

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

JOHN MALONEY, a/k/a, JACK MALONEY,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; ST. THOMAS AQUINAS'
ROMAN CATHOLIC CHURCH SOCIETY OF BUFFALO; and ST.
THOMAS AQUINAS' ROMAN CATHOLIC SCHOOL,

Defendants.

Index No.

SUMMONS

Date Index No. Purchased:
December 27, 2019

To the above named Defendant(s)

THE DIOCESE OF BUFFALO, N.Y., Randall D. White, Esq., Connors LLP, 1000 Liberty Building, 424 Main Street, Buffalo, NY 14202;
ST. THOMAS AQUINAS' ROMAN CATHOLIC CHURCH SOCIETY OF BUFFALO, 450 Abbott Road, Buffalo, Erie County, New York; and
ST. THOMAS AQUINAS' ROMAN CATHOLIC SCHOOL, 450 Abbott Road, Buffalo, Erie County, New York.

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, New York, which is located in Erie County, New York.

Dated: New York, New York
December 27, 2019

SIMMONS HANLY CONROY LLC



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Plaintiff,

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THE DIOCESE OF BUFFALO, N.Y.; ST. THOMAS AQUINAS'
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Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff John Maloney, also known as Jack Maloney, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y.; St. Thomas Aquinas' Roman Catholic Church Society of Buffalo; and St. Thomas Aquinas' Roman Catholic School, 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 which 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 Maloney, also known as Jack Maloney ("Plaintiff") is an individual residing in West Seneca, Erie County, New York.
5. 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, churches, and schools of the Diocese of Buffalo, including during all relevant times, St. Thomas Aquinas' Roman Catholic Church Society of Buffalo; and St. Thomas Aquinas' Roman Catholic School.

6. Defendant St. Thomas Aquinas' Roman Catholic Church Society of Buffalo ("St. Thomas Church") is a Roman Catholic parish within and under the authority of the Diocese of Buffalo and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 450 Abbott Road, Buffalo, Erie County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated St. Thomas Church.

7. Defendant St. Thomas Aquinas' Roman Catholic School ("St. Thomas School") was a Roman Catholic elementary school with its principal office formerly at 20 Athol Street, Buffalo, Erie County, New York, and now at 450 Abbott Road, Buffalo, Erie County, New York. During all relevant times, St. Thomas School was operated by Defendants Diocese of Buffalo and St. Thomas Church.

FACTS COMMON TO ALL CLAIMS

8. Plaintiff and his family were parishioners of and attended St. Thomas Church when Plaintiff was a minor child. Plaintiff also attended St. Thomas School, the parochial elementary school affiliated with St. Thomas Church from approximately 1960 when Plaintiff was approximately eight years of age, until approximately 1965 when Plaintiff was approximately thirteen years of age.

9. During the times relevant to the allegations set forth herein, Mr. Robert Weber, also known as Ollie Weber ("Mr. Weber") was assigned by Defendants Diocese of Buffalo and St. Thomas Church to be the gym teacher at St. Thomas School, where

Plaintiff was a student. During relevant times, Mr. Weber was Plaintiff's gym teacher at St. Thomas School. Mr. Weber died in 1998.

10. Through his positions at, within, or for Defendants Diocese of Buffalo, St. Thomas Church, and St. Thomas School, Mr. Weber was put in direct contact with Plaintiff, a minor parishioner and student of the Diocese of Buffalo.

11. On at least nine occasions from approximately 1962 when Plaintiff was approximately ten years of age, to approximately 1963 when Plaintiff was approximately eleven years of age, Mr. Weber would call Plaintiff into an office at St. Thomas School, initially telling Plaintiff that Mr. Weber needed to take Plaintiff's measurements for Plaintiff's gym uniform. On at least one occasion in approximately 1962 or 1963, when Plaintiff was approximately ten or eleven years of age, Plaintiff encountered Mr. Weber at Mungovan Park in Buffalo, Erie County, New York.

12. Mr. Weber used such encounters, gained through his position at St. Thomas School which granted him access to Plaintiff when Plaintiff was approximately ten to approximately eleven years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least ten occasions in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Mr. Weber

13. At all times material hereto, Mr. Weber was under the management, supervision, employ, direction and/or control of the Defendants.

14. Through his positions at, within, or for the Defendants, Mr. Weber was put in direct contact with Plaintiff.

15. Mr. Weber used his position at, within, or for the Defendants and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

16. Defendants had the duty to reasonably manage, supervise, control and/or

direct employees and teachers who served at St. Thomas School, and specifically, had a duty not to aid pedophiles such as Mr. Weber by assigning, maintaining, and/or appointing them to positions with access to minors.

17. Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Mr. Weber, who sexually abused Plaintiff.

18. Defendant Diocese of Buffalo had a duty to the Plaintiff to properly supervise Diocese of Buffalo employees to ensure that such employees did not use their positions with the Diocese of Buffalo as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Buffalo knew or should have known that Mr. Weber used his positions with the Diocese of Buffalo to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

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

20. 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, 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 Mr. Weber'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 Hiring/Retention/Supervision/Direction

21. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

22. Defendants owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Mr. Weber in his role as teacher, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Mr. Weber 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.

23. Defendant Diocese of Buffalo at all relevant times represented that the parishes and schools of the Diocese of Buffalo were safe places for minors to attend, and that its teachers and employees were 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.

24. Mr. Weber sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in St. Thomas School and at Mungovan Park in Buffalo, Erie County, New York.

25. Defendants negligently hired, retained, directed, and supervised Mr. Weber, though they knew or should have known that Mr. Weber posed a threat of sexual abuse to minors.

26. Defendants knew or should have known of Mr. Weber's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

27. Defendants were negligent in failing to properly supervise Mr. Weber.

28. The sexual abuse of children by adults, including teachers, is a foreseeable result of negligence.

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

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

31. By reason of the foregoing, the Defendants 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.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

32. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

33. Defendants knew, or were negligent in not knowing, that Mr. Weber posed a threat of sexual abuse to children.

34. The acts of Mr. Weber 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 the Defendants.

35. Defendants owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Mr. Weber's sexual deviancy and the consequential damages, both prior to and/or subsequent to Mr. Weber's misconduct.

36. 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.

37. 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 Mr. Weber;
- 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.

38. At all times material hereto, with regard to the allegations contained herein, Mr. Weber was under the supervision, employ, direction and/or control of the Defendants.

39. At all times material hereto, Defendants' 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.

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

41. By reason of the foregoing, the Defendants 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.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

42. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

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

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

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

46. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants, Defendants breached their non-delegable duty to Plaintiff.

47. At all times material hereto, Mr. Weber was under the supervision, employ, direction and/or control of the Defendants.

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

49. By reason of the foregoing, the Defendants 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.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

50. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

51. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants. This entrustment of the Plaintiff to the care and supervision of the Defendants, while the Plaintiff was a minor child, required the Defendants 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.

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

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

54. Defendants breached their fiduciary duty to Plaintiff.

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

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

57. By reason of the foregoing, the Defendants 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

Negligent Infliction of Emotional Distress

58. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

59. As described above, the actions of Defendants, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

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

61. As a direct and proximate result of Defendants' 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.

62. By reason of the foregoing, the Defendants 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 Duty *in Loco Parentis*

63. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

64. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants, as well as directly to Mr. Weber, an agent or servant of Defendants, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

65. Defendants breached their duty to act *in loco parentis*.

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

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

68. By reason of the foregoing, the Defendants 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: December 27, 2019
New York, New York

Respectfully Submitted,

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