of fact as to appropriate measures implemented to evaluate intern's employment and fitness at the time intern was hired]; *Giangrasso v Assn. for Help of Retarded Children*, 243 AD2d 680, 680 [2d Dept 1997] [defendant not entitled to summary judgment where questions of fact exist as to the adequacy of the screening process of new employees and whether defendant took appropriate measures to evaluate employee's fitness at the time of hiring]).

Duplicative Claims

St. Peter and Paul further argues that the second cause of action sounding in general negligence is duplicative of the first cause of action for negligent hiring, retention, supervision, and direction. The defendant's contention is without merit under these circumstances. The negligent hiring, retention, supervision, and direction claim is based upon the defendants' status as an employer whereas a general negligence claim is based on the defendants' supervision of Plaintiff (*see C. M. v W. Babylon Union Free School Dist.*, 231 AD3d 809, 813 [2d Dept 2024] [reversing trial court for dismissing the causes of action in a CVA case for general negligence and negligent hiring retention and supervision], *lv dismissed* 42 NY3d 1092 [2025]; *see also Schaffer v State*, 237 AD3d 1334, 1337 [3d Dept 2025] [finding "no merit in defendant's contention that the claims for negligence and negligent hiring, supervision and retention are duplicative under the facts alleged here, as the latter is based upon defendant's status as an employer, and the former concerns defendant's supervision of claimant"]).

Punitive Damages

The defendants seek, in the alternative, to strike Plaintiff's demand for punitive damages.

Punitive damages are available only in exceptional cases involving conduct that manifests "such a conscious and deliberate disregard of the interests of others that the conduct may be called willful or wanton," but are not recoverable for conduct amounting to mere negligence (*Marinaccio v Town of Clarence*, 20 NY3d 506, 511-512 [2013]). Where punitive damages are sought against an employer for the intentional wrongdoing of its employee, the plaintiff ultimately must show that management authorized, participated in, consented to, or ratified the conduct, or deliberately retained the unfit employee; or that the wrong was committed pursuant to a recognized business system of the entity (*see Loughry v Lincoln First Bank, N.A.*, 67 NY2d 369, 378 [1986]).

Here, defendants have not demonstrated as a matter of law that Plaintiff will be unable to make such a showing at trial. Plaintiff's opposition identifies proof that Roden allegedly abused Ortega years before Plaintiff's abuse and that Ortega reported that abuse to Father Karvelis in the 1970s. The proof further indicates that Father Roden was thereafter recommended, ordained, and assigned to St. Peter and Paul despite evidence in the file reflecting his insistence on a rectory residence open to non-clergy for overnight stays. Once at St. Peter and Paul, Father Roden allegedly engaged in repeated and brazen misconduct involving multiple boys over a period of years in parish settings, including closed-door encounters in the rectory and outings with children.

Viewing these facts in the light most favorable to Plaintiff, and considering the court's determination that there are triable issues of fact, the court cannot conclude at this juncture that the defendants' alleged conduct amounted to nothing more than ordinary negligence. A factfinder could conclude, if Plaintiff's proof is credited, that one or both defendants consciously disregarded an obvious risk to children and effectively turned a blind eye to Father Roden's ongoing abuse.

Accordingly, the branches of defendants' motions seeking to strike the demand for punitive damages are denied.

CPLR Article 16

The defendants move to strike so much of Plaintiff's complaint which alleges that this action is exempt from the operation of Article 16 of the CPLR.

CPLR Article 16 provides a personal injury defendant with limited liability apportioned to his share of fault. It was enacted to limit a joint tortfeasor's liability for noneconomic loss to its equitable share where that tortfeasor is found to be 50 percent or less at fault (*see* CPLR 1601[1]). In other words, its purpose is "to assure that no defendant who is assigned a minor degree of fault can be forced to pay an amount grossly out of proportion to that assignment" (*Rangolan v County of Nassau*, 96 NY2d 42, 46 [2001]). CPLR 1601(1) states, in relevant part,

> when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable ... and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss[.]

The limited liability protections provided in Article 16, however, do not apply to: (1) "any liability arising by reason of a non-delegable duty or by reason of the doctrine of respondeat superior" (CPLR 1602[2]); (2) actions requiring proof of intent (CPLR 1602[5]); (3) "any person held liable for causing claimant's injury by having acted with reckless disregard for the safety of others" (CPLR 1602[7]); and (4) any parties found to have acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based (CPLR 1602[11]), among other enumerated circumstances.

In this case, Plaintiff alleges that Article 16 does not apply because defendants' liability may arise by reason of respondeat superior or a nondelegable duty and because defendants acted with reckless disregard for the safety of others, among other reasons (*see* Plaintiff's Memo at 23-24). At

this juncture, the court cannot conclude, as a matter of law, that defendants are entitled to the protections of Article 16. Whether CPLR Article 16 will ultimately apply depends upon both the theory under which liability, if any, is imposed and the apportionment made by the factfinder. While Article 16 limits a joint tortfeasor's liability for noneconomic loss, CPLR 1602 excludes from that limitation several categories of liability, some of which may be applicable here. Therefore, where, as is the case here, the factual and legal basis for a defendant's liability remains unresolved, a pretrial determination that Article 16 necessarily applies or does not apply is premature.

Illustrative of the premature nature of these applications are the Court of Appeals' decisions in *Rangolan* (96 NY2d at 42) and *Faragiano ex rel. Faragiano v Town of Concord* (96 NY2d 776 [2001]). In *Rangolan*, the Court held that Article 16 could apply because the defendant's liability rested on its own negligence rather than solely on a prohibited non-delegable duty, making the theory of liability dispositive of the Article 16 analysis. By contrast, the *Faragiano* Court held that the Town could seek Article 16 apportionment from "other joint tortfeasors for whose liability it is not answerable" but could *not* seek apportionment from an asphalt company because a municipality owes a non-delegable duty to maintain its roads. Read together, those cases establish that the applicability of Article 16 cannot be resolved in the abstract, but depends upon the theory and factual basis on which liability is ultimately imposed.

The defendants' reliance on *Chianese v Meier* (98 NY2d 270 [2002]) and *Stevens v New York City Tr. Auth.* (19 AD3d 583 [2d Dept 2005]) do not compel a different result. In *Chianese*, the Court of Appeals held that the CPLR 1602(5) exception for actions requiring proof of intent does not preclude apportionment of damages between a merely negligent defendant and a nonparty intentional tortfeasor. The *Stevens* court similarly addressed apportionment in a case where the defendant's liability sounded in negligence while the nonparty perpetrator committed the intentional bad act. Here, by contrast, Plaintiff does not allege merely negligent conduct, but contends that the defendants' actions were "willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff" and done with "with depraved indifference to the health and well-being of children" (*see* Complaint ¶¶ 75, 83).

Under these circumstances, and given the unresolved factual questions concerning the theory and basis of defendants' potential liability, the court cannot determine at this juncture whether Article 16 will ultimately apply. As such, at this stage, Plaintiff is not precluded from asserting that the provisions of CPLR Article 16 should not apply.

CONCLUSION

In accordance with the foregoing, it is hereby:

ORDERED that Diocese'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 St. Peter and Paul'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 the references to the two unidentified priests known to Plaintiff as "Father George" and "Father Peter" in the first and second causes of action, along with any other reference to said individuals in the complaint, are stricken. Plaintiff shall e-file an amended complaint within 10 days of entry of this decision and order; and it is further

ORDERED that St. Peter and Paul is granted partial summary judgment finding that it did not have actual notice of Father Roden's propensity to sexually abuse minor children.

Plaintiff and St. Peter and Paul shall serve a copy of this decision and order, with notice of entry, upon all other parties within five (5) days of such entry, and 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: **April 29, 2026**

E N T E R:

HON. JOANNE D. QUIÑONES
Justice of the Supreme Court