

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JOHN POLVINO,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; SAINTS PETER & PAUL'S
GERMAN CATHOLIC CHURCH OF HAMBURG, NY a/k/a
SS. PETER & PAUL PARISH; and DONALD W. BECKER
f/k/a FATHER DONALD W. BECKER,

Defendants.

Index No.

SUMMONS

Date Index No. Purchased: Sept. 24,
2019

To the above named Defendant(s)

[Empty rectangular box for service details]

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 within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Erie County, which is located in Erie County, New York.

Dated: New York, New York
September 24, 2019

SIMMONS HANLY CONROY LLC

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**SUPREME COURT OF THE STATE OF NEW YORK
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RIDER TO SUMMONS

Defendant/Counsel	Service Address
THE DIOCESE OF BUFFALO, N.Y.	795 Main Street, Buffalo, Erie County, New York
SAINTS PETER & PAUL'S GERMAN CATHOLIC CHURCH OF HAMBURG, NY a/k/a SS. PETER & PAUL PARISH	66 East Main Street, Hamburg, Erie County, New York
DONALD W. BECKER f/k/a FATHER DONALD W. BECKER	13831 Eagle Ridge Lakes Drive, Apartment 103, Fort Myers, Florida 33912

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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff John Polvino, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y.; Saints Peter & Paul's German Catholic Church of Hamburg, NY, also known as SS. Peter & Paul Parish; and Donald W. Becker, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff John Polvino ("Plaintiff") is an individual residing in Amherst, Erie County, New York.

5. Defendant Donald W. Becker, formerly known as Father Donald W. Becker ("Father Becker") is an individual residing at 13831 Eagle Ridge Lakes Drive, Apartment 103, Fort Myers, Florida 33912. At all relevant times, Defendant Father Becker served as a Roman Catholic priest of Defendant The Diocese of Buffalo, N.Y. and Saints Peter & Paul's German Catholic Church of Hamburg, NY.

6. Defendant The Diocese of Buffalo, N.Y. ("Diocese of Buffalo") is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, Erie County, New York. The Diocese of Buffalo is a Roman Catholic diocese. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Buffalo, including during all relevant times, Saints Peter & Paul's German Catholic Church of Hamburg, NY, also known as SS. Peter & Paul Parish.

7. Defendant Saints Peter & Paul's German Catholic Church of Hamburg, NY, also known as SS. Peter & Paul Parish ("Saints Peter & Paul Church") was a Roman Catholic parish within and under the authority of the Diocese of Buffalo and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 66 East Main Street, Hamburg, Erie County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated Saints Peter & Paul Church.

FACTS COMMON TO ALL CLAIMS

8. Plaintiff and his family were parishioners of and attended Saints Peter & Paul Church when Plaintiff was a minor child.

9. During the times relevant to the allegations set forth herein, Defendant Father Becker was assigned by Defendant Diocese of Buffalo to serve as a priest at Saints Peter & Paul Church, where Plaintiff's family were parishioners.

10. Through Father Becker's position at, within, or for Defendants Diocese of Buffalo and Saints Peter & Paul Church, Father Becker was put in direct contact with

members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Buffalo.

11. In approximately 1975 when Plaintiff was approximately 13 years of age, Father Becker approached Plaintiff at Saints Peter & Paul Church and lured Plaintiff to his personal cabin residence in nearby North Java, New York. Father Becker drove Plaintiff to his cabin, where Father Becker provided Plaintiff with alcohol to drink.

12. At the cabin, Father Becker used his position of authority and trust over Plaintiff, who was then 13 years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff. Father Becker sexually assaulted, abused, and/or had sexual contact with the Plaintiff at his cabin on two separate occasions during 1975.

13. Father Becker used this encounter, gained through his position at Saints Peter & Paul Church, which granted him access to Plaintiff when Plaintiff was approximately 13 years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Supervisory Defendants' Responsibility for the Abuse Committed by Father Becker

14. At all times material hereto, Father Becker was under the management, supervision, employ, direction and/or control of Defendants Diocese of Buffalo and Saints Peter & Paul Church.

15. Through his position at, within, or for Defendants Diocese of Buffalo and Saints Peter & Paul Church, Father Becker was put in direct contact with Plaintiff.

16. Father Becker used his position at, within, or for Defendants Diocese of Buffalo and Saints Peter & Paul Church and the implicit representations made by Defendants Diocese of Buffalo and Saints Peter & Paul Church about Father Becker's character that accompanied those position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and touch, Plaintiff.

17. Defendants Diocese of Buffalo and Saints Peter & Paul Church had the duty to reasonably manage, supervise, control and/or direct priests who served at Saints

Peter & Paul Church, and specifically, had a duty not to aid pedophiles such as Father Becker by assigning, maintaining, and/or appointing them to position with access to minors.

18. Defendants Diocese of Buffalo and Saints Peter & Paul Church knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Becker, who sexually abused Plaintiff.

19. Defendant Diocese of Buffalo had a duty to the Plaintiff to properly supervise Diocese of Buffalo priests to ensure that priests did not use their position with the Diocese of Buffalo as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Buffalo knew or should have known that Father Becker used his position with the Diocese of Buffalo to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

20. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Becker's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

21. As a direct result of the Defendants Diocese of Buffalo's and Saints Peter & Paul Church's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was 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. As a victim of Father Becker's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Assault - Father Becker

22. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

23. In approximately 1975 when Plaintiff was approximately 13 years of age, Father Becker intentionally touched Plaintiff's body when Father Becker engaged in the sexual behavior and lewd and lascivious conduct described above. Such conduct placed Plaintiff in imminent apprehension of harmful contact, including apprehension of further sexual contact.

24. As a direct and proximate result of Defendant Father Becker's actions, which included but were not limited to placing the Plaintiff in imminent and reasonable apprehension of harmful and offensive contact, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

25. By reason of the foregoing, Defendant Father Becker is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Battery - Father Becker

26. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

27. In approximately 1975 when Plaintiff was approximately 13 years of age, Father Becker intentionally touched Plaintiff's body when Father Becker engaged in the sexual behavior and lewd and lascivious conduct described above. Such bodily contact was offensive and without consent, because Plaintiff, as a minor, was incapable of consenting to these acts.

28. As a direct and proximate result of Defendant Father Becker's actions, which included but were not limited to unjustified harmful and offensive physical

contact and touching, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

29. By reason of the foregoing, Defendant Father Becker is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Intentional Infliction of Emotional Distress - Father Becker

30. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

31. By engaging in the explicit sexual behavior and lewd and lascivious conduct described above, either Defendant Father Becker intended to inflict emotional distress upon Plaintiff, or Defendant Father Becker knew or should have known and recklessly disregarded the substantial likelihood that severe emotional distress would be the likely result of his conduct.

32. The conduct of Defendant Father Becker in engaging in the explicit sexual behavior and lewd and lascivious conduct with a minor described above is extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society.

33. The mental distress and emotional injuries Plaintiff suffered and will continue to suffer were and are lasting and severe.

34. As a direct and proximate result of Defendant Father Becker engaging in the explicit sexual behavior and lewd and lascivious conduct described above, Plaintiff suffered and will continue to suffer the severe injuries described herein.

35. By reason of the foregoing, Defendant Father Becker is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction - Diocese of Buffalo and Saints Peter & Paul Church

36. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

37. Defendants Diocese of Buffalo and Saints Peter & Paul Church owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Becker in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Becker did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

38. Defendant Diocese of Buffalo at all relevant times held the parishes of the Diocese of Buffalo out to be safe places for minors to attend, and its priests as individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Buffalo entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

39. Father Becker sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in New York.

40. Defendants Diocese of Buffalo and Saints Peter & Paul Church negligently hired, retained, directed, and supervised Father Becker, though they knew or should have known that Father Becker posed a threat of sexual abuse to minors.

41. Defendants Diocese of Buffalo and Saints Peter & Paul Church knew or should have known of Father Becker's propensities for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

42. Defendants Diocese of Buffalo and Saints Peter & Paul Church were negligent in failing to properly supervise Father Becker.

43. The sexual abuse of children by adults, including priests, is a foreseeable

result of negligence.

44. At all times material hereto, Defendants Diocese of Buffalo's and Saints Peter & Paul Church's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

45. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

46. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligence/Gross Negligence - Diocese of Buffalo and Saints Peter & Paul Church

47. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

48. Defendants Diocese of Buffalo and Saints Peter & Paul Church knew, or were negligent in not knowing, that Father Becker posed a threat of sexual abuse to children.

49. The acts of Father Becker described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Buffalo and Saints Peter & Paul Church.

50. Defendants Diocese of Buffalo and Saints Peter & Paul Church owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Becker's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Becker's misconduct.

51. Defendants Diocese of Buffalo's and Saints Peter & Paul Church's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission,

resulted directly and/or proximately in the damage set forth herein at length.

52. Defendants Diocese of Buffalo and Saints Peter & Paul Church:
- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
 - b. failed adequately to supervise the activities of Father Becker;
 - c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
 - d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

53. At all times material hereto, with regard to the allegations contained herein, Father Becker was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo and Saints Peter & Paul Church.

54. At all times material hereto, Defendants Diocese of Buffalo's and Saints Peter & Paul Church's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

55. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

56. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Non-Delegable Duty - Diocese of Buffalo and Saints Peter & Paul Church

57. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

58. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Buffalo and Saints Peter & Paul Church for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants Diocese of Buffalo and Saints Peter & Paul Church.

59. Plaintiff was a vulnerable child when placed within the care of Defendants Diocese of Buffalo and Saints Peter & Paul Church.

60. As a consequence, Defendants Diocese of Buffalo and Saints Peter & Paul Church were in the best position to prevent Plaintiff's abuse, to learn of Father Becker's sexual abuse of Plaintiff, and to stop it.

61. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Buffalo and Saints Peter & Paul Church, Defendants Diocese of Buffalo and Saints Peter & Paul Church breached their non-delegable duty to Plaintiff.

62. At all times material hereto Father Becker was under the supervision, employ, direction and/or control of the Defendants Diocese of Buffalo and Saints Peter & Paul Church.

63. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

64. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION

Breach of Fiduciary Duty – Diocese of Buffalo and Saints Peter & Paul Church

65. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

66. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Buffalo and Saints Peter & Paul Church. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agents or servants of the Defendants Diocese of Buffalo and Saints Peter & Paul Church. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Buffalo and Saints Peter & Paul Church, while the Plaintiff was a minor child, required the Defendants Diocese of Buffalo and Saints Peter & Paul Church to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

67. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo and Saints Peter & Paul Church were entrusted with the well-being, care, and safety of Plaintiff.

68. Pursuant to their fiduciary relationship, Defendants Diocese of Buffalo and Saints Peter & Paul Church assumed a duty to act in the best interests of Plaintiff.

69. Defendants Diocese of Buffalo and Saints Peter & Paul Church breached their fiduciary duty to Plaintiff.

70. At all times material hereto, the actions and/or inactions of Defendants Diocese of Buffalo and Saints Peter & Paul Church were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

71. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

72. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable

to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

EIGHTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress - Diocese of Buffalo and Saints Peter & Paul Church

73. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

74. As described above, the actions of Defendants Diocese of Buffalo and Saints Peter & Paul Church, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

75. Defendants Diocese of Buffalo's and Saints Peter & Paul Church's actions endangered Plaintiff's safety and caused him to fear for his own safety.

76. As a direct and proximate result of Defendants Diocese of Buffalo's and Saints Peter & Paul Church's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

77. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

NINTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis* - Diocese of Buffalo and Saints Peter & Paul Church

78. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

79. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Buffalo and Saints Peter & Paul Church, as well as directly

to Father Becker, agents or servants of Defendants Diocese of Buffalo and Saints Peter & Paul Church, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

80. Defendants Diocese of Buffalo and Saints Peter & Paul Church breached their duty to act *in loco parentis*.

81. At all times material hereto, Defendants Diocese of Buffalo's and Saints Peter & Paul Church's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

82. As a direct result of Defendants Diocese of Buffalo's and Saints Peter & Paul Church's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

83. By reason of the foregoing, Defendants Diocese of Buffalo and Saints Peter & Paul Church are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved 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; and

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: September 24, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.

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