



NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ROGER N. ROSENGARTEN IA Part 22
Justice

	x	Index Number <u>23050</u> 2003
THOMAS J. DAVIS, et al.		
- against -		Motion Date <u>April 20,</u> 2004
REVEREND JAMES COLLINS, et al.		Motion Cal. Number <u>13</u>
	x	

The following papers numbered 1 to 14 read on this motion by defendants Reverend Hugo Bedoya, Reverend Richard Lewkiewicz, Reverend James Collins, Reverend Edward Maurer, Reverend Anthony Failla, Reverend Herbert McElroy, Reverend Robert Ferro, Reverend Francis Mulhall, Reverend James Frost, Reverend James Russo, Reverend Vincent Gallo, Reverend Patrick Sexton, Reverend James Smith and Reverend George Stack and cross motion by defendants Monsignor Otto Garcia, Bishop Thomas Daily and Catholic Diocese of Brooklyn to dismiss the plaintiffs' amended complaint, pursuant to CPLR 3211(a)(1), (5) and (7).

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1-4
Notice of Cross Motion - Affidavits - Exhibits ...	5-7
Answering Affidavits - Exhibits	8-10
Reply Affidavits	11-14

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

The plaintiff commenced this action, in September 2003, to recover damages, inter alia, resulting from alleged sexual abuse by certain priests within defendant Roman Catholic Diocese of Brooklyn. An amended complaint was served in January 2004.

The abuse alleged in the amended complaint occurred between 1954 and 1985 when the several plaintiffs were minor children. The plaintiffs' amended complaint alleges sexual abuse and battery; intentional infliction of emotional distress; fraud; negligent misrepresentation of the risk of harm to the plaintiffs by the priests; and negligence arising out of the failure to remove defendant priests, the failure to supervise defendant priests, the

failure to investigate child abuse, the failure to warn of abusive priests, the failure to train relating to child abuse, the failure to provide a safe and secure environment within the parish churches.


The movants seek dismissal of the claims against them, inter alia, pursuant to CPLR 3211(a)(5), on the ground that the causes of action alleged are barred by the statute of limitations. In opposition to the motions to dismiss, the plaintiffs contend that the statute of limitations has not expired with respect to their cause of action for fraud. While the plaintiffs concede that the statute of limitations has expired for the remaining claims, they contend that the moving defendants should be estopped from asserting the statute of limitations based upon the equitable doctrine of unclean hands.

A defendant may be equitably estopped from pleading the statute of limitations as a defense where a plaintiff was induced by fraud, misrepresentation or deception to refrain from timely commencing an action against it (Simenski v Saali, 44 NY2d 442, 448-449 [1978]; Phelps v Greco, 177 AD2d 559 [1991]; Ramsay v Bassett Hosp., 113 AD2d 149, 153 [1985]). However, equitable estoppel will not serve to toll a limitations statute where a plaintiff possesses "timely knowledge sufficient to place him or her under a duty to make inquiry and ascertain all the relevant facts prior to the expiration of the applicable Statute of Limitations" (McIvor v DiBenedetto, 121 AD2d 519, 520 [1986]; see Ramsay v Bassett Hosp., 113 AD2d 149, 153 [1985]). Inasmuch as the plaintiffs were the objects of the sexual abuse alleged herein and were aware of what was happening to them when the incidents occurred, they possessed personal knowledge of the facts giving rise to their fraud, negligence and intentional tort claims from the date of occurrence and, thus, possessed "timely knowledge sufficient to place [them] under a duty to make inquiry and ascertain all the relevant facts" regarding their claims prior to the expiration of the applicable Statute of Limitations (see Kamruddin v Desmond, 293 AD2d 714 [2002]). Under the circumstances presented, the movants are not estopped from asserting the statute of limitations as a defense.

Accordingly, the motion and cross motion to dismiss the complaint is granted on statute of limitations grounds.

In light of the foregoing, it is unnecessary to address the defendants' remaining contentions.

Dated: 8/22/04



J.S.C.