

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.

**MOTION FOR LEAVE
TO FILE A SECOND
AMENDED COMPLAINT
OR AN AMENDED
REPLY TO
CONTERCLAIM
DESIGNATED AS A
COUNTERCLAIM**

Index No. 08-cv-00347-JTC

Plaintiff Eric E. Hoyle, by his attorney Wynn L. Bowman, Esq, pursuant to Rules 15(a) and 19(a), Fed. R. Civ. P., requested leave to file an amended complaint or in the alternative, an amended reply to counterclaim designated as a counterclaim.

1. The plaintiff filed his original complaint on May 9, 2008. In it, he alleged that in reliance on misrepresentations of defendants, he plaintiff made contributions to MHFM of approximately in excess of \$1.5 million, and took up residence at MHFM on September 27, 2005. Plaintiff further alleged that he executed a document, at the request of defendants specifying that he was to receive \$750,000 upon his departure from MHFM. Plaintiff left MHFM on December 31, 2007, and the defendants have refused plaintiff's demand for the return of previously transferred funds.
2. Plaintiff filed an amended complaint on March 10, 2009, asserting 10 causes of action – fraud, constructive fraud/negligent misrepresentation, unjust enrichment/constructive trust, mandatory accounting, money had and received, violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§

1962(c) and (d) (“RICO”), deceptive trade practices pursuant to New York General Business Law § 349, false advertising, and vicarious liability of MHFM. Defendants filed an answer to the amended complaint on March 20, 2009 and interposed seven counterclaims. Plaintiff filed his reply to the counterclaims on April 9, 2009.

3. On January 6, 2012, defendants filed a motion for summary judgment, seeking dismissal of the amended complaint and judgment on their counterclaims. Plaintiff’s response to the motion was filed February 24, 2012 and defendants reply was filed March 16, 2012.
4. The Court granted the defendants’ motion for summary judgment in part and dismissed the plaintiff’s complaint, but held in abeyance that aspect of the defendants’ motion in which they sought judgment on their counterclaims. The Court subsequently, after attempts to resolve the remainder of the case through mediation failed, denied defendants’ motion for summary judgment in part, and granted summary judgment to plaintiff, sua sponte, on defendants’ counterclaims under the Lanham Act and the ECPA.
5. Plaintiff seeks to file a Second Amended Complaint, in the form attached to this motion, or in the alternative, an Amended Reply to A Counterclaim Designated as a Counterclaim, in the form attached to this motion.
6. A motion for leave to amend should be granted unless it clearly appears the amendment would prejudice the opposing party.
7. Defendants are not prejudiced by the proposed amendment(s), and accordingly, the motion for leave to amend should be granted.

WHEREFORE, plaintiff respectfully request that this Court enter an order granting plaintiff's motion, and grant such further relief as the Court deems appropriate.

DATED: May 22, 2013

Respectfully, submitted,

/s/ Wynn L. Bowman

Wynn L. Bowman, Esq.

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