

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff

Declaration of
K. Wade Eaton

vs.

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,
a New York Not-for-Profit Corporation

Index No. 08-cv-00347-JTC

Defendants

K. WADE EATON hereby declares under the penalties of perjury, as follows:

REQUEST TO PARTIALLY VACATE
PRELIMINARY INJUNCTION

1. On July 23, 2008, this Court entered a preliminary injunction order (Dkt. # 23) which enjoined the plaintiff, *inter alia*, from communicating with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and propriety records of the MHFM or as a result of living or working at MHFM.

2. On or about July 21, 2009, a report about this case was posted at the religious website www.traditio.com and is attached hereto as Exhibit A. It quoted an article published in the Rochester *Daily Record* on April 6, 2009, which described the facts and progress of the case at that time. The article from traditio.com was soon republished and discussed in various media that reach traditional Catholic audiences.

3. On July 24, 2009, the defendants published a lengthy commentary on this case at their website, www.mostholymonastery.com, attached hereto as Exhibit B. This included

serious falsehoods and attacks upon the plaintiff's character. The plaintiff's full name was published, informing readers of his identity and giving them the means to find and to contact him.

4. By the defendants' own actions, the plaintiff has now been introduced directly to Most Holy Family Monastery (MHFM) clients and supporters. In addition, basic facts of the legal dispute have been placed before them and before a significant portion of people who follow traditional Catholic news.

5. Given these circumstances, the preliminary injunction no longer protects the defendants against knowledge of the plaintiff's allegations being spread among MHFM clients and supporters. This is essentially what they claimed would cause irreparable harm, notwithstanding their focus on the word "steal" as being unwarranted. The allegations of fraud and racketeering are at least as serious.

6. However, the preliminary injunction still prevents communication between the plaintiff and any persons whom he first met while at MHFM. Given that the defendants have publicly revealed the plaintiff's identity and allegations in remarks addressed to their clients and followers, it is unreasonable for the plaintiff to remain prohibited from communicating with this entire class of people.

7. The argument made by the defendants in support of their motion for a preliminary injunction was that Mr. Hoyle's continued communication with MHFM customers would irreparably damage its reputation. Now that the defendants have broadcast the details of the claims made in this action, whatever damage the defendants sought to avoid has been brought on by themselves.

8. Thus, the plaintiff requests that the preliminary injunction be amended by deleting

the fifth decretal paragraph enjoining the plaintiff from communicating with certain persons.

MOTION TO COMPEL

9. Plaintiff's initial request for documents included the following at paragraph 5 thereof:

*All documents pertaining, relating or referring to **the revenue and expenses of Most Holy Family Monastery during the relevant period**, including but not limited to all bank records, stock records, records of investments in real property and payments, loans or advances to third parties including individuals, corporations, trusts and partnerships.*

10. A copy of that document request is attached hereto as Exhibit C.

11. In response to this request, we received only periodic bank and investment account statements. Subsequent requests for records detailing revenues and expenses have been ignored.

12. During defendant Frederick Dimond's deposition, he testified that he had prepared the annual reports called for in Section 3 of the By-Laws of MHFM. A copy of the By-Laws is attached hereto as Exhibit D.

13. I requested at that time that the defendants produce those reports. A copy of defendant Dimond's deposition transcript is attached hereto as Exhibit E. See page 30, line 6 through page 35 line 10 thereof.

14. In response to that request, the defendants produced several single sheet statements of assets, copies of which are attached hereto collectively as Exhibit F. These documents are clearly not contemporaneous records which defendant Dimond testified that he had prepared.

WHEREFORE, your declarant prays for an Order partially vacating the outstanding preliminary injunction and directing the defendants to produce the annual reports prepared in

accordance with the By-Laws of defendant MHFM.

Dated: July 7, 2011

/s/ K. Wade Eaton

K. WADE EATON