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SJC-13219

JOHN DOE vs. ROMAN CATHOLIC BISHOP OF SPRINGFIELD & others.[1]

Hampden. April 4, 2022. - July 28, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, & Georges, JJ.

Charity. Corporation, Charitable corporation, Religious. Immunity from Suit. Practice, Civil, Motion to dismiss, Interlocutory appeal. Constitutional Law, Freedom of religion.

Civil action commenced in the Superior Court Department on January 28, 2021.

A motion to dismiss was heard by Karen L. Goodwin, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Michael G. McDonough (Kevin D. Withers & John G. Bagley also present) for the defendants.
Nancy Frankel Pelletier for the plaintiff.

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[1] Mitchell T. Rozanski; Patricia McManamy; Christopher Connelly; Jeffrey Trant; Kevin Murphy; Mark Dupont; John J. Egan; and John Hale.

LOWY, J. The plaintiff brought suit against the Roman Catholic Bishop of Springfield, a corporation sole (Roman Catholic Bishop of Springfield), and church officials for the sexual abuse by church leadership that he allegedly endured as a child in the 1960s and for the church's handling of his complaint beginning in 2014.[2] The defendants moved to dismiss the complaint on the grounds of common-law charitable immunity and the doctrine of church autonomy, the latter of which is derived largely from the religion clauses of the First Amendment to the United States Constitution; a Superior Court judge denied the motion.

The primary issue presented is whether the defendants may use the doctrine of present execution to appeal immediately from the denial of their motion to dismiss even though final judgment has not yet issued.[3] The doctrine of present execution permits an appeal before final judgment when the appellate issue concerns a matter that is collateral to the underlying

[2] A "corporation sole" is "[a] series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like. This continuous personality is viewed, by legal fiction, as having the qualities of a corporation." Black's Law Dictionary 430 (11th ed. 2019).

[3] The parties have not pointed us to, and we have not found, any cases addressing whether the doctrine of present execution applies to issues involving common-law charitable immunity or the religion clauses of the First Amendment.

litigation and that cannot be addressed fully after final judgment. See CP 200 State, LLC v. CIEE, Inc., 488 Mass. 847, 849 (2022).

We conclude that the doctrine of present execution does not apply to the defendants' church autonomy arguments, because they can be addressed adequately on appeal should the plaintiff prevail. Accordingly, we do not address these arguments' merits. In contrast, we conclude that common-law charitable immunity, as it existed before the Legislature abolished it in 1971, would be lost if a charity protected by the immunity nevertheless had to litigate. The arguments pertaining to common-law charitable immunity, therefore, fall within the doctrine of present execution and properly are before us. Reaching the merits, we determine that common-law charitable immunity insulates the Roman Catholic Bishop of Springfield only from the count alleging negligent hiring and supervision. It does not protect the Roman Catholic Bishop of Springfield from the counts alleging sexual assault against the plaintiff, as these allegations do not involve conduct related to a charitable mission.

Background. We take the following facts from the complaint and documents attached to it. See Sacks v. Dissinger, 488 Mass. 780, 781 (2021); Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000).

In the 1960s, when the plaintiff was approximately from nine to eleven years old, he served as an altar boy at a parish in Massachusetts. He was abused sexually by multiple church officials, including a priest at the parish, the pastor of the parish, and then Roman Catholic Bishop of Springfield Christopher J. Weldon. The abuse included "severe anal penetration" and occurred in a rectory bedroom at the parish, a camp in a different town, and a building adjacent to the parish. On one occasion, the plaintiff grabbed onto door frames to prevent Weldon from taking him into a room. Weldon nevertheless dragged the plaintiff into the room, where at least one other altar boy and two priests were present, and commanded one of the altar boys or priests to get the plaintiff onto the bed. The altar boys and priests grabbed the plaintiff, flipped him onto his stomach, and pinned him to the bed while Weldon and others "brutally raped" him.

The plaintiff did not remember these events as an adult until March 2013, when a television program about the Vatican triggered memories of the abuse. In November 2014, he recounted his abuse to defendant Reverend Monsignor Christopher Connelly, an employee of the Roman Catholic Bishop of Springfield, and defendant Patricia Finn McManamy, the Roman Catholic Bishop of Springfield's director of counseling, prevention, and victim services. Neither Connelly nor McManamy reported the

allegations to the district attorney's office at that time. Nor did McManamy report the alleged abuse after meeting with the plaintiff again in 2016. She ultimately reported the allegations to the district attorney's office in August 2018.

In April 2018, McManamy referred the matter to an investigator for the church, defendant Kevin Murphy. Murphy interviewed the plaintiff one time, and then presented a report to the diocesan review board.[4] There were four drafts of this report. Two of the drafts indicated, without explanation, that the plaintiff had stated both that he had been molested by Weldon and that he had not been molested by Weldon. Two other drafts did not include the plaintiff's assertion that Weldon had molested him. Murphy gave the board one of the latter drafts. During a June 2018 meeting of the review board, the plaintiff

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[4] The role of the diocesan review board is explained in the United States Conference of Catholic Bishops's Charter for the Protection of Children and Young People (rev. June 2018), which was attached to the complaint:

> "Dioceses/eparchies are . . . to have a review board that functions as a confidential consultative body to the bishop/eparch. The majority of its members are to be lay persons not in the employ of the diocese/eparchy . . . . This board is to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry. It is regularly to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors. Also, the board can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases."

described being abused by Weldon. After an additional meeting in September 2018, the review board found that the plaintiff's allegations relating to various officials, including Weldon, were "compelling and credible."

In May 2019, a reporter for the Berkshire Eagle newspaper sent an e-mail message to the Roman Catholic Bishop of Springfield's communications director, defendant Mark Dupont, asking why Weldon was not on a list of priests credibly accused of sexual abuse even though the review board had found the plaintiff's allegations to be "compelling and credible." Dupont replied, "You should know that there is NO finding of sexual abuse of any person involving . . . Weldon -- NONE. . . . In fact even the unnamed victim acknowledged that Weldon did not abuse him in statements made to our investigator." He repeated this position in another statement to the reporter in June 2019. He also told the reporter that the notes of the review board meetings "don't indicate the victim contradicting his previous statement to our investigator that they had not been molested by the former bishop," even though Dupont had received an e-mail message stating that, according to the minutes of the June 2018 review board meeting, the plaintiff had described "abuse by . . . Weldon" at that meeting. The Berkshire Eagle then published an article with a statement from the chair of the review board, defendant John Hale, asserting that the review

board had never found that Weldon "engaged in improper contact with anyone."

After the Berkshire Eagle article was published, a former judge conducted an investigation at the request of the Roman Catholic Bishop of Springfield. The former judge concluded that the plaintiff's allegations against Weldon were "unequivocally credible" and that the church's response to the allegations had been "greatly flawed." The Roman Catholic Bishop of Springfield at the time, defendant Mitchell T. Rozanski, wrote to the plaintiff in June 2020 stating that he accepted the former judge's conclusion and asking the plaintiff to "accept [his] apology for the terrible abuse [the plaintiff] had to endure as a young child . . . [and] the chronic mishandling of [the plaintiff's] report by the diocese time and time again since 2014."

The plaintiff commenced an action in the Superior Court in January 2021 against the Roman Catholic Bishop of Springfield and several church officials who had helped investigate the plaintiff's allegations. Counts one through seven arose out of the alleged sexual abuse of the plaintiff in the 1960s.[5] Counts

[5] The complaint alleged assault, battery, intentional infliction of emotional distress, negligent infliction of emotional distress, conspiracy, negligent supervision, and breach of fiduciary duty.

eight through fourteen arose out of how the church handled the plaintiff's accusations starting in 2014.[6]

The defendants moved to dismiss counts one through seven for failure to state a claim on which relief can be granted, on the ground of common-law charitable immunity. See Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974). They moved to dismiss counts eight through fourteen on the ground that resolving them would require the court to become entangled in a religious organization's review process (namely, that of the diocesan review board) in violation of the religion clauses of the First Amendment. A Superior Court judge denied the motion to dismiss, reasoning that further factual development was needed to decide the common-law charitable immunity issue and that the complaint's allegations did not implicate the religion clauses of the First Amendment. The defendants appealed, and we transferred the case to this court on our own motion.[7]

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[6] The complaint alleged negligence; negligent supervision; negligent infliction of emotional distress; intentional infliction of emotional distress; civil conspiracy; violation of G. L. c. 12, § 11I (addressing violations of constitutional rights); and defamation.

[7] There has been parallel litigation involving a motion to stay pending appeal. The defendants moved in the Superior Court for a stay, and the motion was denied. The defendants then filed in the Appeals Court a motion to stay the trial court proceedings pending appeal. A single justice of the Appeals Court denied the motion, and the defendants appealed from that ruling to a panel. That appeal was consolidated in the Appeals

Discussion. 1. Doctrine of present execution. We first address whether the defendants' arguments properly are before us. We conclude that the charitable immunity arguments, relating to counts one through seven, are, and that the church autonomy arguments, relating to counts eight through fourteen, are not. See Shapiro v. Worcester, 464 Mass. 261, 264-265 (2013) (applying doctrine of present execution to some, but not all, claims raised on appeal).[8]

"As a general rule, there is no right to appeal from an interlocutory order unless a statute or rule authorizes it." CP 200 State, LLC, 488 Mass. at 848, quoting Maddocks v. Ricker, 403 Mass. 592, 597 (1988). Accordingly, "the denial of a motion to dismiss is ordinarily not an appealable order." Fabre v.

Court with the appeal from the denial of the motion to dismiss, and we transferred the consolidated appeal to our own docket sua sponte. The defendants then filed, in the full court, a new motion for a stay of the Superior Court proceedings pending appeal. The full court referred that motion to a single justice of this court, who denied the motion. The defendants have not appealed from that denial. Although the defendants' appeal from the ruling of the single justice of the Appeals Court is before us, the defendants do not address that ruling in their briefs. Accordingly, the issue is waived. See Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019) ("The appellate court need not pass upon questions or issues not argued in the brief").

[8] The defendants also raise arguments on appeal about the extent to which the conduct of Weldon and others may be attributed to the corporation sole. Because these arguments clearly do not fall within the doctrine of present execution, we do not consider them.

Walton, 436 Mass. 517, 521 (2002), S.C., 441 Mass. 9 (2004). "The doctrine of present execution is a long-standing exception to this principle, applicable in limited circumstances." CP 200 State, LLC, supra at 849. The doctrine allows an appeal from otherwise nonfinal orders that (1) are "collateral to the rest of the controversy" and (2) "interfere[] with rights in a way that cannot be remedied on appeal from a final judgment," because, for example, "protection from the burden of litigation and trial is precisely the right to which [a party] asserts an entitlement." Id., quoting Estate of Moulton v. Puopolo, 467 Mass. 478, 485 (2014), and Patel v. Martin, 481 Mass. 29, 33 (2018).[9]

Whether an appeal falls within the doctrine of present execution is a threshold issue that an appellate court must resolve before reaching an appeal's merits. Estate of Moulton, 467 Mass. at 485 ("Before considering the merits of the director defendants' claims . . . , we consider first whether the defendants are entitled, by virtue of the doctrine of present

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[9] There are other avenues to obtaining interlocutory relief, none of which is implicated here. See G. L. c. 231, § 118, first par. (single justice of Appeals Court may grant certain relief regarding interlocutory order); Mass. R. Civ. P. 64 (a), as amended, 423 Mass. 1403 (1996) (judge may report interlocutory finding or order to Appeals Court). See also CP 200 State, LLC, 488 Mass. at 848 n.2, citing Patel, 481 Mass. at 31-32 (discussing how to seek relief from interlocutory orders).

execution, to pursue an interlocutory appeal of the denial of their motion to dismiss").

Moreover, the present execution analysis does not consider whether the appellant ultimately will prevail on the merits. Id. at 485-486 ("regardless of whether the director defendants are correct in their assertion that they are employers immune from liability under the exclusive remedy provision, interlocutory appeal under the doctrine of present execution is permissible to challenge the denial of that contention"). See Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 868 (1994) (regarding Federal collateral order doctrine, which addresses appeals before final judgment, "the issue of appealability . . . is to be determined for the entire category to which a claim belongs, without regard to the chance that the litigation at hand might be speeded, or a 'particular injustice' averted, . . . by a prompt appellate court decision" [citation and alteration omitted]).

"Where absolute or qualified immunity is provided by statute or common law, we discern whether the right to immunity is from suit or from liability, because only immunity from suit entitles a party to an interlocutory appeal under the doctrine of present execution." Lynch v. Crawford, 483 Mass. 631, 634-635 (2019). See id. at 635 ("In considering claims of absolute or qualified immunity by governmental entities or employees, we

have interpreted the immunity to provide protection from suit, not merely from liability; therefore, we have applied the doctrine of present execution to allow an interlocutory appeal from an order denying a motion to dismiss or for summary judgment brought by someone asserting such immunity").

An erroneous denial of immunity from suit cannot, by definition, be remedied after the party asserting the immunity already has litigated the matter to final judgment. And immunity from suit always is considered collateral to the underlying litigation. See Kent v. Commonwealth, 437 Mass. 312, 317 (2002), quoting Mitchell v. Forsyth, 472 U.S. 511, 527-529 (1985) ("the denial of a motion to dismiss on immunity grounds is always collateral to the rights asserted in the underlying action because it 'is conceptually distinct from the merits of the plaintiff's claim that his rights have been violated . . . even though a reviewing court must consider the plaintiff's factual allegations in resolving the immunity issue'").

In distinguishing between immunity from liability and immunity from suit, we look to the purpose behind the immunity rather than the words used to describe it. See Lynch, 483 Mass. at 633 ("That the statute speaks only of liability and does not specifically spell out immunity from suit is not dispositive").

If the purpose of the immunity is to protect a party "from the burden of litigation and trial," id. at 634, then the

immunity provides immunity from suit, see, e.g., id. at 640 ("if volunteer organizations are to avoid the need to incur 'unwarranted litigation costs' and, by doing so, avoid 'higher costs in purchasing insurance,' Congress must have intended the [Federal statute providing qualified immunity to certain volunteers] to provide qualified immunity from suit, not merely immunity from liability"); Maxwell v. AIG Domestic Claims, Inc., 460 Mass. 91, 98 (2011) ("St. 1996, c. 427, § 13, is designed to ensure that insurers err on the side of overreporting potentially fraudulent conduct. . . . Reporting to the [insurance fraud bureau] might be chilled if protection could be secured only after litigating a claim through to conclusion, so we conclude that St. 1996, c. 427, § 13 [i], should be interpreted as providing immunity from suit rather than mere immunity from liability"); Brum v. Dartmouth, 428 Mass. 684, 688 (1999) ("This court has noted the importance of 'determining [governmental] immunity issues early if immunity is to serve one of its primary purposes: to protect public officials from harassing litigation'").[10]

[10] The plaintiff argues that common-law charitable immunity and the First Amendment prohibition against entanglement in religious matters provide immunity only from liability because they are affirmative defenses and, therefore, must be raised through litigation. This reasoning is unpersuasive because, logically, a defendant must make at least some showing on all immunities, even those that we have considered to be immunities

We turn now to the two immunities at issue here.

a. Church autonomy. "The First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization" (alteration omitted). Hiles v. Episcopal Diocese of Mass., 437 Mass. 505, 510 (2002), quoting Alberts v. Devine, 395 Mass. 59, 72, cert. denied sub nom. Carroll v. Alberts, 474 U.S. 1013 (1985). "It 'permits hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.'" Hiles, supra, quoting Wheeler v. Roman Catholic Archdiocese of Boston, 378 Mass. 58, 61, cert. denied, 444 U.S. 899 (1979). This rule has been called the "church autonomy doctrine" and "ecclesiastical abstention." Hyung Jin Moon v. Hak Ja Han Moon, 431 F. Supp. 3d 394, 405 (S.D.N.Y. 2019), modified on another ground by 833 Fed. Appx. 876 (2d Cir. 2020), cert. denied, 141 S. Ct. 2757 (2021).

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from suit. Otherwise, the court will not know whether the immunity applies. See, e.g., Blanchard v. Steward Carney Hosp., 483 Mass. 200, 203 (2019) (describing initial burden of party alleging it has been target of strategic lawsuit against public participation [SLAPP]); Fabre, 436 Mass. at 521-522 (denial of special motion to dismiss pursuant to anti-SLAPP statute subject to interlocutory appeal). The important issue is not whether any litigation must occur before the defendant may invoke the immunity, but whether the immunity's rationale contemplates immunity from suit.

The rule's central purpose is to address the historic, philosophical concern with government interference in religious affairs by maintaining the constitutional separation between religion and government; at least originally, another purpose was to prevent civil courts from addressing matters in which they lack competence. See Watson v. Jones, 80 U.S. 679, 728-729 (1871) ("In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine . . . is conceded to all. . . . The right to organize voluntary religious associations . . . is unquestioned. . . . But it would . . . lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed"); id. at 729 ("It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest [people] in each are in reference to their own"). See also Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in N. Am., 344 U.S. 94, 115-116 (1952) ("Watson v. Jones, although it contains a reference to the relations of church and state under our system of laws, was decided without depending upon prohibition of state interference with the free exercise of religion. . . . Freedom to select the clergy . . . must now be said to have federal constitutional protection as a

part of the free exercise of religion against state interference" [footnotes omitted]); 31 J.R. Nolan & L.J. Sartorio, Equitable Remedies § 13.16 (3d ed. 2007), citing Moustakis v. Hellenic Orthodox Soc'y of Salem & Peabody, 261 Mass. 462, 466 (1928) ("Judicial restraint in the area of religious disputes is based on constitutional grounds as well as the court's lack of competence in the area"). See generally Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Employment Opportunity Comm'n, 565 U.S. 171, 182-187 (2012) (describing history of principle that civil courts may not rule on religious body's leadership decisions).

Both these concerns can be addressed on appeal after final judgment if a lower court inadvertently rules on a religious issue. See Tucker v. Faith Bible Chapel Int'l, 36 F.4th 1021, 1047 (10th Cir. 2022) ("the 'ministerial exception'[, an application of ecclesiastical abstention that exempts religious institutions from liability for certain employment decisions,] is not analogous to qualified immunity and does not immunize religious employers from the burdens of litigation itself"); Herx v. Diocese of Fort Wayne-South Bend, Inc., 772 F.3d 1085, 1090 (7th Cir. 2014) ("although the statutory and constitutional rights asserted in defense of this suit are undoubtedly important, the Diocese has not established that . . . the First Amendment . . . provides an immunity from trial, as opposed to

an ordinary defense to liability"); McCarthy v. Fuller, 714 F.3d 971, 976 (7th Cir. 2013) (allowing interlocutory appeal on First Amendment issue, but acknowledging that "the error of the secular court . . . in deciding that whether [the defendant] is a member of a religious order is a proper question to put to a jury, allowing the jury to disregard the ruling by the Holy See, can in principle be corrected on appeal from a final judgment"); Smith & Tuttle, Civil Procedure and the Ministerial Exception, 86 Fordham L. Rev. 1847, 1881 (Mar. 2018) (recommending that ecclesiastical abstention issues be resolved on interlocutory appeal, but admitting that "the fundamental value of the ministerial exception would not be entirely lost by waiting for a final judgment before permitting an appeal. . . . That is, the ministerial exception, at bottom, is . . . a defense to liability rather than a comprehensive immunity from suit"). Cf. Matter of Hamm, 487 Mass. 394, 400 (2021) (ruling on subject matter jurisdiction not "necessarily a proper subject for interlocutory appeal").

Accordingly, there is no need to allow an appeal before final judgment of an ecclesiastical abstention issue.

Other courts have held otherwise. The Connecticut Supreme Court, for instance, has reasoned that the philosophical breach of separation between religion and government cannot be remedied after a final judgment. Dayner v. Archdiocese of Hartford, 301

Conn. 759, 770-771 (2011) (ministerial exception provided immunity from suit because "the very act of litigating a dispute that is subject to the ministerial exception would result in the entanglement of the civil justice system with matters of religious policy, making the discovery and trial process itself a [F]irst [A]mendment violation"). The Supreme Court of North Carolina has reasoned similarly, and it also has emphasized the First Amendment's importance. Harris v. Matthews, 361 N.C. 265, 271 (2007) ("defendant's substantial First Amendment rights are affected by the trial court's order denying his motion to dismiss. Further, these rights will be impaired or lost and defendant will be irreparably injured if the trial court becomes entangled in ecclesiastical matters from which it should have abstained"). See McCarthy, 714 F.3d at 976 ("The harm of such a governmental intrusion into religious affairs would be irreparable . . .").

However, if we extend the doctrine of present execution to all important issues that theoretically cannot be remedied after final judgment, then the exception will swallow the rule. See Digital Equip. Corp., 511 U.S. at 872 ("almost every pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to rewriting history. . . . But if immediate appellate review were available

every such time, . . . [the] final decision rule would end up a pretty puny one").

Accordingly, the defendants' church autonomy arguments are not before us properly, and we will not address their merits. See CP 200 State, LLC, 488 Mass. at 853 ("we decline to exercise our discretion to consider the merits," under superintendence authority, of issue not within doctrine of present execution).[11]

b. Common-law charitable immunity. Common-law charitable immunity was abolished by the Legislature in 1971. See G. L. c. 231, § 85K, inserted by St. 1971, c. 785, § 1. Nonetheless, common-law charitable immunity applies to counts one through seven here because those counts describe conduct that allegedly occurred in the 1960s, and the abolishment of charitable immunity was prospective. See Doe No. 4 v. Levine, 77 Mass. App. Ct. 117, 119 (2010), citing Ricker v. Northeastern Univ., 361 Mass. 169, 172 (1972) (describing charitable immunity statute's history).

In protecting charities under the common law, Massachusetts courts reasoned that funds held in trust for a charitable purpose should be used only for that purpose. See Roosen v. Peter Bent Brigham Hosp., 235 Mass. 66, 69 (1920), citing

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[11] We do not address whether the doctrine of present execution might apply to a situation where a civil court has ruled, or is about to rule, on an issue that obviously implicates religious doctrine.

McDonald v. Massachusetts Gen. Hosp., 120 Mass. 432 (1876) (considering other rationales but concluding principal one is that "the funds of a public hospital are devoted to a charitable trust and . . . to subject them to the payment of a judgment for negligence of its servants would be an unlawful diversion of the trust"). See also Keene v. Brigham & Women's Hosp., Inc., 439 Mass. 223, 238 n.25 (2003) ("Under common law, a nonprofit hospital . . . enjoyed charitable immunity from tort liability, because funds donated for charitable purposes ought not to be diverted from those purposes to pay damages in tort actions"); English v. New England Med. Ctr., Inc., 405 Mass. 423, 424-425 (1989), cert. denied, 493 U.S. 1056 (1990) ("The court reasoned [in McDonald, supra,] that the hospital held its funds in trust for the benefit of the public, and that it would be an unlawful diversion of those funds to apply them to the satisfaction of a judgment based on the negligence of hospital agents"); St. Clair v. Trustees of Boston Univ., 25 Mass. App. Ct. 662, 667 (1988) ("Massachusetts has . . . rigorously followed the trust fund rationale"). Using this reasoning, "Massachusetts . . . applied the [common-law charitable immunity] doctrine broadly" and rejected "exceptions to the doctrine which were adopted in other States." St. Clair, supra (collecting cases).

That our cases justifying charitable immunity have sometimes referred to payment of "damages" to satisfy a

"judgment" at first glance suggests that common-law charitable immunity merely was immunity from liability, not suit. In other cases, however, we have referred to charitable immunity as "immunity from suit," albeit not in the present execution context. See Papadopoulos v. Target Corp., 457 Mass. 368, 385 n.18 (2010) (describing "governmental immunity" and common-law "charitable immunity" as "immunity from suit"); Payton v. Abbott Labs, 386 Mass. 540, 567 (1982) (describing "municipal immunity" and common-law "charitable immunity" as having "afforded complete immunity from suit"); Ricker, 361 Mass. at 169, 172 (answering in affirmative reported question whether charity was "immune from a suit"). The Lynch case teaches, moreover, that we should look beyond the language used to describe an immunity and focus instead on whether immunity from suit would best serve the immunity's purpose. Lynch, 483 Mass. at 633 ("That the statute speaks only of liability and does not specifically spell out immunity from suit is not dispositive").

The cases discussed above that address common-law charitable immunity's rationale do not discuss the doctrine of present execution and, therefore, do not grapple with the distinction between immunity from liability and immunity from suit. There is no reason to think, however, that the courts addressing charitable immunity before it was abolished would have wanted to protect charities from paying judgments but not

from paying attorneys to carry out litigation. The trust fund rationale was premised on charities not spending funds on noncharitable purposes, and Massachusetts courts interpreted the immunity broadly in favor of charities. See St. Clair, 25 Mass. App. Ct. at 667. Accordingly, we conclude that common-law charitable immunity was meant to protect charities from litigation, not merely from liability. See 15 Am. Jur. 2d, Charities § 178 (2020) ("Some courts support the view that a privately conducted charitable institution, because of its charitable nature, enjoys complete immunity from tort liability. Under this view, charitable immunity is immunity from suit, not simply immunity from liability. Decisions sustaining the complete immunity view rationalize that the resources of charitable institutions are better used to further the institution's charitable purposes than to pay tort claims lodged by the charity's beneficiaries" [footnotes omitted]).

Unlike ecclesiastical abstention, then, the purpose of common-law charitable immunity was to protect certain parties "from the burden of litigation and trial." Lynch, 483 Mass. at 634. Therefore, an interlocutory appeal is necessary to protect the rights of charities claiming common-law immunity, and the doctrine of present execution applies to the charitable immunity arguments here.

As the common-law charitable immunity arguments properly are before us, we will now consider their merits and determine whether the Roman Catholic Bishop of Springfield is immune from any of the alleged conduct.

2. Merits of common-law charitable immunity argument. At common law, charitable immunity extended only to wrongdoing "committed in the course of activities carried on to accomplish charitable activities." Keene, 439 Mass. at 239-240. See Reavey v. Guild of St. Agnes, 284 Mass. 300, 301 (1933) ("A charitable corporation is not liable for negligence in the course of activities within its corporate powers carried on to accomplish directly its charitable purposes"). The abuse allegedly carried out by Weldon and other church leaders was not, and could not be, related in any way to a charitable mission. Cf. Tichenor v. Roman Catholic Church of the Archdiocese of New Orleans, 32 F.3d 953, 960 (5th Cir. 1994) ("It would be hard to imagine a more difficult argument than that [the defendant]'s illicit sexual pursuits were somehow related to his duties as a priest or that they in any way furthered the interests of [his church]"); Heinrich v. Sweet, 118 F. Supp. 2d 73, 92 (D. Mass. 2000), vacated on other grounds, 308 F.3d 48 (1st Cir. 2002), cert. denied, 539 U.S. 914 (2003) ("Mass General simply cannot cloak conduct violative of medical ethics with charitable immunity"). Accordingly, the

judge properly denied the motion to dismiss on the ground of charitable immunity for the counts alleging sexual abuse of the plaintiff.[12]

However, one count should have been dismissed under the common-law doctrine of charitable immunity. Count six alleges that the Roman Catholic Bishop of Springfield negligently hired and supervised the church leaders who allegedly assaulted the plaintiff. A negligent supervision claim is exactly the sort of allegation against which common-law charitable immunity was meant to protect. See Roosen, 235 Mass. at 72 ("The inevitable result of our own decisions is to relieve a hospital from liability for negligence of the managers in selecting incompetent subordinate agents . . ."). See also Doe No. 4, 77 Mass. App. Ct. at 117, 121 (common-law charitable immunity protected hospital from plaintiff's claim of negligent hiring, training, and supervision of doctor who allegedly sexually assaulted plaintiff). Therefore, count six should have been dismissed. See Cavanagh v. Cavanagh, 396 Mass. 836, 838 (1986) ("if the complaint shows on its face the existence of an affirmative defense, the complaint does not state a claim upon which relief can be granted").

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[12] We do not address whether common-law charitable immunity can ever protect against claims arising out of intentional misconduct.

Conclusion. The order denying the defendants' motion to dismiss is affirmed as to all counts except count six, on which judgment shall enter for the Roman Catholic Bishop of Springfield. The case is remanded to the Superior Court for further proceedings consistent with this opinion.[13]

So ordered.

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[13] We decline to award attorney's fees and costs to the plaintiff.