

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

COLLEEN GARBARINI,

Plaintiff,

- against -

DIOCESE OF ALBANY a/k/a
ROMAN CATHOLIC DIOCESE OF ALBANY
40 North Main Avenue
Albany, NY 12203

NOTRE DAME-BISHOP GIBBONS SCHOOL
2600 Albany Street
Schenectady, NY 12304

ST. PAUL THE APOSTLE CHURCH
2733 Albany Street
Schenectady, NY 12304

Defendant.

Index No.:
Date Purchased:
Plaintiff designates Albany
County as the place of trial.
The basis of the venue is
where the defendant conducts
business.

SUMMONS

County of Albany

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 plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (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: February 13, 2020



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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

COLLEEN GARBARINI

Plaintiff,

v.

DIOCESE OF ALBANY
a/k/a ROMAN CATHOLIC DIOCESE OF ALBANY
and NOTRE DAME-BISHOP GIBBONS SCHOOL
and ST. PAUL THE APOSTLE CHURCH

Defendants.

VERIFIED COMPLAINT
JURY TRIAL DEMANDED

Index No: _____

Plaintiff Colleen Garbarini ("Plaintiff"), by and through her attorneys, Andreozzi & Associates, P.C., and DeLorenzo, Grasso & Dalmata, LLP, as and for her Complaint in this matter against Defendant Roman Catholic Diocese of Albany ("Defendant" or "Diocese") and Notre Dame-Bishop Gibbons School ("Defendant" or "School") and St. Paul the Apostle Church ("Church") (collectively "Defendants"), hereby alleges as follows:

Nature of the Action

1. Plaintiff brings this action against Defendants pursuant to New York's Child Victims Act ("CVA") (N.Y. C.P.L.R. § 214-g).

Parties

2. Defendant Roman Catholic Diocese of Albany is a Catholic diocese whose principal office is located at 40 North Main Avenue, Albany, New York 12203.

3. At all relevant times, the Diocese created, oversaw, managed, controlled, directed, and operated parishes, and/or churches, and/or schools of the Diocese.

4. At all relevant times, the Diocese oversaw, managed, controlled, and directed all clerics assigned to work in parishes, and/or churches, and/or schools, of the Diocese and associated entities, including Defendant St. Paul the Apostle Church, Defendant Notre Dame-Bishop Gibbons School, and Br. Clement Murphy.

5. Plaintiff Colleen Garbarini is an adult resident of New York.

Jurisdiction and Venue

6. This Court has personal jurisdiction over the Defendants pursuant to N.Y. C.P.L.R. § 301 and § 302.

7. This Court, as a court of general jurisdiction, has subject matter jurisdiction over this action.

8. Venue in the County of Albany is proper pursuant to CPLR § 503 because the Diocese resides and/or does business in this County.

Facts

Sexual Abuse in the Albany Diocese

9. As is now well-known, child sex abuse by Catholic priests was widespread, resulting in major sex abuse scandals involving Catholic dioceses around the world, including those in Boston, Los Angeles, Philadelphia, and many other cities.

10. For many years, however, the scope of the Catholic child sex-abuse epidemic was unknown.

11. Thanks to an investigation in 2002 by the Boston Globe's "Spotlight" team, made more famous by the 2015 film *Spotlight*, the public is now aware that thousands of children have been sexually abused by Catholic priests, and that many of those predator priests were protected by Catholic officials.

12. The Albany Diocese was no different.

13. Throughout the history of the Albany Diocese, many clerics associated with the Diocese have been accused of sexual misconduct and/or abuse.

14. The Albany Diocese has thus been aware of the risk of sexual abuse by clerics for many decades, well before the sexual abuse of the Plaintiff, which is described herein.

15. Sexual abuse by clergy was a known, preventable hazard, to which the Diocese failed to respond.

16. One of the Diocese's cleric-offenders, and the Plaintiff's abuser, was Br. Clement Murphy ("Murphy" or "Perpetrator").

17. At all relevant times, Murphy was on the staff of, acted as an agent of, and served as an employee and agent of the Diocese, School, and/or Church, including as a cleric, schoolteacher, administrator, and/or official.

18. At all relevant times, Murphy was acting in the course and scope of his employment with the Defendants.

19. Prior to abusing the Plaintiff, Murphy had already begun sexually abusing children.

20. Upon information and belief, Murphy abused far more children than Plaintiff is currently aware of, both before and after Plaintiff's abuse.

21. The Diocese knew or should have known that Murphy posed a danger to the Plaintiff.

22. From approximately 1978 – 81, Murphy used his position(s) with the Defendants to sexually abuse the Plaintiff.

23. The Defendants held Murphy out to the Plaintiff and her family as the Defendant(s)'s agent, who had been appropriately vetted, screened, and approved.

24. The Plaintiff and her parents reasonably relied on the acts and representations of the Defendants and their agents regarding Murphy.

25. At no time did Defendants make Plaintiff or her family aware of Murphy's history, or of the known risk of abuse posed by him and other Catholic clergy.

26. Such acts by the Diocese, School, and Church were willful, wanton, and/or reckless.

27. As described, Murphy sexually abused the Plaintiff, in addition to other children.

28. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer as follows:

- a. Severe and permanent emotional distress, including physical manifestations of emotional distress;
- b. Deprivation of the full enjoyment of life;
- c. Expenses for medical and psychological treatment, therapy, and counseling; and,
- d. Loss of income and/or loss of earning capacity.

Causes of Action

First Cause of Action Negligent Retention and Negligent Supervision

29. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

30. Defendant(s) owed a duty of care to all minor persons, including Plaintiff, who was likely to encounter Perpetrator in his role as cleric, counselor, trustee, director, officer, employee, agent, servant, and/or volunteer of Defendant(s).

31. Defendant(s) owed a duty of care to all minor persons, including Plaintiff, to ensure Perpetrator did not use his position to injure minors by sexual assault, abuse, and/or sexual contact.

32. Defendant(s) had an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for her.

33. Defendant(s) negligently, grossly negligently, and/or recklessly hired, retained, and supervised Perpetrator, though they knew or should have known that Perpetrator posed a threat of harm to minors.

34. Defendant(s) negligently, grossly negligently, and/or recklessly retained Perpetrator with actual or constructive knowledge of Perpetrator's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

35. Defendant(s) failed to investigate Perpetrator's history of sexual abuse and, through the exercise of reasonable diligence, should have known of Perpetrator's propensity for child sexual abuse.

36. Defendant(s) should have made an appropriate investigation of Perpetrator and failed to do so, which would have revealed the unsuitability of Perpetrator for continued employment, and it was unreasonable for Defendant(s) to retain Perpetrator in light of the information they knew or should have known.

37. Defendant(s) negligently retained Perpetrator in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant taken reasonable care.

38. In failing to timely remove Perpetrator from working with children or terminate the employment of Perpetrator, Defendant(s) failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

39. Defendant(s) knew or should have known of Perpetrator's propensity for sexual assault, abuse, and/or sexual contact with minors, the same conduct which caused Plaintiff's injuries.

40. Defendant(s) knew or should have known of Perpetrator's propensity for sexual assault, abuse, and/or sexual contact with minors prior to, or at the time of, Plaintiff's injuries.

41. The Plaintiff's sexual abuse by Perpetrator was foreseeable, *i.e.*, Defendant(s) were on notice of prior similar incidents and Plaintiff's sexual abuse was the proximate result of Defendant(s)'s negligent hiring, retention, and supervision of Perpetrator.

42. Perpetrator's acts described herein were undertaken, and/or enabled by, and/or during the course, and/or within the scope of Perpetrator's employment, appointment, assignment, and/or agency with Defendant(s).

43. Defendant(s) took no precautions to prevent Plaintiff's injuries.

44. Defendant(s) failed to take reasonable precautions to prevent Plaintiff's injuries.

45. Defendant(s) gave improper or ambiguous orders, or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others.

46. Defendant(s) failed to adequately supervise the activities of Perpetrator.

47. Defendant(s) failed to protect against or warn the Plaintiff or her family of the known risk of cleric abuse.

48. Defendant(s) permitted, and/or intentionally failed, and/or neglected to prevent, negligent and/or grossly negligent conduct, and/or allowed other tortious conduct by persons, whether or not their servants, and/or agents, and/or employees, upon premises or with instrumentalities under their control.

49. Defendant(s) allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

50. Defendant(s) actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

51. As a direct and proximate result of Defendant(s)'s actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

52. By reason of the foregoing, the Defendant(s) is/are liable to the Plaintiff, jointly, severally, and/or in the alternative, liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Second Cause of Action
Negligence/Gross Negligence/Recklessness**

53. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

54. Defendant(s) owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

55. Defendant(s) owed Plaintiff a duty of care because Defendant(s) had a special relationship with Plaintiff. Defendant(s) also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children to properly train and supervise clerics.

56. Defendant(s)'s special relationship arose because of the high degree of vulnerability of the children entrusted to their care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendant(s) had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

57. Defendant(s) owed Plaintiff a duty to protect Plaintiff from harm because each Defendant also had a special relationship with Perpetrator.

58. Defendant(s) owed Plaintiff a duty of reasonable care because they solicited youth and parents for participation in their youth programs; encouraged youth and parents to have the youth participate in their programs; undertook custody of minor children, including Plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Perpetrator, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Perpetrator, to spend time with, interact with, and recruit children.

59. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the Plaintiff, Defendant(s) also held a position of empowerment over Plaintiff.

60. Defendant(s), by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment.

61. Defendant(s), through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

62. Defendant(s) entered an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children.

63. Defendant(s) owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers.

64. Defendant(s) had the duty to exercise the same degree of care over minors under their control as a reasonably prudent person would have exercised under similar circumstances.

65. Defendant(s) owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

66. Defendant(s) owed Plaintiff a duty to protect Plaintiff from harm because Defendant(s) invited Plaintiff onto their property and Perpetrator posed a dangerous condition on Defendant(s)'s property.

67. Defendant(s) breached its duties to Plaintiff.

68. Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had enough information to represent their facilities as safe.

69. Defendant(s) breach of their duties include, but are not limited to:

- a. failure to protect Plaintiff from a known danger;
- b. failure to have sufficient policies and procedures in place to prevent child sex abuse;
- c. failure to properly implement policies and procedures to prevent child sex abuse;
- d. failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working;
- e. failure to adequately inform families and children of the risks of child sex abuse;
- f. failure to investigate risks of child molestation;
- g. failure to properly train the employees at institutions and programs within Defendant(s)'s geographical confines;
- h. failure to train the parishioners within Defendant(s)'s geographical confines about the dangers of sexual abuse by clergy;
- i. failure to have any outside agency test their safety procedures;
- j. failure to protect the children in their programs from child sex abuse;
- k. failure to adhere to the applicable standard of care for child safety;
- l. failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders, and people as safe;

- m. failure to train their employees properly to identify signs of child molestation by fellow employees; and/or,
- n. failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

70. Defendant(s) also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Perpetrator posed and the risks of child sexual abuse in Catholic institutions. Defendant(s) also failed to warn them about any of the knowledge that Defendant(s) had about child sexual abuse.

71. Defendant(s) additionally violated a legal duty by failing to report known and/or suspected abuse of children by Perpetrator and/or its other agents to the police and law enforcement.

72. Prior to the sexual abuse of Plaintiff, Defendant(s) learned or should have learned that Perpetrator was not fit to work with children.

73. Defendant(s), by and through their agents, servants, and/or employees, became aware, or should have become aware of Perpetrator's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

74. Defendant(s) knew or should have known that they did not have sufficient information about whether or not their leaders and people working at the Parish and other Catholic institutions were safe.

75. Defendant(s) knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities.

76. Defendant(s) knew or should have known that they did not have enough information about whether or not there was a risk of child sex abuse for children participating in Catholic programs and activities.

77. Defendant(s) knew or should have known that Defendant(s) had numerous agents who had sexually molested children.

78. Defendant(s) knew or should have known that child molesters have a high rate of recidivism. Defendant(s) knew or should have known that there was a specific danger of child sex abuse for children.

79. Defendant(s) negligently, grossly negligently, and/or recklessly deemed Perpetrator was fit to work with children; and/or that any previous suitability problems Perpetrator had were fixed and cured; and/or that Perpetrator would not sexually molest children; and/or that Perpetrator would not injure children.

80. Defendant(s) actions created a foreseeable risk of harm to Plaintiff.

81. Plaintiff was a foreseeable victim.

82. Defendant(s) actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

83. As a direct and proximate result of Defendant(s)'s actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

84. By reason of the foregoing, Defendant(s) is/are liable to the Plaintiff, jointly, severally, and/or in the alternative, liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Third Cause of Action
Negligent Training and Supervision of Employees**

85. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

86. At all times material, Perpetrator was employed by Defendant(s) and was under each Defendant(s)'s direct supervision, employ, and control when he committed the wrongful acts alleged herein.

87. Perpetrator engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant(s) and/or accomplished the sexual abuse by virtue of his job-created authority.

88. Defendant(s) had a duty, arising from their employment of Perpetrator, to ensure that he did not sexually molest children.

89. Defendant(s) owed a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

90. Defendant(s) were negligent in the training, supervision, and instruction of their employees.

91. Defendant(s) failed to timely and properly educate, train, supervise, and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

92. Defendant(s) were additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Perpetrator and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Perpetrator's sexual abuse of Plaintiff.

93. In failing to properly supervise Perpetrator, and in failing to establish such training procedures for employees and administrators, Defendant(s) failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

94. Defendant(s)'s actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

95. As a direct and proximate result of Defendant(s)'s actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

96. By reason of the foregoing, Defendant(s) is/are liable to the Plaintiff, jointly, severally, and/or in the alternative, liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

JURY DEMAND

97. Plaintiff demands a trial by jury on all issues so triable.

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WHEREFORE Plaintiff demands judgment against the Defendants on each cause of action as follows:

- a) Awarding compensatory damages in an amount to be proved at trial, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- b) Awarding punitive damages to the extent permitted by law;
- c) Awarding prejudgment interest to the extent permitted by law;
- d) Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- e) Awarding such other and further relief as to this Court may seem just and proper.

Dated: February _____, 2020
Albany, New York

Respectfully Submitted,

/s/ Benjamin D. Andreozzi
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Attorneys for Plaintiffs

VERIFICATION

STATE OF New York)
COUNTY OF Schenectady ss:

Colleen M. Garbarini, being duly sworn, deposes and says: That she is a plaintiff in this action; that she has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes it to be true.


[Name]

Sworn to before me this
25th day of November 2019.


NOTARY PUBLIC

LAURA BAKER
Notary Public, State of New York
Reg. # 01BA6138643
Qualified in Schenectady County
Commission Expires December 27, 2021