

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff,

vs.

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

Defendants

**REPLY TO ANSWER
AND COUNTERCLAIMS**

Index No. 08-cv-00347-JTC

Plaintiff, ERIC E. HOYLE, through his attorneys, Chamberlain D' Amanda Oppenheimer & Greenfield LLP, replies to the defendants' counterclaims as set forth below:

1. Admits the allegations set forth in paragraphs 80, 81, 82 and 83 thereof.
2. Denies the allegations set forth in paragraphs 84 and 85 thereof.
3. With regard to the allegations set forth in paragraph 86 thereof, admits that at various times he has sent emails and other electronic communications into New York State and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations.
4. Denies the allegations set forth in paragraphs 87, 88 and 89 thereof.
5. Admits the allegations set forth in paragraph 90 thereof.
6. As to the allegations set forth in paragraph 91 thereof, admits that, based on false and fraudulent statements made by the defendants, plaintiff believed that MHFM was a Benedictine monastery of the traditional Catholic faith.
7. Admits the allegations in paragraphs 92, 93, 94, 95, 96, 97, 98 and 99 thereof.

8. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 100 thereof.

9. Denies the allegations set forth in paragraphs 101 and 102 thereof.

10. With regard to the allegations set forth in paragraph 103, denies the allegations therein but admits that in 2002 plaintiff visited a monastery which accepted the Novus Ordo liturgy.

11. Denies the allegations set forth in paragraph 104 thereof.

12. Admits the allegations set forth in paragraphs 105, 106, 107 and 108 thereof.

13. With regard to the allegations set forth in paragraph 109, admits that he expected severe economic distress but denies the characterization of his storage of food and water as “hoarding.”

14. Denies the allegations of paragraph 110 thereof.

15. Denies the allegations of paragraph 111, except that he admits he was eager to participate in the public work of MHFM.

16. With regard to the allegations set forth in paragraph 112, admits that he visited MHFM on two occasions but denies the implication that defendants Frederick and Robert Dimond are Catholic Benedictine monks.

17. Admits the allegations of paragraphs 113 and 114 thereof.

18. Denies the allegations of paragraph 115 thereof.

19. Admits the allegations of paragraph 116 thereof.

20. Denies the allegations of paragraph 117 thereof.

21. With regard to the allegations set forth in paragraphs 118 and 119, admits that said transfers were made but further alleges that said transfers were made based on the false representations of the defendants that MHFM was a legitimate Benedictine monastery.

22. With regard to the allegations set forth in paragraph 120, admits that a transfer of stock in the approximate amount took place but denies that it was a donation or that it was made unconditionally.

23. Denies the allegations set forth in paragraph 121 thereof.

24. Admits the allegations set forth in paragraph 122 thereof.

25. With regard to the allegations set forth in paragraph 123, plaintiff admits that he brought certain personal property with him to MHFM, including an Apple laptop computer, but denies the remaining allegations set forth therein.

26. With regard to the allegations set forth in paragraph 126, admits that he agreed with the MHFM teachings and positions and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations thereof.

27. With regard to the allegations set forth in paragraphs 127 and 128, plaintiff lacks sufficient knowledge and information to form a belief as to the truth of the allegations set forth therein.

28. Admits the allegations set forth in paragraphs 129 and 130 thereof.

29. With regard to the allegations set forth in paragraph 131, denies that all customer and business information was to be kept confidential by MHFM policy as set and practiced by defendant Frederick Dimond but admits that the credit card information of customers was to be kept confidential.

30. With regard to the allegations set forth in paragraph 132, denies the allegations that all customer information was not to be shared outside of MHFM and lacks knowledge and information sufficient to form a belief as to whether the defendants trusted plaintiff to keep such information confidential.

31. With regard to the allegations set forth in paragraph 133, admits the allegations thereof except that he lacks knowledge and information sufficient to form a belief as to the allegation that the defendants trusted him.

32. With respect to the allegations set forth in paragraph 134, denies the allegations thereof except admits that plaintiff had access to online PayPal records and was given access to investment account records.

33. With regard to the allegations set forth in paragraph 135, admits that the defendants gave plaintiff access to some confidential and proprietary business records and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations thereof.

34. With regard to the allegations set forth in paragraph 136, denies knowledge and information sufficient to form a belief as to the truth of the allegations thereof.

35. With regard to the allegations set forth in paragraph 137, denies that a religious novitiate actually began or occurred at any point during his residence at MHFM but admits that certain clothing was provided to him during his residence at MHFM.

36. With regard to the allegations set forth in paragraph 138, admits that certain words were spoken on or about October 4, 2007 but further states that the words were spoken on the presumption that defendant Frederick Dimond was a legitimate Benedictine Superior of a

legitimate Benedictine monastery and that a valid novitiate had preceded the event, all of which were untrue.

37. With regard to the allegations set forth in paragraph 139, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

38. With regard to the allegations set forth in paragraph 140, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

39. With regard to the allegations set forth in paragraph 141, admits that he departed MHFM without notice to defendants Frederick and Robert Dimond on December 31, 2007. He denies that he failed to notify defendants of his dissatisfaction while living there.

40. Admits the allegations set forth in paragraph 142 thereof.

41. With regard to the allegations set forth in paragraph 143, admits that he determined that MHFM was practicing and teaching heresy on mass attendance but denies that the services in question were "Catholic" masses.

42. Admits the allegations set forth in paragraphs 144 and 145 but objects to the characterization of those events as Catholic Masses.

43. Admits the allegations set forth in paragraphs 146 and 147 thereof.

44. With regard to the allegations set forth in paragraph 148, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

45. Admits the allegations set forth in paragraphs 149 and 150 thereof.

46. With regard to the allegations set forth in paragraphs 151 and 152, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

47. Admits the allegations set forth in paragraphs 153, 154, 155, 156, 157, 158 and 159 thereof.

48. Denies the allegations set forth in paragraph 160 thereof.

49. With regard to the allegations set forth in paragraph 161, admits that he spoke to Steven Hand on or about January 12, 2008 and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

50. With regard to the allegations set forth in paragraph 162, admits that he knew Mr. Hand was a customer and/or a donor to MHFM but denies that he made false statements to Mr. Hand.

51. Denies the allegations set forth in paragraph 163 thereof.

52. Admits the allegations set forth in paragraph 164 thereof.

53. Denies the allegations set forth in paragraph 165 thereof.

54. Admits the allegations set forth in paragraph 166 thereof.

55. Denies the allegations set forth in paragraph 167 thereof.

56. Admits the allegations set forth in paragraphs 168 and 169 thereof.

57. Denies the allegations set forth in paragraph 170 thereof.

58. With regard to the allegations set forth in paragraph 171, admits speaking with David Burrow [sp?] but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

59. Admits the allegations set forth in paragraph 172 thereof.

60. Denies the allegations set forth in paragraph 173 thereof.

61. Admits the allegations set forth in paragraph 174 thereof.

62. Denies the allegations set forth in paragraph 175 thereof.

63. With regard to the allegations set forth in paragraph 176 thereof, plaintiff admits that his statements indicated his belief that the defendants had defrauded UPS, but denies the remaining allegations thereof.

64. Admits the allegations set forth in paragraphs 177 and 178 thereof.

65. Denies the allegations set forth in paragraph 180 thereof.

66. With regard to the allegations set forth in paragraph 181, admits that he spoke to Steven Hand on or about January 12, 2008 but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

67. Admits the allegations set forth in paragraphs 182 and 183 thereof.

68. With regard to the allegations set forth in paragraph 184, admits speaking with David Burrow [sp.?] but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

69. Admits the allegations set forth in paragraph 185 thereof.

70. Denies the allegations set forth in paragraphs 186, 187 and 188 thereof.

71. With regard to the allegations set forth in paragraph 189, denies making any false statements and denies knowledge and information sufficient to form a belief as to the whether his statements caused the defendants to be exposed to public hatred, contempt, ridicule, and/or disgrace.

72. With regard to the allegations set forth in paragraph 190, denies that statements made were false but admits that said statements were referring to the defendants.

73. With regard to the allegations set forth in paragraph 191, denies that he made false statements and states that truthful statements were made to members of the public both

within and outside New York State, including some individuals residing outside the United States.

74. Denies the allegations set forth in paragraphs 192, 193 and 194 thereof.

75. With regard to the allegations set forth in paragraph 195, denies that he stated any falsehoods and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

76. Denies the allegations set forth in paragraphs 196, 197, 198 and 199 thereof.

77. Denies the allegations set forth in paragraphs 201, 202 and 203 thereof.

78. With regard to the allegations set forth in paragraph 204, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

79. Denies the allegations set forth in paragraph 205 thereof.

80. Denies the allegations set forth in paragraphs 207, 208 and 209 thereof.

81. With regard to the allegations set forth in paragraph 210, admits that he knew of the defendants' relationships with the individuals with whom he spoke but denies that he lied about the defendants.

82. Admits the allegations set forth in paragraph 211 thereof.

83. With regard to the allegations set forth in paragraph 212, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

84. Denies the allegations set forth in paragraphs 213 and 214 thereof.

85. With regard to the allegations set forth in paragraph 216, admits the general statement but denies that the defendants had a right to possession of monies, stock and other items of value which the plaintiff transferred to them under false pretenses.

86. Admits the allegations set forth in paragraphs 217 and 218 thereof.

87. With regard to the allegations set forth in paragraphs 219 and 220, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

88. Denies the allegations set forth in paragraph 221 thereof.

89. With regard to the allegations set forth in paragraph 222, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

90. Denies the allegations set forth in paragraphs 223 and 224 thereof.

91. Denies the allegations set forth in paragraphs 226, 227, 228 and 229 thereof.

92. With regard to the allegations set forth in paragraph 230, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

93. Denies the allegations set forth in paragraph 231 thereof.

94. With regard to the allegations set forth in paragraph 233, admits that the ARC list, the S list and other data existed at MHFM but denies that the ARC list may properly be characterized as listing present supporters, donors and customers and denies that MHFM had an "EBay site."

95. With regard to the allegations set forth in paragraph 234, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

96. Denies the allegations set forth in paragraph 235 thereof.

97. Admits the allegations set forth in paragraph 236 thereof.

98. With regard to the allegations set forth in paragraph 237, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

99. Denies the allegations set forth in paragraph 238 thereof.

100. With regard to the allegations set forth in paragraphs 239 and 240, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

101. Denies the allegations set forth in paragraph 241 thereof.

102. With regard to the allegations set forth in paragraph 243, admits that he accessed electronic communications that were not readily accessible by the general public and denies the remaining allegations thereof.

103. With regard to the allegations set forth in paragraph 244, admits that some emails originated by him in January 2008 appeared to originate from the email address “store@mostholyfamily monastery.com” but denies that he intentionally misused or misrepresented his identity in sending those emails.

104. Denies the allegations set forth in paragraphs 245 and 246 thereof.

105. Admits the allegations set forth in paragraph 247 thereof.

106. Denies the allegations set forth in paragraph 248 thereof.

107. Denies allegations not heretofore admitted, denied or controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

108. The claims of the defendants’ counterclaims fail to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

109. Statements attributed to the plaintiff in the defendants’ counterclaims and which are alleged to have been false, if made, were true.

110. Statements attributed to the plaintiff in the defendants’ counterclaims and which are alleged to have been false, if made, were believed by the plaintiff to be true.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

111. This Court lacks subject matter jurisdiction over one or more of the defendants' counterclaims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

112. Damages alleged in the counterclaims were cause, in whole or in part, by culpable conduct attributable to the defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

113. Defendants had failed to mitigate their damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

114. The defendants' counterclaims are barred by the doctrine of unclean hands.

Dated: April 9, 2009

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