

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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GARY GREENBERG

Plaintiff,

Index No.

Plaintiff designates
Albany County as the
place of trial.

The basis of venue is
*Defendant's place
of business.*

COHOES MEMORIAL HOSPITAL

Summons

Defendants.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Verified Answer on the undersigned attorneys, **HACH ROSE SCHIRRIPA & CHEVERIE, LLP**, representing Plaintiff, within twenty (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.

Defendants' addresses: 421 West Columbia Street, Cohoes New York 12047

Dated: New York, New York
August 10, 2021

Respectfully Submitted,

HACH ROSE SCHIRRIPA & CHEVERIE, LLP

Hillary Nappi
MICHAEL ROSE, ESQ.
HILLARY M. NAPPI, ESQ.
112 Madison Avenue, 10th Floor
New York, New York 10016
(212) 213-8311
Attorneys for Plaintiff Gary Greenberg

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

GARY GREENBERG
Plaintiff,

Index No.

- against -

**VERIFIED
COMPLAINT**

COHOES MEMORIAL HOSPITAL

Defendants.

-----X

Plaintiff Gary Greenberg, by his attorneys Hach Rose Schirripa & Cheverie LLP, complaining of the Defendant and respectfully alleges, upon information and belief and states as follows:

NATURE OF THE ACTION

1. This is a revival action brought pursuant to C.P.L.R § 214-g, the New York Child Victims Act (the “CVA”). The CVA opened a historic one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, each of Plaintiff’s claims were time barred.

2. When Gary Greenberg (“Plaintiff”) was a minor, he was sexually abused by Louis Van Wie, a prolific, convicted pedophile who was employed by Cohoes Memorial Hospital as an orderly on the Defendant’s Premises.

3. As a result of the passage of the CVA, Plaintiff can now pursue restorative justice. Plaintiff brings suit to vindicate his rights.

PARTIES

4. Plaintiff is an individual who resides in Greene County.

5. That at all times hereinafter mentioned Defendant Cohoes Memorial Hospital (“Cohoes”) was a private hospital corporation duly licensed and authorized to provide hospital services to members of the public.

6. Cohoes was which was recognized for many years as one of the finest of its size in the area providing care and attending to the medical needs of those in and around Albany County.

7. Cohoes Memorial was operating a facility located at West Columbia Street in Cohoes, New York beginning in the early 1900s.

8. On January 2, 1986, after 88 years of being in business, Cohoes Memorial stopped accepting patients and closed its emergency room.

9. Upon information and belief, in 1986 Cohoes Memorial's Board of Directors filed for reorganization under Chapter 11 of the Federal Bankruptcy Act to protect the hospital, which was \$1.5 million in debt. Indeed, Chapter 11 bankruptcies are utilized when a business wants to reorganize, and typically proposes a plan of reorganization to keep its business alive and pay creditors over time.

10. Upon information and belief, the Cohoes Bankruptcy plan created eight classes of creditors.

11. Upon information and belief, the Cohoes Bankruptcy plan allowed for specific types of creditors – including Plaintiff and those similarly situated – to bring its claims against the Hospital despite its bankruptcy.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over the claims asserted herein pursuant to C.P.L.R. §§ 301 and 302, in that one or more of the Defendants transact business within the State of New York.

13. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

14. Venue for this action is proper in the County of Albany pursuant to C.P.L.R. § 503 in that one or more of the Defendants transact business within Albany County and a substantial part of the events and omissions giving rise to the claim occurred in Albany County.

FACTS COMMON TO ALL CAUSES OF ACTION

15. At all times relevant, and to the present day, Defendant Cohoes owned the Premises.

16. At all times relevant, and to the present day, Defendant Cohoes, its agents, servants, and/or employees operated the Premises.

17. At all times relevant, and to the present day, Defendant Cohoes, its agents, servants, and/or employees managed the Premises.

18. At all times relevant, and to the present day, Defendant Cohoes, its agents, servants, and/or employees maintained the Premises.

19. At all times relevant, and to the present day, Defendant Cohoes, its agents, servants, and/or employees controlled the Premises.

20. At all times relevant, Defendant Cohoes, its agents, servants, and/or employees supervised the Premises.

21. Louis Van Wie ("Van Wie" or "Plaintiff's abuser"), now well into his seventies, was an employee of Cohoes Memorial Hospital in the late 1960s.

22. Van Wie was employed at Cohoes Memorial as an orderly.

23. In 1997, Van Wie was arrested and subsequently pleaded guilty to sexually abusing two young girls. At the time of his arrest, Van Wie confessed to sexually abusing more than 300 children over four decades.

24. Van Wie is still imprisoned as a result of his heinous crimes against children.

25. At all times relevant, Van Wie, was employed and/or affiliated with Defendant Cohoes.

26. At all times relevant Van Wie, was authorized to treat patients, including Plaintiff, on the Premises.

27. At all times herein mentioned, Van Wie was an agent, servant and/or employee of Defendant Cohoes.

Plaintiff Meets Van Wie Who Sexually Abuses Him

28. In 1967, when Plaintiff was seven years old, Plaintiff visited Cohoes Memorial.

29. At the time of his visits to Cohoes Memorial, Plaintiff's father was an admitted patient.

30. Recovering from surgery, Plaintiff's father was at Cohoes Memorial for several days.

31. Each and every time Plaintiff visited his father in 1967, Plaintiff was by his mother.

32. Van Wie, a predator, saw Plaintiff and immediately targeted him.

33. Van Wie befriended Plaintiff's parents in an attempt to earn their trust.

34. On one of Plaintiff's visits to see his father at Cohoes Memorial, Van Wie asked Plaintiff if he wanted to see the X-ray room.

35. Van Wie asked Plaintiffs parents for permission to give him a tour of the X-Ray room.

36. Plaintiff's parents allowed Plaintiff to accompany Van Wie for a tour of the X-Ray room.

37. Instead, Van Wie took Plaintiff another part of the hospital.

38. Plaintiff was confused and terrified and Van Wie forcibly touched and grabbed at Plaintiff's genitals.

39. Plaintiff attempted to break free of Van Wie. Van Wie pressed on and attempted to pull Plaintiff's pants off.

40. Plaintiff escaped Van Wie's grip and ran to a nearby elevator shaft, where Van Wie grabbed Plaintiff and dangled him in the shaft threatening to drop Plaintiff if he did not acquiescent in allowing Van Wie to touch Plaintiff's penis.

41. Plaintiff broke free of Van Wie and ran to the roof. Van Wie followed in pursuit of Plaintiff and eventually caught up with Plaintiff.

42. Again, Van Wie attempted to touch Plaintiff's penis. Again, Plaintiff resisted and fought Van Wie off.

43. Van Wie dangled Plaintiff from the rooftop and threatened to drop Plaintiff off if he did not allow Van Wie to touch him. Plaintiff fought and struggled and eventually Van Wie gave up.

44. Van Wie threw some loose change at Plaintiff and told him to remain quiet about what had happened and not tell his parents or Van Wie would kill them.

45. Upon information and belief, Van Wie sexually abused other patients, children on the Premises, and children in the community.

46. Upon information and belief, that at all times herein mentioned, Van Wie was a known sexual abuser of children.

47. Upon information and belief, Defendant Cohoes, its agents, servants and employees knew or should have known of Van Wie's propensity to sexually abuse children.

48. As a direct result of the Defendants' conduct described herein, Plaintiff has 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 Van Wie's sexual abuse and Defendant Cohoes's negligence, Plaintiff is unable at this time to full describe all of the details of that abuse and the extent of the harm suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION NEGLIGENCE

49. Plaintiff repeats and re-alleges each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

50. Defendant Cohoes owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

51. Defendant Cohoes owed Plaintiff duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children being treated and visiting in its medical facilities, to properly train and supervise its agents and employees. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such

a special relationship, Defendant Cohoes had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

52. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant Cohoes also had a special relationship with Van Wie and the harms Van Wie could cause to children were foreseeable. Because Defendant Cohoes had the complete ability to control the access of Van Wie to children, like Plaintiff, to prevent the foreseeable harms associated with childhood sexual abuse, Defendant Cohoes owed Plaintiff the duty to control the conduct of Van Wie and take reasonable precautions to stop Van Wie from sexually abusing Plaintiff.

53. By accepting custody of the minor Plaintiff, Defendant Cohoes established an in loco parentis relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendant Cohoes, by holding themselves out as being able to provide a safe environment for visitors, especially children. Defendant Cohoes, through its agents, servants, and/or employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

54. By establishing and/or operating the Premises, holding its medical facilities out to be safe environment for Plaintiff, and establishing a fiduciary relationship with Plaintiff, Defendant Cohoes entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children at its facility. Defendant Cohoes owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant Cohoes had the duty to exercise the same degree of care over minors under its control as a reasonably prudent person would have exercised under similar circumstances.

55. By establishing and operating its medical facilities and by allowing children to be a visitor at its medical facilities, Defendant Cohoes owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

56. Defendant Cohoes owed Plaintiff a duty to protect Plaintiff from harm because Defendant Cohoes invited Plaintiff onto its property and Van Wie posed a dangerous condition on the Defendant Cohoes's property and under the Defendant's care.

57. Defendant Cohoes breached its duties to Plaintiff. Defendant Cohoes failed to use ordinary care in determining whether its medical facilities were safe and/or determining whether they had sufficient information to represent its medical facilities as safe, Defendants Cohoes breach of its duties, include but are not limited to: failure to protect Plaintiff from a known danger, failure to properly implement policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children from the risks of child sex abuse, failure to investigate the risks of child molestation, failure to properly train the employees at medical facilities within Defendant Cohoes's geographical confines, failure to train the minors within Defendant Cohoes's geographical confines about the dangers of sexual abuse by adults, failure to have any outside agency test its safety procedures, failure to protect the children in its medical facilities from child 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 medical facilities, doctors, and people as safe, and/or failure to train its employees properly to identify signs of child molestation by fellow employees.

58. Defendant Cohoes also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Van Wie posed and the risks of child sexual abuse in medical

facilities. Defendant Cohoes also failed to warn them about any of the knowledge that Defendant had about child sexual abuse.

59. Defendant Cohoes breached its duties to Plaintiff by failing to use reasonable care. Defendant Cohoes's failures include, but are not limited to, failing to properly supervise Van Wie, failing to properly supervise Plaintiff, and failing to protect Plaintiff from a known danger.

60. Defendant Cohoes additionally violated a legal duty by failing to report known and/or suspected abuse of children by Van Wie and/or its other agents to the police and law enforcement.

61. Defendant Cohoes knew or should have known that Van Wie was a danger to children before Van Wie sexually assaulted Plaintiff.

62. Prior to the sexual abuse of Plaintiff, Defendant Cohoes learned or should have learned that Van Wie was not fit to work with children. Defendant Cohoes, by and through its agents, servants and/or employees, became aware or should have become aware of Van Wie's propensity to commit sexual abuse and the risk to Plaintiff's safety. At the very least, Defendant Cohoes knew or should have known that it did not have sufficient information about whether or not its agents and/or employees were safe.

63. Defendant Cohoes knew or should have known that there was a risk of child sex abuse for children receiving its medical services and treatment in its medical facilities. At the very least, Defendant Cohoes knew or should have known that it did not have sufficient information about whether or not there was a risk of child sex abuse for children.

64. Defendant Cohoes knew or should have known that Defendants and similarly medical facilities had numerous agents who had sexually molested children. Defendant Cohoes knew or should have known that child molesters have a high rate of recidivism. Defendant Cohoes

knew or should have known that there was a specific danger of child sex abuse for children participating in its medical facilities.

65. However, despite this knowledge, Defendant Cohoes negligently deemed Van Wie was fit to work with children; and/or that any previous suitability problems Van Wie had were fixed or cured; and/or that Van Wie would not sexually molest children; and/or that Van Wie would not injure children.

66. Prior to Plaintiff's abuse, children had been abused by agents and employees of medical facilities for decades, creating a known and expected risk of child sexual abuse by a certain percentage of adult within any medical institution. Despite this knowledge, Defendant Cohoes failed to take any meaningful precautions to keep children safe from adults whose propensity to sexually abuse children was yet unknown. This failure to institute reasonable policies and procedures to protect children from potential sexual abuse by any adult participant was negligent.

67. Defendant Cohoes's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child being treated in its medical facilities, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Van Wie had access to through the Defendant Cohoes's medical facilities, Plaintiff was a foreseeable victim.

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

69. Per C.P.L.R. § 1603, the foregoing cause of action is exempt from the operation of C.P.L.R. § 1601 by reason of one or more of the exemptions provided under C.P.L.R. § 1602, including, but not limited to, C.P.L.R. §§ 1602(2), 1602(7).

SECOND CAUSE OF ACTION
NEGLIGENT HIRING OF EMPLOYEES

70. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

71. At all times material, Van Wie was employed by the Defendant Cohoes and was under the Defendant Cohoes's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Van Wie engaged in the illegal conduct while acting in the course and scope of his employment with the Defendant Cohoes and/or accomplished the sexual abuse by virtue of his job-created authority.

72. Defendant Cohoes was negligent in the hiring of Van Wie. Defendant Cohoes negligently hired and/or retained Van Wie and/or placed Van Wie in positions to cause foreseeable harm, Plaintiff would not have been subjected to harm had Defendant Cohoes taken reasonable care in its investigation of Van Wie.

73. Defendant Cohoes negligently hired Van Wie and knew or reasonably should have known of Van Wie's propensity for this type of behavior, which resulted in Plaintiff's injuries in this action. Defendant Cohoes failed to investigate Van Wie's past history of inappropriate conduct and, through the exercise of reasonable diligence, should have known of Van Wie's propensity for child sexual abuse. Defendant Cohoes were required to make an appropriate investigation of Van Wie and failed to do so. An appropriate investigation would have revealed the unsuitability of Van Wie for employment, and it was unreasonable for Defendant Cohoes to hire Van Wie in light of the information Defendant Cohoes knew or should have known.

74. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant Cohoes.

75. Per C.P.L.R. § 1603, the foregoing cause of action is exempt from the operation of C.P.L.R. § 1601 by reason of one or more of the exemptions provided under C.P.L.R. § 1602, including, but not limited to, C.P.L.R. §§ 1602(2), 1602(7).

THIRD CAUSE OF ACTION
NEGLIGENT TRAINING AND SUPERVISION

76. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

77. At all times material, Van Wie was employed by Defendant Cohoes and was under Defendant Cohoes's supervision, employ, and control when he committed the wrongful acts alleged herein. Van Wie engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Cohoes and/or accomplished the sexual abuse by virtue of this authority created by his role within the Defendant Cohoes's organizations.

78. Defendant Cohoes had a duty, arising from its employment of Van Wie, to ensure that he did not sexually molest children.

79. Defendant Cohoes was negligent in the training, supervision, and instruction of Van Wie. Defendant Cohoes failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should have been followed when sexual abuse of a child is suspected or observed.

80. Defendant Cohoes was additionally negligent in failing to supervise, monitor, chaperone and/or investigate Van Wie and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Van Wie's sexual abuse of Plaintiff.

81. Upon information and belief, the abuse complained of herein occurred on Defendant Cohoes's property, and/or the abuse complained of herein occurred through the use of the Defendant Cohoes's chattels and/or occurred as a result of the Defendant Cohoes's actions.

82. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant Cohoes in the training and/or supervising of employees.

83. Per C.P.L.R. § 1603, the foregoing cause of action is exempt from the operation of C.P.L.R. § 1601 by reason of one or more of the exemptions provided under C.P.L.R. § 1602, including, but not limited to, C.P.L.R. §§ 1602(2), 1602(7).

FOURTH CAUSE OF ACTION
NEGLIGENT RETENTION OF EMPLOYEES

84. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

85. At all times material, Van Wie was employed by Defendant Cohoes and was under Defendant Cohoes's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

86. Defendant Cohoes became aware or should have become aware of Van Wie's propensity for child sexual abuse and failed to take any further action to remedy the problem and failed to investigate or remove Van Wie from working with children.

87. Defendant Cohoes negligently retained Van Wie and knew or should have known of Van Wie's propensity for the type of behavior, which resulted in the sexual abuse of Plaintiff and resulting injuries. Defendant Cohoes failed to investigate Van Wie's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Van Wie's propensity for child sexual abuse. Defendant Cohoes should have made an appropriate investigation of Van Wie and failed to do so. An appropriate investigation would have revealed

the unsuitability of Van Wie for continued employment, and it was unreasonable for Defendant Cohoes to retain Van Wie in light of the information it knew or should have known.

88. Per C.P.L.R. § 1603, the foregoing cause of action is exempt from the operation of C.P.L.R. § 1601 by reason of one or more of the exemptions provided under C.P.L.R. § 1602, including, but not limited to, C.P.L.R. §§ 1602(2), 1602(7).

89. By reason of the foregoing, Defendants, jointly severally, and/or in the alternative are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

WHEREFORE, Plaintiff, demands judgment against the Defendant on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be provide at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- 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: New York, New York
August 10, 2021

Respectfully Submitted,

HACH ROSE SCHIRRIPA & CHEVERIE, LLP



MICHAEL ROSE, ESQ.

HILLARY M. NAPPI, ESQ.

112 Madison Avenue, 10th Floor

New York, New York 10016

(212) 213-8311

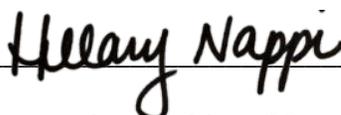
Attorneys for Plaintiff Gary Greenberg

ATTORNEY VERIFICATION

HILLARY NAPPPI, an attorney duly admitted and licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR ¶ 2106, states under the penalty of perjury, as follows:

I am an associate at Hach Rose Schirripa & Cheverie LLP, attorneys for the Plaintiff herein, and as such, fully familiar with all the facts and circumstances heretofore stated herein by reason of a file maintained in our office located at 112 Madison Avenue, 10th floor, New York, New York 10016; I have read the foregoing Complaint, and the same is true to our own knowledge, except as to the matters therein stated to be alleged upon information and belief and, as to those matters, we believe them to be true; and that this verification is being made by us because the Plaintiff does not reside within New York County wherein our office is located.

Dated: August 10, 2021
New York, New York



HILLARY NAPPPI, ESQ.