

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

CHARLES CARR,

Index No. \_\_\_\_\_

Plaintiff,

-against-

**COMPLAINT**

ROMAN CATHOLIC DIOCESE  
OF ALBANY, NEW YORK, HOWARD J.  
HUBBARD, ST. FRANCIS OF ASSISI  
PARISH and DOES 1 through 5

**JURY TRIAL DEMANDED**

Defendants.

Plaintiff, Charles Carr, by and through the undersigned attorneys, complains of Defendants, the Roman Catholic Diocese of Albany and Howard James Hubbard, and alleges on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**PARTIES**

1. Plaintiff Charles Carr is a fifty-five (55) year old resident of South Carolina. Plaintiff was approximately ten years old at the time of the sexual abuse alleged herein.
2. Defendant Roman Catholic Diocese of Albany, New York a/k/a Diocese of Albany (“Albany Diocese”) was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials and employees authorized to conduct business in the State of New York with its principal place of business at 40 North Main Avenue, Albany, NY 12203, in Albany County, New York.
3. Defendant Howard James Hubbard (“Defendant Hubbard”) currently resides and may be served with process at 125 Eagle Street, Albany, New York 12202 or wherever he may be found.

4. Defendant St. Francis of Assisi Parish, formerly known as and successor of St. James Church of Albany, located at 391 Delaware Ave., Albany, New York is a parish that is part of and overseen by the Roman Catholic Diocese of Albany (hereafter "St. James Church").

5. Each of Defendants Does 1 through 5, inclusive, is being sued under fictitious names pursuant to CPLR §1024. Plaintiff does not know the true names, identities, and capacities of Does 1 through 5, whether individual, corporate, associate, or otherwise. When their true names, identities, and capacities are known to Plaintiff, Plaintiff will seek to amend this Complaint to identify them.

#### **JURISDICTION AND VENUE**

6. This Court has personal jurisdiction over the Defendants pursuant to CPLR §§301 and 302, because Plaintiff's claims arise from the tortious acts of Defendants that were committed in the State of New York.

7. The 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.

8. Venue is proper in the County of Albany under CPLR §503 because at least one of the parties to this suit reside in this county at the time this suit was commenced and all or a substantial part of the events or omissions giving rise to this cause of action occurred in Albany County, New York.

9. The federal courts lack jurisdiction over this suit. Plaintiff's claim raises no federal question nor does Plaintiff seek relief under a federal law, statute, regulation, treaty, or the United States Constitution. Accordingly, Plaintiff's right to relief does not depend on the resolution of a substantial question of federal law. Further, this lawsuit cannot be removed because there is no

complete diversity, as at least one Defendant resides or has their principal place of business in New York. Therefore, removal would be improper.

### **HISTORY OF ABUSE AND COVER-UP WITHIN THE CHURCH**

10. The Catholic Church has a long and well-documented history of child sexual abuse by priests. The issue became the subject of widespread media coverage and public attention in the United States in 2002 after publication of the groundbreaking Spotlight series on the cover up of clergy sex abuse by Cardinal Bernard Law in the Boston Archdiocese by the Boston Globe.<sup>1</sup>

11. The problem reached a tipping point in 2018 after publication of a watershed report of Pennsylvania Attorney General's grand jury investigation into six Roman Catholic dioceses in Pennsylvania showing pervasive patterns of abuse and cover up within the Church.<sup>2</sup>

12. Among other things, the Pennsylvania grand jury report identified seven common strategies used by Pennsylvania state dioceses to cover sexual abuse, including

- a. "[U]s[ing] euphemisms rather than real words to describe the sexual assaults in diocese documents."
- b. Not "conduct[ing] genuine investigations with properly trained personnel. Instead, assign[ing] fellow clergy members to ask inadequate questions and then make credibility determinations about the colleagues with whom they live and work."
- c. "[F]or an appearance of integrity, send[ing] priests for 'evaluation' at church-run psychiatric treatment centers. Allow[ing] these experts to 'diagnose' whether the priest was a pedophile, based largely on the priest's 'self-reports,' and regardless of whether the priest had actually engaged in sexual contact with a child."
- d. "[W]hen a priest does have to be removed, [not] say[ing] why. Tell[ing] his parishioners that he is on 'sick leave,' or suffering from 'nervous exhaustion.' Or say[ing] nothing at all."
- e. "[E]ven if a priest is raping children, keep[ing to] provid[e] him housing and living expenses, although he may be using these resources to facilitate more sexual assaults."

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<sup>1</sup> Michael Rezendes, *Church Allowed Abuse by Priest for Years*, The Boston Globe: Spotlight Series (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTTrAT25qKGvBuDNM/story.html>.

<sup>2</sup> Commonwealth of Pennsylvania: Office of the Attorney General, *Report I of the Fortieth Statewide Investigating Grand Jury* (2018), <https://www.attorneygeneral.gov/report/>.

- f. “[I]f a predator’s conduct becomes known to the community, [not] remov[ing] him from the priesthood to ensure that no more children will be victimized. Instead, transfer[ing] him to a new location where no one will know he is a child abuser.”
- g. “Finally and above all, [not] tell the police.”<sup>3</sup>

13. The report was one of the major reasons for the unprecedented wave of child sex abuse statute of limitation (“SOL”) reform by states in 2019 and 2020, with many states, including New York, passing laws that eliminated or extended criminal and civil SOLs and revived expired civil SOLs.

### FACTS SPECIFIC TO PLAINTIFF

14. Plaintiff and his family were devout Roman Catholics who attended St. James Roman Catholic Church (now known as St. Francis of Assisi, 391 Delaware Avenue, Albany, NY 12209).

15. Plaintiff was sexually abused by Defendant Howard James Hubbard in approximately 1975 when Plaintiff was about ten years old.

16. Hubbard was ordained as a Roman Catholic priest in 1963 and served within the Albany Diocese as Vicar General until he was appointed Bishop of Albany on February 2, 1977.

17. On or about 1975, when Mr. Carr was ten years old, Father Frank Sidioti (the head priest of the St. James parish) arranged for a group of students to go on a bus trip to West Point.

18. Mr. Carr became ill during the visit to West Point, at which time Hubbard assisted Mr. Carr who believed that Hubbard was attempting to help him.

19. Hubbard led Plaintiff back to the bus, which was empty at the time.

20. Once back at the bus and Hubbard was alone with plaintiff, Hubbard sexually assaulted Plaintiff, molesting him, including penetration.

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<sup>3</sup> *Id.* at 3.

21. In addition to the West Point assault, Hubbard sexually abused Plaintiff when Hubbard visited the St. James Parrish between 1974 and 1976 when plaintiff was 9 to 11 years old.

22. Between 1974 and 1976, Plaintiff served as an altar boy at the St. James church in Albany, New York.

23. During this time period, altar boys, including plaintiff, were directed to bring brandy from a wet bar located behind the altar to a reading room located behind the altar.

24. On multiple occasions, plaintiff served Hubbard in the reading room at which time, Hubbard had plaintiff sit on Hubbard's lap which was followed by inappropriate touching and ultimately anal sex.

25. Defendant Hubbard was not the only priest who sexually abused Plaintiff. The Rev. Cabell B. Marbury was ordained to the priesthood for the Albany diocese on June 6, 1964.

26. While assigned to teach and minister at Cardinal McCloskey Memorial High School in Albany, New York, Marbury also served in parishes throughout the diocese including St. James, which later became St. Francis of Assisi on Delaware Avenue in Albany.

27. Plaintiff was sexually abused by Reverend Cabell B. Marbury from approximately 1974 until 1976 when Plaintiff was approximately nine to eleven years old.

28. Father Marbury abused him sexually multiple times in the church sacristy, in the rectory and in a music practice room located adjacent to the balcony near the location of the organ

29. This priest forced Mr. Carr to touch him, and the priest touched him. He was also forced to have anal sex with this priest. The abuse did not stop until his family moved to a farm in Westerlo, New York.

30. Due to this abuse of Plaintiff by Defendant Hubbard, Plaintiff suffered chronic mental health issues including depression, post-traumatic stress, impulse control, anti-social disorder, emotional distress and anxiety, which have required and/or will require counseling and other treatment.

**CAUSES OF ACTION AGAINST DEFENDANT HOWARD HUBBARD**

**A. ASSAULT**

31. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 30 as if fully set forth herein.

32. Defendant Hubbard's abuse of Plaintiff placed Plaintiff in imminent apprehension of harmful contact, was committed intentionally and in wanton disregard for the health and/or safety of Plaintiff and is a tortious assault under the law of New York.

33. This assault was a proximate cause of the harms and damages to Plaintiff.

**B. BATTERY**

34. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

35. Defendant Hubbard's uninvited and offensive touching of Plaintiff was a battery upon Plaintiff and a violation of Plaintiff's body and done intentionally in wanton disregard for the health and/or safety of Plaintiff.

36. This battery was a proximate cause of the harms and damages to Plaintiff.

**C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

37. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 36 as if fully set forth herein.

38. Defendant Hubbard's conduct toward Plaintiff was extreme and outrageous. The damage that such conduct would cause Plaintiff was intended by Defendant Hubbard, or Defendant Hubbard disregarded a substantial likelihood of the damage such conduct caused.

39. As a proximate result of Defendant Hubbard's actions, Plaintiff suffered severe emotional distress.

**CAUSES OF ACTION AGAINST DEFENDANT ALBANY DIOCESE AND ST.  
FRANCISE OF ASSISI PARISH FORMERLY ST. JAMES**

**A. NEGLIGENCE**

40. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 39 as if fully set forth herein.

41. Defendants Albany Diocese and St. James Parish held itself out to be safe places for religious worship, spiritual development and growth, learning and education, or engaging in youth and/or community activities. Defendants Albany Diocese and St. James had, adopted, and/or assumed an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

42. Defendants Albany Diocese and St. James owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Defendant Hubbard and The Rev. Cabell B. Marbury, in their role as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer.

43. Defendants Albany Diocese and St. James breached their duties of care in one or more of the following ways:

- a. Negligently hiring Defendant Hubbard and the Rev. Cabell B. Marbury as they knew or should have known that they posed a threat of sexual abuse to children;
- b. Negligently retaining Defendant Hubbard and the Rev. Cabell B. Marbury as they knew or should have known that they posed a threat of sexual abuse to children;

- c. Negligently directing Defendant Hubbard and the Rev. Cabell B. Marbury as they knew or should have known that they posed a threat of sexual abuse to children;
- d. Negligently supervising Defendant Hubbard and the Rev. Cabell B. Marbury as they knew or should have known that they posed a threat of sexual abuse to children;
- e. Failing to investigate the background of Defendant Hubbard and the Rev. Cabell B. Marbury before placing them into close contact with Plaintiff;
- f. "Covering up" or otherwise failing to disclose the harmful acts of Defendant Hubbard and the Rev. Cabell B. Marbury;
- g. Failing to warn Plaintiff, his parents and/or legal guardians of Defendant Hubbard's and the Rev. Cabell B. Marbury's conduct despite having constructive knowledge of sexual abuse;
- h. Failing to warn Plaintiff, his parents and/or guardians of Defendant Hubbard's and the Rev. Cabell B. Marbury's conduct despite having actual knowledge of sexual abuse;
- i. Assigning or allowing Defendant Hubbard and the Rev. Cabell B. Marbury to have contact with Plaintiff despite having constructive and/or actual knowledge of sexual abuse;
- j. Minimizing, ignoring or excusing priestly misconduct over a period of decades;
- k. Failing to provide a safe environment to children and other parishioners within the churches, sacristies, schools and rectories operated and/or owned by Defendant Albany Diocese and St. James;
- l. Failing to train priests and diocesan employees to identify signs of child molestation by fellow employees;
- m. Failing to implement and maintain effective policies and procedures to prevent sexual abuse and abuse of children;
- n. Failing to investigate complaints of abuse properly;
- o. Failing to report Defendant Hubbard's and the Rev. Cabell B. Marbury's sexual abuse to appropriate law enforcement agencies; and
- p. Failing to exercise due care under the circumstances.



44. As a foreseeable, direct, and proximate result of Defendant Albany Diocese's and St. James's negligence, Plaintiff has suffered and will continue to suffer the injuries described herein.

**B. GROSS NEGLIGENCE**

45. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 44 as if fully set forth herein.

46. Defendants Albany Diocese's and St. James' acts and omissions, as previously described, were committed with complete and reckless disregard for, and with willful, wanton, and actual conscious indifference to, the rights, safety, and welfare of Plaintiff and the general public. The nature of Defendants' acts and omissions were of such a nature as to constitute gross negligence and malice. Specifically, Defendant Albany Diocese and St. James undertook a continuous course of action in the form of conscious decisions, with subjective knowledge and awareness of the risks and hazards presented by each decision as discussed above and incorporated herein, to expose Plaintiff and others to sexual abuse and/or sexual assault, and exercised not even slight care or diligence. When viewed objectively from the standpoint of Defendants at the time of their occurrence, said acts and omissions involved reckless disregard of or indifference to an extreme degree of physical, mental, and psychological risk and danger, considering the probability and the magnitude of the potential harm to others. Defendants Albany Diocese and St. James committed various acts and omissions constituting gross negligence, as outlined above. Such gross negligence was a foreseeable, direct, and proximate cause of the occurrence and Plaintiff's injuries and damages.

**C. BREACH OF FIDUCIARY DUTY**

47. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 46 as if fully set forth herein.

48. There is a fiduciary relationship between Plaintiff and Defendants Albany Diocese and St. James. This relationship is based on the fact that Plaintiff trusted his physical, mental, psychological, and spiritual care to the priests, officers, directors, officials, employees, volunteers, servants, and/or all those acting as agents of Defendants or on their behalf, who held themselves out as beholden to a spiritual and interpersonal duty to provide advice, benefit, and guidance to Plaintiff.

49. Because of this fiduciary relationship, Defendants Albany Diocese and St. James was required and had a duty to act in the best interests of Plaintiff and to protect him while he was a minor child.

50. Defendants Albany Diocese and St. James breached its fiduciary duty to Plaintiff. As a foreseeable, direct, and proximate result of Defendants' breach of fiduciary duty, Plaintiff has suffered and will continue to suffer the injuries described herein.

**D. BREACH OF NON-DELEGABLE DUTY**

51. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 50 as if fully set forth herein.

52. When Plaintiff was a minor, he was placed into the care of Defendant Albany Diocese and St. James for the purpose of providing Plaintiff with a safe environment in which to receive an education and/or participate in religious worship, spiritual development, and community service.

53. Because Defendants Albany Diocese and St. James was entrusted with the care of Plaintiff while he was a minor child, there existed a non-delegable duty of care that went from Defendant Albany Diocese an St. James to Plaintiff.

54. Since Plaintiff was a minor child at the time, Defendants were in the best position to prevent the abuse that Plaintiff suffered at the hands of Defendant Hubbard and Rev. Cabell B. Marbury and/or stop such abuse when they learned of it.

55. Defendants Albany Diocese and St. James failed to prevent the abuse and harm Plaintiff suffered, and/or they failed to stop it once they were aware of or should have been aware of the abuse. This failure was a breach of Defendants non-delegable duty to Plaintiff.

56. As a foreseeable, direct, and proximate result of this breach, Plaintiff suffered significant injuries and long-lasting damages.

#### **E. FRAUDULENT CONCEALMENT**

57. Plaintiff incorporates each and every allegation set forth in paragraphs 1 through 56 as if fully set forth herein.

58. For many years after Plaintiff's abuse at the hands of Defendant Hubbard and Rev. Cabell B. Marbury, Defendants Albany Diocese and St. James engaged in a conscious, deliberate plan to conceal the abuse, including but not limited to:

- a. Concealing from the public the sexual abuse committed by Defendant Hubbard and Rev. Cabell B. Marbury;
- b. Concealing the identities of Defendant Hubbard and Rev. Cabell B. Marbury;
- c. Concealing from appropriate law enforcement officials the sexual abuse committed by Defendant Hubbard and Rev. Cabell B. Marbury against Plaintiff and/or other minors;
- d. Attacking the credibility of Plaintiff and/or other victims of Defendant Hubbard and Rev. Cabell B. Marbury; and

- e. Impeding or otherwise preventing Plaintiff and other victims from pursuing legal action against Defendant Hubbard and Rev. Cabell B. Marbury.
59. Defendants Albany Diocese and St. James had a duty to disclose the information it concealed in Paragraph 58, and its concealment therefore amounted to a misrepresentation.
60. Defendants Albany Diocese and St. James concealed this information with fraudulent intent, with the goal of inducing reliance.
61. Plaintiff, and others, justifiably relied upon Defendants concealment of this material information.
62. As a foreseeable, direct, and proximate result of Defendants Albany Diocese's and St. James concealment, Plaintiff suffered significant injuries.

#### DAMAGES

63. Plaintiff seeks compensation for the following damages that resulted from this incident:
- a. Past mental anguish of Plaintiff, and that he will, in all probability, suffer in the future;
  - b. Past physical pain and suffering of Plaintiff, and that he will, in all probability, suffer in the future;
  - c. The medical expenses that Plaintiff has incurred in the past and will, in all probability continue to incur in the future;
  - d. Past and future lost wages;
  - e. Loss of earning capacity;
  - f. Cost of suit;
  - g. Reasonable and necessary attorney's fees;
  - h. Punitive damages;
  - i. Exemplary damages; and

j. Any and all other damages to which Plaintiff may be justly entitled.

**PRESERVATION OF EVIDENCE**

64. Plaintiff hereby requests and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including photographs; videotapes, audiotapes; recordings; business records; medical records; billing records; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; emails; voice mail; text messages; investigations; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff(s), the references incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

**JURY DEMAND**

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

**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages from Defendants in accordance with the evidence; that Plaintiff recovers costs of court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under law, both prejudgment and post-judgment; that Plaintiff recovers actual damages; that Plaintiff is entitled to recover compensatory damages; that Plaintiff recovers punitive damages; and for such other further relief; both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Dated: August 10, 2020

*s/ Gerald J. Williams*

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