IN THE COURT COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

BRIAN MALEWICZ, ET. AL., Plaintiffs,	:	December 2002
v.	:	No. 01741
MICHAEL BAKER CORPORATION, ET. AL., Defendants.	:	COMMERCE PROGRAM
	:	Control Numbers 061853/061848

ORDER

AND NOW, this 15th day of February, 2005, upon consideration of the Motion for Summary Judgment of Defendants Fred Johnson and Dwight Sangrey (cn 061853) and the Motion for Summary Judgment of Defendants Michael Baker Corporation and Donald P. Fusulli, Jr. (cn 061848), all responses in opposition, Memoranda, all matters of record and in accord with the contemporaneous memorandum opinion being filed of record, it hereby is **ORDERED** and **DECREED** that Defendants' respective Motions for Summary Judgment are **Granted** and plaintiffs'amended complaint is dismissed against all Defendants.

BY THE COURT,

_____

C. DARNELL JONES, II, J.

IN THE COURT COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

BRIAN MALEWICZ, ET. AL., Plaintiffs,	:	December 2002
v.	:	No. 01741
MICHAEL BAKER CORPORATION, ET. AL.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	Control Numbers 061853/061848

MEMORANDUM OPINION

JONES, II, J.

Presently before the court is the Motion for Summary Judgment of Defendants Fred Johnson and Dwight Sangrey and the Motion for Summary Judgment of Defendants Michael Baker Corporation and Donald P. Fusilli, Jr. For the reasons that follow, Defendants respective Motions for Summary Judgment are Granted.

BACKGROUND

I. Parties

The parties involved in this suit are the following: the plaintiffs are Brian T. Malewicz, Michael D. Burns, David L. Jannetta, Mark J. DeNino and Mobility Technologies Inc. (Mobility). Mobility is in the business of designing and installing real-time automobile traffic sensor networks in major metropolitan areas throughout the United States. Mobility was formerly known as Argus Network, Inc. Jannetta is a principal and shareholder of Mobility. DeNino, Burns and Malewicz are shareholders of Mobility but are not employed by the company.

The defendants in this action are Michael Baker Corporation ("MBC"), Donald P. Fusilli ("Fusilli"), Fred Johnson, Dwight Sangrey and Howard Kraye. MBC is an

engineering firm. Since September 1999, Fusilli has been a member of MBC's senior management team and has been the company's president since April 2000. In April 2001, Fusilli gained the additional title of chief executive officer.

Defendants Kraye, Sangrey and Johnson are or were principals and shareholders of Santa Fe Technologies ("SFT"). SFT is a New Mexico company engaged in the business of installing and maintaining sensors for various purposes such as recording environmental data or recording automobile traffic density. Sangrey was SFT's CEO from 1996 through the latter part of 1999. Additionally, Kraye, Sangrey and Johnson have been the directors of the company throughout the relevant time period.

II. Factual Background

A. SFT and MBC's Exclusivity Agreement and Due Diligence Period (January 1997 to May 1997).

In January 1997, MBC and SFT entered into an Exclusivity Agreement whereby MBC loaned SFT $600,000.00 for a period of ninety days to conduct due diligence and enter into an Acquisition Agreement with SFT. According to the terms of the agreement, upon expiration of the ninety day period without an Acquisition Agreement, or upon default by SFT or notice by MBC that it will not proceed with acquisition, SFT would have 120 days to repay the full amount of the loan plus accrued interest. Repayment of the loan was secured by the pledge of 100 percent of SFT stock and by personal guarantees issued by Fred Johnson, Howard Kraye and their wives.

In May 1997, after performing due diligence, MBC ultimately decided not to proceed with the acquisition of SFT. As such, MBC informed SFT that under the terms of the Exclusivity Agreement it had 120 days from the date of the expiration of the negotiation period to repay the $600,000.00 plus interest. (Plaintiffs' Exhibit 10). Over a

two year period, SFT paid the debt down to an outstanding principal amount of $117,405.48 but it was never paid off completely. Although MBC made repeated demands for payment, it never exercised its legal rights for payment.

B. SFT and Mobility's Plan of Merger and Termination. (May 1998-March 5, 1999).

In May or June of 1998, Sangrey (SFT) proposed to Jannetta (Mobility) that Mobility merge with SFT so that the companies could bid for an upcoming federal contract to be offered by the Federal Highway Administration for the design and installation of real-time traffic networks in two major metropolitan areas, Philadelphia and Pittsburgh, Pennsylvania.

On November 2, 1998, Mobility entered into an Agreement and Plan of Merger with SFT. (Plaintiffs' Exhibit "32"). In the weeks following the signing of the merger agreement, Mobility advanced SFT $240,000 to help with SFT's cash-flow problems. SFT represented that the monies would be used to cover ordinary business expenses such as payroll.

In December 1998, SFT and Mobility learned that the Federal Highway Administration issued its invitation to bid on the federal contract and that all contract bids were due by March 1, 1999. On January 25, 1999, Sangrey (SFT), in preparation for a meeting with SFT's Board, prepared a status report stating that the plan merger agreement with Mobility was on hold pending resolution of several issues. The existing approved merger plan contained a condition required by the SFT Board that a state or federal contract must be in hand to conclude the merger between SFT and Mobility. (Plaintiffs' Exhibit "45"). In the status report, Sangrey discussed the options available to

SFT in the event the federal contract was not awarded and the plan merger did not occur. (Id.). One of the options discussed was a merger with MBC. (Id.).

On February 19, 1999, despite the merger agreement with SFT and unknown to SFT, Mobility principals David Jannetta and Michael Burns called the principals of a competing New Mexico firm, Sensor Management Systems ("SMS"), to "discuss working together" on the federal bid with Mobility instead of SFT. The next day, Burns wrote an email to his supervisor Mark DeNino proposing to swap SMS for SFT in connection with the federal bid. DeNino approved but expressed concern that SFT might sue. On February 22, 1999, Burns met with Jerry Musnitsky and Mark Nash of SMS in San Francisco to discuss the terms of the merger between SMS and Mobility.

On February 24, 1999, Mobility and SMS set forth in writing their agreement and understanding regarding the terms of the merger of their companies. (Plaintiffs' Exhibit 48). On the same day the merger agreement between SMS and Mobility was signed, Jannetta (Mobility) wrote to Sangrey (SFT) to terminate the Agreement and Plan of Merger with SFT citing Mobility's lack of desire to proceed with the merger. (Plaintiffs' Exhibit "49").

On February 26, 1999, counsel for SFT acknowledged receipt of Mobility's letter terminating the merger agreement between Mobility and SFT. (Plaintiffs' Exhibit "50"). The letter also placed Mobility as well as SMS on notice of potential legal action by SFT against Mobility for tortious interference with the federal contract bid, unjust enrichment and other potential causes of action. (Plaintiffs' Exhibit "50").[1]

On March 1, 1999, Mobility acquired SMS and that same day Mobility submitted its bid for the federal highway contract without SFT. In connection with the bid, MBC

[1] Plaintiffs admit that MBC played no part in the letter by SFT threatening litigation against Mobility.

served as a subcontractor. Mobility was ultimately awarded the federal contract by the Federal Highway Administration to install traffic sensors in Pittsburgh and Philadelphia, Pennsylvania.

In the meantime, unknown to Mobility, MBC contacted SFT questioning whether MBC should continue to be involved with the bid process. (Plaintiffs' Exhibit 22 p. 421-424).

On March 5, 1999, Sangrey (SFT) pursued his contingency plan expressed in his January 1999 status report to SFT's Board, he asked MBC to purchase SFT's assets. (Plaintiffs' Exhibit "51"). MBC responded that it was not interested in purchasing SFT's assets. (Id.).

In late April or May 1999, MBC contacted SFT to express its concern with the technical competence of the team, Mobility and SMS, and sought advice from SFT on how to handle the situation. (Plaintiffs' Exhibit "22" p. 421-424).

C. Mobility and ICG (1998- July 1999).

Sometime prior to the award of the federal contract and thereafter, Mobility sought financing from Internet Capital Group ("ICG"). Prior to delivering the requested financing to Mobility, ICG performed due diligence. As part of the due diligence process, it is unknown whether the letter dated February 26, 1999 from SFT threatening suit was provided to ICG. (Defendants' Exhibit "18" p. 80; Defendants' Exhibit "8" p. 110; Defendants' Exhibit "33"). However, Burns recalls discussing the termination of the merger agreement with SFT and the SMS acquisition with ICG. (Defendants' Exhibit "18" p. 80). According to Burns, ICG was aware that SFT was unhappy with the termination of the merger, that Mobility received advice from counsel and concluded that

it had a right to terminate the merger agreement with SFT and that Mobility did not believe the litigation instituted by SFT was meritorious. (Id. p. 82).

At the time Mobility was discussing its financing plans with ICG, Mobility disclosed its plans to obtain financing from ICG with MBC and other vendors who were working along with Mobility on the federal contract in the spring of 1999. (Plaintiffs' Exhibit "20" p. 31-32; 35). Mobility informed MBC and its other vendors that it hoped to close the transaction in late July, 1999. (Id. p. 41).

The discussions between ICG and Mobility progressed and ultimately ICG delivered a term sheet to Mobility on July 28, 1999. (Defendants' Exhibit "34"). The term sheet delivered to Mobility outlines the terms and conditions of a proposed investment by ICG in Mobility and was solely an expression of intentions and was not to be construed as a binding agreement. (Defendants' Exhibit "34"). The transaction was expected to close on or before August 15, 1999. (Id.). In addition to a term sheet, a stock swap was also drafted between ICG, Burns and Malewicz. (Id. p. 187-188).

D. The New Mexico Lawsuit (7-28-99).

On the day that ICG delivered the term sheet to Mobility, SFT filed a lawsuit against Mobility, DeNino, Burns, Jannetta and three principals of SMS, Nash, Musnitsky and Dollar in New Mexico. The gravamen of SFT's claims were (1) Mobility and its principals stole SFT's proprietary information and used that information to win the federal contract, (2) Nash, Musnitsky and Dollar—all of whom were minority shareholders, former employees, and competitors of SFT—misappropriated a corporate opportunity belonging to SFT, and otherwise breached fiduciary and unspecified "other" duties purportedly owed by those defendants to SFT and (3) civil conspiracy among all of

the defendants for their alleged tortious behavior. On August 3, 1999, discovery requests and the complaint were transmitted by overnight delivery to the named defendants.

On or about August 4, 1999, Mobility and its officers and directors were in receipt of the lawsuit filed by SFT. At the time the lawsuit was received, Mobility's transaction with ICG had not closed. Upon receipt of the lawsuit, plaintiffs allege that ICG immediately informed Mobility that the terms of the transaction would have to be changed because of the added risk to ICG created by the filing of the New Mexico litigation. (Plaintiffs' Exhibit "54"). ICG's investment in Mobility ultimately closed in October 1999.

E. Requests to Purchase MBC's Note to SFT.

On September 8, 2000, counsel for MBC received a communication from counsel representing David Broeker Industries, LLC who expressed an interest in purchasing MBC's interest in the outstanding promissory note due from SFT and the security pledged therein. (Plaintiffs' Exhibit "61"). As a result, on October 11, 2000, a confidentiality agreement was forwarded to MBC for review and signature. (Plaintiffs' Exhibit "62").

On December 4, 2000, MBC sent a formal demand letter to SFT demanding repayment and stating that legal action is certain to result if the loan was not repaid. (Plaintiffs' Exhibit "63"). SFT responded by stating that it had no funds to repay the balance but had several plans in the works such as a commercial prospect involving a portable traffic monitoring tower developed by them which uses microwave and acoustic technology which does not require road sensors and SFT's New Mexico lawsuit which Kraye stated was in its final stages. (Plaintiffs' Exhibit "64"). MBC never heard from

David Broeker Industries nor did they contact them on their pursuit of purchasing SFT indebtedness.

In April 2001, Jannetta (Mobility) contacted MBC's chief executive officer, Fusilli and expressed an interest in purchasing SFT's debt. Fusilli replied that he would check into the matter more and get back to Jannetta. In August 2001, Jannetta again contacted Fusilli about purchasing the indebtedness; Fusilli referred Jannetta to MBC's general counsel. On August 21, 2001, Jannetta and MBC's counsel discussed the status of the SFT debt and collateral. (Plaintiffs' Exhibit "68"). Jannetta offered to pay MBC 10 or 20 cents on the dollar and asked MBC to make a counter offer. Fusilli informed Jannetta that the offer was under consideration.

On September 7, 2001, MBC's general counsel contacted Kraye and questioned him as to when payment would be received on the note. (Plaintiffs' Exhibit "70"). Kraye indicated that SFT had no money to repay the debt. (Id.) MBC's general counsel informed Kraye that MBC had been approached by a firm interested in acquiring its position on the note and foreclosing on the stock of SFT. (Id.). According to MBC counsel, Kraye surmised that the firm was Mobility. (Id.). Thereafter, MBC counsel informed Mobility that it had no desire to engage in a transaction that may result in MBC becoming involved in the litigation against Mobility. (Id.)

On October 1, 2001, counsel for MBC received a phone call from Johnson (SFT). (Plaintiffs' Exhibit 80). Johnson informed MBC counsel that SFT's only asset was the lawsuit against Mobility. (Id). Johnson further stated that he is judgment proof and that he wanted to see MBC get its money back and stated that he may have a potential buyer of the MBC note. (Id.).

Thereafter, in or about the end of 2001 and beginning of 2002, Malewicz discovered from Mark Nash, a co defendant in the New Mexico litigation, that Kraye informed him that the SFT lawsuit was a devised plan to extort money from Mobility. (Plaintiffs' Exhibit "21" p. 160-161).

In December 2002, plaintiffs commenced this action against defendants alleging claims of tortious interference with prospective contractual relations (Count I), prima facie tort under New Mexico law (Count II), malicious abuse of process (Count III) and civil conspiracy to interfere with prospective contractual relations (Count IV), civil conspiracy to commit prima facie tort (Count V), and civil conspiracy to commit malicious abuse of process (Count VI). Defendants MBC and Donald P. Fusilli, Jr. filed preliminary objections to plaintiffs' complaint. On August 6, 2003, the court entered an order dismissing the claims for malicious abuse of process and civil conspiracy to commit malicious abuse of process. The court also sustained objections for plaintiffs failure to attach a document and as to the specificity of the allegations and required plaintiffs to file an amended complaint. Defendants have now filed the instant motions for summary judgment.

DISCUSSION

I. LEGAL STANDARD

A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense. Destefano & Associates, Inc. v. Cohen, 2002 WL 1472340,* 2 (Pa. Com. Pl. 2002) (Herron, J.). Under Pa. R.C. P. 1035.2(2), a defendant may make the showing necessary to support the entry of summary

judgment by pointing to evidence which indicates that the plaintiff is unable to satisfy an element of his cause of action. Id. In response, the nonmoving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. Id. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law.

II. Plaintiffs' Claims Against Defendants Are Barred by the Applicable Statute of Limitations.

Moving defendants argue that the statute of limitations bars all claims made against them since the plaintiffs knew of their injury as early as July 28, 1999 when SFT filed the lawsuit in New Mexico against Mobility, its officers and other related companies. Plaintiffs on the other hand argue that the discovery rule tolls the running of the statute of limitations. For the reasons discussed below, this court finds that the statute of limitations bars all of plaintiffs' claims against defendants.

Pennsylvania's two year statute of limitations applies to the case at hand. *See* 42 Pa. C. S. A. § 5524.[2] The statute of limitations begins to run as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding does not toll the statute of limitations. Pocono International Raceway Inc. v. Pocono Produce Inc., 503 Pa. 80, 84, 468 A.2d 468, 471 (1983). A person asserting a claim is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit

[2] The following actions and proceedings must be commenced within two years pursuant to 42 Pa. C.S.A. § 5524, assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process. Additionally, any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud.

within the prescribed statutory period. C.J.M. v. Archdiocese of Phila., 67 Pa. D. & C. 4th 474, 481 (2004).

A judicially created exception, known as the discovery rule, exists to toll the statute of limitations. The discovery rule tolls the statute of limitations until the plaintiff knows or reasonably should know that (1) he has sustained an injury and (2) his injury has been caused by another party's conduct. Weik v. Estate of Brown, 794 A.2d 907, 909 (Pa. Super. 2002). The limitations period begins to run when the injured party "possess[es] sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress." C.J.M. v. Archdiocese of Phila., supra at 482 (quoting Haggart v. Cho, 703 A.2d 522, 526 (Pa. Super. 1997). In determining whether to apply the discovery rule to a case, "the court must address the ability of the injured party, exercising reasonable diligence, to know that the party has been injured by the act of another." Bowe v. Allied Signal Inc., 806 A.2d 435, 439 (Pa. Super. 2002).

The party seeking to invoke the discovery rule bears the burden of establishing the inability to know he or she has been injured by the act of another despite the exercise of reasonable diligence. Reasonable diligence is defined as "a reasonable effort to discover the cause of an injury the facts and circumstances present in the case." Matthews v. Roman Catholic Diocese of Pittsburgh, 67 Pa. D. & C. 4th 393, 396 (2004) (citing Cochran v. GAF Corp., 542 Pa. 210, 217, 666 A.2d 245, 249 (1995)).

Since the discovery rule's application involves a factual determination as to whether the plaintiff exercised reasonable diligence in discovering the cause of the injury, ordinarily a jury must decide whether the discovery rule applies. Id. However, whenever

reasonable minds would not differ in finding that the plaintiff has failed to exercise reasonable diligence, the court shall decide the matter rather then submit it to a jury. Id (citing Weik v. Estate of Brown, supra. 794 A.2d at 909)).

A. Defendants Johnson and Sangrey.

In the amended complaint as well as the response to defendants' motion for summary judgment, Plaintiffs allege that the filing of the New Mexico lawsuit by the SFT defendants thwarted the proposed $19,000,000 infusion of capital which directly resulted in significant changes to the structure of the financing ultimately obtained by Mobility causing plaintiffs substantial harm.

The SFT defendants filed the New Mexico lawsuit on July 28, 1999. The instant lawsuit was filed on December 12, 2002. Although plaintiffs argue that reasonable minds could plainly differ as to when plaintiffs should have known (a) that SFT was seeking to extort a payment of money from Mobility in order to pay off its indebtedness to MBC, and (b) that MBC shared information with SFT regarding the timing of Mobility's fund raising efforts, reasonable minds can not differ as to when plaintiffs suffered an injury.

As set forth in the amended complaint as well as the record evidence before the court, plaintiffs suffered an injury at the time the New Mexico lawsuit was filed on July 28, 1999. It is that date which begins the running of the statute of limitation. Whether plaintiffs were aware of the motive behind the filing of the New Mexico lawsuit is not determinative as to when the statute of limitations begins to run. Rather, it is when plaintiffs discovered they were injured that begins the clock for statute of limitation purposes.

The record evidence demonstrates that (1) Burns, Jannetta and Malewicz knew that they were injured by the filing of the lawsuit on July 28, 1999, (2) believed that the timing of the lawsuit to be very suspicious and frivolous and (3) knew that SFT and its officers and directors caused their injury. The evidence presented to the court leads to one conclusion, the statute of limitations began to run on July 28, 1999 when SFT filed the lawsuit in New Mexico against Mobility and knew their injury was caused by SFT and its officers and directors. Once plaintiffs became aware of the injury and who occasioned it, they were under a duty to investigate the matter and commence a cause of action. Burton-Lister v. Siegel, Sivitz and Lebed Assocs., 798 A.2d 231, 237 (Pa. Super. 2002).

Plaintiffs, in an attempt to toll the limitations period, argue that the discovery rule exception should be applied to toll the limitations period. The court finds plaintiffs reliance upon the discovery rule to be misplaced. Under the discovery rule, the limitations period does not begin to run until it is reasonably possible for a party to discover that he or she has been injured by the act of another. Here, as demonstrated above, plaintiffs knew (discovered) they were injured on or about August 4, 1999 when they received a copy of the New Mexico lawsuit which caused the terms of the ICG financing to change. As such, the court finds that the discovery rule exception does not apply since the parties were aware of the injury and the cause of injury within the limitations period.[3] Based on the foregoing, Sangrey and Johnson's motion for summary judgment is granted.

[3] Although, a formal motion has not been filed by defendant Howard Kraye, the court finds that plaintiffs' claims against Kraye are also time barred.

B. MBC and Fusilli.

Mobility maintains that it had no knowledge of and no ability to gain knowledge that MBC shared information regarding the timing of Mobility's fund raising effort with SFT. Plaintiffs maintain that it was not until the summer of 2001 that Jannetta first communicated with Fusilli about Mobility's interest in purchasing the SFT indebtedness and it was only after that time that Mobility learned that MBC was acting against its economic interests by refusing to negotiate with a willing buyer.

Plaintiffs further maintain that it was not until after Jannetta's contact with Fusilli that Mobility learned that a co-defendant in the New Mexico litigation and a friend of Kraye's, Mark Nash, had been told by Kraye that SFT's principals intended to recapitalize the company through monies paid by Mobility in the New Mexico lawsuit.

There are two grounds for invoking the discovery rule. The first ground is that the existence of the injury was not known and could not have been reasonably ascertained within the limitations period. The second ground is that the plaintiff knew of the injury but exercising reasonable diligence, did not know the injury was caused by the tortious act of another. *See* Matthews v. Roman Catholic Diocese of Pittsburgh, 67 Pa. D. & C. 4th 393, 397 (Pa. Com. Pl. 2004). As it pertains to the MBC defendants, the second ground is invoked. While plaintiffs knew of the injury within the limitations period, it is plaintiffs' position that until late 2001 they neither knew nor had reason to know that they had been injured by the conduct of the MBC defendants.[4]

As stated previously, the discovery rule provides that where the existence of the injury is not known to the complaining party and such knowledge cannot reasonably be

[4] This court has been unable to find any Pennsylvania appellate authority providing any guidance for the second ground of the discovery rule except for the case law on the discovery rule itself.

ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible. The discovery rule applies in only the most limited of circumstances, where the plaintiff despite, the exercise of reasonable diligence, was unable to discover his or her injury or its cause. The party seeking to invoke the discovery rule bears the burden of establishing the inability to know he or she has been injured by the act of another despite the exercise of reasonable diligence. Cochran v. GAF Corp., 666 A.2d 245, 249 (Pa. 1995).

Applying the foregoing standard to the instant matter, the court finds that Plaintiffs have failed to demonstrate that they exercised reasonable diligence in discovering that MBC was the cause of their injury. Once the lawsuit was filed by the SFT defendants in New Mexico, plaintiffs had a duty to investigate to determine if parties other than the SFT defendants were involved. Although plaintiffs suffered an injury as a result of the New Mexico lawsuit, they waited more than two years to determine all those that were involved in causing the injury. Indeed had the plaintiffs instituted the instant lawsuit within two year limitations period against the SFT Defendants, the alleged involvement of the MBC defendants would have been discovered within the limitations period. No reasonable minds would disagree that Mobility failed to exercise reasonable diligence in discovering MBC's involvement.

In C.J. M. v. Archdiocese of Philadelphia, 67 Pa. D.&C. 4th 474 (2004), the court was faced with a similar situation. In C.J.M., plaintiffs commenced lawsuits against various religious authorities alleging they suffered abuse during their childhoods. Defendants filed a motion for judgment on the pleadings alleging that the statute of limitations barred plaintiffs' claims against the Archdiocesan defendants. Plaintiffs

argued that the discovery rule tolled the statute of limitations in their cases. Similar to the plaintiffs herein, the plaintiffs in C.J.M. admitted that they were injured and that they were aware of their injuries at the time they were abused. Nonetheless, the plaintiffs in C.J.M. argued that they were unaware of the Archdiocesan acts until various disclosures were made in 2002 through 2004, after the limitations period expired.

The court in C.J.M. found that plaintiffs' claims against the Archdiocese were time barred and granted defendants motion. The court reasoned that while the Archdiocesan defendants may have contributed to the harm caused by the priests, they did not create a new injury, a creeping injury or alter the cause of the injury. Id. 484. The court found that while the Archdiocesan's actions may have contributed to plaintiffs' initial injuries, the Archdiocesan's actions were a secondary cause of action related to the injury brought about by the abuse. Id. As such, the court found that the statute of limitations must be deemed to begin to run at the time of the abuse itself, not when the various disclosures were made in 2002 through 2004. Id.

The court finds the reasoning applied in C.J.M. to be persuasive. Here, like the plaintiffs in CJM, plaintiffs ask this court to separate the harm caused by each of the defendants, SFT and MBC, and create a separate clock for statute of limitation purposes. However, plaintiffs fail to provide the court with any evidence to suggest that they suffered a new injury as a result of MBC's actions. The court finds that plaintiffs suffered an injury on July 28, 1999 by the filing of the lawsuit in New Mexico and that with the exercise of reasonable diligence plaintiffs could have discovered that the MBC defendants were involved within the limitations period. Accordingly, the court finds that plaintiffs' claims against the MBC defendants are time barred.

CONCLUSION

For the foregoing reasons, Defendants respective Motions for Summary Judgment are Granted and Plaintiff's amended complaint is dismissed against all Defendants. An Order contemporaneous with this Opinion will follow.

BY THE COURT,

_____

C. DARNELL JONES, II, J.