

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

Index No.

08-cv-00347-JTC

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF HIS
MOTION FOR RECONSIDERATION

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INTRODUCTION

Plaintiff submits this Memorandum in support of his motion to have the Court reconsider its granting of summary judgment dismissing the plaintiff's equitable claims, on the ground that these state law claims do not require the plaintiff to either allege or prove that the defendants acted wrongfully in acquiring plaintiff's assets.

ARGUMENT

POINT I

UNDER NEW YORK LAW, PLAINTIFF NEED NOT ALLEGE WRONGDOING ON THE DEFENDANTS' PART TO ESTABLISH A CLAIM FOR UNJUST ENRICHMENT OR MONEY HAD AND RECEIVED

In its Decision and Order of June 22, 2012, the Court dismissed the plaintiff's Amended Complaint in its entirety. The Court's dismissal of the plaintiff's claims of unjust enrichment (Count Three) and money had and received (Count Five) was based on its determination that the plaintiff had not proven the fraud claim. See Decision and Order, page 24: "As plaintiff has not raised a genuine issue of material fact to suggest that he was the victim of a fraudulent misrepresentation, the defendants have established that they are entitled to judgment as a matter of law on the equitable claims." The Court previously cited cases holding that these two causes of action required only that the plaintiff prove (1) defendant was enriched, (2) at plaintiff's expense, and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover. *Id.* at 23. The Court's final determination clearly strayed from those holdings by requiring that the plaintiff prove fraudulent conduct on the defendant's part.

The law in New York has been to the contrary for many decades. "Unjust enrichment, however, does not require the performance of any wrongful act by the one enriched [citations omitted]." *Simonds v. Simonds*, 44 N.Y.2d 233, 242 (1978). See,

also, *Trotta v. Olivier*, 91 A.D.3d 8, 12 (2nd Dept. 2011). The plaintiff asks the Court to revisit the defendants' motion for summary judgment as to these two claims, applying the correct legal standard under New York law.

A party seeking summary judgment bears the burden of establishing that no genuine issue of material fact exists. See *Adickes v. S.H.Kress & Co.*, 398 U.S. 144, 157 (1970). “[T]he movant must make a prima facie showing that the standard for obtaining summary judgment has been satisfied.” 11 MOORE'S FEDERAL PRACTICE, §56.11[1] [a] (Matthew Bender 3d ed.). Therefore, the burden is on the moving party to demonstrate that the evidence presented in the case creates no genuine issue of material fact. *Amaker v. Foley*, 274 F.3d 677, 681 (2d Cir. 2001).

Only when this burden has been met by the moving party, does the burden shift to the non-moving party to demonstrate that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e); *Anderson v. Liberal Lobby, Inc.*, 477 U.S. 242, 250 (1986).

In determining whether a genuine issue of material fact exists, the Court must view underlying facts and circumstances of the case contained in affidavits, attached exhibits, and depositions in the light most favorable to the non-moving party. *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Moreover, the Court must draw all reasonable inferences and resolve all ambiguities in favor of the non-moving party. *Anderson*, 477 U.S. at 248-49.

Summary judgment is only appropriate when the moving party has met its burden of production under F. R. Civ. P. 56(c), and has demonstrated the absence of a genuine issue concerning any material fact. *Adickes v. S. H.Kress & Co.*, *supra* at 159. The burden of production is a high standard to meet. As the Court noted in *Adickes*, summary judgment should be denied when a party failed to demonstrate that no

genuine issues of material fact remain for trial even if no opposing evidentiary matter is presented. *Id.* at 160.

POINT II

DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON THE EQUITABLE CLAIMS BECAUSE THERE REMAIN GENUINE DISPUTES CONCERNING MATERIAL FACTS

The Court has ruled that defendants' statements about the founding of MHFM is cannot serve as a basis for determining whether the defendants are truly Benedictines. However, for plaintiff's equitable claims, it is question of material fact whether defendants' statements about Joseph Natale and his founding of MHFM were made recklessly or dishonestly, with the intent to obtain money or credibility. The defendants' testimony provides a way to inquire into this point, and the record in this case includes documents favoring the view that the defendants could not have believed their claims about MHFM's history.

For example, there is a video, apparently produced in 1992 as promotional material for MHFM, in which Joseph Natale speaks at length about his monastery. In this video, Mr. Natale says he initially founded MHFM as a community for the handicapped, not a monastery, and he never once mentions having been a monk at St. Vincent Archabbey or having received permission from anyone there to found a monastery. Also, defendants' own responses to interrogatories say nothing of St. Vincent Archabbey in their explanation of how Joseph Natale became a Benedictine monk. In light of these and other facts and allegations, and given the total absence of documentation favoring defendants' claims about Joseph Natale, there is a genuine issue of fact as to whether defendants were reckless or willfully deceptive in their historical claims.

At the times relevant to his equitable claims, plaintiff did not believe that a person or a monastery could become Benedictine by mere self-declaration, without having entered or descended from a Roman Catholic Benedictine monastery. The Court's recent order cited the plaintiff's journal as if to show that he believed in 2005 that one could become a Benedictine by self-declaration, but the statement comes from an entry dated December 30, 2007 and says, "I have only recently learned, as a consequence of someone else's question, that to be a monk or even a Benedictine these days takes nothing more than to profess the faith, vow chastity to God, and live in a manner vaguely similar to the rule of St. Benedict" (emphasis added).

This indicates that plaintiff believed differently before the recent conversation to which the journal refers. Plaintiff claims to have believed that MHFM's descent from St. Vincent Archabbey through Joseph Natale was indeed the basis of its claim to be Benedictine, as he was taught by the defendants, and this makes the possibility of deception by the defendants on this point a question of material fact. Plaintiff does not consider the defendants' historical claims to be "religious beliefs" or "views of traditional Catholicism," so plaintiff should not be understood to agree with the defendants as to the truth or the value of such claims.

A further basis for plaintiff's equitable claims is the terms upon which he transferred money to MHFM. Plaintiff was advised that he would be entitled to the return of a designated portion of the assets upon his departure from MHFM, the amount to be determined by the plaintiff in an informal written instrument. Although the figure of \$30,000 was mentioned at one point, there is no clear record of the amount of money designated to be returned to plaintiff. Following his departure from MHFM, plaintiff requested that the amount of \$483,000 be returned. Defendants refused that request.

The facts related to this issue remain in dispute. Defendants have alleged that (1) they advised the plaintiff that as a postulant at MHFM, he must place his worldly assets in their control, and may designate an amount to be returned to him in the event of his departure, (2) in his August 30, 2005 email to defendants, plaintiff so designated the amount of \$30,000, (3) upon entering MHFM, the plaintiff decided not to reserve anything to be returned to him, (4) plaintiff's November 2005 transfer to defendants worth \$1.2 million was not an unreserved donation at that time, (5) no specific agreement was ever made as to the amount of money to be returned to plaintiff. Defendants have interpreted plaintiff's decision to take a tax deduction for a portion of the amount transferred as demonstrating that plaintiff agreed to waive his right to any return of his assets in the future.

In fact, plaintiff's tax treatment of a portion of his transfers to MHFM as gifts was based on plaintiff's accountant's suggestion and was undertaken solely for tax purposes. Plaintiff has testified that in spring 2006, upon request by defendant Frederick Dimond, he designated \$750,000 to be returned upon his departure from MHFM, and he noted the fact in a handwritten document which he gave to Mr. Dimond. Plaintiff's testimony is supported by his email correspondence with his accountant and by his donation acknowledgment letter of April 7, 2006. This acknowledgment letter states less than the full amount of plaintiff's November 2005 transfer as a donation, implying that the remaining portion of that transfer was not a completed gift, as plaintiff's emails with his accountant indicate.

The defendants have offered an absurd explanation of the purpose of the April 2006 letter: that it would add flexibility to return money they expected to receive in the future, although the defendants already had all possible flexibility in that matter. Further, defendants were in a position of authority over the plaintiff at the relevant

times and thus bear responsibility for the lack of written documentation of the terms of plaintiff's transfers, which has worked to plaintiff's great detriment. Under the situation presented, the questions of whether the plaintiff waived his right to a "refund" and made his transfers unconditional, and of whether the defendants dealt honestly in the matter of plaintiff's transfers, are central to plaintiff's equitable claims and must be addressed to a fact finder.

Additional grounds which the plaintiff will assert at trial include his relative naïveté and the defendants' abuse of their position of trust and authority. That the defendants would allow a young man to irrevocably donate everything he owns to a monastery while only a prospective entrant – as they claim to have done – demonstrates an egregious lack of concern for the young man's well-being, and a willingness to trap him in the monastery by leaving him destitute should he return to secular life.

Because the defendants failed to establish their right to summary judgment dismissing these claims as a matter of law, the plaintiff had no burden to rebut their claim. Viewed under the proper legal standard, the record contains ample evidence to establish that there are material and genuine questions of fact with regard to these claims.

CONCLUSION

Based on the foregoing, the plaintiff asks the Court to reconsider its prior Order and to deny the defendants' motion for summary judgment dismissing plaintiff's equitable claims.

Dated: July 16, 2012

/s/ K. Wade Eaton
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