

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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PB-21 DOE,

Plaintiff,

-against-

SUMMONS

INDEX No.:

ST. NICODEMUS LUTHERAN CHURCH,
UPSTATE NEW YORK SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH IN
AMERICA, EVANGELICAL LUTHERAN
CHURCH IN AMERICA,

Defendants.

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Plaintiff designates the County of Erie as the place of trial. The basis of venue is one of the Defendants' residence is located in ERIE COUNTY.

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 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 defaulted for the relief demanded in the complaint.

Dated: New York, New York
May 29, 2020

PHILLIPS & PAOLICELLI, LLP
Attorneys for Plaintiff

By: Victoria Phillips^{MB}
Victoria Phillips, Esq.
Michael DeRuve Esq.
747 Third Avenue, 6th Fl.
New York, NY 10017
(212) 388-5100

To:

ST. NICODEMUS LUTHERAN CHURCH,
12029 Liberia Road
East Aurora, New York 14052

UPSTATE NEW YORK SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH
IN AMERICA,
5811 Heritage Landing Drive, First Floor
East Syracuse, New York 13057

EVANGELICAL LUTHERAN CHURCH IN AMERICA,
8765 West Higgins Road
Chicago, Illinois 60631 and

c/o C T CORPORATION SYSTEM
208 SO LASALLE ST, SUITE 814
CHICAGO, IL 60604

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

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PB-21 DOE,

Plaintiff,

COMPLAINT

-against-

INDEX No.:

ST. NICODEMUS LUTHERAN CHURCH,
UPSTATE NEW YORK SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH IN
AMERICA,
EVANGELICAL LUTHERAN CHURCH IN
AMERICA,

Defendants.

-----X

Plaintiff PB-21 Doe by and through his undersigned attorneys, as and for his Complaint,
alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g by Plaintiff PB-21 DOE (hereafter "Plaintiff").
2. Between approximately 1999 and 2004, Plaintiff was sexually abused and assaulted by Douglas Thore ("THORE"), then Pastor of Defendant ST. NICODEMUS LUTHERAN CHURCH.
3. Plaintiff was approximately 14 years old when the sexual abuse began.
4. At the time of the abuse, THORE was an agent and/or employee of, under the control of, and/or answerable to, in whole or in part, the following Defendants ST. NICODEMUS LUTHERAN CHURCH, UPSTATE NEW YORK SYNOD OF THE EVANGELICAL

LUTHERAN CHURCH IN AMERICA, EVANGELICAL LUTHERAN CHURCH IN AMERICA (hereafter collectively referred to as “Defendants”).

5. At all relevant times, THORE also resided at premises on Liberia Road in Marilla owned and/or operated by Defendants.
6. Defendants jointly and severally held THORE out as a clergyman capable of being entrusted with children and students, including Plaintiff, and capable of safely supervising children.
7. THORE’s sexual abuse of Plaintiff occurred while he was acting in his assigned role in Defendants’ behalf.
8. Not only did Defendants place Plaintiff in harm’s way by permitting him to have unfettered and unsupervised access to Plaintiff, but they carelessly, negligently, and recklessly failed to protect Plaintiff from sexual abuse by THORE, permitted the abuse to occur, failed to supervise THORE, failed to timely investigate THORE’s misconduct, acted to protect their own self-interest to the detriment of innocent children, including Plaintiff, and are otherwise responsible for THORE’s sexual abuse of Plaintiff and Plaintiff’s consequential injuries and damages.

THE PARTIES

9. Plaintiff is an individual residing in Wyoming County, New York.
10. Plaintiff was born in 1985.
11. At all relevant times, THORE was a Pastor of Defendant ST. NICODEMUS LUTHERAN CHURCH, who was ordained in approximately 1974.
12. From approximately the 1980s through 2004, THORE was serving as Pastor of Defendant ST. NICODEMUS LUTHERAN CHURCH.

13. At all relevant times, Defendant ST. NICODEMUS LUTHERAN CHURCH was managed, controlled, directed, and operated by Defendant UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA and EVANGELICAL LUTHERAN CHURCH IN AMERICA.
14. At all relevant times, Defendant ST. NICODEMUS LUTHERAN CHURCH was and still is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.
15. Defendant ST. NICODEMUS LUTHERAN CHURCH maintains an office at 12029 Liberia Road East Aurora, New York 14052, in the County of Erie and State of New York.
16. Upon information and belief, at all times herein mentioned, Defendant, UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, was and still is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.
17. Defendant UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA maintains an office at 5811 Heritage Landing Drive, First Floor East Syracuse, New York 13057, located in the County of Onondaga and State of New York.
18. Upon information and belief, at all times hereinafter mentioned, Defendant, EVANGELICAL LUTHERAN CHURCH IN AMERICA, was and still is a foreign not-for-profit corporation authorized to do business within the State of New York, with a registered agent for service of process of CT CORPORATION SYSTEM, Address 208 SO LASALLE ST, SUITE 814, CHICAGO , IL 60604

19. Upon information and belief, at all times hereinafter mentioned, Defendant, EVANGELICAL LUTHERAN CHURCH IN AMERICA, maintains its offices at 8765 W Higgins Road, Chicago, IL 60631
20. Upon information and belief, at all times hereinafter mentioned, Defendant, EVANGELICAL LUTHERAN CHURCH IN AMERICA, was and still is doing and transacting business within the State of New York.
21. Upon information and belief, at all relevant times, Defendant, EVANGELICAL LUTHERAN CHURCH IN AMERICA provided financial assistance to its members at the congregational and synod level, including churches and synods based in New York such as UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA and ST. NICODEMUS LUTHERAN CHURCH.
22. Upon information and belief, at all relevant times, Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA was involved in developing programs and systems that purported to protect children from boundary violations and sexual abuse, including children attending churches and synods based in New York.
23. Upon information and belief, at all relevant times, Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA maintained reports of child sexual abuse at the congregational and synod level, including in churches and synods based in New York.
24. Upon information and belief, at all times herein mentioned, THORE was hired and employed by Defendants who conferred upon THORE the religious title "Pastor."
25. Upon information and belief, at all times herein mentioned, THORE was assigned to Defendant, ST. NICODEMUS LUTHERAN CHURCH by Defendants THE EVANGELICAL LUTHERAN CHURCH IN AMERICA and UPSTATE NEW YORK

SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, and was acting as their agent, employee or representative.

26. Upon information and belief, at all times herein mentioned, THORE was under the direction, supervision, and control of Defendants.
27. Between approximately 1999 and 2004, THORE engaged in unpermitted, forcible, and harmful sexual contact with Plaintiff, and otherwise sexually abused him.
28. THORE sexually abused Plaintiff at locations owned by Defendants including THORE's residence.
29. The conduct alleged herein would constitute a sexual offense as defined in article one hundred thirty of the penal law.
30. The sexual crimes by THORE referenced herein were willful, malicious and intentional, and resulted in injury to Plaintiff.
31. As a direct result of conduct by THORE as described herein, Plaintiff has suffered, and continues to suffer great physical and emotional pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, flashbacks, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining full enjoyment of life, and will incur expenses for medical psychological treatment, therapy and counseling.
32. This action falls within one or more of the exceptions set forth in CPLR §1602.
33. As a result of the foregoing, Plaintiff has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

34. As a result of the foregoing, Plaintiff claims punitive damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
35. At all relevant times, ST. NICODEMUS LUTHERAN CHURCH, was managed, controlled, directed and operated by Defendant UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA.
36. At all relevant times, Defendant ST. NICODEMUS LUTHERAN CHURCH, was managed, controlled, directed and operated by Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA.
37. At all relevant times, Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA oversaw, managed, controlled, directed, and operated Defendant ST. NICODEMUS LUTHERAN CHURCH.
38. At all relevant times, Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA oversaw, managed, controlled, directed, and operated Defendant UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA.
39. At all relevant times, Defendants EVANGELICAL LUTHERAN CHURCH IN AMERICA, UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, and ST. NICODEMUS LUTHERAN CHURCH jointly and/or severally exercised management, control and supervision over THORE.

FACTUAL ALLEGATIONS

40. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.
41. Between approximately 1999 and 2004, Plaintiff and his family were parishioners of and/or attended services at Defendant ST. NICODEMUS LUTHERAN CHURCH.

42. At all relevant times, THORE was under the management, supervision, employ, direction and control of Defendants.
43. At all relevant times, THORE was assigned by Defendants to work with and supervise children and students who were parishioners at Defendant ST. NICODEMUS LUTHERAN CHURCH.
44. At all relevant times, THORE's duties and responsibilities at Defendant ST. NICODEMUS LUTHERAN CHURCH included supervising students and children, including Plaintiff.
45. At all relevant times Defendants held THORE out as a qualified religious leader, capable of supervising students and children on and off of church premises.
46. At all relevant times, Defendants authorized, permitted, and assigned THORE and ST. NICODEMUS LUTHERAN CHURCH to supervise students and children including Plaintiff.
47. At all relevant times, Defendants authorized THORE to be alone with children, including Plaintiff, and to have unfettered and unsupervised access to them.
48. Defendants authorized THORE to have physical contact with minors, in a manner consistent with providing discipline, counseling, educational and spiritual guidance, and leadership.
49. Defendants required, children, like Plaintiff, to accept discipline and instruction from clergy, including THORE, and to obey their orders.
50. Plaintiff was encouraged to have reverence, fear, and respect for ST. NICODEMUS LUTHERAN CHURCH and its clergy, including THORE.

51. Between approximately 1999 and 2004, THORE wrongfully subjected Plaintiff to a prolonged course of unpermitted and harmful sexual abuse including on church-owned premises such as THORE's residence, which was owned by Defendants.
52. The sexual abuse of Plaintiff was in violation of Penal Law section 130.
53. On information and belief, prior to Plaintiff's abuse by THORE, THORE engaged in sexual misconduct involving other children whose families belonged to Defendant ST. NICODEMUS LUTHERAN CHURCH.
54. On information and belief, before coming to ST. NICODEMUS LUTHERAN CHURCH, THORE engaged in sexual abuse involving other children at churches belonging to Defendant EVANGELICAL LUTHERAN CHURCH IN AMERICA.
55. Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Church which Defendants endorsed, put pressure on Plaintiff to not report the sexual molestation and abuse.
56. THORE admonished Plaintiff to remain silent, intimidating him to accept that the sexual conduct he forced upon Plaintiff should not be disclosed to anyone, or there would be adverse consequences.
57. At all relevant times, THORE used his position at, within, or for, 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 opportunities to be alone with and abuse Plaintiff.
58. Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up the inappropriate and unlawful sexual misconduct of THORE.

59. Defendants had a duty to Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault vulnerable minors.
60. Defendants knew and/or should have known that THORE used his position at ST. NICODEMUS LUTHERAN CHURCH to harm minors, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.
61. Defendants knew or should have known that THORE was a danger to minors, like Plaintiff, before THORE sexually abused Plaintiff.
62. Defendants knew or should have known that allowing THORE to have unsupervised and unlimited access with children, particularly vulnerable children like Plaintiff, posed an unacceptable risk of child sex abuse.
63. At all relevant times, Defendants were well aware that errant sexual behavior by some clergy was not only widespread but predictable.
64. Prior to the time of Plaintiff's abuse by THORE, Defendants knew or should have known that there was a specific danger of child sex abuse for children in their institutions and programs.
65. The sexual abuse of Plaintiff by THORE was foreseeable.
66. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited parents to send their children to ST. NICODEMUS LUTHERAN CHURCH and to participate in religious and educational programs there; Defendants undertook custody of minor children, including Plaintiff; they promoted their facilities, programs, and staff as being safe for children; they held out their agents, including THORE, as safe to work with and around children; and they encouraged parents to let their children interact with and spend time with their agents and/or authorized agents, including THORE.

67. Defendants owed Plaintiff a heightened, fiduciary and non-delegable duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's family entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised by church personnel in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.
68. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.
69. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.
70. Defendants' aforesaid negligent, grossly negligent and reckless misconduct endangered Plaintiff's safety and caused him to fear for his own safety and wellbeing.
71. Defendants knew or disregarded the substantial probability that THORE would cause severe emotional distress to Plaintiff.
72. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants.
73. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon these Defendants a fiduciary non-delegable duty to act in the best interests of Plaintiff.
74. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.
75. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

76. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants, and was under the supervision and control of these Defendants, such that these Defendants owed him a duty to act in loco parentis and to prevent foreseeable injuries.
77. By reason of the foregoing, Defendants breached their duties to act in loco parentis.
78. As a direct and proximate result of Defendants' foregoing breaches and misconduct, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, physical manifestations of emotional distress, psychological injuries, fear and anxiety; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged.
79. To the extent that any Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

80. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.
81. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that THORE was not fit to work with or around children.

82. Defendants, by and through their agents, servants and/or employees, became aware or should have become aware of THORE'S propensity to commit sexual abuse and of the risk to Plaintiff's safety.
83. Defendants negligently retained THORE with knowledge of THORE'S propensity for the type of behavior which resulted in Plaintiff's injuries.
84. At all relevant times, Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of THORE, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that THORE did not use his assigned position to injure minors by sexual assault, contact or abuse.
85. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of THORE, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him supervise students and children, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.
86. Defendants were negligent and did not use reasonable care in their supervision and direction of THORE, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned them, even though they knew or should have known that THORE posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate THORE's dangerous activities and remove him from their premises; failed to have policies and practices in place that would have prevented this abuse; and Defendants were otherwise negligent.

87. THORE would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of THORE.
88. At all relevant times, THORE acted in the course and scope of his employment with Defendants.
89. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.
90. As a direct and proximate result of the aforesaid misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.
91. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

92. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.
93. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families, and the general public that employees and agents working in ST. NICODEMUS LUTHERAN CHURCH, including THORE, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.
94. Defendants knew or should have known this representation was false and that employing THORE and giving him unfettered access to students and children, including Plaintiff, posed an unacceptable risk of harm to children.

95. Defendants carelessly, negligently, with gross negligence, and recklessly failed to have in place an appropriate policy and/or practice for making hiring and assignment decisions, so as to protect vulnerable students in their care from sexual abuse.
96. Defendants carelessly, negligently, with gross negligence, and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee THORE's interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse.
97. The careless, negligent, grossly negligent, and reckless misconduct by Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children.
98. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury and damages as described above.
99. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

THIRD CAUSE OF ACTION

PREMISES LIABILITY

100. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.
101. At all relevant times, Defendants owned, operated, and/or controlled the premises of Defendant ST. NICODEMUS and THORE's residence on Liberia Road where sexual abuse of Plaintiff occurred.

102. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

103. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

104. Defendants willfully, recklessly, and negligently failed to provide reasonably safe premises that were free from the presence of sexual predators and/or the assault by the occupants of the premises, including THORE.

105. Defendants thereby breached their duty of care to Plaintiff.

106. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury and damages as described above.

107. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

FOURTH CAUSE OF ACTION

BREACH OF STATUTORY DUTIES TO REPORT

108. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

109. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children and students in their care.

110. Defendants breached their statutory duty by knowingly and willfully failing to report reasonable suspicion of sexual abuse by THORE.

111. As a direct and proximate result of Defendants' foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

112. By the reason of the foregoing, Defendants are liable to Plaintiff for damages general, special, and punitive, in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial in amounts that exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and costs;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: May 29, 2020

Yours, etc.

PHILLIPS & PAOLICELLI, LLP

Victoria Phillips AB

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