

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

DECLARATION

v.

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

Civil Action No. 08-CV-347C

Defendants.

Charles C. Ritter, Jr., hereby declares, under penalty of perjury:

1. I am an attorney at law duly admitted to practice in the State of New York and am a partner in the law firm of Duke, Holzman, Photiadis & Gresens LLP, counsel for the defendants Brother Michael (Frederick) Dimond, Brother Peter (Robert) Dimond and Most Holy Family Monastery ("MHFM"), in the above captioned action.

2. I submit this declaration in support of defendants' motion for an Order: **(1)** granting defendants summary judgment against plaintiff Eric E. Hoyle ("Plaintiff") dismissing plaintiff's causes of action for violation of 18 U.S.C. 1962(c) and (d) [R.I.C.O.], fraud, constructive fraud/negligent misrepresentation, unjust enrichment/constructive trust, mandatory accounting, money had and received, deceptive trade practice, false advertising, and vicarious liability of MHFM; **(2)** granting defendants summary judgment against plaintiff on defendant's counterclaims for defamation/injurious falsehood, violation of Lanham Act, conversion, misappropriation of trade secrets, breach of fiduciary duty, and violation of the Electronic Communications Privacy Act; and **(3)** for such other and further relief as this Court deems just and proper.

3. This declaration is made for the purpose of providing the Court with copies of the pleadings and documents relevant to defendants' summary judgment motion in this action.

4. The Court's Memorandum & Decision, dated March 9, 2009, (Item 41) is incorporated herein by reference.

5. Plaintiff's Amended Complaint, dated March 10, 2009, (Item 42) is incorporated herein by reference.

6. Defendants' Answer with Counterclaims, dated March 20, 2008 [*sic*], (Item. 43) is incorporated herein by reference.

7. Plaintiff's Reply to defendants' Counterclaims ("Reply"), dated April 9, 2009, (Item 44) is incorporated herein by reference. Plaintiff makes a significant number of admissions in his Reply, including admitting the following allegations of Defendants' Answer with Counterclaims:

154. Plaintiff left MHFM on December 31, 2007 with MHFM's confidential and proprietary business records including bank, investment account, customer, benefactor, and donor records. Such information was an is not readily or publicly available.

155. Plaintiff left MHFM on December 31, 2007 with other MHFM confidential and proprietary records and materials including but not limited to computer passwords, technology purchase information, and other data and intellectual property contained on a laptop computer, flash drive, and in hard copy. Such information was not readily or publicly available.

156. Beginning in or around December 31, 2007, plaintiff published and/or caused to be published certain statements about all the defendants.

157. In particular, plaintiff made statements to people that the individual defendants **stole money from plaintiff**.

* * *

166. At the times when plaintiff made these statements of alleged fact, *i.e.*, that defendants **stole his money**, he knew or reasonably should have

known that these individuals were vendors, customers, benefactors and/or donors to MHFM.

* * *

168. In addition, in the early part of 2008, plaintiff contacted the United Parcel Service (“UPS”), a business entity with which MHFM has business relations, and told UPS that MHFM had defrauded it.

* * *

174. Upon information and belief, plaintiff made such statements, to the effect that defendants allegedly **stole his money**, to others who knew of MHFM and the individual defendants...

185. At other times not presently known to defendants but believed to be on and after January 1, 2008, plaintiff stated to individuals who were acquainted with the defendants that the defendants, particularly Brother Michael and Brother Peter, **stole money from him**.

* * *

217. On or about [December 31, 2007], plaintiff took certain property that rightfully belonged to defendant or defendants. In taking that property, plaintiff interfered with defendants’ rights to it.

218. In taking MHFM’s property, plaintiff exercised dominion and control over it.

* * *

236. The data in the MHFM databases and computers was not shared publicly. MHFM guarded this information with electronic firewalls and the like to ensure it was secure.

* * *

247. Defendant had taken reasonable steps to protect and secure its electronic communications systems such that it was not readily-accessible to the public at large.

(Item 43, see Item 44) (emphasis added).

8. Attached hereto as **Exhibit A** is a true and correct copy of plaintiff's deposition transcript ("Hoyle T.").

9. Attached hereto as **Exhibit B** is a true and correct copy of emails between plaintiff and his financial advisor, Brad King, dated April 2005 (Deposition Exhibit 16). At plaintiff's deposition on February 8, 2011, he described a pattern of providing financial support to various religious institutions that he later condemned much like his actions involving MHFM.

Q. Okay. You then write, I have dabbled in this recently, to a total of sixty thousand dollars, over half of which went to groups that I now find unacceptable. Do you see that?

A. I do.

Q. Is that kind of similar to what this lawsuit is about? You gave money to –

A. It's similar to it.

(Hoyle T. 164: 22 – 165: 6).

10. Attached hereto as **Exhibit C** is a true and correct copy of plaintiff's Supplemental Response to defendants' First and Second Sets of Interrogatories (Deposition Exhibit 5).

11. Since 2000, plaintiff identifies thirty (30) different churches or religious organizations that he has been affiliated with, all of which he no longer affiliates with or supports. (See Exhibit C, response to interrogatory #1). Plaintiff made monetary donations to fifteen (15) of these organizations, including more than \$34,000 to The Fatima Center, \$20,000 to Biblical Foundations International, and \$5,000 to Our Lady of Guadalupe Monastery. Id.

12. In an email dated March 8, 2005, Plaintiff traced the chronology of his religious pursuits, starting with Lutheran, Methodist and Moravian worship, followed by his acceptance of Calvinist/Presbyterian Protestantism, then exposure to Catholicism, back to attendance of the

Lutheran church, followed by a decision to apply to a protestant seminary, then enrollment in the initiation process for the Novus Ordo Catholic Church, and lastly his attendance of Traditional Catholic mass. A copy of this email is annexed hereto as **Exhibit D** (Deposition Exhibit 12).

13. Plaintiff provided a similar self-authorized summary of the evolution of his religious beliefs in a letter to Father John Fullerton dated May 11, 2004, copy of which is attached as **Exhibit E** (Deposition Exhibit 10).

14. In his pursuit of “true” Catholicism, plaintiff discovered the writings of defendants which plaintiff described as “densely-packed, important and correct”. Attached hereto as **Exhibit F** (Deposition Exhibit 13) is plaintiff’s April 5, 2005 email summarizing the MHFM materials and expressing his agreement with the content.

15. Consistent with his pattern of support followed by abandonment, plaintiff made substantial donations to MHFM, then shifted his religious beliefs and abandoned MHFM and now seeks to destroy it and leave it without any funds, as he expressed shortly after his departure to Mr. Joseph Myers:

A. When we got to the hotel, his [Plaintiff’s] determination was that these guys are heretics and I’m going to take these guys down. So that was his determination.

Q. Did he say that to you, sir?

A. Say again?

Q. Did he say that to you.

A. Absolutely.

Q. He said he was going to take these guys down?

A. Yes. As soon as he was convinced that these guys are heretics, when we got to the hotel, that’s when he was like, ‘Listen, these guys are heretics, and I’m going to take these guys down. I’m taking them for all their worth. I’m taking them down.’

Q. Did you have an understanding to whom he was referring?

A. Yes, I did.

Q. What was that?

A. That was Bro. Michael and Bro. Peter and the whole monastery basically.

Q. Most Holy Family Monastery?

A. Most Holy Family Monastery, yes, ma'am.

(Deposition Transcript of Joseph Myers, annexed hereto as **Exhibit G**, at 62: 10 - 63: 9; see also 79: 8-11 "I remember he was really wanting to take—you know, take Brother Michael and Brother Peter down, take the monastery down and get them in some kind of criminal charge or some kind of criminal act").

16. As supported by the above-mentioned documents, the accompanying supporting declaration of Brother Michael Dimond and for the reasons set forth in Defendants' accompanying Memorandum of Law, the defendants respectfully request that the Court grant an Order dismissing the Amended Complaint; awarding defendants summary judgment against plaintiff on liability on the specified counterclaims, and for such other and further relief as this Court deems just and proper.

Dated: January 6, 2012
Buffalo, New York

/s/ Charles C. Ritter, Jr.
Charles C. Ritter, Jr.