

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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C.L.,

Plaintiff,

COMPLAINT

-against-

ROMAN CATHOLIC DIOCESE OF ALBANY and THE
ROMAN CATHOLIC COMMUNITY OF ST. EDWARD THE
CONFESSOR a/k/a ST. EDWARD THE CONFESSOR ROMAN
CATHOLIC CHURCH,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, C.L., 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 by Howard Hubbard, a priest and former bishop of the Roman Catholic Diocese of Albany.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, C.L., is a citizen and resident of the State of New York. Plaintiff brings this Complaint using his initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, ROMAN CATHOLIC DIOCESE OF ALBANY (hereafter referred to as the "DIOCESE" or the "DIOCESE OF ALBANY"), is a religious institution and organization

with principal offices located at 40 N. Main Avenue, #4, Albany, New York 12203. The DIOCESE OF ALBANY controls all Catholic religious, pastoral, and educational functions in the counties of Albany, Columbia, Delaware, Fulton, Greene, southern Herkimer, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington, including 126 parishes, 4 apostolates, and 157 worship sites. Any Catholic institution ministering within the DIOCESE's territory may only do so within the authority of the DIOCESE. The DIOCESE is a citizen and resident of the State of New York.

3. Defendant, THE ROMAN CATHOLIC COMMUNITY OF ST. EDWARD THE CONFESSOR a/k/a ST. EDWARD THE CONFESSOR ROMAN CATHOLIC CHURCH (hereinafter referred to as "ST. EDWARD") is a Roman Catholic parish and church under the authority and control of the DIOCESE, with a principal place of business located at 569 Clifton Park Center Road, Clifton Park, New York 12065. ST. EDWARD is a citizen and resident of the State of New York.

4. At all times relevant and material hereto, Bishop Howard J. Hubbard (hereinafter referred to as "HUBBARD") was at all material times a duly ordained Catholic priest of the DIOCESE OF ALBANY, under the DIOCESE's supervision and control.

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

6. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

7. Venue of this action lies in Albany County and a substantial part of the events or omissions giving rise to the claim occurred in Albany County or one of the Defendants resides in Albany County.

DUTY

8. At all times relevant and material hereto, defendant DIOCESE, as principal, and defendant ST. EDWARD, as agent, were in an agency relationship, such that ST. EDWARD acted on the DIOCESE's behalf, in accordance with the DIOCESE's instructions and directions on all matters, including those relating to the hiring of priests and clergy. The acts and omissions of ST. EDWARD were subject to the DIOCESE's plenary control, and ST. EDWARD consented to act subject to the DIOCESE's control.

9. At all times relevant and material hereto, defendant DIOCESE and Plaintiff were in a special relationship of church – parishioner in which Plaintiff participated in the DIOCESE's youth-serving and educational activities, including attendance at religious education classes, Mass, and other church functions. As a result of this special relationship, the DIOCESE owed Plaintiff a duty of reasonable care to prevent foreseeable harm.

10. At all times relevant and material hereto, defendant DIOCESE and HUBBARD were in a special relationship of employer – employee, in which the DIOCESE owed a duty to control the acts and conduct of HUBBARD to prevent foreseeable harm.

11. At all times relevant and material hereto, defendant DIOCESE owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being, and health of Plaintiff while he was under the care, custody or in the presence of the DIOCESE or one of its priests. The DIOCESE's duties encompassed using reasonable care in the retention, supervision and hiring of HUBBARD and the duty to otherwise provide a safe environment for Plaintiff.

12. At all times relevant and material hereto, defendant ST. EDWARD and Plaintiff were in a special relationship of church – parishioner, in which Plaintiff participated in ST. EDWARD's youth-serving and educational activities, including attendance at religious education classes, Mass and other church functions. As a result of this special relationship, ST. EDWARD

owed Plaintiff a duty of reasonable care to prevent foreseeable harm. in which owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

13. At all times relevant and material hereto, defendant ST. EDWARD and HUBBARD were in a special relationship of employer – employee, in which ST PETER owed a duty to control the acts and conduct of HUBBARD to prevent foreseeable harm.

14. Defendant ST. EDWARD owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being, and health of Plaintiff while he was under the care, custody or in the presence of ST. EDWARD. ST. EDWARD's duties encompassed using reasonable care in the retention, supervision and hiring of HUBBARD and the duty to otherwise provide a safe environment for Plaintiff.

15. Defendant ST. EDWARD had a duty to exercise reasonable care in the training of clergy, priests, administration, and staff in the prevention of sexual abuse and protection of the safety of children and parishioners in its care.

16. Defendant ST. EDWARD had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the children and parishioners in its care.

HUBBARD'S SEXUAL ASSAULTS OF PLAINTIFF

17. Plaintiff was raised in a devout Catholic family. At all times relevant and material hereto, Plaintiff attended Mass and catechism classes at ST. EDWARD within the DIOCESE.

18. In or about the summer of 1977, when he was about eleven (11) years old, Plaintiff was volunteering at a carnival hosted by ST. EDWARD and the DIOCESE. The carnival was a fundraising opportunity for ST. EDWARD and the DIOCESE.

19. Plaintiff was asked by Father Mooney, a priest of the DIOCESE assigned to ST. EDWARD, to retrieve cups from a storage room. Plaintiff proceeded to the ST. EDWARD storage

room and was approached by HUBBARD. Upon information and belief, HUBBARD was attending the carnival at ST. EDWARD in his role as a priest and/or the bishop of the DIOCESE. HUBBARD instructed Plaintiff to come with him to the rectory.

20. While in the ST. EDWARD rectory, HUBBARD sexually assaulted and abused Plaintiff. Specifically, HUBBARD engaged in frottage with Plaintiff, grinding his clothed penis on Plaintiff's buttocks. HUBBARD proceeded to force Plaintiff to sit in a chair and groped and fondled Plaintiff's genitals beneath his clothes.

21. HUBBARD wore his priest garb during the sexual assault and abuse of Plaintiff.

NOTICE – FORESEEABILITY

22. At all times relevant and material hereto, the Defendants knew or in the exercise of reasonable care should have known that HUBBARD had a propensity for the conduct which caused injury to Plaintiff, particularly that he had a propensity to engage in the sexual abuse of children.

23. At all relevant times, it was reasonably foreseeable to the Defendants, by and through their agents and employees, that HUBBARD would commit acts of child sexual abuse or assault on children.

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

25. With such actual or constructive knowledge, the Defendants' acts and omissions provided HUBBARD with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

Diocese's Concealment of Acts of Sexual Abuse by Priests

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. The policies and practices of the Defendants 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.

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

38. Upon information and belief, the DIOCESE continued to retain HUBBARD as a priest, with authority to act as a priest, without any disclosure of his heinous acts to the Catholic faithful and without any action to prevent or limit his contacts with children, pursuant to the above-described policy and in an effort to avoid scandal.

39. 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.

40. Plaintiff was in a zone of foreseeable harm as a child in close proximity with Catholic clergy.

41. The Defendants 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, particularly HUBBARD.

42. At all relevant times, while the Defendants 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.

43. Plaintiff had no opportunity to protect himself against a danger that was within the knowledge of the Defendants.

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

45. The Defendants knew that HUBBARD was using his status and position to identify, recruit, groom and sexually assault vulnerable children, including plaintiff.

46. All children engaging in Catholic activities within the DIOCESE and at ST. EDWARD were in this manner placed at risk of child sexual abuse.

BREACH

47. During the time Plaintiff was sexually assaulted by HUBBARD, the Defendants knew or should have known that HUBBARD posed a foreseeable risk of sexual assault to children with whom he would have contact and opportunity.

48. With this knowledge, the Defendants breached their duties by (i) hiring and retaining HUBBARD as a priest with unfettered access to children; (ii) failing to adequately supervise HUBBARD as an active priest of the DIOCESE; and (iii) granting and maintaining HUBBARD faculties or authorization to act as priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with HUBBARD.

49. At all relevant times, the Defendants failed to adequately implement or enforce policies and procedures to protect children from pedophile clergy.

50. The Defendants concealed their knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by its priests in general and HUBBARD in particular.

51. The Defendants failed to warn Catholic families that their children were at risk of sexual abuse by priests in general and HUBBARD in particular.

52. As a direct and proximate cause of the foregoing breaches of duty, HUBBARD sexually assaulted Plaintiff.

NATURE OF CONDUCT ALLEGED

53. 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).

54. 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 Defendants acted with reckless disregard for the safety of others, including Plaintiff.

COUNT I - NEGLIGENCE
(Against Defendant DIOCESE)

55. Plaintiff repeats and realleges Paragraphs 1 through 54 above.

56. As a direct and proximate result of the Defendant'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.

57. The Defendant's acts, conduct and omissions show a reckless or willful disregard for the safety and well-being of the Plaintiff and other children.

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

COUNT II - NEGLIGENCE
(Against Defendant ST. EDWARD)

58. Plaintiff repeats and realleges Paragraphs 1 through 54 above.

59. As a direct and proximate result of the Defendant'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 Defendant's acts, conduct and omissions show a reckless or willful disregard

for the safety and well-being of the Plaintiff and other children.

WHEREFORE, Plaintiff demands judgment against the Defendant ST. EDWARD 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
March 9, 2021

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