

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No. 08-CV-347C

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

Defendants.

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**MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
PURSUANT TO FED. R. CIV. PROC. 12(b)(1) AND 12(b)(6)**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, defendants Frederick Dimond, Robert Dimond, and Most Holy Family Monastery ("MHFM") move to dismiss plaintiff's complaint as this Court lacks subject matter jurisdiction to hear the plaintiff's claims. Moreover, with respect to the third and fourth causes of action, the plaintiff has failed to state a cause of action upon which relief may be granted.

Oral argument of this motion is requested and, in accordance with the Court's rules, shall be on a date and time scheduled by the Court. This motion is

supported by the accompanying affirmation of Lisa A. Coppola, Esq., sworn to on June 9, 2008 and memorandum of law dated June 9, 2008 together with the pleadings contained in the Court docket.

Dated: June 9, 2008  
Buffalo, New York

**RUPP, BAASE, PFALZGRAF,  
CUNNINGHAM & COPPOLA LLC**  
Attorneys for Defendants

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No. 08-CV-347C

FREDERICK DIMOND, ROBERT DIMOND,  
And MOST HOLY FAMILY MONASTERY,  
A New York Not-for-Profit Corporation,

Defendants.

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**SUPPORTING AFFIRMATION OF LISA A. COPPOLA, ESQ.**

**LISA A. COPPOLA, ESQ.**, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the State of New York and am a member of Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, attorneys for the defendants in this action. I am fully familiar with the facts set forth herein, and I make this affirmation under the penalties of perjury.

2. This affirmation is respectfully submitted in support of the defendants' motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. By their motion, defendants seek an order dismissing the plaintiff's complaint because the court lacks subject matter jurisdiction and, at least

with respect to the third and fourth causes of action, the plaintiff also failed to state a claim upon which relief may be granted.

3. Plaintiff filed his action on May 9, 2008, after which time the defendants were served with the summons and complaint. This motion is timely made, and the relief requested herein has not previously been requested in this action. As required by the Federal Rules of Evidence, for purposes of this motion, your deponent accepts as true the allegations in plaintiff's complaint.

4. Plaintiff claims that the defendants, Frederick Dimond and Robert Dimond, held themselves out to be members of the Order of St. Benedict as well as Benedictine monks. Plaintiff further alleges that he later discovered the defendants were not members of this order and that Most Holy Family Monastery ("MHFM") was neither founded nor operated in accordance with the requirements of the Order of St. Benedict. Complaint at ¶¶ 16-19, 31 (Dkt. 1).<sup>1</sup>

5. This lawsuit relates to a donation or donations made to MHFM by the plaintiff. Plaintiff alleges that he gave the donations in the belief that the defendants would bestow upon him the religious privileges and status of a Benedictine monk.

Dkt. 1 at ¶¶ 23, 24.

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<sup>1</sup> References to "Dkt. \_\_\_\_" are to pleadings filed in the docket of this action.

6. Before shedding his material possessions as required by the Order of St. Benedict, the plaintiff was instructed to specify a specific portion of the donation to be returned to him should he choose to leave MHFM. Dkt. 1 at ¶ 25. Plaintiff specified the amount, in writing, and delivered this document to the defendants. Dkt. 1 at ¶ 30. By his complaint, the plaintiff alleges that he was denied the return of his donation when he chose to leave MHFM and is therefore entitled to reimbursement of monies given. Dkt. 1 at ¶¶ 57, 58.

### **ARGUMENT**

7. Your deponent specifically incorporates by reference as if fully set forth herein the arguments made in the accompanying memorandum of law.

8. Under the First Amendment of the Constitution of the United States, and more particularly, the Establishment Clause, this Court lacks subject matter jurisdiction. To adjudicate this matter, it would be necessary for the Court to interpret religious doctrine, specifically religious standards regarding the requirements and privileges of Benedictine monks and the Order of St. Benedict, which is prohibited by the Establishment Clause. *See* accompanying Memorandum of Law at 2-5.

9. Plaintiff's complaint also fails to state a cause of action upon which relief may be granted because remedies for claims under theories of quasi-contract

are not available in the face of an express agreement between the parties.

Memorandum of Law at 5-7.

10. For these reasons as well as for those more fully detailed in the accompanying memorandum of law, defendants respectfully request that the Court dismiss the plaintiff's complaint and award to them such other and further relief as the Court deems just and proper.

**WHEREFORE**, your declarant respectfully requests that this Court grant defendants' motion to dismiss and award such other and further relief to the defendants as the Court deems just and proper.

Dated: June 9, 2008  
Buffalo, New York

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s/ Lisa A. Coppola, Esq.  
Lisa A. Coppola, Esq.