

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

SUMMONS

-----X
FRANK MALANOWSKI, JR.,

Plaintiff(s) designate
ERIE County as the place of
trial.

Plaintiff(s),

The basis of the venue is
Plaintiff's residence

-against-

DIOCESE OF BUFFALO and ST. FRANCIS OF
ASSISI CHURCH now known as ST. MAXIMILLIAN
KOLBE CHURCH,

Plaintiff(s) reside at
41 Dona St
Lot 17
Lackawanna, NY 14218

Defendant(s).

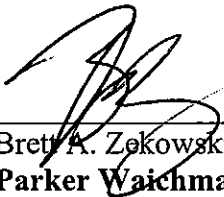
Index No.:
Date Summons &
Complaint Filed:

-----X

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Port Washington, NY
September 9, 2019



Brett A. Zekowski
Parker Waichman LLP
Office & Post Office Address:
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500
Our File # 9007406

TO: Catholic Diocese of Buffalo
795 Main Street
Buffalo, NY 14203

St. Francis of Assisi Church
now known as St. Maximillian Kolbe Church
18 West Main Street
Corfu, NY 10436

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
FRANK MALANOWSKI, JR.,

VERIFIED COMPLAINT

Plaintiff(s),

Index No.:
Jury Trial Demanded

-against-

DIOCESE OF BUFFALO and ST. FRANCIS OF
ASSISI CHURCH now known as ST. MAXIMILLIAN
KOLBE CHURCH,

Defendant(s).

-----X

Plaintiff, Frank Malanowski, Jr., by his attorneys Parker Waichman LLP, complaining of the defendants, respectfully alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

1. At the time of the commencement of this action plaintiff, Frank Malanowski, Jr., was a resident of the County of Erie, State of New York.
2. At the time of the incident(s) giving rise to this complaint, plaintiff was a resident of the County of Erie, State of New York.
3. This action is timely pursuant to CPLR 214-g.
4. At all times herein mentioned, defendant, Diocese of Buffalo, was a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, New York.
5. At all times herein mentioned, defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, was a religious corporation organized pursuant to the Religious Corporations Law with its principal office 18 W. Main Street, Corfu, New York.
6. At all times herein mentioned, Holy Name of Mary Church and St. Francis of Assisi

Church merged to form St. Maximillian Kolbe Parish.

7. At all times herein mentioned, defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, was a Roman Catholic Church within and under the authority of defendant, Diocese of Buffalo.

8. At all times herein mentioned, defendant, Diocese of Buffalo, oversaw, managed, controlled, directed and operated defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

9. At all times herein mentioned, defendant, Diocese of Buffalo, managed, supervised and controlled those who were employed or otherwise worked for defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, including, but not limited to priests, reverends, nuns and other personnel and volunteers, both while they were on premises and engaged in off-premises activities related to their employment with defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

10. At all times herein mentioned, defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, managed, supervised and controlled those who were employed or otherwise worked for defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, including, but not limited to priests, reverends, nuns and other personnel and volunteers, both while they were on premises and engaged in off-premises activities related to their employment with defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

11. From on or about January 1, 1973 through on or about December 31, 1974, plaintiff, an infant, attended St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

12. From on or about January 1, 1973 through on or about December 31, 1974, plaintiff was a parishioner of defendant, St. Francis of Assisi Church now known as defendant, St.

Maximillian Kolbe Church.

13. At all times herein mentioned and relevant to the allegations set forth herein Reverend Robert O. Thornberry, was a reverend and/or priest assigned by defendant, Diocese of Buffalo, to defendant, St. Francis of Assisi Church now known as defendant, St. Maximillian Kolbe Church.

14. At all times herein mentioned and relevant to the allegations set forth herein Reverend Robert O. Thornberry, was a reverend and/or priest at defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

15. At all times herein mentioned, Reverend Robert O. Thornberry, was employed by defendant, Diocese of Buffalo.

16. At all times herein mentioned, Reverend Robert O. Thornberry, was employed by the defendant, St. Francis of Assisi Church now known as defendant, St. Maximillian Kolbe Church.

17. Through his position with defendant, Diocese of Buffalo, Reverend Robert O. Thornberry, was put in direct contact with plaintiff, Frank Malanowski, Jr., then an infant.

18. Through his position with defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, Reverend Robert O. Thornberry, was put in direct contact with plaintiff, Frank Malanowski, Jr., then an infant.

19. That on or about January 1, 1973 through on or about December 31, 1974, Reverend Robert O. Thornberry, sexually abused the plaintiff.

20. At all times herein mentioned, Reverend Robert O. Thornberry, was under the management, supervision, employ, direction and/or control of defendant, Diocese of Buffalo.

21. At all times herein mentioned, Reverend Robert O. Thornberry, was under the management, supervision, employ, direction and/or control of defendant, St. Francis of Assisi

Church now known as St. Maximillian Kolbe Church.

22. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, knew and/or reasonably should have known and/or knowingly condoned and/or covered up, the inappropriate and unlawful sexual activities of Reverend Robert O. Thornberry, who sexually abused the plaintiff, Frank Malanowski, Jr., while plaintiff, Frank Malanowski, Jr., was an infant.

23. Defendants, Diocese of Buffalo, had the responsibility to manage, supervise, control and/or direct priests and reverends assigned to defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

24. At all relevant times, defendant, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, had a duty not to aid pedophiles such as Reverend Robert O. Thornberry, by assigning, maintaining and/or appointing him to positions in which he would have access to minors.

25. At all relevant times, Reverend Robert O. Thornberry, used his position as a priest and/or reverend to entice, take control of plaintiff, Frank Malanowski, Jr., and sexually assault, sexually abuse or have sexual contact with plaintiff, Frank Malanowski, Jr., while plaintiff was a minor.

26. Defendants, individually, jointly and/or severally, violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

27. Plaintiff suffered physical and psychological injuries and damages as a result of his childhood sexual abuse by Reverend Robert O. Thornberry.

28. As a direct result of defendants' conduct, Plaintiff suffered and will continue to

suffer great pain of body and mind, severe and permanent emotional distress and physical manifestations of emotional distress. As a result of his childhood sexual abuse, plaintiff has been prevented from obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and has incurred and will continue to incur loss of income and/or loss of earning capacity.

29. Because of his childhood sexual abuse, plaintiff, Frank Malanowski, Jr., is unable to fully describe all of the details of that abuse and the extent of the harm that he suffered as a result.

**AS AND FOR A FIRST CAUSE OF ACTION
NEGLIGENT HIRING, RETENTION, SUPERVISION AND/OR DIRECTION**

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

31. The sexual abuse of children by adults, including priests, reverends and teachers, is foreseeable.

32. Defendant, Diocese of Buffalo, at all relevant times represented and held out to the public defendant, St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, to be safe places for learning and participating in youth activities.

33. At all relevant times, defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were each under an express and/or implied duty to protect and care for plaintiff, Frank Malanowski, Jr.

34. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, negligently hired, retained, directed and supervised Reverend Robert O. Thornberry, because they knew or should have known that Reverend Robert O. Thornberry, posed a threat of sexual abuse of children such as plaintiff.

35. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, knew or should have known that Reverend Robert O. Thornberry, had a propensity to engage in the conduct which caused plaintiff's injuries prior to or about the time of the occurrence of these injuries.

36. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, owed a duty of care to all minors, including plaintiff, who were likely to come under the influence or supervision of Reverend Robert O. Thornberry, in their role as teacher, priest, reverend counselor, trustee, director, officer, employee, agent, servant and/or volunteer to ensure that Reverend Robert O. Thornberry, did not use their assigned positions to injure minors by sexual assault, sexual abuse or sexual contact with minors.

37. Reverend Robert O. Thornberry, sexually assaulted, sexually abused and/or had sexual contact with plaintiff, Frank Malanowski, Jr., on defendants' premises, including St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

38. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were put on notice of Reverend Robert O. Thornberry's improper and inappropriate actions toward minors.

39. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were negligent in failing to properly supervise Reverend Robert O. Thornberry.

40. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were negligent in failing to properly manage Reverend Robert O. Thornberry.

41. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were negligent in failing to properly control Reverend Robert O.

Thornberry.

42. At all relevant times, defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of plaintiff.

43. As a direct and proximate result of defendants' above described omissions, plaintiff has suffered and will continue to suffer the injuries described herein.

44. By reason of the foregoing, the defendants are liable to plaintiff jointly, severally and/or in the alternative, for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION
NEGLIGENCE/GROSS NEGLIGENCE**

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

46. Defendants, Diocese of Buffalo and St. Francis of Assisi church now known as St. Maximillian Kolbe Church, knew or negligently failed to know that Reverend Robert O. Thornberry, posed a threat of sexual abuse to children.

47. The acts of Reverend Robert O. Thornberry, as described above, were undertaken, enabled by, and/or during the course of their respective employment, assignment, appointment and/or agency with defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

48. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church:

- a. gave improper or ambiguous orders or failed to make proper regulations,

- and/or employed improper persons in work involving risk of harm to others;
- b. failed to adequately supervise the activities of Reverend Robert O. Thornberry;
 - c. failed to adequately supervise and safeguard minors attending St. Francis of Assisi Church now known as St. Maximillian Kolbe Church;
 - d. permitted and/or intentionally failed and/or neglected to prevent negligent or tortious conduct by persons, whether or not their servants, agents or employees, upon premises under their control; and
 - e. allowed the acts of omission and/or commission of any or all of the allegations set forth in this Complaint to occur.

49. At all relevant times, Reverend Robert O. Thornberry, was under the supervision, employ, direction and/or control of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

50. At all relevant times, defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were wanton, willful, malicious, reckless and outrageous in their disregard for the rights and safety of plaintiff, which conduct was equivalent to criminal conduct.

51. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described herein.

52. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

THIRD CAUSE OF ACTION BREACH OF FIDUCIARY DUTY

53. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 52 as if fully set forth herein.

54. At all relevant times, there existed a fiduciary relationship of trust, confidence, and reliance between plaintiff, on the one hand, and defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, on the other, based upon the entrustment of plaintiff, while he was a minor child, to the care and supervision of the defendants and each of them, as a parishioner, worshiper, invitee, attendee or guest at St. Francis of Assisi Church now known as defendant, St. Maximillian Kolbe Church, and as a student, invitee, attendee or guest at St. Francis of Assisi Church now known as St. Maximillian Kolbe Church. The entrustment of the plaintiff to the care and supervision of the defendants and each of them, while plaintiff was a minor child, required the defendants to assume a fiduciary role and to act in the best interests of the plaintiff and to protect him while he was a minor and vulnerable child.

55. Pursuant to their fiduciary relationship with plaintiff, defendants were entrusted with the well-being, care and safety of plaintiff.

56. Pursuant to their fiduciary relationship with plaintiff, defendants assumed a duty to act in the best interests of plaintiff.

57. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, breached their fiduciary duties to plaintiff.

58. At all relevant times, the actions and/or inactions of defendant, Diocese of Buffalo and St. Francis of Assisi Church now known as St Maximillian Kolbe Church, were willful, malicious, wanton, reckless and outrageous in their disregard for the rights and safety of plaintiff.

59. As a direct result of defendants' conduct, plaintiff has suffered injuries and damages described herein.

60. By reason of the foregoing, defendants, jointly, severally and/or in the alternative

are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FOURTH CAUSE OF ACTION
BREACH OF NON-DELEGABLE DUTY**

61. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 60 as of fully set forth herein.

62. When he was a minor, plaintiff, Frank Malanowski, Jr., was placed in the care of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, for the purposes of providing plaintiff with a safe environment in which to participate in youth activities and receive an education. There was thus created a non-delegable duty of trust between plaintiff and defendants.

63. Plaintiff, Frank Malanowski, Jr., was a vulnerable child when placed in the care of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church.

64. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, and each of them, were in the best position to prevent plaintiff from being abused and/or to have learned of the repeated abuse by Reverend Robert O. Thornberry and to have stopped it.

65. As evidenced by the fact that plaintiff, Frank Malanowski, Jr., was sexually abused as a minor child entrusted to the care of the defendants, these defendants breached their non-delegable duty to plaintiff.

66. At all relevant times, Reverend Robert O. Thornberry, was under the supervision, employment, direction and/or control of defendants, Diocese of Buffalo and St. Francis of Assisi

Church now known as St. Maximillian Kolbe Church.

67. As a result of the sexually abusive conduct of Reverend Robert O. Thornberry, plaintiff, Frank Malanowski, Jr., suffered the injuries and damages described herein, the full extent of which is unknown at present.

68. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FIFTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

69. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 68 above as if set forth at length herein.

70. As described above, defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church acted in a negligent and/or grossly negligent manner.

71. The actions of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, endangered plaintiff's safety and caused him to fear for his own safety.

72. As a direct and proximate result of the actions of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, which included, but were not limited to, negligent and/or grossly negligent conduct, plaintiff suffered severe injuries and damages as described herein, including, but not limited to, mental and emotional distress.

73. By reason of the foregoing, defendants, jointly, severally and/or in the alternative

are liable to plaintiff for compensatory damages and for punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**SIXTH CAUSE OF ACTION
BREACH OF DUTY *IN LOCO PARENTIS***

74. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 73 as if set forth at length herein.

75. While he was a minor, plaintiff was entrusted by his parents to the control of the defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, for the purposes of providing plaintiff with an education and allowing him to participate in youth activities sponsored by defendants. During the times that plaintiff was at Sunday school and during the times that he participated in youth activities, he was under the supervision and control of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church. These defendants, and each of them, at all relevant times and now, owed and owe a duty to children entrusted their care to act *in loco parentis* and to prevent foreseeable injuries.

76. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, breached their duty to act *in loco parentis*.

77. At all relevant times the actions of defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, were willful, malicious, wanton, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of plaintiff.

78. As a direct result of defendants' conduct, plaintiff, Frank Malanowski, Jr., has suffered the injuries and damages described herein.

79. By reason of the foregoing, defendants jointly, severally and/or in the alternative, are liable to plaintiff for compensatory damages, and for punitive damages, together with interest and costs in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**SEVENTH CAUSE OF ACTION
BREACH OF STATUTORY DUTY PURSUANT TO NEW YORK
SOCIAL SERVICES LAW §§ 413, 420 TO REPORT ABUSE**

80. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 79 as if fully set forth herein.

81. Pursuant to N.Y. Social Services Law §§413, 420, defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, had a statutory duty to report the reasonable suspicion of abuse of children in their care.

82. Defendants, Diocese of Buffalo and St. Francis of Assisi Church now known as St. Maximillian Kolbe Church, breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Reverend Robert O. Thornberry, of children in their care.

83. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described above.

84. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower

courts which would otherwise have jurisdiction;

- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

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

Dated: Port Washington, New York
September 9, 2019

Yours, etc.



Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
Office & Post Office Address
6 Harbor Park Drive
Port Washington, NY 11050
516-466-6500
Our File # 9007406

NYSCEF INDEX NO. 1

RECEIVED NYSCEF: 09/11/2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

FRANK MALANOWSKI, JR.,

Plaintiff(s),

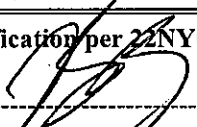
-against-

DIOCESE OF BUFFALO and ST. FRANCIS OF ASSISI CHURCH now known as ST.
MAXIMILLIAN KOLBE CHURCH,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

Certification per 22 NYCRR §130-1.1a


Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500

To:
Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated:
Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF

ENTRY that the within is a (certified) true copy of a entered in the office of the Clerk of the within named
Court on 2019 .

NOTICE that an Order of which the within is a true copy will be presented to the Hon. , one of the

OF

SETTLEMENT judges of the within named Court, at ,

, on
20 , at M.

Dated:

Parker Waichman LLP
Attorneys for Plaintiff(s)

TO: