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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-000950-16

JOHN DOE 1,

Plaintiff,

v.

ARCHDIOCESE OF
PHILADELPHIA, and
ST. CHARLES BORROMEO
SEMINARY,

Defendants.

APPROVED FOR PUBLICATION

January 8, 2020

COMMITTEE ON OPINIONS

Decided: March 20, 2019

Nicholas M. Centrella, for plaintiff (Conrad O'Brien, PC, attorneys).

David K. Inschio, for defendants (Kline & Specter, attorneys).

C. SMITH, J.S.C.

NATURE OF MOTION AND PROCEDURAL BACKGROUND

Plaintiff, John Doe, initiated this tort action against the Archdiocese of Philadelphia (hereinafter "Archdiocese") and St. Charles Borromeo Seminary (hereinafter "St. Charles") (together referred to as "Archdiocese defendants"). The Archdiocese defendants filed a motion to dismiss plaintiff's complaint

raising defenses of lack of personal jurisdiction, statute of limitations and forum non conveniens. This court will first address the jurisdiction and forum issues.

I.

The Archdiocese was, and continues to be, a Roman Catholic organization and non-profit religious corporation authorized to conduct business in the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia, Philadelphia County, Pennsylvania. In 1969 through 1973, Craig Brugger (hereinafter "Brugger") was a seminarian at St. Charles, a theological seminary owned and operated by the Archdiocese, with a principal place of business in Wynnewood, Montgomery County, Pennsylvania. As a seminarian, Brugger was admitted to the diaconate of the Archdiocese. In May 1973, Brugger was ordained as a priest in the Archdiocese and assigned to St. Anne's Parish, Phoenixville, Chester County, Pennsylvania. Brugger remained an ordained priest in the Archdiocese until he was laicized in June 2006.

Plaintiff grew up in Phoenixville, Chester County, Pennsylvania, where he lived with his immediate family and maternal grandparents. Plaintiff and his family were devout Catholics and members of St. Anne's Parish. His grandfather attended mass daily and his grandmother often invited clergy to the family home. Plaintiff's uncle, Peter McLaughlin, and Brugger

contemporaneously attended St. Charles and lived on the same dormitory floor.

In the summer of 1972, plaintiff was approximately seven (7) years old. During that same summer, while Brugger was a deacon in the seminary, plaintiff's family invited Brugger to join them at their vacation home in Brigantine, Atlantic County, New Jersey. That vacation constituted the first time plaintiff met Brugger. Plaintiff alleges that during that vacation Brugger took him to a bathroom at the beach and rubbed his genitals and then Brugger offered him candy. Subsequent to this trip, Brugger was ordained and assigned to St. Anne's Parish.

Plaintiff alleges that, while in Pennsylvania, Brugger continued to sexually abuse him, escalating from fondling to oral sex. Plaintiff alleges that Brugger threatened to retaliate against his family if plaintiff reported Brugger's conduct. Specifically, plaintiff alleges that Brugger coerced plaintiff to remain silent about the abuse by reminding him that the church provided plaintiff's family with significant charity and the church would retaliate against his family. Plaintiff also alleges he felt threatened by Brugger. Specifically, plaintiff feared that Brugger would abuse plaintiff's younger brother. Plaintiff alleges that Brugger was physically violent at times, even striking plaintiff on his head with Brugger's ring.

In 1974, plaintiff reported the abuse to St. Anne's pastor, Father Griffin.

Father Griffin allegedly told plaintiff, "these things did not happen and that people should not speak of these types of matters." In 1976, a nun – Sister Rose – allegedly intervened on plaintiff's behalf to keep Brugger away. Shortly after this intervention, Brugger was transferred to Resurrection of Our Lord Parish, Chester, Chester County, Pennsylvania.

While Brugger was at St. Anne's Parish, plaintiff alleges that Brugger transported him from Pennsylvania to New Jersey on three (3) separate occasions, with molestation occurring each time. One trip was to Gloucester City where McLaughlin, plaintiff's uncle, was a priest. During the car ride there, Brugger allegedly sexually abused plaintiff. Brugger later took plaintiff to the Gloucester County rectory to further the abuse; however, plaintiff fled. During two of these trips, plaintiff alleges that Brugger secreted plaintiff at a hotel and rectory room and sexually assaulted him, including sodomizing plaintiff. When plaintiff was approximately twelve (12) years old, the abuse ended.

At the end of 2014, plaintiff attended a family wedding, wherein a family dispute arose between plaintiff's sister, parents and priest-uncle, McLaughlin. In December 2014, plaintiff took his parents to St. Anne's. This was the first time in many years that plaintiff returned to St. Anne's Parish. While there, plaintiff experienced "perceptual distortions" with the "church

becoming massive" while he felt very small and scared. Thereafter, plaintiff began having nightmares, flashbacks and intrusive thoughts of abuse.

On April 29, 2015, plaintiff began treatment with therapist, Christy Yerk-Smith. During treatment in May 2015, plaintiff acknowledged that he had been sexually abused by Brugger.

II.

With regard to the negligence claim (Count I), plaintiff asserts a number of specific acts of negligence, including that the Archdiocese defendants failed to: (1) observe and supervise the relationship between plaintiff and Brugger or have policies requiring such supervision; (2) investigate plaintiff's sexual abuse complaint to Father Griffin, which was made in Pennsylvania; (3) investigate prior sexual abuse of another unidentified victim also alleged to have occurred in Phoenixville; (4) investigate Brugger taking plaintiff to the rectory of St. Anne's Parish, Phoenixville; and (5) adequately check Brugger's background before admitting him to St. Charles and ordaining him as a priest in Pennsylvania. As to his negligent supervision claim (Count II), plaintiff claims that the Archdiocese defendants should have supervised plaintiff and Brugger and investigated Brugger after plaintiff allegedly complained of the abuse to Father Griffin. Regarding plaintiff's negligent hiring claim (Count III), plaintiff alleges a number of failings by the Archdiocese defendants

related to their selection and retention of Brugger as a seminarian, deacon and later ordained priest.

In support of their motion, Archdiocese defendants argue that no evidence supports the proposition that New Jersey has specific or general jurisdiction over them. The Archdiocese defendants assert that this court does not have personal jurisdiction as Brugger was acting outside of the scope of his employment. As to general jurisdiction, they assert that plaintiff's actual claims of negligence, negligent supervision and negligent hiring and retention, all concern the Archdiocese defendants' alleged conduct in Pennsylvania, not New Jersey. The Archdiocese defendants assert that without any specific acts by the Archdiocese defendants shown to have occurred in, or been directed toward, New Jersey, plaintiff cannot establish the minimum contacts necessary to satisfy constitutional due process.

In opposition to this motion, plaintiff asserts that New Jersey has personal jurisdiction over the Archdiocese defendants based on the multiple sexual assaults on plaintiff by the Archdiocese defendants' agent, Brugger, while in New Jersey. Whether this court has personal jurisdiction over the Archdiocese defendants is inextricably tied to whether they can be held vicariously liable for the sexual abuse by Brugger. Plaintiff argues that the Archdiocese defendants may be subject to specific jurisdiction based on the

actions of Brugger, their agent. Plaintiff asserts that under the Restatement (Second) of Agency § 219 an employer is liable for the actions of its agent, even if outside of the scope of employment, if the agent was purporting to act on behalf of the principal or was aided in commission of the tort by his position as an agent. Restatement (Second) of Agency § 219 (Am. Law Inst. 1958). Plaintiff suggests that Brugger used his authority and position as a priest for the Archdiocese to obtain, and maintain, access to plaintiff in both Pennsylvania and New Jersey. According to plaintiff, Brugger's actions can be directly attributed to the Archdiocese defendants and, so, New Jersey can assert personal jurisdiction.

To further support plaintiff's position, he cites the 2005 Philadelphia Grand Jury report regarding the defendant Archdiocese's secreting of pervasive molestation of minors by priests since the late 1960s.[1]

III.

In assessing jurisdiction, this court starts with the premise that territorial presence in the forum state is the basic prerequisite for subjecting a defendant to its in personam jurisdiction. Citibank, N.A. v. Estate of Simpson, 290 N.J.

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[1] Lynne Abraham, 2005 Court of Common Pleas Grand Jury Report, (Sept. 17, 2003), https://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf.

Super. 519, 526 (App. Div. 1996). In lieu of actual territorial presence, "in personam jurisdiction may be predicated upon the defendant's contacts with the forum provided they meet the standard of minimum contacts." Ibid. "A state court's assertion of personal jurisdiction over a defendant must comport with the due-process of the fourteenth amendment." Charles Gendler & Co. v. Telecom Equip. Corp., 102 N.J. 460, 469 (1986). "Rule 4:4-4, this state's equivalent of a 'long-arm statute,' permits service of process on non-resident defendants 'consistent with due process of law.'" Ibid. (citing Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971)). Consequently, New Jersey "allows out-of-state service to the uttermost limits permitted by the United States Constitution." Ibid. (citing Avdel Corp., 58 N.J. at 268).

"Originally the United States Supreme Court construed the due-process clause to require the personal presence of the defendant in the jurisdiction." Ibid. See Pennoyer v. Neff, 95 U.S. 714 (1878). The Court later ruled:

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."
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> [Ibid. (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).]

"The purpose of the minimum-contacts test is to insure the fairness and

reasonableness of requiring a non-resident to defend a lawsuit in the forum state." Id. at 470 (citing Int'l Shoe, 326 U.S. at 317). "By precluding state courts from unfairly requiring non-residents to defend themselves, the due-process clause also insures that a state's grasp does not exceed its jurisdictional reach." Ibid. (citing Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.10 (1982)). "By focusing on the non-resident defendant's contacts with the forum, the minimum-contacts test protects that interest." Ibid. "[T]he Supreme Court varies the measure of minimum contacts depending on the nature of the case." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989).

IV.

Jurisdiction over a nonresident defendant exists in two forms: specific and general. Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 452 (App. Div. 1998). New Jersey may exercise specific jurisdiction "over a defendant who has 'minimum contacts' with the state" when "the cause of action arises directly out of a defendant's contacts with [New Jersey]." Rippon v. Smigel, 229 N.J. Super. 344, 359 (App. Div. 2017) (quoting Lebel, 115 N.J. at 323). Minimum contacts "focus on 'the relationship among the defendant, the forum, and the litigation.'" Lebel, 115 N.J. at 323 (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). "[M]inimum contacts" are

"satisfied so long as the contacts resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff." Ibid. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980)). "[W]hen the defendant is not present in the forum state, 'it is essential that there be some act by which the defendant purposefully avails [itself] of the privilege of conducting activities within [New Jersey], thus invoking the benefit and protection of its laws.'" Baanyan Software Servs., Inc. v. Kuncha, 433 N.J. Super. 466, 475 (App. Div. 2013) (citing Waste Mgmt. Inc. v. Admiral Ins. Co., 138 N.J. 106, 120 (1994)). The defendant must "purposefully avail[] itself of the privilege of conducting activities" in New Jersey such that the defendant can reasonably anticipate being sued in this State. Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 599 (App. Div. 2017) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

Under general jurisdiction, a defendant may be sued for "virtually any claim, even if unrelated to the defendant's contacts with the forum" provided "the defendant's activities in [New Jersey] can be characterized as 'continuous and systematic' contacts." Lebel, 115 N.J. at 323 (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984)). For general jurisdiction to be applicable, a defendant's activities must be "so 'continuous and systematic' as to render [it] essentially at home in the forum State."

FDASmart, Inc. v. Dishman Pharm. & Chems. Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016) (alteration in original) (quoting Daimler AG v. Bauman, 571 U.S. 117, 128 (2014)). A defendant's "principal place of business and place of incorporation" generally indicates where that defendant is "at home" and, thus, subject to general jurisdiction. FDASmart, Inc., 448 N.J. Super. at 202. Establishing general jurisdiction requires "extensive contacts between a defendant and a forum." Id. at 202-03 (quoting Mische v. Bracey's Supermarket, 420 N.J. Super. 487, 492 (App. Div. 2011)).

"General jurisdiction subjects the defendant to suit on virtually any claim, even if unrelated to the defendant's contact with the forum, but is unavailable unless the defendant's activities in the forum state can be characterized as 'continuous and systematic' contacts." Lebel, 115 N.J. at 323 (citing Helicopteros, 466 U.S. at 416). A lesser standard is required to sustain the exercise of specific jurisdiction, and the test to be met is whether the defendant has "purposely avail[ed] itself of the privilege of conducting activities within the forum state." Burger King Corp., 471 U.S. at 474-75. "[O]nce it is established that defendant's activities relating to the action established minimum contacts with the forum state, the 'fair play and substantial justice' inquiry must still be made." Lebel, 115 N.J. at 328. If a non-resident defendant is found to have minimum contacts with the forum

state, that defendant "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King Corp., 471 U.S. at 477.

> This determination requires evaluation of such factors as "the burden on the defendant, the interests of the forum State, the plaintiff's interest in obtaining relief" . . . "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" and "the shared interest of the several States in furthering fundamental substantive social policies."
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> [Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 113 (1987) (quoting World-Wide Volkswagen Corp., 444 U.S. at 292) (citations omitted).]

A plaintiff bears the burden to prove jurisdiction. Dutch Run-Mays Draft, LLC, 450 N.J. Super. at 598.

V.

The Restatement (Second) of Agency § 219 reads in relevant part:

> (2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless:
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> (a) the master intended the conduct or the consequences, or
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> (b) the master was negligent or reckless, or
>
> (c) the conduct violated a non-delegable duty of the master, or
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> (d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.

> [Restatement (Second) of Agency § 219 (Am. Law Inst. 2010) (emphasis added).]

In Hardwicke v. American Boychoir School, 188 N.J. 69, 99-101 (2006), the Supreme Court held that a boarding school could be liable for sexual abuse of a student even though the acts of sexual abuse are outside the "scope of agency." The Court further held that the Restatement (Second) of Agency § 219 applies to cases involving child sexual abuse and its application forwards the goals of protecting vulnerable children from victimization.

VI.

When considering a motion to dismiss a complaint for lack of jurisdiction, this court's findings must be supported by substantial, credible evidence. Mastondrea v. Occidential Hotels Mgmt. S.A., 391 N.J. Super. 261, 268 (App. Div. 2007). See Rova Farms Resort Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). See also Jacobs, 309 N.J. Super. at 452. This court finds unpersuasive the Archdiocese defendants' arguments that they do not have "minimum contacts" with the State of New Jersey and litigation in the State would offend the "traditional notions of fair play and substantial justice." New Jersey Courts have been vested with in personam long-arm jurisdiction over nonresidents to the outer limits permitted by due process. Beckwith v. Bethlehem Steel Corp., 182 N.J. Super. 376, 382 (Law Div. 1981) (citing R. 4:4-

4(c)(1); Avdel Corp., 58 N.J. at 277). Here, the alleged conduct by the defendants' agent, Brugger, while in New Jersey, if true, allegedly caused serious injury – in the form of sexual abuse – to plaintiff. Once the abuse began, Brugger purposely transported plaintiff from Pennsylvania to New Jersey on two additional occasions to continue the abuse, which became more overt and violent while in this State.

Under New Jersey law, to satisfy International Shoe, a defendant must have sufficient contacts with the forum state to show either general or specific jurisdiction. Citibank, N.A., 290 N.J. Super. at 519. Specific jurisdiction applies here and, thus, the ultimate question is whether the claim against the defendants arose out of their purposeful conduct in New Jersey in circumstances in which this State's exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. Ibid.

Here, plaintiff is now, and was at all relevant times, a resident of Pennsylvania. Thus, plaintiff's choice of forum in New Jersey is granted substantially less deference than that given to a resident-plaintiff. Additionally, the majority of potential witnesses are domiciled in Pennsylvania or are deceased.

Additionally, neither the Archdiocese nor St. Charles availed themselves of service in New Jersey but were served in the Commonwealth of Pennsylvania.

The Archdiocese of Philadelphia is an ecclesiastical territory, or diocese, of the Roman Catholic Church and oversees parishes within Philadelphia, Montgomery, Bucks, Chester and Delaware counties. The Archdiocese's principal office is located in Philadelphia, Pennsylvania. The Archdiocese's authority over priests is governed by Canon law and is circumscribed within its geographic boundaries. The Archdiocese does not currently own property in New Jersey; however, it did during the times relevant to this litigation. The court takes judicial notice (N.J.R.E. 201(c)) of the facts that the Archdiocese previously owned two properties in Ventnor City, Atlantic County, New Jersey – the very county where the instant litigation pends. The first property was owned by the Archdiocese from 1963 through 2012. The second property was sold by the Archdiocese in 2013. The New Jersey property ownership took place during the times relevant to this litigation, although no alleged abuse by Brugger occurred at either location.

St. Charles is a theological seminary and degree-granting institution of higher education located exclusively in Wynnewood, Pennsylvania. It maintains no satellite campuses or affiliate educational institutions in New Jersey. During oral argument defendants could not affirmatively answer whether St. Charles conducts business in New Jersey or partners with any diocese located there. However, the court takes judicial notice (N.J.R.E.

201(c)) that on St. Charles' webpage, one of its partner diocese is the Diocese of Trenton which is located in New Jersey.

Additionally, Brugger was a resident of Pennsylvania assigned to serve at Archdiocese parishes exclusively in Pennsylvania. Brugger died in September 2010. However, Brugger is not a named defendant in the instant litigation and, so, this court need not address jurisdiction over Brugger.

The Archdiocese's ownership of the two Ventnor properties in New Jersey over a period of many years weighs in favor of a finding that it has the requisite minimum contacts. Specifically, the Archdiocese owned the properties during the same time the alleged abuse occurred and the property was located only a few miles from the alleged location of the abuse. Additionally, St. Charles presently partners with the Diocese of Trenton. These facts firmly suggest to this court that the Archdiocese availed itself of this forum. Therefore, the State of New Jersey has personal jurisdiction over the Archdiocese defendants. Under this set of facts, it would not be a violation of defendants' due process rights to subject them to the long-arm jurisdiction of the Courts of New Jersey, given their contacts with this State. Accordingly, defendants' motion to dismiss for lack of jurisdiction is hereby denied.

VII.

Next, the court turns to the defense of forum non conveniens. "The

doctrine of forum non conveniens, an equitable principle, is firmly embedded in the common law of this State." Civic S. Factors Corp. v. Bonat, 65 N.J. 329, 332 (1974) (citing Starr v. Berry, 25 N.J. 573 (1958)). "The precise origins of the doctrine are obscure; the term appeared in early Scottish practice and was invoked by courts declining to exercise jurisdiction when justice required that an alternative forum be used." Gore v. U.S. Steel Corp., 15 N.J. 301, 305 (1954). Under this doctrine, "a court may decline jurisdiction where there is available another trial forum which will better serve both the convenience of the parties and the ends of justice." Civic S. Factors Corp., 65 N.J. at 332-33. See also Kurzke v. Nissan Motor Corp. in U.S.A., 164 N.J. 159, 164 (2000). The doctrine is often invoked "to protect the private interest of the litigants such as availability of witnesses and the ease of access to other sources of proof." Semanishin v. Met. Life Ins. Co., 46 N.J. 531, 533 (1966). The determination as to the proper forum is not derived by a simple balancing test of conveniences. Camden Iron & Metal, Inc. v. Klehr, Harrison, Harvey, Branzberg & Ellers, LLP, 384 N.J. Super. 172, 180 (App. Div. 2006). The doctrine of forum non conveniens is "equitable in nature and, therefore, decisions concerning its application ordinarily are left to the sound discretion of the trial court." Civic S. Factors Corp., 65 N.J. at 333. Nevertheless, defined guidelines channel the discretion of the court. Yousef v. Gen.

Dynamics Corp., 205 N.J. 543, 557 (2011).

"To guide the exercise of this discretion, courts generally apply a three step process." Varo v. Owens-Illinois, 400 N.J. Super. 508, 519-20 (App. Div. 2008). Initially, the court must determine "whether there is an adequate alternative forum to adjudicate the parties' dispute." Ibid. If an alternative forum exists, the court must then consider "the degree of deference properly accorded the plaintiff's choice of forum." Ibid. Lastly, the court must analyze "the private-and public-interest factors implicated in the choice of forum." Ibid. See D'Agostino v. Johnson & Johnson, 225 N.J. Super. 250, 261-63 (App. Div. 1988), aff'd o.b., 115 N.J. 491 (1989). See also Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005).

The forum non conveniens analysis is qualitative rather than quantitative, and the burden is on the defendants to demonstrate the inappropriateness of plaintiff's chosen forum. Camden Iron & Metal, Inc., 384 N.J. Super. at 180. Specifically, a defendant must bear the burden of establishing that the plaintiff's choice of forum is demonstrably inappropriate and designed to subject defendant to harassment, vexation, or clear hardship. Ibid. See also D'Agostino, 225 N.J. Super. at 262; Madan-Russo v. Grupo Posada, S.A. de C.V., 366 N.J. Super. 420, 427 (App. Div. 2004).

"There is a strong presumption in favor of retaining jurisdiction where

the plaintiff is a resident who has chosen his . . . home forum. A nonresident's choice of forum is entitled to substantially less deference." Kurzke, 164 N.J. at 171 (citing D'Agostino, 225 N.J. Super. at 262). Furthermore, any alternative forum must be adequate, and the defendant must be amenable to process in that forum. Yousef, 205 N.J. at 557. An alternative forum is inadequate if the remedy offered by the other forum is clearly unsatisfactory. Ibid. Likewise, the Court in Varo, 400 N.J. Super. at 521, implied that a defendant's agreement to accept service of process in an alternative forum with subject matter jurisdiction would make that alternative forum adequate, provided the agreement was a condition of the dismissal order. Finally, a court should not dismiss a case on the ground of forum non conveniens unless the defendant demonstrates that the plaintiff's chosen forum is demonstrably inappropriate. Id. at 557, 559.

In determining whether a plaintiff's forum is demonstrably inappropriate, courts may consider both private and public interest factors. Mowrey v. Duriron Co., Inc., 260 N.J. Super. 402, 409 (App. Div. 1992). The public-interest factors include: (1) consideration of trial delays; (2) whether jurors should be compelled to hear a case that has no or little relationship to their community; (3) the benefit to a community of having localized controversies decided at home; and (4) whether the law governing the case will

be the law of the forum where the case is tried. Yousef, 205 N.J. at 558. The private-interest factors include: (1) accessibility to sources of proof; (2) availability of compulsory process; (3) cost of obtaining the attendance of witnesses; (4) ability to view an accident scene; (5) enforceability of a judgment; and (6) all other practical problems that make trial of a case easy, expeditious and inexpensive. Ibid. "The value ascribed to any particular factor may vary depending on the circumstances of each case." Ibid. A mere balancing of conveniences will not defeat plaintiff's choice of forum and, therefore, the plaintiff's choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant. Ibid. Lastly, dismissal pursuant to the doctrine of forum non conveniens cannot occur if the transfer will result in significant hardship to the plaintiffs. Id. at 558-59. In considering the hardship to the plaintiff, New Jersey courts have noted, "litigation cannot be dismissed on forum non conveniens grounds if to do so would be to leave plaintiff with no available forum." Mandell v. Bell Atl. Nynex Mobile, 315 N.J. Super. 273, 280-81 (Law Div. 1997).

Ultimately, it is within the sound discretion of the trial court to decide, on a case-by-case basis, when a motion to dismiss for forum non conveniens has merit.

Here, plaintiff is not a resident of the chosen forum and as a nonresident,

plaintiff's choice of forum is entitled to substantially less deference. Kurzke, 164 N.J. at 171; D'Agostino, 225 N.J. Super. at 262. Furthermore, neither defendant availed itself of service within New Jersey. However, the alternate forum, Pennsylvania, is inadequate as there remains no remedy there for the plaintiff due to its strict statute of limitations.[2]

In reaching its decision, the court must consider the public-interest factors outlined in Yousef.[3] As to the first public-interest factor, it does appear that since a majority of witnesses live outside New Jersey, they would not be subject to this State's subpoena power. This could complicate pre-trial proceedings, such as depositions, and trial proceedings. In considering the second public-interest factor, the court finds that there is strong public policy favoring the litigation of child molestation cases in the community in which it

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[2] See 42 Pa. Cons. Stat. Ann. § 5533(b)(ii)(i) (West 2016) ("If an individual entitled to bring a civil action arising from childhood sexual abuse is under 18 years of age at the time the cause of action accrues, the individual shall have a period of 12 years after attaining 18 years of age in which to commence an action for damages regardless of whether the individual files a criminal complaint regarding the childhood sexual abuse.").

[3] The public-interest factors include: (1) consideration of trial delays; (2) whether jurors should be compelled to hear a case that has no or little relationship to their community; (3) the benefit to a community of having localized controversies decided at home; and (4) whether the law governing the case will be the law of the forum where the case is tried. Yousef, 205 N.J. at 558.

occurred. Additionally, as contemplated by the third public-interest factor, there is a benefit to a community having localized controversies, such as child abuse, decided within that jurisdiction. Here, the abuse is alleged to have occurred in both Atlantic and Gloucester Counties and, as such, either vicinage would be an appropriate venue entitled to the benefit of hearing these localized instances of alleged abuse. Lastly, assuming the statute of limitations has not run and the repressed memory exception[4] applies, New Jersey law would control, thereby satisfying the fourth public-interest factor.

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[4] In 1992, the State Legislature adopted the Child Sex Abuse Act, N.J.S.A. 2A:61B-1, which provides that a "cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse" and the "action shall be brought within two years after reasonable discovery." See also R.L. v. Voytac, 199 N.J. 282, 297-98 (2009). Further,

> Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.
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> [N.J.S.A. 2A:61B-1(c).]

In addition, the court must consider Yousef's private-interest factors.[5] In considering the first private-interest factor, three separate occasions of child sexual abuse allegedly occurred within this jurisdiction, so, there would be greater accessibility to sources of proof for these instances of abuse. However, the court acknowledges that defendants cannot be subject to compulsory process, and the cost of obtaining the attendance of witnesses may be greater and there may be more difficulty enforcing a judgment. Further, the remaining practical problems that make trial of a case easy, expeditious and inexpensive, appear to weigh in favor of dismissal.

Nevertheless, the consideration of both the public- and private-interests collectively does not suggest that New Jersey is a demonstratively inappropriate forum. Mowrey, 260 N.J. Super. at 409. The interests of Pennsylvania in adjudicating this case do not necessarily outweigh the interests of New Jersey. Pennsylvania's interest in protecting its state residents is clear. Plaintiff is a resident and citizen of Pennsylvania. Likewise, most of the abuse occurred in Pennsylvania. Still, New Jersey has a strong interest in assessing Brugger's in-state conduct. The fact that other

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[5] The private-interest factors include: (1) accessibility to sources of proof; (2) availability of compulsory process; (3) cost of obtaining the attendance of witnesses; (4) ability to view an accident scene; (5) enforceability of a judgment; and (6) all other practical problems that make trial of a case easy, expeditious and inexpensive. Yousef, 205 N.J. at 558.

states have an interest in this litigation does not, by itself, make New Jersey a demonstratively inappropriate forum. Id. at 410-11.

Furthermore, New Jersey is an appropriate forum as "there is jurisdiction but there is no alternative forum." Mandell, 315 N.J. Super. at 280-81. New Jersey law may apply to the statute of limitation defenses for the substantive claims. In the alternative, if this court were to grant defendants' motion, an ultimate decision on the merits would likely never be reached. Under Pennsylvania's statute of limitations, plaintiff's complaint is time-barred and would not afford plaintiff any remedy. See Gantes v. Kason Corp., 145 N.J. 478 (1996) (stating the dismissal for forum non conveniens would be inappropriate because the plaintiff would not have an alternative forum and would be denied a recovery).

Moreover, the test for a motion to dismiss on the grounds of forum non conveniens is not which state is a better forum. Mowrey, 260 N.J. Super. at 410-11. The defendants must demonstrate that plaintiff's choice of forum is demonstratively inappropriate. Id. at 409 (citing Kreuzer v. Kreuzer, 230 N.J. Super. 182, 186 (App. Div. 1989)), and a mere balancing of conveniences will not defeat plaintiff's choice of forum. Mowrey, 260 N.J. Super. at 409 (citing D'Agostino, 225 N.J. Super. at 262). The public interest factors do not suggest that plaintiff's choice of forum is demonstratively inappropriate.

Considering all of the factors in this case, this court finds that the defendants have not met their burden. The doctrine of forum non conveniens is equitable in nature and, here, equity does not support a further delay or outright dismissal of plaintiff's claims.

Accordingly, the court finds that the State of New Jersey is an appropriate forum for this action. Defendants' motion to dismiss on the grounds of forum non conveniens is denied.

VIII.

For the reasons set forth herein, defendants' motion to dismiss for lack of jurisdiction and forum non conveniens here is hereby denied. The court must now determine if New Jersey's statute of limitations precludes further adjudication of this claim. A plenary hearing to address the statute of limitations, pursuant to Lopez v. Swyer, 62 N.J. 267 (1973), will be scheduled.

The court will enter the appropriate order.