

**NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS**

RANDOLPH COYLE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	
	:	
Plaintiff,	:	ESSEX COUNTY
	:	DOCKET NO.: L-2606-21
v.	:	
	:	OPINION
	:	
SALESIANS OF DON BOSCO; DON	:	
BOSCO PREPARATORY HIGH SCHOOL;	:	
INC. f/k/a DON BOSCO HIGH SCHOOL;	:	
DEFENDANT DOE REPRESENTATIVE	:	
OF THE ESTATE OF FR. DIEGO	:	
BORGATELLO, DECEASED 1-5;	:	
DEFENDANT DOE 1-10; DEFENDANT	:	
INSTITUTION 1-10	:	
	:	
	:	
	:	
Defendants.	:	

Decided: July 27, 2021

The following attorneys are counsel of record:

Scott Weingart, attorney for plaintiff (McCarter & English, L.L.P., attorneys)

John Baldante, attorney for defendants Salesian Society and Don Bosco Preparatory High School, Inc. (Levy Baldante, P.C., attorneys)

VENA, J.S.C.

Preliminary Statement

This matter is before the Court on Defendants Salesians of Don Bosco (“Salesians”) and Don Bosco Preparatory High School’s (“DBPHS”) (collectively, “Defendants”) Motions to Dismiss for failure to state a claim pursuant to Rule 4:6-2(e). The Estate of Father Diego Borgatello is a co-defendant but does not write in support of the Motions or advance a motion of its own. Plaintiff Randolph Coyle (“Plaintiff”) writes in opposition to both Motions. Both Salesians and DBPHS submitted briefs in reply to Plaintiff’s Opposition.

Statement of Facts

In 1953, Plaintiff was a fifteen-year-old high school freshman and/or parishioner attending Don Bosco High School (“School”), a Catholic and Salesian secondary school in Ramsey, New Jersey. Salesians is the governing body for the Salesians of Don Bosco in the United States. In 1953, Borgatello was a priest, teacher, and infirmarian at the School. Plaintiff alleges that in the early evening of March 5, 1953, Borgatello sexually abused him while Plaintiff was in bed in the School’s dormitory. Plaintiff stopped attending the School after the 1953 school year. Plaintiff alleges that, while still a minor, Borgatello sexually abused him on other occasions, but he has emotionally suppressed these events. Borgatello died in 1994. As a result of the alleged sexual abuse, Plaintiff developed depression, anxiety, and other emotional issues. Plaintiff demands judgement against Defendants, jointly and severally, in an amount in excess of fifty million dollars.

Legal Arguments

Salesians’ Motion to Dismiss

Salesians assert that Plaintiff’s reliance on the Child Victims’ Act, N.J.S.A. 2A:14-2b (“CVA”), which purports to revive time-barred claims based on sexual abuse, is misplaced because the CVA violates the due process clause of the New Jersey Constitution. Plaintiff also fails to allege facts that, taken as true, would support a reasonable inference of liability or claims for negligence, negligent supervision, negligent hiring and retention, and gross negligence. Plaintiff fails to establish that there was a breach in the Salesians’ duty of care owed to Plaintiff. Salesians claim that Plaintiff’s Complaint relies on conclusory language and generalities about what the Defendants “knew or should have known” regarding the sexual

abuse Borgatello allegedly committed. Plaintiff has not shown that Salesians knew or had reason to know of Borgatello's allegedly dangerous attributes and that Salesians could reasonably have foreseen harm to the Plaintiff.

Salesians add that Plaintiff's breach of fiduciary duty and intentional infliction of emotion distress ("IIED") claims are also insufficiently pled. Salesians contend that the Plaintiff has not established the existence of a fiduciary duty between Salesians and Plaintiff, nor has he established a breach of such a duty. Plaintiff has not alleged facts that establish that Salesians were obligated to act on Plaintiff's behalf or advise Plaintiff on matters within the scope of their relationship.

Plaintiff fails to allege any intentional conduct committed by anyone other than Borgatello. Plaintiff's conclusory allegations that Salesians "knew or should have known" Borgatello committed child sexual abuse does not satisfy the intent requirement of IIED. Salesians add that they are not vicariously liable for Borgatello because any alleged sexual assault falls outside the scope of his employment. Plaintiff also fails to plead sufficient facts to support the conclusion that Borgatello had apparent authority to commit the sexual abuse or that he was aided in committing his tort by an agency relationship with the Salesians. In addition, sexual conduct is not the kind of conduct that a high school teacher or employee is hired to perform and is not actuated by a purpose to serve the principal.

As for the punitive damages claim, Plaintiff's Complaint fails to allege facts sufficient to support such measures and "punitive damages" is a remedy, not a cause of action. Plaintiff alleges no facts that would support the conclusion that Salesians acted recklessly or intentionally, or that Salesians had actual knowledge that Borgatello was inclined to commit sexual abuse before he allegedly abused the Plaintiff. Thus, this claim should be dismissed.

Plaintiff's Opposition to Salesians' Motion

Plaintiff asserts that the CVA does not violate the due process clause of the New Jersey Constitution because the law does not interfere with vested rights and does not create a manifest injustice to the Defendants. Plaintiff cites to a recently decided unpublished United States District Court for the District of New Jersey case that denied a motion to dismiss on a similar due process clause violation issue. The decision relied on deference to legislative intent

along with a two-factor analysis. The Court found that a due process violation exists if the challenger can establish that the retroactive application of a statute would interfere with “vested rights” or would result in “manifest injustice”. Plaintiff argues that the retroactive application of the CVA would neither deprive Salesians of its vested rights nor cause manifest injustice since it is heavily within the public interest in upholding the CVA. The public interest outweighs any reliance Salesians had on the prior statute of limitations.

Plaintiff asserts that the CVA and precedent held that an employer can be vicariously liable for the employee’s acts under the modern principles of agency. Precedent applied Restatement (Second) of Agency §219 finding that an employer is subject to liability for the torts of its employee if the employer was negligent or reckless, or if the employee was acting or speaking on the behalf of the principal and there was reliance upon apparent authority or if the agency relationship aided the employee in committing the tort.

As for the Salesians’ contention that the Plaintiff’s pleadings are deficient, Plaintiff asserts that since New Jersey is a notice pleading state, only a short, concise statement of the claim needs to be given in a complaint. Plaintiff argues that Salesians ignore the fact that Borgatello was the agent of the DBPHS and a member of the Salesians at the time of Plaintiff’s abuse and throughout his life. Plaintiff quotes the Salesians’ Mission Statement from its website to support the conclusion that a fiduciary relationship existed between Defendants and Borgatello and Plaintiff.

Plaintiff claims that the Defendants are vicariously liable for Borgatello’s IIED of Plaintiff under New Jersey law because he was an agent of the Defendants. If Defendants knew that Borgatello was a child molester and they allowed Borgatello to be in a setting where he could access and abuse children, then the elements for IIED are met. Plaintiff alleges that Salesians and DBPHS were systemically negligent and turned a blind eye to the abuse happening in their institution. They were complicitly involved in the sexual abuse of Plaintiff and/or directly involved in covering up the sexual abuse. Thus, because Borgatello was an agent of the Defendants at the time, they are vicariously liable for his actions.

Plaintiff argues that he has pled sufficient facts to support an award for punitive damages if the facts alleged are proven.

Salesians' Reply

Salesians again assert that each of Plaintiff's claims are deficiently pled. In addition, Plaintiff misinterprets the authority of the New Jersey Supreme Court and does not grasp the key distinction in *Hardwicke* that allowed for revival of claims for rights created by statute, but not those existing at common law. Rights existing at common law possess a vested right in the defendant once the statute of limitations has run. Plaintiff over-reads precedent and interprets it as giving the legislature free rein to retroactively revive time-barred claims that are not breach of contract claims. The CVA's policy merits that the Plaintiff lists are beside the point, and the Complaint should therefore be dismissed.

Plaintiff's contention that New Jersey is a notice pleading state also suggests that the facts are not necessary to state a claim for relief. However, both rule and precedent mandate that a complaint must allege the "facts on which a claim is based, showing that the pleader is entitled to relief." R. 4:5-2. Pleadings may not be mere conclusions without facts, but Plaintiff relies on conclusory allegations about what Salesians knew or should have known about Borgatello.

In Plaintiff's Opposition, he does not dispute that he must allege facts to adequately plead breach of duty of care, but instead of providing such facts, Plaintiff argues that his Complaint already includes such allegations. The allegations Plaintiff points to in his Complaint are the very conclusory assertions about what Salesians knew or should have known.

Salesians assert that Plaintiff's allegations, if proven, would support an award of punitive damages against Borgatello, but not against Salesians.

DBPHS's Motion to Dismiss

DBPHS joins Salesians' Motion to Dismiss, and all of the reasons set forth in it, in full, and writes separately to support its own Motion to Dismiss. DBPHS argues that it is not a proper defendant because it did not exist when Borgatello taught at the school, when Plaintiff attended, or when the abuse occurred, so it cannot be held liable for any events predating its inception. In Exhibit A of its Motion, DBPHS provides an NJ Corporate search web page result that claims it was organized in 2015, long after the alleged abuse that happened in 1953. Since the date of its incorporation is a matter of public record, exhibit may be properly considered on a motion to dismiss.

Plaintiff's Opposition to DBPHS'S Motion

Plaintiff argues that DBPHS's Motion to Dismiss should be denied because the Motion should be analyzed under the summary judgment standard of R. 4:46-2. Because this information is outside the pleading that is relied upon in a R. 4:6-2(e) motion, the motion must be converted into a summary judgment motion. The summary judgment motion should be denied because discovery has not been conducted and questions of fact remain. In addition, Plaintiff cites to the general rule of corporate-successor liability exceptions. Plaintiff alleges that DBPHS was created as a successor for Don Bosco High School, but the question remains as to what corporate-successor liability exception applies.

DBPHS's Reply

DBPHS asserts that, contrary to Plaintiff's Opposition, matters of public record may be considered on a motion to dismiss. Since it is a matter of public record that DBPHS did not exist prior to 2015, it could not have been liable under any of the theories Plaintiff advanced. Plaintiff's asserts in his Opposition that DBPHS may be liable under successor liability theory, but Defendant counters that the Complaint alleges no such facts that would support such liability, or any other liability, on DBPHS.

Legal Analysis

N.J. Court Rule 4:6-2(e) Standard

This is a motion to dismiss Plaintiff's complaint with prejudice pursuant to New Jersey Court Rule 4:6-2(e) for failure to state a claim upon which relief can be granted. The dismissal of a complaint with prejudice is one of, if not the most severe ruling a litigant can receive. In addition, a motion to dismiss brought under this rule is often at the very beginning of a case when any pleading deficiencies may be cured by amendment or through further discovery. For these reasons, the longstanding principles of Printing Mart dictate that motions to dismiss with prejudice pursuant to 4:6-2(e) must be considered "with great caution" and "should be granted only in the rarest of instances." Printing Mart-Morristown v. Sharp Electronics Corp., 166 N.J. 739, 772 (1989).

The Court in Printing Mart took great care to emphasize that “the test for determining the adequacy of a pleading” is “whether a cause of action is “suggested” by the facts.” Printing Mart at 746, citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). In its review of a complaint pursuant to a R. 4:6-2(e) motion, the court should make a thorough and liberal search of the complaint to determine whether a cause of action “may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Id. citing DiCristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957). Thus, both the principles of fairness as well as case law suggest that a court should not dismiss a complaint with prejudice when an amended complaint or further discovery can cure any pleading deficiencies.

The role of the court in deciding a 4:6-2(e) motion, while taking all reasonable inferences in favor of the plaintiff, is strictly to ascertain the “legal sufficiency” of the facts contained within the complaint. Id. citing Rieder v. Department of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). At such an early stage in the litigation, the Court does not consider whether the plaintiff will be able to prove the allegations in the complaint, but rather only examines the adequacy of the facts within the pleading. Id.

Finally, in evaluating a motion to dismiss, the court can review the “complaint, exhibits attached to the complaint, matters of public record and documents that form the basis of a claim.” Lum v Bank of Am., 361 F.3d 217, 222 n.3 (3d Cir. 2004). However, if the Court considers “matters outside the pleading ...the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46....” R. 4:6-2. In addition, a judge may take judicial notice of certain relevant documents and of certain statements that were included in those documents. State v. Silva, 394 N.J. Super. 270, 275 (App. Div. 2007). However, the judge may not take judicial notice of the truth of the facts asserted in the documents. Id.

Child Sexual Abuse Act, N.J.S.A. 2A:61B-1

In Hardwicke, the New Jersey Supreme Court held that the Child Sexual Abuse Act, (“CSAA”) created two categories of abusers, “active abusers”, who commit the abuse, and “passive abusers”. Hardwicke v. Am. Boychoir Sch., 188 N.J. 69, 86 (2006). The Court further held that the CSAA imposes “passive abuser” liability on persons standing in loco parentis within the household who know of and allow pervasive and sustained sexual abuse to happen.

Id. Though the CSAA does not define the terms “persons”, “in loco parentis”, or “within the household”, the Hardwicke Court considered legislative intent and Title I, N.J.S.A. 1:1-2 for further clarification. Title I reads that the word “person” includes “corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals... .” N.J.S.A. 1:1-2. The Court found that the defendant boys’ school was a “person” within the meaning of the CSAA. Hardwicke, 188 N.J. at 74. The Hardwicke Court also found that an in loco parentis relationship includes the “responsibility to rear, educate, supervise, and care for the child”. Id. The Court reasoned that this relationship between the boys’ school and the students existed because the school acted in place of the students’ parents by providing them shelter, food, education, recreation, religious services, and discipline. Id. The Court found that the defendant boys’ school was a “household” under the CSAA because it provided food, shelter, instruction, recreation, and emotional support to its students who boarded there. Id.

Child Victim’s Act, N.J.S.A. 2A:14-2b

The CVA extended the statute of limitations for child sexual assault claims and revived previously expired child sexual assault claims for a two-year period immediately following the effective date. N.J.S.A. 2A:14-2b. When there is a challenge to the retroactivity of a statute, courts consider the legislature’s intent and whether the legislature demonstrates a clear intent for the statute to apply retroactively. Twiss v. State Dep’t of Treasury, 124 N.J. 461, 467 (1991). In W.F., an unpublished New Jersey District Court opinion, the Court held that the plain language of the CVA demonstrates that the New Jersey legislature meant for it to apply retroactively because it opened a two-year revival period for previously expired child sexual abuse claims. W.F. v. Roman Catholic Diocese of Paterson, 2021 U.S. Dist. LEXIS 111062 (D.N.J. 2021). The Court gave a high degree of judicial deference to the legislature’s intent and presumed that it “acted with existing constitutional law in mind and intended the act to function in a constitutional manner”. Short v. Short, 372 N.J. Super 333, 338 (App. Div. 2004).

Though courts favor the prospective application of a statute, this is only a means to interpret statute, with its purpose being to help the court determine legislative intent. Twiss, 124 N.J. at 467. If the legislature does not clearly express the intent that a statute should apply prospectively, it is up to the court whether to apply the statute retroactively. Id. To determine this, the court must consider two questions – first, whether the legislature intended for the

statute to apply retroactively and second, whether the statute's retroactive application will cause an unconstitutional violation of a defendant's "vested rights" or will result in a "manifest injustice". Id.; see also, State, Dept. of Environmental Protection v. Ventron Corp., 94 N.J. 473, 499 (1983) (holding that the retroactive application of a statute that does not change substantive liability but merely establishes new remedies for conduct previously considered tortious under prior statutes and common law does not unconstitutionally interfere with vested rights).

In addition, the New Jersey's due process clause generally does not disallow the retroactive application of civil legislation unless the consequences are particularly harsh or oppressive. State Dep't of Envtl. Prot., 94 N.J. at 498-99. Although a statute's retroactive application may diminish or destroy an individual's property rights, a state may validly enact such a statute when the public interest clearly outweighs the diminishment or destruction of that right. Rothman v. Rothman, 65 N.J. 219, 225 (1974).

In Standard Oil, the United States Supreme Court noted that jurisprudence dictates that when a claim has become barred by the statute of limitations, "the statutory defense constitutes a vested right which is proof against legislative impairment". State by Parsons v. Standard Oil Co., 5 N.J. 281, 293-94 (1950). However, twenty-six years later, the Supreme Court in Panzino declined to apply that statement broadly to all claims. Rather, the Supreme Court held that such a "vested right" springs from the effect of the statute of limitations in time-barring claims born of contract, not of statute. Panzino v. Cont'l Can Co., 71 N.J. 298, 305 (1976).

Intentional Infliction of Emotional Distress Standard

To establish an IIED claim, the plaintiff must demonstrate that: (1) the defendants acted intentionally, (2) the defendant's conduct was "so outrageous in character, and so extreme in degree,...beyond all possible bounds of decency,...regarded as atrocious, and utterly intolerable in a civilized community", (3) the defendant's actions were the proximate cause of the plaintiff's emotional distress, and (4) the emotional distress was so severe that no reasonable person could be expected to tolerate it. Soliman v. Kushner Cos., Inc., 433 N.J. Super. 153, 177 (App. Div. 2013)

Negligence Standard

The elements of a negligence claim involve a duty of care owed by the defendant to the plaintiff, the defendant's breach of that duty, an injury to the plaintiff proximately caused by the breach, and damages. G.A.-H. v. K.G.G., 238 N.J. 401, 413 (2019). Whether a duty of care exists is a question of law and it is up to the Court to decide. Id. Whether a duty of care exists is based upon several factors that includes the relationship of the parties, foreseeability, and public policy and fairness. Id. New Jersey Courts recognize a heightened duty for school personnel to ensure students' safety from foreseeable harms, including those harms presented by intentional acts of school personnel. Steele v. Kerrigan, 148 N.J. 1, 34, 689 A.2d 685 (1997). This duty encompasses not only the supervisory care of the students' safety and well-being but also reasonable care for the students who participate in school-sponsored activities. Frugis v. Bracigliano, 177 N.J. 250, 270 (2003). The standard of care is the degree of care which a person of ordinary prudence, charged with similar duties, would exercise under the circumstances. Id. This duty may be breached through commission of acts or through negligence or a failure to act. Id.

For a defendant to be found liable for negligent hiring, a plaintiff must show that the employer "knew or had reason to know of the particular unfitness, incompetence or dangerous attributes of the employee and could reasonably have foreseen that such qualities created a risk of harm to other persons" and that the plaintiff's injury was proximately caused by the employer's negligence in hiring the employee or the employee's "incompetence, unfitness or dangerous characteristics". Di Cosala v. Kay, 91 N.J. 159, 173 (1982).

A plaintiff must satisfy a similar standard to establish a claim for negligent supervision or training. The plaintiff must prove that the defendant-employer knew or had reason to know that the failure to supervise or train an employee in a particular way would create a risk of harm and that risk of harm actually happened and caused the plaintiff's injury. Id.

To establish gross negligence, the conduct must be "egregious" and the defendant's failure to exercise "slight care or diligence" creates an unreasonable risk of harm to another person. Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 364 (2016) (quoting Model Jury Charges (Civil), 5.12, Introductory Notes, "Gross Negligence" (approved Feb. 2004)). The act or omission involved in gross negligence is of a greater degree than ordinary negligence, but less than willful or intentional misconduct. Id.

Punitive Damages, N.J.S.A. 2A:15-5.12

Punitive damages are a remedy that may be awarded to a plaintiff only if the plaintiff establishes, through clear and convincing evidence, that the harm they suffered was caused by the defendant's acts or omissions. N.J.S.A. 2A:15-5.12(a). The defendant's acts or omissions must have been motivated by actual malice or "accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions." Id. Negligence, including gross negligence, cannot satisfy this burden of proof. Id.

The trier of fact must consider all relevant evidence when determining whether punitive damages should be awarded. This includes, but is not limited to, the following:

- (1) The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
- (2) The defendant's awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
- (3) The conduct of the defendant upon learning that its initial conduct would likely cause harm; and
- (4) The duration of the conduct or any concealment of it by the defendant.

N.J.S.A. 2A:15-5.12(b). If the trier of fact decides that punitive damages are warranted, it is then up to the trier of fact to determine the amount of damages. Id.

Corporate-Successor Liability Doctrine

Generally, when a company sells its assets to another company, the acquiring company is not liable for the selling company's debts and liabilities merely because it has taken ownership of the seller's assets. 15 William & Fletcher, Cyclopedia of the Law of Corporations 70, 122 nn. 9-15 (1990). However, there are four exceptions: "(1) the successor expressly or impliedly assumes the predecessor's liabilities; (2) there is an actual or de facto consolidation or merger of the seller and the purchaser; (3) the purchasing company is a mere continuation of the seller; or (4) the transaction is entered into fraudulently to escape liability." Id. New Jersey District Courts analyze and apply successor liability by considering the "de facto consolidation" and "mere continuation" exceptions together. Glynwed, Inc. v. Plastimatic, Inc., 869 F. Supp. 265,

275 (D.N.J. 1994). To determine whether a transaction is a “de facto consolidation” or “mere continuance”, courts consider four factors: the “continuity of management, personnel, physical location, assets, and business operations”, the termination of usual business and dissolution of the former entity as soon as legally and practically possible, the successor’s assumption of the liabilities usually required for uninterrupted continuation of the former entity’s business, and the continuity of ownership and shareholders. *Id.* at 276.

Substantive Analysis

Salesians’ Motion to Dismiss

This Court finds that the CVA is constitutional and supported by significant public interest. This Court applies the two-part test of *Twiss* to consider whether retroactive application of the CVA was the intent of the New Jersey legislature and whether such retroactive application would cause an unconstitutional violation of Defendants’ “vested rights” or cause Defendants “manifest injustice.” Clearly, the New Jersey legislature intended for the CVA to apply retroactively because it opened a two-year revival period for previously expired child sexual abuse claims. The first factor is in the Plaintiff’s favor. The retroactive application of the CVA would not change the Defendant’s substantive liability, as it only establishes new remedies for conduct previously considered tortious under prior statutes and common law. This Court agrees with the *Ventron* Court that holds that such retroactive application of statutes does not unconstitutionally interfere with vested rights. Sexual abuse of children, and the vicarious liability of an employer on behalf of a tortious employee, was tortious prior to the enactment of the CVA and remains tortious. Retroactive application of the CVA would only change the remedial procedures by adding a revival period, it would not substantively enhance or enlarge the illegality of child sexual abuse. The second factor is also in Plaintiff’s favor.

Further, this Court uses the *Rothman* balancing test to weigh the public interest in upholding the CVA against the potential destruction of the Defendants’ property rights. The public interest in upholding the CVA outweighs any of the Defendants’ property rights that may be diminished or destroyed. The CVA was intended to be a remedy for victims of child sexual abuse who are often left without relief because the damaging effects of the abuse they suffered does not manifest until years, and sometimes decades later. Because victims may not even be aware that they suffered such abuse until after the statute of limitations has run on their

claim, the CVA works to cure the procedural defect often present in childhood sexual abuse claims. There is a significant public interest in holding perpetrators and those complicit in abuse responsible, and for victims to have a pathway for relief.

Plaintiff alleges facts that, if proven, are actionable in negligence, negligent supervision, negligent hiring and retention, and gross negligence causes of action against Defendants. Plaintiff has alleged that the Defendants owed a duty to protect Plaintiff from foreseeable harm as a child attending the School, Defendants breached that duty because they knew or should have known Borgatello was a serial child molester yet allowed him access to the School's students, and this breach caused Plaintiff to be sexually abused and suffer harm. The Complaint's allegations include that the Defendants were aware of other incidents of sexual abuse yet failed to properly screen employees before placing them in close contact with children, failed to investigate complaints of abuse, minimized abusive employees' inappropriate behavior, and failed to maintain proper policies to prevent sexual abuse of students. These facts provide the inference that sexual abuse of students, the harm Plaintiff suffered, was foreseeable. The Court finds that the Plaintiff has sufficiently stated the above negligence claims.

Further, the CSAA imposes vicariously liability onto "passive abusers" on persons standing in loco parentis within the household who know of and allow pervasive and sustained sexual abuse to happen. Applying the definitions outlined in Hardwicke, both Defendants qualify as "persons" standing in loco parentis within the household and could be subject to passive abuser liability if Plaintiff can prove the allegations in his Complaint and thus establish Borgatello as the "active abuser".

DBPHS's Motion to Dismiss

DBPHS did not exist until 2015 as evidenced by the New Jersey Business Entity Record provided in Exhibit A of its brief in support of its Motion to Dismiss. This Court takes judicial notice of the record, however, this Court finds that DBPHS may fall under one or more of the four exceptions to the corporate-successor liability doctrine. This Court applies New Jersey's liberal notice-pleading standards outlined in Printing Mart to ascertain a cause of action from even an "obscure statement of claim". Plaintiff's Complaint identifies "Don Bosco Preparatory School formerly known as Don Bosco High School in Ramsey, NJ" as defendants. This Court

finds that Plaintiff sufficiently put DBPHS on notice of the claims against it. Plaintiff identifies that the School is a former entity of DBPHS and alleges that DBPHS is the current iteration of Don Bosco High School, thus a “successor” that could fall into one of the exceptions to the corporate-liability doctrine. If Plaintiff can prove such allegations, liability could be imposed upon DBPHS under one of the exceptions to the corporate-successor liability doctrine.

Conclusion

For the foregoing reasons, the Defendants’ Motions to Dismiss are **DENIED**.