

ET  
gmu

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

KRISTINE PATICO KOUMENTAKOS,  
ET AL

Plaintiff

VS.

METROPOLITAN HERMAN, ET AL

Defendant

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 13-C-08-073089 OT

MOTION FOR SUMMARY JUDGMENT

Comes now Defendant V. Reverend Constantine White, Dean, (hereinafter “Dean White”) by and through counsel, Brault Graham LLC and Daniel L. Shea, Esq., and pursuant to Maryland Rule 2-501 moves this court for the entry of Summary Judgment on his behalf on the grounds set forth below. In short, there are no genuine issues of material fact, and this Defendant may not be held liable for the alleged tortious actions of Defendant Raymond Velencia.

BACKGROUND

Incorporated by reference herein is the “Background” section the Motion for Summary Judgment filed on behalf of Metropolitan Herman on November 12, 2008

As set forth more fully in that Motion, there are two fundamental bases upon which the Third Amended Complaint rests in the effort to attempt to impose liability upon several defendants, including Dean White. The first basis stems from Mrs. Koumentakos’ termination from her employment at St. Mathew House on February 8, 2006. The second basis stems from alleged improper dissemination of information on

FILED

08 DEC 22 AM 11:46

78000

November 1, 2007 as a result of the publication in an email allegedly containing confidential information given by plaintiffs to Father Raymond Velencia in confession or during counseling sessions.

This Defendant is the Dean of the Washington Deanery, which is not a legally constituted entity, and thus is also not a proper defendant to this proceeding. (*See*, Motion for Summary Judgment filed on behalf of the Deanery in this regard). The Washington Deanery consists primarily of a group of seven separate parish churches which are within the geographic area known as the Washington Diocese of the Orthodox Church in America.

As set forth in the Third Amended Complaint, Dean Constantine White has been named specifically as a defendant in four (4) of the Third Amended Complaint's twenty-two (22) counts.<sup>1, 2</sup> Six other counts (Counts I, II, IX, X, XIX and XX) make non-specific claims for damages against "All Defendants" without naming Dean White specifically in the *ad damnum* clauses. As demonstrated herein, as a matter of law Dean White cannot be held liable for the alleged tortious acts of Father Velencia. Accordingly, because the claims against Defendant Dean White fail as a matter of law, he is entitled to the entry of summary judgment.

---

<sup>1</sup> Those counts which specifically name Dean White as a defendant are as follows: Count V and Count VI (plaintiffs claim negligent hiring and retention of Father Valencia); Count VII and Count VIII (plaintiffs claim negligent retention of Father Valencia).

<sup>2</sup> Twelve other counts (Counts III, IV, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XXI and XXII) make no direct allegations about this defendant specifically. The *ad damnum* clauses of each of these twelve counts identify specific defendants against whom damages are sought, none of whom are Dean White.

## I. Standard of Review

A trial court properly grants summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Southland Corporation v. Griffin*, 322 Md. 704, 633 A.2d 84 (1993). As stated by the Court of Appeals, not just any factual dispute will defeat the motion, rather:

In order to prevent the granting of a motion for summary judgment, the objecting party must show more than that there was a question of fact presented. He must, of course, also show that the resolution of that question will somehow affect the outcome of the case, i.e., that it is a material fact.

*Park lawn v. Nee*, 243 Md. 249, 254, 220 A.2d 563, 566 (1966) (emphasis added). A general allegation that material facts are in dispute will not suffice; contradictory facts must be shown “in detail and with precision . . . to prevent the award of summary judgment.” *Tri-State Properties, Inc. v Middle Man*, 238 Md. 41, 47, 207 A.2d 499, 502 (1965). Where the pleadings, exhibits, and affidavits of the moving party set forth sufficient competent evidence to entitle one to summary judgment, it is incumbent upon the opposing party to present such evidence as will give rise to a triable issue of a material fact. *Krasner v. Fleischmann*, 261 Md. 164, 274 A.2d 339 (1971). The party opposing the motion must show by facts which are admissible in evidence that there is a real dispute between the parties. *Kinsley v. Keller*, 11 Md. App. 269, 273 A.2d 624 (1971). The remaining authorities set forth in the motion for summary judgment are incorporated herein by reference.

As demonstrated herein, there is no genuine issue of material fact as to the dispositive issues raised by this Motion. Accordingly, Defendant Dean White is entitled

to the entry of summary judgment as a matter of law.

## II. Claims Involving this Defendant

The Third Amended Complaint consists of twenty-two counts. Four (4) of the twenty-two (22) Counts of the Third Amended Complaint seek damages from Dean White specifically<sup>3</sup>, and they are as follows: Counts V, VI, VII and VIII, each of which claims negligent hiring and retention of Father Velencia. Six other counts (Counts I, II, IX, X, XIX and XX) make non-specific claims for damages against “All Defendants.”<sup>4</sup> However, Dean White is not specifically named in the body of the allegations under the captions of these six counts, nor is he specifically named in the *ad damnum* clauses applicable to these six counts, as he is in the above four counts where he is specifically identified. To the extent that the allegations of these six counts may be interpreted as having properly been brought against Dean White, this motion is directed at each of those six counts as well.

As outlined below, this Defendant is entitled to summary judgment as to each of the above counts.

---

<sup>3</sup> In each of the four counts where Dean White is specifically named, seven other defendants are joined as specifically named defendants.

<sup>4</sup> The remaining twelve counts (Counts III, IV, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XXI and XXII) make no direct allegations about this defendant specifically. The *ad damnum* clauses of each of these twelve counts identify specific defendants against whom damages are sought, none of whom are Dean White.

### III. Governing Law

The fundamental factual allegations which are the predicate for the claims against Dean White, as well as against seven other defendants, are contained at paragraph 11 (which alleges that Dean White was “supervising” Defendant Valencia), and paragraph 85 which alleges:

“85. Defendants OCA, Metropolitan Herman, the Diocese, The Deanery, Dean White, OCSM, SMH and the BOD had a duty and obligation to Plaintiffs Mr. and Mrs. Koumentakos to hire and retain priests and spiritual leaders who met appropriate standards of conduct, to investigate complaints with regard to priests and spiritual leaders regarding alleged violations of the appropriate standards of conduct and to remove individuals who violated the code of conduct.”

The theories of the Third Amended Complaint upon which plaintiffs seek to impose liability upon Dean White concern the law of agency, as relates to the claim of failure to supervise Father Valencia, and the law of negligent hiring and/or retention as relates to the employment (eg., hiring, firing, investigation and retention) of Father Valencia as his employee. As outlined below, the effort to impose liability upon Dean White on either basis fails as matter of law.

#### A.

##### The Law of Agency

Dean Constantine White incorporates by reference the legal authorities set forth in the Motion for Summary Judgment filed on behalf of Metropolitan Herman.

To highlight, however, the focus of the case law which outlines the limitations which Maryland places upon efforts to impose liability by way of a theory of agency is

upon three specific elements. In *Forest v. P&L Real Estate*, 759A2d 1187, 1202, 134 Md. App. 371, 396-97 (2000) those elements are identified as follows:

“In the absence of a written agreement, the following three factors are examined in order to determine if an agency relationship exists: (1) the agent is subject to the principal's right of control; (2) the agent has a duty to act primarily for the benefit of the principal; and (3) the agent holds a power to alter the legal relations of the principal. *Id.* (citing *Schear v. Motel Management Corp.*, 61 Md.App. 670, 687, 487 A.2d 1240 (1985) (citing to *Restatement (Second) of Agency* §§ 12-14 (1982)).”

A party asserting a claim dependent upon an agency relationship, such as *respondeat superior*, bears the burden of producing legally sufficient evidence of the nature and extent of the relationship. *P. Flanigan & Sons, Inc. v. Childs*, 251 Md. 646, 248 A 2d 473 (1968); *Schear v. Motel Mgmt. Corp. of Am.*, 61 Md. App. 670, 687, 487 A.2d 1240, 1248 (1985) (granting a directed verdict for the defendant because of insufficient evidence of an agency relationship). Only where legally sufficient evidence exists to prove the agency relationship can the question of an alleged agency's existence be submitted to the jury. *Green v. H & R Block*, 355 Md. 488, 504, 735 A. 2d 1039, 1048 (1999). Accordingly, where a party fails to produce legally sufficient evidence of an agency relationship, or where there is “no conflict in the evidence relating to the question and but one inference can be drawn therefrom,” summary judgment should be granted. *Globe*, 208 Md. at 585; *Green*, 735 A. 2d at 1048; *Schear*, 61 Md. App. at 687.

In *Schear, supra*, the plaintiff sought to impose liability upon Holiday Inns, Incorporated by reason of the conduct of its franchisee which was alleged to have failed to take adequate steps to safeguard a hotel guest's property which was stolen. The trial

court granted Holiday Inn's motion for a directed verdict. The trial court was affirmed on appeal. The decision centered upon the fact that the "control" element was totally lacking. In particular, the appellate court observed, "Although Holiday retained the right to conduct periodic inspections as a means of insuring adherence to Holiday Inn standards, it took no part in the day-to-day operation of the hotel." 487 A .2d 1249. The court further explained, "...the fact that one of the parties has subsidiary duties to act for the interests of another...does not create an agency relationship..." *Id.*, citing to *Restatement (Second) of Agency*, § 13 comment c (1958). In affirming the trial judge, the *Schaer* court concluded, "The right possessed by Holiday to insure compliance with its franchise standards contributes no more than the right to enforce such a subsidiary duty." *Id.*

In the instant matter, there is no competent evidence that an agency (e.g., master-servant) relationship has ever existed between Fr. Raymond Velencia (as servant) and Dean White (as master) with respect to either the alleged operation of SMHD, or with respect to Fr. Velencia's alleged conduct in terms of the allegation relating to maintaining confidence as to counseling sessions or confessions which Fr. Velencia personally heard.

Here, as demonstrated by the supporting affidavit of Constantine White and the record, Dean White has never expressly or impliedly consented to a relationship whereby he had a right to control the actions of Fr. Velencia with regard to (a) employment decisions relating to the operation of St. Matthew House, or (b) insofar as defendant Velencia's conduct in maintaining confidence as a counselor or confessor. *Schear, supra; see also, Bowser*, 170 Md. App. at 635-36 (holding a father-in-law not liable for

his son-in-law's automobile accident even though the purpose of the trip was to obtain medicine for the father-in-law because there was no evidence that either consented to an agency relationship); *Talbott v. Gegenheimer*, 245 Md. 186, 225 A.2d 462, 465 (1967). Therefore, absent evidence of express or implied consent to a master-servant relationship, Dean White cannot be held individually liable for Fr. Velencia's allegedly tortious conduct.<sup>5</sup>

In the instant matter, the competent evidence in the record fails to meet any of the elements necessary to make out a viable claim of liability against Dean White by reason of the conduct of Father Valencia. Dean White took no part in the operation of SMH. He did not control the day-to-day operation of the confessional or counseling sessions which Father Valencia had with parishioners. There is no written agreement between Father Valencia and Dean White. Father Valencia is not subject to Metropolitan Herman's control insofar as confessions or employment decisions made by Father Valencia pertaining to employees of an independent corporation over which Dean White had no control. There is no evidence that Father Valencia has a duty to act primarily for Dean White. Similarly, there is no evidence that Father Valencia holds any power to alter Dean White's legal relationships with others.

The record is devoid of any evidence of express or implied consent by either Father Raymond Velencia or by Dean White as to the existence of a master-servant

---

<sup>5</sup> By referring to plaintiffs' allegations of tortious conduct such as failing to maintain a confidence insofar as confession is concerned and improper termination of employment, the court should not conclude that this defendant concurs with these allegations. Instead, as pointed out herein, even accepting *arguendo* this allegation as true in ruling on this motion, as a matter of law this defendant may not be held liable for such conduct.



relationship between the two. The record is equally devoid of evidence that Dean White had any right to control Fr. Velencia's actions in relation to his maintaining confidence over confessions he heard, or in regards employment decisions by Fr. Velencia at SMHD. As in *Hecklemann*, *Shear* and *Dhanraj*, the absence of control by Dean White over Father Raymond Valencia's employment decisions at SMHD, as well as the absence of any control by Metropolitan Herman over Fr. Velencia's maintaining confidence as to confessions or counseling sessions, demonstrates that a master-servant relationship as to the fundamental allegations which are the bases for plaintiffs' Third Amended Complaint did not exist as a matter of law as between these two individuals.

Additionally, the nature of the alleged tortious conduct by Fr. Velencia fails to supply evidence from which the court could infer the existence of a master-servant relationship between Dean White and Father Velencia as to employment decisions at SMHD or in the maintenance of confidence in regards confessions. As a matter of law, liability may not be imposed vicariously upon another absent admissible evidence of a master's express control over the alleged improper conduct. This "control" must be express in the absence of evidence to show that the conduct at issue is "of such vital importance in furthering the master's business that his control over it might reasonably be inferred." *Gallagher*, 209 Md. at 602; *see also*, *Dhanraj*, 506 A.2d at 228 (finding that traveling to a work training facility was not so vitally important to impose liability under *respondeat superior*).<sup>6</sup>

Moreover, in two specific counts of the Third Amended Complaint which seek

---

<sup>6</sup> These citations are to the cases set forth in the Motion for Summary Judgment filed on behalf of Metropolitan Herman which have been incorporated by reference.

relief on an agency theory of *respondeat superior* (Counts XI and XII) plaintiffs plead that “at all times relevant” five different defendants were Father Valencia’s employer; Dean White is *not* among those identified as Father Valencia’s employer. (Compl. ¶¶ 115, 120)

In summary, there is no competent evidence to demonstrate the existence of any of the elements necessary to sustain a claim of liability upon Dean White by reason of the alleged tortious conduct of Fr. Raymond Valencia. Accordingly, the claim against Dean White based on agency fails as a matter of law.

## B.

### Negligent Hiring/ Retention

It is clear beyond cavil that a fundamental prerequisite to liability based on a theory of negligent hiring /retention is that one must be the *employer* of the alleged tortfeasor. *Horridge v. St. Mary’s County Dept. of Social Services*, 382 Md. 170, 180-81, 854 A.2d 1232, 1237-38 (2004); *Evans v. Morsell*, 284 Md. 160, 395 A. 2d 480 (1978). Indeed, Plaintiffs Third Amended Complaint does not even allege that Dean White was Father Valencia’s employer. It specifically identifies five other defendants as Father Valencia’s employer. (Compl. ¶¶ 115, 120)<sup>7</sup>

As the accompanying affidavit of Dean White demonstrates, he has never been the employer of Father Raymond Velencia. As there is no genuine issue of material fact as to

---

<sup>7</sup> An allegation, of course, does not make a claim true or serve in any way as grounds to oppose a motion for summary judgment. The absence of such an allegation, however, is pointed out because pleading in good faith in accordance with the *Maryland Rules* requires the existence of good grounds to support an allegation. Rule 1-311 (b). There is no good faith grounds to make such an allegation.

this circumstance, Dean White is entitled as a matter of law to the entry of summary judgment as to the claim of negligent hiring/retention.

C.

**A Corporate Officer has no Personal Liability for the Tort of the Principal**

A corporate officer or director who has no involvement in the commission of an alleged tort cannot be held personally liable for the tort of the corporation. See, *Metromedia Co. v. WCBM Maryland, Inc.*, 327 Md. 514, 610 A.2d 791 (1991) (corporate officer or director is not liable for the torts of the corporation or misconduct of a subordinate of which he has no knowledge or participation in or to which he has not consented). To the extent plaintiffs seek to impose liability upon Dean White by reason of any alleged corporate affiliation or capacity (ie., as “Dean of a Deanery), as the governing legal authority makes plain, as a matter of law he cannot be held liable in either his personal or official capacity for any alleged tortious conduct by Fr. Raymond Valencia.

The first basis for the allegations of tortious conduct of Father Valencia relate to the termination of Mrs. Koumentakos’ employment. Dean White had no knowledge of plaintiff’s termination of an employee of a corporation with which he has no affiliation and in which he had no participation.. Father Valencia, in his capacity as President on behalf of SMHD, Inc., terminated plaintiff’s employment. That action involved terminating plaintiff as an employee of that corporation. That act had nothing whatsoever to do with Dean White or the Deanery. The undisputed evidence of record is that Dean White has no ownership in or control over SMHD, Inc. Dean White has never had any

right to control Father Raymond Valencia as concerns the operation or the affairs of SMHD, Inc. Moreover, no agency relationship has ever existed between Dean White and Father Valencia as relates to Father Valencia's day-to day conduct, including personal encounters with parishioners involved in private counseling sessions or insofar as maintaining confidence over matters heard in confession by Father Valencia at the Church of Saint Matthew. There is no competent evidence to demonstrate any liability upon Dean White by reason of any alleged failure to maintain confidence as to confession Father Valencia personally heard or counseling he personally performed at the Church of St. Matthew. There is no competent evidence which demonstrates that Dean White had any knowledge of, participation in or that he consented to such alleged tortious conduct of Father Valencia. For these reasons, any effort to impose personal liability by reason of any affiliation Dean White may have had with any incorporated entity or any unincorporated entity fails as a matter of law.

D.

**Punitive Damages are not Recoverable as to the Defendant**

The synopsis of Maryland law regarding the recovery of punitive damages has been set forth in detail in the Motion for Summary Judgment filed on behalf of Metropolitan Herman. It is incorporated herein by reference.

There is no viable claim for punitive damages as to this defendant. No evidence of any element of actual malice--fraud, malice, evil motive, ill will, or intent to injure -- exists in this matter as relates to Dean White. Accordingly, the plaintiffs' effort to seek an award of punitive damages against Dean White fails as a matter of law.

#### IV. Conclusion

The record before the court demonstrates that there is no genuine issue of material fact as to the dispositive matters which are the subject of this motion.

There is no legally sufficient evidence of record which supports any contention that Father Raymond Valencia, either in the operation of SMHD or insofar as maintaining confidence in regards confessions he heard or counseling in which he may have participated, was acting as the agent for or was subject to the control of Dean White. There is no legally sufficient evidence to support any effort to impose liability upon Dean White. He is not and never has been the employer of Father Raymond Valencia. Plaintiffs have not even alleged the existence of such an employment relationship, yet have made such an allegation as to five other defendants.<sup>8</sup>

Accordingly, as a matter of law, Dean White may not be liable under theories of agency or negligent hiring /retention. In addition, there is no competent evidence which demonstrates, either individually or in his official capacities for the Deanery, that Dean White had any knowledge of, any participation in or that he consented to such alleged tortious conduct. Finally, in all events, there is no competent evidence to support a claim of punitive damages against Dean White.

---

<sup>8</sup> See the comments at footnote 7 as to the effect and requirements of an allegation.

For the foregoing reasons, Dean White is entitled as a matter of law to the entry of summary judgment as to all claims against him.

Respectfully submitted,

BRAULT GRAHAM, LLC

BY: 

---

Daniel L. Shea, Esq.  
101 South Washington Street  
Rockville, MD 20850  
(301) 424-1060  
Attorneys for Defendant, V.  
Reverend Constantine White