

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
 NUMBER: S10036 of 1999

Plaintiff: **JOAN KATHERINE ISAACS**

AND

DRAFT

First Defendant: **FRANCIS EDWARD DERRIMAN**

AND

Second Defendant: **THE TRUSTEES OF THE CORPORATION OF THE ROMAN CATHOLIC ARCHDIOCESE OF BRISBANE**

DEFENCE OF THE SECOND DEFENDANT

The second defendant relies on the following facts in defence of the claim -

1. The second defendant admits the allegations of fact contained in paragraph 1 of the statement of claim.
2. In relation to the allegations contained in paragraph 2 of the statement of claim, the second defendant:-
 - a. says that the correct name of the second defendant is The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane;
 - b. admits that the second defendant is a Body Corporate capable of suing and being sued;
 - c. admits that the second defendant was the registered proprietor of the property at Sandgate on which the Roman Catholic Church, presbytery, and Church hall are located;
 - d. says that the second defendant was the registered proprietor in its capacity as the incorporated entity of trustees appointed to hold the real and personal property of the Roman Catholic Church in that part of the State of Queensland comprised within the Archdiocese of Brisbane;
 - e. denies that the second defendant employed the first defendant in relation to his ministry within the Sandgate parish.
3. In relation to paragraph 3 of the Statement of Claim, the second defendant:-

DEFENCE
 Filed on behalf of the Second Defendant
 Form 17 - R.146

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- a. admits that the first defendant was an ordained Priest of the Roman Catholic Church;
 - b. denies that the first defendant was the servant or agent of the second defendant in carrying out his functions as a priest within the parish, including any function that involved acting as a "spiritual advisor" because:-
 - i. the second defendant constituted a body corporate by name and style pursuant to the Letters Patent for the purpose of holding the real and personal property of the Roman Catholic Church in that part of the State of Queensland comprised within the Archdiocese of Brisbane;
 - ii. the second defendant does not exercise any religious function or control on behalf of the Roman Catholic Church so far as the religious function of the Roman Catholic Church within the Archdiocese of Brisbane is concerned.
 - c. in relation to the allegation that the plaintiff was a child and a member of the parish, the second defendant admits that the plaintiff was born on 19 January 1953.
 - d. does not plead to paragraph 3(d) because it relates solely to the first defendant.
 - e. denies that the second defendant provided spiritual advice, education and counselling to the plaintiff and, as such, stood in a fiduciary relationship to the plaintiff.
4. In relation to the allegations contained in paragraph 4 of the Statement of Claim, the second defendant:-
- a. does not plead to the allegation because it relates solely to the actions of the first defendant;
 - b. in any event the second defendant has no independent means of satisfying itself of the truth or otherwise of the allegations and is accordingly unable to admit the same;
 - c. says that the conduct of the first defendant, if true, constituted criminal activity for which the first defendant is personally liable in circumstances where the first defendant was acting personally and outside the principles, teachings and responsibility of the Roman Catholic Church.
5. In relation to the allegations contained in paragraph 5 of the Statement of Claim:-
- a. the second defendant does not plead to the allegation as it relates solely to the first defendant;
 - b. the second defendant denies the allegations contained therein because:-
 - i. the plaintiff's assertions involve questions of law and the second defendant's denial of the same relates to the different view of the law held by the second defendant and the plaintiff;
 - ii. the second defendant exercised no religious function of the Roman Catholic Church and did not control or direct the first defendant in relation to any religious function with respect to priests working within the parish or otherwise;

- iii. the second defendant denies the allegation as there exists no fact, matter or circumstance that would give rise to a duty as alleged by the plaintiff against the second defendant.
6. In relation to the allegations contained in paragraph 6 of the Statement of Claim, the second defendant denies the allegation and says that the conduct of the first defendant, if true, constituted criminal activity for which the first defendant is personally liable in circumstances where the first defendant was acting personally and outside the principles, teachings and responsibility of the Roman Catholic Church.
7. In relation to paragraph 7 of the Statement of Claim, the second defendant does not admit the allegations on the basis that it has no independent means of satisfying itself of the truth or otherwise of the allegations in the time available and remains uncertain in that regard.
8. In relation to paragraphs 8 of the Statement of Claim, the second defendant does not plead to the allegations as they relate solely to the first defendant.
9. In relation to paragraph 9 of the Statement of Claim, the second defendant denies the allegations contained therein because:-
- a. the plaintiff's assertions involve questions of law and the second defendant's denial of the same relates to the different view of the law held by the second defendant and the plaintiff;
 - b. the second defendant exercised no religious function of the Roman Catholic Church and did not control or direct the first defendant in relation to any religious function with respect to priests working withing the parish or otherwise;
 - c. the first defendant was not a servant, agent or employee of the second defendant from which a vicarious liability could arise.
 - d. there exists no fact, matter or circumstance that would give rise to a duty of care as alleged by the plaintiff against the second defendant.
10. In relation to the allegations contained in paragraph 10 and 11 of the Statement of Claim, the second defendant denies the allegation contained therein because:-
- a. of the matters pleaded in paragraph 9 hereof;
 - b. the plaintiff's assertion involves questions of law and the second defendant's denial of the same relate to the different view of the law held by the second defendant and the plaintiff;
 - c. the second defendant did not know, and nor ought it have known, of any alleged risk of injury or sexual assault to the plaintiff at the hands of the first defendant;
 - d. the second defendant had no function with respect to Priests working within the parish nor did employ Priests;
 - e. the second defendant denies having held the first defendant out as a suitable "spiritual advisor" as alleged.
11. In relation the plaintiff's claim generally, the second defendant:-
- a. denies that it was responsible in any way for the actions of the first defendant;

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- b. says the first defendant was acting on a wrongful personal pursuit entirely outside any teachings of the Roman Catholic Church;
- c. says that the first defendant is responsible for his own conduct in that regard acting on his own account and without any knowledge, approval or consent of the Roman Catholic Church.

12. Further:-

- a. the second defendant says that any cause or causes of action for damages against the second defendant as alleged in the Statement of Claim did not accrue within 3 or 6 years of the issue of the Writ in this action and are time barred pursuant to the provisions of the *Limitation of Actions Act*;
- b. the plaintiff's delay in bringing these proceedings with respect to events alleged to have occurred between 30 to 34 years ago is, so far as the second defendant is concerned, an abuse of process because:-
 - i. the proceedings have been brought with unreasonable delay;
 - ii. the proceedings are unfairly and unjustifiably oppressive because of the delay;
 - iii. the proceedings are prejudicial to the second defendant's ability to investigate and properly defend the proceedings because of the delay.

13. In the premises, the second defendant seeks a permanent stay of the proceedings.

14. The second defendant claims costs from the plaintiff.

15. Save as hereinbefore admitted or otherwise expressly pleaded to, the second defendant denies each and every allegation expressed in the claim.

The second defendant does not require a jury.

Signed:

Description: Solicitors for the Second Defendant

Dated:

NOTICE AS TO REPLY

You have 14 days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.