UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARGERY WAKEFIELD,

Plaintiff,

-vs- CASE NO. 82-1313 Civ-T-10

THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, etc.,

Defendant.
_____/

O R D E R

This is a civil action against the Church of Scientology ("The Church"), alleging fraudulent misrepresentation and psychological malpractice or negligence.

1. Motion to dismiss for lack of subject matter jurisdiction.

Defendant's motion to dismiss for lack of subject matter jurisdiction raises the argument that because Plaintiff sues for fraudulent misrepresentation, the Court would be required to examine the veracity of the Church's beliefs. The Church argues that such an examination is beyond the jurisdiction of the Court. This argument ignores the fact that the Court must, in the first instance, determine whether the representations were secular or religious in nature. The Court has previously ruled that "the boundary between the Defendant's protected religious beliefs and

its unprotected secular actions associated with that belief cannot be determined in the early stages of the case on a motion to dismiss or a motion for summary judgment." Accordingly, the motion is DENIED.

2. Motion for summary judgment on the issue of punitive damages.

Defendant's motion for summary judgment on the issue of punitive damages does not rest on the facts of this particular case. Rather, it argues that punitive damages should not be assessed against a church as a matter of law, regardless of the circumstances. This contention does not have support in the law. See, e.g., Bredburg v. Long, et al., No. 85-5012, slip op. (8th Cir. 1985); Christofferson v. Church of Scientology of Portland, 644 P.2d 577, 57 Or. App. 203 (1982), rev. denied, 650 P.2d 927 (Or. 1982), cert. denied, 103 S.Ct. 1196 (1983); Allard v. Church of Scientology, 129 Ca. Rptr. 795, 58 Cal. App. 3d 439 (1976), cert. denied 97 S. Ct. 1101 (1977). Accordingly, the motion is DENIED.

3. Motion for summary judgment on state law grounds.

The Defendant moves for summary judgment on various state law grounds. First, the Defendant argues that, as a matter of law, the Plaintiff cannot prevail on her claim of fraudulent misrepresentation because her reliance on the alleged misrepresentations was unjustified. The Defendant maintains that even if

Church members did represent to the Plaintiff that the practices of Scientology were non-religious, scientific, and psychotherapeutic, the Plaintiff was on notice that this was not true. She had signed various official documents acknowledging the spiritual nature of the Church's practices and disclaiming any scientific prowess. She had read various Scientology books containing similar disclaimers. The Plaintiff, however, has asserted that she was informed that the disclaimers were made for tax and other purely legal purposes.

The Defendant relies on a 1951 Florida Supreme Court decision, McDonald v. Rose, 50 So.2d 878 (Fla. 1951), holding that when a purchaser of real property is placed on notice of the falsity of the seller's representations, he cannot rely on the seller's reassurances. However, this is no longer the law in Florida. Besett v. Basnett, 389 So.2d 995 (Fla. 1980). Whether reliance on misrepresentations is justified is ordinarily a question of fact for the jury. See, e.g., Pinzl v. LaPointe, 426 So.2d 65 (Fla. 5th D.C.A. 1983). Additionally, on a motion for summary judgment the Court must draw all reasonable inferences from undisputed facts in favor of the party resisting the motion. American Telephone & Telegraph Co. v. Delta Communications Corp., 590 F.2d 100, 101-02 (5th Cir., cert. denied, 444 U.S. 926 (1979). This issue cannot be resolved on a motion or summary judgment.

The Defendant next contends that the Plaintiff's claims are barred by the applicable statutes of limitations. The Defendant asserts that under Florida's borrowing statute, Fla. Stat.

§95.10, when a cause of action arises in another state and is barred by the statute of limitations of that state, no cause of action maybe maintained in Florida.

The borrowing statute is triggered only upon a finding that the cause of action "arose" in another state, Meechan v. Celotex, 466 So.2d 1100, 1101 (Fla. 3d D.C.A. 1985). The borrowing statute is procedural,* so the determination of where the cause of action arises is made in accordance with the law of the forum state, here Florida. Id. (citations omitted). And, under the applicable Florida law, a cause of action in tort "arises in the jurisdiction where the last act necessary to establish liability occurred." Id. at 1102 (citations omitted).

The Defendant argues that the place of initial injury is the place where the cause of action arises, and that the statute of limitations of California applies. This is not the law in Florida. Florida caselaw makes no distinction between where a cause of action "accrues" for the running of Florida's statute of limitations, and where it "arises" for purposes of the borrowing statute. Id. (citations omitted). A cause of action for fraud is "not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." Matthews v. Matthews, 222 So.2d 282 (Fla. 2d D.C.A. 1969). Discovery, for

*State statutes of limitations must be applied by a federal court in a diversity case, even though statutes of limitations may be regarded as procedural for some other purposes. Guaranty Trust Co. of New York v. York, 65 S.Ct. 1464 (1945).

this purpose, is defined in Florida by an objective standard. A plaintiff is held to have knowledge of facts which would have been discovered in the exercise of due diligence. Id. at 284.

The Defendant again notes the various disclaimers, etc., which should have put the Plaintiff on notice that any alleged claims of scientifically curative power were fraudulent. Nevertheless, even though the standard for discovery is objective, there are various circumstances which may except the Plaintiff from constructive notice. An "artfully concealed or convincingly practiced" fraud may justify a plaintiff's inactivity. Azalea Meats, Inc. v. Muscat, 386 F.2d 5 (5th Cir. 1967), cited with approval in Codding v. Phillips, 296 So.2d 554 (Fla. 3d D.C.A. 1974). Furthermore, Florida courts recognize the fiduciary, confidential nature of the physician/patient relationship as imposing, in some circumstances, a duty on the part of the physician to disclose a potential cause of action. Nardone v. Reynolds, 333 So.2d 25 (Fla. 1976). Failure to disclose tolls the statute of limitations, Id. This duty has been extended to a principal/agent relationship, First Federal Sav. & Loan Ass'n v. Dade Federal Sav. & Loan Ass'n, 403 So.2d 1097 (Fla. 5th D.C.A. 1981), and may be applicable here. Also, if a plaintiff can show, in any situation, a successful concealment of the cause of action through fraudulent means, he is not held to constructive discovery. Nardone, supra, at 39.

Whether there was a fraudulent concealment, whether the Plaintiff exercised due diligence, and when, if ever, she should

have known that the alleged misrepresentations were false are disputed questions of material fact. Resolution of these issues as a matter of law is therefore inappropriate.

The Defendant also moves for summary judgment on the purported claim of false imprisonment. The Plaintiff admits no such claim is made and therefore is not at issue in this case.

Accordingly, the motion for summary judgment on on state law grounds is DENIED.

4. Motion for summary judgment on the issue of release.

The Defendant also moves for summary judgment on the issue of release. The undisputed facts are that on July 22, 1981, the Plaintiff executed and delivered to the Defendant a release of all potential claims. In consideration for the release, the Plaintiff was given a check in the amount of $15,891.59. The Plaintiff claims the release was executed under duress and is therefore invalid. The Court denied Defendant's previous motion for summary judgment on the issue of release because there is a factual question as to the validity of the release.

The Defendant now claims that newly discovered facts preclude the Plaintiff from seeking to set aside the release. The newly discovered fact is that the Plaintiff negotiated the $15,891.59 check at a time removed from when Plaintiff signed the release and outside the presence of any representative of the Defendant. The Defendant argues that the negotiation of the check was a free and voluntary act which constitutes a ratifica-

tion of the release, and that the failure to tender return of the consideration in a timely fashion precludes Plaintiff from now seeking to set aside the release.

The Defendant relies on testimony from the Plaintiff's parents and on a letter from the Plaintiff to her attorney to establish the fact that the Plaintiff appropriated the funds to her own use. However, an affidavit from Plaintiff's counsel states that there have been sufficient funds in escrow, at least from the inception of this litigation, to pay the amount, but that the Defendant has refused to accept the tender. Mr. Logan further explains that the delay in tendering the amount resulted from his own failure to so instruct his client. Mr. Logan explains that he represents other individuals involved in lawsuits with the Defendant. He states that his experience in litigation with the Defendant has caused him to be very cautious in accepting new clients, as the Defendant has been known to cause spies to infiltrate offices of those opposing the Defendant. Rumors that the Plaintiff herself was such a spy had reached Mr. Logan. A letter from a former Church member substantiates the allegation that the Defendant had caused such rumors to be circulated about the Plaintiff. Therefore, in an effort to protect his existing clients, Mr. Logan was very cautious in his investigation of the Plaintiff's claim, accounting for the delay in instituting the instant litigation, and, presumably, in advising the Plaintiff of the necessity of tendering the consideration.

The retention of release consideration until an individual is advised by her attorney for the necessity of a tender does not automatically constitute a ratification of an otherwise invalid release. Shipley v. Komer, 60 F.Supp. 551, 554-55 (S.D. Fla. 1945). There are disputed facts as to the advice the Plaintiff had received about the negotiation on the check. Accordingly, the motion for summary judgment on the issue of release is DENIED.

The Defendant has moved to strike portions of Plaintiff's response to the defense memorandum in support of summary judgment on the issue of release. Upon due consideration the motion is DENIED.

5. Motion for dismissal or other sanctions for violations of Rules 11, 26(g) and 37, F. R. Civ. P.

The Church contends that the Plaintiff has violated these rules by falsely stating in her complaint, in affidavits, in depositions and in responses to request to admit, that she never understood Scientology to be religious and that representatives of the Defendant never characterized Scientology as religious. As evidence that the original statements were false, Defendant points to a letter written by the Plaintiff to her grandmother, a subsequent deposition of the Plaintiff, an address by Plaintiff to a church group made after she had left the Church, and an interview with a psychiatrist.

In her complaint, Plaintiff alleges that:

> Representations were made by agents/members of Scientology that Scientology was a new type of psycho-therapy..

Complaint, Paragraph 5. Plaintiff further alleged that she

> relied upon these representations which represented Scientology as a science for the treatment of mental problems.

Complaint, Paragraph 6.

The fact that the Plaintiff stated in a letter, written more than a year after her introduction into Scientology, that Scientology is, inter alia, religious in nature, is not necessarily inconsistent with the allegations in the complaint. The address to the church group indicates that at some point in her indoctrination the Plaintiff was made aware of the religious nature of some of the beliefs espoused by Scientology. This, likewise, does not directly contradict the allegations of the complaint.

Allegations of Rule 11 violations in pleadings are generally to be determined at the end of litigation. Rule 11, Notes of Advisory Committee on Rule. It is premature, at this stage, to determine if the alleged inconsistencies are a result of falsities in the complaint, or if there is some other explanation. Accordingly, the motion for sanctions under Rule 11 is DENIED without prejudice to renewal at the end of this litigation.

The Defendant also points to statements made by the Plaintiff in a sworn affidavit submitted to the Court on January 18, 1983 in opposition to Defendant's motion to dismiss. The Plaintiff stated that she had been told the Defendant called itself a

church for tax purposes and "I never believed I had joined a church at any time in Scientology . . . It was always represented to me that it was an advanced form of psychotherapy." These statements do appear to be contradicted by later statements. The Plaintiff explains that the representations about the religious aspect of Scientology made to her grandmother were made under instructions from members of the Church in an effort to "con" other people into joining. Deposition, Feb. 17, 1983, Vol. II, p. 103-104; Deposition, Oct. 1, 1985, Vol. II, p. 99. Although the Plaintiff insists that she initially understood that the idea that Scientology was a religion was propounded for tax purposes, she does admit that she was later "brainwashed" into believing Scientology was a religion. Deposition, Oct. 1, 1985, Vol. II, p. 100. These inconsistencies will certainly provide the Defendant with ample impeachment material. However, the Plaintiff may have accepted the religious nature of certain beliefs without ever believing she had "joined a church". Accordingly, the motion for sanctions for falsities in affidavits is DENIED without prejudice to the right to renew should it appear at the end of this litigation that the Plaintiff intentionally misrepresented the facts to the Court.

6. Motion for summary judgment on First Amendment issues.

Finally, the Defendant moves for summary judgment, or in the alternative, for an evidentiary hearing, on First Amendment issues. The Defendant argues that Scientology is a religion and

therefore the nature and truth or falsity of its beliefs are protected from judicial scrutiny by the First Amendment. Because the beliefs are thus protected, the issue of whether the Plaintiff believed in the religious nature of the representations is therefore, according to the Defendant, immaterial.

It is not altogether clear that Scientology is a religion entitled to First Amendment protection. See, Vanschaick v. Church of Scientology, 535 F.Supp. 1125 (D. Mass. 1982). However, even presuming it to be generally entitled to such protection does not foreclose inquiry into whether certain statements were made, as alleged by the Plaintiff, for a purely secular purpose and in a non-religious context. Christofferson v. Church of Scientology, supra. Because Plaintiff claims she was injured by fraudulent misrepresentations that Scientology would provide a scientific cure for mental illness, her belief in this regard is relevant. A religious defense to a charge of false statement requires that "the person charged with the alleged misrepresentation must have explicitly held himself out as making religious, as opposed to medical, scientific or otherwise secular claims." Founding Church of Scientology v. United States, 409 F.2d 1146, 1164 (D.C. Cir. 1969). There is an issue of fact here.

The Defendant argues that the decision in United States v. Article or Device, 333 F.Supp. 357 (D. D.C. 1971) converts, by means of court ordered disclaimer, all Scientology's claims of curative power into protectable religious statements, in spite of the fact that the disclaimers are attached to predominantly

scientific literature. That case dealt with the labeling required for E-Meters to continue to be marketed. The Court did not have before it a situation in which an allegedly unbalanced individual was purportedly reassured that the disclaimers were made for purely legal purposes.

The Defendant points to evidence that the Plaintiff signed statements acknowledging the religious nature of Scientology, read such representations, and indeed, made such statements herself. While not denying the allegations, the Plaintiff asserts various reasons why these are not indications of the underlying truth, as she perceived it. Again, the Court is constrained, on a motion for summary judgment, to draw all reasonable inferences in favor of the non-moving Plaintiff. American Telephone & Telegraph Co. v. Delta Communications Corp., supra.

The Defendant further asserts that all of the First Amendment issues presented by this case should be decided by the Court as a matter of law. This is clearly untrue. If there is conflicting evidence about the context in which statements are made, and such statements are not necessarily religious, the Plaintiff is "entitled to have a jury consider, under proper instructions, whether the statements were made for a wholly non-religious purpose." Christofferson, supra, at 603.

Accordingly, Defendant's motion for summary judgment, or, in the alternative, for an evidentiary hearing on the First Amendment issues is DENIED.

The Defendant also moves for a separate trial of its counterclaim which alleges that the Plaintiff entered into express and implied agreements not to disclose confidential materials regarding the Scientology processes in which she was to engage. The Defendant is seeking specific performance of these agreements and a preliminary and permanent injunction against access to or disclosure of the subject materials.

The materials at issue are the Plaintiff's "auditing file". Plaintiff's right of access to this file for purposes of this litigation has been settled by the court's Order dated December 7, 1984. The Defendant argues that because the Plaintiff will rely on the file in her case-in-chief, severing the counterclaim and hearing it first is necessary if the Defendant is to be accorded the relief it seeks. In the alternative, the Defendant requests a hearing on its motion for preliminary and permanent injunction.

Upon due consideration, the motion is DENIED. It would obviously be impractical to resolve the Defendant's claim regarding disclosure of this information without resolving or at least considering, at the same time, the Plaintiff's claim of fraud relating to those materials; and that, in turn, involves inter alia a determination of the religious/secular issues of fact. Accordingly, all such issues will be carried with the case and will be treated as evidentiary questions to be determined at trial (including the possible entry of protective orders to safeguard confidential information).

7. Other motions.

Many of the motions pending before the Court are, because of the entry of this order, moot. Accordingly, Defendant's motions for a continuance of the trial date, for reconsideration of the Court's order of January 7, 1986, to stay the financial discovery mandated by that order, and to file a reply memorandum to Plaintiff's memorandum in response to Defendant's motion for violations of Rules 11, 26(g) and 37, F. R. Civ. P. are DENIED. Plaintiff's motion to strike the revised affidavit of Elizabeth Roush and the revised sealed affidavit of Terry Gross is DENIED.

IT IS SO ORDERED.

DONE and ORDERED at Tampa, Florida, this 11th day of February, 1986.

UNITED STATES DISTRICT JUDGE