

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

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J.J.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK; and CHURCH
OF THE INCARNATION,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

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

INTRODUCTION

1. This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. Plaintiff, J.J., when he was a minor, was sexually assaulted and abused at THE CHURCH OF THE INCARNATION in New York, New York by MONSIGNOR THOMAS P. LEONARD (hereinafter referred to as “MONSIGNOR LEONARD”), and FATHER THOMAS J. THOMPSON, (hereinafter referred to as “FATHER THOMPSON”), Priests of the Archdiocese of New York assigned to the CHURCH OF THE INCARNATION, and by DENNIS O’DRISCOLL, (hereinafter referred to as “O’DRISCOLL”) a staff member assigned to the CHURCH OF THE INCARNATION. Plaintiff was approximately ten (10) to eleven (11) years old when he was sexually abused and assaulted by MONSIGNOR LEONARD, FATHER THOMPSON and O’DRISCOLL.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a citizen and resident of the State of Arizona. Plaintiff brings this Complaint anonymously 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 her identity as a victim of child sexual abuse were to become publicly known.

3. Defendant ARCHDIOCESE OF NEW YORK (hereinafter referred to as “ARCHDIOCESE”) is a religious institution and organization with principal offices located at 1011 First Avenue, New York, New York 10022. The ARCHDIOCESE controls all Catholic religious, pastoral and educational functions in the boroughs of Manhattan, the Bronx and Staten Island, and in other counties in the greater New York metropolitan area. The ARCHDIOCESE operates and controls approximately 370 CHURCH, 274 schools and 90 Catholic charities. The ARCHDIOCESE is a citizen and resident of the State of New York.

4. Defendant CHURCH OF THE INCARNATION, (hereinafter referred to as the “CHURCH”) is a Catholic Church and Parish located at 1290 Saint Nicholas Avenue, New York, New York 10033. The CHURCH is a citizen of the State of New York.

5. At all times relevant and material hereto, MONSIGNOR LEONARD and FATHER THOMPSON were employed by the ARCHDIOCESE as a Priests and assigned to the CHURCH.

6. At all times relevant and material hereto, O’DRISCOLL was employed by the as a staff member of the ARCHDIOCESE and assigned to the CHURCH.

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

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

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

10. The amount in controversy exceeds the jurisdictional limit of all lower courts.

DUTY

Defendant ARCHDIOCESE

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

12. At all times relevant and material hereto, Defendant ARCHDIOCESE and Plaintiff were in a special relationship of church – parishioner in which the ARCHDIOCESE owed Plaintiff a duty of reasonable care to prevent foreseeable harm.

13. At all times relevant and material hereto, Defendant ARCHDIOCESE and MONSIGNOR LEONARD were in a special relationship of employer – employee, in which the ARCHDIOCESE owed a duty to control the acts and conduct of MONSIGNOR LEONARD to prevent foreseeable harm.

14. At all times relevant and material hereto, Defendant ARCHDIOCESE and FATHER THOMPSON were in a special relationship of employer – employee, in which the

ARCHDIOCESE owed a duty to control the acts and conduct of FATHER THOMPSON to prevent foreseeable harm.

15. At all times relevant and material hereto, Defendant ARCHDIOCESE and O'DRISCOLL were in a special relationship of employer – employee, in which the ARCHDIOCESE owed a duty to control the acts and conduct of O'DRISCOLL to prevent foreseeable harm.

16. At all times relevant and material hereto, Defendant ARCHDIOCESE 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 ARCHDIOCESE. The ARCHDIOCESE's duties encompassed using reasonable care in the retention, supervision and hiring of MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON and the duty to otherwise provide a safe environment for Plaintiff.

17. At all times relevant and material hereto, Defendant ARCHDIOCESE 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 parochial school students in its care.

18. At all times relevant and material hereto, Defendant ARCHDIOCESE 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 parochial school students in its care.

DUTY
Defendant the CHURCH

19. At all times relevant and material hereto, Defendant CHURCH and Plaintiff were in a special relationship of church – parishioner, in which the Defendant owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

20. At all times relevant and material hereto, Defendant CHURCH had a duty to act as a reasonable parent would in the circumstances while Plaintiff was on school grounds or participating in school-related activities. In this regard Defendant was *in loco parentis* with the Defendant’s students, including Plaintiff.

21. At all times relevant and material hereto, Defendant CHURCH and MONSIGNOR LEONARD were in a special relationship of employer-employee, in which CHURCH owed a duty to control the acts and conduct of MONSIGNOR LEONARD to prevent foreseeable harm.

22. At all times relevant and material hereto, Defendant CHURCH and FATHER THOMPSON were in a special relationship of employer-employee, in which CHURCH owed a duty to control the acts and conduct of FATHER THOMPSON to prevent foreseeable harm.

23. At all times relevant and material hereto, Defendant CHURCH and O’DRISCOLL were in a special relationship of employer-employee, in which CHURCH owed a duty to control the acts and conduct of O’DRISCOLL to prevent foreseeable harm.

24. At all times relevant and material hereto, Defendant CHURCH 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 a priest clergyman or staff member of the CHURCH. Defendant CHURCH’s duties encompassed using reasonable care in the retention, supervision and hiring of MONSIGNOR LEONARD, FATHER THOMPSON and O’DRISCOLL and the duty to otherwise provide a safe environment for Plaintiff.

25. At all times relevant and material hereto, Defendant CHURCH 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 parochial school students in its care.

26. At all times relevant and material hereto, Defendant CHURCH 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 parochial school students in its care.

SEXUAL ASSAULTS OF PLAINTIFF

27. Plaintiff was raised in a devout Catholic family who worshipped at the CHURCH. In approximately 1976, when Plaintiff approximately ten (10) or eleven (11) years old, Plaintiff joined the choir at the CHURCH.

28. In approximately 1976 when Plaintiff was approximately ten (10) or eleven (11) years old, MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON, sexually abused and assaulted Plaintiff following choir practice.

29. The acts of sexual abuse and assault perpetrated by the men against Plaintiff include exposing of Plaintiff's genitals. Additionally, O'DRISCOLL sexually assaulted Plaintiff by fondling and grabbing Plaintiff's genitals.

30. The acts of sexual abuse and assault perpetrated against Plaintiff by MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON occurred on one occasion.

31. The acts of sexual abuse and assault perpetrated by MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON against Plaintiff took place in an office on CHURCH premises.

32. MONSIGNOR LEONARD instructed Plaintiff not to disclose any information about the sexual abuse and assault perpetrated against him at the CHURCH.

NOTICE –FORESEEABILITY

33. At all relevant times, the ARCHDIOCESE and CHURCH each knew or in the exercise of reasonable care should have known that MONSIGNOR LEONARD, O’DRISCOLL and FATHER THOMPSON 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.

34. At all relevant times, it was reasonably foreseeable to the ARCHDIOCESE and the CHURCH that MONSIGNOR LEONARD, O’DRISCOLL and FATHER THOMPSON would commit acts of child sexual abuse or assault on children.

35. At all relevant times, the ARCHDIOCESE and the CHURCH each knew or should have known that MONSIGNOR LEONARD, O’DRISCOLL and FATHER THOMPSON were unfit, dangerous, and a threat to the health, safety, and welfare of the minors entrusted to his ministry, counsel, care, and/or protection.

36. With such actual or constructive knowledge, the Defendants’ acts and omissions provided MONSIGNOR LEONARD, O’DRISCOLL and FATHER THOMPSON with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

Archdiocese’s Concealment of Acts of Sexual Abuse by Priests

37. The Archbishop of the ARCHDIOCESE at all relevant times knew that priests of the ARCHDIOCESE, 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 Archbishop knew that this was a widespread, ubiquitous, and systemic problem in the ARCHDIOCESE, involving many priests and numerous victims.

38. 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.

39. This concealment was in accordance with a policy of the ARCHDIOCESE, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Archbishops 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 Archbishop of the ARCHDIOCESE, 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.

40. 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.

41. 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.

42. 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.

43. 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 ARCHDIOCESE, 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.

44. 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 ARCHDIOCESE, knowingly allowed, permitted and encouraged child sex abuse by the ARCHDIOCESE's priests.

45. 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.

46. 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 Archbishop of the ARCHDIOCESE, in 1988 and 2001.

47. The policies and practices of the ARCHDIOCESE 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.

48. Upon information and belief, the ARCHDIOCESE’s transfers and reassignments of MONSIGNOR LEONARD, and FATHER THOMPSON were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the ARCHDIOCESE from scandal.

49. Upon information and belief, the ARCHDIOCESE and Defendants continued to retain MONSIGNOR LEONARD and FATHER THOMPSON as priests, with authority to act as priests, without any disclosure of their 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.

50. 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 ARCHDIOCESE believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling priests.

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

52. The ARCHDIOCESE and CHURCH were 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 MONSIGNOR LEONARD and FATHER THOMPSON.

53. At all relevant times, while the ARCHDIOCESE 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.

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

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

56. The ARCHDIOCESE and the CHURCH knew or should have known that MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON were using their status

and position to identify, recruit, groom and sexually assault vulnerable children, including Plaintiff.

57. All children engaging in Catholic activities within the ARCHDIOCESE and at CHURCH were in this manner placed at risk of child sexual abuse.

BREACH

58. During the time Plaintiff was sexually assaulted by MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON, the Defendants knew or should have known that MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON posed a foreseeable risk of sexual assault to children with whom they would have contact and opportunity.

59. With this knowledge, the Defendants breached their duties by (i) retaining MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON as priests and staff member with unfettered access to children; (ii) failing to adequately supervise MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON as active priests and staff member of the ARCHDIOCESE; and (iii) granting and maintaining MONSIGNOR LEONARD's, and FATHER THOMPSON's faculties or authorization to act as priests and O'DRISCOLL's authorization to act as a staff member without making any warning or notice of their perverse sexual proclivities to the Catholic faithful who would have contacts with MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON.

60. At all relevant times, the Defendants had inadequate policies and procedures to protect children from pedophile clergy and staff members.

61. The Defendants concealed their knowledge that priests and staff members were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk

of child sexual abuse by its priests and staff members in general and MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON in particular.

62. The Defendants failed to warn Catholic families that their children were at risk of sexual abuse by priests and staff members in general and MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON in particular.

63. As a direct and proximate cause of the foregoing breaches of duty, MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON sexually assaulted Plaintiff.

NATURE OF CONDUCT ALLEGED

64. 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).

65. 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 MONSIGNOR MONSIGNOR LEONARD, O'DRISCOLL AND FATHER THOMPSON, to retain MONSIGNOR LEONARD, O'DRISCOLL AND FATHER THOMPSON in ministry with unfettered access to children.

COUNT I - NEGLIGENCE **(Against Defendant ARCHDIOCESE)**

66. Plaintiff repeats and realleges Paragraphs 1 through 65 above.

67. Defendant ARCHDIOCESE was negligent.

68. Defendant ARCHDIOCESE owed a duty of care to Plaintiff.

69. Defendant ARCHDIOCESE breached the duty of care owed to Plaintiff. Defendant ARCHDIOCESE had actual or constructive notice of MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON's sexual assaults and abuse against children, but failed to protect Plaintiff or otherwise make CHURCH activities safe.

70. Defendant ARCHDIOCESE knew or should have known that Plaintiff was being sexually abused while a parishioner at the CHURCH L and failed to terminate the perpetrator of the sexual abuse, namely MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON, or otherwise make the CHURCH safe for Plaintiff.

71. Plaintiff was sexually abused after Defendant ARCHDIOCESE knew or should have known that Plaintiff was being sexually abused at the CHURCH.

72. It was reasonably foreseeable to Defendant ARCHDIOCESE that in allowing MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON to have access to children, those children may be sexually abused.

73. Defendant ARCHDIOCESE was negligent in the hiring, supervision, placement, training, and retention of MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON at the CHURCH.

74. As a direct and proximate result of Defendant ARCHDIOCESE'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.

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

COUNT II - NEGLIGENCE
(Against Defendant CHURCH)

76. Plaintiff repeats and realleges Paragraphs 1 through 65 above.

77. Defendant CHURCH was negligent.

78. Defendant CHURCH owed a duty of care to Plaintiff.

79. Defendant CHURCH breached the duty of care owed to Plaintiff. Defendant CHURCH had actual or constructive notice of MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON's sexual assaults and abuse against children, but failed to protect Plaintiff or otherwise make CHURCH activities safe.

80. Defendant CHURCH knew or should have known that Plaintiff was being sexually abused while a parishioner at the CHURCH and failed to terminate the perpetrators of the sexual abuse, namely MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON, or otherwise make the CHURCH and the SCHOOL safe for Plaintiff.

81. Plaintiff was sexually abused after Defendant CHURCH knew or should have known that Plaintiff was being sexually abused at the CHURCH.

82. It was reasonably foreseeable to Defendant CHURCH that in allowing MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON to have access to children, those children may be sexually abused.

83. Defendant CHURCH was negligent in the hiring, supervision, placement, training, and retention of MONSIGNOR LEONARD, O'DRISCOLL and FATHER THOMPSON at the CHURCH.

84. As a direct and proximate result of Defendant 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.

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

DEMAND FOR JURY TRIAL

86. Plaintiff demands a jury trial in this action.

WHEREFORE, the amount in controversy exceeds the jurisdictional limits of all lower courts, and Plaintiff demands judgment against Defendants jointly and severally for compensatory damages, pain and suffering, punitive damages, attorney fees, the costs and disbursements of this action, and such other and further relief as this Court deems necessary just and proper.

Dated: New York, New York
June 14, 2021

Respectfully submitted,

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By: 

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