

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

MAUREEN NYSEWANDER,

Plaintiff,

JAMES McLUCAS, ARCHDIOCESE OF NEW  
YORK And PRIESTLY FRATERNITY OF SAINT  
PETER,

Defendants.

-----X

: Index No.: 154582/12

:  
: **NOTICE OF MOTION TO**  
: **DISMISS**

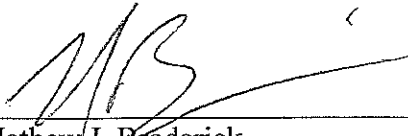
**PLEASE TAKE NOTICE**, that upon the annexed Affirmation of Jonathan R. Harwood dated September 11, 2012, the exhibits annexed thereto, the accompanying memorandum of law, and upon all the prior pleadings and proceedings in this action, the undersigned will move this court at the Supreme Court, New York County Courthouse, Submissions Part, Room 130, located at 60 Centre Street, New York, New York on the 25<sup>th</sup> day of October, 2012, at 9:30 a.m., in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order granting defendant James McLucas's motion to dismiss plaintiff's complaint pursuant to CPLR §3211, dismissing plaintiff's claims against James McLucas in their entirety and with prejudice, and for such other and further relief as this court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR 2214(b), answering papers, if any, must be served on counsel for the defendant at least seven (7) days prior to the return date of this motion.

Dated: Hawthorne, New York  
September 11, 2012

**TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP**

By: \_\_\_\_\_

  
Mathew J. Broderick  
*Attorneys for Defendant, James McLucas*  
Mid-Westchester Executive Park  
Seven Skyline Drive  
Hawthorne, New York 10532  
(914) 347-2600

To: Katherine G. Hall, Esq.  
*Attorneys for Plaintiff*  
BAILLY and McMILLAN, LLP  
244 Westchester Avenue  
Suite 410  
White Plains, New York 10604  
(914) 684-9100

Bradford S. Babbitt, Esq.  
*Attorneys for the Archdiocese of New York*  
ROBINSON & COLE, LLP  
885 Third Avenue, 28<sup>th</sup> Fl.  
New York, NY 10022-4834  
(212) 451-2900

PRIESTLY FRATERNITY OF SAINT PETER  
119 Griffin Road  
Elmhurst Township, PA 18444

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
MAUREEN NYSEWANDER,

Plaintiff,

JAMES McLUCAS, ARCHDIOCESE OF NEW  
YORK And PRIESTLY FRATERNITY OF SAINT  
PETER,

Defendants.  
-----X

: Index No.: 154582/12  
:  
: **AFFIRMATION IN SUPPORT**  
: **OF MOTION TO DISMISS**

Jonathan R. Harwood, being duly admitted to practice law before the courts of the State of New York, hereby affirms under the penalty of perjury that:

1. I am a member of the firm of Traub Lieberman Straus & Shrewsberry LLP, counsel for defendant Fr. James McLucas and, as such, am fully familiar with the facts and circumstances herein. I make this affirmation in support of Fr. McLucas's motion to dismiss plaintiff's complaint pursuant to CPLR §3211(a)(5).

2. Plaintiff's complaint, filed on or about July 19, 2012, alleges that from July 2007 to December 2009 Fr. McLucas committed various intentional torts against the plaintiff, resulting in her alleged damages. While Fr. McLucas vehemently denies committing any of the intentional torts alleged in the complaint, plaintiff's complaint must nevertheless be dismissed as it was filed beyond the one year statute of limitations applicable to the intentional torts alleged therein.

3. While plaintiff has couched her allegations against Fr. McLucas as sounding in negligence, she cannot, as described more fully below, transmogrify her factual allegations of

intentional torts by labeling them as negligence. It is therefore respectfully requested that plaintiff's claims against Fr. McLucas be dismissed, in their entirety and with prejudice.

4. Plaintiff filed an amended complaint against Fr. McLucas, and other defendants, on or about July 19, 2012. *See* Ex. "A". In the amended complaint, plaintiff alleges that from July 2007 to December 2009 she was "sexually abused, attacked and harassed by Defendant James McLucas." *Id.*, ¶17. While each of plaintiff's causes of action against Fr. McLucas are based upon these allegations of intentional torts, plaintiff's first, third and fourth causes of action allege negligence against Fr. McLucas and the other co-defendants, and plaintiff's second cause of action alleges negligence and gross negligence against each of the defendants.

5. As discussed in greater detail below, plaintiff's claims, while labeled as negligence, clearly allege the commission of intentional torts by Fr. McLucas, beginning in July 2007 and ending in December 2009. Because plaintiff's claims are based upon allegations of intentional torts alleged to have been committed by Fr. Lucas, plaintiff's claims are subject to a one year statute of limitations. While Fr. McLucas vehemently denies the salacious allegations that plaintiff has made against him, plaintiff's complaint must nevertheless be dismissed against Fr. McLucas, as it was filed on July 19, 2012, more than three years following the last date upon which Fr. McLucas was alleged to have committed the last intentional tort referenced in the complaint. Thus, it is respectfully submitted that plaintiff's claims against Fr. McLucas must be dismissed, in their entirety and with prejudice.

6. While plaintiff has labeled her first, third and fourth causes of action against Fr. McLucas as sounding in negligence and her second cause of action against Fr. McLucas as sounding in gross negligence, her claims are clearly based solely upon allegations of intentional tort and therefore subject to a one year statute of limitations. Plaintiff has failed to provide any

factual basis to support a negligence cause of action against Fr. McLucas. *See* Ex. “A”, ¶¶ 23, 33, 41, 44. Plaintiff cannot avoid the one year statute of limitations applicable to her claims against Fr. McLucas by denominating her factual allegations of intentional tort as claims for negligence or gross negligence.

7. It is respectfully submitted that there is no reasonable reading of the factual allegations against Fr. McLucas in the complaint that could support a claim for negligence or gross negligence. *See* Ex. “A”, ¶17. Plaintiff’s allegation that she was “sexually abused, attacked and harassed” by Fr. McLucas clearly sound in intentional tort, and are therefore subject to the one year statute of limitations.

8. In analyzing a complaint, the courts look at the essence of the claims, regardless of the causes of action asserted by the plaintiff. Simply put, the names a plaintiff ascribes to her causes of action do not control. Moreover, the New York courts have adopted the view that once a plaintiff alleges intentional offensive contact, her claim is one for intentional tort, not negligence.

9. In this case, plaintiff clearly alleges intentional conduct by Fr. McLucas. These claims are subject to a one year statute of limitations and, as the last such intentional tort committed by Fr. McLucas allegedly occurred no later than December, 2009, the deadline for the filing of plaintiff’s claims based upon these allegations expired in December 2010. As plaintiff’s instant complaint was filed on July 19, 2012, her claims of intentional tort against Fr. McLucas are barred and must therefore be dismissed, in their entirety and with prejudice.

**WHEREFORE**, defendant Fr. James McLucas respectfully requests that the court enter an order dismissing the complaint in its entirety and with prejudice, along such further relief that the court deems just and appropriate.

Dated: Hawthorne, New York  
September 11, 2012

TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP

By: 

Jonathan R. Harwood  
Attorneys for Defendant  
James McLucas  
Mid-Westchester Executive Park  
Seven Skyline Drive  
Hawthorne, New York 10532  
(914) 347-2600