To be Argued by:
RAYMOND W. BELAIR
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

ANTHONY GORGIA,

Plaintiff-Appellant,

Docket No.: 2022-00751

– against –

TIMOTHY DOLAN, THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, ADAM PARK, PETER HARMAN, THE PONTIFICAL NORTH AMERICAN COLLEGE and JOHN GEARY MCDONALD,

Defendants-Respondents,

– and –

"JOHN DOE-I" through "JOHN DOE-XXV,"

Defendants.

BRIEF FOR PLAINTIFF-APPELLANT

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ANTHONY J. GORGIA,

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QUESTIONS PRESENTED

Did the court below err by failing to find personal jurisdiction over the defendants Pontifical North American College (NAC) and Peter Harman (Harman) under CPLR §302(a) 1, CPLR §302 (a) 2, CPLR §302 (a) 3(i) or CPLR §302 (a) 3 (ii)?

This question should be answered in the affirmative, since the elements of CPLR §302 (a), New York's long-arm statute, have been satisfied.

Did the court below err in finding that the NAC and McDonald were not properly served with the Summons with Notice?

This question should be answered in the affirmative. Defendants NAC and McDonald did not even move to dismiss for failure to properly serve them; only defendants Adam Park (Park) and Harman did so. The NAC was properly and personally served at its principal and only place of business in the United States in Washington, D.C.

Did the court below err by dismissing the action against Timothy Dolan (Dolan) and the Archdiocese of New York (ADNY) where the Complaint was served only eight days late, where a reasonable excuse for the short delay was offered by plaintiff, where a meritorious claim was well pleaded and where defendants asserted no prejudice?

This question should be answered in the affirmative.

Did the court below err by failing to apply the correct legal standard and failing to deny defendants' motions to dismiss for failure to state a cause of action by not treating all the allegations in the complaint and plaintiff's supporting affidavits as true, and where the

plaintiff was entitled to every possible favorable inference therefrom?

This question should be answered in the affirmative.

Did the court below err In failing to deny the motion to dismiss the First through Fifth, Seventh, Eighth and Tenth Causes of Action pursuant to CPLR §3211 (a) 2, 7, 8, which tests only the sufficiency of the allegations in the Complaint and the affidavits of plaintiff to remedy any gaps in the complaint, instead relying upon on improper affirmations submitted by defendants' attorneys?

This question should be answered in the affirmative, since the court below did not accept the allegations in the complaint and plaintiff's affidavits as true.

PRELIMINARY STATEMENT

In this action plaintiff-appellant Anthony J. Gorgia ("plaintiff") now seeks to recover damages against Dolan, the ADNY, the NAC and Harman as a result of his forced resignation as a seminarian of the ADNY and the NAC. The NAC, through its employees, concocted a wholly false narrative of fabricated deficiencies which narrative was documentably untrue and baseless. Plaintiff seeks recovery on a number of causes of action in tort and contract. The causes of action in the Complaint which plaintiff is now pursuing are based upon the malign actions of the defendants the NAC and its employees Park, Harman and McDonald, which actions Dolan and ADNY compounded by the breach of their tort and contractual duties including: invidious sexual discrimination against plaintiff, a heterosexually-oriented seminarian by defendants in violation New York State Human Rights Law (NYSHRL) (codified in the New York Executive Law (NYEL); defendants' breach of their fiduciary duty to plaintiff, fraud and deceit; malicious interference with prospective economic advantage; wrongful discharge in violation of organizational policy, Plaintiff's proposed Amended Complaint also sought to assert additional causes of action

breach of implied contract and breach of the covenant of good faith and fair dealing.

Plaintiff seeks reversal of the January 13, 2022 order of the Supreme Court, Richmond County, Lizette Colon, J. (A-5)[1], which granted the respective motions of: defendants NAC, Park, Harman and McDonald to dismiss for lack of personal jurisdiction pursuant to CPLR §3211 (a) 8, lack of subject matter jurisdiction pursuant to CPLR § 3211(a)[2] and for failure to state a cause of action pursuant to CPLR §3211 (a) 7; and Dolan and the ADNY to dismiss this action for late service of the Complaint (eight days) pursuant to CPLR §3012(b) ,for lack of subject matter jurisdiction pursuant to CPLR §3211 (a) 2 and for failure to state a cause of action pursuant to CPLR §3211 (a) 7. Plaintiff also seeks reversal of the denial his cross-motion pursuant to CPLR §2215 to allow the service of the complaint served eight days late *nunc pro tunc*; directing defendants Dolan and ADNY to accept such service, and to permit plaintiff to amend his complaint to state two additional causes of action.

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[1] All such references are to pages in the Appendix.
[2] Dolan and the ADNY alone sought this relief. The remaining defendants accepted service of the Complaint.

STATEMENT OF THE NATURE OF CASE AND MATERIAL FACTS[3]

1. Plaintiff's Education and Employment by the ADNY

From his youth on Staten Island, plaintiff aspired to become a Catholic priest. Plaintiff graduated *summa cum laude* and first in his class from both Star of the Sea High School and St. John's University. Plaintiff was then accepted as a seminarian of the ADNY in 2015 by defendant Dolan. Then an employee of the ADNY, plaintiff entered the Cathedral Seminary House of Formation in Douglaston, Queens, New York (Douglaston), a minor seminary of the ADNY (A-930). From 2015 through 2017 plaintiff regularly received compensation from the ADNY of $150.00 per month while he was at Douglaston. Later, from 2017 through 2018 while he was at the NAC, the ADNY paid him a stipend of $1,200.00 every October and February. The ADNY also reimbursed plaintiff for work-related expenses such as the cost of moving to his new location at the NAC; as well as tuition, room, board and other expenses for his training for the ADNY. When he was nominated and accepted to the NAC, he was also instructed by the ANDY to discontinue his

[3] The following Appendix references are, unless otherwise stated, from plaintiff's complaint, his affidavits or the exhibits attached to them.

private health insurance and to join the ADNY employee group health insurance plan; which plan clearly described him as an employee of the ADNY and a member of the plan. Though not required to do so, plaintiff was encouraged by ADNY officials, because of his outstanding performance, to pursue a second year at Douglaston to earn an M.A. degree in Catholic Philosophical Studies. This he did, again maintaining *summa cum laude* grades throughout his studies; and obtaining the M.A. degree and graduating summa cum laude in 2017 (A-44, 930-931, 969, 974).

2. The NAC Recruits and Accepts Plaintiff

While still at Douglaston, plaintiff was in 2016 interviewed and recruited for the NAC by Fr. Daniel Hanley, Dean of Studies at the NAC and a faculty member there. He came on a recruiting mission to Douglaston, to recruit plaintiff and other ADNY seminarians to the NAC (A-453-454).

The NAC is an elite Roman Catholic educational institution, incorporated in Maryland, with its principal place of business in Washington, D.C. The NAC has been continually recruiting and training outstanding New York

seminarians from the ADNY, as well as from the other dioceses in the New York Province, and in the United States since 1859. The NAC is located in Rome, Italy and is governed by the Vatican dicastery known as the Congregation for Clergy. The oversight of the NAC is delegated to the United States Conference of Catholic Bishops (USCCB) which in turn governs through a corporation known as the American College of the Roman Catholic Church of the United States (A-42-43).

In 2021 (a COVID year), the NAC had 163 seminarians enrolled; nine from New York. Each year the NAC sends invoices to the dioceses for its seminarians at the rate of approximately $36,000 per year (A-211). The NAC therefore collected no less than $324,000 in 2021 alone in tuitions and board from New York dioceses. The entire body of 163 seminarians account for business income from tuitions and board of $5,868,000 from the United States in 2021. The NAC, founded in 1859, has been accepting seminarians from the State of New York and elsewhere for well over a century (A-42-43)[4]. However, even if the current census of New York

[4] There are eight dioceses in the Ecclesiastical Province of New York: Albany, Brooklyn, Buffalo, Ogdensburg, Rochester, Rockville Center, Syracuse and the Archdiocese of New York.

seminarians were accepted for the previous century before plaintiff was accepted (1917 through 2017) that would entail 900 seminarians from New York on an adjusted rate of $32,400,000 from the State of New York. Of course, the NAC was in operation for 58 years before 1917. If the 2021 census of all 163 seminarians is totaled from 1917 through 2017, the income for that period would alone total $586,800,000, exclusive of other income (A-674-676).

Although the record contains only a part of the NAC's business and financial activities in New York, the United States and internationally, it would appear to be substantial by any common sense standard. Thus, the NAC regularly does or solicits business within the State of New York, and has done so since the 19th century. *Id*. The NAC is vicariously liable for the acts of Park, Harman and McDonald (A-42).

As part of the agreement between the NAC and Dolan/ADNY and plaintiff for education and formation, the NAC was paid in excess of $35,000 by the ADNY for plaintiff's tuition, room, board and other expenses, as it was for the other seminarians from the State of New York and elsewhere (A-455, 457).

Although he had expected to pursue his continuing formation studies at Saint Joseph's Seminary at Dunwoodie, New York (Dunwoodie), the ADNY seminary, plaintiff was eventually told by Dolan that he had been recommended to Dolan in the highest adulatory terms as a stellar major seminary candidate by Douglaston President Fr. George Sears. Sears thus enthusiastically recommended plaintiff for a more prestigious formation program than plaintiff had himself sought at Dunwoodie. Dolan ultimately nominated plaintiff for the NAC, and he was admitted to begin studies there in the 2017-2018 academic year at the NAC (A-43).

While plaintiff was at the NAC, defendants Dolan and the ADNY, as well as the NAC and its agents, were in a fiduciary relationship with plaintiff in which they were in positions of *de facto* control and complete dominance over him. That by reason of plaintiff's position as a seminarian for the ADNY and of the NAC, all defendants had complete control over plaintiff's advancement, or not, within the ADNY. As such, plaintiff was uniquely vulnerable and incapable of self-protection regarding his education and formation ((A-64-86).

Plaintiff, while at the NAC, was still subject to Dolan's supervision, authority and control. Before departing from New York for Rome to attend the NAC, Dolan told plaintiff that he was plaintiff's "Diocesan Supervisor" (DS). Dolan's role as plaintiff's DS included what Dolan told him at their meeting of January 11, 2017: that while he was an employee of the ADNY at the NAC, plaintiff was to reach out to Dolan with his concerns, if he had any; that he could count on Dolan's support should he need it while at the NAC. Further the ADNY assured plaintiff that he could rely upon Dolan to keep plaintiff's personal best interests as his foremost and primary concern. This echoed what plaintiff was told by ADNY's seminary officials: that while plaintiff was at the NAC as a seminarian, he could trust Dolan and the ADNY, who had only plaintiff's best interests at heart (A-455).

As part of plaintiff's nomination to the NAC, Dolan also wrote to plaintiff on March 24, 2017 stating that, while plaintiff was at the NAC, Dolan and the ADNY would take fiscal, medical and legal responsibility for him. While at the NAC, he was still an employee of the ADNY subject to Dolan's supervision, authority and dominance.

Plaintiff was told that the NAC and its faculty were Dolan's agents for plaintiff's education and formation. Dolan allowed the NAC defendants to assume a position of dominance over plaintiff, just as Dolan and the ADNY had such dominance over plaintiff. (A-98, 100, 101, 103,

That this breach of fiduciary duty is a tort which arises from the violation of a relationship of trust and confidence which plaintiff placed in the defendants who assumed fiduciary control, care and responsibility for plaintiff. *Id.*

That all defendants breached their duties when they acted in a manner which violated the best interests of plaintiff to whom they owed a FIDUCIARY duty of loyalty. This cause of action is not susceptible to any exemption or exception since the action involves a law of general application and does not involve Church doctrine or undue entanglement in ecclesiastical affairs. As a result, plaintiff has suffered special economic damages as well as damages for mental anguish and humiliation, all of which are of a continuing nature. Dolan breached his voluntary promises and voluntarily assumed fiduciary duties to plaintiff to protect plaintiff when Dolan later abandoned

him. Dolan failed to meet with plaintiff after five requests to do so and failed to even investigate the false claims made against him by the NAC through Harman (A-82-86, 457).

3. Plaintiff's First Year at the NAC

Upon arrival at the NAC plaintiff and his fellow first-year seminarians were instructed by the NAC, Park, Harman, McDonald and other NAC faculty members, that all seminarians should trust, confide in, and rely upon them because they would always act in a seminarian's' best interests and welfare. These assurances were repeated periodically and continuously at conferences and general meetings of the seminarians, by these NAC faculty advisors (A-457).

A number of NAC documents published and provided to plaintiff and all seminarians confirm the latter's fiduciary duties to the seminarians. Three such documents include: The *NAC Student Handbook* (*Handbook*) of August 2017, the *NAC Formation Program* (*Program*) of August 2018, and the *Rule of Life* (Rule) of August 2017 (A-458, 541, 608, 639) According to pages 5 and 6 of the *Program*, a

seminarian is directed to "establish an open, honest and trusting relationship with [his] formation advisor" (McDonald), as well as with the "formation faculty and administration," which includes Harman and Park (A-458, 612). Per the *Program*, among Harman's responsibilities were: having a seminarian's personal welfare as his "central responsibility" (A-458-459, 626). The *Program* also confirms McDonald's role, to support plaintiff (A-630).

The *Handbook* obliged the NAC Defendants to avoid conflicts of interest and other improprieties such as "violating a confidence of another for personal gain." *Handbook*, page 46, 3, "Prohibited Activities". According to the *Handbook*, the NAC Defendants were expected to "*protect the interests of those with lesser power*" (*Handbook*, page 41, "Role Integrity," 1 a) (emphasis added) and establish an environment "*free from intimidation and harassment*" (*Handbook*, page 45, "Just Treatment," 1 d.) (emphasis added). The *Handbook* also made clear that plaintiff was a "subordinate" (*Handbook*, page 45, "Role Integrity, 1 c) (emphasis added) to the NAC defendants who had complete control over plaintiff's advancement. Per the *Handbook*, seminarians were assured the protection by all NAC

employees that sexual improprieties on the part of superiors would not affect "any personnel decisions, such as termination, advancement, or dismissal." *Handbook*, page 46, "Just Treatment," 1 (d). Each seminarian was directed to trust his "relationship with his bishop as a means of addressing breaches of trust by NAC superiors in the objective pursuit of justice" (for example, Complaint Exhibit "I", page 4, "Freedom for Reporting"). (A-115, 459-460, 584-585, 588-590).

As the *Handbook* and the *Program* plainly stated, and the *Rule* also sets forth, the voluntarily assumed obligations of the NAC's faculty and administration was to ensure the seminarian will "find his way" in the NAC community. *Rule*, 42, p. 11 (A-460, 651)

Park was at all relevant times, Vice Rector, generally in charge of student concerns and overall Director of Human Formation. Seminarians were instructed that Park could be counted upon to resolve "any matters pertaining to the Formation Program in general, or regarding an individual seminarian or formation advisor." Seminarians were also instructed that "at any time," they could count on "the

assistance or counsel of the Vice Rector." *Program* p. 18, 2 b), 22, 4 a)-c) 5 (A-460, 626. 630).

Plaintiff accepted all the assurances given to him by Dolan, the ADNY, the NAC, Park, Harman, McDonald and others that he should place his confidence and trust in the defendants and they place his interests before any of their own interests (A-457, 458, 461, 541, 608, 639), All the defendants would later betray these assurances and duties.

From the beginning of his first year at the NAC, McDonald was assigned as plaintiff's formation advisor who, per the *Program*, would "represent the seminarian to the faculty and the faculty to the seminarian." *Program,* p. 22, "Formation Advisor," 4 a) (A-630). McDonald's duties included acting as his advocate before the faculty. McDonald never reported any problems because there were none; stating that plaintiff was a "star seminarian" who mastered "the formational stage required." (A-46).

In the end, McDonald abandoned plaintiff, refused to speak with plaintiff and betrayed him by refusing to state the truth as he knew it when the lies invented by Harman were put forth (A-63-65, 462).

Plaintiff's first year of 2017-2018 went extremely well, both in his studies and his human formation, again continually maintaining *summa cum laude* grades. He was appointed by the NAC faculty as the NAC's representative to the Pontifical University (PGU)[5]. At the end of his first year at the NAC, plaintiff attended the customary faculty evaluation in March of 2018, where the entire faculty expressed high praise for his performance and unanimously voted to promote to the second year. Plaintiff signed this evaluation and a copy was sent to Dolan in New York (A-47).

Plaintiff subsequently received a letter from Dolan dated June 11, 2018, in response to plaintiff's evaluation which stated that Dolan was "delighted" to learn of his superlative evaluation in attaining all of the goals for the first year (A-104). The NAC psychologist evaluated plaintiff and all seminarians in May of 2018, and stated that plaintiff possessed the qualities to become an outstanding priest (A-47-48).

[5] The NAC seminarians take many of their courses at a Pontifical university. The PGU is one such university, and plaintiff studied there.

4. Plaintiff's Second Year at the NAC

While plaintiff was at the NAC shortly before the beginning of his second year, he witnessed Park approach a seminarian from behind in the NAC refectory and initiate uninvited physical contact with the seminarian by what appeared to be back rubbing massaging action. What plaintiff saw was inappropriate. From both prior seminary formation and in his formation at the NAC, plaintiff knew such acts can actually be "grooming activity" used by sexual predators[6]. Plaintiff was aware of his own, virtually involuntary, facial expression which was one of surprise upon witnessing this behavior. As Park looked directly at plaintiff's expression, Park showed his awareness of plaintiff's facial disapproval. When he saw Park looking directly at him, plaintiff had an interior "gut-feeling" that the activity was not right and wondered "What would happen to [him] since [he] had witnessed what Park did?" Plaintiff's concern was further legitimized by

[6] In his seminary training at Douglaston and the NAC, plaintiff learned that grooming is a manipulative process used by a sexual predator for the purpose of creating a sense of trust with a vulnerable, targeted person prior to the act of actual victimization and seduction. Such predators initially present themselves as persons one may trust, so one's guard is lowered (A-48).

multiple provisions of the NAC's *Code of Ethical Conduct* and other policies concerning harassment and inappropriate behavior of superiors toward seminarians. Another former seminarian revealed that he was "harassed" by Park with repeated uninvited physical contact described as causing "extreme discomfort" and "dread." When the seminarian told Park he was offended by these physical advances, Park repeatedly taunted the seminarian until the seminarian left the NAC, within six months of his disturbing encounters with Park. (A-48-50, 107, 109, 112).

Plaintiff later learned, in 2020, that Park was known as an open homosexual while Vice Rector at the NAC (A-74, 466). Plaintiff also later learned that Harman was a furtive homosexual, having participated in an orgy with his bishop in the Diocese of Springfield in Illinois, with seminarians present (A-75-76). Others came forward with additional corroborating accounts of homosexual advances made by Park throughout the years (A-531, 956-967, 982) Some who reported Park's behaviors to present and/or past NAC officials, or were otherwise witnesses to Park's inappropriate conduct, were coerced into leaving the NAC or found their reports uninvestigated (A-75).

5. Harman's False Accusations Begin

Just after the events involving Park and at the beginning of plaintiff's second year at the NAC, plaintiff received an email from McDonald on October 15, 2018, praising his outstanding performance, and stating that plaintiff had "mastered the formational stage required." Two days later, on October 17, 2018, plaintiff received an email from Harman requesting a meeting. McDonald said he did not (A-58).

The next day, October 18, 2018, Harman falsely alleged that McDonald made two criticisms of him: 1) that plaintiff was reluctant to "try new things," and 2) that he acted like "an old man." Both statements were untrue, and no at the NAC one had ever criticized him. Harman then invented false examples of "new things" he alleged refused to try refused to try. Harman incorrectly said plaintiff should not have worked in a parish over the summer, plaintiff told him that he had not, and that worked in Lourdes, France, as already documented and approved by both the NAC and Dolan. Harman then said plaintiff should have chosen a different work assignment for his second year at the NAC. When plaintiff told Harman that he had requested three different

work assignments, but that his advisor reassigned him to the one he completed, Harman was speechless and obviously frustrated. Plaintiff did not see why Harman presented false claims which NAC documentation showed them to be false. When Harman alleged that plaintiff acted like an "old man," Harman pointedly ridiculed plaintiff for his posture, which resulted from congenital scoliosis[7]. When reminded of this, Harman again ridiculed plaintiff by saying that plaintiff would "have plenty of time to act like an old man" in his elder years (A-58-59).

Unable to fault plaintiff, Harman directed him to meet with the NAC psychologist.[8] The psychologist, on November 2, 2018, said she could not understand why Harman referred him to her. She advised plaintiff that she found no problem with him. Msgr. McNamara, a member of the NAC faculty since

[7] Congenital, pathological and lateral curvature of the spine.

[8] A recognized tactic of clergy who enjoy power and control over heterosexually-oriented seminarians who are not complicit with the former's homosexual lifestyles is that the latter are referred to psychologists, psychiatrists or to psychiatric institutions as a way of attacking or attempting to discredit their character. A likewise documented tactic of clergy who adopt "secret" homosexual lifestyles, and some of the defendants in particular, is to retaliate against those who witness such behavior in anticipation of these witnesses making adverse disclosures against them. *Id.*

plaintiff's arrival in 2017, on learning of Harman's false claims objected to them and offered to speak with McDonald in plaintiff's defense (A-59-60).

Following his meeting with Harman, plaintiff was notified by another seminarian that Harman had approached him and another seminarian inquiring if there were things about plaintiff which were of concern to them. Unable to solicit plaintiff's peers to defame him, Harman ordered these seminarians to remain silent and not to reveal that he had spoken to them about plaintiff. When plaintiff later spoke with McDonald, McDonald refused to either affirm or deny having brought up with Harman the false accusations. This was just two days after he had written plaintiff had mastered "the formational stage required." (A-60).

6. Plaintiff's Return to New York for Surgery

Days later, on October 27, 2018, plaintiff was advised by a Roman physician that he needed unavoidable and urgent spinal surgery (A-50-51). Plaintiff began the process of obtaining the necessary permission for the surgery from, sequentially, the NAC, Dolan, and the PGU to return to New

York for the surgery and to recuperate, while continuing to keep up with his class work, including following the lectures contemporaneously and turning in his assignments before they were due (A-54).

Firstly, plaintiff met with his formation advisor McDonald on October 29, 2018 to ask how to obtain permission from the NAC to return to New York for surgery. McDonald told plaintiff to ask permission from Dolan, which consent should be sent to Park. McDonald stated that he would personally advise Park of plaintiff's request. McDonald told plaintiff that plaintiff did not need to speak with Park, because he, McDonald would do so. McDonald told plaintiff he would secure permission if plaintiff followed his advice. Following McDonald's directions, plaintiff emailed Dolan's priest-secretary, Fr. Ferreira, with copy to McDonald the same day, October 29, 2018; receiving Dolan's permission to return to New York for the surgery. Plaintiff stressed to Fr. Ferreira that he was committed to remaining current with all his formation requirements during his recovery. Ferreira replied affirmatively (A-54-56, 116).

7) Harman Delivers His Lies to Dolan in New York Which Caused Injury to Plaintiff in New York

In a letter dated November 21, 2018, Dolan congratulated plaintiff, now recuperating from surgery at his Staten Island home, for his strong academic performance in his journey toward the priesthood (A-51, 105). Dolan likewise stated in an accompanying letter to the NAC's Academic Dean, Rev. John Cush, that Dolan was pleased that plaintiff was "progressing well" at the NAC (A-51, 106).

However, just three weeks later on December 13, 2018, while plaintiff was still recuperating from his surgery, he received another letter from Dolan stating that Harman, the NAC Rector, raised alleged "concerns" and barred plaintiff's return to the NAC. Dolan's letter cited three claims against plaintiff: 1) that his "lengthy absence from the seminary compromises the integrity of the entire first semester of … [his] second year;" 2) that regarding his leave for urgent surgery, he "informed [the NAC] that the ADNY had approved … [his] return home 'before' seeking permission from the college;" and 3) that his formation advisor "brought to … [his] attention some concerns about … [his] slow progress in … [his] human formation" and that he

had been "resistant to hearing these reservations and acting upon them." These were documentably and unconscionable lies (A-51-52).

Because all three of the documentably false fabrications which Harman provided were utterly baseless, plaintiff wished to meet with Dolan to provide proof that what Harman had said about him was untrue, and to secure an unbiased hearing and to continue formation. Unfortunately, despite five requests for a meeting, Dolan five times refused to meet with plaintiff and declined to listen to plaintiff's side of the story (A-52) thus breaching his voluntarily assumed duties to plaintiff.

As to plaintiff's surgery compromising "the integrity of the entire first semester of … [his] second year," plaintiff never fell behind in his studies, as defendants knew. Prior to his departure for surgery, he met with his formation advisor, McDonald, and with Fr. Cush, the NAC's Academic Dean, to discuss the plan to continue his studies remotely during his recovery. As part of this plan, he communicated with his university professors at the PGU to notify them of his absence and made detailed plans to follow the lectures remotely and contemporaneously in New

York. In an e-mail to McDonald of October 30, 2018, plaintiff stated he would "remain up-to-date on these assignments" and his willingness to deliver all assignments scheduled while recuperating. McDonald cheerfully accepted this. Plaintiff diligently e-mailed McDonald his assignments before they were due. Additionally, plaintiff submitted all of his assignments to his PGU professors before they were due while recuperating. Plaintiff learned from other seminarians that arrangements had precedent at the NAC, even for much longer periods than plaintiff's six-week leave for surgery and recovery. These seminarians then continued their formation without interruption (A-52-53).

Plaintiff compiled a written account of his academic arrangements in an e-mail of November 2, 2018 to both McDonald and Msgr. McNamara. He also repeated these arrangements to Fr. Cush in an e-mail of November 5, 2018. Fr. Cush shared these academic preparations with the moderator of plaintiff's program of studies, Fr. Nicolas Steeves, S.J., who, in an e-mail of November 6, 2018, copied to the Academic Dean, thanked plaintiff for "so thoroughly preparing … [his] absence and interim studies and upcoming exams." When plaintiff told Harman about his

commitment to his academics throughout his recovery and his academic plans in place, Harman told plaintiff he no concerns about plaintiff's formation studies because plaintiff was "a smart cookie." McDonald wrote to plaintiff in an e-mail of December 7, 2018 that he appreciated plaintiff sending him his assignments and that there be no problem when he returned. Plaintiff regularly kept in contact with both McDonald and Msgr. McNamara and updated them throughout his recuperation in New York. He likewise updated Fr. Ferreira on several occasions regarding his medical progress and his adherence to the arrangements set in place before his departure from the NAC (A-53-54, 126-127).

The second false accusation proffered by Harman to prevent plaintiff's return to the NAC involved a fabricated claim that plaintiff did not obtain permission to return for his surgery from the NAC before requesting permission from Dolan. Contrary to this claim and, again, plaintiff met with McDonald, his formation advisor, on October 29, 2018 to ask how to obtain permission. (A-54-56, 116, 126).

The third allegation put forward by Harman to prevent plaintiff's return to the NAC was that McDonald, his

formation advisor, was alleged to have brought to plaintiff's attention "some concerns about … [his] slow progress in [his] human formation" and that he was allegedly "resistant to hearing these reservations and acting upon them." This allegation was completely untrue. There was never a time when McDonald or anyone said a word concerning any deficiency in plaintiff's human formation. In an e-mail of October 15, 2018, just two months before receiving Dolan's letter of December 13, 2018, McDonald echoed the recognition of plaintiff's good standing by writing that he had mastered "the formational stage required." (A-57-58).Fr. John Cush, a voting member of the NAC faculty stated in an email that his performance was "above and beyond." (A-463).

By choosing to wait until plaintiff was home in New York recuperating from his surgery before sending the false materials to Dolan, Harman sought to evade the organizational policy of the NAC. That is, plaintiff had just come through a stellar year which weeks earlier had earned him not only unanimous promotion, but also faculty accolades from the NAC. Harman's accusations were easily disprovable and any consideration of plaintiff's situation

by the entire faculty - the standard for NAC evaluation of seminarians - would certainly have exposed Harman's malignity and fabrication. In turn, plaintiff would have been allowed to return by the entire faculty and Harman knew it. Moreover, plaintiff's upcoming peer reviews were expected to be highly positive, since plaintiff was highly respected by his fellow NAC seminarians (A-62). Only by taking action which would cause injury to plaintiff while plaintiff was still in New York could Harman evade proper practice, thus breaching his duties to plaintiff in New York.

The affidavit of Msgr. Eugene Gomulka[9], a veteran formator at major Catholic seminaries, was submitted in opposition to the defendants' motions to dismiss this action. Msgr. Gomulka's testimony is that it is unheard of, except in rare exceptions and in an era when there is a

[9] Msgr. Gomulka was a NAC seminarian who received Pontifical degrees while studying at the NAC, and was a classmate for three years with Dolan. Msgr. Gomulka who was ordained in 1974 for the Diocese of Altoona-Johnstown, in Pennsylvania, and was a made a Prelate of Honor by Pope St. John Paul II.in 1999. He served in the United States Navy as a member of the Chaplain Corps, retiring and honorably discharged in 2004 at the rank of Captain [O-6] (A-485-489).

dearth of vocations[10] , for a seminarian to be to be involuntarily separated early in an academic year without a vote of the full faculty (A-499). In fact, the NAC's own Handbook identifies only certain specific offenses which might result in such action "outside the normal evaluation process." None of those enumerated offenses have any application whatsoever to plaintiff.[11] Dolan's betrayal and intransigence regarding the punitive measures coerced plaintiff's resignation as a seminarian of the ADNY (A-67).

POINT I

THE NAC DEFENDANTS WERE PROPERLY SERVED

The court below improperly granted dismissal for improper service in favor of all the NAC defendants (A-10). However, defendants NAC and McDonald did not even move to dismiss for improper service; only Park and Harman did so (A-196-198). The NAC was properly and personally served at its only place of business in the United States by personal delivery to it at 3211 4th Street NE, Washington D.C. 20017

[10] Vocations in the United States decreased by 45% from 1970 to 2015, while the population of American Catholics increased by 40% in the same period (A-499-500).

[11] Slander, calumny, or detraction; stealing, lying or cheating; sexual harassment or misconduct; persistent use of NAC electronic resources for unhealthy illegal or immoral purposes; alcohol or drug misuse and mental or emotional instability (A-499-500).

on December 9, 2020 (A-33, 196-198, 210, 214-219). The NAC did not claim otherwise.

Defendant Harman was properly served by mail to him at the NAC in Rome, Italy on December 8, 2020, "personal and confidential" with no return address, as well as by delivery and by mail at the address of his employer NAC at 3211 4th Street NE, Washington, D.C. 20017 (A-30, 34).

POINT II

NEW YORK HAS PERSONAL JURISDICTION OVER THE NAC AND HARMAN

The court below improperly dismissed the action against the NAC and Harman. On respondent NAC's pre-answer motion in the court below to dismiss pursuant to CPLR §3211(a) 8, plaintiff needed only to make a prima facie showing that defendants were subject to personal jurisdiction. *Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 7 NY3d 65, 71 (2006), Weitz v. Weitz, 85 AD3d 1153 (2nd Dep't 2011), *Opticare Acquis. Corp. v. Costillo,* 25 AD3d 238, 243 (2nd Dep't 2005). The court evaluating plaintiff's *prima facie* showing must view plaintiff's complaint and his affidavits in the light most favorable to

the plaintiff. *Brandt v. Toraby*, 273 AD2d 429 (2nd Dep't 2000). The court below failed to do so, improperly dismissing the action as against the NAC and Harman. The NAC is a corporation which can only act through its employees and agents. The NAC is therefore liable for the acts of its employees Harman, Park and McDonald.

1. Pursuant to CPLR §302 (a) 1

Plaintiff has made the requisite showing under CPLR §302 (a) 1. Under New York's long-arm statute, non-domiciliaries who "transact business" within New York, though they never enter New York, are subject to personal jurisdiction, and where only a "single act" of such transaction of business in New York was purposeful, and where the plaintiff's cause of action "arises from" or has a "substantial relationship" to the transaction. *Al Rushaid v. Pictet & Cie*, 28 NY3d 316, 323 (2016), *Paterno v. Institution*, 24 NY3d 370 (2014), *Fischbarg v. Doucet*, 9 NY3d 375, 380(2007), *Deutsche Bank*, 7 NY3d at 71, *Park-Bernet Galleries v. Franklyn*, 26 NY2d 13 (1970) [a single phone call to an auction house in New York was sufficient to confer jurisdiction under CPLR §302 (a) 1]. See, *Kreutter v. McFadden Oil Corp.*, 71 NY2d 460, 467 (1988),

McKee Electric Co. v. Rauland -Borg Corp., 20 NY2d 377, 382 (1967), *Longines-Wittnauer v. Barnes Reinecke*, 15 NY2d 443, 456 (1965), *Bank Brussels v. Fiddler Gonzalez Rodriguez*, [citing *Parke Bernet* and *Reiner v. Schwartz*, 41 NY2d 648, 653 (1977)]. 171 F3d 779, 787 (2d Cir. 1999).

It was in 1970 that the Court of Appeals stated:

> It is important to emphasize that one not be physically present in order to be subject to the jurisdiction of our courts under CPLR 302 for, particularly in this day of instant long-range communications, one can engage in extensive purposeful activity here without ever actually setting foot in the State.

Parke Bernet 26 NY2d at 17. In the case at bar, it was the NAC who sent its Dean of Studies to New York to solicit and recruit plaintiff and others, as it had been doing for over a century. As the Court of Appeals stated in Paterno:

> Thus, where the non-domiciliary seeks out and initiates contact with New York, solicits business in New York and establishes a continuing relationship a non-domiciliary can be said to transact business within the meaning of CPLR 302 (a) (1)[citing *Fischbarg*, 9 N.Y.3d at 381].

Paterno, 24 NY3d at 993(emphasis added). Application of New York's long-arm statute in this case is also in conformity

with the due process guarantees of the United States Constitution annunciated in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), as the Court of Appeals also confirmed in confirmed in *Parke Bernet* 26 NY2d at 17.

The statement of the court below that the exercise of jurisdiction over the NAC and Harman would violate due process is difficult to grasp (A-14). This is especially so since the court below asserts support by citing *D & R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro, supra*. In *D & R Global*, the Court of Appeals reversed the order of the First Department which had dismissed the action for lack of personal jurisdiction under CPLR §302 (a) 1. That decision held that, as here, a non-domiciliary purposefully avails one's self of the privileges of conducting activities in the state by, on one's own initiative, projected one's self into this state to engage in a sustained and substantial transaction of business. Further, and again as here, purposeful availment occurs when the non-domiciliary seeks out and initiates contact with New York and establishes a continuing relationship. Still further, as here, the cause of action arose from that transaction of business because at least one element of the

cause of action had an articulable nexus with that transaction of business. *D & R Global*, 29 NY3d 292 at 297-299. All of the elements set forth in *D & R Global* are here present. That the NAC transacts substantial business in New York by soliciting and recruiting seminarians in New York is amply demonstrated by well over a century of this lucrative availment (A-42-43. 453-457, 674-676). The NAC, through its rector and others, as part of its business transactions of soliciting and recruiting seminarians, including plaintiff, in New York thrust itself into New York by delivering lies to Dolan thereby breaching its duties to plaintiff

While at this stage the record cannot be complete as to either the NAC or Harman, it is satisfactory as to the NAC and, as to Harman, it is at the least a "good start," which suffices at this early stage (A-676), *Peterson v Spartan Indus.*, 33 NY2d 463, 467 (1974), *Lettieri v. Cushing*, 80 AD3d 574 (2nd Dep't 2011), *Shore Pharma. Providers, Inc. v Oakwood Care Ctr, Inc.*, 65 AD3d 623 (2nd Dep't 2009) To oppose a motion to dismiss pursuant to CPLR 3211 (a) (8) on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiffs need not

make a *prima facie* showing of jurisdiction, but instead must only set forth a sufficient start, and show their position is not frivolous [citations omitted]. "[T]he plaintiffs need only demonstrate that facts `may exist' to exercise personal jurisdiction over the defendant" *Peterson,* 33 NY2d at 467. See, *Marist College v. Brady*, 84 AD3d 1322 (2nd Dep't 2011), *Ying Jun Chen v Lei Shi*, 19 AD3d at 408 (2nd Dep't 2005).

In *Licci v. Lebanese Canadian Bank, SAL*, 20 NY3d 327 (2012) the Court of Appeals explained that the requirement of "arising from" is sufficiently shown, in light of all the circumstances, where there is some "articulable nexus" (*McGowan v Smith*, 52 NY2d 268 [1981]) or "substantial relationship" (*Kreutter v. McFadden Oil Corp.*, 71 NY2d 460,467 [1988]) between the business transaction and the claim asserted. The inquiry under the statute is relatively permissive. *McGowan*, 52 NY2d 2nd at 272, *Kreutter*, 71 NY2d at 467. Relatedness between the transaction and the legal claims need only be "not completely unmoored" from the former, regardless of the ultimate merits of the claim. Jurisdiction only requires the claims be in some way "arguably connected" to the transaction and that an

"articulable nexus" or sustained or continuing relationship exists "where at least one element of a cause of action arises from the New York contacts," rather than "every element of the cause of action pleaded." *D & R Glob. Selections, S.L. v. Pineiro,* 29 NY3d 292 (2017), Licci, at 20 NY3d 341.

> Yet CPLR 302(a)(1) does not require that every element of the cause of action pleaded must be related to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the statute. *Id.*

It is the "quality of the contacts" that is determinative of purposeful availment and not the number of them. *Venture v. Mau*, 146 AD3d 40, 51-52 (2nd Dep't 2016). In the case at bar, the contacts are both of quality, which is to say of significance, and numerous. Purposeful activity depends on the totality of the circumstances. *Farkas v. Farkas*, 36 AD3d 852, 853 (2nd Dep't 2007). The transaction in this case concerned plaintiff; and where one fiduciary group - the NAC – which solicited and recruited plaintiff in New York. The NAC then entered into an agreement with a second fiduciary group - Dolan and the ADNY - to provide the

education and formation of plaintiff who was an employee of the ADNY. This action arises from that transaction, the same sort of business transactions which the NAC had been doing in New York for well over a century.

While CPLR §302 (a) 1 is a single act statute (Deutsche Bank, 7 NY3d at 71), there is no paucity contacts with New York. The exercise of personal jurisdiction over the defendants NAC and Harman is justified since each had: a long standing and very lucrative relationship with the ADNY, New York contacts; including volitional and purposeful annual personal recruitment of plaintiff and others in New York; solicitation of funds by its rector and others in New York; accepting a position vis-a-vis plaintiff as a fiduciary to plaintiff and other New York seminarians, and as agent for plaintiff's New York employer -Dolan and ADNY - for education and formation; exchanges of correspondence regarding plaintiff and other New York seminarians with evaluations and the expectation of a "continuing relationship;" all culminating in the wrongful actions of the NAC, and its rector Harman, by wrongful delivery in New York of the false, baseless and malicious allegations against plaintiff causing injury to plaintiff

while he was in New York. This should reasonably have caused the defendants to expect to defend tort and other claims in New York. *Paterno* at 993, *Fischbarg* at 384-85, *Reiner v. Schwartz*, 41 NY2d 648, 653 (1977).

So long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subjected to jurisdiction even if not "present" in that State(*Kreutter*, 71 NY2d at 466).

> Defendants here purposefully availed themselves of New York's legal services market by establishing a continuing attorney-client relationship with plaintiff. Their contacts here were sufficient, consisting of solicitation of plaintiff's services here and frequent communications with him. Given these facts, they should have reasonably expected to defend against a suit based on their relationship. [citations omitted]. New York contacts that "contemplated and resulted in a continuing relationship certainly are of the nature and quality to be deemed sufficient to render (defendants) liable to suit here [citations omitted"]).

Fischbarg 9 N.Y.3d at 384-85 (emphasis added).

In the case at bar, the activities of solicitation and recruitment, a continuing relationship with plaintiff - at least four years - as well as over a century with the ADNY satisfies the jurisdictional requirement.

2. Pursuant to CPLR §302 (a) 2

CPLR §302 (a) 2 provides for personal jurisdiction over a non-domiciliary who commits a tortious action within the state, except for defamation of character arising from the act. The wrongful acts of Harman, who planned, executed and delivered his baseless and false claims to Dolan and the ADNY in New York thereby breached his duties to plaintiff here. This was last act necessary to complete his acts of betrayal of plaintiff. This was a considered deliberate action which, to be effective, would have to be delivered into New York while plaintiff was away from the NAC. His scheme would otherwise not have succeeded. It was only after this act in New York took place that plaintiff suffered injury in New York.[12] *Banco Nacional v. Chan*, 169

[12] The Court of Appeals has not yet ruled on whether actual physical presence in New York is necessary to invoke personal jurisdiction pursuant to CPLR 302 (a) 2. The Second Department has to date ruled that it is necessary, while both the First Department and the Second Circuit have ruled that it is not necessary, citing modern

Misc. 2d 182 (Sup. Ct. NY Cty. 1996, aff'd, 240 AD2d 252 (1st Dep't 1997), *Bensusan Restaurant Corporation v. King*, 126 F.3d 25 (2d Cir. 1997).

3. Pursuant to CPLR §302 (a) 3 (i) and (ii)

CPLR §302 (a) 3 provides for personal jurisdiction over a non-domiciliary who:

> commits a tortious act without the state causing injury to person or property within the state if he
>
> (i) *regularly does or solicits business, or engages in any other persistent course of conduct*, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
>
> (ii) *expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate international commerce.*

CPLR §302 (a) (3)] [emphasis added]).

By Harman's delivery of the false and baseless written communication concerning plaintiff to Dolan in New York an act was committed without the state which clearly caused injury to plaintiff within the state while he was

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technical advancements which now suffice for actual physical presence.. This Court is respectfully urged to now embrace those views as well.

recuperating here. This caused plaintiff's forced resignation as a seminarian of the ADNY. Harman's wrongful action, a breach of his fiduciary duty to plaintiff, set in motion the scheme to wrongfully terminate from, or drive plaintiff out of, formation and from his status as an ADNY seminarian. Moreover, both the second and third prongs of the statutory test, while only one such demonstration is required, are easily satisfied.

Firstly, the NAC and Harman: regularly "do and solicit business" and "engage" in other persistent courses of conduct in the state. (A-42-43, 211-213, 674-676).

Secondly, the NAC, especially through its rector, should reasonably have expected these acts to have consequences in New York. In fact, the consequences of the lies delivered to Dolan in New York were clearly not only foreseeable. Worse, they were clearly intended to injure plaintiff while he was in New York and unable to avail himself of the protections of faculty review and oversight of Harman's chicanery (A-499).

That the NAC also derives substantial revenue from interstate or international commerce cannot seriously be questioned (A-42-43, 211-213, 674-676).

Finally, plaintiff herein agrees that the situs of the injury for CPLR §302 (a) 3 i or ii is the place of original event which caused injury, and not simply that plaintiff suffered damage in New York. *Paterno v. Institution*, 24 NY3d 370 (2014) *Fanelli v. La*tman, 202 AD3d 758 (2nd Dep't 2022), *Hermann v. Sharon Hospital, Inc.,* 135 AD3d 682 (2nd Dep't 1987. However, the court below failed to correctly discern the facts before applying the rule. The situs of the original event which caused injury in New York also took place in New York when Harman, on behalf of the NAC, thrust himself into New York by delivering his baseless lies against plaintiff to Dolan in New York. Until that act of New York delivery to Dolan took place, the NAC had not finally breached its fiduciary duty and other duties to plaintiff causing injury. The decision ad order of the court below ignored all of this, blithely contending that the all the alleged tortious activity was in Rome (A-12). The court below thus evaded the fact that the final, fatal

blow was struck against plaintiff by Harman's delivery of his communication to Dolan in New York.

POINT III

THE ACTION AGAINST DOLAN AND THE ADNY WAS PROPERLY COMMENCED

1. The Summons and the Amended Summons

The Summons with Notice in this action was electronically filed on September 7, 2020 (A-25). The Amended Summons with Notice was served on Dolan and the ADNY December 17, 2020 and an affidavit of such service was filed on December 22, 2020 (A-38-39). Dolan and the ADNY do not claim otherwise. Neither did Dolan nor the ADNY moved to dismiss for not having been served with the Summons with Notice (A-228, 231). The Amended Summons was filed with the court below as part of affidavits of service on Harman and Park (A-28, 30). The Summons with Notice and the Amended Summons with Notice are in every detail identical, except for the amount of the stated *ad damnum*. Defendants NAC, Park, Harman and McDonald neither raised nor moved to dismiss on this claimed irregularity. Dolan and the ADNY mentioned it but did not move to dismiss on such basis. It is submitted that any irregularity in this regard was thus

waived. The court below adverted to no authority for its dismissal on this basis. Neither does research reveal such a basis.

2. Service of the Complaint

Dolan and the ADNY responded to the Amended Summons with Notice by appearing and demanding a complaint on January 4, 2021 and, after correction, again on January 6, 2021. The remaining defendants also demanded a complaint. The Complaint was served on February 3, 2021, eight days late. Neither Dolan nor the ADNY complained about the eight day delay. Instead, they requested an extension of 58 days to respond to the complaint until April 5, 2021 and then again until April 12, 2021. Plaintiff agreed to both of these requests. Never having mentioned, much less rejected, the slightly late service of the complaint, Dolan and the ADNY then alone moved to dismiss, inter alia, pursuant to CPLR §3012 (b) for late service of the complaint. Plaintiff cross moved, *inter alia*, to permit the service of the complaint nunc pro tunc on February 3, 2021, instead of on January 26,2021 when it was due, and to direct Dolan and the ADNY to accept it. Plaintiff and his attorney both explained the short delay was caused by plaintiff's

grandmother's terminal illness, death, wake and funeral, as well as the legal infirmity of the motion to dismiss, both because of the very short explainable delay and the absence of even a claim of prejudice to the defendants, with ample legal precedent, and a meritorious claim (A-432-438, 902-904, 921-922).

3. The Verified Complaint

The court below erroneously asserted that plaintiff's counsel "signed" the complaint because he was unable to meet with plaintiff. This assertion is not true. The verification was properly made by counsel because, as stated in the verification itself, counsel's office was in a county where plaintiff had neither a residence nor a place of business (A-314). This was properly done in conformity with CPLR §3020 (d) 3. The court below ignored this and dismissed the complaint as to Dolan and the ADNY, as a defectively verified pleading, pursuant to CPLR §3022. Neither Dolan nor the ADNY moved for this relief (A-228). Moreover, CPLR §3022 does not provide for dismissal. Rather, an adversary may treat a defectively verified pleading, which the instant complaint was not, as a nullity, provided the adversary gives notice with due

diligence that he intends to treat it as such. CPLR §3022. Neither Dolan nor the ADNY, or any defendant for that matter, gave any such notice, opting instead to request a lengthy adjournment to respond to the complaint (A-433-435). Furthermore plaintiff confirmed the truth of all the allegations in the complaint in his affidavit (A-452). The court below ignored all of this and dismissed the action. It is respectfully submitted that this decision was both contrary to statutory authority and an extreme abuse of discretion, which should be reversed.

POINT IV

NEUTRAL LAWS OF GENERAL APPLICATION ARE NOT AMENABLE TO SUBJECT MATTER JURISDICTION ATTACK

The court below granted dismissal of the First, Second, Sixth, Ninth and Tenth Causes of Action as to Dolan and the ADNY based on a lack of subject matter jurisdiction citing church autonomy and ministerial exception (A-17). It is well settled that a "law that is neutral laws of general applicability need not be justified by a compelling governmental interest, even if the law has the incidental effect of burdening a particular religious practice." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993), Jones v. Wolf, 443 U.S. 595 (1979),

Employment Division v. Smith, 494 U.S. 872 (1990), *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 AD2d. 159 (2d Dep't 1997), *mot. for leave to appeal dismissed*, 91 NY2d 848 (1997).

The *Kenneth R.* court observed that some cases have indicated that the First Amendment may be asserted as a defense if the defendant's conduct that caused the plaintiff's injury finds its basis in religious beliefs or religious practices[citations omitted] *Id.* See also *First Presbyt. Church of Schenectady v. United Presbyt. Church in U.S. of Am.*, 62 NY2d 110, 116 (1984), *cert denied* 469 U.S. 1037.

However, *Kenneth R.*, citing *Swaggart Ministries v. Board of Equalization*, 493 U.S. 378 (1988) and *L.L.H. v. Clauder,* 203 Wis. 2d 570, 552 N.W. 2d 89 (1996), found that certain claims being presented would not violate any religious doctrine or inhibit any religious practice. *Kenneth R., supra*, at 164-165. The Kenneth R. court continued:

> Moreover, while the First Amendment to the United States Constitution prohibits regulation of religious beliefs, *conduct by a religious entity*

> "*remains subject regulation for the protection of society*. (*Cantwell v. Connecticut*, 310 U.S.296, 304; *Employment Division v. Smith* and *Destefano v. Grabean*, 723 P2d 275, 283). The First Amendment does not grant religious organizations immunity from tort liability.(See, *Konkle v. Henson*, 672 N.E.2d 450, 456; *Moses v. Dioceses of Colorado*, 863 P.2d 310, 319. Therefore, religious entities must be held accountable for their actions "even if that conduct is carried out as part of the church's religious practices. (*Meroni v. Holy Spirit Assn. for Unification of World Christianity*, 119 A.D.2d 200, 203)

229 AD2d at 165 (emphasis in original).

Esformes v. Brinn, 52 AD3d 459 (2d Dep't 2008) distinguished between matters presenting a controversy that requires consideration of religious doctrine on the one hand - challenging a judgment of a rabbinical court - and, on the other hand, a legal challenge to the validity of activities of a Jewish synagogue which do not require intrusion into constitutionally protected ecclesiastical matters. *Id.*, at 462. A challenge to the validity of the election of the Board which sought the rabbi's removal was not beyond the reach of the Court. The *Esformes* court held that subject matter jurisdiction existed over that aspect

of the case which did not require intrusion into constitutionally protected religious matters.

Similarly, the case before this Court requires no consideration of religious doctrine or ecclesiastically protected religious tribunals. Plaintiff seeks no remedies other than money damages provided by civil law. As a layman, plaintiff had no rights whatsoever. Plaintiff never functioned in a ministerial role (A-80, 82-83, 86-87, 89-93, 454-455, 922-931). This is also confirmed by Msgr. Gomulka in his affidavit which states, by factually describing plaintiff's duties, that he was not a minister of the church. Additionally, Msgr. Gomulka confirms that plaintiff's complaints herein are not an internal church matter and involve no issues of doctrine, dogma, tenets of the Catholic faith or church law (A-489-493).

It is ironic that all the defendants were always at pains throughout plaintiff's employment by Dolan and the ADNY and at the NAC to him he was not a minister of the Catholic Church (A-925-931); but now scurry about in an attempt to rewrite history by claiming that he is. Plaintiff's direction from the defendants was to study and to do what he was told.

The New York Court of Appeals has provided definitive guidance on this issue in *Matter of Congregation Yetev Lev D'Satmar*, 9 NY3d 282 (2007). While confirming that the First Amendment forbids civil courts from interfering in or determining religious disputes, and thus becoming entangled in essentially religious controversies with groups espousing particular doctrines or beliefs, it never the less made clear that:

> Civil disputes involving religious parties or institutions may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution (see *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d 110 [1984]; *Park Slope Jewish Ctr. v Congregation B'nai Jacob*, 90 NY2d 517, 521 [1997], citing *Jones v. Wolf*, 443 US 595 [1979]). *The "neutral principles of law" approach requires the court to apply objective, well-established principles of secular law to the issues* (*First Presbyt. Church*, 62 NY2d at 119-120). *In doing so, courts may rely upon internal documents, such as a congregation's bylaws, but only if those documents do not require interpretation of ecclesiastical doctrine. Thus, judicial involvement is permitted when the case can be "decided solely upon the application of neutral*

> *principles of ... law, without reference to any religious principle*" *Avitzur v Avitzur*, 58 NY2d 108, 115 [1983]).

Id., at 286 (emphasis added). See, *Queens Branch of the Bhuvanesherwar Mandir, Inc. v. Sherman*, 156 AD3d 658 (2d Dep't 2017); *Matter of Ming Tung* v. *China Buddhist Assn.*, 124 AD3d 13, 20 (2d Dep't 2017); *Berger v. Temple Beth-El of Great Neck*, 303 AD2d 346, 348 (2d Dep't 2003).

The Queens Branch court found that the issues could be resolved based on neutral principles of law and reference to the secular provisions of the church's internal documents, so long as they did not require interpretation of ecclesiastical doctrine. 156 AD3d at 658-9). See, *Schwimmer v. Welz*, 52 AD3d 541,543 (2d Dep't 2008*); Malankara Archdiocese of Syrian Orthodox Church in N.A. v. Thomas*, 33 AD3d 887, 888 (2d Dep't 2006) In the case at bar, only secular principles of law are claimed to have been violated. No issues of doctrine or dogma are involved.

In *Rodzianko v. Parish of the Russian Orthodox Holy Virgin Protection Church*, 11 AD3d 706 (2d Dep't 2014), this Court held stated that where, as here, there are no

controversies concerning differing opinions as to doctrines or beliefs, civil disputes involving religious parties (there, a rabbi's contract) may be adjudicated by neutral principles of law without offending the First Amendment (citing *Matter of Congregation Yetev Lev D'Satmar*). *Id.*

POINT V

MINISTERIAL EXCEPTION IS AN AFFIRMATIVE DEFENSE, NOT A JURISDICTIONAL OBJECTION

Hosanna-Tabor Evangelical Lutheran Church &. School v. EEOC, 565 U.S.171 (2012) is the Supreme Court case which established the "ministerial exception" whereby churches are exempted from claims by prominent persons in positions of church leadership or with public pastoral duties. *Hosanna-Tabor* provides clarification that ministerial exception was an affirmative defense, rather than a challenge to subject matter jurisdiction, the Supreme Court agreed:

> We conclude that the exception operates as an *affirmative defense to an otherwise cognizable claim, not a jurisdictional bar.*

Id. (emphasis added).

This critical holding was presented to the court below (A-996), which ignored it and dismissed the action (A-17).

POINT VI

PLAINTIFF IS NOT SUBJECT TO THE MINISTERIAL EXCEPTION

The court below failed to accept as true the factual allegations of plaintiff's complaint, which plaintiff formally confirmed (A-452), that he was not a minister of the Catholic Church (A-80, 82-83, 86-87, 89-93). The court below also failed to accept as true plaintiff's affidavit and reply affidavit which set forth in factual detail both that he was not a minister of the Catholic Church, and that the defendants constantly reminded him of that fact (A-454-455, 922-931).

Discussion of the ministerial exception begins with *Hosanna-Tabor, supra*. The complaint and plaintiff's affidavits alone establish for purposes of this action that plaintiff is not a minister and therefore ministerial exceptions have no application to him. *Hosanna-Tabor*, involved a "called" teacher, Perich, of a congregation of the Lutheran Missouri Synod, which synod classified teachers into separate categories; "called" and "lay." Those who, like Perich, were "called" were regarded as

having been called to their vocation by God through a congregation. A called teacher was required to complete certain requirements and examinations, subject to removal only for cause and a vote of the congregation. Though she was earlier a "lay" teacher she completed requirements, was called; and then received certificated as a "religion minister, commissioned." She taught religion classes, led daily prayer and devotions and presided at chapel services. Later diagnosed with narcolepsy, she was asked to resign. She was then terminated. Before the EEOC, who sued Hosanna-Tabor, the church contended she was terminated because her threat to sue the church violated the Synod's belief that Christians should not pursue legal remedies. *Id.*, at 177-180.

Perich was held to be subject to the ministerial exception because of the totality of her circumstances, because, *firstly: the defendant in Hosanna-Tabor held Perich out as a minister* "tasked with performing that that office according to the Word of God and the confessional standards of the Evangelical Lutheran Church. That she could only be removed by supermajority vote was to insure she could "preach the Word of God boldly." *Id.*, at 190-

191. This stands in sharp contrast to plaintiff's position, where he was powerless to prevent his removal at the whim of Dolan and the NAC defendants. By way of further contrast, plaintiff and his classmate seminarians were constantly reminded that they were laymen, and not members of the ministry of clergy. He was not held out by the Catholic Church as a minister of anything (A-44, 80, 82-83, 86-87, 89-93, 454-455, 489-493, 922-931).

Secondly, plaintiff Perich in Hosanna-Tabor held herself out as a minister by accepting the formal call to religious service, according to the terms of the congregation; and claimed a tax benefit ("parsonage allowance") only available to those in the "exercise of the ministry." and regarded herself as a minister." *Id.*, *Hosanna-Tabor* at 191-192. Describing its action as concerning a "minister challenging a decision to fire her" the Supreme Court continued, saying:

> We express no view on whether the exception bars other types of suits, including alleging breach of contract or tortious conduct by their religious employers.

Hosanna-Tabor at 196.

Plaintiff's complaint and proposed amended complaint set forth both torts and breaches of contract by a non-ministerial employee.

Justice Alito's concurring opinion in *Hosanna-Tabor*, in which Justice Kagan joined, clearly asserts that questions of ministerial exception should focus on the function of the alleged minister. "Courts should focus on the function performed by persons who work for religious bodies." *Id.*, at 198.

The basis for the ministerial exception looks to protect "certain key religious activities, including the conducting of worship services and other religious ceremonies and rituals, as well as the critical process of communicating the faith." *Id.*, at 199. (emphasis added). The "ministerial" exception should be tailored to this purpose. *It should apply to any "employee" who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of the truth. Id.* (emphasis added).

It is thus possible, wrote Justice Alito, to ascertain a general category of employees whose functions are essential to the independence of practically all religious

groups. These include those who serve in positions of leadership, those who "perform important functions in worship services and religious services and those who teach the faith to the next generation." *Id.*, at 200. In this action, it is not only well pleaded but also well established that plaintiff had no functions which included any of these three: religious leadership, worship, ritual, teaching or other functions which Hosanna-Tabor stated as key to determinations of ministerial exception (A-44,-80, 82-83, 86-87, 89-93, 454-455, 489-493, 922-931). Thus, plaintiff was not a minister and therefore not subject to ministerial exception.

It is eminently clear that plaintiff bears no resemblance whatever to the *Hosanna-Tabor* plaintiff. Plaintiff's role was to study and to do what he was told. He never held himself out as a minister because he was not a minister. Plaintiff is not a candidate for ministerial exception because he does not meet the *Hosanna-Tabor* tests for such status.

POINT VII

PLAINTIFF HAS WELL PLEADED HIS CLAIMS AS AN EMPLOYEE AND AS ONE IN FIDUCIARY AND CONTRACTUAL REALTIONSHIPS WITH DEFENDANTS

While the court below "maintain[ed] its position that the First, Second, Fifth, Sixth (withdrawn by plaintiff) and Seventh, Ninth, and Tenth causes of action were barred by the ministerial exception," it also alternatively asserted, only as to Dolan and the ADNY (the cited causes of action as pleaded also applied to all other defendants), that if the ministerial exception did not apply to those causes of actions, they would be alternatively dismissed for failure to state a cause of action. This was because those causes of action, except the Fifth cause of action, can only be maintained between employers and employees. The court below incorrectly stated that plaintiff had failed to show he was an employee of Dolan and the ADNY (A-19) and failed to acknowledge that the claims were made against all other defendants as educational agents of Dolan and the ADNY and supervisors within the NAC by its employees.

It should be observed that the court below did not discuss anywhere in its decision any basis to dismiss the Third, Fourth and Eighth causes of action (breach of

fiduciary duty against all defendants and malicious interference with prospective economic advantage)

1. As to the First, Second, Sixth, Ninth and Tenth Causes of Action

The court below also failed to take the allegations of employment in plaintiff's complaint as true; instead stating that that the exhibits submitted as attachments to plaintiff's pleadings concerning his employment "were not persuasive." Id. Such a statement flies in the face of overwhelming factual allegations. Among the many allegations in plaintiff's complaint and his affidavits are plaintiff's direct statement that he was "indeed" an employee of Dolan and the ADNY, was paid regularly as an employee, and became enrolled in the ADNY employee health program after being instructed by the ADNY to discontinue his private health insurance, which had provided more favorable coverage (A-930). Plaintiff was paid $150 a month from 2015-2017 when he was enrolled as an ADNY seminarian at Douglaston. Thereafter he was paid $1.200 by the ADNY every February and October in 2017 and 2018; and was reimbursed by the ADNY for work related expenses, including the expenses of relocating to Rome when he attended the NAC (A-930-931).Proof of payment by the ADNY was also presented

to the court below, along with health insurance documentation of his "employee" status (A-931). Please see, Chase Bank records of payments to plaintiff from the ADNY (A-969-973) and United Healthcare insurance identification of plaintiff in the ADNY employee health plan (A-974). Other references to plaintiff's employment relationship with the ADNY and Dolan, as well as the role of the NAC as Dolan's and ADNY's agent for plaintiff's education and formation are numerous (A-45, 67, 78, 80, 82, 154, 455, 475, 895).

Thus the employment status of plaintiff, the only basis the court below addressed in granting dismissal of the First, Second, Sixth (discontinued), Ninth and Tenth causes of action are clearly presented in plaintiff's complaint and affidavits. The dismissal of these causes of action should be reversed.

2. As to the Fifth Cause of Action

The court below incorrectly stated that the fifth cause of action for fraud and deceit did not allege any fraud or misrepresentations which Dolan and the ADNY made to plaintiff and upon which he relied to his detriment.

Such misrepresentations were set forth in great detail by plaintiff, and dealt with Dolan's and the ADNY's fraudulent statements that they both would put plaintiff's interests foremost and before their own. This includes and begins with Dolan and the ADNY and continued with the NAC and its employee defendants. This included the promises of Dolan and the ADNY that they would both be the ones who would put plaintiff's interests before their own, that he could approach them at any time and that if plaintiff ever encountered any problems or difficulties that he could count on them and come to him and they would assist him. Dolan and the ADNY instead betrayed me (A-455-475). Dolan not only betrayed his promise to help and assist plaintiff, he would not even speak or meet with him so plaintiff could present his position, despite five requests to do so (Id.) Dolan indicated through indicated through his secretary that even if he believed plaintiff, he would have to obey his duty to Harman, which duty did not exist, thereby revealing that he never had any intention to follow through on his deceitful promises to plaintiff to induce plaintiff to take his assignment in reliance on those commitments (Id.) Worse, he deceived plaintiff when he induced plaintiff to believe him, but never intended to do so,

since he published Harman's lies about him to the entire faculty at Dunwoodie, the diocesan seminary for the ADNY; thereby poisoning the well against plaintiff. None of this was ever disclosed to plaintiff (A-473-475).

Some of these allegations are comprehended in other causes of action, including those for breach of fiduciary duty and emotional distress. The difference is that that the promises and commitments made to plaintiff were knowingly false and fraudulent when made, thus inducing plaintiff to accept them to his detriment because the defendants had no intention to honor their promises.

3. As to the Seventh Cause of Action

The Seventh cause of action is for infliction of emotional distress against all defendants. The court below stated, as to Dolan and the ADNY alone, that no outrageous or extreme conduct was identified. This is not correct. The Seventh cause of action incorporated all of the previous conduct of all defendants pleaded in the previous 121 paragraphs (A-898). This might or might not be considered outrageous or extreme. However, that is irrelevant where, as here, the claim is for negligent infliction of emotional

distress. This Court has held that outrageous and extreme conduct is not an element of such a cause of action. In *Taggart v. Costabile*, 131 AD3d 243, (2nd Dep't 2015) this Court held:

> [W]e now clarify that, notwithstanding any case law to the contrary, extreme and outrageous conduct is not an essential element of a cause of action for negligent infliction of emotional distress. Our conclusion is consistent with the Court of Appeals formulation of the cause of action alleging negligent infliction of emotional distress [citing Ornstein v. New York City Health & Hosps. Corp., 10 NY3d at 6, 852 N.Y.S.2d 1, 881 N.E.2d 1187(2008) and Kennedy v. McKesson Co., 58 N.Y.2d at 506, 462 N.Y.S.2d 421, 448 N.E.2d 1332 (1983).
>
> Furthermore, this formulation of the cause of action is consistent with the New York Pattern Jury Instructions (see 1B N.Y. PJI3d 2:284, Comment at 873 [2014]), the Third Restatement (see Third Restatement § 47), and Prosser and Keaton on the Law of Torts (see Prosser and Keaton, Torts § 54 at 361). Accordingly, to the extent that certain of this Court's past decisions have indicated that extreme and outrageous conduct is an element of negligent infliction of emotional distress [citations omitted] those cases should no longer be followed.

Id. at 398.

This Court also held in Taggart that "a breach of a duty of care "resulting directly in emotional harm is

compensable even though no physical injury occurred." [citing *Kennedy*, *Ornstein*, and *Baumann v. Hanover,* 100 AD3d at 816 (2nd Dep't 2012). Plaintiff has properly pleaded its cause of action for negligent infliction of emotional distress as against all defendants.

POINT VIII

THE MOTION TO AMEND TO INCLUDE THE THIRTEENTH AND FOURTEENTH CAUSES OF ACTION SHOULD HAVE BEEN GRANTED

The Proposed Amended Complaint, containing what would have been the Thirteenth and Fourteenth causes of action were presented to the court below (A-1061). The court below did not deal with the merits of the motion or the contents of the amendments, instead reverting to the baseless dismissal of the action for serving the complaint eights delays late and unspecified "defects" in the complaint. The court below did recognize the much-cited CPLR §3012 (b) provision and, presumably, the cases which plaintiff submitted which construed it (A-.0892- 893, 917-918), but failed to apply those principles to the facts of this case (A-435-438, 902-903, 1181-1182, 1243). The court below further incorrectly stated that plaintiff did not correct deficiencies in service, which were not deficient, "despite being on notice for several months," when the first such

notice came months after the complaint was served when defendants Dolan and the ADNY moved to dismiss after receiving extensions from January 26, 2021 when the complaint was served until April 12, 2021 when the motion to dismiss was served (A-433-435), before raising the matter. Again, defendants did not, for that reason, seek dismissal.

POINT IX

THE COURT BELOW DID NOT REACH THE MERITS OF THE CAUSES OF ACTION PLEADED BY PLAINTIFF

Since the court below did not reach the merits of the pleaded causes of action, plaintiff will, with one limitation, respectfully refer this Court to the record references supporting the various causes of action pleaded, and sought by way of amendment.

1. The First and Second Causes of Action

These claims are bought under the New York Human Rights Law and pertain to all defendant employers and the agents of employers, and thus in favor of plaintiff as an employee of Dolan and the ADNY and their agent, the NAC, for plaintiff's education and formation, the NAC and its employees (A-295-299).

2. *The Third and Fourth Causes of Action*

All defendants and their subordinate agents voluntarily took on the position of plaintiff's fiduciary as to his education and formation, and then breached those duties and obligations ((A-82-86, 454- 472, 1192-1195). Moreover, such claims are legally cognizable in New York (688-691).

Moreover, while New York courts have not specifically dealt with claims regarding seminarians in the context of: fiduciary duties, breach of contract, breach of the duty of good faith and fair dealing, and interference with prospective economic advantage, other states with laws similar to New York have done so; finding that such civil claims do not run afoul of any church autonomy or ministerial exception issues. That is because such claims seek nothing more than money damages for civil wrongs. Here, the plaintiff does not claim that he is entitled to but that he has suffered damages at the hands of defendants for civil wrongs (A-691-698).

The attention of this Court is especially invited to *McKelvey v. Pierce*, 173 NJ 26 (2002), from the Supreme Court of New Jersey, a case remarkably similar to the

instant action. New Jersey has virtually identical laws as New York has with respect to the causes of action cited above *Id.* at 33. The *McKelvey* plaintiff, a former seminarian who sued the Diocese of Camden and a number of priests on the claims cited immediately above when he, like the instant plaintiff, was forced to drop out of his seminary. He was then left, again like plaintiff, without a meaningful career. *Id.* at 32-33. The trial court granted summary judgment on subject matter jurisdiction grounds. The Appellate Division affirmed.

The Supreme Court of New Jersey unanimously reversed and remanded, finding that the trial court failed to determine, on an issue-by issue basis, whether plaintiff's claims might be adjudicated consistent with First Amendment principles. "[T}he First Amendment does not immunize every legal claim against a religious institution and its members." *Id.*, at 32-33. In reviewing the history of similar litigation, the *McKelvey* court assessed both the U.S. Constitution's Establishment and Free Exercise Clauses. The former prohibits states from promoting religion or becoming too entangled in religious affairs. The latter protects religious freedom by embracing two

concepts, freedom to believe and freedom to act. "The first is absolute, but in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Id.*, at 40 (quoting *Employment Division v. Smith*, 494 U.S. 872, 877 (1990)). "A party challenging state action as violative of free-exercise rights must establish that the action produces a coercive effect on the practice of religion. The conduct at issue *must have been part of the beliefs and practices of the defendant's religion*." *Id.*, (quoting *Cantwell v. Connecticut*, 310 U.S. at 303-04 (1940) (emphasis added).

While churches are protected from hiring and decisions regarding ministers, neither the instant plaintiff nor the *McKelvey* plaintiff was hired or fired as a minister. Nor were either a minister or a person seeking to force anyone to ordain them. Even if plaintiff were a minister, which he was not, he is still entitled to pursue his tort and contract claims against all the defendants in this case.

McKelvey continued: "Not all entanglements, of course, have the effect of advancing or inhibiting religions. Interaction between church and state is inevitable. . . and we have always tolerated some level of involvement between

the two. Entanglements must be 'excessive' before it runs afoul of the establishment cause." *Id.*, at 46 (quoting *Agostini v. Felton*, 521 U.S. 203, 233 (1997), citing *Bowen v. Kendrick*, 487 U.S. 589, 615-17 (1988) and *Roemer v. Board of Public Works*, 426 U.S. 736, 764-765 (1976) (finding no excessive entanglement by state audits to insure that religious colleges were not using grant moneys to teach religion). "Judicial caveats against entanglements must recognize that the line of separation far from being a 'wall' is a blurred, indistinct and variable barrier depending on all circumstances of a particular relationship." (quoting *Lemon v. Kurzman*, 403 U.S. 602, 614 (1971)).

Although the law relating to church autonomy provides a limited shield against excessive incursion on internal church management, it clearly cannot be applied blindly to all disputes involving church conduct or decisions. *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 657 (10th Cir. 2002). "The doctrine is implicated only in those situations where 'the alleged misconduct is rooted in religious belief.'" (quoting Wisconsin v. Yoder, 406 U.S. 205, 215 (1972)), McKelvey, supra, at 44-45

(emphasis added)). The First amendment does not protect church against negligence claims for hiring and supervising concerning priest actions not rooted in religious belief. "Of course churches are not - and should not be - above the law. Like any other person or organization, they may be held liable for their torts and upon their contracts." *McKelvey*, *supra* at 45 (quoting *Malicki v. Doe, 814 So. 2d 347, 361 (Fla. 2002) citing Rayburn v. General Conference of Seventh-Day Adventists*, 772 F2d 1164, 1170 (4th Cir. 1985))

In the case at bar, the conduct complained of - breach of various duties in tort and contract - is based on betrayal of duties, lying in aid of discriminating against an exemplary heterosexual seminarian with a documented record of excellence. Such conduct cannot be rooted in religious belief. Nor could it be rooted in any requirement of priestly formation. Objectively, defendants may well be guilty of violations of the Sixth and Eighth Commandments. Plaintiff does not rely on such authorities here. Plaintiff's only asserted claims are based on civil law.

3. The Fifth Cause of Action

Fraud and deceit is well pleaded as to the conspiratorial nature and the bias against a heterosexual seminarian by practicing homosexuals. This conspiracy and bias was concealed from plaintiff. Had it been disclosed it would have resulted in plaintiff's being admitted to the Dunwoodie seminary, which Dolan had the power to do (A-48-63, 69, 86-87, 886-887).

4. The Seventh Cause of Action

The Seventh cause of action is for infliction of emotional distress, factually set forth in the Complaint (A-89-90) and legally supported POINT VII-3, *supra.*

5. The Eighth Cause of Action

This cause of action against the NAC and Harman is for malign interference with plaintiff's economic relationship with Dolan and the ADNY, and is factually set forth in the complaint and in plaintiff's affidavit (A-90-91).

6. The Ninth Cause of Action

This cause of action is for maintaining a hostile work environment and is set forth in the complaint (A-91-92).

7. The Tenth Cause of Action

This cause of action for wrongful discharge in violation to organizational procedure is set forth in the complaint (A-92-93) and affidavits (A-499).

CONCLUSION

It is respectfully requested that the order of the court below be reversed, that the complaint be reinstated as to defendants Dolan, the ADNY, the NAC and Harman and that permission to amend the complaint be granted.

Dated:

Bronxville, New York
October 26, 2022

Respectfully submitted,

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I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: October 26, 2022

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court

Appellate Division—Second Department

ANTHONY GORGIA,

Plaintiff-Appellant,

– against –

TIMOTHY DOLAN, THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, ADAM PARK, PETER HARMAN, THE PONTIFICAL NORTH AMERICAN COLLEGE and JOHN GEARY McDONALD,

Defendants-Respondents,

– and –

"JOHN DOE-I" through "JOHN DOE-XXV,"

Defendants.

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1. The index number of the case in the court below is 151501/20.

2. The full names of the original parties are as set forth above. There have been no changes.

3. The action was commenced in Supreme Court, Richmond County.

4. The action was commenced on or about September 7, 2020, by the filing of a Summons with Notice. A Demand for a Complaint was filed by Defendants Timothy Dolan and The Roman Catholic Archdiocese of New York, on November 4, 2021, and by the Defendants The Pontifical North American College, Peter Harman and John Geary McDonald, on December 29, 2020. Thereafter a Verified Complaint was served on February 3, 2021. Issue was joined by the filing of a Motion to Dismiss and the Verified Complaint by Defendants on April 12, 2021.

5. The nature and object of the action is asking relief for Sexual Orientation Discrimination, Disability Discrimination, Breach of Fiduciary Duty, Fraud, Violation of Title VII of the Civil Rights Act.

6. This appeal is from the Decision and Order of the Honorable Lizette Colon, dated January 18, 2022, which granted Defendants' Motions to Dismiss the Complaint and denies Plaintiff's Cross-Motion to permit late service of the Complaint on Defendants Timothy Dolan and The Roman Catholic Archdiocese of New York

7. This appeal is on the appendix method.