DOC. NO.: X06-UWY-CV-21-6067153-S	:	SUPERIOR COURT
JOSEPH PETRELLO	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	COMPLEX LITIGATION DOCKET
BRUCE J. BEMER, ET AL.	:	APRIL 26, 2024

MEMORANDUM OF DECISION RE
MOTIONS FOR SUMMARY JUDGMENT #224 AND #225

On March 12, 2021, the plaintiff, Joseph Petrello, commenced this action by service of process on the defendants, Bruce J. Bemer (Bemer) and Bemer Petroleum Corp. (company).[1] In the operative pleading, the amended complaint filed on August 6, 2021, the plaintiff alleges the following. On unspecified dates during the years 1996 to 1997, Bemer, acting directly or through his boyfriend, Jason McCormick, lured the minor plaintiff to the company's Glastonbury office. Once there, Bemer, acting as an officer, agent, servant and/or employee of the company, proceeded to "[engage] in a pattern of inappropriate conduct and touching [of the plaintiff] . . . for the purpose of sexual gratification and/or sexual exploitation of said minor plaintiff." When the plaintiff was sixteen, Bemer hired the plaintiff to work at the company, which allowed Bemer to have increased access to the plaintiff and the "ability to prey upon him." Bemer also invited the plaintiff to live in his home during this period. The plaintiff further alleges that Bemer used various tactics such as alcohol, drugs, cars and/or money to entice the plaintiff to perform sexual acts. According to the plaintiff, he and Bemer engaged in sexual activities approximately thirty times during this two-year period. The plaintiff asserts that he has suffered extreme emotional difficulties and corresponding medical treatment arising out of Bemer's conduct. Additionally,

[1] The defendants will both be referred to collectively as "the defendants" and separately by their names when appropriate.

the plaintiff alleges that the company co-conspired with Bemer to "[create] an environment of sexual abuse on its premises."

As a result of this alleged conduct, the plaintiff alleges the following causes of action: (1) count one—assault and battery as to Bemer; (2) count two—reckless and wanton conduct as to Bemer; (3) count three—intentional infliction of emotional distress as to Bemer; (4) count four—negligence as to the company; (5) count five—employer/owner liability on count one against the company; (6) count six—employer/owner liability on count two against the company; and (7) count seven—employer/owner liability on count three against the company. Counts five through seven are all based on a theory of vicarious liability. In response to the plaintiff's claims, the defendants have filed an answer the alleges, inter alia, that the plaintiff's causes of action are barred by the statute of limitations found in General Statutes § 52-577.

On January 11, 2024, Bemer filed a motion for summary judgment and a memorandum of law in support of his motion. The company also filed a motion for summary judgment on the same date.[2] Although not attached, in support of their summary judgment motions, the defendants both reference the transcript and video of the plaintiff's deposition, along with the supporting deposition exhibits, that were offered as a full exhibit during a prior prejudgment remedy proceeding in this case.[3] The plaintiff filed a memorandum of law in opposition to the summary judgment motions on February 15, 2024. On February 27, 2024, both defendants filed

[2] The company's motion for summary judgment incorporated by reference Bemer's supporting memorandum of law.

[3] On November 28, 2023, this court, *Bellis, J.*, granted the plaintiff's application for prejudgment remedy. This decision has been appealed by the defendants.

their reply memoranda. The plaintiff filed a surreply on April 9, 2024.[4] The court heard oral argument on April 15, 2024.[5]

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case."

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[4] The parties filed multiple exhibits in connection with the plaintiff's summary judgment opposition, the defendants' reply memoranda, and the plaintiff's surreply. These exhibits will be referenced only as necessary in this memorandum of decision.

[5] Initially, the court heard oral argument on the summary judgment motions on March 8, 2024. At that hearing, the plaintiff requested the opportunity to file a surreply to address arguments that were raised for the first time in the company's reply memorandum. The court granted this request and heard further argument on both motions on April 15, 2024.

(Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). "[T]he party moving for summary judgment . . . is required to support its motion with supporting documentation, including affidavits." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 324 n.12, 77 A.3d 726 (2013). "The existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence. . . . If the affidavits and the other supporting documents are inadequate, then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof." (Internal quotation marks omitted.) *Rivera* v. *CR Summer Hill, Ltd. Partnership*, 170 Conn. App. 70, 74, 154 A.3d 55 (2017).

The defendants both move for summary judgment as to all counts on the ground that the plaintiff's claims are time barred under the applicable statute of limitations. Specifically, the defendants contend that because the undisputed facts establish that the plaintiff was eighteen years or older when the alleged sexual contact with Bemer occurred, the plaintiff cannot rely on the extended statute of limitations that applies to claims regarding sexual abuse inflicted on minors. Rather, the defendants assert that the general three-year tort statute of limitations applies to the plaintiff's claims. In support of their position that the plaintiff was eighteen years or older when he met Bemer, the defendants rely on statements made in the plaintiff's deposition that suggest he could not have possibly been a minor at the time of the acts alleged in his complaint. Accordingly, the defendants argue they are entitled to judgment as a matter of law. In opposition, the plaintiff agues there is a genuine issue of material fact regarding how old he was when he met Bemer and was allegedly sexually assaulted by him. The plaintiff asserts that the defendants have "cherry-picked" certain testimony in his deposition and ignored other testimony that contradicts their position. As argued by the plaintiff, the statements made in his deposition

could be used to cross-examine him regarding his assertion that he was a minor when he interacted with Bemer, but that the defendants have not conclusively established he was eighteen or older at the time of the events that give rise to this case. On that basis, the plaintiff contends that summary judgment is inappropriate.

Under Connecticut law, most tort claims are governed by the statute of limitations found in § 52-577.[6] That statute provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of." Nevertheless, the General Statutes have a specialized statute of limitations that applies to victims who experienced sexual abuse when they were minors. The version of that statute implicated here, General Statutes (Rev. to 2019) § 52-577d,[7] provided: "Notwithstanding the provisions of section 52-577, no action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation or sexual assault may be brought by such person later than thirty years from the date such person attains the age of majority." Within the General Statutes, the term "minor" is defined to mean "a person under the age of eighteen years . . . ." General Statutes § 1-1d. Additionally, the phrase "age of majority" is statutorily defined as a person who

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[6] Causes of action sounding in negligence, however, are governed by General Statutes § 52-584, which provides in relevant part: "No action to recover damages for injury to the person . . . caused by negligence, or by reckless or wanton misconduct . . . shall be brought but within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered . . . ." Therefore, it is presumably the defendants' position that § 52-584, as opposed to § 52-577, applies to count four and arguably counts two and six.

[7] General Statutes § 52-577d was amended in 2019. The Public Act that amended § 52-577d, however, made clear that it was "[e]ffective October 1, 2019, and applicable to any cause of action arising from an incident committed on or after said date." Public Acts 2019, No. 19-16, § 13. Prior to 2019, § 52-577d was last amended in 2002. That Public Act, in contrast, indicated that it was "[e]ffective from passage [May 23, 2002] and applicable to any cause of action arising from an incident committed prior to, on or after said date." Public Acts 2002, No. 02-138, § 2. Therefore, this action is governed by the version of § 52-577d was in effect from 2002 to 2019.

is "deemed to be eighteen years." § 1-1d. Accordingly, it is clear that in order for § 52-577d to be applicable, the sexual contact at issue must have occurred before the plaintiff reached the age of eighteen.

The parties agree that the plaintiff was born in late November, 1980, and this action was commenced on March 12, 2021. In his complaint, the plaintiff alleges that he was sexually assaulted by Bemer during the period between 1996 and 1997. Accordingly, if the underlying events occurred in the time frame set forth by the plaintiff, this case would be timely under § 52-577d because the plaintiff was allegedly sexually assaulted when he was a minor and this action was brought less than thirty years after he reached the age of majority. On the other hand, this matter is clearly time barred if the sexual conduct at issue happened after the plaintiff turned eighteen.

Under Connecticut law, "[s]ummary judgment may be granted where the claim is barred by the statute of limitations. . . . Summary judgment is appropriate on statute of limitations grounds when the material facts concerning the statute of limitations [are] not in dispute . . . ." (Internal quotation marks omitted.) *Gaddy* v. *Mount Vernon Fire Ins. Co.*, 192 Conn. App. 337, 344, 217 A.3d 1082 (2019). "Typically, in the context of a motion for summary judgment based on a statute of limitations special defense, a defendant . . . meets its initial burden of showing the absence of a genuine issue of material fact by demonstrating that the action had commenced outside of the statutory limitation period." (Internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 192, 177 A.3d 1128 (2018). Only then does it become "incumbent upon the party opposing summary judgment to establish a factual predicate from which it can be determined, as a matter of law, that a genuine issue of material fact [as to the timeliness of the action] exists." (Internal quotation marks omitted.) Id.

In the memorandum of law in support of his summary judgment motion and reply memorandum, Bemer sets forth a fairly convincing circumstantial case that he did not even meet the plaintiff until well after he turned eighteen. This argument has been adopted in whole by the company. In short, the defendants point to certain statements made by the plaintiff in his deposition, supported by various pieces of documentary evidence, indicating that the plaintiff left school just weeks before turning eighteen, then lived in a number of different places over a period of many months if not years, and at that point he met McCormick and thereafter Bemer. At first blush this argument may appear to be persuasive. However, in his affidavit dated March 21, 2022, the plaintiff attests that "[b]eween the ages of 16-17 between 1996-1997 . . . Bemer . . . directly or through his boyfriend, would lure me to either his personal residence or his office at [the company] to engage in sexual activity with me. He also hired me at or around the age of 16 to work at his company . . . ." [8] This attestation is supported, at least in part, by statements made in the report of licensed psychologist Demara B. Bennett that the plaintiff was "was sexually

[8] In Bemer's reply memorandum, which is adopted by the company with respect to this argument, the defendants urge the court to disregard this attestation based on the "sham affidavit rule." As noted by our Supreme Court, "[t]he sham issue of fact doctrine prohibits a party from defeating summary judgment simply by submitting an affidavit that contradicts the party's previous sworn testimony." (Internal quotation marks omitted.) *Stuart* v. *Freiberg*, 316 Conn. 809, 829 n.14, 116 A.3d 1195 (2015). Importantly, however, even though it has been recognized in federal court, at this point in time "the sham affidavit doctrine . . . has not been adopted by [the Supreme Court] . . . ." Id. As recently as 2022, when discussing the viability of the doctrine in the context of a motion for summary judgment, the Appellate Court stated that "[w]ere the sham affidavit rule [to] be adopted in Connecticut . . . the court would have no hesitation about determining it to be applicable here; however, the court expressly declined to adopt and to apply the rule . . . instead prefer[ring] to rely on established rules of evidence and determining that the relevant portion of the . . . affidavit [at issue] was not competent evidence pursuant to Practice Book § 17-46. Accordingly, we need not address the defendants' claim regarding the sham affidavit rule, and we leave for another day the question of whether the rule is a viable doctrine in Connecticut." (Internal quotation marks omitted.) *Atlantic Street Heritage Associates, LLC* v. *Atlantic Realty Co.*, 216 Conn. App. 530, 549 n.18, 285 A.3d 1128 (2022). Given that there is no appellate authority adopting the sham affidavit doctrine in this state, the court will rely on the ordinary principles for adjudicating a motion for summary judgment when ruling on the motion that is presently before it.

abused on various occasions by . . . Bemer between 1996 and 1997 when [the plaintiff] was 16 to 17 years old at [the company] and at . . . Bemer's private residence."

It is well accepted that "[i]n ruling on a motion for summary judgment, the court's function is not to decide issues of material fact . . . but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 302 Conn. 408, 421-22, 28 A.3d 302 (2011), cert. denied, 567 U.S. 924, 132 S. Ct. 2773, 183 L. Ed. 2d 653 (2012). "[I]ssue-finding, rather than issue-determination, is the key to the procedure." (Internal quotation marks omitted.) *DiMiceli* v. *Cheshire*, 162 Conn. App. 216, 222, 131 A.3d 771 (2016). In the present case, the parties have produced contradictory evidence regarding when the alleged sexual contact took place between the plaintiff and Bemer. It is simply not the court's role, within the context of a motion for summary judgment, to resolve these disputed issues of fact. Accordingly, the defendants have failed to meet their burden to establish that they are entitled to judgment as a matter of law on their statute of limitations special defense. Therefore, the court denies the motions for summary judgment as to that ground.

The company also moves for summary judgment as to counts five, six, and seven in which the plaintiff brings claims based on a theory of vicarious liability.[9] In its reply memorandum,[10] the company argues that the plaintiff's opposition memorandum makes no distinction between the conduct of Bemer and the company. The company asserts that there is

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[9] During oral argument and in its briefing, the company made clear that it is not moving for summary judgment as to count four sounding in negligence on the basis of this argument.

[10] This argument was raised for the first time in the company's reply memorandum. Even though such a procedure is improper; *Mangiafico* v. *State Board of Education*, 138 Conn. App. 677, 680–81 n.4, 53 A.3d 1066 (2012); the parties agreed to allow the plaintiff the opportunity to file a surreply so that he could respond to the company's argument. Therefore, the court will examine the substance of the parties' arguments in the manner they were presented.

no evidence in the summary judgment record that could demonstrate that Bemer was acting within the scope of his employment and in furtherance of his employer's business when he allegedly sexually assaulted the plaintiff. Accordingly, the company contends that it cannot be held liable for Bemer's conduct under the doctrine of respondeat superior. Furthermore, the company argues that the policy behind the specialized statute of limitations found in § 52-577d is not served by applying it to claims based on vicarious liability. As stated by the company, "vicarious liability claims are predicated solely on the actions of the abuser, not on the [c]ompany's own actions. Without this causal connection between the [c]ompany's own actions and [the plaintiff's] alleged injuries . . . § 52-577d cannot apply . . . ." In response, the plaintiff argues that there is a genuine issue of material fact as to whether the company is vicariously liable for Bemer's acts. According to the plaintiff, as part of his employment with the company, Bemer recruited cheap unskilled labor to work on the company's premises. This role provided Bemer with the authority to hire underaged boys to work at the company, and that gave him the perfect opportunity to sexually abuse them. Accordingly, the plaintiff contends summary judgment on this basis would be inappropriate.

In asserting this argument, the company is actually raising two separate issues. The first is whether it can be held legally responsible for Bemer's alleged wrongful acts pursuant to the doctrine of respondeat superior. Second, the company contends that even if respondeat superior is potentially applicable here, that § 52-577d does not apply to claims that sound in vicarious liability. Both arguments will be addressed separately.

"[T]he fundamental principles of the doctrine of respondeat superior are well established in Connecticut. Under the doctrine of respondeat superior, a master is liable for the wilful torts of his servant committed within the scope of the servant's employment and in furtherance of his master's business. . . . The master is not held on any theory that he personally interferes to cause

the injury. It is simply on the ground of public policy, which requires that he shall be held responsible for the acts of those whom he employs, done in and about his business, even though such acts are directly in conflict with the orders which he has given them on the subject. . . . [I]n order to hold an employer liable for the intentional torts of his employee, the employee must be acting within the scope of his employment and in furtherance of the employer's business. . . . But it must be the affairs of the principal, and not solely the affairs of the agent, which are being furthered in order for the doctrine to apply." (Internal quotation marks omitted.) *2 National Place, LLC* v. *Reiner*, 152 Conn. App. 544, 557-58, 99 A.3d 1171, cert. denied, 314 Conn. 939, 102 A.3d 1112 (2014). "In determining whether an employee has acted within the scope of employment, courts look to whether the employee's conduct: (1) occurs primarily within the employer's authorized time and space limits; (2) is of the type that the employee is employed to perform; and (3) is motivated, at least in part, by a purpose to serve the employer. . . . Ordinarily, it is a question of fact as to whether a wilful tort of the servant has occurred within the scope of the servant's employment . . . [b]ut there are occasional cases [in which] a servant's digression from [or adherence to] duty is so clear-cut that the disposition of the case becomes a matter of law." (Internal quotation marks omitted.) *Doe* v. *Flanagan*, 201 Conn. App. 411, 431-32, 243 A.3d 333, cert. denied, 336 Conn. 901, 242 A.3d 711 (2020).

"When an employee engages in sexual misconduct toward a minor or a ward, courts generally reject efforts to hold the employer liable under the doctrine of respondeat superior on the basis that the sexual assaults . . . were repugnant to his employer's business and in utter contravention of the employer's aims and rules. Unlike a situation in which a servant performs the master's work poorly or misunderstands what the master wants done, the molestation of children is a total abdication of the master's work so that the [employee] can satisfy personal lust." (Emphasis omitted; internal quotation marks omitted.) *Doe* v. *Hartford Roman Catholic*

Diocesan Corp., Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X10-CV-10-5015963-S (May 9, 2014, *Dooley, J.*) (58 Conn. L. Rptr. 177, 179-80). Nevertheless, "not all respondeat superior actions alleging sexual misconduct are properly disposed of as a matter of law. Regardless of the nature of the intentional tort alleged . . . it would be contrary to Connecticut law to adopt a per se rule against vicarious liability in cases involving sexual assault. Some factual inquiry is mandated by Connecticut law." (Internal quotation marks omitted.) *Madey* v. *Stanley Black & Decker, Inc.*, Superior Court, judicial district of New Britain, Docket No. CV-20-6088375-S (July 29, 2021, *Morgan, J.*) (71 Conn. L. Rptr. 199, 203).

In the present case, according to the deposition testimony of multiple employees from the company, Bemer had the job responsibility of hiring individuals to work in the yard and then supervise them. The people that Bemer employed were usually boys between the ages of sixteen and eighteen. The plaintiff alleges that Bemer hired him in that manner and then proceeded to sexually assault him on company property. Accordingly, based on the unique factual circumstances of this case, the court concludes that a reasonable jury could find Bemer was acting within the scope of employment because the alleged wrongful conduct at issue occurred while he was at work and his position afforded him the opportunity to select particular individuals to be on company property and then victimize them. Sufficient evidence has been submitted such that a reasonable jury could determine that the company may have financially benefited from the relatively cheap labor the company received from the young men, such as the plaintiff, that Bemer is alleged to have ultimately sexually abused. Simply put, like the factual situation in an analogous decision from the Appellate Court, "[i]f the jury found the [plaintiff's] evidence credible, it could reasonably find that, but for his position as an employee . . . [Bemer would not have had the opportunity to assault the plaintiff and he therefore acted] in a misguided

effort" to serve his employer. *Glucksman* v. *Walters*, 38 Conn. App. 140, 145, 659 A.2d 1217 (directed verdict in favor of defendant employer improper when employee attacked patron during pickup basketball game), cert. denied, 235 Conn. 914, 665 A.2d 608 (1995).

The Appellate Court's decision in *Mullen* v. *Horton*, 46 Conn. App. 759, 700 A.2d 1377 (1997), rev'd on other grounds by *Cefaratti* v. *Aranow*, 321 Conn. 593, 141 A.3d 752 (2016) provides further support for the court's conclusion regarding the application of the doctrine of respondeat superior to this matter. In *Mullen*, the plaintiff alleged that a priest, who also was a practicing psychologist, engaged in misconduct when he had sex with her multiple times during counseling sessions. The trial court granted summary judgment in favor of the defendant employer on the ground that there was no genuine issue of fact that the employer could not be vicariously liable for the priest's misconduct. On appeal, the Appellate Court reversed. The court stated that the priest's "alleged sexual exploitation of the plaintiff occurred during his church sanctioned pastoral-psychological counseling sessions and while he staffed church retreats. Thus, a trier of fact could reasonably determine that [the priest's] sexual relationship with the plaintiff was a misguided attempt at pastoral-psychological counseling, or even an unauthorized, unethical, tortious method of pastoral counseling, but not an abandonment of church business." Id., 765-66. As support for this statement, the Appellate Court noted that the "institutional defendants did benefit monetarily from [the priest's] misguided counseling of the plaintiff." Id., 770. The Appellate Court then "conclude[d] that whether [the priest's] actions constituted a negligent, disobedient and unfaithful conducting of church business or a complete abandonment of church business represents an issue about which reasonable minds could differ, and thus constitutes a genuine issue of material fact." Id., 771. A similar result is mandated here. When the evidence is viewed in a light most favorable to the plaintiff, a reasonable jury could conclude that Bemer was acting within the scope of his employment and in furtherance of

his employer's business. Therefore, the court cannot conclude as a matter of law that the company cannot be held vicariously liable for his actions.

With respect to the company's argument that § 52-577d cannot be utilized in a situation where a plaintiff is attempting to hold an employer vicariously liable for the actions of its employee, the court notes that the company has cited no authority in support of this position. Rather, the sole case relied on by the company in its brief on this issue, *Doe* v. *Boy Scouts of America Corp.*, 323 Conn. 303, 147 A.3d 104 (2016), actually stands for the proposition "that § 52–577d applies not only to actions against the perpetrators of sexual abuse of minors, but also to actions against parties whose negligent acts or omissions legally caused the personal injuries suffered by the victims of such abuse." Id., 340. Although the *Doe* case is somewhat distinguishable from this matter because the issue at hand in *Doe* was whether § 52–577d applied to negligence claims as opposed to vicarious liability based on intentional torts, the *Doe* court repeatedly stated that "§ 52–577d plainly is not concerned with *particular types of defendants*, but with providing a recovery for a *particular type of injury*, namely, 'personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation or sexual assault . . . .'" (Emphasis in original.) Id., 334; see also *Doe #2* v. *Norwich Roman Catholic Diocesan Corp.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-12-5036425-S (December 2, 2013, *Dubay, J.*) (57 Conn. L. Rptr. 342, 345) (stating that "the court finds itself persuaded by the numerous Connecticut Superior Court cases that have applied § 52–577d to actions brought against institutional defendants.").

The *Doe* court also cited favorably to *Almonte* v. *New York Medical College*, 851 F. Supp. 34 (D. Conn. 1994), which contains the following passage: "in defining the scope of [§ 52–577d], courts should look to whether the underlying harm was allegedly 'caused by sexual abuse, sexual exploitation or sexual assault' . . . rather than whether the named defendants are

potentially primarily *or only secondarily liable* for the alleged harm. (Citation omitted; emphasis added.) Id., 37. Clearly, the *Almonte* court contemplated situations where a party could be held vicariously liable for the actions of another. Given that our Supreme Court has held that the applicability of § 52–577d is determined by the nature of the harm alleged as opposed to the status of a party, and that the company has cited no case law holding that the statute cannot be invoked to hold an employer vicariously liable for sexual abuse allegedly perpetrated by its employee, the court rejects this argument advanced by the company. Accordingly, the court denies the summary judgment motion as to this argument.

For all of the foregoing reasons, the court denies both Bemer and the company's motions for summary judgment.

BY THE COURT,

BELLIS,J. 421277

Bellis, J.