IN THE MONTGOMERY COUNTY CIRCUIT COURT, MARYLAND
CIVIL DIVISION

JANE DOE, et al.	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 369721V
	)	Hon. Sharon V. Burrell
	)	
SOVEREIGN GRACE MINISTRIES, et al.	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' MOTION TO RECONSIDER THE APPLICATION OF MARYLAND'S STATUTE OF LIMITATIONS TO CONSPIRACY CLAIMS OF ALL PLAINTIFFS AND TO RECONSIDER THE APPLICATION OF COURTS & JUDICIAL PROCEEDINGS §5-117 AND ALLOW CERTAIN PLAINTIFFS SEVEN YEARS FROM THE AGE OF MAJORITY FOR FILING OF THEIR ACTION

Pursuant to Md. R. 2-534, Plaintiffs hereby move the Court to reconsider its ruling, entered on May 23, 2013, regarding the accrual date of Plaintiffs' civil conspiracy claims, which the Court ruled accrued at the same time as the underlying torts which were the object of the conspiracy. Civil conspiracy is a recognized cause of action in Maryland, and although it borrows the applicable statute of limitations from the underlying torts – here three years (except in the case of minors sexually abused by caretakers) – a cause of action for civil conspiracy accrues is when the Plaintiffs knew or reasonably should have known about the conspiracy. As the Second Amended Complaint alleges that the conspiracy was discovered in August of 2011, Plaintiffs' civil conspiracy claims were timely filed.[1]

In addition, Plaintiffs Renee Palmer Gamby and Donna Doe move the Court to reconsider its ruling, whereby the Court did not apply the Maryland law allowing minor victims of sexual

[1] Although the Court Order suggests that the claims against the Virginia defendants were dismissed on statute of limitations grounds, Plaintiffs note that the Court ruled separately that it had no jurisdiction over these defendants, and thus no ruling regarding the statute of limitations is applicable to those defendants.

abuse seven years from the age of majority to file suit. Md. Code, Courts and Judicial Proceedings § 5-117 allows persons who suffer sexual abuse as minors seven years from the age of majority to file claims, rather than the three year statute of limitations typically applicable under Maryland law. The sexual abuse must be by a "parent" or other person with "responsibility for the supervision of a child." At the age of two, Gamby was sexually molested by a babysitter, and thus by a person with "temporary responsibility for the supervision of a child." She turned eighteen in April 2008, and thus her claim first filed on October 17, 2013 is timely filed within the requirements of §5-117. As a minor, Donna Doe suffered sexual abuse at the hands of her father, a parent. She turned eighteen in October 2007, and thus her claim first filed on October 17, 2013 is timely filed.

FACTUAL BACKGROUND

The Second Amended Complaint ("SAC") alleges a long standing conspiracy among the defendants to suppress the reporting of sexual abuse to civil authorities, to interfere with the prosecution of child abuse, and to prevent other church members from learning of past reported child abuse. As alleged in the SAC, discovery of the conspiracy occurred in August 2011. Until that date, plaintiffs were not aware of the concerted efforts by Church leadership to suppress reporting of child abuse, to interfere with the prosecution of child abuse, and to prevent other church members from learning of past reported child abuse

As alleged in the Second Amended Complaint, Renee Palmer Gamby was molested by a 15 year old babysitter at the family home when she was just two years old. Gamby was born in April 1990, and turned eighteen in April 2008. Donna Doe was molested by her father on numerous occasions when she was a minor, also in the family home. Doe was born in October 1989, and turned eighteen in October 2007.

ARGUMENT

I. Civil Conspiracy Claims Are Timely Filed as Such Claims Accrued at the Time of Discovery of the Conspiracy.

A civil conspiracy tort has been defined in Maryland as "a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff." *Mackey v. Compass Marketing*, 892 A.2d 479 (Md. 2006); *Hoffman v. Stamper*, 385 Md. 1, 24, 867 A.2d 276, 290 (2005) (quoting *Green v. Wash. Sub. San. Comm'n*, 259 Md. 206, 221, 269 A.2d 815, 824 (1970)). The plaintiff must prove an unlawful agreement, the commission of an overt act in furtherance of the agreement, and that as a result, the plaintiff suffered actual injury. *Hoffman* 385 Md. at 25, 867 A.2d at 290. The civil conspiracy requires a separate tortious act, but if allegations supporting the other elements of the cause of action are made, then the claim is recognized under Maryland law. *See Lloyd v. General Motors Corp.*, 397 Md. 108, 916 A.2d 257 (2007) (setting forth the elements of a separate cause of action for civil conspiracy).

Maryland law has long recognized that the tort of civil conspiracy "borrows" the statute of limitations from the underlying wrong. But Maryland cases have not held that a cause of action for civil conspiracy "accrues" at the same time as the underlying tort. As noted in *Lloyd*, the cause of action for civil conspiracy has different elements and requires different proof as compared to the underlying tort. *Lloyd v. General Motors Corp.*, 397 Md. 108, 916 A.2d 257 (2007) (the elements of a civil conspiracy claim separate form the underlying tort claims, even if underlying claim required for a conspiracy).

These general principles were discussed in *Prince Georges County v. Longtin*, 419 Md. 450, 19 A.3d 859 (2011) (concurring and dissenting opinion). There, in discussing the general

framework of Maryland law, the concurring and dissenting Judges noted that each cause of action may have a unique accrual date. The opinion noted that Maryland "[has] adopted what is known as the discovery rule, which now applies generally in all civil actions, and which provides that a cause of action accrues when a plaintiff in fact knows or reasonably should know of the wrong." *Longtin,* 419 Md. at 504, 19 A.3d at 891, citing *Heron v. Strader*, 361 Md. 258, 761 A.2d 56 (2000) (a cause of action is said to have arisen when facts exist to support each element); *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 334, 635 A.2d 394, 399 (1994); *Lumsden v. Design Tech Builders, Inc.,* 358 Md. 435, 444, 749 A.2d 796, 801 (2000) ("[W]e now hold the discovery rule to be applicable generally in all actions and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong."). Because each cause of action possesses distinct elements, Courts should examine each cause of action separately. Not surprisingly, under such an approach, each claim may have a unique accrual date. *Longtin,* 419 Md. at 504, 19 A.3d at 892, citing *Heron*, 361 Md. at 262, 761 A.2d at 58.

Under the discovery rule, a cause of action for conspiracy accrues when the plaintiff learns of the conspiracy or with reasonable inquiry should have learned of the conspiracy. Courts applying the discovery rule to civil conspiracy claims have reached the same conclusion – the crucial factor is the discovery of the conspiracy, not the discovery of the underlying tort injury. In *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1999), the plaintiff alleged a civil conspiracy, among other torts. The defendants claimed that the injury occurred outside of the statutory period. The Nevada Supreme Court, reviewing the impact of the "discovery rule," rejected the defendants claims – the same claims pressed by defendants here – and held that "an action for civil conspiracy accrues when the plaintiff discovers or should have discovered all of the necessary facts constituting a conspiracy claim." To hold otherwise means that a plaintiff is

barred from bringing a claim before she ever discovers or could have discovered the factual predicates for the claim, a direct contradiction of the discovery rule. *See also Hill v. A.O. Smith Corp.*, 801 F.2d 217 (6th Cir. 1986) (applying Tennessee law and holding that discovery rule when applied to civil conspiracy claims required that Court look to date of discovery of the conspiracy). In addition, the running of the statute can be tolled by a variety of mechanisms, including a fiduciary relationship between the parties, *McBride v. Pishvaian*, 402 Md. 572, 937 A.2d 233 (2007); *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 173, 857 A.2d 1095, 1107 (2004), or continuing unlawful acts, *Bacon v. Arey*, 203 Md.App. 606, 40 A.3d 435 (2012); *MacBride v. Pishvaian*, 402 Md. 572, 584, 937 A.2d 233 (2007); *Dunn v. Rockwell*, 225 W.Va. 43, 689 S.E.2d 255 (2009) (last overt act tolls the running of the statute of limitations for conspiracy claim even if conspiracy claim is not an independent tort).

Here, the accrual date applicable to the civil conspiracy claims is that date the plaintiffs learned of the conspiracy or should have learned of the conspiracy. Although other tortious conduct is required for a civil conspiracy to be actionable, Maryland law does not require that the same accrual date apply to both causes of action. Like other states, Maryland recognizes that different causes of action may have different accrual dates, and the time of learning about the injury arising from negligence is not the same as the time of learning about the conspiracy. The timeliness of conspiracy claims should be judged by the discovery of the conspiracy, not the discovery of the underlying injury associated with other causes of action.

II. Claims of Certain Plaintiffs Are Timely Filed Within the Requirements of §5-117

In October 2003, Maryland law was amended by passage of Courts and Judicial Proceeding Section 5-117, which increased the time allowed for bringing claims "arising out of" an alleged incident of "sexual abuse" that occurred while the victim was a minor. Rather than

the standard three year statute of limitations, the new law allowed a victim seven years after reaching the age of majority to file suit, if the claims fall within the scope of the law. The claims of Renee Gamby and Donna Doe both "arise out of" alleged incidents of sexual abuse that occurred when they were minors. In addition, both Gamby and Doe were the victims of "sexual abuse" as defined under Maryland law, because both were abused by persons specifically included within the scope of §5-177. Meeting the requirements of §5-117, each plaintiff should be allowed 7 years from the date of majority, and thus the claims of Renee Gamby and Donna Doe are timely filed within the requirements of the Maryland law.

A. The Claims of Gamby and Donna Doe Arise Out Of an Alleged Incident of Sexual Abuse

Both Gamby and Doe assert claims that Defendants are at least partially responsible for their damages both before and after the fact of their sexual assaults, in that Defendants knew of the risks posed by the sexual predators, failed to warn the victims and their families about the dangers posed by the perpetrators and after the molestations became known to Defendants exacerbated the damages by actively interfering with the prosecution of the molesters. These claims "arise out of" the alleged sexual assaults in that they "originate from, are incident to or have a connection with" the sexual assaults. *See Mass Transit Admin. v. CSX Trans., Inc.*, 349 Md. 299, 708 A.2d 298 (Md. 1998) (defining "arising out of"); *Northern Assurance Co. of America v. EDP Floors, Inc.*, 311 Md. 217, 533 A.2d 682 (1987); *Chesapeake & Potomac Tel. Co. v. Allegheny Constr. Co.*, 340 F.Supp. 734 (D.Md.1972). "Arising out of" does not require proximate causation and has a broader meaning than the words "caused by." *Mass Transit* at 306, 314. Nor do the claims have to arise solely from the sexual abuse to meet the standard of "arising out of." *Northern Assurance,* 311 Md. at 230-31, 533 A.2d at 688-89. All of plaintiffs'

claims here "arise out of" the sexual assaults in that "but for" the sexual assaults, none of the other actions giving rise to liability would have occurred.

B. The Claims Of Gamby and Donna Doe Meet the Definition of "Sexual Abuse."

The claims of Gamby and Donna Doe meet the definition of "sexual abuse" in §5-117. Section 5-117 incorporates the definition of "sexual abuse" in §5-701 of the Family Law Article. Under sub-part (x) of the Family Law definition, "sexual abuse" is defined to mean

> Any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member
>
> Donna Doe was sexually molested by her father, who it is alleged in the complaint,
>
> "had been repeatedly molesting [her], almost every day for many months, by fondling her vagina with his fingers, penetrating her with his fingers, and making her touch his penis. Donna Doe also recalls her father kissing, licking, sucking and pinching her breasts, forcing her to use her hands to stimulate his penis, and inserting his tongue into her mouth as he kissed her." SAC at ¶141

These acts are clearly alleged sexual molestation, which by the statute's terms includes "incest, rape, sexual offense in any degree, sodomy and unnatural or perverted sexual practices." As her parent, the sexual abuse allegations meet the requirements of §5-701.

Renee Gamby was sexually assaulted by her babysitter on March 18, 1993. A babysitter, entrusted by her parents to supervise Renee, qualifies as a person with "temporary care or custody or responsibility for supervision of a child." *See Anderson v. State*, 372 Md. 285, 812 A.2d 1016 (2002) ("a baby sitter temporarily has responsibility for the supervision of a child" under the meaning of an identically worded statute in the Md. Code Ann., Art. 27, Section 35C(b)); *Pope v. State*, 284 Md. 309, 396 A.2d 1054 (1979) (listing a babysitter as one who has temporary supervision of a child). Thus, the allegations regarding the abuse of Renee Gamby fall within the scope of "sexual abuse" under §5-701. Renee alleges that she was forcibly raped by her babysitter who committed other sexual offenses against her as well.

CONCLUSION

The application of the discovery rule to civil conspiracy claims dictates that such claims accrue at the time the plaintiffs discover or should have discovered the facts establishing the elements required to bring a conspiracy claim. Under this rule, Plaintiffs civil conspiracy claims are timely filed. Moreover, based on the allegations in the SAC, the allegations by Renee Palmer Gamby and Donna Doe arise out of alleged incidents of sexual abuse that occurred when the plaintiffs were minors. As such, the applicable period of limitations is seven years from the age of majority, and claims by both Gamby and Doe were filed within the allowable limitations period.

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2013, I served the foregoing Plaintiffs' Motion for Reconsideration on the following counsel of record via email and regular mail delivery.

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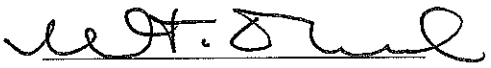
By: 

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