

**Order of the Teachers of the Children of God, Inc. v
Diocese of Long Is.**

2002 NY Slip Op 30123(U)

February 27, 2002

Supreme Court, Suffolk County

Docket Number: 95-2881

Judge: Patricia E. Henry

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 15 - SUFFOLK COUNTY

PRESENT:

Hon. PATRICK HENRY
Justice of the Supreme Court

MOTION DATE 5/25/01
ADJ. DATE 11/2/01
Mot. Seq. #003 - Mot D
Mot. Seq. #004 - XMD

-----X	
ORDER OF THE TEACHERS OF THE CHILDREN OF GOD, INC.,	: McMAHON, MARTINE & GALLAGHER
	: Attorneys for Plaintiff
	: 90 Broad Street, 14th Floor
	: New York, New York 10004
	: :
Plaintiff,	: :
	: SKADDEN, ARPS, SLATE, MEAGHER
- against -	: & FLOM LLP
	: Attorneys for Defendants
THE TRUSTEES OF THE ESTATE BELONGING TO THE DIOCESE OF LONG ISLAND, THE EPISCOPAL CHURCH IN BROOKLYN * QUEENS * NASSAU * SUFFOLK - THE DIOCESE OF LONG ISLAND, THE BISHOP OF THE DIOCESE OF LONG ISLAND, Individually, as Trustee and/or Administrator of the "Maycroft Holiday House Fund" and as President of the Trustees of the Estate Belonging to the Diocese of Long Island, THE RIGHT REVEREND ORRIS G. WALKER, JR., Individually, as Trustee and/or Administrator of the "Maycroft Holiday House Fund," as President of the Trustees of the Estate Belonging to the Diocese of Long Island, and as the Bishop of the Diocese of Long Island, and THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,	: Four Times Square
	: New York, New York 10036-6522
	: ELIOT SPITZER, ESQ.
	: Attorney General of the State of New York
	: By: Robert R. Molic, Esq.
	: 120 Broadway
	: New York, New York 10271
	: :
	: :
Defendants.	: :
	: :
-----X	

Upon the following papers numbered 1 to 53 read on this motion and cross motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-26; Notice of Cross Motion and supporting papers 27-53; Answering Affidavits and supporting papers _____; Replying Affidavits and supporting papers _____; Other: defendants' memorandum of law; plaintiff's memorandum of law; defendants' reply memorandum of law; plaintiff's reply memorandum of law; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by defendants The Trustees of the Estate Belonging to the Diocese of Long Island, The Episcopal Church in Brooklyn * Queens * Nassau * Suffolk – The Diocese of Long Island, The Bishop of the Diocese of Long Island, and The Right Reverend Orris G. Walker, Jr. for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint and in their favor on the counterclaim is granted to the extent of dismissing the third, fourth, fifth, sixth, seventh, and eighth causes of action, and is otherwise denied; and it is further

ORDERED that the cross motion by plaintiff for an order granting summary judgment in its favor on the first, second, and fourth causes of action and partial summary judgment in its favor on the fifth, sixth, seventh, and eighth causes of action, dismissing the counterclaim, and striking defendants' seventh affirmative defense is denied.

This action concerns the disposition of real property known as Maycroft as well as a fund known as the Maycroft Holiday House Fund. By deed dated July 12, 1921, Mary Gertrude Edson Aldrich conveyed the property, located in Sag Harbor, New York, to the defendant Trustees. Mrs. Aldrich also bequeathed to the defendant Bishop of the Diocese of Long Island the sum of \$50,000.00, the income of which was to be used for the maintenance of the residence located on the property and for the property's upkeep, taxes, repairs, and insurance, including the payment of salaries and wages to employees ("the Fund"). Mrs. Aldrich's will further provided that full authority as to the control and management of the Fund "be vested in the Bishop of Long Island, whose right and duty it shall be to appoint a committee to determine and decide all questions of administration." By deed dated October 27, 1952, the Trustees conveyed Maycroft to the plaintiff, an order of Episcopal nuns. The October 27, 1952 deed provided that if the property ceased to be used as the plaintiff's "Mother House," ownership of Maycroft would revert to the Trustees.

[T]his deed is made upon the condition that the [plaintiff] and its successors shall use the property as the Mother House of The Order of the Teachers of the Children of God Inc., and * * * upon the further condition that if the [plaintiff] or its successors shall violate the provision and condition aforesaid or permit any violation thereof, then this deed shall be void and the said premises shall revert to and become the absolute property of the [Trustees] * * *.

In December 1952, the Trustees adopted a resolution to apply to court for direction as to the disposition of income of "two Trust Funds of Maycroft Holiday House."¹ In May 1953, a second resolution was passed to request the court to allow the income from the trust funds to be used "for Youth Work in the Diocese of Long Island at the direction of the Bishop." However, these resolutions were rescinded by the Trustees in September 1953. It is undisputed that, subsequent to the transfer of title, the Trustees never sought or obtained judicial authorization terminating their obligation to use the Fund for the purposes of maintaining the property, and no income from the Fund was used with respect to the maintenance of the property.

According to the plaintiff, in the 1950's, it established a school at Maycroft, which it continued to

¹ Despite repeated reference in the record to two trust funds, it appears upon review of the complaint that the only trust fund which is the subject of this action is the "Maycroft Holiday House Fund."

operate at least to the commencement of this action. The plaintiff moved its Mother House from Connecticut to Maycroft in 1952. Soon thereafter, a chronic respiratory illness of the Mother Superior of the Order, Mother Abbie, forced her to spend time living in Arizona and, over the years, she spent more and more time in Arizona although she continued to live at Maycroft as well. In the late 1960's, the plaintiff opened a school in Tucson, Arizona, and the plaintiff's "center of gravity" gradually began shifting to Arizona, as acknowledged in a contemporaneous brochure prepared by Mother Abbie.

With the necessity for The Mother Superior to spend much of the year in Tucson, eventually the center of gravity * * * shifted, and the O.T.C.G. Press, the main workshops, and the many other producing activities of The Order were moved to this Southwestern Headquarters. The Mother House, however, remains at Sag Harbor and will always be there.

When Mother Abbie died in 1970, she was succeeded by Mother Virginia, who made her principal residence in Tucson. As the plaintiff's operations gradually shifted to Arizona, its presence at Maycroft was correspondingly reduced.

In 1971, the Trustees adopted a resolution that the income from the two trust funds "be paid over to the Episcopal Foundation for Education, Diocese of Long Island, incorporated for the express purpose of assisting the work of the Office of Boarding and Day Schools * * *."

In August 1975, Reverend North, the chaplain general of the Order, wrote to Bishop Sherman, as President of the Trustees, to inquire as to the availability of funds for the upkeep of Maycroft. Reverend North asked why "the funds for the upkeep of the property did not go with it" when title was conveyed to the plaintiff, and requested specific information regarding the terms of the trusts, the value of the trust funds, and the amount of income disbursed for the preceding year. Reverend North concluded his letter with the following observation.

Our milkman, an old farmer here, surprised us a few months ago by remarking, as he looked about, that he understood that there was some sort of fund for looking after the upkeep of this property, so apparently the existence of the trusts is common knowledge in the community.

Bishop Sherman's response, dated October 23, 1975, noted that the Trustees had examined the matter in 1971 and determined that any obligation on their part to use the funds for the upkeep of the property had ceased upon the transfer of title to the plaintiff, so that income from the trusts could be used for other purposes. This exchange of correspondence triggered a subsequent letter, dated October 29, 1975, from Bishop Sherman to Mother Virginia. In that letter, Bishop Sherman requested "clarification" as to the location of the Mother House. Bishop Sherman cited a publication indicating that the plaintiff had "a headquarters for the Western Province" in Tucson, Arizona and noted "that the head of the Order is presently in residence in the Western Province." He concluded that if Maycroft "is not the Mother House * * * we must consider whether or not the conditions of the original grant have been breached." Mother Virginia's response, dated November 3, 1975, denied that the plaintiff's headquarters were located in Tucson and offered repeated assurances that the Mother House was at Maycroft.

Regarding the letter of October 29, in spite of the fact that the Episcopal Church Annual indicates that our headquarters is in Tucson, Arizona, this is not so. There has never been any doubt in the minds of anyone connected with the Order but that the mother house is at Maycroft.

[T]he mother house of the Order is unquestionably at Maycroft, Sag Harbor * * *.

If the question should come before you again as to whether or not Maycroft is the mother house of the Order, please be assured that it is.

Mother Virginia claimed that this was so notwithstanding her frequent visits to Tucson, noting that there were "always sisters residing at Maycroft," that the Order maintained a school and camp there and was "in full operation twelve months of the year," and that former members of the Order were buried there.

The record reveals little of the manner and extent to which Maycroft was used from 1975 until 1993 when, according to defendant Walker, he was contacted by a descendant of Mrs. Aldrich regarding Maycroft's state of disrepair. This led to a telephone conversation between Bishop Walker and Mother Virginia in which they discussed the property and in which it was apparently agreed that Maycroft should revert to the Trustees so that it could be properly maintained. Mother Virginia subsequently acknowledged in a June 28, 1993 letter to Bishop Walker that she no longer considered Maycroft the Mother House.

Now the question is, since it is not the Mother House does the property revert to the Diocese of Long Island, or shall we continue as it stands? The Diocese may not want to be bothered with it as it has become a Historical Landmark * * *.

In or about December 1993, a quitclaim deed was delivered to Mother Virginia for her signature. The deed was never returned, and this action followed. According to Mother Mary Louise, the current Mother Superior, at least one nun remained in residence at Maycroft until 1994 or 1995, and Reverend North also resided at Maycroft until his death in 1997.

Although the parties agree that the plaintiff no longer uses the property as its Mother House, they disagree as to when the property ceased to be so used.

The plaintiff's first cause of action is for judgment declaring that the reverter contained in the October 27, 1952 deed is extinguished and unenforceable by reason of the defendants' failure to file a declaration of intention to preserve the restriction by October 27, 1982, i.e., within 30 years after the creation of the restriction, as required under Real Property Law § 345. The second cause of action, seeking the same declaratory relief, is based upon the defendants' failure to make a demand or commence an action within 10 years after the occurrence of the reverter pursuant to RPAPL 612.² The third cause of action alleges that

²By decision and order (one paper) dated October 20, 1997 (243 AD2d 614, 668 NYS2d 903), the Appellate (continued...)

title has vested in the plaintiff by adverse possession. The fourth cause of action seeks the extinguishment of the deed restriction pursuant to RPAPL 1955. The fifth, sixth, seventh, and eighth causes of action sounding, respectively, in fraud, conversion, breach of fiduciary duty, and unjust enrichment, all seek damages arising from the defendants' alleged misconduct in relation to the Fund, including the failure to reveal the existence of the Fund and to administer its proceeds for the benefit of Maycroft. The plaintiff seeks, *inter alia*, reimbursement of sums paid for upkeep, repairs, and insurance of Maycroft, and the payment of salaries and wages for employees connected with Maycroft from 1952 to the commencement of this action. The ninth and final cause of action is for the imposition of a constructive trust. The defendants have interposed a single counterclaim for judgment declaring that title to Maycroft revert to the Trustees by reason of the plaintiff's abandonment of the use of the property as its Mother House.

The defendants now seek summary judgment dismissing the complaint and in their favor on the counterclaim. The defendants claim that they were not aware until 1993 that the plaintiff no longer considered Maycroft the Mother House. The defendants contend that the plaintiff should be estopped from invoking the statute of limitations to bar reverter because the plaintiff, in 1975, gave emphatic assurances that Maycroft was and would always be the Mother House. The defendants also contend that the plaintiff's claims with respect to the Fund are time-barred because the plaintiff knew of the existence of the Fund as early as 1975. The defendants assert no claim that their obligation to use the Fund for the purposes of maintaining the property ceased either upon the transfer of title to the plaintiff or upon adoption of the 1971 resolution. The plaintiff counters that it was not aware of the Fund's existence until 1992, when it was so advised by a descendant of Mrs. Aldrich. The plaintiff further contends that since Reverend North's relationship to the plaintiff was purely a spiritual one and he had no role in the plaintiff's business affairs or in communicating with other episcopal organizations on the plaintiff's behalf, any knowledge he may have possessed regarding the existence of the Fund may not be imputed to the plaintiff. The plaintiff cross-moves for summary judgment on its first, second, and fourth causes of action, on the issue of liability on its fifth, sixth, seventh and eighth causes of action, dismissing the counterclaim, and striking the seventh affirmative defense alleging that the plaintiff's claims are barred by the applicable statute of limitations. While conceding that Maycroft is no longer the Mother House, the plaintiff alleges that it is entitled to retain the property because the Trustees' right of reverter is barred by the applicable statutes of limitations. The plaintiff contends that the defendants were aware no later than 1979 that Maycroft was no longer serving as the plaintiff's Mother House. Regarding the Fund, the plaintiff claims that its continued right to the income from the Fund is established by the Trustees' failure to avail themselves of the *cy pres* remedy, and that equitable tolling operates to save their respective causes of action.

Summary judgment is denied to both the plaintiff and the defendants with respect to the first and second causes of action. By decision and order (one paper) dated April 5, 1999 (260 AD2d 356, 687 NYS2d 684), the Appellate Division denied the plaintiff summary judgment on the first cause of action, noting that

²(...continued)

Division granted summary judgment dismissing the remaining portion of the plaintiff's second cause of action, which sought a determination of title in its favor based on the Trustees' failure to commence an action on its reversionary interest within one year after service of a demand (*see*, RPAPL 612[1]).

Real Property Law § 345 could not be sustained as a statute of limitations to the enforcement of a reverter provision which was not yet mature (*Board of Educ. of Cent. School Dist. No. 1 v Miles*, 15 NY2d 364, 259 NYS2d 129 [1965]) and that there remained a sharp factual dispute regarding when the event triggering the reverter occurred. The Appellate Division left open the possibility, however, that the plaintiff could establish its entitlement to judgment as a matter of law if it could show that the defendants' reversionary interest matured prior to October 27, 1982. The plaintiff has now submitted evidence that the term "mother house" is defined as "the headquarters of a community with branch houses," and contends that this evidence, in conjunction with Mother Mary Louise's deposition testimony that the plaintiff's principal place of business has been in Tucson since at least 1972, compels the granting of summary judgment in its favor. The Court disagrees. Notwithstanding the plaintiff's showing, there remains, by dint of the November 3, 1975 letter, a factual dispute as to when Maycroft ceased to be the Mother House. The letter, authored by the person presumably most familiar with the activities of the Order at the time it was written, not only affirms repeatedly that Maycroft is the Mother House, but also denies expressly that the headquarters of the Order is located in Tucson. Moreover, since the record is devoid of proof which might otherwise permit the Court to determine whether Maycroft ceased to be the Mother House sometime after November 3, 1975—and, if so, when—the Court is unable to conclude as a matter of law that the reverter was triggered prior to October 27, 1982. With respect to the defendants' motion, even assuming that the Trustees justifiably relied on the statements in the November 3, 1975 letter in determining not to enforce the reverter at that time, they have made no evidentiary showing to support a finding that continued reliance was justified beyond that date.

The defendants' motion is granted to the extent it seeks summary judgment dismissing the third cause of action, alleging adverse possession.

The entry onto the property must be strictly adverse to the title of the rightful owner in order for title to be acquired through adverse possession and if the first possession is by permission it is presumed to so continue until the contrary appears * * *. When possession is permissive in its inception, adverse possession will not arise until there is a distinct assertion of a right hostile to the owner and brought home to him.

(*Shandaken Refm. Church v Leone*, 87 AD2d 950, 950-951, 451 NYS2d 227, 228, *lv denied* 57 NY2d 602, 454 NYS2d 1027 [1982]; *accord, Hinckley v State of New York*, 234 NY 309 [1922]; 2 NY Jur 2d, Adverse Possession, § 35). Here, no such assertion having been made until June 28, 1993 at the earliest, possession may not be said to have been adverse for the requisite 10 years prior to the commencement of this action.

Since both the plaintiff and defendants agree that the property is no longer being used for the purpose specified in the deed, the fourth cause of action, seeking relief from the restriction, is dismissed as academic.

The plaintiff's fifth cause of action is premised on the argument that the defendants fraudulently concealed the existence of the Fund and deliberately misrepresented to the plaintiff that there was no money available to maintain the property or to pay salaries and wages for employees connected with Maycroft. The plaintiff claims that, as a result of the fraud, it was required to obtain a mortgage in 1952 and, later, to

expend its own money for the upkeep of Maycroft. The defendants contend, however, that the plaintiff was aware of the Fund's existence no later than 1975 and, therefore, that the claim must be dismissed as untimely. The Court agrees that the claim is untimely. A cause of action based upon actual fraud must be commenced within six years after the commission of the fraud, or two years from the date the fraud could reasonably have been discovered, whichever is later (CPLR 203[g]; 213[8]). "The burden of establishing that the fraud could not have been discovered before the two-year period prior to the commencement of the action rests on the plaintiff, who seeks the benefit of the exception" (*Lefkowitz v Appelbaum*, 258 AD2d 563, 685 NYS2d 460, 461 [1999]). Here, it is evident that, by November 3, 1975, Mother Virginia had knowledge of operative facts sufficient to trigger a duty to inquire regarding the alleged fraud, as evidenced by the following statement in her letter to Bishop Sherman.

I believe the question concerning the estate of the late Mr. and Mrs. Aldrich came up because Father North felt that there had been funds allocated for the upkeep of Maycroft, and thought that possibly we could have the use of some of these.

Viewed in conjunction with the exchange of correspondence immediately preceding the November 3, 1975 letter, this statement clearly reveals that Mother Virginia had been in contact with Reverend North and was aware of his suspicions regarding the Fund.

The test as to when a plaintiff should have discovered an alleged fraud is an objective one (see, *Watts v Exxon Corp.*, 188 AD2d 74; *TMG-II v Price Waterhouse & Co.*, 175 AD2d 21). As noted by the Second Circuit in *Armstrong v McAlpin* (699 F2d 79, 88): "[W]here the circumstances are such as to suggest to a person of ordinary intelligence the probability that he has been defrauded, a duty of inquiry arises, and if he omits that inquiry when it would have developed the truth, and shuts his eyes to the facts which call for investigation, knowledge of the fraud will be imputed to him." *Higgins v. Crouse*, 147 N.Y. 411, 416".

(*Prestandrea v Stein*, 262 AD2d 621, 622, 692 NYS2d 689, 690-691 [1999]). Even if, as the plaintiff contends, Reverend North's knowledge of the Fund's existence cannot be imputed to the plaintiff, Mother Virginia's own knowledge cannot be similarly discounted. The plaintiff has made no showing that, with due diligence, it could not reasonably have discovered the fraud at that time (*cf.*, *id.*). The defendants' motion is granted, therefore, to the extent it seeks summary judgment dismissing the fifth cause of action, and the plaintiff's requests for summary judgment in its favor on the fifth cause of action and dismissing the affirmative defense of statute of limitations are correspondingly denied.

The defendants' motion is also granted, and the plaintiff's cross motion denied, to the extent they address the plaintiff's sixth, seventh, and eighth causes of action. The plaintiff concedes, with respect to each cause of action, that the wrongdoing commenced no later than 1953. Under New York law, the three-year statute of limitations on a cause of action for conversion begins to run when the conversion occurs (see, CPLR 214[3]; *Vigilant Ins. Co. v Housing Auth.*, 87 NY2d 36, 637 NYS2d 342 [1995]). When a defendant lawfully comes into possession of a plaintiff's property, a conversion occurs when the defendant refuses to

return the property after a demand or sooner disposes of the property (*see, e.g., Johnson v Gumer*, 94 AD2d 955, 464 NYS2d 318 [1983]; 23 NY Jur 2d, Conversion, and Action for Recovery of Chattel, § 45). However, “where [the] right [to demand] grows out of the receipt or detention of money or property by a trustee * * * or other person acting in a fiduciary capacity, the time within which the action must be commenced shall be computed from the time when the person having the right to make the demand discovered the facts upon which the right depends” (CPLR 206[a][1]; *see, Bernstein v La Rue*, 120 AD2d 476, 501 NYS2d 896 [1986], *lv dismissed* 70 NY2d 746, 519 NYS2d 1032 [1987]). CPLR 206(a)(1) thus “imposes a discovery accrual rule for fiduciary relationships analogous to that which tolls the statute in cases of fraud” (1 Weinstein-Korn-Miller, NY Civ Prac ¶ 206.02). Consistent with the analysis in the preceding paragraph, the Court finds that the sixth cause of action accrued no later than 1975, and is therefore untimely. As for the seventh and eighth causes of action, even assuming that the discovery accrual rule would operate to extend the three-year limitation period applicable to a breach of fiduciary duty claim seeking only money damages (*see, Yatter v William Morris Agency*, 256 AD2d 260, 682 NYS2d 198 [1998]) or the six-year statutory period governing claims of unjust enrichment (*see, CPLR 213[2]*), they are untimely as well.

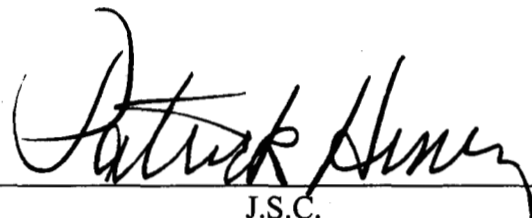
The plaintiff, however, contends as to each of these causes of action that the defendants should be equitably estopped from asserting a statute of limitations defense. This argument is rejected. Generally, a defendant may be equitably estopped from pleading the statute of limitations where the plaintiff was induced by fraud, misrepresentation or deception to refrain from timely commencing an action (*see, Simcuski v Saeli*, 44 NY2d 442, 406 NYS2d 259 [1978]). But estoppel will not apply “if the 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 Di Benedetto*, 121 AD2d 519, 520, 503 NYS2d 836, 837 [1986]; *accord, Gleason v Spota*, 194 AD2d 764, 599 NYS2d 297 [1993]). The plaintiff also bears the burden of establishing the applicability of any exception to the statute of limitations (*see, Park Assocs. v Crescent Park Assocs.*, 159 AD2d 460, 552 NYS2d 314 [1990]). In view of the statement in the November 3, 1975 letter evidencing Mother Virginia’s knowledge as to the existence of the Fund, the Court finds that the plaintiff has not satisfied its burden. Nor is there any merit to the claim that the plaintiff is entitled to the benefit of the “continuing violation” doctrine because the Trustees continue to hold the Fund proceeds. This doctrine is typically employed “where there is a series of continuing wrongs and serves to toll the running of a period of limitations to the date of the commission of the last wrongful act” (*Selkirk v State of New York*, 249 AD2d 818, 819, 671 NYS2d 824, 825 [1998]; *see also, Neufeld v Neufeld*, 910 F Supp 977 [SDNY 1996]). Here, the conduct which underlies the respective claims is not a series of unlawful acts as might give rise to successive causes of action but rather a single alleged wrong, namely, the Trustees’ failure to acknowledge the plaintiff’s right to have the income from the Fund applied to the upkeep of the property. Even assuming, then, that the plaintiff continues to suffer damages, the doctrine is not properly invoked under the circumstances at bar (*cf., Selkirk v State of New York, supra*).

With respect to the ninth cause of action, which seeks the imposition of a constructive trust, the defendants have failed to address this cause of action in their moving papers, and summary judgment is denied accordingly.

Finally, as to the counterclaim, summary judgment is denied to both the plaintiff and the defendants. The Court finds that outstanding issues of fact as to whether the Trustees' right of reverter is barred by the applicable statutes of limitations preclude a grant of summary judgment in the defendants' favor. The Court further rejects the plaintiff's argument that the counterclaim must be dismissed for failure to cite RPAPL article 15 (see, RPAPL 1515[1]). The failure of a pleading to state that a claim has been brought pursuant to RPAPL article 15 is not considered fatal so long as the pleading in fact states a cause of action under article 15 (see, Meehan, Practice Commentaries, McKinney's Cons Laws of NY, Book 49½, RPAPL 1515, 2001-2002 Interim Pocket Part, at 153).

The Court directs that the remaining claims in this action be severed and continued.

Dated: 27 Feb. 2002



J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION