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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MATTHEW EBERT

Plaintiff,

SUMMONS

vs.

CANISIUS COLLEGE
2001 Main Street
Buffalo, New York 14208

Defendant.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon the plaintiff's attorneys an Answer to the Complaint in this action within twenty (20) days after the service of the Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis for the venue designated is the place of business of the defendant, Canisius College, which is 2001 Main Street in the City of Buffalo, the County of Erie and



The Dietrich Law Firm P.C.
1323 North Forest Road
Williamsville, New York 14221

the State of New York.

DATED: December 17, 2019

Yours, etc.

THE DIETRICH LAW FIRM P.C.



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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MATTHEW EBERT,

Plaintiff,

COMPLAINT

vs.

CANISIUS COLLEGE,

Defendant.

The plaintiff, above-named, by The Dietrich Law Firm P.C., for his Complaint against the defendant, above-named, alleges upon information and belief:

- 1. This action is timely pursuant to CPLR 214-g.

PARTIES

- 2. At the time of the incident(s) giving rise to this complaint, the plaintiff Matthew Ebert was a resident of the State of New York.

- 3. At all times herein relevant, the defendant, Canisius College, has been a private, Jesuit college with its principle office located at 2001 Main Street in the City of Buffalo, the County of Erie and the State of New York.

- 4. At all times herein relevant, the defendant, Canisius College, oversaw, managed, controlled and directed Father Charles W. Lehmkuhl.

- 5. At all times herein relevant, the defendant, Canisius College, managed, supervised and controlled those who were employed or otherwise worked for Canisius College, including but not limited to priests, reverends and nuns, such as Father Lehmkuhl both while they were on premises and engaged in off-premises activities related to their employment with Canisius College.

FACTS

6. At all times herein relevant, Father Charles W. Lehmkuhl was a Jesuit priest employed by Canisius College. Father Lehmkuhl remained under the direct supervision, employ and control of the defendant.

7. The defendants placed Father Lehmkuhl in positions where he had access to and worked with children as an integral part of his work.

8. The defendant held their leaders and agents out as people of high morals, as possessing immense power, teaching families and children to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to their programs, marketing to youth and families, recruiting youth and families, and holding out the people that worked in the programs as safe.

9. The plaintiff was raised in a very religious family in Cornwall, New York. The plaintiff and the plaintiff's family came into contact with Father Lehmkuhl, a father figure and spiritual leader, starting in or around 1972.

10. In or around June 1983, the plaintiff, a minor, went on a trip to Canisius College with Father Lehmkuhl.

11. In or around June 1983, the plaintiff was entrusted into the care of defendant, Canisius College and Father Lehmkuhl for the duration of his trip to Buffalo.

12. During this trip the plaintiff, as a minor and vulnerable child, was dependent on the defendant and Father Lehmkuhl. The defendant had custody of the plaintiff and/or accepted the entrustment of the plaintiff and/or had responsibility for the plaintiff and/or authority over the plaintiff.

13. From approximately 1973 to 1983, when the plaintiff was 7 to 17 years old, Father Lehmkuhl engaged in unpermitted sexual contact with the plaintiff.

14. The culture of the Church over the plaintiff created pressure on the plaintiff not to report the abuse that he had suffered.

15. The defendant knew or should have known that Father Lehmkuhl was a danger to children before Father Lehmkuhl sexually assaulted the plaintiff.

16. Prior to the sexual abuse of the plaintiff, the defendant learned or should have learned that Father Lehmkuhl was not fit to work with children. The defendant, by and through their agents, servants and/or employees, became aware, or should have become aware of Father Lehmkuhl's propensity to commit sexual abuse and of the risk to the plaintiff's safety. At the very least, the defendant knew or should have known that they did not have sufficient information about whether or not their leaders and people working at Canisius College were safe.

17. Defendant knew or should have known that there was a risk of child sex abuse for children participating in programs and activities within Canisius College. At the very least, the defendant knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children for children participating in youth programs.

18. The defendant knew or should have known that the defendant had numerous agents who had sexually molested children. The defendant knew or should have known that child molesters have a high rate of recidivism. The defendant knew or should have known that some of the leaders and people working as a part of Canisius

College were not safe and that there was a specific danger of child sex abuse for children participating in their youth programs.

19. Instead, the defendant negligently deemed that Father Lehmkuhl was fit to work with children and/or that any previous problems were fixed and/or that Father Lehmkuhl would not sexually assault children and/or that Father Lehmkuhl would no injure children.

20. The defendant owed the plaintiff a duty of reasonable care because they had superior knowledge about the risk that Father Lehmkuhl posed to the plaintiff, the risk of abuse in general in their programs and/or the risks that their facilities posed to minor children.

21. The defendant owed a duty to the plaintiff to protect him from harm because the defendant's actions created a foreseeable harm to the plaintiff. As a vulnerable child participating in the program that the defendants offered to minors, the plaintiff was a foreseeable victim. As a vulnerable child who Father Lehmkuhl has access to through the defendant's facilities and programs, the plaintiff was a foreseeable victim.

22. The defendant also breached their duty to the plaintiff by actively maintaining and employing Father Lehmkuhl in a position of power and authority through which Father Lehmkuhl had access to children, including the plaintiff, and power and control over children, including the plaintiff.

23. The defendant breached its duties to the plaintiff. The defendant failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe. The defendant's breach of their duties include, but are not limited to: failure to protect the

plaintiff from a known danger, failure to have sufficient policies and procedures to prevent child sex abuse, failure to make reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to properly train the employees at institutions and programs within the defendant's geographical confines, failure to train youth within Canisius College's geographical confines about the risk of sexual abuse, failure to have an outside agency test their safety procedures, failure to protect the children of their programs from sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the institutions, programs, leaders and people as safe and/or failure to train their employees properly and to identify signs of child sexual abuse by fellow employees.

24. The defendant also breached their duty to the plaintiff by failing to warn the plaintiff and the plaintiff's family of the risk that Father Lehmkuhl posed and the risks of sexual abuse in Catholic institutions. They also failed to warn them about any of the knowledge that defendant had about child sex abuse.

25. The defendant additionally violated a legal duty by failing to report known and/or suspected abuse of children by Father Lehmkuhl and/or its other agents to the police or law enforcement.

26. The defendant was negligent and/or made representations to the plaintiff and plaintiff's family during the plaintiff's minority.

27. As a direct result of the defendant's negligence as described in the paragraphs above, the plaintiff has suffered and will continue to suffer great pain of mind

and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, physical, personal and psychological injuries. The plaintiff was prevented and will continue to be prevented from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will come to incur expenses for psychological treatment, therapy and counseling and on information and belief has and/or will incur loss of income and/or loss of earning capacity.

AS AND FOR A FIRST CAUSE OF ACTION:
NEGLIGENCE

28. The plaintiff repeats and re-alleges the above paragraphs as if set forth in their entirety herein.

29. The defendant owed the plaintiff a duty of reasonable care to protect the plaintiff from injury.

30. The defendant owed the plaintiff a duty of reasonable care because the defendant had a special relationship with the plaintiff.

31. The defendant also had a duty arising from their special relationship with the plaintiff, the plaintiff's parents and other parents of young, vulnerable children, to properly train and supervise its priests. The special relationship arose because of the high degree of vulnerability of the children entrusted to the defendant's care. As a result of the high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, the defendant had a duty to establish measures of protection not necessary for persons who are older or better able to safeguard themselves.

32. The defendant owed the plaintiff a duty to protect the plaintiff from harm because each defendant had a special relationship with Father Lehmkuhl.

33. The defendant owed the plaintiff a duty of reasonable care because the defendant encouraged youth participation in its youth programs; encouraged youth and parents to have the youth participate in programs; undertook custody of minor children, including the plaintiff; promoted their facilities and programs as being safe for children; held their agents, including Father Lehmkuhl, out as safe to work with children; encouraged parents and children to spend time with their agents; and/or encouraged their agents, including Father Lehmkuhl, to spend time with, interact with and recruit children.

34. By holding Father Lehmkuhl out as safe to work with children and by undertaking the custody, supervision of and/or care of the plaintiff, who at the time was a minor, the defendant entered into a fiduciary relationship with the minor plaintiff. As a result of the plaintiff being a minor and by the defendant undertaking the care and guidance of the at the time vulnerable, minor plaintiff, the defendant held a position of empowerment over the plaintiff.

35. Further, the defendant, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. The defendant thus entered into a fiduciary relationship with the plaintiff. The defendant exploited their position of empowerment, putting the plaintiff at risk to be sexually assaulted.

36. By accepting custody of the minor plaintiff, the defendant established an *in loco parentis* relationship with the plaintiff and in so doing, owed the plaintiff a duty to protect the plaintiff from injury.

37. By establishing and/or operating Canisius College, accepting the minor plaintiff as a participant in their programs, holding their facilities and programs out to be a safe environment for the plaintiff, accepting custody of the minor plaintiff *in loco parentis* and by establishing a fiduciary relationship with the plaintiff, the defendant entered into an express and/or implied duty to properly supervise the plaintiff and provide a reasonably safe environment for children, who participated in their programs. The defendant also owed the plaintiff a duty to properly supervise the plaintiff to prevent harm from foreseeable dangers. The defendant had the duty to exercise the same degree of care over young people under their control as a reasonably prudent person would have exercised under similar circumstances.

38. By establishing and operating Canisius College, which offered educational programs to children and by accepting the enrollment and participation of the plaintiff who was a minor at the time, as a participant in those educational programs, the defendant owed the plaintiff a duty to properly supervise the plaintiff to prevent harm from generally foreseeable dangers.

39. The defendant owed the plaintiff a duty to protect the plaintiff from harm because the defendant invited the plaintiff onto their property and Father Lehmkuhl posed a dangerous condition on the defendant's property.

40. The defendant breached its duties to the plaintiff by failing to use reasonable care. The defendant's failures include, but are not limited to, failing to properly supervise Father Lehmkuhl, failing to properly supervise the plaintiff and failing to protect the plaintiff from a known danger.

41. As a direct result of the foregoing, the plaintiff sustained physical, emotional and psychological injuries, along with pain and suffering.

AND AS FOR A SECOND CAUSE OF ACTION:
NEGLIGENT TRAINING AND SUPERVISION

42. The plaintiff repeats and re-alleges the above paragraphs as if set forth in their entirety herein.

43. At all times herein relevant, Father Lehmkuhl was employed by the defendant and was under the defendant's direct supervision, employ and control when he committed the wrongful acts alleged in the paragraphs above. Father Lehmkuhl engaged in the wrongful conduct while acting the course and scope of his employment with the defendant and/or accomplished the sexual abuse by virtue of his job-created authority.

44. The defendant had a duty, arising from their employment of Father Lehmkuhl, to ensure that Father Lehmkuhl did not sexually molest children.

45. Further, the defendant had a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent and address inappropriate behavior and conduct between clerics and children.

46. The defendant was negligent in the training, supervision and instruction of their employees. The defendant failed to timely and properly educate, train, supervise and/or monitor their agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

47. The defendant was additionally negligent in failing to supervise, monitor, chaperone and/or investigate Father Lehmkuhl and/or in failing to create, institute and/or enforce rules, policies, procedures and/or regulations to prevent Father Lehmkuhl's sexual abuse of the plaintiff.

48. In failing to properly supervise Father Lehmkuhl and in failing to establish such training procedures for employees and administrators, the defendant failed to exercise the care that a reasonably prudent person would have exercised under similar circumstances.

49. As a direct result of the foregoing, the plaintiff sustained physical, emotional and psychological injuries, along with pain and suffering.

AS AND FOR A THIRD CAUSE OF ACTION:
NEGLIGENT RETENTION

50. The plaintiff repeats and re-alleges the above paragraphs as if set forth in their entirety herein.

51. The defendant became aware or should have become aware of Father Lehmkuhl's propensity for child sexual abuse and failed to take any further action to remedy the problem and failed to investigate or remove Father Lehmkuhl from working with children.

52. The defendant negligently and/or recklessly retained Father Lehmkuhl with knowledge of Father Lehmkuhl's propensity for the type of behavior, which resulted in the plaintiff's injuries in this action.

53. The defendant negligently and/or recklessly retained father Lehmkuhl in a position where he had access to children and could foreseeably cause

harm, which the plaintiff would not have been subjected to had the defendant acted reasonably.

54. In failing to timely remove Father Lehmkuhl from working with children or terminate the employment of Father Lehmkuhl, the defendant negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

55. As a direct result of the foregoing, the plaintiff sustained physical emotional and psychological injuries, along with pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff demands judgment against the defendant, in all causes of action, in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but does not exceed the monetary jurisdictional limits of the New York State Supreme Court. The plaintiff demands such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DATED: December 17, 2019

Yours, etc.,

THE DIETRICH LAW FIRM P.C.



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