

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No.: 08-CV-347C

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

PRELIMINARY STATEMENT

This memorandum of law is submitted by defendants, Frederick Dimond, Robert Dimond, and Most Holy Family Monastery ("MHFM") in support of their motion pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure seeking dismissal of plaintiff's complaint, together with such other and further relief as the Court deems just and proper.

STATEMENT OF FACTS

As required by law, for the purposes of this motion only, defendants assume the facts set forth in plaintiff's complaint are true.

ARGUMENT

POINT I

**THE COURT LACKS SUBJECT MATTER JURISDICTION;
THEREFORE, THE COMPLAINT MUST BE DISMISSED.**

As the party invoking this Court's jurisdiction, it is the plaintiff who has the burden to prove jurisdiction is proper. *Hoffritz for Cutlery, Inc. v. Amajac, Ltd.*, 763 F.2d 55, 57 (2d Cir. 1985). Accepting the allegations in the complaint as true, plaintiff fails in his burden. In cases involving questions of religious doctrine, the First Amendment of the United States Constitution controls. In relevant part, the Establishment Clause provides that "Congress shall make no law respecting an establishment of religion. . . ." As the Court well knows, the First and Fourteenth Amendments guarantee separation between church and state. They prohibit civil courts from interfering in ecclesiastical disputes. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 698 (1976).

Even though civil courts have been allowed to adjudicate certain cases involving property disputes and fraud in solicitation, they may only do so only if the court is able to reach a decision "without interpreting or weighing church doctrine." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 451 (1969). A court faced with such an action must refrain from considering doctrinal matters. *Jones v. Wolf*, 443 U.S. 595, 604 (1979). Simply put, unless a court can resolve the controversy by applying neutral principles of law, it must dismiss the action.

Following this Constitutional standard, the United States District Court for the Southern District of New York concluded that it lacked the jurisdiction to determine fraud claims where a factual determination would require the court to interpret religious doctrine or practices. *See Mirabadi v. Nurbakhsh*, No. 92 Civ. 7734, 1995 U.S. Dist. LEXIS 13780, at *12 (S.D.N.Y. Sept. 22, 1995) citing *Presbyterian Church*, 393 U.S. 440 (1969) and *U-John v. Composite Bible-Based Religious Body*, 839 F. Supp. 861, 864 (N.D. Ga. 1993). In *Mirabadi*, the plaintiff claimed that she had been fraudulently induced to donate money to the defendants for religious and charitable purposes. *Mirabadi*, 1195 U.S. Dist. LEXIS 13780, at *10-11. Strikingly similar to the claims made by plaintiff herein, *Mirabadi* argued that one of the individual defendants “induced her to donate money based on fraudulent representations that the donations would be used for ‘religious and charitable purposes in accordance with the professed tenets and principles of the Sufi faith.’” *Id.* at *11-12. On defendants’ motion to dismiss, the court held that in order to rule on plaintiff’s fraud claim, it would be required to determine the tenets of the Sufi faith. *Id.* at *12. That, it held, is impermissible under the United States Constitution, because a court may not make any factual determination that involves the interpretation of religious doctrine. *Id.*

The longstanding prohibition against government entanglement into religious matters also is featured in *Commack Self-Service Kosher Meats, Inc. v. Rubin*, 106 F. Supp. 2d 445 (E.D.N.Y. 2000). In *Commack*, the district court was faced with a controversy involving numerous New York State regulations regarding kosher meat standards. Analyzing the statutes in question, the court concluded that they violated the

Establishment Clause of the United States Constitution because the laws interpreted the term “kosher” and necessarily required a government agency to enforce related religious law. *Commack*, 106 F. Supp. 2d at 459.

The rationale of *Mirabadi* and *Commack* should guide this Court. In this case, the plaintiff is asking the Court to define and interpret religious terms. At the core of the instant action is the definition of a Benedictine monk and a Benedictine monastery, two fundamental tenets of the Catholic Church. Crediting the complaint’s allegations, the plaintiff alleges that the defendants promised to aid him in his aspiration of becoming a Benedictine monk. Complaint at ¶¶ 23, 24 (Dkt. 1).¹ He further alleges that the defendants misrepresented their ecclesiastical affiliations and the scope of the religious privileges that they could confer upon others. *Id.* at ¶¶ 31, 32.

To determine the validity of these allegations, this Court would be required to define the term ***Benedictine***, meaning “of St. Benedict” or the “Rule of St. Benedict.” This Court also would be required to interpret the specific criteria to be employed in order to determine if a monk or a monastery was Benedictine in its nature, character, and beliefs. Moreover, the Court would need to determine what privileges, if any, a Benedictine monk is allowed to bestow upon another individual. Since the plaintiff alleges that MHFM was neither founded nor operated in accordance with the requirements of the Order of Saint Benedict, it would be necessary for this Court to define what those religious requirements are and determine if the defendants followed

¹ References to “Dkt. ____” are to filings in the Court’s docket in this matter.

them to the specification and satisfaction of the standards of a religious order. This sort of analysis, requiring an interference in religion, is precisely that which the Establishment Clause of the United States Constitution prohibits. Such fundamental religious determinations do not properly belong in the Courts. It therefore respectfully is requested that this Court dismiss plaintiff's complaint in its entirety.

POINT II

THE THIRD AND FOURTH CAUSES OF ACTION MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Defendants recognize that on a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court essentially is bound by the complaint. It is required to accept the plaintiff's allegations as true and to construe those allegations in a light most favorable to the plaintiff. *Conley v. Gibson*, 355 U.S. 41, 46 (1957); *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir. 1995), *cert. denied* 519 U.S. 808 (1996). Yet the complaint will be dismissed if the plaintiff can prove no set of facts that would entitle him to relief. *Conley*, 355 U.S. at 45-46; *Allen v. WestPoint-Pepperell, Inc.*, 945 F.2d 40, 44 (2d Cir. 1991).

Even under this broad and forgiving standard, it respectfully is submitted that the third and fourth causes of action in plaintiff's complaint should be dismissed as a matter of law, as he has failed to state a claim upon which relief may be granted.

See Clark-Fitzpatrick, Inc. v. Long Island Rail Road Co., 70 N.Y.2d 382, 388-389, 521 N.Y.S.2d 653 (1987).

Plaintiff's claims of unjust enrichment and money had and received, as alleged in the third and fourth causes of action in the complaint, should be dismissed as a matter of law. Under New York law, it is well-settled that claims based on unjust enrichment and money had and received are rooted in theories of quasi-contract. *County of Niagara v. Town of Royalton*, 48 A.D.3d 1072, 849 N.Y.S.2d 822 (4th Dep't 2008); *Lum v. New Century Mortgage Corp.*, 19 A.D.3d 558, 559-560, 800 N.Y.S.2d 408 (2d Dep't 2005); *In re Witbeck*, 245 A.D.2d 848, 850, 666 N.Y.S.2d 315 (3d Dep't 1997). A quasi-contract claim is not viable where an express contract is alleged. *Shovak v. Long Island Comm'l Bank*, No. 2007-08535, 2008 NY App. Div. LEXIS 3885, at *3-4 (2d Dep't April 29, 2008) citing *Lum*, 19 A.D.3d at 559-560. A contract is formed when three specific elements are met:

The requirements for the formation of a contract are that at least two parties with legal capacity to contract, mutually assent to the terms of the contract, and that there is consideration.

State Ins. Fund v. Branicki, 2 Misc. 3d 972, 975, 775 N.Y.S.2d 443 (N.Y. Civ. Ct. 2004) (internal citations omitted).

Assuming that the plaintiff's claims are true, as the defendants must on their Rule 12(b)(6) motion, a contract existed between the parties, making quasi-contract claims irrelevant. The plaintiff is not alleging that any party lacked capacity to form a

contract. According to plaintiff, defendant Frederick Dimond agreed to assist the plaintiff in his aspirations to become a Benedictine monk. In return, the plaintiff agreed to donate all his worldly goods to MHFM. The plaintiff further alleges that Frederick Dimond instructed the plaintiff to identify a specific portion of his donation which would be returned to the plaintiff should he choose to leave MHFM. *See* Affirmation of Lisa A. Coppola, Esq., sworn to on June 9, 2008 at ¶ 6; Complaint at ¶ 30. Plaintiff executed a written document which he claims specifically identified the exact sum to be remitted to him. *Id.* This document was signed by the plaintiff and received by defendant Frederick Dimond. *Id.* If plaintiff's claims are to be believed, the parties formed an agreement to exchange the defendants' services for the plaintiff's donation. The terms are further defined by defendant's request for documentation of an amount to be remitted to the plaintiff, and the plaintiff's written submission of a finite amount. Consequently, a contract was formed, and the quasi-contract claims of unjust enrichment and money had and received are unavailable to the plaintiff. They should be dismissed as a matter of law.

CONCLUSION

The defendants, Frederick Dimond, Robert Dimond, and Most Holy Family Monastery, respectfully request that plaintiff's complaint be dismissed in its entirety as barred by the Establishment Clause of the United States Constitution, or in the alternative, that the third and fourth causes of action be dismissed for failure to

