



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER NAPLES, :
 :
 :
 Plaintiff Below, Appellant, :
 :
 :
 v. :
 : **No. 311, 2013**
 :
 THE DIOCESE OF TRENTON, a :
 New Jersey corporation; :
 ST. THERESA PARISH, a foreign :
 corporation; : **On Appeal from the Superior**
 : **Court of the State of Delaware,**
 : **In and For Kent County**
 Defendants Below, Appellees. : **C. A. No. 09C-04-048 JTV**

APPELLANT'S REPLY BRIEF

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INTRODUCTION

The Appellees/Defendants' Answering Brief makes the following arguments: (1) that the Superior Court correctly denied Plaintiff's request for jurisdiction discovery,¹ and (2) that the Superior Court correctly concluded that there was no personal jurisdiction over the Diocese and Church.² .

Each of these two arguments is incorrect, and for the reasons set forth in Appellant's Opening Brief, the lower court's decision should be reversed and remanded. As stated in Plaintiff's Complaint, in his response to Defendants' motion to dismiss, during oral arguments, and his Opening Brief to this Court, the lower court was in error when it denied Plaintiff the opportunity to conduct discovery against the Diocese and Church.³ Additionally, the lower court erred when it ruled that it did not have personal jurisdiction over the Diocese and Church because Plaintiff's complaint alleged that the Diocese and Church knowingly allowed its agent McAlinden to take Plaintiff to Delaware, where McAlinden abused Plaintiff.⁴

¹ Appellees' Answering Brief, p. 26.

² *Id.* at, p. 8.

³ Appellant's Opening Brief, p. 8.

⁴ *Id.* at, p. 17.

ARGUMENT

I. Plaintiff should have been allowed to conduct jurisdictional discovery in this case.

In Plaintiff's Complaint he alleges that the abuse he suffered in Delaware at the hands of McAlinden occurred while McAlinden was the Diocese's Director of Youth Organization (CYO) Director and later as the pastor of the Church.⁵

Plaintiff's complaint also alleges that in 1985, McAlinden, then the Diocese's CYO Director, met Plaintiff and shortly thereafter began abusing him.⁶ Plaintiff also alleged that after the abuse started, but before McAlinden took Plaintiff to Delaware, Plaintiff's father voiced his concerns to a Diocese official about the amount of time McAlinden was spending with his son.⁷ Additionally, Plaintiff alleges that another Diocese official, Rev. Thomas Triggs, the Associate Director Youth Services, "frequently" saw Plaintiff stay overnight with McAlinden at the Diocese owned Jeremiah House.⁸ Despite such knowledge, the Diocese allowed McAlinden to take Plaintiff to Delaware where he abused him.⁹

Subsequently, McAlinden became the Church's pastor.¹⁰ While pastor, Plaintiff alleged that those associated with the Church saw Plaintiff spend the night with McAlinden, and that the Church's housekeeper witnessed McAlinden abuse

⁵ *Id.* at p. 4, citing Compl. ¶ 24.

⁶ *Id.*

⁷ *Id.* at p. 4, citing Compl. ¶ 75-76.

⁸ *Id.* at, p. 5, citing Compl. ¶ 55.

⁹ *Id.* at p. 5, citing Compl. ¶ 56.

¹⁰ *Id.* at, p. 6, citing Compl. ¶26.

Plaintiff in the Church's rectory.¹¹ Subsequently, McAlinden again took Plaintiff to Delaware where McAlinden sexually abused him.¹²

Despite such substantial and non-frivolous allegations, the lower court improperly refused to allow Plaintiff to conduct jurisdictional discovery.¹³ The Defendants' Answering Brief states that Plaintiff waived jurisdictional discovery.¹⁴ This is inaccurate. On July 7, 2009, in response to Defendants' motion to dismiss, Plaintiff filed a motion to suspend briefing on Defendants' Motion to Dismiss and Initiate Discovery on the Issues of Jurisdiction and Venue.¹⁵ As the Superior Court Proceeding Sheet shows, Plaintiff did not withdraw his motion, but instead the lower court denied plaintiff's motion to initiate discovery.¹⁶ Oral arguments on this motion were held on August 18, 2009.¹⁷ The trial court began the argument, by stating that it was not going to allow jurisdictional discovery in the case,

“It's just my experience has shown that extending discovery – or allowing summary judgment is kind of a useless exercise because there are still issues of fact. No matter how you throw it out there, that's what generally happens.”¹⁸

In response to this statement, Plaintiff's counsel continued to argue for discovery but realizing the court was inclined to deny the Motion, ultimately

¹¹ *Id.* at p. 6, citing Compl. ¶¶ 26, 30, 31, 73-75.

¹² *Id.* at, p. 6, citing Compl. ¶ 58.

¹³ *Id.* at, p. 1, citing D.I. 29, A46.

¹⁴ Appellee's Answering Brief, pp 26-27.

¹⁵ Appellant's Opening Brief, p. 1 citing D.I. 14, A38-42.

¹⁶ A-46.

¹⁷ Plaintiff's Opening Brief, p. 1 citing D.I. 29, A46.

¹⁸ Motion Hearing Transcript dated Aug. 18, 2009 in *Naples v. Diocese of Trenton*, p. 4. AR4.

agreed with the Court that if the Court were to take all allegations to be true, then the Court should go ahead with full briefing.¹⁹

But even more importantly, in its Answering Brief before this Court Defendants fail to indicate that Plaintiff again requested to take jurisdictional discovery during March 3, 2010 oral arguments on Defendants' motion to dismiss. During that motion the following dialogue took place:

Court: Okay. Is there an allegation that they directed the plaintiff to go – or the defendant to go on the trip to Delaware with the plaintiff?

Mr. Neuberger [Plaintiff's Counsel]: There is no specific allegation of that in the Complaint, Your Honor. I would request – on that, **I would request the opportunity for additional discovery** [emphasis added]; the concept being that the individual defendant was the Director of the Diocese CYO Program.²⁰

Plaintiff's counsel continued by stating, "**I would submit to you that discovery** [emphasis added] would reveal that at least some employees of the various institutional defendants knew that the individual defendant was taking plaintiff on trips to Delaware and to other places, Your Honor, because – be it bowling, be it wherever, but was taking the plaintiffs on trip..."²¹

As a result, Plaintiff did not waive his right to seek jurisdictional discovery, in fact, repeatedly requested the opportunity to take it.

¹⁹ Motion Hearing Transcript dated Aug. 18, 2013, p. 5-7. AR5-7.

²⁰ Motion Hearing Transcript dated March 3, 2010 in *Naples v. Diocese of Trenton*, p. 25 AR38.

²¹ Motion Hearing Transcript dated March 3, 2010, p. 25 AR38.

Defendants quote Rule 12(b)(2), that “[p]laintiff is required to respond to a Rule 12(b)(2) to dismiss with a actual proof, not mere allegations.”²² If jurisdictional discovery had been allowed in this case, the Plaintiff would have been able to respond with actual proof that jurisdictional discovery was warranted in this case. That opportunity was denied.

As noted in Plaintiff’s opening brief, except in the rare case where the allegations are frivolous, “a court should permit limited discovery before resolving a motion to dismiss for lack of personal jurisdiction.”²³ Additionally, “[O]nly where the facts alleged in the complaint make any claim of personal jurisdiction over defendant frivolous, might the trial court, in the exercise of its discretionary control over the discovery process, preclude reasonable discovery in aid of establishing personal jurisdiction.”²⁴

The facts alleged in Plaintiff’s complaint are not frivolous. Defendants’ contention that “appellant did not present any facts, at all, either in his Complaint or by affidavit, to establish a prima facie showing that the Delaware courts permissibly exercise personal jurisdiction over the Diocesan Defendants”²⁵ is not accurate. Defendants’ cite *Hansen v. Neumueller* for the proposition that a

²² Appellees’ Answering Brief, p. 9.

²³ *Tell v. Roman Catholic Bishops of Diocese of Allentown*, 2010 WL 169119, *7 (Del. Super. Apr. 26, 2010), citing *Hart Holding Co. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 539 (Del. Ch. 1991).

²⁴ *Hart Holding Co.* 593 A.2d at 539; *See Toe No. 2 C.A. No. 09C-12-033*, Withham, J.(Del. Super. June 30, 2010) at 11-12.

²⁵ Appellees’ Answering Brief p. 30.

plaintiff must set forth “some competent evidence to demonstrate that personal jurisdiction over the defendant might exist before allowing discovery to proceed.”²⁶ In that case, the Plaintiff was working with a waste treatment dryer allegedly manufactured by the defendant.²⁷ Plaintiff was informed by his supervisor that the defendant had manufactured the dryer, but alleged no other facts as to whether jurisdiction was appropriate.²⁸ As a result, the court granted Defendants’ motion to dismiss.²⁹

Here, this matter is easily distinguishable from the *Hansen*. Plaintiff has numerous factual bases for allowing jurisdictional discovery. Plaintiff met McAlinden in 1985 when McAlinden was the Diocese CYO Director.³⁰ McAlinden’s position, more than another position he could have had, allowed him to have access to children and go on trips with them. It was in this context that he met Plaintiff and began to abuse him. It was in the context of serving as the Diocese’s CYO Director and later as the Church’s pastor that he abused Plaintiff in the state of Delaware.

Defendants state that “Naples did not allege that anyone at the Diocese or Parish was aware that he was traveling to Delaware with McAlinden, that anyone

²⁶ *Id.* at, p. 29 citing *Hansen v. Neumueller*, 163 F.R.D, 471, 475-76 (D. Del.1995).

²⁷ *Id.*

²⁸ *Id.* at 475.

²⁹ *Id.*

³⁰ Appellant’s Opening Brief p. 4. citing Compl. ¶ 24.

from the Diocese or the Parish saw Naples and McAlinden together in Delaware, or that McAlinden was performing priestly duties while in Delaware”³¹ However, Plaintiff’s complaint alleges that the Defendants knew that McAlinden was spending an exorbitant amount of time with Plaintiff and concern had been raised about the nature of the relationship between Plaintiff and McAlinden.³² In addition, the contention that McAlinden was not performing priestly duties while in Delaware is not accurate.³³

More fundamentally, the facts in this case do not simply involve a religious official who simply abused a child in the state of Delaware, but an individual who was the *Director* of the Diocese’s Youth Ministry Service in which Plaintiff was involved and later served as Plaintiff’s pastor.³⁴ It was in this context, as an individual that was in charge of the spiritual well-being of the children of the Diocese, which included Plaintiff, and for the spiritual well-being of his parishioners, which again included Plaintiff, that McAlinden abused Plaintiff.

Defendants’ effort to distinguish the District Court’s decision in *Thompson v. Roman Catholic Archbishop of Washington* is unavailing.³⁵ Contrary to the

³¹ Appellees Answering Brief, p. 31.

³² Appellant’s Opening Brief pp 4-5, citing Compl. ¶ 73-75, 76.

³³ Appellees’ Answering Brief, p. 31. See Argument Section II of Appellant’s Reply Brief herein in which Plaintiff discusses the Agency relationship between McAlinden and the Diocese and Church.

³⁴ Appellant’s Opening Brief, p. 4-5, Compl. ¶ 24, 26, 29, 30, 31, 47, 58.

³⁵ Appellees’ Answering Brief, p. 30-31, citing *Thompson v. Roman Catholic Archbishop of Washington*, 735 F. Supp. 2d 121 (D. Del. 210).

Defendants' claims, Third Circuit law does not require a plaintiff to submit a preliminary affidavit as part of an attempt to obtain jurisdictional discovery. Instead, the analysis looks at whether the plaintiff has presented sufficient factual allegations in the complaint that suggest with reasonable particularity the possible existence of the requisite contact between the party and the state such that the jurisdictional claims are not frivolous.³⁶ As detailed in Appellant's Brief, the factual allegations of Plaintiff's Complaint did so. Accordingly, the trial court abused its discretion in denying jurisdictional discovery.

³⁶ Courts regularly allow for jurisdictional discovery based on the allegations in the Plaintiff's complaint alone. *See Renner v. Lanard Toys Ltd*, 33 F.3d at 283-84; *Toys "R" US, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456-57 (3d Cir. 2003); *Marnavi Spa*, 2010 WL 1499583, * 3-7.

II. The Superior Court Has Personal Jurisdiction Over The Defendants Through Delaware’s Long Arm Statute, Nor is Due Process Violated. Defendant Was An Agent of Diocese And His Actions Were Performed While An Agent. Plaintiff’s Conspiracy Argument Was Preserved Below.

As both the Opening Brief and Appellees’ Answering Brief note, Delaware applies a two-step analysis regarding whether or not Delaware Courts have personal jurisdiction over a non-resident party, such as the Diocese and Church.³⁷ Defendants argue that personal jurisdiction is not warranted over the Diocese and Church for the following reasons: that there was no agency relationship between McAlinden and the Defendants,³⁸ that conspiracy cannot be used as a basis for jurisdiction,³⁹ and due process cannot be satisfied by exercising personal jurisdiction over the Defendants.⁴⁰

³⁷ See 10 Del. C. § 3104 (c) (3); *Hercules Inc. v. Leu Trust & Banking (Bahamas) Ltd.*, 611 A.2d 476, 480-81 (Del. 1992). Defendants incorrectly state that Plaintiff has waived the argument as to whether the Diocese and Church are subject to General Jurisdiction in Delaware. Plaintiff concedes that it is doubtful that general jurisdiction exists over the Diocese and Church, but had the Court allowed jurisdictional discovery in this case, this issue would have already been conclusively resolved. As a result, it is still not entirely clear whether the Diocese and Church are or are not subject to general jurisdiction.

³⁸ Appellees’ Answering Brief, p. 11-12.

³⁹ *Id.* at, p. 16-22.

⁴⁰ *Id.* at, p. 22-25. Appellees’ Answering Brief states, “There is no allegation in the Complaint, nor is there any evidence in the “factual record” developed after the Diocesan Defendants were dismissed from the case, that either the Diocese or the Parish took any action at all in Delaware...” *Id.* at 24. The object, however, of the discovery that took place after these institutional defendants were dismissed was to focus on the individual defendant McAlinden’s liability and actions and not on the conduct of the dismissed defendants.

The Defendants cannot and have not argued that McAlinden was not employed by the Diocese and Church. Nor can they dispute that McAlinden first met the Plaintiff while he was serving as the Diocese's CYO Director.⁴¹ McAlinden's job with the Diocese was *designed* to bring him into close contact with children such as the Plaintiff and spend time with them. It was in this context that McAlinden met Plaintiff and began to repeatedly sexually abuse him, including in the state of Delaware.⁴² Later, when McAlinden was reassigned to the Church he continued to use his position as the pastor of the Church to abuse Plaintiff who was a parishioner at his church.⁴³ It was in the context as Plaintiff's pastor that McAlinden took him again to Delaware where again he abused Plaintiff.⁴⁴

Appellees' Answering Brief, like Plaintiff's Opening Brief, quotes from the Restatement (Second) of Agency regarding whether an employer can be held accountable for the tortious actions of the its employees namely, "Under the Restatement of Agency (2d) § 228, conduct is within the scope of employment if (1) it is the kind he is employed to perform; (2) it occurs within the authorized

⁴¹ Appellant's Opening Brief, p. 4, citing Compl. ¶ 24.

⁴² *Id.* at p. 4, citing Compl. ¶ 24, 27, 56.

⁴³ *Id.* at p. 6, citing Compl. ¶ 30, 31.

⁴⁴ *Id.* at p. 6, citing Compl. ¶ 58.

time and space limits; (3) it is activated; in part at least, by a purpose to serve the master; and (4) if force is used, the use of force is not unexpected.”⁴⁵

The Defendants claim that Plaintiff cannot prove that McAlinden “was acting within the scope of that agency when he committed the assaults.”⁴⁶

However, Plaintiff has alleged sufficient evidence that the abuse was within in the context of McAlinden’s employment by the Diocese and Church. The Defendants attempt to rely on *Simms v. Christiana School District* and distinguish the Superior Court’s ruling in *Doe v. State*.⁴⁷ *Simms*, of course, was decided before the Children’s Victim’s Act of 2007, 10 Del. C. § 8145 (“the CVA”) was passed. The CVA was designed to hold individuals such as McAlinden and institutions such as the Diocese and Church accountable.

But what distinguishes the present facts most from those of *Simms* is that the Diocese and Church in this case had notice of McAlinden’s inappropriate behavior with Plaintiff, while the defendant school district in *Simms* had no prior notice whatsoever until the very last incident that sexual abuse had already occurred.⁴⁸ Here, there were reports concerning the appropriateness of McAlinden’s relationship with Plaintiff and even an eye witness that saw the abuse occur.⁴⁹ This

⁴⁵ *Doe v. State*, 2013 WL 5006496, * 1, (Del.2013) (citations and internal punctuation omitted) emphasis added).

⁴⁶ Appellees’ Answering Brief, p. 12.

⁴⁷ *Id.* at p. 13.

⁴⁸ *Simms v. Christiana School District*, 2004 WL 344015, at *3, *9.

⁴⁹ Appellant’s Opening Brief, pp 4-6, ¶¶ 24, 25 29, 47, 55, 56, 73-75.

is materially distinguishable from *Simms* where as soon the defendant had an inkling of wrongdoing remedial action was promptly taken, as it should have been.⁵⁰ No such prompt remedial action was ever taken herein.

Defendants attempt to distinguish this case from *Doe* by stating, that McAlinden was “not on duty” at the time he was sexually abusing Plaintiff, but fail to cite any facts about the job duties of priests. However, these are the same defense counsel that defended the Catholic Diocese of Wilmington, which involved CVA litigation.⁵¹ It was in that litigation that Monsignor Thomas Cini, the Diocese of Wilmington’s Vicar General for Administration (and their client) said that a priest such as McAlinden is *always* on duty. Monsignor Cini said a priest’s job is “not a 9:00 to 5:00 job,” instead a priest is on duty 24 hours a day (Cini March 13, 2009 at 116, AR71; DeLuca 2008 at 243, AR66). Another Diocesan priest who admitted molesting numerous children and was also sued under the CVA, Francis DeLuca, stated that a priest’s duties include interacting with parishioners, altar boys and school children outside the confines of the church and classroom. “It’s the job of diocesan priests in particular to be with the lay people in parishes and in their local community, to be right where the people are.” (DeLuca 2008 at 242-43, AR66). Priests are expected to “visit people in their homes,” attend weddings, school events, football games and the like. (DeLuca

⁵⁰ *Simms*, 2004 WL 344015, at *3, *9.

⁵¹ That litigation was resolved in U.S. Bankruptcy Court.

2008 at 246-47, AR67). DeLuca admitted that taking altar boys and parish children on trips to the beach, to see a show in New York City or to buy vestments in Philadelphia “were part of ... being a priest in that parish.” (DeLuca 2008 at 249-50, AR68). Such official trips “we[re] permitted within the parish.” (DeLuca 2008 at 339, AR69).

What Francis DeLuca did, McAlinden did: taking children on trips across state lines. Both men were, in the words of Monsignor Cini, still acting as priests when they took children on trips; both men were still on duty as priests when they repeatedly molested children in Delaware; and both men were employed by dioceses and churches that knew or should have known that there were molesting members of their dioceses and churches. As a result, it is clear that McAlinden was clearly acting in the ordinary course of the Diocese and Church’s business.

However, even if this Court concludes that McAlinden’s abuse of Plaintiff was not part of his job duties originally, the Diocese and Church ratified McAlinden’s actions when they failed to repudiate them.⁵² Defendants’ state that ratification “is not Delaware law” but fail to explain how it is not. Nor do Defendants attempt to explain that this Court’s ruling in *Hannigan v. Italo* (Del.

⁵² See Appellant’s Opening Brief, p. 24.

1945) is not sufficient.⁵³ As Plaintiff pointed out in his Opening Brief in *Hannigan* this Court said,

The effect of a subsequent ratification is that it relates back and gives validity to the unauthorized act or contract, as of the date when it made and affirms it in all respects as though it had originally been authorized. The act is legalized from its inception. Accordingly, when the ratification occurs there is no further necessity of showing previous authority. The principle is tersely explained in the proposition that a ratification is equivalent to an original authorization.⁵⁴

Here, facts alleged in Plaintiff's complaint demonstrate that the Diocese and Church ratified the actions of McAlinden.⁵⁵ As a result, it is clear that the Defendants ratified the actions of McAlinden by not stopping him from abusing children when they had received reports that he was.

Defendants' claim that Plaintiff's allegation of conspiracy was not preserved below is also not correct. On March 3, 2010, Defendants' motion to dismiss was heard before the Superior Court.⁵⁶ At that hearing Plaintiff's attorney stated that there was jurisdiction in this case over the Diocese and Church because of conspiracy stating,

⁵³ Appellees' Answering Brief, p. 16.

⁵⁴ *Hannigan v. Italo Petroleum Corp. of Am.*, 47 A.2d 169, 173 (Del. 1945) (internal citations). See also Plaintiff's Opening Brief, p. 25 citing *Dannely v. Murrery*, 1980 WL 268061, *4 (Del. Ch. July 3, 1980), (citations omitted); *Nevins v. Bryan*, 885 A.2d 233, 254 (Del. Ch. 2005) (internal punctuation and citations omitted); See also Restatement (Second) of Agency § 94, cmt. A (1958) ("Silence under such circumstances that, according to ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred.")

⁵⁵ See Appellant's Opening Brief pp. 4-6, citing Compl. , ¶¶ 24, 25 29, 47, 55, 56, 73-75.

⁵⁶ Transcript of March 3, 2010 motion. AR14-64.

Your honor, there's also a separate jurisdictional theory which Judge Robinson did not address in her Elliott opinion. It is the well-known theory. The Delaware Supreme Court has termed it the **Conspiracy Theory of Jurisdiction** [emphasis added]. Then, Vice Chancellor, now Justice Jacobs, has explained Conspiracy Theory of Jurisdiction, that it's framework, where a defendant's conduct had either occurred or had a substantial effect on Delaware, is attributed to defendant who would not otherwise be amenable to jurisdiction in Delaware... The basics, your Honor, is that there has to be some kind of a conspiracy to defraud, a conspiracy to hide some kind of information, and Your Honor, just briefly. We have a conspiracy count in the Complaint. We have a fraud count in the Complaint, and we have specific allegations under each. Whether the specific – the extent of that is necessary... Was there a conspiracy? What was it to do, and did it cause some kind of effect on the forum state? And I think you get into the same issues I just talked about, Your Honor. They know that -- they know that that -- they know their priest was sexually abusing children. They know that from numerous reports. So, they have both actual knowledge and various forms of constructive knowledge as well. **I would submit to you that discovery would reveal** [emphasis added] that at least some employees of **the various institutional defendants** [emphasis added] knew that the individual defendant was taking plaintiff on trips to Delaware and to other places, Your Honor, because – be it bowling, be it whatever, but was taking the plaintiff on trips. He takes him on the trip, and he sexually abuses him there. That has an effect on Delaware. I would submit that's a prima – that's at least a prima facie showing, Your Honor.⁵⁷

Thus, it is clear that Plaintiff's allegations of conspiracy were raised below. The Court should have at least permitted discovery on the issue, as the Court did in *Toe No.#2 v. Blessed Hope Baptist Church, Inc., et al.*, (Del. Super. June 30, 2010).⁵⁸

⁵⁷ Transcript of March 3, 2010 motion, 26-29. AR39-42.

⁵⁸ See *Toe No. 2 v. Blessed Hope Baptist Church, Inc. Baptist Church, Inc. of Harford County*, 2012 WL 1413552, * 4 (Del. Super. Jan. 31, 2012). The Superior Court eventually determined, after discovery was taken, that the evidence did not support exercising jurisdiction based on conspiracy. *Toe No.2 v. Blessed Hope Baptist Church, Inc. of Harford Cnty.*, 2012 WL 1413552, * 4 (Del. Super. Jan. 31, 2012). *Dassen* was not identical to this case. In *Dassen*, the Court allowed some limited discovery, refused additional discovery that plaintiff requested, because plaintiff in that case, unlike plaintiff in this case “made no allegation that the Diocese

The Defendants attempt to distinguish the language of *Instituto Bancario Italiano Spa v. Hunter Eng'g Co., Inc.* arguing that case is distinguishable, because there one of the parties had filed an amendment to a Delaware corporation Certificate of Incorporation to increase the number of authorized shares, which directly benefited the non-resident defendant's interests in the corporation.⁵⁹ While the facts of *Instituto Bancario* are different from the matter here, the holding of that case allows for a conspiracy allegation if a party meets such a standard.⁶⁰ Such a showing could be as in *Instituto* where the defendant filed an amendment to a certificate of incorporation; or as in this case –allowing a Diocese's Director of Youth Services (McAlinden) to take a child on trips out of state, despite notice of concerns about such trips, or a Church's pastor to take a child on trips out of state despite knowledge that the pastor had abused this child.⁶¹

knew that Brown was taking Dassen, or any other youngster, on any trips, much less to the State of Delaware.” *Dassen v. Boland*, 2011 WL 1225579, *3 (Del. Super. Mar. 23, 2011). The Court determined that conspiracy personal jurisdiction over the Diocese of Savannah was not appropriate because the evidence produced reflected disagreement, not agreement, over how to handle the perpetrator and the Diocese had no reason to know of any effect in Delaware of the alleged conspiracy. *Id.* at *7. Again, the allegations of this case – and evidence adduced so far – support the opposite conclusions here.

⁵⁹ Appellees' Answering Brief p. 18, citing *Instituto Bancario Italiano Spa v. Hunter Eng'g Co. Inc.*, 444 A.2d 210 (Del. 1982).

⁶⁰ Appellant's Opening Brief, p. 29, citing *Instituto Bancario Italiano Spa*, 444 A.2d 210, 225 (Del. 1982).

⁶¹ Appellant's Opening Brief, pp. 4-7, citing Plaintiff's Compl ¶¶ 24, 25 29, 47, 55 73-75.

Defendants rely on *Toe # 2 v. Blessed Hope Blessed Hope Baptist Church* and *Dassen v. Boland* in their argument against finding a conspiracy.⁶² Both cases are distinguishable from the matter at hand. In *Toe #2*, Plaintiff could not show that the Defendants were part of a conspiracy because of lack of evidence⁶³ Similarly, in *Dassen* the court found that there was no conspiracy by the Diocese of Savannah in part because the individual defendant was not yet ordained and additionally that the Diocese of Savannah had concerns about “Brown’s fitness for the priesthood” and there was no evidence that it had authorized or failed to stop his trip with children to Delaware.⁶⁴ Here, Plaintiff has alleged that both Defendants were aware of concerns and allegations of molestation against its employee, McAlinden, yet did not prevent their employee from taking Plaintiff to Delaware where he molested him.⁶⁵

As Plaintiff demonstrated in his Opening Brief, the lower court erred when it found that due process would be violated if personal jurisdiction was granted over the Diocese and Church. Again, both Defendants were on notice that McAlinden was spending a great deal of time with Plaintiff, including taking him on overnight trips, and concerns had been raised about McAlinden’s behavior around Plaintiff

⁶² Appellees’ Answering Brief, pp. 19-20 citing *Dassen v. Boland*, 2011 WL 1225579 (Del. Super. March 23, 2011); *Toe No. 2 v. Blessed Hope Baptist Church, Inc. Baptist Church, Inc. of Harford County*, 2012 WL 1413552, * 4 (Del. Super. Jan. 31, 2012).

⁶³ *Toe # 2 v. Blessed Hope Baptist Church, Inc. of Harford County*, *4, 2012 WL 1413552 (Del. Super. Jan. 31, 2012).

⁶⁴ *Dassen v. Boland*, * 6, 2011 WL 1225579 (Del. Super. March 23, 2011).

⁶⁵ Appellant’s Opening Brief, pp 4-5, ¶¶ 24, 25 29, 47, 55 73-75.

and *actual* abuse by McAlinden of Plaintiff was witnessed by Church staff. As a result, the Diocese and Church had fair warning that they could be subject to personal jurisdiction in Delaware, a neighboring state, and could reasonably anticipate being held accountable by the courts of this State for their failure to protect a child from being sexually abused by their employee.⁶⁶ As a result, due process is not violated.

CONCLUSION

For the aforementioned reasons in Plaintiff's Opening and Reply briefs, Plaintiff has made the necessary showing to be allowed to conduct jurisdictional discovery. Additionally, the State of Delaware has personal jurisdiction over the Diocese and Church. Plaintiff should be allowed the opportunity to hold the Diocese and Church accountable for their failure to prevent the repeated molestation of Plaintiff by their employee. As a result, Plaintiff asks that this Court reverse the Superior Court's ruling allowing this case to proceed with discovery.

Respectfully submitted,

Jacobs & Crumplar, P.A.

⁶⁶ Plaintiff believes jurisdictional discovery will demonstrate that the Defendants knew that McAlinden was taking Plaintiff on trips to Delaware.

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