

SUPERIOR COURT OF NEW JERSEY

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Date: August 22, 2016

To: Christopher Westrick, Esq. (973) 994-1744
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From: Arin Mossovitz
Law Clerk to the Honorable Lisa Perez Friscia, J.S.C.

Re: Drumgoole v. Paramus Catholic H.S., et al.
BER-L-3394-16

Number of Pages including Cover Sheet: 17

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AUG 22 2016

Order Prepared by the Court

LISA PEREZ FRISCIA, J.S.C.

<p>KATHRYN DRUMGOOLE,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PARAMUS CATHOLIC HIGH SCHOOL, ET AL.</p> <p style="text-align: center;">Defendant.</p>

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY
DOCKET NO. BER-L- 3394-16**

Civil Action

ORDER

THIS MATTER having been opened to the Court upon application of Notice of Motion, filed by Christopher Westrick, Esq., counsel for defendants, The Archdiocese of Newark, Paramus Catholic High School, and James P. Vail, and upon opposition filed by Lawrence H. Kleiner, Esq., counsel for plaintiff, Kathryn Drumgoole, and the Court having reviewed and considered the motion papers submitted, and for the reasons set forth on the record, and for good cause having been shown;

IT IS on this 22nd day of August, 2016,

ORDERED that:

1. Defendants' motion is hereby **DENIED** for the reasons stated in the attached opinion.
2. A copy of this Order shall be served upon all parties appearing herein within 7 days of the date hereof.


 HON. LISA PEREZ FRISCIA, J.S.C.

**KATHRYN DRUMGOOLE V. PARAMUS CATHOLIC HIGH
SCHOOL, ET AL.**

DOCKET No. BER-L-3394-16

RIDER TO ORDER DATED AUGUST 19, 2016

Defendants, Paramus Catholic High School (hereinafter "Paramus Catholic"), James P. Vail (hereinafter "defendant Vail"), the Archdiocese of Newark (hereinafter the "Archdiocese") (hereinafter, collectively, "defendants"), filed the within motion for summary judgment. Plaintiff, Kathryn Drumgoole (hereinafter "plaintiff"), opposed the defendants' motion. This court denies the defendants' motion for the reasons set forth below.

The within matter arises out of plaintiff's termination from employment in July of 2015. At the time of the termination, plaintiff was employed as dean of guidance at Paramus Catholic, which is owned and operated by the Archdiocese. Defendant Vail is the president of Paramus Catholic. Paramus Catholic teaches children in grades 9 through 12. Plaintiff filed her complaint on April 28, 2016 and the discovery end date is September 3, 2017.

Plaintiff commenced employment at Paramus Catholic in 2005 as an assistant varsity coach for the girls' basketball team. She was hired as a guidance counselor in 2010. On August 25, 2010 and November 18, 2014, plaintiff signed and acknowledged receipt of the Archdiocese's "Policies on Professional and Ministerial Conduct" (hereinafter "ministerial policies"), including the "Code of Ethics."

The ministerial policies' "Code of Ethics" provides:

- Church personnel shall exhibit the highest Christian ethical standards and personnel integrity.
- Church personnel shall conduct themselves in a manner that is consistent with the discipline, norms and teachings of the Catholic Church.

[Def. Ex. E, p. 3].

The ministerial policies define immoral conduct as “conduct that is contrary to the discipline and teachings of the Catholic Church and/or which may result in scandal to the faithful or harm to the ministry of the Catholic Church.” (Def. Ex. E, p. 5). The ministerial policies also contain a section on “Prevention of Immoral Conduct: Guidelines for Ethical Behavior,” which states in part:

1. Church personnel enjoy a public trust and confidence. It is essential that Church personnel view their own actions and intentions objectively to assure that no observer would have grounds to believe that irregularity in conduct exists. All Church personnel have a responsibility to strive to uphold standards of the Catholic Church in their day-to-day work and personal lives.
2. Further, it is fundamental to the mission of the Archdiocese that Church personnel exhibit the highest ethical standards and personnel integrity. The purpose of this policy is to insure that all Church personnel follow the ethical standards of the Catholic Church [. . .]

[Def. Ex. E, p. 6].

The ministerial policies define “Church Personnel” to include “The Lay Faithful.” “The Lay Faithful” are defined as “[a]ll paid personnel whether employed in areas of ministry or other kinds of services by the Archdiocese, its parishes, schools or other agencies; also, those who contract their services to Catholic Church agencies.” (Def. Ex. E, p. 13).

The Paramus Catholic High School Faculty Handbook (hereinafter the “Faculty Handbook”), dated October 16, 2014, sets forth duties and responsibilities for all teachers, which includes “compliance with all Code of Ministerial Conduct Policies.” The Faculty Handbook also highlights that the duties of the dean of guidance include the following:

- Assist the Associate Principals and President in fostering school spirit and climate reflective of the Gospel Values.

- Enhance opportunities for growth of the school as a faith community.
- Insure that counseling given to students conforms to and is compatible with the stated philosophy and objectives of the school and is consistent with authentic Catholic teachings. Follow all school and RCAN policies in the referral of students to other counselors and related professional personnel.
- Project in work and action the religious mission and vision of the school.
- Offer direction to teachers in attending to the individual needs of students, school policy, and effective classroom management.
- Communicate effectively with the President, APs, Vice Principals, Chaplain, and Campus Ministers, on any situation regarding a student's needs or challenges that fall within their area.
- Work as a team with other counselors, Campus Ministers, teachers and administration.

[Def. Ex. B, p. 32-35].

Relevantly, Paramus Catholic's Policy Regarding Harassment and Sexual Harassment of Employees, which plaintiff alleges she was provided in her Faculty Handbook and separately, provides in part:

The purpose of this document is to summarize the rights, obligations and reporting responsibilities of personnel within our School regarding matters involving harassment and/or sexual harassment of employees. This policy only applies to employees. [. . .]

- (a) Civil Rights laws make it illegal to discriminate against and/or harass an employee because of sex, race, religion, color, national origin, physical or mental disability, marital status, age, gender, genetic information, blood type liability for service in the armed forces, gender identity or expression, civil union status, domestic partnership status [. . .]

It is permissible for a religious employer uniformly to require that all of its employees follow the tenets of its religion [. . .]

It is the policy of our School to provide a work environment that is free of harassment/sexual harassment. Any form of workplace harassment/ sexual harassment will be treated as a disciplinary matter [. . .]

[Pl. Ex. B].

Additionally, Paramus Catholic's Whistleblower Policy provides that it "is committed to complying with state statutory requirements that provide appropriate protections for its employees who are 'whistleblowers.'" (Pl. Ex. B).

Plaintiff lawfully married her partner on August 2, 2014. In July 2015, plaintiff was allegedly terminated pursuant to Art. 10 Sec. F para 2(b) of a collective bargaining agreement (hereinafter "the agreement"), which she signed as part of her employment. Art. 10 Sec. F para 2(b) of the agreement provides that a tenured teacher may be terminated for cause for "violating accepted standards of catholic morality as to cause public scandal." (Def. Ex. G, p. 29). The agreement also provides that "[i]n the event of termination pursuant to 2(a) or 2(b) above, Ecclesiastical Appeals procedures should be followed." (Def. Ex. G, p. 30). The Ecclesiastical Appeals procedure, set forth in the appendix, provides that:

(A) In the event that a disagreement concerning termination or non-renewal of a tenured employee pursuant to Article 10(F) 2(a) and/or 2(b) cannot be resolved between the School and the individual terminated, the matter may be presented by the employee (if he/she desires) to the Archbishop within five (5) school days of the termination conference. [. . .]

(E) Should the teacher in question not be satisfied with the decision of the Archbishop, then he/she may within (10) school days, appeal to Rome by appealing either to the Third Office of the Congregation for Catholic Education, the Congregation of the Doctrine of the Faith or the Administrative Tribunal of the Signatura (The Roman Congregation will decide the appropriate congregation to consider the appeal). The decision at this level shall be final and binding upon all concerned.

(F) The members of the bargaining unit and the LFA agree that resort to this procedure shall be the sole and exclusive recourse available for review of termination/non-renewal decision.

[Def. Ex. G, p. 67].

Plaintiff did not appeal to the Archbishop.

On April 28, 2016, plaintiff filed a complaint against defendants alleging discrimination and disparate treatment under the New Jersey Law against Discrimination (hereinafter "NJ LAD"). Plaintiff additionally included a claim for intentional infliction of emotional distress and a claim for torturous interference against co-defendant Elaine Vanore (hereinafter "defendant Vanore").

Defendants herein maintain that plaintiff was not terminated because of her sexual orientation, rather they allege she was terminated for violating the archdiocese's ministerial policies and the code of ethics by entering into a same sex marriage. Defendants argue that the NJ LAD, expressly permits an exemption which allows defendants the freedom to require that their employees abide by the tenets of the catholic religion and that same sex marriage violates Catholic religious tenets. Defendants also argue that the First Amendment protects from inquiry their motivation for the contested employment action as the action is based on catholic religious beliefs. Defendants further argue the applicability of the ministerial exception. Defendants also aver that defendant Vail should be dismissed as there is no individual liability for aiding and abetting under the NJ LAD. Alternatively, defendant Vail argues that plaintiff cannot sustain an aiding and abetting claim against defendant Vail because the First Amendment protection and exemption attaches to this conduct. Finally, defendants argue that plaintiff's intentional infliction of emotional distress and tortuous interference claims should be dismissed against defendants Vail and Paramus Catholic. Plaintiff, in opposition, did not contest that the claim for

material fact challenged[.]” R. 4:46-2(c). If the non-moving party “points only to disputed issues of fact that are of an insubstantial nature, the proper disposition is summary judgment.” Brill v. Guardian Life Ins. Co. Am., 142 N.J. at 529. “Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. Amer. Arbitration Association, 67 N.J. Super. 384, 399-400 (App. Div. 1961) (citing Gherardi v. Trenton Board of Education, 53 N.J. Super. 349, 358 (App. Div. 1958)).

In Globe Motor Company v. Igdaley, the New Jersey Supreme Court stated that:

[t]he summary judgment rule set forth in Rule 4:46-2 “serve[s] two competing jurisprudential philosophies”: first, “the desire to afford every litigant who has a *bona fide* cause of action or defense the opportunity to fully expose his case,” and second, to guard “against groundless claims and frivolous defenses,” thus saving the resources of the parties and the court. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541-42, 666 A.2d 146 (1995) (quoting Robbins v. Jersey City, 23 N.J. 229, 240-41, 128 A.2d 673 (1957)). 2016 N.J. LEXIS 687, *19 (N.J. June 29, 2016). In light of the important interests at stake when a party seeks summary judgment, the motion court must carefully evaluate the record in light of the governing law, and determine the facts in the light most favorable to the non-moving party. R. 4:46-2(c).

[2016 N.J. LEXIS 687, *20 (N.J. June 29, 2016)].

A court reviewing a motion for summary judgment, must undertake a diligent inquiry and review of the alleged facts. A litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met.” Id. at 23 (quoting Biunno, Current N.J. Rules of Evidence, comment 5a on N.J.R.E. 101(b)(1) (2005)).

The Court in Brill encouraged trial courts not to hesitate in granting summary judgment when the appropriate circumstances are presented, such that the “evidence is so one-sided that one party must prevail as a matter of law. Brill, 142 N.J. at 540.

Generally, summary judgment pursuant to R. 4:46 is not appropriate before the party resisting such a motion has had an opportunity to complete the discovery of relevant and material evidence to aid in defense of the motion, especially when “critical facts are peculiarly within the moving party’s knowledge.” Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189, 193 (1988). Thus, where discovery on a relevant and material issue is incomplete, the responding party must be given the opportunity to take discovery before the motion is decided. Wilson v. Amerada Hess Corp., 168 N.J. 236, 253-54 (2001).

While summary judgment is generally inappropriate prior to the completion of discovery, the court is not prohibited from granting such relief prior to that time. See Velantzas, *supra* at 193. In fact, in order for the objecting party to defeat a motion for summary judgment on the ground that such relief is premature due to outstanding discovery, the objecting party must demonstrate with some specificity the discovery sought and its materiality. See In re Ocean County Comm’r of Registration for a Recheck of the Voting, 379 N.J. Super. 461, 478 (App. Div. 2005); see also, Wellington v. Wellington, 359 N.J. Super. 484, (App. Div. 2003) (party objecting to summary judgment motion must show with some degree of particularity that further discovery will lead to material facts in dispute).

B. New Jersey Law Against Discrimination

In reviewing a motion for summary judgment of a NJ LAD claim, the court must examine whether a plaintiff’s alleged facts and reasonable inferences thereto establish a claim.

N.J.S.A. 10:5-12 provides in relevant part:

It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic

intentional infliction of emotion distress, and the claim for contractual tortuous interference, are only against defendant Vanore.

In opposition to defendants' First Amendment argument, plaintiff argues that her termination violated the NJ LAD because she was not performing a ministerial function at Paramus Catholic as she was employed as a counselor and coach who was not involved in teaching religion. She further alleges that discrimination allegations require full discovery and review under the McDonnell Douglas three-tiered analysis. Plaintiff points to Paramus Catholic's policy on harassment of employees, which incorporates civil rights law and NJ LAD protections. The policy terms recognize that it is illegal to discriminate based on marital status, civil union status, or domestic partnership status. Plaintiff cites to the policy which provides that an employee will be free from harassment. Plaintiff maintains she was provided these policies, was bound to the policies, and that she and the other faculty relied on the policies. Plaintiff further argues that Paramus Catholic is bound to the terms of the policy. Finally, plaintiff maintains that individual liability for aiding and abetting under the NJ LAD is actionable, and that as no discovery has been undertaken, dismissal is not warranted.

Analysis

A. Summary Judgment

New Jersey's standard for summary judgment as set forth in Brill v. Guardian Life Ins. Co. Am., 142 N.J. 520, 540 (1995) entitles a movant to summary judgment if the adverse party, having all facts and inferences viewed most favorably towards it, has not demonstrated the existence of a dispute whose resolution in its favor will entitle him to judgment. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of

information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; [. . .] provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee [. . .]

As in all employment discrimination claims, the plaintiff is required to bear the burden of proving the elements of a prima facie case. Victor v. State, 203 N.J. 383, 408 (2010). To do so, “a plaintiff must show that he or she (1) belongs to a protected class; (2) applied for or held a position for which he or she was objectively qualified; (3) was not hired or was terminated from that position; and that (4) the employer sought to, or did fill the position with a similarly-qualified person.” Viscik v. Fowler Equip. Co., 173 N.J. 1, 14 (2002). In a discrimination action it is the employer’s intent which makes an employer’s personnel action unlawful. See Zive v. Stanley Roberts, Inc., 182 N.J. 436, 446 (2005). Given the difficulty in proving intent, New Jersey courts have adopted federal burden-shifting framework articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, (1973). See id. at 447 (citations omitted). First, the plaintiff’s establishment of a prima facie case “creates an inference of discrimination.” Id. at 449. At that point, “the matter moves to the second stage of McDonnell Douglas, when the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employer’s action.” Id. If the employer satisfies that burden, “the burden of production shifts

back to the employee to prove by a preponderance of the evidence that the reason articulated by the employer was merely a pretext for discrimination and not the true reason for the employment decision.” Id.

In the within matter, defendants seek summary judgment pursuant to recognized First Amendment protections provided religious organizations. Defendants maintain that the NJ LAD recognizes a religious organization exemption in the plain statutory language. Defendants maintain that the alleged conduct in plaintiff’s complaint is protected and exempt from civil grievance under the NJ LAD and that further inquiry into the motivation for the employment decisions is precluded. Defendants also maintain that plaintiff’s complaint should be dismissed without any discovery and further inquiry. This court finds defendants’ argument, that discovery is unnecessary, and further examination is precluded, unpersuasive.

The New Jersey Supreme Court has refused to “adopt a per se rule that courts may not entertain employees’ suits against religious instructions or leaders.” Alicea v. N.B. Theol. Seminary, 128 N.J. 303, 312 (1992). However, both the New Jersey Supreme Court and the United States Supreme Court “have recognized that ‘there are many cases in which court intervention is simply inappropriate because judicial scrutiny cannot help but violate the first amendment.’” Ibid. (internal citations omitted).

In the United States Supreme Court case Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 190 (2012), the Court concluded that “there is a ministerial exception grounded in the Religion Clauses of the First Amendment.” The Court specifically limited its holding to ministerial employees. The Court stated, “[w]e are reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister. It is enough for us

to conclude, in this our first case involving the ministerial exception, that the exception covers Perich, given all the circumstances of her employment.” Ibid. The Court also stated,

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

[Id. at 196].

Notably, the United States Supreme Court did not decide whether “the exception bars other types of suits, including action by [non-minister] employees alleging breach of contract or tortious conduct by their religious employers.” Ibid. In this case, following the United States Supreme Court precedent, discovery is mandated so that the court examine whether the plaintiff’s employment qualifies as ministerial. To undertake such a review, discovery must be conducted.

The New Jersey Supreme Court has noted that “[a]lthough the church autonomy doctrine provides a shield against excessive government intrusion on internal church management, it clearly cannot be applied blindly to all disputes involving church conduct and decision.” Ibid. The ministerial exception is only implicated when “the alleged misconduct is ‘rooted in religious belief.’” Ibid. The “threshold inquiry is whether the underlying dispute is a secular one, capable of review by a civil court or an ecclesiastical one about “discipline, faith internal organization, or ecclesiastical rule, custom or law.” Id. at 45. The New Jersey Supreme Court, in McKelvey v. Pierce, 173 N.J. 26, 47-48 (2002), elaborated that:

Before barring a specific cause of action, a court first must analyze each element of every claim and determine whether adjudication would require the court to choose between “competing religious visions,” or cause interference with a church’s administrative

prerogatives, including its core right to select, and govern the duties of, its ministers. In so doing, a court may "interpret provisions of religious documents involving property rights and other non-doctrinal matters as long as the analysis can be done in purely secular terms." Minker, supra, 894 F.2d at 1358 (citing Jones, supra, 443 U.S. at 600-01, 99 S. Ct. at 3024, 61 L. Ed. 2d at 783). The court must next examine the remedies sought by the plaintiff and decide whether enforcement of a judgment would require excessive procedural or substantive interference with church operations.

If the answer to either of those inquiries is in the affirmative, then the dispute is truly of a *religious nature*, rather than theoretically and tangentially touching upon religion, and the claim is barred from secular court review. If, however, the dispute can be resolved by the application of purely neutral principles of law and without impermissible government intrusion (e.g., where the church offers no religious-based justification for its actions and points to no internal governance rights that would actually be affected), there is no First Amendment shield to litigation.

In addition to a determination as to plaintiff's ministerial status, a review of the employment contracts between the parties is required. In Woolley v. Hoffmann-La Roche, the New Jersey Supreme Court addressed whether express and implied promises in an employment manual created a contract precluding defendant from being terminated. 99 N.J. 284 (1985). The Supreme Court stated that:

[g]iven the facts before us and the common law of contracts interpreted in the light of sound policy applicable to this modern setting, we conclude that the termination clauses of this company's Personnel Policy Manual, including the procedure required before termination occurs, could be found to be contractually enforceable. Furthermore, we conclude that when an employer of a substantial number of employees circulates a manual that, when fairly read, provides that certain benefits are an incident of the employment (including, especially, job security provisions), the judiciary, instead of "grudgingly" conceding the enforceability of those provisions, Saverese, supra, 9 N.J. at 601, should construe them in accordance with the reasonable expectations of the employees.

The employer's contention here is that the distribution of the manual was simply an expression of the company's "philosophy" and therefore free of any possible contractual consequences. The former

employee claims it could reasonably be read as an explicit statement of company policies intended to be followed by the company in the same manner as if they were expressed in an agreement signed by both employer and employees. From the analysis that follows we conclude that a jury, properly instructed, could find, in strict contract terms, that the manual constituted an offer; put differently, it could find that this portion of the manual (concerning job security) set forth terms and conditions of employment.

In determining the manual's meaning and effect, we must consider the probable context in which it was disseminated and the environment surrounding its continued existence

[*Id.* at 297].

The New Jersey Supreme Court has recognized that policies provided to an employee, as part of an employment manual, may create a binding contract. The court is to review the relationship between the parties to the contract and the manual policy provisions in reviewing summary judgment.¹

In Welter v. Seton Hall Univ., 128 N.J. 279, 294 (1992), the Supreme Court rejected “the notion that an employee’s status as a cleric within a religious organization, standing alone, justifies judicial abstention from enforcement of rights in job security, which this court has

¹ This court notes the New Jersey Appellate Division decision Romeo v. Seton Hall University, 378 N.J. Super 384 (App. Div. 2005). In Romeo, a Seton Hall University student filed a complaint claiming NJ LAD violations by Seton Hall for not recognizing a gay and lesbian student organization. The plaintiff in Romeo argued that the catholic university’s religious exemption, under the NJ LAD, was waived because of its published anti-discrimination policy. The Appellate Division found that summary judgment was warranted, stating:

The standard in Woolley cannot be applied here in light of the inherent differences between the employer-employee relationship and the university-student relationship. As noted in Woolley:

A policy manual that provides for job security grants an important, fundamental protection for workers. If such a commitment is indeed made, obviously an employer should be required to honor it.

[*Id.* at 394 (citing Woolley v. Hoffman-La Roche, 99 N.J. 284, 297 (1985))].

The Appellate Division further stated that “[c]learly, application of the Woolley standard to a relationship outside of the employer-employee context, particularly the university-student relationship, is not appropriate.” *Id.*

previously recognized as important.” The Supreme Court reasoned that “[s]uch a dividing line would preclude a cleric’s enforcement of even purely secular rights against an institution of the same religion.” Id.

This court declines to grant summary judgment of plaintiff’s NJ LAD claim. Accepting as true the facts set forth by plaintiff, further discovery is warranted. This court is to examine whether the plaintiff served in a ministerial capacity and evaluate whether the dispute is secular or ecclesiastical. The defendants’ statement that it is ecclesiastical, without any discovery, does not sufficiently satisfy the requisite analysis to provide the defendants First Amendment exemption from NJ LAD.

C. Aiding and Abetting

In reviewing a claim for aiding and abetting, a court must review the alleged conduct and actions undertaken by the employee. N.J.S.A. 10:5-12 specifies that it is “an unlawful employment practice, or as the case may be, an unlawful discrimination: [. . .] (e) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.” To support a finding of aiding and abetting under N.J.S.A. 10:5-12(e), a plaintiff must demonstrate that:

(1) The party whom the defendant aids. . . performe[ed] a wrongful act that cause[d] an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortuous activity at the time he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation.

[Tarr v. Ciasulli, 181 N.J. 70, 83 (2004)(citing Hurley v. Atlantic City Police Dep’t, 174 F.3d 95, 129 (3d Cir. 1999)].

The New Jersey Supreme Court in, Tarr, further set forth five factors which must be considered in evaluating whether a defendant “knowingly and substantially assisted” the principal violation. Ibid. Those factors are: “(1) The nature of the act encouraged, (2) the amount of assistance given

by the supervisor, (3) whether the supervisor was present at the time of the asserted harassment, (4) the supervisor's relations to the others, (5) the state of mind of the supervisor." Ibid. In a clearly non-binding, but persuasive opinion, Rowan v. Hartford Plaza, Ltd., LP, the Appellate Division acknowledged that LAD has a "broad and pervasive" reach and should be liberally construed to permit individual liability for a supervisor who encourages or facilitates another employee's harassing conduct and for a supervisor based on his or her own discriminatory or harassing conduct. 2013 N.J. Super Unpub. LEXIS 766, *20 (App. Div, April 5, 2013).² Summary judgment of plaintiff's aiding and abetting claim is denied as further inquiry is warranted.

Conclusion

This court declines defendants' request for summary judgment, as accepting the facts and reasonable inferences set forth by plaintiff, there are sufficient material questions of fact established. Discovery is warranted to determine whether defendants' employment action against plaintiff falls within the ministerial exception. Additionally, discovery is warranted on Paramus Catholic's contractual policies barring harassment and discrimination. Only after discovery is complete can the court review each claim to determine whether the ministerial exception grounded in the First Amendment applies and whether defendants' actions are exempt under the NJ LAD. Relevantly, the instant matter was filed on April 28, 2016 and the discovery end date is September 3, 2017. As no discovery has occurred, parties are to undertake the

² New Jersey Court Rule 1:36-3 provides: "[n]o unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.

discovery process. This court notes that plaintiff does not dispute that counts two and three of the complaint are only alleged against defendant Venore.

For these reasons, defendants' motion for summary judgment is hereby denied.