

2006 WL 3512482

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Delaware,
New Castle County.

Eric EDEN, Plaintiff,
v.

OBLATES OF ST. FRANCIS DE SALES;
Oblates of St. Francis De Sales Incorporated,
a Delaware Corporation; Salesianum School,
Inc., a Delaware corporation; Catholic Diocese
of Wilmington, Inc., a Delaware corporation;
Rev. James W. O'Neill, O.S.F.S.; Rev. Robert
D. Kenney, O.S.F.S.; Rev. Joseph G. Morrissey,
O.S.F.S.; Rev. Michael A. Saltarelli; and,
Rev. Louis S. Fiorelli, O.S.F.S., Defendants.

ID No. 04C-01-069 CLS. | Submitted:
Aug. 1, 2006. | Decided: Dec. 4, 2006.

Synopsis

Background: Former student of Catholic school brought action against a priest who taught and worked at the school, the school, the church affiliated with the school, and the church's diocese, and various other church leaders, asserting claims of breach of contract, intentional misrepresentation, conspiracy, assault and battery, and negligence arising from the priest's alleged 10-year sexual abuse of former student, and the subsequent breach of a contract that the church defendants allegedly formed with the student's parents following complaints of the alleged abuse. The church defendants moved to dismiss the case, or, in the alternative, for summary judgment.

Holdings: The Superior Court, New Castle County, [Calvin L. Scott, Jr., J.](#), held that:

[1] statute of limitations on student's personal injury claims was not tolled as to the one reported incident of sexual abuse; [2] a triable issue existed as to whether the discovery rule tolled the statute of limitations period on student's personal injury claims, as to the previously unreported incidents of abuse;

[3] a triable issue existed as to whether an alleged oral contract formed between church officials and the student's parents was enforceable under the Statute of Frauds;

[4] a triable issue existed as to whether statute of limitations expired on student's breach of contract claim;

[5] a triable issue existed as to whether student was a third-party beneficiary of the alleged contract formed between church officials and the student's parents; and

[6] a triable issue existed as to whether student's claims against a church bishop, which were asserted against the bishop solely in his official capacity as agent or alter ego of the church diocese, were precluded.

Motions denied in part and granted in part.

West Headnotes (6)

[1] **Limitation of Actions**

Injuries to the Person

The two-year statute of limitations applicable to personal injury claims asserted by former Catholic school student, who alleged that he was sexually abused by priest, was not tolled by the discovery rule, insofar as the former student's claims implicated the single incident of sexual abuse that former student reported to his parents; the reported incident was not inherently unknowable. 10 West's Del.C. § 8119.

[1 Cases that cite this headnote](#)

[2] **Judgment**

Bar of Statute of Limitations

A genuine issue of material fact existed as to whether the two-year statute of limitations period applicable to personal injury claims asserted by former Catholic school student, who alleged that he was sexually abused by priest, was tolled by the discovery rule, precluding summary judgment on student's personal injury claims, insofar as the claims implicated the estimated 900 alleged incidents of sexual abuse that former student did not previously report. 10 West's Del.C. § 8119.

[1 Cases that cite this headnote](#)

[3] **Judgment**

🔑 [Contract Cases in General](#)

A genuine issue of material fact existed as to whether an alleged oral contract formed between church officials and the parents of a student who claimed he was sexually abused by a priest was enforceable under the Statute of Frauds, precluding summary judgment on student's breach of contract claim against the priest and church defendants. 6 West's Del.C. § 2714.

[1 Cases that cite this headnote](#)

[4] **Judgment**

🔑 [Bar of Statute of Limitations](#)

A genuine issue of material fact existed as to whether church officials concealed their alleged breach of an oral contract allegedly formed with the parents of a former student who claimed he was sexually abused by a priest, so as to toll the three-year statute of limitations applicable to breach of contract claims under the fraudulent concealment exception, precluding summary judgment on former student's breach of contract claim. 10 West's Del.C. § 8106.

[5] **Judgment**

🔑 [Contract Cases in General](#)

A genuine issue of material fact existed as to whether student who claimed he was sexually abused by a priest was a third-party beneficiary of an alleged contract formed between church officials and the student's parents following parent's report of the student's allegation of abuse, precluding summary judgment on former student's breach of contract claim against church officials.

[1 Cases that cite this headnote](#)

[6] **Religious Societies**

🔑 [Torts](#)

Former Catholic school student's claims against a church bishop, which claims arose from a priest's alleged 10-year sexual abuse of the student, and which were asserted against the bishop solely in his official capacity as agent or alter ego of the

church diocese, were precluded, where the bishop began to serve as an officer of the diocese after the alleged period of abuse, and could not have ordered, directed, ratified, approved, or consented to the alleged abuse.

Upon Consideration of Defendant's Motion to Dismiss or in the Alternative, for Summary Judgment **DENIED IN PART, GRANTED IN PART.**

Attorneys and Law Firms

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[Anthony G. Flynn](#), [Neill Mullen Walsh](#) and [Jennifer M. Kinkus](#), Esquires, Young, Conaway, Stargatt & Taylor, LLP, Wilmington, DE, Attorneys for Defendants Catholic Diocese of Wilmington, Inc. and Rev. Michael A. Saltarelli.

Opinion

[SCOTT, J.](#)

I. INTRODUCTION

*1 This case arises from the alleged sexual molestation of Plaintiff Eric Eden ("Eden") by Defendant Reverend James W. O'Neill ("O'Neill"). Eden has sued the Oblates of St. Francis de Sales, the Oblates of St. Francis de Sales, Inc., the Salesianum School, Inc., the Catholic Diocese of Wilmington, Inc., Reverend James W. O'Neill O.S.F.S., Reverend Robert D. Kenney O.S.F.S., Reverend Joseph G. Morrissey O.S.F.S., Reverend Louis S. Fiorelli O.S.F.S. and Bishop Michael A. Saltarelli (hereinafter "the Church Defendants") for breach of contract, intentional

misrepresentation, civil conspiracy, assault and battery and negligence.

The Church Defendants presently bring a Motion to Dismiss, or in the alternative for Summary Judgment before the Court. In light of the evidence, this Motion is **DENIED** in part and **GRANTED** in part with regard to Bishop Michael A. Saltarelli. The Court finds no material dispute of fact that makes Bishop Saltarelli a party to the action at hand.

II. BACKGROUND

Eden alleges that over nine years, from 1976 to 1985, Rev. O'Neill sexually molested him. At the time of the alleged sexual molestation, Eden ranged from ages eight to seventeen. Eden is now a 35 year-old resident of New Castle County, Delaware.

Rev. O'Neill is a Roman Catholic Priest and a member of the Oblates of St. Francis de Sales. From 1975 through 1985, he served as a priest within the Catholic Diocese of Wilmington, Delaware, and as a teacher, then principal of Salesianum High School. Eden contends that Rev. O'Neill earned his family's trust by befriending his parents during this time. O'Neill visited Eden's home at least twice a week for two to five hours. According to Eden, O'Neill would sexually molest him at the family home under the context of tutoring him. O'Neill also took advantage of Eden in the school office and while accompanying Eden's family on vacation.

Eden alleges that the last incident of sexual molestation occurred in 1985 in the home of Eden's parents. Eden immediately reported this incident to his parents, who then reported it to the Oblates Diocese, Salesianum and their agents. In the Complaint, Plaintiff alleges that Church Defendants denied any wrongdoing. His parents continued to stand their ground, and Church Defendants "threatened to draw out any litigation and prolong it in such a manner as would maximize the physical, emotional and psychological injury to plaintiff."¹

As a result, Eden's parents entered into a contract with Church Defendants. Plaintiff Eden generally alleges that this contract amounted to Defendants imposing their power and position on Plaintiff and his devoutly religious parents. His parents agreed not to sue Defendants as long as O'Neill: (1) would never again have the opportunity to be around any minor youths, (2) would be removed from Salesianum High School where he was serving as principal, and (3) would be placed immediately into intensive psychotherapy. Eden has

proffered no evidence establishing the existence of a verbal or written contract. According to Eden, only the Church Defendants retained copies of the alleged 1985 contract.

*2 Commencement of this action began January 8, 2004, when Eden filed a Complaint in this Court for the alleged incidents of sexual molestation by O'Neill that occurred from 1975 to 1985. Eden asserts two theories explaining this delay and the inapplicability of Delaware's Statute of Limitations to the case at hand:

- 1) During the same 17 years, Plaintiff totally suppressed any memory of the alleged abusive conduct, and it was not until April 2002, due to extensive reporting by the media of sex abuse cases that he began to understand he was molested.
- 2) For a period of 17 years, from 1985 to 2002, Plaintiff claims he was the victim of an orchestrated ruse to deny him "observable, objective factors which would give plaintiff or any other reasonable person reason to know or suspect that a breach (of the purported 1985 contract) occurred."

With regard to the alleged memory suppression, Eden claims that he reported the 1985 incident to his parents, but refrained from telling them about 900 other repeated incidents over the course of nine years. Eden alleges that he psychologically suppressed these incidents. According to Plaintiff, he "had complete amnesia of the other nine years worth of sexual abuse" prior to the 1985 incident.² Plaintiff's expert, Dr. Tavani, wrote a report in May 2005 confirming this contention.³ Following an April 13, 2005 psychiatric examination of Plaintiff, she concluded that Plaintiff repressed several years of sexual abuse due to traumatic amnesia.

As to the alleged breach of contract, Eden asserts that he reported the incidents to the Attorney General in April of 2002 when he first learned of facts indicating a breach of contract. Plaintiff claims that prior to this date, he had "no reason to know of any facts, information, suspicion or other indicators sufficient to put a reasonable person of ordinary intelligence on inquiry" that a breach of contract had occurred by the Church Defendants.⁴ In April 2002, the media reported the removal of O'Neill from his position as pastor of a North Carolina parish where he oversaw 1900 families. Plaintiff contends that further investigation revealed that O'Neill was originally transferred to the Archbishop Wood Oblate High

School in Philadelphia in 1985 and then transferred to the North Carolina parish in 1990.

Following this report, Plaintiff initially filed the Complaint on January 8, 2004 in arbitration. Church Defendants soon after filed this Motion to Dismiss the Complaint on February 12, 2004. Subsequently, on April 21, 2005, Defendant O'Neill filed a reply brief in support of the Motion to Dismiss. On April 22, 2005, Defendant Saltarelli also filed a reply brief in support of the Motion to Dismiss, or in the Alternative for Summary Judgment.

Defendant Saltarelli's April 22, 2005 Motion primarily contests his involvement in the case as an officer/director of the Catholic Diocese of Wilmington. Bishop Saltarelli acts as the President and Chief Executive Officer of the Diocese Certificate of Incorporation of Catholic Diocese of Wilmington. In the Complaint, Plaintiff generally names Saltarelli as a defendant solely "in his official capacity as agent or alter ego of the Diocese."⁵ However, in his defense, Saltarelli notes that he was installed as Bishop of the Catholic Diocese of Wilmington on January 23, 1996, 11 years after the alleged contract.

III. STANDARD OF REVIEW

*3 When assessing the merits of a motion to dismiss for failure to state a claim pursuant to [Superior Court Civil Rule 12\(b\)\(6\)](#), all well-pleaded facts in the complaint are assumed to be true.⁶ "A complaint(,) attacked by a motion to dismiss for failure to state a claim[,] will not be dismissed unless it is clearly without merit, which may be either a matter of law or of fact."⁷ Likewise, a complaint will not be dismissed for failure to state a claim unless "(i)t appears to a certainty that, under no set of facts which could be proved to support the claim asserted, would the plaintiff be entitled to relief."⁸ That is to say, the test for sufficiency is a broad one. It is measured by whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible to proof under the complaint.⁹ If the plaintiff may recover, the motion must be denied. Similarly, when a defendant who attacks a complaint for failure to state a claim upon which relief could be granted, and who moves to dismiss the complaint, offers affidavits, depositions, or other supporting documentation, in addition to pleadings, the motion will be considered a motion for summary judgment.¹⁰ Because the parties have relied upon other matters outside the pleadings here, the motion will be considered a motion for summary judgment.

The Court's function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of fact exist.¹¹ Summary judgment will be granted if, after viewing the record in a light most favorable to the non-moving party, no genuine issues of material fact exist and the party is entitled to judgment as a matter of law.¹² If, however, the record indicates there is a material fact in dispute, or if judgment as a matter of law is not appropriate, then summary judgment will not be granted.¹³

IV. DISCUSSION

A. Plaintiff Has Established a Genuine Issue of Material Fact as to His Claims for Personal Injury and Breach of Contract

Church Defendants argue that the Court must dismiss the Complaint because the statute of limitations clearly bars Plaintiff's claims for personal injury. Defendants also contend that the statute of frauds and statute of limitations bar Plaintiff's claim for breach of contract. Viewing the evidence in the light most favorable to the non-moving party, the Court finds that a genuine issue of material fact exists for both claims.

1. Personal Injury Claim

[1] The statute of limitations is two years for a personal injury cause of action in Delaware. [10 Del C. § 8119](#) reads as follows:

No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title.

In the case of a minor, the statute of limitations extends to three years after he reaches the age of majority.¹⁴ A strict application of this statute would, therefore, bar Plaintiff's claims here.

*4 However, despite the statutory time limitation, Delaware also recognizes the discovery rule exception for "inherently unknowable injuries".¹⁵ This rule applies when an "inherently unknowable injury" is sustained by a plaintiff "blamelessly ignorant of the act or omission and injury

complained of, and the harmful effect thereof develops gradually over a period of time ...”¹⁶

Two courts in Delaware have previously applied the discovery rule exception to cases of child sex abuse, and thereby, rejected those claims because the plaintiff did not suffer from an inherently unknowable injury. Both the *Warner v. University of Delaware*¹⁷ and *Garcia v. Nekarda*¹⁸ Courts held that the alleged abuse was not inherently unknowable when the child victims told an adult about the incidents of sexual molestation. In *Warner*, the victim told a school counselor about the sexual assaults on September 2, 1992, but plaintiffs did not bring the Complaint until more than two years later on July 14, 1994.¹⁹ Likewise, the victim in *Garcia* told a school teacher of the alleged incidents of abuse in August of 1991, but no one filed the Complaint until more than two years later as well.²⁰ The *Warner* and *Garcia* Courts, therefore, applied the statute of limitations from the time that the child victim initially reported the incidents of sexual abuse to an adult and subsequently barred the claims.

In making these rulings, the Delaware courts also relied on the decision in *Callahan v. State of Iowa* which turned on whether a mental repression syndrome disabled the child victim from relaying memories of alleged sexual abuse.²¹ Both *Warner* and *Garcia* distinguished their sexually abused child victims from the victim in *Callahan* on this basis. The *Warner* Court found that nothing in the record indicated that the child victim suffered from repression syndrome.²² Similarly, the *Garcia* Court found that, “Unlike the child in *Callahan*, the facts presented in this case indicate(d) Tannis Garcia (the victim) did not suffer any physical disabilities or post-traumatic stress disorders which prevented her from verbalizing the abuse she experienced.”²³ These Courts, thereby, ruled out the possibility of an inherently unknowable injury caused by memory suppression.

Based on the foregoing cases, this Court finds that it must differentiate between the one incident of sexual abuse that Plaintiff reported to his parents in 1985 as opposed to the other 900 incidents that allegedly occurred during the prior nine years. Like the victims in *Warner* and *Garcia*, Plaintiff reported the last incident of sexual abuse to an adult. Plaintiff allegedly told his parents about the last instance of sexual abuse in 1985. As such, the Court finds that this one reported incident is not inherently unknowable. The two year statute of limitations for this incident, therefore, started to run in 1985

when Plaintiff made his parents aware of it. The Court must bar Plaintiff’s claim as to this last reported incident.

*5 [2] However, the Court finds that the statute of limitations does not apply to the 900 incidents that allegedly occurred prior to the last incident reported in 1985. Unlike the *Warner* and *Garcia* Courts, this Court finds sufficient evidence in the record indicating that Plaintiff suffered from memory suppression that disabled him from relaying memories of the sexual abuse he allegedly suffered as a child. Plaintiff argues that he “had complete amnesia of the other nine years worth of sexual abuse” prior to the 1985 incident.²⁴ Like the victim in *Callahan*, Plaintiff has presented the Court with expert testimony as to this contention. Plaintiff’s expert, Dr. Tavani, wrote a report in May 2005 that confirmed Plaintiff’s memory suppression of the nine years prior to 1985. Following an April 13, 2005 psychiatric examination of Plaintiff, she concluded that Plaintiff repressed this sexual abuse due to traumatic amnesia.

Hence, Plaintiff has established genuine issues of material fact as to the alleged incidents of sexual abuse that occurred prior to the last incident reported in 1985. The Court finds that it must toll the statute of limitations for these claims because Plaintiff’s memory suppression made them inherently unknowable.

2. Breach of Contract Claim

[3] Before determining whether the statute of limitations bars Plaintiff’s claims for breach of contract, the Court must first decide the issue of enforceability. Plaintiff generally claims that his parents entered into a written contract with Church Defendants, but proffers no evidence of a written agreement. According to Plaintiff, only the Church Defendants retained a copy of this agreement.

Under the Delaware Statute of Frauds, a contract is not enforceable without evidence of a written agreement if the nature of the contract requires more than one year for performance.²⁵ 6 Del. C. § 2714 provides in part:

No action shall be brought ... upon any agreement that is *not to be performed within the space of one year from the making thereof* ... unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith, or some other person thereunto by the party lawfully authorized in writing..

The statute of frauds will not apply if an alleged oral contract can be performed within one year.²⁶ The

Delaware Supreme Court has held that, “In this state the law is settled authoritatively that if any agreement by any possibility may, under the contract, be performed within one year, it is valid notwithstanding the statute (of frauds).”²⁷

Because Plaintiff has not proffered evidence of a writing here, the Court must first determine whether a genuine issue of fact exists as to the possibility of performing the alleged contract within one year. Plaintiff contends that the alleged terms of the contract stated that Defendant Reverend O'Neill: (1) would never again have the opportunity to be around any minor youths, (2) would be removed from Salesianum High School where he was serving as principal, and (3) would be placed immediately into intensive psychotherapy.

*6 The Court generally finds that Plaintiff shows the possibility of performing these terms within a year. Plaintiff clearly proves that the Church Defendants could, and did, in fact, perform the second term of the agreement in a year. Regarding the second term, Plaintiff states that Defendant O'Neill was “in fact removed from his position as a principal at Salesianum at the end of the school year in June 1986.”²⁸ The Church Defendants, thereby, complied with this term less than a year after making the alleged contract.

With regard to the first and third term, the Court finds that Plaintiff raises a genuine issue of material fact as to whether Defendant could have performed the terms within a year. First, Plaintiff argues that Defendant “could have ... been defrocked for his crimes” and/or “could have retired” within a year, thereby removing him from his position as a priest.²⁹ Second, Plaintiff argues that Defendant “could have received immediate intensive psychotherapy” within a year, as agreed upon in the contract.³⁰ Plaintiff, therefore, contends that the possibility exists for Church Defendants to have performed these contract terms within a year. Because the Court finds that Plaintiff raises a genuine dispute here, it cannot dismiss Plaintiff's Complaint based on the statute of frauds.

[4] Next, the Court must decide whether it can dismiss the Complaint based on the statute of limitations for breach of contract claims. The statute of limitations is three years for a breach of contract claim in Delaware.³¹ Accordingly, 10 *Del C. § 8106* provides in part that, “no action based on a promise ... shall be brought after the expiration of 3 years from the accruing of the cause of such action.”³² Strictly applying this statute to the case at hand would, therefore, bar Plaintiff's

claim for breach of contract since Plaintiff first raised his claim approximately 19 years after the alleged contract.

However, Delaware law acknowledges that fraudulent concealment of a cause of action may toll the statute of limitations.³³ To prove fraudulent concealment here, Plaintiff must demonstrate that: (1) Church Defendants had knowledge of the alleged breach, and (2) Church Defendants actively concealed the breach by preventing Plaintiff from discovering it.³⁴ In addition to these requirements, other Delaware courts have held that fraudulent concealment also requires “something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to a cause of action.”³⁵

The Court finds that Plaintiff has met this burden of proof with respect to the first requirement of fraudulent concealment. Here, Church Defendants had knowledge of the alleged breach as they actively oversaw the transfer of O'Neill to the Archbishop Wood Oblate High School in Philadelphia in 1985 and then to the North Carolina parish in 1990, where he stayed until 2002.

*7 With respect to the second requirement for fraudulent concealment, however, the Court finds Plaintiff's burden to show “something affirmative in nature” more difficult than the first. Plaintiff must give affirmative evidence demonstrating that Church Defendants actively concealed the breach. Overall, Plaintiff contends that Church Defendants sought to “intentionally, deliberately and fraudulently misrepresent the facts” in order to conceal the breach of contract from Defendant.³⁶ In support of this contention, Plaintiff refers the Court to various sections of the Complaint where he describes a dubious plan to conceal the alleged sexual molestation by O'Neill.³⁷ Plaintiff's allegations generally amount to a colorful description of the Church Defendants imposing their power and position on Plaintiff and his devoutly religious parents.³⁸ Under the circumstances, the Court finds Plaintiff's argument sufficient to raise a genuine issue of fact here. The Court cannot deny Plaintiff from having his day in Court, when a jury can more appropriately address the “affirmative nature” of these contentions

Furthermore, the Delaware Supreme Court has held that, “While the Statute of Limitations may not apply when the acts complained of are fraudulently concealed from the plaintiff, such application is suspended only until his rights are discovered by the exercise of reasonable diligence.”³⁹

Plaintiff, therefore, contends that he mentally suppressed any memory of the abuse and only became aware of his rights upon extensive reporting of sex abuse by the media in April 2002. At this time, Plaintiff began his investigation of the alleged incidents and reported them to the Attorney General. The Court finds that Plaintiff has provided the Court with sufficient evidence to support this contention. As stated previously, Plaintiff also presented the Court with expert testimony in regard to his memory suppression prior to the April 2002 media reports.

The Court, therefore, finds that Plaintiff has established that a genuine issue of material fact exists as to whether Church Defendants affirmatively concealed the breach of contract. For this reason, the Court cannot dismiss the Complaint because the fraudulent concealment exception to the statute of limitations under 10 *Del C.* § 8106 may apply here.

B. Plaintiff Has Established a Genuine Issue of Material Fact as to Whether He Has Standing as a Third Party Beneficiary

[5] Even though Plaintiff has no direct contractual relationship with Church Defendants, he may still make a claim for breach of contract as a third party beneficiary. “Delaware courts clearly recognize that a third party ‘beneficiary’ may sue to collect damages for breach of contract.”⁴⁰ Third party beneficiaries fall into two categories, a donee beneficiary or a creditor beneficiary.⁴¹ A donee beneficiary “has someone else’s performance donated to him as a gift secured by the promisee’s consideration.”⁴² On the other hand, one becomes a creditor beneficiary when “the promisee owes a duty or liability to the beneficiary and the promise secures a contract with another party whose performance satisfies the obligation to the beneficiary.”⁴³

*8 To qualify as an intended third party beneficiary of a contract in Delaware, the Plaintiff must meet three qualifications.⁴⁴ These qualifications read as follow: “(1) the contracting parties must have intended that the third party beneficiary benefit from the contract, (2) the benefits must have been intended as a gift or in satisfaction of a pre-existing obligation to that person, and (3) the intent to benefit the third party must be a material part of the parties’ purpose in entering into the contract.”⁴⁵

The Court finds that Plaintiff raises a genuine issue of material fact in regard to these requirements. In the Complaint, Plaintiff alleges that Church Defendants initially denied

any wrongdoing.⁴⁶ When his parents continued to stand their ground, Church Defendants “threatened to draw out any litigation and prolong it in such a manner as would maximize the physical, emotional and psychological injury to plaintiff.”⁴⁷ Plaintiff, therefore, claims that he has standing to bring this suit as a third party beneficiary because Church Defendants and his parents entered into the contract to “save (him) from further abuse.”⁴⁸

Saving Plaintiff from further abuse would constitute a material part of the contract made on Plaintiff’s behalf. Hence, viewing the evidence in the light most favorable to the non-moving party, the Court finds that it cannot dismiss Plaintiff’s claim as a third party beneficiary to the alleged contract.

C. Bishop Saltarelli’s Motion to Dismiss Is Granted Because Plaintiff Cannot Make a Claim against Him

[6] In the Complaint, Plaintiff states that, “Saltarelli is being sued solely ‘in his official capacity as agent or alter ego of the Diocese’ ”.⁴⁹ The Court finds that Plaintiff cannot do so under Delaware law. “As a general rule, so far as personal liability on corporation contracts is concerned, officers of corporations are ... not liable on corporate contracts as long as they do not act and purport to bind themselves individually.”⁵⁰ Furthermore, a corporate officer may only be liable for his tortious conduct if the officer “directed, ordered, ratified, approved or consented to the tort.”⁵¹

Here, Bishop Saltarelli serves as the President and Chief Executive Officer of the Diocese Certificate of Incorporation of Catholic Diocese of Wilmington. Saltarelli was first installed as Bishop of the Catholic Diocese of Wilmington on January 23, 1996.⁵² Bishop Saltarelli, therefore, began his service as Officer of the Catholic Diocese 11 years after the alleged contract. As such, the Court finds that he had no part in directing, ordering, ratifying, approving or consenting to the actions alleged by Plaintiff. No genuine issue of fact exists on this issue. The Court, thereby, holds that Plaintiff has no claim against Saltarelli in his official capacity as Bishop of the Catholic Diocese of Wilmington.

To establish personal liability against Bishop Saltarelli, Plaintiff must bring this action in the Court of Chancery. Plaintiff cannot pierce the corporate veil in the Superior Court.⁵³ Under Delaware law, “piercing the corporate veil may be done only in the Court of Chancery, when the purpose

of the action is to obtain a judgment against individual stockholders or officers.”⁵⁴

V. CONCLUSION

*9 For the above mentioned reasons, the Court finds that a genuine issue of material fact exists as to the breach of contract claim and the personal injury claims of sexual abuse

that occurred prior to the last incident reported in 1985. In addition, Plaintiff cannot hold Bishop Saltarelli directly liable for these claims as an officer of the Catholic Diocese of Wilmington. Defendants' Motion for Summary Judgment is, thereby, **DENIED** in part and **GRANTED** in part with regard to Bishop Saltarelli.

IT IS SO ORDERED.

Footnotes

- 1 Pl. Compl. ¶ 48.
- 2 Pl. Sur-Reply In Opp'n to Def. Mot. to Dismiss at 5.
- 3 The Court notes that Dr. Tavani's report is under seal. As such, all material references to the report are limited to assertions by the parties.
- 4 Pl. Compl. ¶ 70.
- 5 Pl. Compl. ¶ 11.
- 6 *Laventhol, Krekstein, Horwath & Horwath v. Tuckman*, 372 A.2d 168, 169 (Del.1976).
- 7 *Diamond State Telephone Co. v. University of Del.*, 269 A.2d 52, 58 (Del.1970).
- 8 *Id.*
- 9 *Spence v. Funk*, 396 A.2d 967, 968 (Del.1978); *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del.1952).
- 10 *Venables v. Smith*, 2003 WL 1903779, at *2 (Del.Super.); *Shultz v. Delaware Trust Co.*, 360 A.2d 576, 578 (Del.Super.Ct.1976).
- 11 *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del.Super.Ct.1973). *See also* Super. Ct. Civ. R. 56.
- 12 *Id.*
- 13 *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del.1962).
- 14 10 *Del C.* § 8116 provides:
If a person entitled to any action comprehended within §§ 8101-8115 of this title, shall have been, at the time of the accruing of the cause of such action, under disability of infancy or incompetency of mind, this chapter shall not be a bar to such action during the continuance of such disability, nor until the expiration of 3 years from the removal thereof.
- 15 *Warner v. University of Delaware*, 1995 Del.Super. LEXIS 439, at *4-5, 1995 WL 656797 (citing *Layton v. Allen*, 246 A.2d 794, 798 (Del.1968)).
- 16 *Id.*
- 17 1995 Del.Super. LEXIS 439, 1995 WL 656797.
- 18 1993 Del.Super. LEXIS 53, 1993 WL 54491.
- 19 1995 Del.Super. LEXIS 439 at *2-3, 1995 WL 656797.
- 20 1993 Del.Super. LEXIS 53 at *3, 1993 WL 54491.
- 21 464 N.W.2d 268 (Iowa 1990). The Court notes that the plaintiff in *Callahan* presented the Court with expert testimony in regard to this contention.
- 22 1995 Del.Super. LEXIS 439 at *6, 1995 WL 656797.
- 23 1993 Del.Super. LEXIS 53 at *3, 1993 WL 54491.
- 24 Pl. Sur-Reply In Opp'n to Def. Mot. to Dismiss at 5.
- 25 6 *Del. C.* § 2714.
- 26 *Haveg Corp. v. Guyer*, 211 A.2d 910, 912 (Del.1965).
- 27 *Id.* (citing *Duchatkiewicz v. Golumbuski*, 111 A. 430 (Del.Ch.1920)).
- 28 Pl. Answ. Br. in Opp'n. to Def. Mot. to Dismiss at 23.
- 29 Pl. Answ. Br. in Opp'n. to Def. Mot. to Dismiss at 23.
- 30 *Id.*
- 31 10 *Del C.* § 8106.
- 32 *Id.*

- 33 *Wright T/A House of Wright Mortuary v. Dumizo*, 2002 Del.Super. LEXIS 271 at *8-9, 2002 WL 31357891 (citing *Lecates v. Hertich Pontiac Buick, Co.*, 515 A.2d 163, 176 (Del.Super.1986)).
- 34 *Id.* at *9.
- 35 *Nardo v. DeAscanis & Sons Inc.*, 254 A.2d 254, 256 (Del.Super.1969).
- 36 Pl. Answ. Br. in Opp'n. to Def. Mot. to Dismiss at 22.
- 37 *Id.* at 21.
- 38 Pl. Compl. ¶ 40-61, 67.
- 39 *Wright T/A House of Wright Mortuary v. Dumizo*, 2002 Del.Super. LEXIS 271 at *9, 2002 WL 31357891 (citing *Giordano v. Czerwinski*, 216 A.2d 874 (Del.1966)).
- 40 *Browne v. Robb*, 583 A.2d 949 (Del.1990) (citing *Blair v. Anderson*, 325 A.2d 94, 96 (Del.Super.1974); *Astle v. Wenke*, 297 A.2d 45, 47 (Del.1972)).
- 41 *Brown*, 583 A.2d 949 (Del.1990) (citing CORBIN, CORBIN ON CONTRACTS § 774, at 6 (1951)).
- 42 *Id.*
- 43 *Id.*
- 44 *Maglione v. BCBSD, Inc.*, 2003 WL 22853421 (Del.Super.), at *3 (citing *Madison Realty Partners 7, LLC v. Ag ISA, LLC*, 2001 WL 406268 (Del.Ch.) at *5).
- 45 *Id.*
- 46 Pl. Compl. ¶ 48.
- 47 *Id.*
- 48 Pl. Answ. Br. in Opp'n. to Def. Mot. to Dismiss at 15.
- 49 Pl. Compl. ¶ 11.
- 50 *Heronemus v. Ulrick*, 1997 Del.Super. LEXIS 266, at *4, 1997 WL 719320 (citing *Brown v. Colonial Chevrolet Co.*, 249 A.2d, 439, 441 (Del.Super.1968)).
- 51 *Heronemus v. Ulrick*, 1997 Del.Super. LEXIS 266, at *4-5, 1997 WL 719320 (citing *Spano Bldg. v. Dept. of Natural Res.*, 628 A.2d 53, 61 (Del.Super.1993)).
- 52 Reply Br. of Def. Rev. Michael A. Saltarelli at 2 (citing Official 2003-2004 Directory of the Diocese of Wilmington, The Catholic Press of Wilmington, Inc., Oct. 2003 at 11).
- 53 *Fountain v. Colonial Chevrolet Co.*, 1988 Del.Super. LEXIS 126, at *30, 1988 WL 40019 (citing *Sonne v. Sacks*, 314 A.2d 194, 197 (Del.1973)).
- 54 *Id.*