

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No. \_\_\_\_\_

JOHN J. RYAN, IV, ET AL.,

*Petitioners,*

v.

LEONOR LOBO DE GONZALEZ and  
JORGE GONZALEZ,

*Respondents.*

On Discretionary Conflict Review of Decisions of the Florida Supreme Court  
and other District Courts of Appeal

**JURISDICTIONAL BRIEF OF PETITIONERS**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

I. STATEMENT OF CASE AND FACTS ..... 1

III. ARGUMENT ..... 5

    A.  
EQUITABLE ESTOPPEL DOES NOT REQUIRE THE PLAINTIFF TO BE  
AWARE OF HER CAUSE OF ACTION PRIOR TO THE EXPIRATION OF  
THE STATUTE OF LIMITATIONS ..... 5

    B. THIS COURT SHOULD EXERCISE ITS DISCRETION AND  
ENTERTAIN THIS CASE ON THE MERITS BECAUSE THE ISSUES  
RAISED ARE OF GREAT PUBLIC IMPORTANCE ..... 9

II.  
CONCLUSION ..... 10

CERTIFICATE OF SERVICE ..... 11

CERTIFICATE OF COMPLIANCE ..... 11

## TABLE OF AUTHORITIES

### Cases

<i>Florida Department of Health and Rehabilitative Services v. S.A.P.</i> , 835 So.2d 1091 (Fla. 2002) .....	passim
<i>Head v. Lane</i> , 495 So.2d 821 (Fla. 4 <sup>th</sup> DCA 1986) .....	6
<i>Miami Gardens v. Conway</i> , 102 So.2d 622 (Fla. 1985) .....	5
<i>Morsani v. Major League Baseball</i> , 790 So.2d 1071 (Fla. 2001) .....	9
<i>Pasco County v. Tampa Development Corp.</i> , 364 So.2d 850 (Fla. 2d DCA 1978) .....	6
<i>Ryan v. Lobo de Gonzalez</i> , 841 So. 2d. 510 (Fla. 4th DCA 2003) .....	3
<i>State Dep't of Revenue v. Anderson</i> , 403 So.2d 397 (Fla. 1981) .....	5
<i>Travelers Ins. Co. v. Spencer</i> , 397 So.2d 358 (Fla. 1st DCA 1981) .....	6

## **I. STATEMENT OF CASE AND FACTS**

Petitioners, John Ryan, IV, Victoria Ryan, Carolina Ryan Camperio and Alin Ryan Smith (the “children”), and Robert Nall, as personal representative of the Estate of Julio Lobo Olabarria, seek discretionary review of a decision of the Fourth District Court of Appeal that affirmed the trial court’s final summary judgment order which found that every claim for relief in Petitioners’ Second Amended Complaint was barred by the statute of limitations.

Petitioners filed suit against Leonor Lobo de Gonzalez (“Leonor”) and Jorge Gonzalez to recover one half of the shares of Chiriqui Sugar Mills Corporation, a Panamanian corporation holding title to sugar properties in Cuba consisting of vast agricultural lands, three mills and the largest refinery on the island, with an integrated railroad system linking the three mills. Maria Luisa Lobo Ryan, the now deceased mother of the children, and Leonor, are the two daughters of Julio Lobo, who is also deceased. Petitioners alleged that Maria Luisa and Leonor either equally owned the Chiriqui shares, or alternatively that the Moorings Development Company, a company they owned 50-50, held the shares in trust for the benefit of Julio Lobo.

Respondents alleged that the Moorings owned the Chiriqui shares when Maria Luisa redeemed her 50 percent interest in the Moorings in 1980 and that Maria Luisa relinquished her interest in the shares. Petitioners alleged that at the time that Maria Luisa redeemed her interest in the Moorings, Leonor and her husband, Jorge Gonzalez, had control of the Moorings, never took the position that the Chiriqui shares were part of the Moorings’ assets, and in fact never listed the Chiriqui shares as an asset of the Moorings in any of the company’s financial statements.

Four years after Maria Luisa's redemption of her interest in the Moorings, Leonor and Jorge Gonzalez sold 100% interest in the Moorings to a third party but did not include the Chiriqui shares as part of the sale and kept the shares in a shoebox. As late as 1996, Leonor publicly asserted that she and her sister owned the Chiriqui shares equally. However, later in 1996, for the first time, Leonor publicly announced that she was the sole owner of the Chiriqui shares. Shortly after Leonor made this disclosure, Petitioners filed this lawsuit seeking to recover fifty percent of the Chiriqui shares.

Respondents argued that the statute of limitations barred Petitioners' claims. However, Petitioners argued that the statute of limitations was inapplicable because it did not begin to run until 1996 when Leonor first announced that she was the sole owner of the shares. Alternatively, Petitioners argued that if in fact the statute of limitations had expired, Leonor was equitably estopped from relying on the statute of limitations because she intentionally omitted to disclose her position that she owned 100% of the Chiriqui shares until after the limitations period expired. The trial court ruled that the equitable estoppel doctrine was inapplicable because the doctrine required Maria Luisa to be aware of the existence of her cause of action prior to the expiration of the limitations period.

The Fourth District affirmed the trial court's decision, and ruled as follows:

In the instant case, the trial court correctly ruled that equitable estoppel does not support the children's claims because Maria Luisa was not aware that she had a cause of action until 1996 (even though the last act of accrual of the cause of action occurred in 1980) and she was, therefore, not induced to forego filing suit within the limitations period. Likewise, Julio Lobo knew in 1974, at the latest, that his claims and demands for the Chiriqui stock were not being honored and there is no

evidence that he was induced to forbear enforcing his rights.

*Ryan v. Lobo de Gonzalez*, 841 So. 2d. 510, 520 (Fla. 4th DCA 2003).

The Fourth District's decision directly and expressly conflicts with the decision of this Court in *Florida Department of Health and Rehabilitative Services v. S.A.P.*, 835 So.2d 1091 (Fla. 2002), and other district courts of appeal in that it imposes a requirement that a claimant must be aware of the existence of her cause of action prior to the expiration of the statute of limitations period in order to apply equitable estoppel to bar a defendant's reliance on the statute of limitations. *S.A.P.* and other Florida appellate decisions permit application of the equitable estoppel doctrine in "omission" cases, which decisions directly and expressly conflict with the Fourth District's decision below.

## **II. SUMMARY OF ARGUMENT**

In *S.A.P.*, this Court ruled that a plaintiff does not have to have knowledge of the existence of a cause of action during the limitations period to be entitled to rely on equitable estoppel to bar application of the statute of limitations. Several district courts of appeal have also found that the doctrine of equitable estoppel is applicable in cases where a defendant is in a confidential relationship and has a duty to inform the plaintiff of material facts that would provide notice of a claim, but fails to do so until after the limitations period expires.

In express and direct conflict with this Court's opinion in *S.A.P.* and decisions of other district courts of appeal, the Fourth District below held that for a plaintiff to rely on equitable estoppel to bar application of the statute of limitations, the plaintiff must be aware of the existence of her cause of action prior to the expiration of the

statute of limitations period. The Fourth District's decision makes this requirement an element of the equitable estoppel doctrine. In addition to contradicting this Court's ruling in *S.A.P.*, the Fourth District's decision frustrates the prime purpose of the doctrine as it would allow a wrongdoer to conceal his wrongful acts until after the statute of limitations expires, and thereby profit from his wrongdoing. Accordingly, Petitioners invoke this Court's jurisdiction under Article V, § 3(b)3 of the Florida Constitution based on the conflict with decisions of the Florida Supreme Court and other district courts of appeal.

### **III. ARGUMENT**

#### **A. EQUITABLE ESTOPPEL DOES NOT REQUIRE THE PLAINTIFF TO BE AWARE OF HER CAUSE OF ACTION PRIOR TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS**

The Fourth District's decision in this case adopted the Respondents' argument that for a plaintiff to rely on equitable estoppel to bar the application of the statute of limitations, the plaintiff must be aware of the existence of her cause of action prior to the expiration of the statute of limitations period. However, the Fourth District's decision expressly and directly conflicts with decisions of the Florida Supreme Court and other district courts of appeal which permit application of the doctrine in "omission" cases.

This Court set forth the elements of equitable estoppel in *State Dep't of Revenue v. Anderson*, 403 So.2d 397, 400 (Fla. 1981):

- (1) a representation as to a material fact that is contrary to a later asserted position; (2) reliance on that representation; and (3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon.

In addition, in *Miami Gardens v. Conway*, 102 So.2d 622, 626 (Fla. 1985), this Court

found that one of the essential elements of equitable estoppel is that a person who claims the benefit of the doctrine has been influenced or has relied upon the conduct, act, or omission to act of the opposing party.

Several district courts of appeal have also found that the representation may be made by words or conduct and, “where there is a duty to speak, failure to do so can be a representation relied upon by a party claiming estoppel.” (Emphasis added). *Head v. Lane*, 495 So.2d 821, 824 (Fla. 4<sup>th</sup> DCA 1986); *Travelers Ins. Co. v. Spencer*, 397 So.2d 358, 361 (Fla. 1st DCA 1981); *Pasco County v. Tampa Dev. Corp.*, 364 So.2d 850, 853 (Fla. 2d DCA 1978). Therefore, since a plaintiff can rely on the equitable estoppel doctrine where a defendant’s omission constitutes conduct that induces a plaintiff to forego filing suit during the limitations period, the Fourth District’s decision requiring a plaintiff to be aware of the existence of a cause of action prior to the expiration of the statute of limitations period expressly and directly conflicts with decisions from other district courts of appeal.

This Court’s decision in *S.A.P.* demonstrates that equitable estoppel does not require that a plaintiff have knowledge of her claim prior to the expiration of the limitations period in order to preclude application of the statute of limitations. The plaintiff in *S.A.P.* alleged in her complaint that an internal HRS investigation in 1992 revealed for the first time that HRS employees had obstructed the criminal investigation of the 1979 abuse and neglect of the plaintiff. *Id.* The plaintiff in *S.A.P.* contended that “in light of HRS’s allegedly fraudulent acts and its ‘active concealment’ of those acts, the doctrine of equitable estoppel should bar the department from asserting a statute of limitations defense.” *Id.* at 1094. This Court agreed, holding that “[t]his prohibition on the ability of HRS to articulate the defense is consistent with this Court’s reliance upon the principle that our courts will not protect defendants who are directly responsible for delays of filing because of their own willful acts.” (Emphasis added). *Id.* at

1094.

The plaintiff in *S.A.P.* had no knowledge of her claim until 1992, some 13 years after the alleged wrongful conduct occurred, well outside the statute of limitations. Despite the fact that plaintiff had no knowledge of the existence of her claim prior to the expiration of the statute of limitations, this Court ruled that equitable estoppel could bar the defendant's use of the statute of limitations.

In his concurring opinion in the decision below, Judge Gross suggests that *S.A.P.* should be limited to abuse cases, and stated:

The question is whether the supreme court in *S.A.P.* has expanded the doctrine of equitable estoppel to apply in all situations where a defendant's conduct prevents a plaintiff from even being aware of a cause of action. Such an extension would push equitable estoppel beyond its application in any other Florida case. We therefore conclude that *S.A.P.* is not an extension of the law, but a case that is limited to the unique cause of action there at issue.

*Ryan*, 841 So. 2d. at 525. Contrary to Judge Gross' analysis, this Court's decision to apply the equitable estoppel doctrine in *S.A.P.* was not limited to abuse cases in that the plaintiff did not seek relief for abuse. Rather, the plaintiff's claim against HRS was for HRS's negligence in failing to remove the child from an abuse situation. Moreover, the equitable estoppel argument arose from the HRS's "active concealment" of records that would have disclosed the negligence cause of action. This Court ruled that the HRS should not be permitted to profit from its wrongful concealment of facts that would have disclosed the existence of a cause of action. *See S.A.P.*, 835 So.2d at 1093.

Here, like in *S.A.P.*, the complaint alleges that the Appellees actively concealed facts from Appellants. The complaint further alleges that the Appellees concealed the facts until after the limitations period expired, thus preventing Appellants from recognizing that they had a cause of action. The complaint also alleges that if these facts were not concealed, Petitioners would have asserted their rights in a timely manner. These allegations are nearly identical to the allegations in *S.A.P.*, where this Court held that under those circumstances, the wrongdoer is precluded, by the doctrine of equitable

estoppel, from relying on the statute of limitations to bar a plaintiff's claim. This Court's ruling in *S.A.P.* thus demonstrates that Petitioners are entitled to rely on the doctrine of equitable estoppel to bar Respondents' reliance on the statute of limitations even though they did not have knowledge of the existence of a claim during the limitations period.

Because *S.A.P.* and other appellate decisions teach that the plaintiff does not have to have knowledge of the existence of a cause of action during the limitations period to be entitled to rely on equitable estoppel to bar application of the statute of limitations, the Fourth District's decision below requiring that a plaintiff be aware of the existence of her cause of action prior to the expiration of the statute of limitations period expressly and directly conflicts with decisions of the Florida Supreme Court and other district courts of appeal on the same question of law.

**B. THIS COURT SHOULD EXERCISE ITS DISCRETION AND ENTERTAIN THIS CASE ON THE MERITS BECAUSE THE ISSUES RAISED ARE OF GREAT PUBLIC IMPORTANCE**

The Fourth District's decision below requiring a plaintiff relying on equitable estoppel to be aware of the existence of her cause of action prior to the expiration of the statute of limitations period is unreasonable given that the basis for excusing the plaintiff's untimely filing is the conduct of the defendant, not the conduct of the plaintiff. Indeed, situations in which the conduct of the defendant prevents the plaintiff from learning of the existence of a cause of action until after the limitations period expires should be even more appropriate for the application of the equitable estoppel doctrine, because the doctrine is based on concepts of equity and fundamental fairness.

In *S.A.P.* this Court explained, quoting *Morsani v. Major League Baseball*, 790 So.2d 1071, 1099 (Fla. 2001), that a prime purpose of the doctrine of equitable estoppel "is to prevent a party from profiting from his or her own doing." This Court also found in *S.A.P.* that "[l]ogic dictates that a defendant cannot be taken by surprise by the late filing of a suit when the defendant's own actions are responsible for the tardiness of the filing." *Id.*

Allowing the Fourth District's decision below to go uncorrected will result in the elimination of causes of action where the defendant would profit from his own wrongful conduct by concealing the wrongful acts until after the statute of limitations expired and will prevent injured parties from seeking redress. Therefore, this Court should exercise its discretionary jurisdiction, review the decision of the Fourth District Court of Appeal on the merits, and make uniform the rule that a plaintiff relying on equitable estoppel need not be aware of the existence of his cause of action prior to the expiration of the statute of limitations period.

## **II. CONCLUSION**

For the foregoing reasons, this Court should exercise its conflict jurisdiction and grant review of the decision below.

**CERTIFICATE OF SERVICE**

We hereby certify that a true and correct copy of the foregoing was served via U.S. Mail on May 27, 2003 to: George H. Moss, Moss, Henderson, Blanton & Lanier, P.A., Attorney for Appellees, 817 Beachland Boulevard, Vero Beach, Florida 32964.

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**CERTIFICATE OF COMPLIANCE**

We hereby certify that the foregoing was prepared using Times New Roman 14-point font in compliance with Fla. R. App. P. 9.210.

\_\_\_\_\_  
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