IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

MARK BELENCIA, DONNA BELENCHIA AND JOHN DOE #1 — **PLAINTIFFS**

VS. — **CIVIL ACTION NO. 251-02-915**

ST. MARY'S CATHOLIC CHURCH/SCHOOL, ET AL — **DEFENDANTS**

MEMORANDUM OPINION

Before the Court are defendants' joint motion for summary judgment under Rule 56, MRCP. The Court has reviewed the motion, plaintiffs' response, arguments of counsel, and is now prepared to render a decision.

I.

INTRODUCTION

Plaintiff Doe asserts that Paul Madden, while a priest at St. Mary's, sexually abused him in 1973 when Doe was a thirteen-year-old boy accompanying Father Madden on a trip to Ireland. Doe reported the abuse to his parents that same year. According to Plaintiff Mark Belenchia another priest, Bernard Haddican, sexually abused him over a three to four year period, beginning in 1968 when Belenchia was 12 or 13 years old. This abuse is alleged to have occurred in the rectory of St. Mary's Catholic Church and on various trips. Belenchia's mother learned of the abuse and reported it to defendant Bernard Law at least before 1977 when Belenchia married.

In 1993 (20 years after he was allegedly abused), Plaintiff Doe contacted representatives of the Defendant Diocese to settle his claims. On January 6, 1995, he executed a written agreement and released the diocese and church officials from liability for his claims. He accepted payment of $50,000 as consideration for that release.

Similarly, in 1999 (more than 20 years after he was allegedly abused), Plaintiff Mark Belenchia and his wife, Plaintiff Donna Belenchia, contacted representatives of the Defendant Diocese to settle their claims. On January 5, 2000, in consideration of $44,264, the Belenchias released all of their claims against the diocese and the church officials.

At the respective ages of 46 and 42, Mark Belenchia and John Doe filed this lawsuit on July 17, 2002, alleging numerous causes of action against the defendants arising from their claims of sexual abuse and alleging that the defendants fraudulently induced them to execute their respective settlement agreements.

II.

PLAINTIFFS' CLAIMS ARE TIME-BARRED

Mississippi's general statute of limitations, Section 15-1-49, MISS. CODE ANN. (1972), as amended, applies to the claims of all plaintiffs herein. Prior to 1989, it provided a six-year limitation for all actions for which no other period of limitation was prescribed. Because these claims accrued prior to 1989, and at a time when both were minors, Plaintiffs Mark Belenchia and John Doe each had six years from the date of his twenty-first birthday to file their lawsuit.[1]

Mark Belenchia was born August 1, 1955. John Doe was apparently born in 1960.[2] Thus, tolling the running of the statute for minority, the statutory "clock" began to run on August 1, 1976 for Belenchia (his twenty-first birthday) and no later than December 31, 1981 for John Doe. Belenchia thus had until August 1, 1982 to file suit, and John Doe had until the date of his

---

[1] See *Lawler v. Government Employees Ins. Co.*, 569 So.2d 1151, 1153 (Miss, 1990)(seventeen- year-old child injured in 1979 automobile accident; held pre-amendment six-year statue of limitations under Miss. Code §15-1-49 was tolled and began to run on her twenty-first birthday).

[2] The Complaint does not state the birth date for John Doe, but does allege that he was abused in 1973 at the age of 13.

27th birthday in 1987 to file. They did not do so, however, until July 1, 2002 – twenty years too late for Belenchia and fifteen years too late for John Doe.

Neither the discovery doctrine nor fraudulent concealment, can toll the running of the statute against the plaintiffs in this case because Mark Belenchia and John Doe were fully aware of the injury or abuse inflicted upon them. They knew who abused them and they knew that it was wrong at the time it happened, long before they reached the age of majority and many years before they filed this lawsuit. Plaintiff Belenchia's mother knew of his abuse at least 25 years ago and Plaintiff Doe's parents knew of the abuse suffered by him at least 29 years ago.

In *Doe v. Archdiocese of Washington*,[3] Doe claimed that he was sexually abused by two priests, beginning when he was eleven years old in 1972 and continuing until 1978. It was not until 1995, however, that he filed suit against the priests and the archdiocese. The Maryland trial court dismissed his claims based on the statute of limitations. Doe argued on appeal that his claims against the archdiocese did not accrue until he confronted it and learned that some of its officials had long known that one of his abusers had a history of pedophilia. Doe argued that, because he had no way of knowing of the archdiocese's wrongdoing because of the clandestine nature of its conduct, the doctrine of fraud and fraudulent concealment should toll running of the statute. Like the plaintiffs herein, Doe claimed that the archdiocese engaged in a conspiracy to cover up the priests' pedophilia by systematically and secretly transferring them without reporting criminal sexual misconduct to law enforcement authorities. The Maryland appellate court rejected the argument and affirmed the trial court's dismissal, holding that the knowledge relevant to begin the statute of limitations running is the victim's knowledge that he/she was abused.

[3] 689 A.2d 634 (Md.App. 1997).

> We reject that contention that these allegations are sufficient to toll the statute. There is not a single specific allegation of conduct on the part of the archdiocese that kept Doe in ignorance of his claims. To the contrary, when the priests molested Doe, he was immediately on notice of potential claims against the priests as well as against the archdiocese as their employer.
>
> The statute of limitations begins to run when the potential plaintiff is on "inquiry notice" of such facts and circumstances that would "prompt a reasonable person to inquire further." Once on notice of one cause of action, a potential plaintiff is charged with the responsibility for investigating, within the limitations period, all potential claims and all potential defendants with regard to the injury.[4]

A United States District Court in Texas rejected similar claims last year in *Doe v. Linam*,[5] where a minor, abused by a priest from 1973-74, waited twenty-eight years to file suit. Doe claimed that he was one of numerous boys abused by the priest, that the diocese did not adequately investigate the priest's fitness to work with children, and that the diocese did not report the priest to the proper authorities as part of an agreement between the defendants to conceal the sexual abuse of minors. Doe alleged the agreement included making false representations to the public. The priest, the diocese and the bishop moved to dismiss based on the statute of limitations. Doe argued that the statute should be tolled because he only recently discovered the defendants' fraudulent concealment of the priest's sexual propensity to abuse children.

In granting the motion for summary judgment and dismissing Doe's suit, the District Court held that the statute was not tolled because Doe knew he had been abused.

In *Parks v. Kownacki*,[6] a priest sexually abused a child in 1971. She did not file suit until 22 years after she reached the age of majority. The Illinois Supreme Court affirmed dismissal of

---

[4] 689 A. 2d at 644. (citations omitted).

[5] 225 F. Supp. 2d 731 (S.D. Tex. 2002).

[6] 737 N.E.2d 287 (Ill. 2000).

her claims holding that because she knew of her injury and its wrongful nature, her claim was barred two years after she reached the age of majority.[7]

In *HRB v. Rigali*,[8] a priest sexually abused HRB from 1963-64, when HRB was twelve to thirteen years of age. HRB did not file suit until 1994. Because he did not timely file after reaching the age of majority, his claims were barred. The Missouri Court of Appeals noted that "where an overt sexual assault occurs, the injury and damage resulting from the act are capable of ascertainment at the time of the abuse."[9]

In *BBB Doe v. Archdiocese of Milwaukee*,[10] priests assaulted seven minors, but none of the minors timely filed suit after reaching the age of majority. The Wisconsin Supreme Court affirmed dismissal of their claims, holding that their claims against the priests and the diocese accrued at the time of abuse and that the minor victims of intentional and nonconsensual sexual acts by priests knew, or in the exercise of reasonable diligence should have discovered, that they were injured at the time of the assaults.[11]

In *Cevenini v. Archbishop of Washington*,[12] a priest repeatedly molested three altar boys from 1975 through1983, but no suit was filed until 1995. The District of Columbia Court of Appeals affirmed the trial court's dismissal because each plaintiff was fully aware that sexual abuse caused them injury before they reached the age of majority and they were aware that the offending priest served the archdiocese. The claims against the archdiocese accrued at the same time as the claims against the priest and plaintiffs were on inquiry notice to pursue their claims

---

[7] *Id* at 295.
[8] 18 S.W.3d 440 (Mo. App. 2000).
[9] *Id* at 443.
[10] 565 N.W.2d 94 (Wis.1997).
[11] *Id* at 96.
[12] 707 A.2d 768 (D.C. App. 1998).

against the archdiocese in a timely manner.[13]

In *Ayon v. Gorley*,[14] summary judgment for the Archdiocese of Denver was granted on all claims arising from abuse by priests of a minor who failed to file his lawsuit within the appropriate statutory time limit after reaching the age of majority.

In *Pritzlaff v. Archdiocese of Milwaukee*,[15] the plaintiff filed her complaint in 1992, alleging that while she was a high school student in the late 1950s, a priest coerced her into a sexual relationship. As a result, she alleged that she later suffered severe emotional distress that contributed to the breakup of her marriage, separation from her children, loss of jobs and other difficulties. She further alleged that the archdiocese knew or should have known of the type of conduct being pursued by the priest and should have taken steps to stop it. She argued that her claim was saved by the discovery rule because she suppressed, and had therefore been unable to perceive, the existence, nature and cause of her psychological injuries. The Wisconsin Supreme Court affirmed dismissal of her claims because she knew at the time both the identity of the priest and that the sexual relationship was without her consent. The court held that the discovery rule could not apply and her claims were barred by the statute of limitations.[16]

The standards for applying the discovery rule or the doctrine of fraudulent concealment to toll a statute of limitations in Mississippi are similar. In *Moore v. Memorial Hospital of Gulfport*,[17] the Mississippi Supreme Court explained that the discovery rule tolls a "statute of limitations until a Plaintiff should have reasonably known of some negligent conduct, even if the

---

[13] *Id* at 775.
[14] 47 F.Supp.2d 1246 (D.C. Colo. 1998)
[15] 533 N.W.2d 780 (Wis. 1995)
[16] *Id.* at 785-88.
[17] 858 So.2d 658 (Miss. 2002)

Plaintiff does not know with absolute certainty that the conduct was legally negligent."[18] The United States District Court for the Southern District of Mississippi has also clarified the discovery rule, holding that "a cause of action accrues when the Plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured."[19] In the context of a Tort Claims Act case, the Mississippi Supreme Court has noted that the discovery rule, by definition, has no application to injuries that are not latent.[20]

The Mississippi Supreme Court also recognizes that for fraudulent concealment of a cause of action to toll the statute of limitations, there must be some "act or conduct of an affirmative nature."[21] Such conduct must be designed to prevent the party from discovering its possible cause of action and, despite the plaintiff's due diligence, did, in fact, prevent discovery.[22] Neither the discovery doctrine nor fraudulent concealment apply in the case *sub judice* because Mark Belenchia and John Doe were at all relevant times aware of the fact that they were injured and of who inflicted that injury.

Plaintiffs argue that the diocese and church officials engaged in a "conspiracy" that plaintiffs only last year discovered and that their claim of conspiracy, consequently, should not be time-barred.

The courts in *Doe v. Archdiocese of Washington, supra,* and *Doe v. Linam,*

---

[18] *Id* at 667, citing *Sarris v. Smith*, 782 So.2d 721, 725 (Miss. 2001).
[19] *A-1 v. Molpus*, 906 F. Supp 375, 379 (S.D. Miss. 1995), citing *Helton v. Clements*, 832 F.2d 332, 334-35 (5th Cir. 1987).

[20] *Robinson v. Singing River Hosp. Sys.*, 732 So.2d 204, 208 (Miss. 1999)
[21] *Robinson v. Cobb*, 763 So.2d 883, 887 (Miss. 2000), citing *Reich v. Jesco, Inc.*, 526 So.2d 550, 552 (Miss. 1988). See also *Allred v. Fairchild*, 785 So.2d 1064 (Miss. 2001).
[22] *Robinson, supra* at 887.

supra, expressly rejected such arguments. Similarly, in *Smith v. O'Connell*[23], the court made it clear that the material inquiry is limited to whether the alleged victim knew of his or her ***own*** abuse:

> The plaintiffs appear to suggest that, although the alleged nondisclosure may not have concealed the existence of their cause of action against the priests, it did conceal the existence of their cause of action against the hierarchy defendants. The premise upon which that suggestion implicitly rests is that a cause of action does not arise until all relevant evidence bearing on a defendant's potential liability is known. The plaintiffs have cited no authority to support that proposition. On the contrary, under Rhode Island law, it is well established that, except in cases where the "discovery" rule applies, a personal injury cause of action accrues at the time of injury. Accrual or the existence of a cause of action is not deferred until a plaintiff learns of all the facts that may be helpful in proving his or her claim. Once it becomes apparent that a cause of action exists, the statute of limitations begins to run even though the plaintiff's investigation is not complete. It becomes the plaintiff's responsibility, through the discovery process or otherwise, to undertake whatever further investigation may be appropriate in order to gather specific bits of evidence supporting the claim.
>
> Here, at the time the alleged abuse occurred, the plaintiffs were well aware that the hierarchy defendants, as the priests' "employers," were potentially liable for that abuse. *See Doe*, 689 A.2d at 645 (a plaintiff who is sexually assaulted by a priest is on inquiry notice of his potential claims against the Archdiocese, as the priest's employer). There is no indication that the hierarchy defendants made any effort to misrepresent the nature of their relationship to Frs. O'Connell and Marcantonio. Consequently, it cannot be said that the hierarchy defendants fraudulently concealed the plaintiffs' causes of action against them.[24]

In *Mark K. v. Roman Catholic Archbishop of Los Angeles*,[25] the plaintiff sought to extend the statute of limitations by claiming that the church was aware that the priest was sexually exploiting children and made knowingly false promises that the matter would be "taken care of and that the priest would be closely supervised." Just as Belenchia and Doe claim here, Mark K. alleged that those false representations were made to avoid investigations that would scandalize

---

[23] 997 F.Supp. 226 (R.I. 1998)
[24] *Id* at 240 (some citations omitted).
[25] 79 Cal. Rptr. 2d 73 (1998).

the church. He also alleged that he was unaware of the church's misrepresentations until shortly before filing the lawsuit and that the intentional concealment barred the church from claiming that his suit was time-barred. Finally, like Belenchia and Doe, he alleged that the church and its officials entered into a conspiracy to conceal the priest's deviant sexual conduct. The Court rejected these arguments for tolling the statute of limitations, stating:

> It is also important to note what plaintiff has not alleged. He has not alleged that he was at any time unaware of Father Llanos's identity or of his connection with the church. Nor has plaintiff alleged that he was unsure of the fact that he had been molested by Father Llanos or that he had failed to appreciate the wrongfulness of Llanos' conduct until some subsequent event triggered his memory and/or made him realize that Llanos had acted inappropriately. Plaintiff's failure to allege lack of knowledge or appreciation of Father Llanos' misconduct deprives him of any basis upon which to disclaim inquiry notice that the church was a potential tort-feasor. Plaintiff knew that Llanos was a priest of the church, thereby obligating plaintiff to determine, as with any employer whose employee has injured a third party, whether the church shouldered some responsibility for the misconduct of its priest. . . .
>
> Plaintiff's claims of delayed accrual and estoppel by concealment are to no avail.[26]

In *Kelly v. Marcantonio*,[27] the First Circuit Court of Appeals explained why the fact that a Diocese transferred priests from parish to parish whenever sexual abuse allegations arose did not toll the statute of limitations:

> All of the plaintiff-appellants' claims are claims of damages for the sexual abuse perpetrated by the priests-defendants. In making these claims, plaintiff-appellants do not allege that the hierarchy defendants' silence misled them into believing that the alleged abuse did not occur, that it had not been committed by the priests, or that it had not resulted in injury to the plaintiff-appellants. In other words, the hierarchy defendants never concealed from any of the plaintiff-appellants the fact of the injury itself. Rather, the essence of the plaintiff-appellants' fraudulent concealment argument is that the hierarchy defendants' silence concealed from them an additional theory of liability for the alleged sexual abuse. This argument misses the mark. For a cause of action to accrue

---

[26] *Id* at 78-79.

[27] 187 F.3d 192 (1st. Cir. 1999)

> the entire theory of the case need not be immediately apparent . . . . (citations omitted). Once injured, a plaintiff is under an affirmative duty to investigate diligently all of his potential claims . . . . (citations omitted). In this case, as soon as plaintiff-appellants became aware of the alleged abuse, they should also have been aware that the hierarchy defendants, the priests' "employers," were potentially liable for such abuse . . . . To postpone the accrual of the causes of action until plaintiff-appellants completed their investigation of all potential liability theories would destroy the effectiveness of the limitation.[28]

Significantly, plaintiffs make no allegation here that any act or omission of the church officials misled them into believing that the abuse did not occur, or that it had not been committed by the priests in question, or that the priests were not affiliated with the Catholic Diocese of Jackson, or that the plaintiffs were not injured by the abuse. In other words, the church officials never concealed from the plaintiffs the injury itself. As the *Kelly* court, and many other courts have recognized, the Plaintiffs' real claim here is for damages arising from alleged sexual abuse that occurred decades ago. Accordingly, these claims are barred by the statute of limitations.

III.

VICARIOUS LIABILITY CLAIMS

Plaintiffs' also assert that certain church hierarchy officials are vicariously liable under the doctrine of respondeat superior. Instructive on this issue is *Tichnor v. Roman Catholic Church of New Orleans*,[29] wherein the Fifth Circuit Court of Appeals, applying Mississippi law, affirmed summary judgment for the parish and archdiocese when a minor victim of sexual abuse sought to hold the parish and archdiocese vicariously liable for sexual assaults committed by a priest. The court explained the fallacy underlying such a claim:

---

[28] *Id* at 200-01.

[29] 32 F.3d 953 (5th Cir. 1994).

> The district court found that smoking marijuana and engaging in sexual acts with minor boys were not within the scope of Cinel's employment as a Catholic priest.
>
> * * * *
>
> [Plaintiff] Tichenor argues that [priest] Cinel's activities were so closely connected in time, place, and causation to his duties as a Catholic priest as to warrant the imposition of vicarious liability on the Archdiocese and St. Rita's. In other words, even if he technically was "off duty" when on vacation in Mississippi, the nature of his calling required that he be a priest 24 hours a day, every day.
>
> We reject the contention that Cinel was acting within the scope of his employment. Although a priest's duties are less susceptible to definition than, say, a store clerk, we can nonetheless outline the basics. It is a priest's duty to represent the word of God, as embodied in the Scriptures. The central aspect of that duty is to aid people in their relationship with God and, also, the Church. Moreover, it is his duty to help others--whose paths may have wandered--to find safety and security in the doctrines of Catholic theology.
>
> It would be hard to imagine a more difficult argument than that Cinel's illicit sexual pursuits were somehow related to his duties as a priest or that they in any way furthered the interests of St. Rita's, his employer. Instead, given Cinel's vow of celibacy and the Catholic Church's unbending stand condemning homosexual relations, Cinel's acts represent the paradigmatic pursuit of "some purpose unrelated to his master's business".[30]

Likewise, in *HRB. v. JLG.*,[31] the Missouri Court of Appeals held that sexual misconduct by a priest was not part of his duties as a priest or teacher nor was it intended to further any religious or educational interest of the Catholic Church, therefore, the church was not liable under the doctrine of respondeat superior for the priest's alleged sexual misconduct.[32] Therefore, even if the direct claims against the priests were not time-barred, plaintiffs' vicarious claims should be dismissed as a matter of law.

---

[30] 32 F.3d at 959-960.

[31] 913 S.W.2d 92 (Mo. App. 1995).

[32] *Id.* See also *Byrd v. Faber*, 565 N.E.2d 584, 588 (Ohio 1991) (affirming dismissal of respondeat superior claim, "[church] did not hire [pastor] to rape, seduce or otherwise physically assault members of his congregation.")

IV.

CLAIMS FOR FRAUDULENT INDUCEMENT RELATED TO EXECUTION OF PLAINTIFFS' SETTLEMENT AGREEMENTS

Plaintiffs further claim that they were misled into entering their respective releases with the church officials. According to their argument, their claims are not time-barred because they only recently learned that, contrary to the assertions made to them by the diocese and church officials at the settlement discussions, certain officials of the church hierarchy knew that Fathers Haddican and Madden had sexually abused other children. As abhorrent as it is, even if such misrepresentations were made while the statute-of-limitations clock was still ticking, they operated to mislead plaintiffs only in knowing the true measure of the damages or compensation that they could or should have received. But as the Fifth Circuit has observed:

> The would-be plaintiff need not have become absolutely certain that he had a cause of action; he need merely be on notice—or should be—that he should carefully investigate the materials that suggest that a cause probably or potentially exists. Neither need the plaintiff know *with precision* each detail of breach, causation, *and damages*, but merely enough to make a plain statement of the case backed by evidence sufficient to survive a summary judgment motion.[33]

The settlement discussions, even if as fraudulent as plaintiffs claim, did nothing to stall the running of the statute of limitations and, as will next be shown, did not spawn any new actionable cause.

To sustain their claim for misrepresentation, fraud, or fraudulent inducement, plaintiffs must show by clear and convincing evidence:

> (a) a material and false representation,
> (b) which is known by the speaker to be false,
> (c) and which is intentionally made to induce the hearer to act in reliance thereon, and
> **(d) the hearer acts to his detriment in reasonable reliance on the false representation, and**

[33] *First Trust Nat'l Ass'n v. First Nat'l Bank of Commerce*, 220 F.3d 331 (5th Cir. 2000) [Emphasis added].

(e) the hearer suffered an injury based on such reliance. [34]

Assuming that Plaintiffs could produce sufficient evidence of the first three elements, Plaintiffs cannot show that they acted ***to their detriment*** or suffered ***an injury*** by executing their respective releases. Belenchia's claims were barred no later than 1982 and Doe's claims were barred no later than 1987. At the time that each of them first approached the diocese seeking a settlement (1993 for Doe, 1999 for the Belenchias), the statute of limitations had already run on their claims. No detriment or harm is suffered if one "releases" claims that are already time-barred.

Moreover, assuming that Plaintiffs' could produce evidence sufficient to support this claim, the appropriate remedy for one who is fraudulently induced to enter a contract is to rescind the contract and restore the parties to their status prior to entering the agreement.[35] Here, restoration of the parties to their status prior to execution of the releases would require the Belenchias and Doe to return the monies that they accepted from the diocese, which would leave them with claims barred by the statute of limitations.

These claims should also be dismissed.

V.

CONCLUSION

For the above reasons, this Court finds beyond a reasonable doubt that, even assuming that all allegations of the plaintiffs are true and viewing all reasonable inferences in that light most favorable to the plaintiffs, there are no genuine issues of ***material*** fact and that all

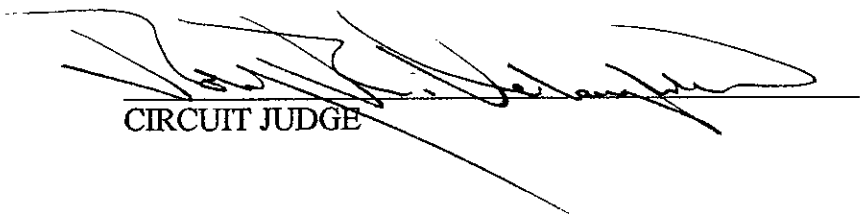
---

[34] *Braidfoot v. William Carey College*, 793 So. 2d 642, 652, (Miss. App. 2000); *McGee v. Swarek*, 733 So. 2d 308 (Miss. App. 1998); *Nichols v. Tri-State Brick & Tile Co.*, 608 So. 2d 324, 330 (Miss. 1992); *Spragins v. Sunburst Bank*, 605 So. 2d 777, 780 (Miss. 1992).

[35] *See, e.g., Cenac v Murry*, 609 So.2d 1257 (Miss. 1992).

defendants are entitled to judgment as a matter of law on all claims asserted by all plaintiffs. The Court thus grants summary judgment in favor of all defendants, dismissing all claims with prejudice. Counsel for defendants are directed to submit an appropriate order consistent with this opinion for entry by the Court.

This the 29th day of September, 2003.



CIRCUIT JUDGE