

SUPREME COURT: COUNTY OF ERIE

PB-12-DOE,

Plaintiff,

vs.

THE DIOCESE OF BUFFALO, MOUNT
CARMEL ROMAN CATHOLIC CHURCH
SOCIETY OF SILVER CREEK, and MOUNT
CARMEL CATHOLIC SCHOOL,

Defendants.

SUMMONS

Index No.:

TO THE ABOVE NAMED DEFENDANTS :

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
January 23, 2020

Phillips & Paolicelli, LLP
Attorneys for Plaintiffs



By: Diane Paolicelli
Michael DeRuve
747 Third Avenue, 6th Floor
New York, New York 10027
212-388-5100
dpaolicelli@p2law.com
mderuve@p2law.com

Paul K. Barr

{00048747}

Fannizzi & Barr, P.C.
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizziandbarr.com

TO:

THE DIOCESE OF BUFFALO
795 Main St.
Buffalo, NY 14206

MOUNT CARMEL ROMAN CATHOLIC CHURCH
SOCIETY OF SILVER CREEK
165 Central Ave.
Silver Creek, NY 14136

MOUNT CARMEL CATHOLIC SCHOOL
165 Central Ave.
Silver Creek, NY 14136

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

PB-12-DOE,

Plaintiff,

vs.

THE DIOCESE OF BUFFALO, MOUNT
CARMEL ROMAN CATHOLIC CHURCH
SOCIETY OF SILVER CREEK, and MOUNT
CARMEL CATHOLIC SCHOOL,

Defendants.

COMPLAINT

Index No.:

Plaintiff PB-12-DOE, by and through his undersigned attorneys, as and for his Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-12-DOE was repeatedly sexually abused and assaulted by Msgr. Edmund O'Connor, Sister Mary, and Sister Veronica who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants The Diocese of Buffalo, Mount Carmel Roman Catholic Church Society Of Silver Creek, and Mount Carmel Catholic School (herein collectively "Defendants").
3. Plaintiff was between third and eighth grade at the time of his abuse.
4. Despite years of refusal to publically address rampant child abuse by priests and nuns, The Diocese of Buffalo recently published a long list clergy in their employ who were credibly accused of molesting children.

5. In fact, the Roman Catholic Church and Defendants have long known that substantial numbers of priests and nuns throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners and others, in particular with children like Plaintiff, who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

6. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Msgr. O'Connor, Sr. Mary, and Sr. Veronica permitted the abuse to occur, failed to supervise Msgr. O'Connor, Sr. Mary, and Sr. Veronica failed to timely investigate Msgr. O'Connor's, Sr. Mary's, and Sr. Veronica's misconduct, failed to train minor students, parents, clergy members and/or adult staff about the risk of sexual abuse in their institution and school, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Msgr. O'Connor's, Sr. Mary's, and Sr. Veronica's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

7. Plaintiff is an individual residing in Erie County, New York.
8. Plaintiff was born in 1932.
9. Defendant The Diocese of Buffalo, N.Y. (herein "Diocese") is a New York not-for-profit corporation, organized pursuant to the laws of the State of New York, and which

operated at all relevant times in Niagara County, New York, with its principal place of business at 795 Main Street, Buffalo, New York 14206.

10. At all relevant times, the Diocese oversaw, managed, controlled, directed and operated parishes, churches and schools within the Diocese.

11. At all relevant times, Defendant Mount Carmel Roman Catholic Church Society Of Silver Creek (herein "Mt. Carmel Church") was and is a Roman Catholic Church, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Niagara County, New York, with its principal place of business at 165 Central Ave, Silver Creek, NY 14136.

12. At all relevant times, Defendant Mt. Carmel Church was and still is under the direct authority, control and province of the Diocese.

13. At all relevant times, the Diocese owned the premises where Defendant Mt. Carmel Church was located.

14. At all relevant times, the Diocese oversaw, managed controlled, directed and operated Defendant Mt. Carmel Church.

15. At all relevant times, the Diocese oversaw, managed, controlled, directed and assigned priests and other clergy to work in parishes, churches and schools of the Diocese, including Defendant Mount Carmel Catholic School (herein "Mt. Carmel School").

16. At all relevant times, Defendant Mt. Carmel School was a Roman Catholic School, organized pursuant to the laws of the State of New York and located at 165 Central Ave, Silver Creek, NY 14136.

17. At all relevant times, Defendant Mt. Carmel School was and still is under the direct authority, control and province of Defendants Diocese and Mt. Carmel Church.

18. At all relevant times, the Defendants Diocese and Mt. Carmel Church owned the premises where Defendant Mt. Carmel School was located.

19. At all relevant times, the Defendants Diocese and Mt. Carmel Church oversaw, managed controlled, directed and operated Defendant Mt. Carmel School.

20. At all relevant times, the Defendants Diocese and Mt. Carmel Church oversaw, managed, controlled, directed and assigned priests and other clergy to work in parishes, churches and schools of the Diocese, including Defendant Mt. Carmel Catholic School.

FACTUAL ALLEGATIONS

21. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

22. Plaintiff attended Mt. Carmel School.

23. At all relevant times, Monsignor Edmund J. O'Connor ("Msgr. O'Connor") was a Roman Catholic priest employed by the Diocese.

24. At all relevant times, Sister Mary ("Sr. Mary") and Sister Veronica ("Sr. Veronica") were Roman Catholic nuns employed by the Diocese.

25. At all relevant times, Msgr. O'Connor, Sr. Mary, Sr. Veronica (collectively "Abusers") were under the direct supervision, employ, and control of the Defendants.

26. During the time that Plaintiff was a student attending Defendant Mt. Carmel School, Defendants assigned Msgr. O'Connor as Priest, Pastor, and Monsignor at Defendants Mt. Carmel Church and School.

27. During the time that Plaintiff was a student attending Defendant Mt. Carmel School, Defendants assigned Sr. Mary and Sr. Veronica to nuns and teachers at Defendants Mt. Carmel Church and School.

28. By assigning the Abusers to their respective roles, Defendants gave the Abusers complete unfettered access to minors, including Plaintiff, and empowered them to groom, guide, discipline, and otherwise exercise complete authority over minors.

29. The Abusers' duties and responsibilities included supervising, interacting with, mentoring and counseling minor boys.

30. In the performance of their duties, Defendants authorized the Abusers to be alone with minor boys, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

31. Defendants required students, like Plaintiff, to accept and obey guidance, discipline, and instruction from the Abusers and other clergy and teachers.

32. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear for the Catholic Church and its clergy, including the Abusers.

33. Between Plaintiff's third grade and eighth-grade years at Defendant Mt. Carmel School, Msgr. O'Connor, acting in his capacity as Priest, Pastor, and Monsignor, and Sister Mary and Sister Veronica, acting in their capacities as nun and teacher, and in furtherance of the business of Defendants, groomed Plaintiff and took advantage of him. The grooming behavior included, but was not limited to, giving Plaintiff special praise and attention, bringing him on trips, giving him ice cream and/or gifts, and other forms of compensation.

34. There, on Church and School grounds, the Abusers engaged in unpermitted, forcible and harmful sexual contact with Plaintiff.

35. The Abusers threatened Plaintiff in order to keep him silent. They also manipulated Plaintiff to believe that no one would believe him if he spoke out.

36. In addition to these direct threats, Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Catholic church which Defendants endorsed, put pressure on Plaintiff not to report the Abusers' abuse or threats.

37. Defendants knew or should have known that the Abusers were a danger to minor boys like Plaintiff before they sexually abused Plaintiff.

38. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to the Abusers's abuse of Plaintiff, and communicated as much with all levels of Church hierarchy including bishops and other Diocesan leaders. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests and nuns was not only widespread but predictable.

39. Upon information and belief, not only was the Diocese aware of sexual abuse of children, but it participated in covering up such heinous acts by moving errant priests, nuns, and clergy members from assignment to assignment, thereby putting children in harm's way.

40. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that the Abusers posed to Plaintiff.

41. Prior to the time of Plaintiff's abuse by the Abusers, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic church, and knew that there was a specific danger of child sex abuse for children in their institutions and programs.

42. The sexual abuse of Plaintiff by the Abusers was foreseeable.

43. Prior to the time of Plaintiff's abuse by the Abusers Defendants knew or should have known of the Abuser's acts of child sexual abuse on other minors.

44. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Mt. Carmel School; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including the Abusers as safe to work with and around minor boys, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including the Abusers to spend time with, interact with, and recruit children.

45. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

46. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

47. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and continues to suffer loss of spirituality; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limit of the lower courts of this State.

48. To the extent that any Defendants plead, or otherwise seek to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

49. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

50. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of the Abusers so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that the Abusers did not use this assigned position to injure minors by sexual assault, contact or abuse.

51. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of the Abusers, failed to properly investigate their backgrounds and employment histories, and/or hired, appointed and/or assigned them to Defendant Mt. Carmel Church and School, when Defendants knew or should have known of facts that would make them a danger to children; and Defendants were otherwise negligent.

52. Defendants were negligent and did not use reasonable care in their supervision and direction of the Abusers, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that the Abusers posed a threat of sexual abuse to minors; allowed the

misconduct describe above to occur and continue; failed to investigate the Abusers' dangerous activities and remove them from their premises; and Defendants were otherwise negligent.

53. The Abusers would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Msgr. O'Connor and Sr. Mary.

54. At all relevant times, the Abusers acted in the course and scope of their employment with Defendants.

55. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

56. Plaintiff suffered grave injury as a result of the Abusers' sexual abuse and misconduct, including physical, psychological and emotional injury as described above.

57. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

58. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

59. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that clergy working in the Diocese, including the Abusers did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

60. Defendants knew or should have known this representation was false and that employing the Abusers and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

61. The Diocese maintained a policy and practice of covering up criminal activity committed by clergy members within the Diocese.

62. Over the decades, this “cover-up” policy and practice of the Diocese resulted in the sexual assault of untold numbers of children, and put numerous other children at risk of sexual assault.

63. The Diocese failed to report multiple allegations of sexual abuse by its employees, agents and representatives, to the proper authorities, thereby putting children at risk of sexual assault.

64. Upon information and belief, Defendants covered up acts of abuse by the Abusers and concealed facts concerning the Abusers’ sexual misconduct from Plaintiff and his family.

65. Defendants were negligent and did not use reasonable care in their training, if any, of minor students and parents about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

66. Defendants were negligent and did not use reasonable care in their training, if any, of clergy members and/or adult staff about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

67. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, including the Abusers, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

68. Defendants failed to warn Plaintiff and his parents that the Abusers posed a risk of child sexual assault.

69. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

70. Defendants' aforesaid actions were negligent, reckless, willful and wanton in their disregard for the rights and safety of children, including Plaintiff.

71. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

72. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, together with interest and costs.

THIRD CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

73. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

74. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

75. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

76. Defendants knew or disregarded the substantial probability that the Abusers y would cause severe emotional distress to Plaintiff.

77. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

78. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

FOURTH CAUSE OF ACTION

PREMISES LIABILITY

79. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

80. At all relevant times, Defendants owned, operated, and /or controlled the premises known as Mt. Carmel School, including the areas where the sexual abuse of Plaintiff occurred.

81. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

82. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

83. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premise that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including the Abusers. Defendants thereby breached their duty of care of Plaintiff.

84. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological, and emotional injury and damages as described above.

85. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

86. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

87. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and each Defendant. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants fiduciary duty to act in the best interests of Plaintiff.

88. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

89. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

90. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

91. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

SIXTH CAUSE OF ACTION

BREACH OF DUTY IN LOCO PARENTIS

92. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

93. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

94. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

95. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

96. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

SEVENTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

97. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

98. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420 and New York Education Law Article 23-B, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

99. Defendants breached their statutory duty by failing to report reasonable suspicion of abuse by the Abusers of children in their care.

100. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

101. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

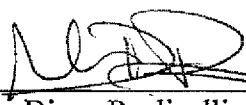
JURY TRIAL DEMANDED

102. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: January 23, 2020

Yours, etc.

PHILLIPS & PAOLICELLI, LLP


By: Diane Paolicelli
dpaolicelli@p2law.com
Michael DeRuve
mderuve@p2law.com
747 Third Avenue, Sixth Floor
New York, New York 10017
212-388-5100

Paul K. Barr
Fanizzi & Barr, P.C.
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizziandbarr.com

Attorneys for Plaintiff