

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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P.M.,

Plaintiff,

COMPLAINT

-against-

DIOCESE OF BROOKLYN and ST. MARY’S OF THE
IMMACULATE CONCEPTION, ROMAN CATHOLIC
CHURCH OF THE CITY OF BROOKLYN, a/k/a CHURCH
OF THE IMMACULATE CONCEPTION OF THE BLESSED
VIRGIN MARY,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, P.M., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted on multiple occasions by Father Herbert J. McElroy, a Priest of the Diocese of Brooklyn. The sexual assaults occurred at St. Mary’s of the Immaculate Conception Church.

Parties, Jurisdiction and Venue

1. Plaintiff P.M. is a citizen and resident of the State of New York.
2. Defendant, Diocese of Brooklyn (hereafter, the “Diocese” or the “Diocese of Brooklyn”), is a religious institution and organization with principal offices located at 310 Prospect Road West, Brooklyn, New York. The Diocese of Brooklyn controls all Catholic religious,

pastoral and educational functions in the boroughs of Brooklyn and Queens, encompassing approximately 180 parishes and 210 churches. The Diocese is a citizen of the State of New York.

3. Defendant, St. Mary's of the Immaculate Conception, Roman Catholic Church of the City of Brooklyn a/k/a Church of the Immaculate Conception of the Blessed Virgin Mary (hereafter, "St. Mary's" or the "Church"), is a Catholic parish and church at all relevant times located at 72 Maujer St., Brooklyn, NY. At all relevant times, St. Mary's owned and operated a school in the parish, known as the Immaculate Conception School (the "School"). The Diocese at all relevant times controlled the Church and the School. St. Mary's is a citizen of the State of New York.

4. Herbert J. McElroy ("Father McElroy") was at all material times a duly ordained Catholic Priest assigned by the Diocese to St. Mary's.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. Personal jurisdiction lies over Defendant as it is present and domiciled in the State of New York.

7. Venue of this action lies in Kings County as the Defendant Diocese has its principal place of business in Kings County.

Duty

8. At all material times, the Diocese was in a special relationship with Plaintiff as a parishioner, parochial school student and altar boy with whom its ordained Priests would have contacts in the course of engaging in Catholic activities. Based on this special relationship, the Diocese owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

9. At all relevant times, the Diocese and Father McElroy were in a special relationship of employer – employee, such that the Diocese owed a duty to control Father McElroy to prevent foreseeable harm.

10. At all relevant times, the Church and Father McElroy were in a special relationship of employer – employee, such that the Church owed a duty to control Father McElroy to prevent foreseeable harm.

11. At all material times, the Church was in a special relationship with Plaintiff as a parishioner, parochial school student and altar boy with whom Priests would have contacts in the course of engaging in Catholic activities. Based on this special relationship, the Diocese owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

12. The Diocese and Church each owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Father McElroy.

13. The Diocese and Church each owed a duty to exercise reasonable care in the hiring, retention and supervision of Father McElroy.

14. The Diocese and Church each owed a duty to train their employees and agents in the reporting and prevention of child sexual abuse.

15. The Diocese and Church each owed a duty to adopt, implement and apply policies and procedures to prevent child sexual abuse.

16. The Diocese and Church each owed a duty to prevent foreseeable harms on the premises of St. Mary's, including those arising from the dangers to children posed by pedophile clergy.

17. The Diocese owed a duty in transferring or assigning Father McElroy to prevent or avoid foreseeable harm to parishioners and others who would have contacts with Father McElroy.

Father McElroy's Sexual Assaults of Plaintiff

18. Plaintiff was raised in a devout Catholic family. He attended the School and served as an altar boy at St. Mary's. Plaintiff as altar boy served at masses conducted by Father McElroy.

19. Father McElroy groomed Plaintiff to make him compliant to his advances so that he could commit acts of sexual abuse. When Plaintiff was between the approximate ages of 11 and 13, in or about 1962 - 64, Father McElroy sexually assaulted Plaintiff on not less than ten occasions. The acts of sexual assault included, for example, fondling Plaintiff's genitalia; having Plaintiff touch Father McElroy's genitalia; and digitally penetrating Plaintiff's anus.

20. Father McElroy's acts of sexual assault typically occurred after mass in the rectory (the priest's living quarters) and in the sacristy (the changing room by the altar in the chapel).

21. While sexually assaulting P.M., Father McElroy wore priest garb, and served in his pastoral and ministerial role as priest.

Notice-Foreseeability

A. Father Herbert McElroy's History of Child Sexual Abuse

22. Father McElroy was ordained as priest in the Diocese in or about 1934.

23. Upon information and belief, Father McElroy sexually abused boys from the beginning of his tenure as a priest of the Diocese. Multiple allegations of child sexual abuse have been made against Father McElroy, which include acts dating back to the 1950's well before he sexually assaulted Plaintiff.

24. Father McElroy was transferred and reassigned to multiple parishes within the Diocese in his tenure as a priest, which upon information and belief was part of a plan or scheme to conceal allegations against him of child sexual abuse.

25. At all relevant times, the Diocese of Brooklyn and the Church knew or in the exercise of reasonable care should have known that Father McElroy had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

26. At all relevant times, it was reasonably foreseeable to the Diocese of Brooklyn and the Church that Father McElroy would commit acts of child sexual abuse or assault on children.

27. At all relevant times, the Diocese and the Church knew or should have known that Father McElroy was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his ministry, counsel, care and/or protection.

28. With such actual or constructive knowledge, the Diocese's and Church's acts and omissions provided Father McElroy with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

B. Diocese's Concealment of Acts of Sexual Abuse by Priests

29. The Bishop of the Diocese at all relevant times knew that Priests of the Diocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Bishop knew that this was a widespread, ubiquitous and systemic problem in the Diocese, involving many Priests and numerous victims.

30. In February 2019, the Diocese released a list of over 100 priests of the Diocese against whom credible allegations of child sexual abuse that had been made. These priests are

acknowledged to have abused children within the Diocese of Brooklyn over decades. The list includes the name of Herbert McElroy.

31. Despite receiving credible allegations of child sexual abuse against priests, the Diocese acted to conceal these allegations in an effort to avoid scandal and accountability.

32. This concealment was in accordance with a policy of the Diocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Diocese, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

33. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

34. The 1962 document reinforced that the Holy See and its agents to whom the document was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

35. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

36. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Diocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

37. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Diocese, knowingly allowed, permitted and encouraged child sex abuse by the Diocese's Priests.

38. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining

in a certain place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

39. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Diocese, in 1988 and 2001.

40. The policies and practices of the Diocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

(a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;

(b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;

(c) failing to alert parishioners from the Priest’s prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

41. Upon information and belief, the Diocese’s transfers and reassignments of Father McElroy were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Diocese from scandal.

42. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Diocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

43. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

44. The Diocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

45. At all relevant times, while the Diocese had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

46. Plaintiff had no opportunity to protect himself against a danger that was solely within the knowledge of the Diocese.

47. The Diocese knew a significant percentage of Priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children in the Church.

48. All children engaging in Catholic activities within the Diocese were in this manner placed at risk of child sexual abuse.

C. Breach

49. With the foregoing knowledge, the Diocese and the Church breached their duties by (i) retaining Father McElroy as a Priest with unfettered access to children; (ii) failing to adequately supervise Father McElroy as an active Priest of the Diocese; and (iii) granting and maintaining Father McElroy faculties as Priest without making any warning or notice of his perverse sexual proclivities to the parishioners and Catholic faithful who would have contacts with Father McElroy.

50. At all relevant times, the Diocese had inadequate policies and procedures to protect children who would encounter Catholic Priests in the course of their duties.

51. At all relevant times, the Diocese and the Church had inadequate or nonexistent training of their employees and agents in the prevention and reporting of child sexual abuse.

52. The Diocese concealed its knowledge that priests were unsafe and failed to adopt or implement policies and procedures that would protect children and reduce the risk of child sexual abuse by its Priests.

53. The Diocese and Church failed to keep the premises of St. Mary's safe to children from pedophile clergy in general and Father McElroy in particular.

54. The Diocese failed to warn Catholic families that their children were at risk of sexual abuse by Priests.

55. As a direct and proximate cause of the foregoing breaches of duty, Father McElroy sexually assaulted Plaintiff.

Nature of Conduct Alleged

56. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

57. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father McElroy to retain Father McElroy in ministry with unfettered access to children.

COUNT I **NEGLIGENCE** *(Against Diocese)*

58. Plaintiff P.M. repeats and realleges Paragraphs 1 through 57 above.

59. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

60. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of P.M. and other children.

WHEREFORE, Plaintiff demands judgment against the Diocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(Against Church)

61. Plaintiff P.M. repeats and realleges Paragraphs 1 through 57 above.

62. As a direct and proximate result of the Church's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

63. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of P.M. and other children.

WHEREFORE, Plaintiff demands judgment against the Church for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York

May 26, 2020

Respectfully submitted,

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