

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

RICHARD ROWE,

Plaintiff,

v.

IMMACULATE HEART OF MARY ROMAN CATHOLIC CHURCH
SOCIETY OF BUFFALO, NEW YORK; and ST. ALOYSIUS
GONZAGA ROMAN CATHOLIC CHURCH SOCIETY OF
CHEEKTOWAGA, NEW YORK, INCORPORATED,

Defendants.

Index No.

SUMMONS

Date Index No. Purchased:
October 1, 2020

To the above named Defendant(s)

IMMACULATE HEART OF MARY ROMAN CATHOLIC CHURCH SOCIETY OF BUFFALO,
NEW YORK; and ST. ALOYSIUS GONZAGA ROMAN CATHOLIC CHURCH SOCIETY OF
CHEEKTOWAGA, NEW YORK, INCORPORATED, 157 Cleveland Drive, Cheektowaga,
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
October 1, 2020

SIMMONS HANLY CONROY LLC



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IMMACULATE HEART OF MARY ROMAN CATHOLIC
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SOCIETY OF CHEEKTOWAGA, NEW YORK,
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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Richard Rowe, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against Immaculate Heart of Mary Roman Catholic Church Society of Buffalo, New York; and St. Aloysius Gonzaga Roman Catholic Church Society of Cheektowaga, New York, Incorporated, 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 Richard Rowe ("Plaintiff") is an individual residing in Erie

County, New York.

5. Defendant Immaculate Heart of Mary Roman Catholic Church Society of Buffalo, New York (“Immaculate Heart of Mary”) was a Roman Catholic parish within and under the authority of the Bishop of Buffalo and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office formerly at 381 Edison Street, Buffalo, Erie County, New York, and now at 157 Cleveland Drive, Cheektowaga, Erie County, New York. At relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of Immaculate Heart of Mary, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of Immaculate Heart of Mary.

6. Defendant St. Aloysius Gonzaga Roman Catholic Church Society of Cheektowaga, New York, Incorporated (“St. Aloysius Gonzaga”) is a Roman Catholic parish within and under the authority of the Bishop of Buffalo and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 157 Cleveland Drive, Cheektowaga, Erie County, New York. As a result of a corporate merger, Defendant St. Aloysius Gonzaga is the legal successor to Defendant Immaculate Heart of Mary.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and his family were parishioners of and attended Immaculate Heart of Mary when Plaintiff was a minor child. Plaintiff also attended the parochial elementary school affiliated with Immaculate Heart of Mary when Plaintiff was a minor child. Plaintiff served as an altar boy and lector at Immaculate Heart of Mary, and sang in the Choir at Immaculate Heart of Mary when Plaintiff was a minor child.

8. Mr. Leonard Weigand (“Mr. Weigand”) was, at all relevant times, assigned by Defendant Immaculate Heart of Mary to be the Organist and Choir Director at Immaculate Heart of Mary, where Plaintiff and Plaintiff’s family were parishioners when Plaintiff was a minor child.

9. Through his positions at, within, or for Defendant Immaculate Heart of Mary, Mr. Weigand was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of Defendant Immaculate Heart of Mary.

10. From approximately 1964 when Plaintiff was approximately ten years of age, to approximately 1965 when Plaintiff was still approximately ten years of age, Plaintiff sang in the Choir at Immaculate Heart of Mary under Mr. Weigand's supervision, and would, at times, be alone with Mr. Weigand at Immaculate Heart of Mary and at other locations in and around Buffalo, New York.

11. Mr. Weigand used such encounters, gained through his position at Immaculate Heart of Mary which granted him access to Plaintiff when Plaintiff was approximately ten years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least fifty occasions in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Mr. Weigand

12. At all times material hereto, Mr. Weigand was under the management, supervision, employ, direction and/or control of Defendant Immaculate Heart of Mary.

13. Through his positions at, within, or for Defendant Immaculate Heart of Mary, Mr. Weigand was put in direct contact with Plaintiff.

14. Mr. Weigand used his position at, within, or for Defendant Immaculate Heart of Mary and the implicit representations made by Defendant Immaculate Heart of Mary about Mr. Weigand's 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.

15. Defendant Immaculate Heart of Mary had the duty to reasonably manage, supervise, control and/or direct individuals who worked and/or volunteered at Immaculate Heart of Mary, and specifically, had a duty not to aid pedophiles such as Mr. Weigand by assigning, maintaining, and/or appointing them to positions with access to

minors.

16. Defendant Immaculate Heart of Mary knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Mr. Weigand, who sexually abused Plaintiff.

17. Defendant Immaculate Heart of Mary had a duty to the Plaintiff to properly supervise Immaculate Heart of Mary employees and/or volunteers to ensure that they did not use their positions with Immaculate Heart of Mary as a tool for grooming and assaulting vulnerable children. Defendant Immaculate Heart of Mary knew or should have known that Mr. Weigand used his positions with Immaculate Heart of Mary to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

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

19. As a direct result of the Defendant Immaculate Heart of Mary's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Mr. Weigand'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

20. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 19 as if fully set forth herein.

21. Defendant Immaculate Heart of Mary owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Mr. Weigand in his role as choir director, organist, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Mr. Weigand 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.

22. Defendant Immaculate Heart of Mary at all relevant times represented that its facilities were safe places for minors to attend or visit, and that its employees and/or volunteers were individuals to whom it was safe to entrust the care of minor children. Defendant Immaculate Heart of Mary entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

23. Mr. Weigand sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor.

24. Defendant Immaculate Heart of Mary negligently hired, retained, directed, and supervised Mr. Weigand, though it knew or should have known that Mr. Weigand posed a threat of sexual abuse to minors.

25. Defendant Immaculate Heart of Mary knew or should have known of Mr. Weigand's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

26. Defendant Immaculate Heart of Mary was negligent in failing to properly supervise Mr. Weigand.

27. The sexual abuse of children by adults, including church employees and/or volunteers, is a foreseeable result of negligence.

28. At all times material hereto, Defendant Immaculate Heart of Mary's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

30. Liabilities of Defendant Immaculate Heart of Mary were transferred to, or assumed by, Defendant St. Aloysius Gonzaga. As a result, Defendant St. Aloysius Gonzaga is liable to the Plaintiff for the damages caused by Defendant Immaculate Heart of Mary stated in this cause of action.

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 19 as if fully set forth herein.

33. Defendant Immaculate Heart of Mary knew, or was negligent in not knowing, that Mr. Weigand posed a threat of sexual abuse to children.

34. The acts of Mr. Weigand described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, assignment, and/or agency with Defendant Immaculate Heart of Mary.

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

36. Defendant Immaculate Heart of Mary's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

37. Defendant Immaculate Heart of Mary:

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. Weigand;
 - 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. Weigand was under the supervision, employ, direction and/or control of Defendant Immaculate Heart of Mary.

39. At all times material hereto, Defendant Immaculate Heart of Mary's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

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. Liabilities of Defendant Immaculate Heart of Mary were transferred to, or assumed by, Defendant St. Aloysius Gonzaga. As a result, Defendant St. Aloysius Gonzaga is liable to the Plaintiff for the damages caused by Defendant Immaculate Heart of Mary stated in this cause of action.

42. 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 Fiduciary Duty

43. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

44. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendant Immaculate Heart of Mary. 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 Defendant Immaculate Heart of Mary. This entrustment of the Plaintiff to the care and supervision of the Defendant Immaculate Heart of Mary, while the Plaintiff was a minor child, required Defendant Immaculate Heart of Mary 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.

45. Pursuant to their fiduciary relationship, Defendant Immaculate Heart of Mary was entrusted with the well-being, care, and safety of Plaintiff.

46. Pursuant to their fiduciary relationship, Defendant Immaculate Heart of Mary assumed a duty to act in the best interests of Plaintiff.

47. Defendant Immaculate Heart of Mary breached its fiduciary duty to Plaintiff.

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

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

50. Liabilities of Defendant Immaculate Heart of Mary were transferred to, or assumed by, Defendant St. Aloysius Gonzaga. As a result, Defendant St. Aloysius Gonzaga is liable to the Plaintiff for the damages caused by Defendant Immaculate Heart of Mary stated in this cause of action.

51. 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: October 1, 2020
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr. _____

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