UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff

vs.

Index No. 08-cv-00347-JTC

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,
a New York Not-for-Profit Corporation

Defendants

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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PROCEDURAL BACKGROUND

This action was commenced on May 9, 2008, alleging that the defendants had engaged in fraudulent and inequitable conduct which resulted in the plaintiff transferring over $1.6 million in personal assets to defendant Most Holy Family Monastery ("MHFM"), a New York not-for-profit corporation. The defendants filed their Answer and Counterclaims on June 6, 2008. The plaintiff filed his Reply to Counterclaims on June 30, 2008.

The defendants now move to dismiss the Complaint, primarily on the grounds that the Court does not have subject matter jurisdiction of the case because its resolution would require judicial scrutiny of the religious beliefs and practices of the defendants. The defendants also assert that plaintiff's quasi-contract causes of action are barred because there existed an express contract between the parties.

FACTS

The Order of Saint Benedict

The Order of Saint Benedict is a world-recognized confederation of some twenty-one monastic congregations following the Rule of Saint Benedict and dating back to 980 A.D.[1] Although the Order of Saint Benedict is not as hierarchical as some Catholic Orders, it does have an international governing body which is recognized by the Roman Catholic Church: the Benedictine Confederation of the Order of Saint Benedict (in Latin, *Confoederatio Benedictina Ordinis Sancti Benedicti*) ("the Confederation"). The Confederation is governed by an organizational document entitled *Lex Propria Confoederationis Benedictinae*.[2]

[1] The Rule was gleaned from the writings of Benedict of Nurcia (480-547 A.D.)

[2] See, generally, *www.osb-international.info/*.

The world's approximately 8,000 Benedictine monks are linked together into 21 congregations, each governed by an abbot president, who meet every four years at the Congress of Abbots. The Congress of Abbots elects the Abbot Primate, who is recognized as the representative of the Confederation, Abbot of the College and Chancellor of the Pontifical Athenaeum of Sant'Anselmo. It is universally recognized that individuals using the suffix "O.S.B." is employed to designate a person affiliated with the Order of Saint Benedict of the Roman Catholic Church.

The Plaintiff's Claims

The Dimond defendants are two brothers who use the suffix "O.S.B." and purport to be affiliated with the Order of Saint Benedict. They maintain a self-styled monastery near Fillmore, New York, which they call the Most Holy Family Monastery ("MHFM").

The plaintiff's Complaint alleges that the he relied on the Dimond brothers' representations concerning their affiliation with the Order of Saint Benedict when he took up residence at MHFM, with the intention of becoming a Benedictine monk, and subsequently transferred some $1.6 million dollars in assets to MHFM.

The Complaint also alleges that plaintiff subsequently learned that the Dimond defendants were not, in fact, affiliated with the Order of Saint Benedict and, on December 31, 2007, left the monastery. He now seeks the return of the value of the assets which he transferred to MHFM in reliance on the defendants' misrepresentations regarding their affiliation with the Order of Saint Benedict.

ARGUMENT

POINT I

ADJUDICATION OF THE PLAINTIFF'S CLAIMS WILL NOT VIOLATE THE DEFENDANTS' RIGHTS UNDER THE FIRST AMENDMENT

A. The Fraud Claims

The first two causes of action are based on the defendants' fraudulent misrepresentations that the Dimond brothers and MHFM were affiliated with the Order of Saint Benedict. The defendants argue that these claims require the Court to "define and interpret religious terms", to wit: "Benedictine monk" and "Benedictine monastery", which they describe as "basic tenets of the Catholic Church. Defendants' Memorandum of Law, p. 4.

Nothing could be further from the truth. The only issue to be decided with regard to the fraud claims is whether the defendants are, or are not, affiliated with the universally recognized and sanctioned Order of Saint Benedict. If not, their misrepresentations to that effect and their use of the suffix "O.S.B." form the basis of the plaintiff's fraud claims.[3]

It is critical that the Court distinguish between a claim that requires inquiry into religious practice or ecclesiastical law and a fraud case such as this, where the underlying claim is simply that the defendants lied about their affiliation with an established religious organization. The plaintiff has alleged that he reasonably believed that the defendants' use of the suffix "O.S.B.", their claim to be Benedictine monks and their reference to MHFM as a Benedictine community meant that they were affiliated with the world-recognized Order of Saint Benedict. This inquiry does not require the Court to judicially define the terms Benedictine monk or Benedictine

[3] Thus the constitutional issue presented relates to the Free Exercise Clause, not the Establishment Clause, of the First Amendment.

monastery, but simply to determine whether the defendants were recognized as members by the Order of Saint Benedict or not.

Similar cases in the secular world demonstrate the need to carefully parse the plaintiff's claims.. In *Gray v. Seaboard Securities, Inc.*, 241 F.Supp.2d 213 (N.D.N.Y.2003), the Court addressed the question of whether a stockbrokers misrepresentation that he was affiliated with a national brokerage house was pre-empted by the Securities Litigation Uniform Standards Act, 15 U.S.C. §77p ("SLUSA"). Had the Court determined that the plaintiff's claims required an adjudication of the propriety of the defendant's investment advice, pre-emption would have required dismissal of the plaintiff's case. The Court looked closely at the essence of the plaintiff's misrepresentation claim and distinguished it from a claim "in connection with the purchase or sale of a covered security". It held that the misrepresentation claim was not pre-empted.[4]

In this regard, it is important to revisit the language of Justice Roberts in rendering the Court's decision in *Cantwell v. State of Connecticut*, 310 U.S. 296, 303-304 (1940)(invalidating registration requirements for public solicitation for religious purposes by Jehovah's Witnesses):

> The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment

[4] See, also, *Mussalli v. Board of Regents*, 159 A.D.2d 746 (3rd Dept. 1990), where the Court upheld the Board of Regents' decision to suspend the plaintiff's license to practice medicine because he had, *inter alia*, misrepresented to patients that he was affiliated with a local hospital when he was not.

> embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.
>
> * * *
>
> Nothing we have said is intended even remotely to imply that, **under the cloak of religion**, persons may, with impunity commit frauds upon the public. [Emphasis supplied.][5]

In an extremely thoughtful and thorough discussion of the difficulties posed by claims against religious entities where the Free Exercise Clause is raised to defeat subject matter jurisdiction, the Supreme Court of New Jersey has opined as follows:

> The First Amendment does not immunize every legal claim against a religious institution and its members. The analysis in each case is fact-sensitive and claim specific, requiring an assessment of every issue raised in terms of doctrinal and administrative intrusion and entanglement. In our view, the lower courts failed to engage in that kind of painstaking analysis and painted with too broad a brush when dismissing [the plaintiff's] case in its entirety. We thus reverse and remand the case to the trial court to determine, on an issue-by-issue basis, whether any of [the plaintiff's] claims may be adjudicated consistent with First Amendment principles.

McKelvey v. Pierce 173 N.J.26, 32-33 (2002).

Similarly, the Ninth Circuit Court of Appeal conducted a finely honed analysis of a Title VII employment discrimination claim by a former Jesuit novice in *Bollard v. The California Province of the Society of Jesus*, 196 F.3d 940, 947-948 (9th Cir. 1999). It distinguished between a claim of constructive discharge, which it could address under Title VII, and a claim for actual

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5 These words are echoed in Justice Asch's decision in *Lefkowitz v. Colorado State Christian College of the Church of the Inner Spirit*, 76 Misc.2d 50, 59 (Sup. Ct. New York Co. 1973).

discharge, the adjudication of which would be barred by the Free Exercise Clause and the judicially fashioned "ministerial exception" to Title VII's prohibitions *Ibid.*

Likewise in the present case, the Court must conduct a "painstaking analysis... of every issue raised in terms of doctrinal and administrative intrusion and entanglement." To do less gives the defendants blanket protection for their fraudulent conduct which was never intended by the Founders.

B. The Equitable Causes of Action

Plaintiff alleges that he turned over more than a $1.6 million dollars to the defendants based on their false representations that they were affiliated with the Roman Catholic Order of Saint Benedict and their promise to instruct him in the requirements of becoming a monk affiliated with the Order of Saint Benedict. Plaintiff alleges that the defendants misrepresented their affiliation with the Order of Saint Benedict and failed to provide such instruction. He left the monastery at the end of 2007 and the defendants have refused to return the money.

These allegations clearly state a cause of action for unjust enrichment, or constructive trust. Such common law claims are based upon a confidential relationship, a promise, a transfer based on reliance and the enrichment of the donee at the donor's expense. *Sharp v. Kosmalski*, 40 N.Y. 2d 119, 121 (1976) (cases cited therein).

These allegations also state a cause of action for money had and received. "Such a cause of action is available to obtain restitution from one who has been unjustly enriched, i.e., one who 'possesses money that in equity and good conscious he ought not to retain and that belongs to another' . . . the remedy is available whether the defendant has obtained the money by wrongdoing, illegality, or mistake. . ." *Citipostal Inc. v. Unistar*, 283 A.D.2d 916, 919 (4th Dep't 2001)(quoting *Parsa v. State of NY*, 64 N.Y. 2d 143, 148 (1984).

Neither the cause of action for money had and received nor the cause of action for constructive trust requires an interpretation of religious practices or beliefs. They can be adjudicated by the application of neutral principles of law without reference to ecclesiastical law, church discipline or religious doctrine. See *Jones v. Wolf,* 443 U.S. 595. There is simply no need to refer to any religious doctrine in order to resolve these claims.

POINT II

THE QUASI-CONTRACT CLAIMS ARE PROPERLY BEFORE THE COURT

The defendants seek dismissal of the Complaint's Third and Fourth Causes of Action on the ground that they are based on quasi-contract and cannot stand where there existed an express and legally binding contract. The plaintiff has not, however, pleaded a contract cause of action and does not believe that the facts of this case give rise to such a cause of action. There is certainly no written contract which covers the understanding between the parties. Secondly, any oral contract which might have arisen from the discussions between the parties would be unenforceable under New York Statute of Frauds, General Obligations Law § 5-701.

Where there is a genuine dispute as to the existence of a legally enforceable contract, Fed. R. Civ. Proc. Rule 8 (e)(2) permits pleading both causes of action. *CBS Broadcasting Inc. v. Jones* 460 F.Supp.2d 500, 506 (S.D.N.Y.2006); *Astroworks, Inc. v. Astroexhibit, Inc.* 257 F.Supp.2d 609, 621 (S.D.N.Y. 2003).

CONCLUSION

For the reasons set forth herein, the plaintiff prays for an Order denying the defendant's motion to dismiss in its entirety.

July 31, 2008

s/ *K. Wade Eaton*

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Certificate of Service

I hereby certify that on July 31, 2008, I electronically filed the foregoing Memorandum of Law in Opposition to the defendants' Motion to Dismiss with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

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