Doe XXV v Archdiocese of N.Y.
2026 NY Slip Op 30269(U)
January 21, 2026
Supreme Court, New York County
Docket Number: Index No. 950721/2020
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **CVA 1**

Justice

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JOHN DOE XXV,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, OUR LADY OF MOUNT CARMEL CHURCH, OUR LADY OF MOUNT CARMEL SCHOOL

Defendants.

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INDEX NO. 950721/2020

MOTION DATE 10/08/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 2, 19, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110

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

BACKGROUND

Plaintiff commenced this action under the Child Victims Act ("CVA") seeking damages for personal injuries stemming from alleged sexual abuse at Our Lady of Mount Carmel School (the "School").

Our Lady of Mount Carmel Church (the "Church") is a church that operated the School located at 2465 Bathgate Avenue, Bronx, New York 10458 (NYSCEF Doc No. 19, at 2). Rudy Tremaroli ("Tremaroli") was a janitor who worked at the Church and School from approximately 1959 to 1992 (NYSCEF Doc No. 43, at 17). Tremaroli was involved in afterschool and after-church events, specifically Our Lady of Mount Carmel's basketball program (*id.* at 116).

Plaintiff attended the School from nursery to eighth grade (NYSCEF Doc No. 41, at 8). Plaintiff first encountered Tremaroli at the School's film club that Tremaroli had founded (*id.*).

Plaintiff was also part of the School's basketball club that Tremaroli supervised, and he testified that Tremaroli first abused him when he caressed Plaintiff's buttocks at basketball practice (*id.* at 9). Tremaroli's abuse of Plaintiff continued at the School's film club, where at one session Tremaroli undressed himself behind Plaintiff and rubbed his penis on Plaintiff's neck (*id.*). Tremaroli also digitally penetrated Plaintiff's anus and grabbed Plaintiff's penis (*id.*).

Plaintiff testified that similar incidents occurred from when he was eight years old to around eleven years old (*id.* at 10). The abuse occurred in the School gymnasium, in Ciatti Hall and Caffuzzi Hall (*id.*). Plaintiff witnessed Tremaroli abuse other children as well; however, he testified that he never told anyone about the abuse (*id.* at 11).

Tremaroli remained employed by Our Lady of Mount Carmel until his death in 1992.

PENDING MOTION

On January 9, 2026, the Archdiocese moved for summary dismissal of Plaintiff's complaint as against it pursuant to CPLR § 3212 (NYSCEF Doc No. 33 (mot. seq. 002)).

The motion is denied for the reasons set forth below.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). Furthermore, a defendant's burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence

showing why" the plaintiff's claim must fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When the movant meets this initial burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to overcome a motion for summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [alteration in original]). Courts view the evidence in a light most favorable to the nonmovant, according the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

The First Amendment does not preclude the Archdiocese from being held liable for the negligent hiring, retention or supervision of Tremaroli.

The Archdiocese argues that is entitled to summary judgment because the First Amendment prohibits claims against religious institutions based on their norms, customs and usages and also prohibits courts from interpreting the same. The Court disagrees.

The Free Exercise Clause of the First Amendment provides, "Congress shall make no law . . . prohibiting the free exercise" of religion (US Const, 1st Amend). The Free Exercise Clause, as applied to the States through the Fourteenth Amendment, mandates that the law "be applied in a manner that is neutral toward religion" (*Masterpiece Cakeshop, Ltd. v Colorado Civ. Rights Commn.*, 584 US 617, 640 [2018]). Laws that are "neutral and generally applicable" are not subject to strict scrutiny under the Free Exercise Clause when they only "incidentally burden religion" (*Fulton v City of Philadelphia*, 593 US 522, 533 [2021], citing *Employment Div. v Smith*, 494 US 872, 878–82 [1990]). However, the government fails to act neutrally when "it

proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature" (*id.*, citing *Masterpiece Cakeshop*, 584 US at 643–44).

Regarding courts' intervention in civil disputes, the First Amendment "forbids civil courts from interfering in or determining religious disputes, because there is a substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs" (*Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286 [2007]). However, courts may adjudicate disputes involving religious institutions "as long as neutral principles of law are the basis for their resolution" (*Escobar v Segunda Iglesia Pentecostal Juan 3:16 Asamblea de Dios*, 232 AD3d 719, 720 [2d Dept 2024]).

Various Departments in this State have consistently held that a religious institution may be liable for the negligent hiring, retention or supervision of an employee without violating that institution's Free Exercise rights (*PB-20 Doe v St. Nicodemus Lutheran Church*, 228 AD3d 1233, 1238 [4th Dept 2024] [*rejecting on appeal the argument that the religious institution could not be liable for the negligent hiring, retention or supervision of a pastor under the First Amendment*]; *Kenneth R v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 164–65 [2d Dept 1997] [*holding that liability for negligent hiring, retention and supervision did not implicate the First Amendment because there was no evidence that increased supervision of an alleged abuser violated religious doctrine or inhibited a religious practice*]).

Plaintiff's cause of action asserts liability against the Archdiocese for the negligent hiring, retention and supervision of Tremaroli, a janitor. The Archdiocese fails to demonstrate why the present dispute cannot be adjudicated "solely upon the application of neutral principles of law, without reference to religious principles" (*see Lifschitz v Sharabi*, 153 AD3d 1338, 1338

[2d Dept 2017]). At no time during the adjudication of this matter would the Court or a jury intervene in the Archdiocese's "religious disputes" or on behalf of a group "espousing particular doctrines or beliefs" (*Matter of Congregation Yetev Lev D'Satmar, Inc.*, 9 NY3d at 286). The Archdiocese also cites no religious principles that would be implicated should there be a determination that it was negligent for hiring, retaining or failing to adequately supervise Tremaroli. Finally, the Archdiocese does not explain why liability for the negligent hiring, retention or supervision of Tremaroli would be "intolerant of [the Archdiocese's] religious beliefs . . . because of their religious nature" rather than the application of a "neutral or generally applicable" law (*see Fulton v City of Philadelphia*, 593 US 522, 533 [2021]).

Accordingly, the Archdiocese fails to make out a *prima facie* case for entitlement to summary judgment on the defense of the First Amendment.

Questions of fact exist concerning whether the Archdiocese was in an agency relationship with Tremaroli, the Church or the School.

The threshold question in any action for negligence is whether an alleged tortfeasor owed a duty of care to the injured party (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138 [2002]). While a jury decides whether and to what extent a duty was breached, courts are tasked with determining "whether any duty exists, taking into consideration the reasonable expectations of the parties and society generally" (*Tagle v Jakob*, 97 NY2d 165, 168 [2001]).

Ordinarily, there is no duty for a defendant "to prevent a third party from causing harm to another" absent a special relationship between the defendant and the third party or the defendant and the alleged victim (*Einhorn v Seely*, 136 AD2d 122, 126 [1st Dept 1988]). However, and contrary to the assertion of the Archdiocese (NYSCEF Doc No. 52, at 24–25), liability for the negligent hiring, retention and supervision of an employee "does not require a special relationship between the defendant and the alleged victim" (*Waterbury v New York City Ballet*,

Inc., 205 AD3d 154, 161 [1st Dept 2022]). When "[the employee's] conduct was a foreseeable outcome of [the] employment, [the defendant] had a duty to supervise that employment" (*id.* at 162, citing *Sheila C. v Povich*, 11 AD3d 120, 129 [1st Dept 2004]).

The Archdiocese further argues that it owed Plaintiff no duty under theories of negligent hiring, retention and supervision because the Archdiocese did not directly hire, retain or supervise Tremaroli. The Court disagrees.

Generally, an element of negligent hiring, retention and supervision is that the defendant was the employer of the alleged tortfeasor. However, the Second Department has ruled that agency relationships between a junior organization and a senior organization may impute liability onto a senior organization when the senior organization could also have been responsible for the hiring, retention or supervision of an employee (*see Schlesinger v Sisters of the Order of St. Dominic*, 236 AD3d 1074, 1076 [2d Dept 2025]). In *Schlesinger*, the Second Department affirmed the denial of a defendant's motion for summary judgment, reasoning that the defendant "failed to eliminate triable issues of fact as to whether it lacked *an employer/employee-like* relationship with [the alleged abuser]" (*id.* [emphasis added]). The defendant in *Schlesinger* was a religious order responsible for appointing its members to the school where the plaintiff was allegedly sexually abused—also by a janitor at the school (*id.*). However, the defendant had not actually employed the janitor when the abuse occurred (*id.*).

Tremaroli was similarly employed as a janitor at the Church; however, his employment was conditional upon the authority of the pastor, who was appointed to the Church by the Archdiocese. The Archdiocese has thus failed to eliminate triable issues of fact that it lacked an employer/employee-like relationship with Tremaroli.

The Archdiocese further argues that the Church and School were "operated, maintained and managed independently during the time of the alleged abuse and was a separate and distinct legal entity operating separately and independently of the Archdiocese," which eliminates any issue of fact as to an agency relationship between the Archdiocese and the Church (NYSCEF Doc No. 52, at 19). The Court disagrees.

As explained by the First Department, "It is well settled that a principal-agency relationship exists where one retains a degree of direction and control over another" (*Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 [1st Dept 1976]). While the Archdiocese has not met its *prima facie* burden, the Court nevertheless cites several issues of fact in the underlying record that would necessitate a trial on this issue:

> (1) In 1972, the Pastor of the Church was appointed by Archbishop Terence Cardinal Cooke (NYSCEF Doc No. 59).
>
> (2) According to testimony from Bishop Gerald Walsh, Archbishop Cook approved the transfer of all priests within the Archdiocese's territory, which would include the pastor of the Church (NYSCEF Doc No. 58, Ex. 2, at 19 [on file with Court]).
>
> (3) According to Bishop Walsh, principals at the School needed the approval of the Archdiocese's Department of Education before they could serve as principal (*id.* at 13).
>
> (4) One pastor of the Church, Father Jose Felix Ortega, testified that his own salary was set and paid by the Archdiocese (NYSCEF Doc No. 43, at 75).
>
> (5) Principal of the School John Musto testified that the pastor of the Church had the authority to hire custodians at the Church (NYSCEF Doc No. 44, at 86).
>
> (6) Principal Musto also testified that teachers at the School were likely interviewed and hired by the principal during the time of 1959 to 1992 (*id.* at 115).

The Archdiocese is thus not entitled to summary judgment because "questions of agency and of its nature and scope are questions of fact to be submitted to the jury under proper instructions by the court" (*Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 [1st Dept 1976]).

There is also evidence in the record from which a jury could conclude that the Archdiocese had actual or constructive notice of Tremaroli's conduct and propensities.

The Archdiocese has failed to eliminate issues of fact that it lacked an agency relationship with the Church, the School or Tremaroli. In any event, issues of fact also exist as to the Archdiocese's notice of Tremaroli's propensity for abuse or actual abuse of children.

When an employer owes a duty to a third party under the theory of negligent hiring, retention and supervision, the plaintiff must then demonstrate that "an employer knew of its employee's harmful propensities, that it failed to take necessary action, and that this failure caused damage to others" (*Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 160 [1st Dept 2022], citing *Gonzalez v City of New York,* 133 AD3d 65, 67–68 [1st Dept 2015]).

The Archdiocese argues that it cannot be liable because it did not have knowledge of Tremaroli's existence until the start of this litigation. The Court disagrees.

Knowledge that is acquired by an agent acting within the scope of their agency "is imputed to [the agent's] principal and the [principal] is bound by such knowledge although the information is never actually communicated to [the principal]" (*Center v Hampton Affiliates, Inc.*, 66 NY2d 782, 784 [1985]; *see also A.M. v Holy Resurrection Greek Orthodox Church of Brookville,* 190 AD3d 470, 470–71 [1st Dept 2021]; *R.L. v Holland Cent. Sch. Dist.*, 2025 NY App Div LEXIS 7557, at *5 [4th Dept 2025]). Thus, if certain employees at the Church or School were "acting on the . . . Archdiocese defendants' behalf" when they learned of the subject abuse, their knowledge would be imputed to the Archdiocese (*see A.M.*, 190 AD3d at 470–71).

As the Court holds above, questions of fact exist as to the agency relationship between the Archdiocese and the School and Church. If a jury finds that employees at either of those junior organizations had actual or constructive notice of the subject abuse, the Archdiocese could also be liable under Plaintiff's theory of negligent hiring, retention and supervision.

Questions of fact exist as to whether the Archdiocese had actual or constructive notice of the propensities and conduct of Tremaroli. In opposition, Plaintiff cites the following evidence in the record:

> (1) Around 1972, John Doe VI reported to the secretary at the Parish Youth Center, Emilia Longo, that Tremaroli touched him "down there." She responded that if he kept saying that, he would not be allowed to come back to Ciatti Hall. (NYSCEF Doc No. 79, Ex. 23, at 55 [on file with the Court]).
>
> (2) Around 1973, Plaintiff personally observed School teacher Dominick Rella make eye contact with and stare at Tremaroli while he was touching and fondling young boys' buttocks at the School gymnasium and in the locker room. Rella, upon observing Tremaroli touching these boys, called Tremaroli over with his finger, and Plaintiff then saw Tremaroli leave the gym. (NYSCEF Doc No. 82, Ex. 26, at 14–15 [on file with the Court]).
>
> (3) Around 1975, John Doe XIII's uncle testified that he was with John Doe XIII's mother when she reported to Monsignor Martorella that she observed behavioral changes in her son since he started spending time with Tremaroli, and she had caught John Doe XIII inserting a douche inside of his anus in the shower. She reported her concern that this behavior was being caused by Tremaroli. She also told Martorella that she heard Tremaroli had been "messing around with other children in the school." Martorella responded that another mother had accused Tremaroli of touching her son and that these children were lying and should not be believed (NYSCEF Doc No. 83, Ex. 27, at 14–16 [on file with the Court]).
>
> (4) Around 1977, Doe W.M. reported to School teacher Brother Gilbert during class that Tremaroli fondled him. Brother Gilbert responded by grabbing Doe W.M. by the neck, telling him not to make up stories, and throwing him against the wall. Brother Gilbert went to Doe W.M.'s home that night and told Doe W.M.'s parents that Doe W.M. was "making accusations about Rudy." The day after Brother Gilbert went to Doe W.M.'s home, Doe W.M.'s mother took Doe W.M. to Principal Sister Aurelia's office and reported her son's allegations of sexual abuse to Sister Aurelia. (NYSCEF Doc No. 84, Ex. 28, at 13–15 [on file with the Court]).
>
> (5) The mother of Doe S.F. reported to Principal Sister Aurelia the sexual abuse perpetrated by Tremaroli on her son, exclaiming that "some fucking white man put a penis on my son's asshole." (NYSCEF Doc No. 85, Ex. 29, at 24–25 [on file with the Court]).
>
> (6) Doe S.F. told his mother about the sexual abuse perpetrated by Tremaroli approximately seven times from 1977 to 1982. Each time Doe S.F. told his mother about the sexual abuse, his mother reported the sexual abuse to Sister Aurelia. Sister Aurelia always responded that the allegation was "rubbish" and dismissed him as a

> "liar." Doe S.F. was present each time his mother reported the sexual abuse to Sister Aurelia. (*id.* at 26 [on file with the Court]).
>
> (7) Around 1977, the father of John Doe 40 reported to School Teacher Brother Christopher and Principal Sister Aurelia that the gym teacher was touching his son. They responded that they were sorry and would look into it. (NYSCEF Doc No. 86, Ex. 30, at 111 [on file with the Court]).

Additionally, Bishop Gerald Walsh testified that if there were a suspected instance of child sexual abuse in the School or Church, the Archdiocese itself would investigate the allegation (NYSCEF Doc No. 58, Ex. 2, at 68–69 [on file with the Court]).

The Court thus holds that the Archdiocese has failed to affirmatively establish that the School, the Church or the Archdiocese lacked actual or constructive notice of the subject abuse by "merely point[ing] to perceived gaps" in the Plaintiff's proof "rather than submitting evidence showing why" Plaintiff's claims must fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019]).

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of the Archdiocese of New York (mot. seq. 002) is denied in its entirety; and it is further

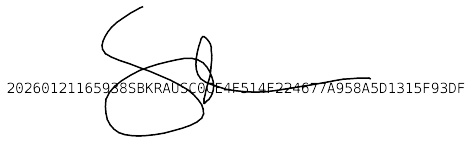
ORDERED that, within twenty (20) days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the action is reassigned to Justice Hasa Kingo for trial; and

ORDERED that the parties are directed to reach out to Justice Kingo's Part Clerk and request a date for a pre-trial conference.

This constitutes the decision and order of this Court.



1/21/2026
DATE

SABRINA KRAUS, J.S.C.

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