

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

**AFFIDAVIT OF
ERIC E. HOYLE**

Index No. 08-cv-00347-JTC

STATE OF NORTH CAROLINA)

) ss.:

COUNTY OF Forsyth)

ERIC E. HOYLE, being duly sworn, states the following:

1. I am the plaintiff in the above-referenced action. I submit this affidavit in support of my motion to modify the preliminary injunction ordered by the Court on July 23, 2008.

2. By its Order, the Court prohibited me from all communication with third parties made possible by my alleged unauthorized use of confidential information obtained through my association with MHFM. The defendants seem to share this understanding, as they note: "... the core concern of the injunction: Plaintiff's misuse of Defendants' confidential and proprietary information" (Docket #82, ¶ 7).

3. The Court did not bar me from communicating with the general public, but rather with persons unknown to me except through my work at MHFM.

4. I have long since disposed of all MHFM proprietary information in my possession, as ordered by the Court. However, there are persons whose identity I first came to know while at MHFM, who either have contacted me in recent years, or whose identity and contact information

are in the public domain, such as on a personal website.

5. While I could have communicated with such persons without using any information obtained from MHFM, I have refrained from doing so, based on my understanding that communication with such people is prohibited by the preliminary injunction of July 23, 2008.

6. It is for cases of this kind, in which I can communicate without relying on any confidential information of MHFM, that the amendment to the injunction is sought. Presently, my communications are restricted beyond what is sufficient to safeguard the privacy of MHFM's confidential information. As noted previously, this is especially true now that the defendants have published my full name on the MHFM website (Dkt. #75-3), furnishing their readers with the means to find and contact me. Such contact does not depend on any information that I may recall from my work at MHFM.

7. The defendants misconstrue the matter at hand in asking "why [Plaintiff] should now be permitted to contact MHFM supporters, misuse confidential information of Defendants to do so, or any legitimate purpose for such communications" (Dkt. #82, ¶ 15). They imply that their supporters, at least in relation to myself, are MHFM property, and not independent persons who need not justify their wishes to communicate in a lawful manner, without, of course, using any of defendants' confidential information. As the defendants would have it, MHFM's supporters must themselves be barred from contact with me, even against their will, or else MHFM's confidential information is compromised.

8. If the defendants wish to know why I seek this relaxation of the restrictions on my communications, the answer is that I wish to speak about various matters of religious or personal interest with certain individuals whom I came to know while at MHFM. But this is quite irrelevant to the grounds for the present motion.

9. To accommodate the defendants' concern for confidentiality, I believe that it would suffice to modify the paragraph in question, instead of deleting it. The following language would give the relief desired without any appearance of compromising the defendants' confidentiality:

Plaintiff shall immediately cease and desist from engaging in any communication with anyone whose identity and/or contact information are known to the plaintiff *solely* by means of the confidential and proprietary records of the MHFM or of living or working at MHFM. If plaintiff seeks to engage in any communication with such persons for purposes of case preparation or otherwise, he must make application to the Court for permission.

10. The defendants express concern that I will defame them if the present motion is granted, but the Court has already addressed this matter in the sixth decretal paragraph of the same injunction, which reads:

Plaintiff shall immediately cease and desist from making defamatory statements about any of the named defendants, including representations that the individual defendants stole money from plaintiff.

11. The First Amendment to the United States Constitution protects my right to state my opinions concerning the defendants' religious views in any forum, private or public, so long as any statement of facts made by me is truthful. I am told that, under most circumstances, courts will not impose prior restraint even on defamatory statements.

12. There are only a handful of incidents, all of which occurred in early 2008, in which it can be alleged that I defamed the defendants. Whether my statements that the defendants had "stolen my money" were true, which is a complete defense to the defendants' charges, will be determined by the Court in this proceeding.

13. I have spoken very little about the defendants in recent years. Since the entry of the Court's Order I have not made any statements alleging that the defendants "stole" my money and I have not engaged in any activity which would improperly influence the actions of others to do business with or support MHFM.

14. The defendants' contention that I am brimming with desire to defame them is mistaken. My sole intention is to tell the truth about my experiences at MHFM and to express my disagreement with certain of the defendants' religious views.

15. Defendants' counsel asserts that my email of Nov. 4, 2008 "evidences a purposeful intent by Plaintiff to attempt to circumvent the confidentiality of the proceedings and the preliminary injunction that was directed by this Court in July 2008 by placing his attacks in 'public filings' in the lawsuit" (Dkt. #82, ¶ 18).

16. It is not clear how defendants' counsel could know what I wished to publicize, much less whether it was confidential. In fact, I had in mind a piece of correspondence that I received from St. Vincent Archabbey, stating, *inter alia*, that:

Joseph A. Natale came to Saint Vincent as a candidate for the lay brotherhood on July 5, 1960. He remained here for several months as a postulant but he did not receive vows as a Benedictine monk.... In reviewing the ORDOs of the American Cassinese Congregation for the years 1960 - 1968, I have found no listing for Joseph A. Natale, which would confirm our understanding the (sic) he was never professed as a Benedictine member of this Community.

17. In desiring that this important information become known, I committed no breach of confidentiality or of the preliminary injunction order and entertained no malice against the defendants.

18. In seeking to use the Court to block this kind of information, the defendants hold things out as rights that, in my view, enjoy no legal protection, such as (1) that MHFM continue to exist; (2) that MHFM's religious views be successfully maintained and disseminated (Dkt. #82, ¶ 10); (3) that MHFM receive future donations; and (4) that MHFM not be supported otherwise than by donations (Dkt. #82, ¶ 11).

19. I am not engaged in any commercial activity in competition with the defendants. My only financial interest in their enterprise lies in being able to recover whatever moneys the Court

may award to me in this case.

WHEREFORE, your affiant requests an Order modifying the preliminary injunction as requested herein.

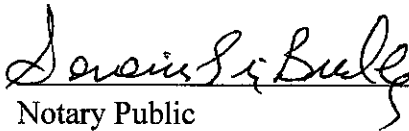


ERIC E. HOYLE

Sworn to before me this
24 day of August, 2011



SEVERIUS ELI BRADLEY
Notary Public - North Carolina
Forsyth County
My Commission Expires APR 25, 2016


Notary Public