

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

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D.J.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK and CHURCH OF ST.
JOSEPH,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, D.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. The Plaintiff, when he was a minor, was sexually assaulted by FATHER PATRICK M. CARROLL, a priest of the ARCHDIOCESE OF NEW YORK assigned to CHURCH OF ST. JOSEPH in Yonkers, New York. Plaintiff was a minor, approximately between the ages of eight (8) and nine (9) years old, when Plaintiff was sexually abused and assaulted by FATHER CARROLL.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff D.J. 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.

3. Defendant, ARCHDIOCESE OF NEW YORK (hereafter, the “ARCHDIOCESE”), is a religious institution and organization with principal offices located at 1011 1st Avenue, New York, New York 10022. The ARCHDIOCESE controls all Catholic religious, charitable, 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 parishes, 274 schools and 90 Catholic charities. The ARCHDIOCESE is a citizen and resident of the State of New York.

4. Defendant CHURCH OF ST. JOSEPH (hereafter, the “CHURCH”) is a Catholic Church and parish located at 141 Ashburton Avenue, Yonkers, NY 10701. CHURCH OF ST. JOSEPH is a citizen and resident of the State of New York.

5. At all relevant times, FATHER PATRICK M. CARROLL (hereinafter, “FATHER CARROLL”) was an ordained Catholic Priest. Upon information and belief, FATHER CARROLL at all relevant times was an agent, servant, or employee of the ARCHDIOCESE. Upon information and belief, the ARCHDIOCESE assigned FATHER CARROLL as a Catholic Priest to CHURCH.

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

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

8. Venue of this action lies in New York County as 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.

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

DUTY

Defendant ARCHDIOCESE

10. At all times relevant and material hereto, Defendant ARCHDIOCESE, as principal, and Defendant CHURCH, as agent, were in an agency relationship, such that 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 CHURCH were subject to the ARCHDIOCESE's plenary control, and CHURCH consented to act subject to the ARCHDIOCESE's control.

11. At all material times, the ARCHDIOCESE was in a special relationship with Plaintiff as parishioner at one of its parishes, to wit, CHURCH, with whom its Priests would have contacts in the course of engaging in Catholic ministry, pastoral, and educational activities. Based on the Catholic parish - parishioner relationship between the ARCHDIOCESE and Plaintiff, the ARCHDIOCESE owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

12. The ARCHDIOCESE and FATHER CARROLL were in a special relationship of employer – employee. The ARCHDIOCESE owed a duty to control FATHER CARROLL to prevent foreseeable harm.

13. The ARCHDIOCESE 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 CARROLL.

14. The ARCHDIOCESE owed a duty to exercise reasonable care in the hiring, retention, and supervision of FATHER CARROLL.

15. The ARCHDIOCESE owed a duty in assigning, transferring, reassigning, disciplining, and/or laicizing FATHER CARROLL when it knew or should have known that he posed a danger to children in his duties and role as a Catholic Priest.

DUTY
Defendant CHURCH

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

17. At all times relevant and material hereto, CHURCH and FATHER CARROLL was in a special relationship of employer – employee, in which the Defendant owed a duty to control the acts and conduct of FATHER CARROLL to prevent foreseeable harm.

18. At all times relevant and material hereto, the CHURCH's duties encompassed using reasonable care in the retention, supervision and hiring of FATHER CARROLL and the duty to otherwise provide a safe environment for Plaintiff.

19. At all times relevant and material hereto, the 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 parishioners in their care.

20. At all times relevant and material hereto, the 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 parishioners in their care.

21. At all times relevant and material hereto, the 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 and custody and/or in the presence of CHURCH.

22. At all times relevant and material hereto, CHURCH's duties encompassed the protection and supervision of Plaintiff, and otherwise providing a safe environment for Plaintiff while on CHURCH premises.

FATHER CARROLL'S SEXUAL ASSAULT OF PLAINTIFF

23. Plaintiff grew up Catholic and worshipped at CHURCH. Plaintiff also attended the Catholic school at the CHURCH.

24. Plaintiff served as an altar boy at CHURCH. As an altar boy, Plaintiff had regular contact with FATHER CARROLL.

25. When Plaintiff was approximately eight years old, FATHER CARROLL sexually assaulted and abused Plaintiff at CHURCH. At all times relevant and material hereto, FATHER CARROLL was over eighteen (18) years of age.

26. Prior to and while sexually abusing and assaulting Plaintiff, FATHER CARROLL engaged in grooming behaviors such as complimenting Plaintiff constantly generally and regarding his role as an altar boy, repeatedly telling Plaintiff that he could trust FATHER CARROLL, and buying toys and gifts for Plaintiff, ordering take out and throwing parties with Plaintiff and the other altar boys, and taking Plaintiff to the movies.

27. The acts of sexual abuse and assault perpetrated by FATHER CARROLL against Plaintiff include, but are not limited to: frottage; FATHER CARROLL fondling Plaintiff's penis; FATHER CARROLL performing oral sex on Plaintiff; and digital penetration of Plaintiff's anus.

28. The acts of sexual abuse and assault perpetrated by FATHER CARROLL against the Plaintiff occurred on multiple occasions from approximately 1992 to 1993 when Plaintiff was approximately eight (8) and nine (9) years of age.

29. The sexual assault and abuse perpetrated by FATHER CARROLL against Plaintiff

took place on CHURCH premisesa.

30. FATHER CARROLL's behavior was open, obvious, and notorious. During the acts of sexual abuse and assault perpetrated by FATHER CARROLL, FATHER CARROLL would put his arm around Plaintiff and rub Plaintiff's neck in front of CHURCH staff members. FATHER CARROLL would keep Plaintiff behind after mass to sexually abuse and assault Plaintiff while Plaintiff's family waited for him in the church.

NOTICE-FORESEEABILITY

31. At all relevant times, the ARCHDIOCESE and CHURCH each knew or in the exercise of reasonable care should have known that FATHER CARROLL 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.

32. FATHER CARROLL would put his arm around Plaintiff and rub Plaintiff's neck in front of CHURCH staff members. FATHER CARROLL would also keep Plaintiff behind after mass while Plaintiff's family was waiting for him in the church and would sexually abuse and assault Plaintiff.

33. FATHER CARROLL engaged in grooming behaviors such as complimenting Plaintiff constantly generally and regarding his role as an altar boy, repeatedly telling Plaintiff that he could trust FATHER CARROLL, and buying toys and gifts for Plaintiff, ordering take out and throwing parties with Plaintiff and the other altar boys, and taking Plaintiff to the movies.

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

35. At all relevant times, the ARCHDIOCESE and CHURCH each knew or should have known that FATHER CARROLL was 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 FATHER CARROLL with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

Defendants' Concealment of Acts of Sexual Abuse by Priests

37. 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 ARCHDIOCESE acted to conceal allegations of sexual abuse 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, 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, Archbishops 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 Defendants knowingly allowed, permitted, and encouraged child sex abuse by Priests, including those under the control of Defendants.

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 them 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 assignments, transfers, and reassignments of accused Priests were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect Defendants from scandal.

49. 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.

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

51. The ARCHDIOCESE was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of clergy to sexually abuse children.

52. 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.

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

54. The Defendants knew a significant percentage of Catholic clergy were using their status and position to identify, recruit, groom and sexually assault vulnerable children whom they encountered during the course of their performance of duties as clergymen.

55. All children engaging in Catholic activities and parochial school students within the ARCHDIOCESE were in this manner placed at risk of child sexual abuse.

BREACH

56. The ARCHDIOCESE and CHURCH each breached their duties by (i) hiring FATHER CARROLL as a Priest when it knew or should have known of his sexual proclivities for children; (ii) at all relevant times, retaining and failing to adequately supervise FATHER CARROLL, particularly in his interactions with children; and (iii) granting and maintaining FATHER CARROLL faculties as a Priest without making any warning or notice of his perverse sexual proclivities to the parishioners of CHURCH or the those who would have contacts with FATHER CARROLL as Priest.

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

58. 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 clergy.

59. The ARCHDIOCESE and CHURCH failed to warn Catholic families at CHURCH that their children were at risk of sexual abuse by clergy.

60. As a direct and proximate cause of the foregoing breaches of duty, FATHER CARROLL sexually assaulted Plaintiff.

NATURE OF CONDUCT ALLEGED

61. 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).

62. 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 CARROLL, to retain FATHER CARROLL in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(Against the ARCHDIOCESE)

63. Plaintiff repeats and realleges Paragraphs 1 through 62 above.

64. Defendant ARCHDIOCESE was negligent.

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

66. Defendant ARCHDIOCESE breached the duty of care owed to Plaintiff. Defendant ARCHDIOCESE, having actual or constructive notice of child sex abuse perpetrated by clergy and, specifically, FATHER CARROLL, failed to protect plaintiff, and otherwise make church activities safe.

67. Defendant ARCHDIOCESE knew or should have known that Plaintiff was being sexually abused at CHURCH and failed to terminate the perpetrators of the sexual abuse, namely FATHER CARROLL, or otherwise make CHURCH safe for Plaintiff. Plaintiff was sexually

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

68. It was reasonably foreseeable by Defendant ARCHDIOCESE that in allowing priests to have unfettered and unsupervised access to children that the children may be sexually abused.

69. Defendant ARCHDIOCESE was negligent in the hiring, supervision, placement, training, and retention of FATHER CARROLL at CHURCH.

70. As a direct and proximate cause 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.

71. 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 CHURCH)

72. Plaintiff repeats and realleges Paragraphs 1 through 62 above.

73. Defendant CHURCH was negligent.

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

75. Defendant CHURCH breached the duty of care owed to Plaintiff. Defendant ARCHDIOCESE, having actual or constructive notice of child sex abuse perpetrated by clergy and, specifically, FATHER CARROLL, failed to protect plaintiff, and otherwise make church activities safe.

76. Defendant CHURCH knew or should have known that Plaintiff was being sexually

abused at CHURCH and failed to terminate the perpetrators of the sexual abuse, namely FATHER CARROLL, or otherwise make CHURCH safe for Plaintiff. Plaintiff was sexually abused after Defendant CHURCH knew or should have known that Plaintiff was being sexually abused at CHURCH.

77. It was reasonably foreseeable by Defendant CHURCH that in allowing priests to have unfettered and unsupervised access to children that the children may be sexually abused.

78. Defendant CHURCH was negligent in the hiring, supervision, placement, training, and retention of FATHER CARROLL at CHURCH.

79. As a direct and proximate cause of Defendant CHURCH' 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.

80. Defendant CHURCH' 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

81. 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
May 20, 2021

Respectfully submitted,

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By: _____

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