

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

PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT OF
MATERIAL FACTS NOT IN
DISPUTE

Index No. 08-cv-00347-JTC

Defendants

1. Plaintiff agrees that statements made in the following paragraphs in defendants' Statement of Material Facts are not in dispute: paragraphs 5, 13, 17, 18, 22, 26, 33, 34, 37, 38, 41, 46, 47, 52, 53, 55, 56, 57, 60, 61, 63, 64, 65, 66, 67, 70, 72, 73, 74, 75, 77, 78, 79, 80, 82, 83, 84, 85.

2. Plaintiff asserts that the statements made in paragraphs 6, 7, 8, 9, 10, 11, 12, 15, 16, 19, 23, 24, 25, 44 are not statements of material facts.

3. Plaintiff asserts that the statements contained in the remaining paragraphs thereof reference material facts as to which there is genuine dispute between the parties.

4. Paragraph 2 is unsupported by evidence and is disputed by plaintiff. It is not clear that plaintiff was "fully aware of the beliefs and teachings of MHFM," because plaintiff's reading and conversation were not necessarily sufficient to produce such awareness. Statements by defendant Robert Dimond have been produced that indicate plaintiff's incomplete awareness of MHFM beliefs during the time alleged (Bridget Burrows email 1/17/2008 6:25 pm ***). When plaintiff entered MHFM, he was rather new to the Catholic

religion and uninformed about the Order of St. Benedict; and throughout his time at MHFM, he was learning about these matters through his reading and through conversation with the defendants (F. Dimond T. 72-73).

5. Defendants contend that their understanding of the Order of St. Benedict is a religious belief of MHFM, of which plaintiff is alleged to have been “fully aware,” yet defendants also contend that plaintiff was ignorant and careless about this matter at the same time (Statement of Undisputed Facts, ¶14). This contradictory position cannot be true.

6. Plaintiff states that he did not accept MHFM as an independent monastery in the sense now alleged by defendants, and that their present position as to the basis for their Benedictine status was not published or communicated to plaintiff prior to his departure from MHFM. Also, plaintiff contests the claim that MHFM's alleged affiliation with the Order of St. Benedict is a “religious belief” of the defendants.

7. Paragraphs 3 and 4 attempt to define the term “traditional Catholic,” but this is a matter of opinion. The definition provided uses vague language and has not been approved by plaintiff. Defendants have made statements that are inconsistent with these paragraphs (Dkt. 89-9, p. 3; Statement of Undisputed Facts, ¶ 8).

8. Paragraph 14 is disputed by plaintiff. Plaintiff testified that he did not research the Benedictine Confederation, which is the governing body of the publicly recognized Order of St. Benedict. However, plaintiff did focus on the Order of St. Benedict, at least sufficiently to understand defendants' statements in regard to MHFM's founding by a monk from St. Vincent Archabbey. Plaintiff also read the Rule of St. Benedict (Deposition Exh. ****) during the time frame mentioned (F. Dimond T. ***).

9. Paragraph 20 wrongly states that plaintiff has never investigated or sought out any Benedictine organizations. In fact, plaintiff has investigated two organizations that present themselves as Benedictine, namely MHFM and St. Vincent Archabbey. Plaintiff sought to become a monk at MHFM.

10. Paragraph 21 indicates that plaintiff was indifferent to “Benedictine issues” at the same time plaintiff believed himself to have entered a Benedictine monastery and to be living a monastic life. This is absurd, and is contradicted in paragraph 36 of defendants' statement of undisputed facts.

11. Paragraph 27 is slightly inaccurate. Plaintiff's decision to depart MHFM was based principally but not solely on his disagreement with defendants in regard to Mass attendance.

12. Plaintiff has testified that he 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). Mr. Ibranyi had been a member of MHFM under Frederick Dimond, and while plaintiff could not confirm his claims about Joseph Natale before departing MHFM, plaintiff considered it likely that they were true, and thus that the defendants had deceived him in regard to their Benedictine status.

13. Also, defendant Frederick Dimond testified that plaintiff mentioned, on the day of his departure from MHFM, his belief that Mr. Dimond was “too young to be a validly elected superior” (F. Dimond EBT, p. 103). This demonstrates that Mass attendance was not the sole

issue contributing to plaintiff's decision to leave MHFM, and that at the time of his departure; plaintiff questioned the organizational legitimacy of the defendants (Hoyle T. 203-5).

14. Paragraph 28 assumes that plaintiff's reading of the MHFM website made him fully familiar with MHFM's religious beliefs. This conclusion is unwarranted and untrue.

15. Paragraph 29 is incorrect, and is not supported by the document cited. Plaintiff changed his religious beliefs significantly as a result of reading articles written by defendants. In particular, defendants were instrumental in leading plaintiff to adopt beliefs known broadly as "sedevacantism" and "Feeneyism".

16. Paragraph 30 is not an established fact, as plaintiff has no way of knowing whether defendants have misrepresented their *religious beliefs*. Plaintiff does not consider the defendants' claims to belong to the Order of St. Benedict as matters of *religious belief*.

17. Paragraph 31 is a principal matter of dispute in this action. Defendants wrongly claim that plaintiff understood Most Holy Family Monastery 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. This is not what was stated by the defendants at the relevant times, nor was it what the plaintiff understood (Hoyle T. 274).

18. The defendants have publicly claimed, since at least the year 2002, and still claim at the present day (Deposition Exh. 34, p. 1), that MHFM originated with Brother Joseph Natale, who allegedly became a Benedictine monk at St. Vincent Archabbey in Latrobe, Pennsylvania, received permission to found a new monastery from his Archabbot there, and thus founded MHFM. This story was given under the heading "Who Made Us Benedictines?"

in an article that defendant Frederick Dimond has identified as a publication of MHFM (Deposition Exh. 55, p. 21; F. Dimond EBT pp. 75-79). The defendants have consistently published this 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 this 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.

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

20. Paragraph 32 is correct, except that plaintiff understood the relations between MHFM and the Order of St. Benedict as described in the response to paragraph 31.

21. Paragraph 35 is false. In fact, plaintiff believed 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. See response to paragraph 31.

22. Paragraph 36 is built upon false assumptions contained in paragraphs 31 and 35.

It is in direct conflict with paragraph 14. Defendants have not described “the pertinent doctrines which define a Benedictine community,” nor do they explain how plaintiff obtained “full knowledge” of such doctrines. The citations from plaintiff's testimony do not support defendants' claims.

23. Paragraph 39 is incorrect, and was explicitly denied in plaintiff's testimony (Hoyle T. 279-81). The documents in question were written by plaintiff after his departure from MHFM, and are meant to be humorous, as is apparent when their whole text is considered (Exh. 41, 42).

24. Paragraph 40 is similar to paragraph 2, which is addressed above. Plaintiff admits that he reviewed the defendants' published work and was broadly in agreement with the doctrines contained therein. This does not establish as a fact that plaintiff understood all of defendants' beliefs and teachings.

25. Paragraph 42 asserts what plaintiff has denied. Plaintiff testified that he did not decide how much money he would have liked to transfer to himself from MHFM on December 31, 2007, but that it would not have been more than a million dollars (Hoyle T. 64, 68). Thus, it appears that plaintiff did not attempt “to transfer all of the assets on deposit to himself.” Also, plaintiff did not access MHFM's financial accounts after leaving MHFM.

26. Paragraph 43 is disputed by plaintiff, who has denied that he spoke falsely on this matter (Dkt. 44, #62).

27. Paragraph 45 is inaccurate as written. Plaintiff contacted only some, not all, of MHFM's followers, and his purpose was to assist such people by speaking about religious matters and historical facts, in part to counteract the fraud by which both plaintiff and MHFM's

followers had been victimized.

28. Paragraph 48 is too general, and is not supported in full by the testimony cited. Plaintiff cannot confirm that he had access to all of the defendants' writings; and even if all their writings were within plaintiff's reach, this does not show that plaintiff was practically able to review all of defendants' writings. However, it appears that one article that is quite significant, titled "Response to the Schismatic False Prophet Richard I." (Deposition Exh. 55), had been removed from the MHFM website, and was certainly not called to the plaintiff's attention by defendants. This article would have alerted plaintiff to Mr. Ibranyi's allegations that defendants were making false historical claims to establish their Benedictine status.

29. Paragraph 49 is incorrect. Plaintiff was informed, by defendant Frederick Dimond, that the religious rules of MHFM required plaintiff to place his financial assets in the keeping of MHFM as a condition of entering the Benedictine community and to designate an amount to be refunded should he decide to depart MHFM (Hoyle T. 184-85; Emails, Bates No. MHFM795 & MHFM46313). The amount of plaintiff's November 2005 transfer to MHFM to be treated as a donation for tax purposes, and the amount to be refunded to plaintiff in the event of his departure from MHFM, were determined some months after the transfer took place. This agrees with the testimony of defendant Frederick Dimond (F. Dimond T. 53, 68).

30. Further, plaintiff did not donate all his personal property to MHFM. While plaintiff resided at MHFM, defendants treated his personal property as his own, not as having been donated to MHFM (Hoyle T. 184). Defendants did not claim that they had received plaintiff's property by donation until some weeks after plaintiff had departed MHFM. Shortly before this time, defendants willfully collected items of plaintiff's property and carried them

outside for him to take away (cite Robert Dimond email of January 19, 2008 ***).

31. Paragraph 50 is incorrect. Plaintiff took the religious name of Brother Edmund when he had been at MHFM for approximately one year, as admitted by defendant Frederick Dimond (Dkt. 7-2, #18). The false claim that plaintiff took his religious name upon entering MHFM has been repeated several times by defendants, apparently to bolster the false claim that patrons of MHFM could not have known plaintiff as Eric Hoyle.

32. Paragraph 51 is incorrect. Plaintiff did not act “in a manner consistent with others residing at MHFM,” because the defendants were perpetrating a fraud, and plaintiff was not.

33. Paragraph 54 is very similar to paragraphs 2 and 40, which are addressed above.

34. Paragraphs 58 and 59 are incorrect. These points have been disputed by plaintiff (Hoyle T. 186-93), and are contrary to the testimony of defendant Frederick Dimond (F. Dimond T. 53, 68). They are also inconsistent with produced documents (Deposition Exhs. 20, 21, 29, 53). In particular, there is evidence that plaintiff and defendant Frederick Dimond agreed that only \$750,000 of plaintiff's November 2005 transfer would be designated as a completed gift for tax purposes (Deposition Exh. 21, pp. 3-4).

35. The principal transfer of plaintiff's assets to defendants, mentioned in paragraph 59, was made in order to comply with defendants' requirements for entrance into their Benedictine monastery, and as such was not a donation. This 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 someone 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. This 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.

36. Further, the defendants have published a commentary in which they admit the connection between plaintiff's transfer of money and his entrance into MHFM as a postulant (Audio "lawsuit_discussion.mp3" from MHFM website ***). 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 something where 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."

37. Paragraph 62 is not admitted by plaintiff. Plaintiff treated this transfer as a donation for tax purposes, but defendants were free to draw upon these assets in order to return money to plaintiff.

38. Paragraphs 68 and 69 are disputed by plaintiff insofar as they imply it would be a breach of confidentiality for plaintiff to personally contact anyone whom he met through his work at MHFM. Plaintiff's relations with MHFM customers often went beyond mere handling of information, as indicated by MHFM customer Keith McKay's testimony that he and plaintiff were "friends" (McKay T., pp. 96-99).

39. Paragraph 71 is incorrect. Plaintiff handled only a portion of the orders received at MHFM, not all of them. Plaintiff was assigned for some weeks to update MHFM's customer information database, but plaintiff did not otherwise "manage" such information.

40. Paragraph 76 implies that plaintiff took all of MHFM's business records, when in fact he departed with only a small portion of such records.

41. Paragraph 81 is disputed by plaintiff. Defendants have not provided evidence that plaintiff used the confidential and proprietary records of MHFM in order to contact MHFM supporters. Plaintiff has admitted that he contacted the people in his email address book (Hoyle T. 54), but it is doubtful that this was a confidential or proprietary MHFM record. In their allegations that plaintiff used confidential information obtained from MHFM, defendants ignore the possibility that plaintiff obtained such information from his own recollection and from public records, as in fact he did.

Dated: February 24, 2012

/s/ K. Wade Eaton

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