

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE
GARRETT PYC



Plaintiff,

v.

SUMMONS

CATHOLIC DIOCESE OF BUFFALO
795 Main Street
Buffalo, NY 14203

Index No.:

ST. JOHN GUALBERT CHURCH
83 Gaulbert Avenue
Buffalo, NY 14211

KOLBE CATHOLIC SCHOOL
120 Alexander Avenue
Buffalo, NY 14211

Defendants.

To the above named defendants:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys a verified answer to the verified complaint in this action within twenty (20) days after the service of this 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.

Dated: August 14, 2019

Frank M. Bogulski, Esq.
Attorney for Plaintiff
Garrett Pyc
286 Delaware Avenue, Suite B
Buffalo, NY 14202
(716) 649-0090

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE
GARRETT PYC



Plaintiff,

v.

COMPLAINT

CATHOLIC DIOCESE OF BUFFALO
795 Main Street
Buffalo, NY 14203

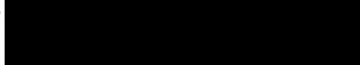
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ST. JOHN GUALBERT CHURCH
83 Gaulbert Avenue
Buffalo, NY 14211

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120 Alexander Avenue
Buffalo, NY 14211

Defendants.

Plaintiff, GARRETT PYC, by and through his attorney, Frank M. Bogulski, Esq. brings this Complaint against the Defendant and alleges that at all times hereinafter mentioned:

1. Plaintiff Garrett Pyc is a resident of  County of Erie, State of New York.
2. Defendant Catholic Diocese of Buffalo, NY is a Roman Catholic diocese with headquarters in the City of Buffalo, County of Erie, State of New York. At all relevant times herein, the Diocese of Buffalo operated schools for minors, including Defendant Kolbe Catholic School in 1999.
3. Defendant St. John Gualbert Church is a Catholic church located and doing business in the City of Buffalo, County of Erie, State of New York.
4. In or around 1999, when Plaintiff was eight (8) years old, he attended St. John Gualbert Church, a church under the auspices of Defendant Catholic Diocese of Buffalo, NY.
5. During the time of the allegations more fully described herein, Father David Bialkowski, was employed as a priest at Defendant St. John Gualbert Church.
6. Through his position for the Defendants, Father David Bialkowski was put in direct contact with the Plaintiff. Father Bialkowski used the power bestowed upon him by the Defendants to sexually abuse and harass the Plaintiff.

7. Plaintiff was sent to counseling with Father Bialkowski by the Defendants, placing the Plaintiff in one-on-one contact with a pedophile.
8. From 1999 to 2000, Father Bialkowski sexually abused the Plaintiff for approximately eight (8) months, a couple times a week.
9. Father Bialkowski forcible touched the Plaintiff without his consent and exposed himself to the Plaintiff.
10. At all times herein, Father Bialkowski was under the direct supervision and control of the Defendants.
11. All of the Defendants knew or should have known the inappropriate and unlawful sexual activities of Father Bialkowski against the Plaintiff.
12. Defendants knowingly condoned and/or covered up Father Bialkowski's inappropriate and unlawful sexual acts against the Plaintiff.
13. Defendants had the responsibility to supervise and/or direct the priests serving under their authority, and specifically, had a duty not to aid Father Bialkowski in his unlawful sexual acts by consistently placing a minor, such as the Plaintiff at the time of the abuse, under his direct and sole control.
14. Defendants violated New York State Social services Law §413 and §420, which requires school officials and teachers to report suspected cases of child abuse and impose a liability for failure to report.
15. Plaintiff suffered both physical and psychological injuries and damages as a result of Father Bialkowski's actions, as well as other damages related to the incident herein.
16. As a direct result of the Defendant's conduct described herein, Plaintiff suffered and continues to suffer both to his body and mind, severe and permanent emotional distress that has manifested itself in many negative ways throughout his life.
17. Plaintiff was prevented, continues to be prevented, and will be prevented from performing his normal daily activities and obtaining the full enjoyment of life as a result of the abuse he has suffered.
18. As a result of the damages described herein, Plaintiff has incurred and continues to incur medical expenses related to counseling, therapy, and treatment, along with loss earnings.

**AS FOR THE FIRST CAUSE OF ACTION:
NEGLIGENCE**

19. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "18" above as if more set forth herein.
20. The aforesaid incidents and injuries as a result of and were proximately caused by the unlawful conduct of Father Bialkowski.
21. Defendants owed a duty to Plaintiff to maintain a reasonably safe environment while he was entrusted into their care.
22. Defendants breached these duties, and as a result of the breach of care of the Defendants and the Defendants' other negligence, Plaintiff sustained the injuries, losses, and damages more fully described above without any negligence on the Plaintiff contributing thereto.
23. Accordingly, Plaintiff demands judgment against the Defendants on its first cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SECOND CAUSE OF ACTION:
RESPONDEAT SUPERIOR**

24. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "23" above as if more set forth herein.
25. Defendants' with the scope of employment/service sexually assaulted the Plaintiff.
26. Plaintiff sustained injuries, losses, and damages more fully described above as a direct result of the conduct of Defendants' employment of Father Bialkowski.
27. Father Bialkowski used the power and authority conferred upon him by the Defendants while doing the acts that caused the injuries alleged herein.
28. It was foreseeable that Father Bialkowski may exercise the power and authority the Defendants conferred upon him by engaging in illegal, careless, reckless, and/or other injury-causing conduct.
29. Therefore, the conduct of Father Bialkowski is incident to his employment with the Defendants so as to be attributable to the Defendants.
30. As a direct result of the Defendants' malfeasance and nonfeasance, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, and has incurred and will continue to incur expenses for medical and psychological treatment.

31. Accordingly, Plaintiff demands judgment against the Defendants on its second cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE THIRD CAUSE OF ACTION:
NEGLIGENT HIRING, RETENTION AND SUPERVISION**

32. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "31" above as if more set forth herein.
33. Father Bialkowski, whose conduct caused Plaintiff's injuries, was responsible for ensuring the mental, physical, emotional, and spiritual safety of the Plaintiff.
34. Father Bialkowski was unfit for employment based on the nature of the job and the likelihood that an unfit employee would cause harm to others.
35. Defendants' hiring of Father Bialkowski caused the Plaintiff's injuries.
36. By accepting Plaintiff as a parishioner and student and holding out the Defendants' establishment to be a reasonably safe environment for the growth and development of children, Defendants entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff.
37. At the time of the subject incidents, Defendants had actual or constructive knowledge of Father Bialkowski's unfitness responsible for Plaintiff's injuries.
38. Defendants' knowledge made the harm and injuries to Plaintiff foreseeable.
39. Accordingly, Plaintiff demands judgment against the Defendants on its third cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FOURTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY**

40. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "39" above as if more set forth herein.
41. Through his positions in service to the Defendants, Father Bialkowski was put in direct contact with Plaintiff, then a minor student. Specifically, Father Bialkowski was assigned to the instruction, spiritual guidance and counseling of the Plaintiff under the Defendants. It was under these conditions that the Plaintiff came under the direct control and authority of Father Bialkowski, who used his position of authority and trust over the Plaintiff to sexually abuse and harass him.
42. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all Defendants.
43. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff. They also assumed a duty to act in the best interests of the Plaintiff.
44. Defendants breached their fiduciary duty as their actions were reckless and taken in a manner that disregarded the rights and safety of the Plaintiff.
45. Accordingly, Plaintiff demands judgment against the Defendants on its fourth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FIFTH CAUSE OF ACTION:
BREACH OF NON-DELEGABLE DUTY**

46. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "45" above as if more set forth herein.
47. Plaintiff was a minor when placed in the care of the Defendants. Defendants were to provide a safe environment for education, spiritual instruction, guidance, and counseling.
48. This was a non-delegable duty of trust between the Plaintiff and Defendants.
49. Defendants were in the best position to prevent Plaintiff's abuse. Defendants were in the best position to learn of Father Bialkowski's repeated abuse of Plaintiff and stop it.
50. Because Plaintiff was sexually abused as a parishioner/student, Defendants breached their non-delegable duty to Plaintiff.

51. At all times material hereto Father Bialkowski was under the direct supervision, employment and/or control of the Defendants.
52. Accordingly, Plaintiff demands judgment against the Defendants on its fifth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SIXTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

53. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "52" above as if more set forth herein.
54. As described above, Defendant's actions were negligent and grossly negligent.
55. Defendant's actions endangered Plaintiff's safety and caused him to fear for his own safety.
56. As a direct and proximate result of Defendant's actions, Plaintiff suffered the severe injuries and damages described herein, including but not limited to mental and emotional distress.
57. Accordingly, Plaintiff demands judgment against the Defendants on its sixth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SEVENTH CAUSE OF ACTION:
BREACH OF DUTY *in Loco Parentis***

58. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "57" above as if more set forth herein.
59. Plaintiff was a minor when his parents entrusted to the control and supervision of the Defendants for the Plaintiff's education, training, spiritual guidance and counseling. Defendants owed a duty to students entrusted to them, like the Plaintiff, to adequately supervise and care for them to prevent injuries to their students.
60. Defendants breached this duty as they were reckless and negligent by disregarding the rights and safety of the Plaintiff.
61. As a direct result of the Defendants' conduct, Plaintiff suffered injuries and damages described herein.

62. Accordingly, Plaintiff demands judgment against the Defendants on its seventh cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE EIGHTH CAUSE OF ACTION:
BREACH OF STATUTORY DUTY TO REPORT ABUSE UNDER SOCIAL SERVICE
LAW §§413, 420**

63. Plaintiff incorporates herein by reference hereto the allegations of paragraphs “1” through “62” above as if more set forth herein.

64. Pursuant to New York State Social Service Law §§413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.

65. Defendants breached that duty by knowingly and willfully failing to report their reasonable suspicions of Father Bialkowski’s abuse of children in their care.

66. As a direct and indirect result of this conduct, Plaintiff was suffered injuries and damages described herein.

67. Accordingly, Plaintiff demands judgment against the Defendants on its eighth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

WHEREFORE, Plaintiff demands judgment in against the Defendants 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.

Plaintiff further demands such other, further and different relief as to the Court may seem just, proper, together with the costs and disbursements of this action.

Dated: Buffalo, NY
August 14, 2019



Frank M. Bogulski, Esq.
Attorney for Plaintiff
Garrett Pyc
286 Delaware Avenue, Suite B
Buffalo, NY 14202
(716) 649-0090