

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

KATHLEEN GALLAGHER-SMITH,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE,
NEW YORK; AND THE ROMAN CATHOLIC CHURCH OF
SAINT FRANCIS OF ASSISI,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Kathleen Gallagher-Smith, by her attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Rockville Centre, New York and The Roman Catholic Church of Saint Francis of Assisi and alleges, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Suffolk pursuant to CPLR 503 in that one or more Defendant resides in this County.

PARTIES

4. Plaintiff Kathleen Gallagher-Smith ("Plaintiff") is an individual residing in Pickens County, South Carolina.
5. Defendant The Roman Catholic Diocese of Rockville Centre, New York ("Diocese of Rockville Centre") is a religious corporation organized pursuant to the

Religious Corporations Law, with its principal office at 50 North Park Avenue in Rockville Centre, Nassau County, New York. The Diocese of Rockville Centre is a Roman Catholic diocese. At all relevant times, the Diocese of Rockville Centre created, oversaw, managed, controlled, directed and operated parishes or churches of the Diocese of Rockville Centre including the Roman Catholic Church of St. Francis of Assisi. At all relevant times, the Diocese of Rockville Centre oversaw, managed, controlled, and directed priests assigned to work in parishes or churches of the Diocese.

6. Defendant The Roman Catholic Church of Saint Francis of Assisi, ("St. Francis of Assisi") is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 29 Northgate Drive, Greenlawn, Suffolk County, New York. At all relevant times, St. Francis of Assisi was and has been a Roman Catholic Church or parish within and under the authority of the Diocese of Rockville Centre which created, oversaw, managed, controlled, directed and operated St. Francis of Assisi. At all relevant times, priests assigned to St. Francis of Assisi were agents, managers, directors, or employees of St. Francis of Assisi.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and her family were parishioners of and attended St. Francis of Assisi in Greenlawn, New York when she was a child.

8. During the times relevant to the allegations set forth herein, Father Joseph Keyes was a priest assigned by Defendant Diocese of Rockville Centre to be the pastor at St. Francis of Assisi. Father Keyes had been the first priest assigned by Defendant Diocese of Rockville Centre to be the pastor at St. Francis of Assisi.

9. Through his position at, within, or for the Defendants, Father Keyes was put in direct contact with Plaintiff, a minor parishioner of the Diocese of Rockville Centre.

10. In approximately 1970, when Plaintiff was approximately five or six years of age, she and her family were attending a celebration in Greenlawn, New York, to celebrate a neighbor's son's First Communion.

11. While attending this celebration, Father Keyes isolated Plaintiff and sexually assaulted her.

12. Father Keyes used this encounter, gained through his position at St. Francis of Assisi which granted him access to his parishioners, when Plaintiff was approximately five years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

13. At all times material hereto, Father Keyes was under the management, supervision, employ, direction and/or control of Defendants Diocese of Rockville Centre and St. Francis of Assisi.

14. Defendants Diocese of Rockville Centre and St. Francis of Assisi knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Keyes who sexually abused Plaintiff.

15. Defendants had the responsibility to manage, supervise, control and/or direct priests who served at St. Francis of Assisi, and specifically, had a duty not to aid pedophiles such as Father Keyes by assigning, maintaining, and/or appointing them to positions with access to minors.

16. Defendants had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault vulnerable children. Defendants knew and/or should have known that Father Keyes used his position at St. Francis of Assisi to harm minor children, including the Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

17. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Keyes' actions, as well as other damages related thereto, as a result of her childhood sexual abuse.

18. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent

emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Keyes' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

19. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

20. Defendants Diocese of Rockville Centre and St. Francis of Assisi at all relevant times represented or otherwise indicated to parishioners of St. Francis of Assisi that parishioners' minor children would be physically safe while in the presence of priests assigned to St. Francis of Assisi. Defendants Diocese of Rockville Centre and St. Francis of Assisi entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a priest assigned to St. Francis of Assisi Plaintiff would be kept reasonably safe and that that priest would not sexually abuse Plaintiff.

21. Defendants Diocese of Rockville Centre and St. Francis of Assisi owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Father Keyes or under the supervision of Father Keyes, to ensure that Father Keyes did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

22. Defendants Diocese of Rockville Centre and St. Francis of Assisi knew or should have known of Father Keyes' propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

23. The sexual abuse of children by adults, including priests, is a foreseeable

result of negligence.

24. Father Keyes sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while he was a priest of St. Francis of Assisi.

25. Defendants Diocese of Rockville Centre and St. Francis of Assisi negligently hired, retained, directed, and supervised Father Keyes as they knew or should have known that Father Keyes posed a threat of sexual abuse to children.

26. Defendants Diocese of Rockville Centre and St. Francis of Assisi were negligent in failing properly to supervise Father Keyes.

27. At all times material hereto, Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

28. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

29. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

31. At all times material hereto, with regard to the allegations contained herein, Father Keyes was under the supervision, employ, direction and/or control of Defendants Diocese of Rockville Centre and St. Francis of Assisi.

32. Defendants Diocese of Rockville Centre and St. Francis of Assisi owed Plaintiff, at the relevant times, a minor, a duty to protect her from Father Keyes' sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Keyes' misconduct.

33. Defendants Diocese of Rockville Centre and St. Francis of Assisi knew, or were negligent in not knowing, that Father Keyes posed a threat of sexual abuse to children.

34. The acts of Father Keyes described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with the Defendants Diocese of Rockville Centre and St. Francis of Assisi.

35. Defendants Diocese of Rockville Centre's and St. Francis of Assisi's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

36. Defendants Diocese of Rockville Centre and St. Francis of Assisi:

- a. 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;
- b. failed adequately to supervise the activities of Father Keyes;
- c. 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, with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

37. At all times material hereto, Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

38. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

39. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

40. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

41. Plaintiff, when she was a minor, was placed in the care and supervision of the Defendants Diocese of Rockville Centre and St. Francis of Assisi for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, religious, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and the Defendants.

42. Plaintiff was a vulnerable child when placed within the care of the Defendants Diocese of Rockville Centre and St. Francis of Assisi.

43. As a consequence, Defendants Diocese of Rockville Centre and St. Francis of Assisi were in the best position to prevent Father Keyes' sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father Keyes' sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

44. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Rockville Centre and St. Francis of Assisi, Defendants breached their non-delegable duty to Plaintiff.

45. At all times material hereto, Father Keyes was under the supervision, employ, direction and/or control of the Defendants Diocese of Rockville Centre and St. Francis of Assisi.

46. As a direct result of said conduct, Plaintiff has suffered injuries and

damages described herein.

47. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

48. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

49. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of Father Keyes, a priest of the Defendants Diocese of Rockville Centre and St. Francis of Assisi. During the times that Plaintiff was entrusted to Father Keyes, the founding Pastor of St. Francis of Assisi, Father Keyes was under the supervision and control of Defendants Diocese of Rockville Centre and St. Francis of Assisi.

50. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Rockville Centre and St. Francis of Assisi. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of the Defendants Diocese of Rockville Centre and St. Francis of Assisi as a parishioner of St. Francis of Assisi. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Rockville Centre and St. Francis of Assisi, while the Plaintiff was a minor child, required these Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect her due to her infancy and vulnerability.

51. Pursuant to their fiduciary relationship, Defendants Diocese of Rockville Centre and St. Francis of Assisi were entrusted with the well-being, care, and safety of Plaintiff.

52. Pursuant to their fiduciary relationship, Defendants Diocese of Rockville Centre and St. Francis of Assisi assumed a duty to act in the best interests of Plaintiff.

53. Defendants Diocese of Rockville Centre and St. Francis of Assisi breached their fiduciary duties to Plaintiff.

54. At all times material hereto, Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

55. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

56. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

57. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

58. As described above, the actions of Defendants Diocese of Rockville Centre and St. Francis of Assisi, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

59. Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions endangered Plaintiff's safety and caused her to fear for her own safety.

60. As a direct and proximate result of Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to mental and emotional distress.

61. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*

62. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 18 as if fully set forth herein.

63. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of Father Keyes, a priest of the Defendants Diocese of Rockville Centre and St. Francis of Assisi. During the times that Plaintiff was entrusted to Father Keyes, the founding Pastor of St. Francis of Assisi, Father Keyes was under the supervision and control of Defendants Diocese of Rockville Centre and St. Francis of Assisi. These Defendants owe – and owed -- a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

64. Defendants Diocese of Rockville Centre and St. Francis of Assisi breached their duty to act *in loco parentis*.

65. At all times material hereto Defendants Diocese of Rockville Centre's and St. Francis of Assisi's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of Defendants Diocese of Rockville Centre's and St. Francis of Assisi's conduct, Plaintiff has suffered the injuries and damages described herein.

67. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

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, but in any event 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;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: June 12, 2019
New York, New York

Respectfully Submitted,

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