

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CAYUGA

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D.S.,

Plaintiff,

COMPLAINT

-against-

SAINT ALPHONSUS PARISH,

Index No.

Defendant.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, D.S., 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. Plaintiff, when he was a minor, was sexually assaulted and abused by Father John Merklinger (hereinafter referred to as “Father Merklinger”), a priest and serial pedophile of the Diocese of Rochester assigned to Saint Alphonsus Parish in Auburn, NY.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the State of New York. 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 his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, Saint Alphonsus Parish is a Roman Catholic parish under the authority of the Roman Catholic Diocese of Rochester, with a principal place of business located at 85 East Genesee Street, Auburn, NY 13021. Defendant is a citizen and resident of the State of New York.

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

4. Personal jurisdiction lies over the Defendant as it is present and domiciled in the State of New York and/or transacts business within the State of New York and/or regularly solicits business in the State of New York and/or otherwise falls within the jurisdiction of the Court pursuant to CPLR § 302.

5. Venue of this action lies in Cayuga County as a substantial part of the events or omissions giving rise to the claim occurred in Cayuga County or one of the Defendants resides in Cayuga County.

DUTY

6. At all times relevant and material hereto, the Defendant and Plaintiff were in a special relationship of school – student, and residential custodian – child, in which the Defendant had custody of Plaintiff at Saint Alphonsus Parish and owed Plaintiff a duty of reasonable care to protect him from foreseeable harms on school/residential grounds and during school/residential related activities.

7. Defendant had a duty to act as a reasonably prudent parent would in the circumstances. In this regard Defendant owed a duty *in loco parentis* to the Defendant's students, including Plaintiff.

8. At all times relevant and material hereto, Defendant and Father Merklinger were in a special relationship of employer – employee or principal – agent, in which Defendant owed a

duty to control the acts and conduct of Father Merklinger and other employees, agents, and/or volunteers to prevent foreseeable harm.

9. At all times relevant and material hereto, the Defendant 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 physical and/or legal care, custody or in the presence of the Defendant. The Defendant's duties encompassed using reasonable care in the retention, supervision and hiring of Father Merklinger and the duty to otherwise provide a safe environment for Plaintiff.

10. At all times relevant and material hereto, the Defendant had a duty to exercise reasonable care in the training of clergy, priests, employees, administration, and staff in the prevention of sexual abuse and protection of the safety of children in its care.

11. At all times relevant and material hereto, the Defendants 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 in its care.

BACKGROUND AND FACTS OF SEXUAL ABUSE

12. At all times relevant and material hereto, Father Merklinger was a priest of the Diocese of Rochester and assigned to St. Alphonsus.

13. At all times relevant and material hereto, Plaintiff was a student at Saint Alphonsus.

14. Plaintiff was a heavier child who had speech issues. Other students made fun of Plaintiff, and he had few friends. This rendered Plaintiff more vulnerable.

15. Father Merklinger recognized this and groomed/befriended Plaintiff.

16. Father Merklinger began sexually assaulting and abusing Plaintiff in approximately 1967 when Plaintiff was approximately eight (8) years old. The sexual assaults and abuse lasted until approximately 1969 when Plaintiff was approximately ten (10) years old.

17. The acts of sexual assault and abuse committed by Father Merklinger included, but were not limited to, groping Plaintiff, fondling Plaintiff's penis, forcing Plaintiff to masturbate him. Father Merklinger would use a rope to tie up Plaintiff and would blindfold Plaintiff during some acts of sexual abuse.

18. The acts of sexual assault and abuse committed by Father Merklinger repeatedly occurred on the grounds of St. Alphonsus.

19. The acts of sexual assault and abuse of Plaintiff often occurred while Father Merklinger was wearing his priest garb and serving in his pastoral and ministerial role.

NOTICE – FORESEEABILITY
Father Merklinger's History of Child Sexual Abuse

20. Father Merklinger sexually abused boys from the beginning of his tenure as a priest. He sexually abused numerous children, including at St. Alphonsus, during his tenure as an active priest of the Diocese of Rochester.

21. Another priest assigned to St. Alphonsus witnessed Father Merklinger sexually abusing and assaulting Plaintiff. Despite another priest witnessing the sexual abuse, no action whatsoever was taken against Father Merklinger, and as a result, Father Merklinger continued to sexually abuse Plaintiff.

22. At all relevant times, the Defendant knew or in the exercise of reasonable care should have known that Father Merklinger 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 Defendant that Father Merklinger would commit acts of child sexual abuse or assault on children.

24. At all relevant times, the Defendant knew or should have known that Father Merklinger 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 Defendant acts and omissions provided Father Merklinger with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

Concealment of Acts of Sexual Abuse by Priests

26. The Bishop of the Diocese of Rochester and the Defendant at all relevant times knew that priests, under their 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 Diocese of Rochester and the Defendant knew that this was a widespread, ubiquitous, and systemic problem in the Diocese of Rochester and at the Defendant, involving many Priests and numerous victims.

27. Despite receiving credible allegations of child sexual abuse against priests, the Diocese of Rochester and the Defendant 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 of Rochester and the Defendant, as agents, 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 Diocese of Rochester and the Defendant, 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 of Rochester and the Defendant, 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 of Rochester and the Defendant, knowingly allowed, permitted, and encouraged child sex abuse by 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 of Rochester and the Defendant, in 1988 and 2001.

36. The policies and practices of the Diocese of Rochester and the Defendant 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 of Rochester and the Defendant's transfers and reassignments of Father Merklinger were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Diocese of Rochester and the Defendant from scandal.

38. Upon information and belief, the Diocese of Rochester and the Defendant continued to retain Father Merklinger 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, the Diocese of Rochester and the Defendant 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 Defendant 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 Father Merklinger.

42. At all relevant times, the Defendant 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 Defendant.

44. The Defendant 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 Defendant knew that Father Merklinger 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 of Rochester and the Defendant and those children with clergy employed by and/or affiliated with The Diocese of Rochester and the Defendant were in this manner placed at risk of child sexual abuse.

BREACH

47. The Defendant breached its duties by (i) failing to protect Plaintiff from sexual assault and lewd and lascivious acts committed by their agents and employees; (ii) failing to establish policies and procedures that were adequate to protect the health, safety and welfare of children and other vulnerable and disadvantaged members of the community and protect them from sexual abuse; (iii) failing to implement and enforce policies and procedures that were adequate to protect the health, safety and welfare of children and protect them from sexual abuse;

(iv) hiring, retaining and/or failing to supervise Father Merklinger when it knew or should have known that he posed a substantial risk of harm to children and other vulnerable and disadvantaged members of the community; and (v) failing to adequately monitor and supervise children and other vulnerable and disadvantaged members of the community on Defendant's premises.

48. At all relevant times, the Defendant had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

49. The Defendant concealed its knowledge that Father Merklinger was unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by their employees and agents.

50. The Defendant failed to warn Plaintiff and similarly situated individuals that they were at risk of sexual abuse.

NATURE OF CONDUCT ALLEGED

51. 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).

52. 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, or knowingly or intentionally, in concert with Father Merklinger, to permit Father Merklinger's unfettered access to children.

COUNT I - NEGLIGENCE
(against Defendant St. Alphonsus's)

53. Plaintiff repeats and realleges Paragraphs 1 through 52 above.

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

55. As a direct and proximate result of 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.

WHEREFORE, Plaintiff demands Judgment against Defendant for compensatory damages, punitive damages, attorneys' fees, interest, 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
April 23, 2021

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100



By: _____
Jeff Herman
jherman@hermanlaw.com