

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

RICHARD W. WATROBA,

Plaintiff,

SUMMONS

v.

THE DIOCESE OF BUFFALO, N.Y.
795 Main Street
Buffalo, New York 14203

Index No.: _____

ST. STEPHEN'S ROMAN CATHOLIC CHURCH
193 Elk Street
Buffalo, New York

Child Victims Act Proceeding
22 NYCRR 202.72

OUR LADY OF ANGELS ASSOCIATION
150 South Fourth Street
Lewiston, NY 14092

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

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 (20) days after the service of this summons, exclusive of the day of service [or within thirty (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.

Erie County is designated as the place of trial on basis of in that one or more Defendant resides, or conducts business, in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

Dated: November 11, 2019
Hamburg, New York



Daniel J. Chiacchia, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for Plaintiff
5113 South Park Avenue
Hamburg, New York, 14075
Telephone: (716) 648-3030

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

RICHARD W. WATROBA,

Plaintiff,

COMPLAINT

v.

Index No.: _____

THE DIOCESE OF BUFFALO, N.Y.,
ST. STEPHEN'S ROMAN CATHOLIC CHURCH, and
OUR LADY OF ANGELS ASSOCIATION

Defendants.

Plaintiff, RICHARD W. WATROBA, by his attorneys Chiacchia & Fleming, LLP, brings this action against THE DIOCESE OF BUFFALO, N.Y., ST. STEPHEN'S ROMAN CATHOLIC CHURCH and OUR LADY OF ANGELS ASSOCIATION, 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 each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendant resides, or conducts business, in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

3. This action is brought pursuant to CPLR § 214-G, as added by the New York State Child Victims Act, which has revived claims of child sexual abuse for a period of one year

beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely.

PARTIES

4. Plaintiff RICHARD W. WATROBA is an individual residing in the State of Louisiana.

5. Defendant THE DIOCESE OF BUFFALO, N.Y. (“DIOCESE”) is a Roman Catholic diocese headquartered in Buffalo, New York, with its principal place of business located at 795 Main Street, Buffalo, New York. At all relevant times, the Diocese of Buffalo operated churches in 1973 through 1976, including the placement of Father James E. McCarthy (“McCarthy”) at Defendant ST. STEPHEN’S ROMAN CATHOLIC CHURCH.

6. At all times relevant, Defendant ST. STEPHEN’S ROMAN CATHOLIC CHURCH (“ST. STEPHEN’S”) was an organization authorized to conduct business in the State of New York, with its principal place of business at 193 Elk Street, Buffalo, New York. St. Stephen’s Roman Catholic Church includes, but it not limited to St. Stephen’s Church and any other organizations and/or entities operating under the same or similar name with the same or similar place of business. At all relevant times, it conducted activities in Erie County, New York.

7. Defendant OUR LADY OF ANGELS ASSOCIATION (“OUR LADY OF ANGELS”) is an association of Catholic priests and school of seminary, with its principal place of business located at 150 South Fourth Street, Lewiston, New York 14092. At all relevant times, Defendant OUR LADY OF ANGELS conducted activities in Erie County, New York, including the oversight and placement of priests within parishes and Catholic schools, including the placement of McCarthy at Defendant St. STEPHEN’S.

FACTS COMMON TO ALL CLAIMS

1. In or around 1973 when he was 10 years old, Plaintiff began frequenting Defendant ST. STEPHEN'S Church, a church within and under the auspices of Defendant DIOCESE.
2. During the times relevant to the allegations set forth herein, McCarthy, allegedly deceased, was employed as a priest at Defendant ST. STEPHEN'S.
3. Through his positions at, within, or for the Defendants, McCarthy was put in direct contact with Plaintiff, who eventually became an altar boy at Defendant ST. STEPHEN'S Church, and McCarthy used his position of authority and trust over Plaintiff to sexually abuse and harass him.
4. On numerous occasions, during the years from approximately 1973 through 1976, while Plaintiff was a minor, McCarthy, while acting as a priest, counselor, teacher, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendants sexually assaulted, sexually abused and/or had sexual contact with Plaintiff in violation of the laws of the State of New York. The abuse occurred regularly beginning when Plaintiff was approximately 10 years old and ending when she was approximately 13 years old.
5. On multiple occasions, McCarthy would lure the Plaintiff to the church basement and other locations where he sexually assaulted, sexually abused and/or had sexual contact with Plaintiff.
6. At all times material hereto McCarthy was under the direct supervision, employ and/or control of Defendants.
7. All the Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of McCarthy who

sexually abused Plaintiff.

8. Defendants had the responsibility to supervise and/or direct priests serving at Catholic churches, and specifically, had a duty not to aid a pedophile such as McCarthy, by assigning, maintaining and/or appointing him to a position with access to minors.

9. Plaintiff suffered personal physical and psychological injuries and damages as a result of McCarthy's actions, as well as other damages related thereto, as a result of his/her childhood sexual abuse.

10. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful and embarrassed, feeling alone and isolated, losing faith in God, feeling estranged from the church, struggling with drug problems, feeling helpless and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, having panic attacks, crying, feeling dirty, used, and damaged, suicidal, having flashbacks, feeling like he took the wrong road, feeling that his innocence was stolen, and feeling that his life was ruined. Plaintiff was prevented and will continue to be 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, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of McCarthy'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 Negligent Retention/Supervision/Direction

11. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

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

13. By establishing, staffing, and/or operating Catholics churches Defendants encouraged the participation and attendance of Plaintiff at defendant ST. STEPHEN'S, holding same out to be a safe environment for religious worship and learning as well as youth activities, Defendants entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him/her.

14. Defendants negligently retained, directed, and supervised McCarthy when they knew or should have known that he posed a threat of sexual abuse to children.

15. Defendants knew or should have known of McCarthy's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

16. McCarthy sexually assaulted, sexually abused and/or had sexual contact with Plaintiff on Defendants' premises and elsewhere.

17. Defendants were put on notice of McCarthy's improper and inappropriate actions with Plaintiff.

18. Defendants owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of McCarthy in his role as a teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that McCarthy did not abuse his authority as a teacher, priest, counselor, trustee, director, officer, employee, agent,

servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

19. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

21. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION Negligence/Gross Negligence

22. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

23. Defendants knew, or were negligent in not knowing, that McCarthy posed a threat of sexual abuse to children.

24. The acts of McCarthy described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendants.

25. Defendants owed Plaintiff, at the relevant times a minor, a duty to protect him from McCarthy's sexual deviancy, both prior to and/or subsequent to McCarthy's misconduct.

26. Defendants' 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.

27. Defendants:

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 McCarthy;
- 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.

28. At all times material hereto, with regard to the allegations contained herein, McCarthy was under the direct supervision, employ and/or control of Defendants.

29. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

30. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

31. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION Breach of Fiduciary Duty

32. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

33. Through his positions at the Defendants, McCarthy was put in direct contact with

Plaintiff, then a minor, specifically being assigned to perform religious services and teach Plaintiff religious instruction, including religious training, spiritual guidance and/or counseling expounded by the Roman Catholic Church. It was under these circumstances that Plaintiff came to be under the direction and control of McCarthy who used his position of authority and trust over Plaintiff to sexually abuse and harass him.

34. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all the Defendants herein.

35. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

36. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

37. Defendants breached their fiduciary duties to Plaintiff.

38. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

39. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

40. 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.

FOURTH CAUSE OF ACTION
Breach of Non-Delegable Duty

41. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

42. Plaintiff, as a minor, was placed in the care of all of the Defendants for the purposes of, *inter alia*, providing plaintiff with a safe environment to receive spiritual instruction, training, guidance and/or counseling. There existed a non-delegable duty of trust between Plaintiff and Defendants.

43. Plaintiff was a vulnerable child when placed within the care of the Defendants.

44. As a consequence, the Defendants were in the best position to prevent Plaintiff's abuse, and to learn of McCarthy's repeated sexual abuse of Plaintiff and stop it.

45. By virtue of the fact that Plaintiff was sexually abused as a parishioner and altar boy, Defendants breached their non-delegable duty to Plaintiff.

46. At all times material hereto McCarthy was under the direct supervision, employ and/or control of the defendants.

47. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

48. 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.

FIFTH CAUSE OF ACTION Fraudulent Concealment

49. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

50. Defendant allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

51. Defendants knew or should have known of McCarthy's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

52. Defendants had a duty to report any reasonable suspicion of child abuse.

53. Defendants owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of McCarthy in his role as a teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that McCarthy did not abuse his authority as a teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

54. Defendants breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by McCarthy of children in their care or involved in church related activities.

55. Defendants breached their duty by knowingly and willfully failing to disclose reasonable suspicions of abuse by McCarthy of children in their care to current or prospective church parishioners.

56. By knowingly and willfully failing to inform other current and prospective students or church parishioners of the abuse of McCarthy, Defendants intended to defraud other current and prospective church parishioners.

57. When Plaintiff chose to attend defendant ST. STEPHENS he reasonably relied upon the Defendant's representation that Defendant would look out for Plaintiff's well-being, care, and safety.

58. While attending defendant ST. STEPHENS, Plaintiff was sexually abused by McCarthy and has suffered injuries and damages described herein.

59. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

60. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

61. 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.

SIXTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

62. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

63. As described aforesaid, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

64. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

65. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

66. 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.

SEVENTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

67. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

68. During the time period from approximately 1973 through 1976, Defendants allowed McCarthy unrestricted access to Plaintiff and willfully and/or intentionally ignored suspicious behavior and/or complaints against McCarthy of sexual assault, sexual abuse and sexual contact.

69. During the time period referenced above, Defendants willfully and/or intentionally ignored Plaintiff's safety by requiring Plaintiff to be under the supervision and direction of McCarthy by himself before, during and after church services, including church sanctioned activities.

70. Defendants were deliberately indifferent to the risk of sexual assault, sexual abuse, and sexual contact posed to Plaintiff by being alone with McCarthy.

71. Defendants willfully and/or intentionally created a hostile and unsafe environment that no child would be able to tolerate.

72. Defendants in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation and extreme emotional distress so he would stay silent, and not report the abuse.

73. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

74. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual assault, sexual abuse and sexual contact.

75. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

76. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

77. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

EIGHTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*

78. Plaintiff repeats and realleges each and every allegation set forth in foregoing paragraphs as if fully set forth herein.

79. Plaintiff when he was a minor was entrusted by his parents to the control of Defendants for the purposes of *inter alia*, providing Plaintiff with spiritual instruction, training, counseling and/or spiritual guidance as expounded by the Roman Catholic Church. Defendants owe – and owed -- a duty to minors entrusted to them to adequately supervise them to prevent foreseeable injuries to their parishioners. As a result, Defendants owed a duty to Plaintiff *in loco parentis*.

80. Defendants breached their duty *in loco parentis*.

81. At all times material hereto, said Defendants' 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' conduct, Plaintiff has suffered the injuries and damages described herein.

83. 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.

NINTH CAUSE OF ACTION
Nuisance (Common Law and N.Y. Penal Law 240.45)

84. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

85. The Defendants' actions and omissions, as described above, have interrupted or interfered with the health, safety, and welfare of the general public.

86. The Defendants have created and exposed the public to these unsafe conditions continuously and on an ongoing basis since at least the time that Plaintiff was sexually abused and has continued to expose the public to that unabated threat until the present day.

87. As a direct and proximate result of the Defendants' conduct, the Plaintiff has suffered special and individualized harms separate and distinct from the harms suffered by the public at large.

88. The harm suffered by the Plaintiff is the exact type of harm that one would expect to result from the Defendants' acts and omissions.

89. Defendant continues to conspire and engage and/or has conspired and engaged in efforts to: 1) conceal from the general public the sexual assaults committed by, the identities of, and the pedophilic/ephebophilic tendencies of McCarthy and the Diocese's other accused priests; and/or 2) conceal from proper civil authorities sexual assaults and abuse committed by McCarthy and the Diocese's other agents against minor children; and/or 3) attack the credibility of victims of the Diocese's agents; and/or 4) protect the Diocese's agents from criminal prosecution for their sexual assaults and abuse against children; and/or 5) allow known child molesters to live freely in the community without informing the public.

90. The net result of the aforementioned activities is that Defendant Diocese has introduced the threat of criminal activity into the public sphere and has thereby impaired the public's health, safety, and welfare.

91. The conduct of Defendant Diocese was specially injurious to Plaintiff's health, safety and welfare as because Plaintiff was sexually assaulted by Defendant Diocese's agent, McCarthy.

92. The conduct of Defendant Diocese was further specially injurious to Plaintiff's health, safety and welfare in that when Plaintiff discovered Defendant Diocese's conduct, Plaintiff experienced mental, emotional and/or physical distress that he had been the victim of Defendant Diocese's conduct.

93. Plaintiff has suffered and/or continues to suffer special, particular, and peculiar psychological and emotional harm and/or peculiar pecuniary harm, different in kind from the general public, after learning of Defendant Diocese's conduct.

94. Plaintiff's injuries are also particular to him and different from certain members of the public who have not been harmed by the nuisance. People who have not been harmed by the nuisance include those who have not suffered any injury at all, those who are unaware of the nuisance, those who do not believe that the conduct of Defendant Diocese ever occurred, and those who think that any such conduct only occurred decades ago.

95. 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.

TENTH CAUSE OF ACTION
Debts for Willful and Malicious Injury Nondischargeable

96. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

97. Pursuant to Section 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is

nondischargeable.

98. Defendants allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

99. Defendants breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by McCarthy of children in their care.

100. Defendants knowingly, willingly, and intentionally failed to report reasonable suspicion of abuse by McCarthy of children in their care.

101. Defendants' intentional act of nondisclosure allowed McCarthy to continue abusing children in Defendant's care, an injury that Defendant was substantially certain would occur.

102. This intentional act necessarily produced the harm that resulted.

103. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

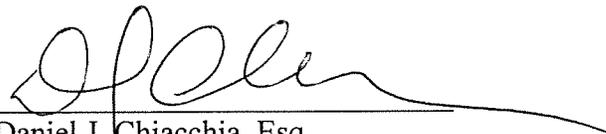
104. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

105. 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.

WHEREFORE, plaintiff respectfully requests judgment against Defendants herein in sums which exceed the jurisdictional limit of all lower courts which would otherwise have jurisdiction in this action, including compensatory damages, punitive damages, prejudgment interest to the extent permitted by law; costs, disbursements and fees of this action, including

attorneys' fees, to the extent permitted by law; and any other relief as the Court deems just and proper.

Dated: November 11, 2019
Hamburg, New York



Daniel J. Chiacchia, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for the Plaintiff
5113 South Park Avenue
Hamburg, New York 14075
Telephone: (716) 648-3030