

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

**DECLARATION OF
ERIC E. HOYLE**

Index No. 08-cv-00347-JTC

ERIC E. HOYLE, under the penalties of perjury, states the following:

1. I am the plaintiff in this action and submit this declaration in opposition to the defendants' motion for summary judgment.
2. The defendants' motion rests on factual contentions that have been extensively disputed. Defendants blithely label their own version of events as undisputed, although it misstates, misconstrues, and omits important facts. Because defendants' argument is faulty in its factual claims and its conclusions, and has been disputed on the record, the motion for summary judgment should be denied.
3. The defendants' argument for dismissal of plaintiff's claims is based on two assertions: (1) there was no misrepresentation by defendants regarding their Benedictine status; and (2) I understood defendants' religious positions and was at all times aware they were not affiliated with "the universally recognized and sanctioned Order of St. Benedict."

(Memo. of Law, Dkt. 89-26, p. 2, ¶ 1.) Both claims are false, and both have been contested by me.

4. As to the second claim, that I understood defendants' religious positions and organizational status, I have conceded that I received and accepted the defendants' statements on such matters. However, in the present motion, defendants draw the unwarranted conclusion that I understood Most Holy Family Monastery (“MHFM”) to be a wholly independent and self-authorized organization, whose claim to belong to the Order of St. Benedict had no basis in any organizational connection with a preceding Benedictine monk or monastery. That is not what was stated by the defendants at the relevant times, nor was it what I understood (Hoyle T. 274).

5. The defendants have publicly claimed, since at least the year 2002, and still claim at the present day that MHFM originated with Brother Joseph Natale, who allegedly became a Benedictine monk at St. Vincent Archabbey in Latrobe, Pennsylvania. They claim that he received permission to found a new monastery from the Archabbot there, and thus founded MHFM. That was presented under the heading “Who Made Us Benedictines?” in an article that defendant Frederick Dimond has identified as a publication of MHFM.

6. The defendants have consistently published that account of MHFM's founding on their website, where, even now, it appears in an article titled “Our Benedictine Community.” MHFM's purported connection through Joseph Natale to St. Vincent Archabbey is the first thing mentioned in that article, and for good reason, because a monastery's founding and history are among the first points to be established in order to verify that it belongs to the Order of St. Benedict.

7. I understood the defendants to mean that MHFM was a Benedictine monastery because it was duly founded within the Order of St. Benedict and had continued to operate as a Benedictine monastery since its founding.

8. I understood that MHFM was at odds with Benedictine monasteries in the Vatican II church, because MHFM had resisted certain religious changes connected with the Second Vatican Council, but that MHFM had never been deprived of its Benedictine status. Such was the plain meaning of defendants' published statements, and I consistently explained MHFM's Benedictine status in that way in my communications on behalf of MHFM, under the defendants' supervision and with their knowledge and approval.

9. The defendants now claim, for purposes of this litigation, that their status as Benedictines is by self-declaration, without regard for any organizational connection with other Benedictine monks or monasteries (Dimond EBT, p. 20, ll. 5-22). That contradicts what I was told by defendants at the relevant times and what their website states.

10. The defendants' longstanding public statement about MHFM's founding is a material fact in connection with defendants' claims to be Members of the Order of St. Benedict. Even if one accepts that the defendants may define the "Order of St. Benedict" for themselves as a matter of religious doctrine, the accuracy of their historical claims remains a question of fact.

11. I have alleged that the defendants' historical claims are false, based on information received from St. Vincent Archabbey. The records at that Archabbey reportedly indicate that Joseph Natale lived there for a few months as a postulant for the lay

brotherhood but never became a Benedictine monk and never received permission from St. Vincent Archabbey to found a monastery. See Exhibit A, attached hereto.

12. Thus, the first of the defendants' two basic claims mentioned above, that “there was no misrepresentation by defendants regarding their Benedictine status,” is patently false. The willfulness of defendants' misrepresentation appears from their persistence in publishing their false history of MHFM, by which, even today, they continue to misrepresent the basis of their claim to belong to the Order of St. Benedict.

13. Defendants claim that “Hoyle's actions and testimony demonstrate that he viewed the 'Benedictine' issue as irrelevant” (Dkt. 89-26, p. 4, ¶ 2). That implies to me that I was indifferent as to whether any organization that might claim to be a Benedictine monastery was truly such. That is cited as my testimony, but is actually a false conclusion drawn from testimony that asserts the opposite (Hoyle Transcript, p. 89):

Q. The reason for the donation, though, it was not -- it didn't have anything to do with their so-called Benedictine status, because you indicated you weren't aware of how it was organized or the rules and regulations that governed it, you didn't look into any of that?

A. My donation -- my choice to donate to them did assume that they were properly and truly a Benedictine monastery, which I had no reason to question or to research at the time.

14. Defendants' line of reasoning implies that to donate to a monastery which one's religious confreres treat as legitimate, without investigating its legitimacy for oneself, proves a lack of concern as to its legitimacy, and thus a tacit permission to be defrauded.

15. Based on that faulty reasoning, defendants further conclude that my “desire to become a Benedictine monk ... is nothing more than an after-the-fact creation of legal

counsel” (Dkt. 89-26, p. 4, ¶ 3). I took extensive action to become a Benedictine monk at MHFM, following the steps prescribed by the defendants for that purpose. That manifests my desire to become a Benedictine monk. Further, that desire is compatible with my goal as alleged by defendants, mainly the “pursuit of the 'true' Catholic religion” (Id. p. 4, ¶ 3).

16. Defendants characterize my search for religious truth as a “cycle of adopting and then renouncing religious organizations [that] is lengthy and undisputed: he affiliated with over 30 religious organizations between 2000 and 2005.” (Dkt. 89-26, p. 5, ¶ 2).

17. By framing my dealings with MHFM as a continuation of a “cycle of evolving beliefs” (Id. p. 5, ¶ 3), defendants gloss over the radical incongruity between my commonplace attendance or financial support of various churches or ministries and my later decision to become a Benedictine monk at MHFM, which entailed vows of poverty, chastity, and obedience. I was not a mere supporter of MHFM; I was an entrant into the monastic community, which, according to defendants, required that I place my financial assets in the monastery's keeping and practice obedience to Frederick Dimond.

18. In that claim, defendants apply the phrase “affiliated with” to a great variety of relationships, ranging from small donations without personal contact to large contributions and frequent attendance and participation. It is noteworthy that defendants construe the term “affiliated with” broadly when evaluating my conduct, but insist that that term does not apply to the connection they allege between themselves and St. Vincent Archabbey as an explanation of how they became Benedictines.

19. Defendants assert that my decision to leave MHFM “had nothing to do with the 'Benedictine' issue,” but was motivated by a disagreement about Mass attendance (Dkt. 89-26, p. 5, ¶ 3). That contention is irrelevant to my legal claims and is incorrect as stated.

20. I have testified that I decided to depart MHFM after reading articles by Richard Ibranyi (Hoyle T. 59-61). Among these articles was one titled “Against the Dimonds,” in which Mr. Ibranyi asserts that Joseph Natale did not receive permission from St. Vincent Archabbey to found a monastery and that Natale's final vows are doubtful (Against the Dimonds, pp. 59-60). See Exhibit B, attached hereto.

21. Mr. Ibranyi had been a member of MHFM under Frederick Dimond, and while I could not confirm his claims about Joseph Natale before departing MHFM, I considered it likely that they were true and, thus, that the defendants had deceived me in regard to their Benedictine status.

22. Defendants claim that I believed that MHFM was a Benedictine monastery “because it operated as an independent religious community with adherence to the Rule of St. Benedict” (Dkt. 89-26, p. 6, ¶ 4). In fact, I believed that MHFM was a Benedictine monastery because it claimed to have been duly founded within the Order of St. Benedict and had continued to operate as a Benedictine monastery since its founding.

23. Defendants claim that I had “full knowledge of the pertinent doctrines which define a Benedictine community” (Dkt. 89-26, p. 6, ¶ 4). In fact, at the times relevant to my legal claims, I had little knowledge of the rules and statutes that govern a Benedictine monastery and had received little, if any, instruction on such matters from the defendants, as appears from the testimony of defendant Frederick Dimond (F. Dimond T. 72-73). It is not

clear how the present claim is compatible with defendants' contention, just a few paragraphs above, that I did not research or care about Benedictine monasteries (Dkt. 89-26, p. 4, ¶ 2).

24. Defendants claim that “Hoyle promoted MHFM as a Benedictine monastery through the preparation of transcripts for radio broadcasts wherein he stated 'we believe we are a true Benedictine monastery'” (Dkt. 89-26, p. 7, ¶ 1). That was explicitly denied by me (Hoyle T. 279-80). The documents in question were written by me after my departure from MHFM and are meant to be humorous, as is apparent when their whole text is considered (Exh. 41, 42).

25. The following section contains my response to defendants' argument for summary judgment in regard to the several charges.

Counts 1 & 2
Fraud and Negligent Misrepresentation
(Dkt. 89-26, pp. 9-10)

26. I dispute the claim that there was no misrepresentation by defendants of their Benedictine status, as noted above (pp. 1-4). Further, I dispute the claims that (1) all monies transferred by me to defendants were donations; and (2) such transfers were not contingent upon defendants' claims to operate a Benedictine monastery.

27. In fact, the principal transfer of my assets to defendants was made in order to comply with defendants' requirements for entrance into their Benedictine monastery and, as such, was not a donation. That was admitted by defendant Frederick Dimond amid his combative and contradictory testimony (F. Dimond T. 53, 68):

Q. Did you ever say to Eric that the rules which governed the activities of MHFM required one who entered as a postulant to turn over all their worldly assets to the monastery?

A. The person, when they come in, loses the right of their assets. And so they can choose to donate a certain amount or they can write down a figure. So that when they lose the right over using the assets for the time that they're at the monastery, what -- the figure they've put down would be returned to them in the event that they choose to leave.

Q. Do you recall when the original letter acknowledging the 1.2 million donation was signed?

A. I don't have it in front of me.

Q. Is it fair to say it was several months after the transfer took place?

A. The actual donation signed? Yes.

Q. What was the reason for the delay, do you know?

A. He was going to decide how much -- what the donation would be finalized as.

Q. That was after he had transferred the securities --

A. He already -- yeah.

Q. Excuse me. Let me finish. After he transferred the securities to the monastery?

A. Yes.

28. Further, the defendants have made available a recorded discussion concerning the lawsuit in which they admit the connection between my transfer of money and my entrance into MHFM as a postulant. It remains available to the public at:

http://www.mostholymonastery.com/mp3/lawsuit_discussion.mp3

29. I accurately transcribed this discussion and have attached my transcription hereto as Exhibit C. The pertinent part is as follows:

Frederick Dimond: “One other note is that before he came into the community, before he joined, he was going to give, you know, his money, basically, to the monastery, but he wanted to give a donation to another organization that, even though they were promoting a lot of truth, were promoting a few things that were not completely right, and so we said, we can't have you come in here if you're gonna donate. Now this meant, and we realized it, losing, you know, a super-large donation, and so, but we said no, it's like, we don't, he can't support that group and if he wants to give a donation, even though it wasn't that much, we said you can't do it, **and if that's what you want to do, you can't enter our community, and this meant losing all the money that he donated**, if he said to himself, ok, well I don't agree with you guys, I want to donate, give this small donation to this group anyway, **then we wouldn't have gotten anything from the guy; he never would have joined**, et cetera.” (Emphasis added).

Counts 6 & 7
RICO 18 U.S.C. §§ 1962[c] and 1962[d]
(Dkt. 89-26, pp. 10-12)

30. I dispute the claim that there was no misrepresentation by defendants of their Benedictine status, as noted above (pp. 1-4). I was victimized through the donations and transfers to MHFM which I made in reliance on defendants' misrepresentations of their Benedictine status.

31. I dispute the allegation (Dkt. 89-26, p. 12, ¶ 2) that I was a knowing participant in the RICO enterprise of MHFM. I was unaware, at the relevant times, that the defendants were deceiving the public in regard to their Benedictine status.

Counts 8 and 9
Deceptive Trade Practices and False Advertising
(Dkt. 89-26, pp. 12-13)

32. I dispute the claim that there was no misrepresentation by defendants of their Benedictine status, as noted above (pp. 1-4). I was victimized by my donations and

transfers to MHFM in reliance on defendants' false advertising in regard to their Benedictine status.

Counts 3, 4, and 5
Unjust Enrichment Accounting, Money Had and Received
(Dkt. 89-26, pp. 13-14)

33. I dispute the claim that there was no misrepresentation by defendants of their Benedictine status, as noted above (pp. 1-4). I was victimized by my donations and transfers to MHFM in reliance on defendants' misrepresentations of their Benedictine status.

34. The defendants not only were unauthorized and unqualified to instruct me in the path to becoming a Benedictine monk, but they also neglected to take reasonable action for that purpose (Dkt. 42, #72), including the steps prescribed in the Rule of St. Benedict (Exh. 46, chap. 58). When defendants' treatment of me is compared to the manner of receiving new monks observed at St. Vincent Archabbey, either in the 1960's or at present, it is plain that I was victimized through my misplaced confidence that my welfare would be safeguarded by the customary procedures of a Benedictine monastery (Exh. 5, pp. 25-35).

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35. Defendants claim that "Hoyle presents a picture of fraud and deception in which he knowingly participated" (Dkt. 89-26, p. 16). In fact, I lacked the knowledge necessary to make me guilty of fraud. I relied on defendants' claims as to the history of MHFM and reasonably believed that those claims were true. I was a victim, not a perpetrator, of defendants' fraudulent enterprise.

36. It is natural that the victim of a fraudulent monastery will repeat to others the falsehoods by which he has been victimized. To hold that that implicates the victim in the

fraudulent enterprise itself is to prove too much and to grant the fraudulent monastery a blanket defense against legal claims.

Defamation as a Matter of Law

37. Defendants argue that I “admit making defamatory statements about defendants” (Dkt. 89-26, p. 18). In fact, I assert that my alleged defamatory statements about the defendants, insofar as such statements were actually made, were in fact true, and that is an adequate defense in law.

38. The question of whether defendants stole money from me, by means of the fraudulent MHFM enterprise, is presently before the Court. Thus, whether my statements were false is a disputed matter, and summary judgment is improper.

Conversion of Confidential and Proprietary Information, Misappropriation of Trade Secrets (Dkt. 89-26, pp. 19-21)

39. Defendants' factual claims on these topics include gratuitous assertions that are disputed by me. Given the facts as alleged by me, there is significant doubt of my guilt on these counts.

40. During my residence at MHFM, copies of various MHFM business records were placed in my keeping by defendants. On December 31, 2007, I felt an urgent need to depart MHFM, for reasons of religion and of personal safety, and it was impractical for me to separate all MHFM property from my personal property before my departure. I have denied any intention to convert MHFM property to my own use (Item 44, # 88, 99).

41. On January 2, 2008, I informed New York State Trooper Larry LaRose of my desire and intent to return the defendants' property (Dkt. 89-24 at 40:30-60:00). Trooper

LaRose relayed that to the defendants in a telephone conversation, suggesting that the defendants come to my motel room to retrieve their property (Dkt. 89-24 at 61:25). For six days, defendants had that opportunity to retrieve their property, but they apparently made no attempt to do so.

42. Defendants mention their “efforts to secure a voluntary return of the confidential and proprietary information” (Dkt. 89-26, p. 20, ¶ 3). It appears, on the contrary, that defendants chose to leave their property with me in order to manufacture frivolous claims against me.

43. I came back to MHFM of my own volition on January 8, 2008, in order to return the defendants' property and to retrieve what remained of my own property. There was no disagreement at that time as to which items belonged to which party, despite the adversarial relations that had already resulted from events connected with the present lawsuit. I delivered various paper and electronic documents, along with various other items, including some that were with Joseph Myers when he departed MHFM. Defendants carried my belongings outside their main building for me to take away.

44. It is noteworthy that defendants did not ask for my Apple Macintosh computer, which, to that time, they had always treated as my own property. Their claim to own that computer was first made in an email of January 19, in which they cite my email of August 30, 2005 – more than two years before – to show that the computer had belonged to MHFM all along. That displays the defendants' penchant for finding, in old documents, meanings that do not derive from the text itself and were not previously intended or accepted by the author or the addressee.

45. Defendants have not provided evidence that I used the confidential and proprietary records of MHFM in order to contact MHFM supporters. I admitted that I contacted the people in my email address book (Hoyle T. 54), but it is doubtful that information was a confidential or proprietary MHFM record; and further, my message to these parties did not include the statement that defendants have alleged to be defamatory.

46. In their allegations that I used confidential information obtained from MHFM, defendants ignore the fact that I obtained such information from my own recollection and from public records.

47. I retained some of defendants' documents past January 2008 on the advice of counsel, because such documents were potentially useful in protecting my rights in a legal action. To the best of my knowledge, the defendants had copies of all these documents, so their access to them was not obstructed.

48. Finally, I dispute the claim that I “contacted hundreds of MHFM supporters, donors, benefactors, and clients” (Dkt. 89-26, p. 20, ¶ 3). That number is exaggerated; the true number is probably close to 100.

**Electronic Communications Privacy Act
(Dkt. 89-26, pp. 24-25)**

49. Based on documents provided by defendants, I accidentally sent a few emails that appeared to originate from an MHFM email address, although they may have been sent through yahoo.com servers. That occurred because when I first attempted to remove MHFM accounts from my email settings, I failed to make all the necessary changes.

50. In the body of the messages in question, I did not misrepresent my identity or my relationship to MHFM. There is no evidence that I accessed any message that was not sent by or addressed to me; and to the best of my knowledge, I did not do so. I did not intercept anything.

**Response to Declaration of Frederick Dimond
(Dkt. 89-9)**

51. This document repeats many of the allegations set forth in the accompanying Memorandum of Law (Dkt. 89-26) and Statement of Undisputed Facts (Dkt. 90). As explained above, many of these allegations are based upon facts that are disputed by me. Most of the contentions in Mr. Dimond's declaration have already been addressed, but the following points merit a further response.

52. Mr. Dimond defines a "Traditional Catholic" as one who "does not accept Vatican II, the New Mass (the Novus Ordo), or the structure known as the Vatican II church," and goes on to assert that "[d]efendants do not accept the post-Vatican II claimants to the Papacy as valid popes" (Dkt. 89-9, #3). That involves Mr. Dimond in some difficulties. Mr. Dimond claims that MHFM was founded in the 1960's and that "[s]ince its beginning, MHFM has always been and held itself out to be a Traditional Catholic Benedictine Monastery" (Dkt. 89-9, p. 3).

53. But for approximately the first three decades of its existence, MHFM acknowledged the Vatican II claimants to the papacy as legitimate. Thus, according to Mr. Dimond's definition, MHFM was not "Traditional Catholic" during that time.

54. MHFM newsletters produced by defendants show that for many years, MHFM consistently treated the bishops and popes of the Vatican II church as misguided but legitimate. MHFM still held that position, accepting the Vatican II popes, when the present MHFM was established in New York, as well as for some years under the leadership of defendant Frederick Dimond.

55. In fact, Mr. Dimond is on record giving a speech, at MHFM and dressed in monk's attire, against the proposition that John Paul II was not a valid pope. That is surely recognition by defendants of the structure known as the Vatican II church.

56. It is hard to believe that while MHFM recognized John Paul II as a true pope, MHFM also claimed to belong to some other Order of St. Benedict than the one recognized by John Paul II. Contention over religious doctrine would not necessarily have prevented MHFM from claiming or even possessing organizational unity with the Vatican II church. Many Catholic persons and groups chose to resist certain changes connected with Vatican II without renouncing or losing their membership in the Vatican II church. That could have been done by MHFM, had it belonged to the Order of St. Benedict before the Vatican II changes occurred. But MHFM was not in that position, because its founder was never a Benedictine monk and was never authorized to found a monastery within the Order of St. Benedict.

57. The defendants' historical claims in regard to MHFM indicate that a monastery can be subject to the Vatican II popes, which implies some level of tolerance of the Second Vatican Council and the New Mass, without ceasing to belong to the Roman Catholic Order of St. Benedict. That is exactly what the defendants represent to have been MHFM's own

position. MHFM's longstanding acceptance of the Vatican II popes supports my contention that MHFM presented itself as a faithful branch of the Order of St. Benedict, separated from the Vatican II or "publicly recognized" Benedictines only in consequence of religious differences.

58. I believe that the Catholic faith has broadly been lost within the Order of St. Benedict, which calls in question its right to that name, and thus I have referred to that organization as the "publicly recognized" Order of St. Benedict. However, I understood that MHFM claimed to be a portion of the Order of St. Benedict that had preserved the Catholic faith and could trace its lineage to before the breakdown of Catholic doctrine had occurred, i.e., the time when today's "publicly recognized" Order of St. Benedict was truly and properly the Roman Catholic Order of St. Benedict.

59. Defendants' objections to my claim of misrepresentation hinge upon the defendants' supposedly clear separation from the Vatican II church and its publicly recognized Order of St. Benedict.

60. In fact, that separation is rather murky. Defendants claim that they do not "accept" the "structure" of the Vatican II church (Dkt. 89-9, #3), but for years they have attended the liturgy and received Communion at St. Josaphat's Ukrainian Catholic Church, in Rochester, New York. That church is openly and fully united with the Vatican II church and its pope, Benedict XVI, as defendants well know.

61. Defendants attended that church while I resided at MHFM and for some time thereafter, possibly continuing to today. On that basis, it is quite reasonable to state that defendants are "affiliated with" the Vatican II church, using the defendants' rather broad

definition of “affiliation.” Defendants have published articles in which they assert that the clergy and lay attendees of places such as St. Josaphat's are heretics but that the places themselves remain lawful Catholic churches (Deposition Exh. 55, p. 6).

62. These points reveal the confused and contradictory nature of defendants' claims as to what is a Catholic organization, and as to their affiliation or lack of affiliation with the Vatican II church. Defendants should not be allowed to label their deceptive, contradictory, and factually false claims as “religious beliefs” in order to provide legal cover for fraud.

63. I have disputed many of Mr. Dimond's claims as to my alleged misuse of MHFM's confidential information and disruption of MHFM's business relationships (Dkt. 89-9, pp. 15-16). It seems that Mr. Dimond blames any loss of business on defamation by me, without producing evidence or competent testimony that this was the case. Such allegations are unfounded, because MHFM's loss of customers, if it has occurred, may easily result from negative publicity connected with the present lawsuit, for which I am not liable, or from other causes unrelated to me.

64. It would be absurd for such gratuitous assertions as the defendants make on that point to form a basis for summary judgment. Of the approximately 40 parties with whom defendants claim to have lost business relationships on account of my alleged defamation or misuse of confidential information (Deposition Exh. 56, p. 14, #15), some were at odds with MHFM before my departure, some were never in contact with me, and four submitted affidavits on the defendants' behalf in June of 2008. Such allegations should be considered false until proven true, which defendants have hardly attempted to do.

65. Mr. Dimond's best attempt is to cite the list of approximately 130 parties to whom I have admitted having “stated that defendants teach heresy and/or that MHFM is not a legitimate monastery of the Catholic faith and/or that defendants stole [my] money” (Dkt. 89-9, p. 17). But that does not prove any defamation, because that list includes parties to whom I said nothing that has been alleged as defamatory, but spoke of my religious beliefs and of other unobjectionable matters.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 24, 2012

/s/ Eric Hoyle
ERIC E. HOYLE