

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,

Civil Action No. 08-CV-347C

Defendants.

STATEMENT OF UNDISPUTED FACTS

Defendants hereby submit this Statement of Undisputed Facts in support of their motion for summary judgment.

1. Plaintiff is a highly intelligent, well educated individual who has spent many years investigating and studying religious doctrine. He is a college graduate, Phi Beta Kappa, and was accepted to Medical School as well as other post-graduate programs. Rather than pursue these programs, plaintiff dedicated himself to religious study and pursuit of a “true” religion.

(Ritter Decl. Exhs. D, E; Hoyle T. 84- 87).

2. Between 2005 and December 30, 2007, plaintiff was fully aware of the beliefs and teachings of MHFM and accepted MHFM as an independent Traditional Catholic Benedictine Monastery. (Bro. Michael Decl.).

3. To be a “Traditional Catholic” means adhering to all the dogmas proclaimed by true popes, and the traditional rites of the Church. (Id.)

4. A Traditional Catholic does not accept Vatican II, the New Mass (the Novus Ordo), or the structure known as the Vatican II Church. (Id.)

5. The Vatican II Church is currently lead by Benedict XVI, whom is not a true pope.

6. Hoyle became interested in the Catholic religion in or about April 2003. (Ritter Decl. Exh. D).

7. In February 2004 Hoyle was invited to attend a traditional Mass in Washington, D.C. where he was introduced to Dr. David White whom he thereafter met with weekly to study the Catholic faith. (Ritter Decl. Exh. D, p. 4 @ Nos. 11-12). During these studies and before he had any dealings with defendants, Hoyle came to conclude that

the Catholic Church was overthrown from the “inside”, by its own purported leaders, in the 1960’s and following, a project that is especially to be identified with the rogue council “Vatican II” and with the fabrication of a new Mass, called the Novus Ordo Missae (“New Order of Mass”). The whole project reeks of dishonesty and evil.

(Ritter Decl. Exh. D, p.4 @ No. 12; Hoyle T. 122-23).

8. Hoyle became a confirmed Catholic in June 2004 from Bishop Williamson of the Society of St. Pius X (“SSPX”), a traditional Catholic religious organization not affiliated with the Vatican II religion. (Ritter Decl. Exh. E, p. 2).

9. As Hoyle’s religious beliefs evolved between 2003 and 2005, he would abandon his then current religious affiliations as heretical in favor of new ones that he concluded were proper and true. (See, e.g., Ritter Decl. Exh. E, p.2 (offering to do “anything possible” to advance the work of SSPX, an organization he later disavowed)).

10. By March of 2005, Hoyle had begun to move away from SSPX. He had come to the conclusion that the Catholic Church “worldwide is in the most severe crisis of her entire history by far; Vatican officials teach and practice all kinds of heresies. There has been a numerical collapse in the in the forty years since Vatican II; monks and nuns are nearly extinct.” (Ritter Decl Exh. D, p 5 @ No. 15).

11. A “prime intention” of Hoyle’s religious studies was to find truth and/or a true religion. (Hoyle T. 221).

12. A prime intention of Hoyle’s religious studies was to become a true Catholic. (Id.)

13. Between 2004 and December 31, 2007, Hoyle never focused on or researched the Benedictine Confederation or its hierarchy. (Hoyle T. 89-91).

14. Between 2004 and December 31, 2007, Hoyle never focused on or researched the what is publicly known or referred to as the Order of St. Benedict. (Hoyle T. 89-91).

15. Hoyle has sought to identify and/or affiliate with individuals and organizations he believes are truly Catholic.

16. Hoyle has not sought to identify and/or affiliate with individuals or organizations that are part of the publicly recognized Order of St. Benedict.

17. Hoyle made irrevocable donations of cash and stock to MHFM. (See Bro. Michael Decl.)

18. Hoyle made donations to MHFM to provide resources so that their religious teachings and beliefs could be disseminated, including through written materials, the internet, and broadcasts.

19. Plaintiff’s financial support of various religious organizations mirrors his evolving religious beliefs--- Hoyle provided financial support to those organizations that he found to share his views on religion. As his beliefs evolved, he would denounce his prior affiliations and withdraw his financial support. (Hoyle T. 82).

20. Hoyle’s “prime intention” was to be a “true Catholic” which did not require him to be Benedictine, and he had not and has not investigated or sought out any Benedictine organizations. (Hoyle T. 221).

21. Hoyle did not research Benedictine issues until after he departed MHFM. (Hoyle T. 82, 87-88, 90-91, 221).

22. In and after 2005, Hoyle's affiliation with and support for religious organizations, including MHFM, was based on the organization's beliefs concerning Catholic doctrine not whether there was an affiliation with the Benedictine Confederation. (Id.)

23. Hoyle affiliated with over 30 religious organizations between 2000 and 2005. (Ritter Decl. Exh. C, pp. 4-11; see also Hoyle T. 164-65).

24. Plaintiff initially supported Protestant organizations, but "came to believe Protestantism was a false religion." (Ritter Decl. Exh. C., p. 6). Plaintiff then became a supporter of "various organizations that presented themselves as Catholic." (Id., p. 7).

25. The initial "group" of Catholic organizations plaintiff supported "embraced the Second Vatican Council," whereas the second group expressed reservations about the New Mass and related changes. (Ritter Decl. Exh. C). Plaintiff "ceased to attend or support" the first group of organizations as he became more aware of "traditional Catholic" doctrine. (Id., p. 8). By mid-April 2005, plaintiff decided "not to attend or support" any of the "Catholic" organizations in the second group. (Id.) This included his rejection of SSPX. (Hoyle T. 102). By this point, plaintiff's beliefs had independently evolved to be "generally the same religious beliefs as promoted by MHFM." (Ritter Decl. Exh. C, p. 8; Hoyle T. 123).

26. Despite his affiliation with MHFM, plaintiff's cycle of evolving religious beliefs continued: Hoyle eventually concluded that he disagreed with defendants' religious beliefs, he openly denounced them, and withdrew all financial support. He literally reached this decision overnight. On December 30, 2007, MHFM was the only "true Catholic community" Hoyle was aware of (Hoyle T. 61, 109, 151). On December 31, 2007, plaintiff suddenly concluded that defendants' position on mass attendance was heretical.

27. Hoyle's decision to leave MHFM was based solely on a disagreement with defendants on the issue of mass attendance- i.e. where and with whom a true Catholic could receive/attend Mass. (Hoyle T. 61, 109, 301; Ritter Decl. Exh. G p. 61-62).

28. Plaintiff was fully familiar with MHFM's religious beliefs before he joined its community and made donations to provide funding for it to spread its message. (Hoyle T. 144).

29. Plaintiff had independently developed his own beliefs about the "true" Catholic religion before he discovered MHFM, and upon reviewing their writings determined that their beliefs were "correct" and consistent with his own. (See Ritter Decl. Exh. F p. 1).

30. Defendants did not make any "fraudulent statements" relating to their religious beliefs. (Hoyle T. 302).

31. Before he entered MHFM, plaintiff knew defendants were not affiliated with the publicly recognized Order of St. Benedict.

32. Before he entered MHFM, plaintiff had thoroughly reviewed all of the information on the MHFM website, including the materials where defendants' expressly disavowed any affiliation with Pope John Paul II or "the Benedictine Order under him." (Hoyle T. 257).

33. Before he entered MHFM, plaintiff knew that defendants condemned as false all of the monasteries that fell under "the publically recognized Order of Saint Benedict" and agreed with this position. (Hoyle T. 257-59; Item 30 ¶ 12).

34. Defendants never represented that they were affiliated with the Benedictine Confederation. (Hoyle T. 271).

35. Between 2005 and January 1, 2008, Hoyle believed that MHFM was a Benedictine monastery because it operated as an independent religious community with adherence to the Rule of St. Benedict. (Hoyle T. 252-53, 254-56, 281).

36. With full knowledge of the pertinent doctrines which define a Benedictine community prior to January 1, 2008, Hoyle agreed that MHFM was a Benedictine monastery. (Hoyle T. 252-53, 254-56, 281).

37. Hoyle read, edited, and assisted defendants with the publication of books and other written materials that explained MHFM was a Benedictine community. (Bro. Michael Decl. ¶¶ 40-41, Exh. I).

38. Hoyle promoted MHFM as a Benedictine monastery in verbal discussions, by sending out written materials to the public, and by electronic communications via email and the MHFM website. (Hoyle T. 252-53, 255, 297-98).

39. 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.” (Hoyle T. 281).

40. Prior to December 31, 2007, Hoyle understood and agreed with all of MHFM beliefs and teachings, including that they were a Benedictine community.

41. When he departed MHFM on December 31, 2007, Hoyle took without permission defendants’ property in the form of computer records, billings records, and financial records.

42. Immediately before and shortly after leaving MHFM, Hoyle accessed MHFM’s financial accounts in an effort to transfer all of the assets on deposit to himself. (Hoyle T. at 62-64, 155-56, 159-61).

43. In January 2008, plaintiff contacted law enforcement officials falsely claiming that defendants “stole” his money. (Bro. Michael Decl. Exhs. P & Q).

44. After law enforcement refused to pursue a criminal charge for the “theft” of his funds, plaintiff contacted the police a second time to report that Bro. Michael was a “dangerous” driver. (Hoyle T. 207-08).

45. Plaintiff contacted MHFM's followers/customers by telephone, email, and/or written correspondence in an effort to get them to terminate their relationships with MHFM.

46. In or about April and May 2005, Plaintiff made unconditional cash donations to MHFM in the amounts of \$700 and \$65,000, respectively. (Bro. Michael Decl Exh. A & B).

47. During the summer months of 2005, Plaintiff visited MHFM twice - the first time he spent several days at MHFM, the second time he spent several weeks at MHFM. During these visits to MHFM, Plaintiff observed MHFM's chapel, living quarters, kitchen, outdoor land and natural space, and areas where books, articles, and writings were stored. (Bro. Michael Decl.)

48. During these visits to MHFM, and even prior thereto, Plaintiff had access and opportunities to review, read, observe, and analyze the writings of the monks at MHFM, many of which also were readily accessible to Plaintiff over the Internet. (Hoyle T. 256: 21 – 257)

49. After Plaintiff's two visits to MHFM, plaintiff advised Bro. Michael that he wished to join MHFM and live in the community in Fillmore, New York, and that he wished to donate his worldly possessions to MHFM. (Bro. Michael Decl.)

50. In or about September 2005 Plaintiff moved to MHFM and took the religious name of Brother Edmund. (Id.)

51. When Plaintiff entered MHFM to live he was admitted to MHFM's religious community and conducted himself in a manner consistent with others residing at MHFM. (Id.)

52. After living at MHFM for approximately one year, Plaintiff was given a monk's habit and clerical collar. (Id.)

53. After living at MHFM for approximately two years, on October 4, 2007, Plaintiff took formal, monastic vows before me. (Id.)

54. From September 2005 until December 30, 2007, plaintiff reiterated that he fully agreed with and understood the teachings of MHFM and that he was devoted to the work of MHFM. (Id.)

55. From the time Plaintiff moved to MHFM in September 2005, he was involved in the routine life and responsibilities of a religious at MHFM. (Id.)

56. For example, he regularly engaged in prayer in the chapel and elsewhere. Plaintiff regularly assisted in the work of MHFM's Internet-based sales operation, taking online, telephone and mailed-in orders, processing and filling those orders, and downloading customer information from MHFM's website-based store, including credit card information. (Id.)

57. Plaintiff stated in an email to Bro. Michael that "I plan to give the vast majority of my holdings as an outright gift. As for the part that would be written down under my name and would revert to me if I departed, perhaps around \$30,000? Even that sounds excessive, but it comes to mind as a small portion of what I am accustomed to having. Give me your thoughts on this." (Bro. Michael Decl. Exh C).

58. Plaintiff later stated that he wanted to make all of his assets an outright gift and also stated that he wished to give his future inheritance assets to MHFM as well. (Bro. Michael Decl.).

59. In or about November 2005, Plaintiff made an unconditional donation of certain shares of stock to MHFM which were valued in the approximate amount of \$1.2 million. (Bro. Michael Decl. Exh. D).

60. Plaintiff received the \$1.2 million donation receipt. (Hoyle T. 221: 23 – 222: 2).

61. In an email to Plaintiff's tax advisor, Michael Trawick, dated January 18, 2006, Plaintiff provided Mr. Trawick with numbers for his 2005 taxes, which expressly included under "Gifts" "Stock \$1,233,100.00" and "Cash [\$]65,700.00." (Bro. Michael Decl. Exh. E).

62. In or about September 2006, plaintiff made an unconditional donation of certain shares of stock to MHFM which were valued in the approximate amount of \$307,989.00. (Bro. Michael Decl. Exh. F).

63 More than a year before he departed MHFM, plaintiff read Defendants' book, *The Truth about What Really Happened to the Catholic Church after Vatican II*. (Item 44 at ¶ 7). This book explicitly states that the defendants are not in communion with the post-Vatican II "Benedictines." This was Defendants' public position, which Plaintiff understood before he entered MHFM.

64. This book reference in paragraph 63 contains an entire section against the post-Vatican II "Benedictines" about which Plaintiff was and is aware. As an example, at page 403 of the book, Defendants explicitly say that they are not in communion with the post-Vatican II "Benedictines." Plaintiff proofread this book to assist Defendants, and in doing so, he read it numerous times before it was published. Chapter 32 of *The Truth about What Really Happened to the Catholic Church after Vatican II* is titled "The Religious Orders in the Vatican II Sect: Totally Apostate." (Bro. Michael Decl. Exh. I).

65 The computer databases in which MHFM maintained information regarding its supporters, donors, and customers are called the Arc List and the S List. In addition, MHFM had other data, not necessarily recorded in either the Arc List or the S List, that reflected names, addresses, telephone numbers, and in many cases credit card information for individuals who purchased items from MHFM's store and/or from its EBay site. (Bro. Michael Decl.)

66. MHFM's customers, supporters, and benefactors are not readily ascertainable outside MHFM's community as prospective donors or supporters to MHFM or as customers of MHFM's products (books, DVDs, and the like). The data in the MHFM databases and computers was not shared publicly. MHFM guarded this information with electronic firewalls to ensure it was secure.

67. While a member of MHFM's community, plaintiff assisted in creating and administering MHFM's EBay sales store and their online Yahoo website store, and in doing so he had access to and did in fact download online orders and customer information.

68. In working on these sales efforts on behalf of MHFM, plaintiff knew or reasonably should have known that he was doing the work of MHFM and that the customer information that he viewed, downloaded, and saved was of a confidential nature.

69. Plaintiff knew or reasonably should have known that customer information and other sensitive business information of MHFM was not to be shared outside of MHFM and that it was entrusted to him because defendants trusted Plaintiff to keep such information confidential

70. Plaintiff made it clear that he had expertise in computer and information technology as well as banking and investments. For more than two years, plaintiff supported MHFM and its beliefs and during that time was given increasing responsibility to handle various computer and technology-related tasks vital to the continued survival of MHFM.

71. Plaintiff not only handled MHFM's online store and all telephone, Internet, and mail-generated orders, but as part of that responsibility he managed the confidential and proprietary information that was maintained by MHFM on its customers, clients, supporters and benefactors.

72. In addition to being placed in control of a vast amount of MHFM's client information- including supporters' private home addresses, telephone numbers, e-mail addresses, and credit card information - plaintiff also was given access to MHFM's Scottrade brokerage account in the early winter of 2007 as a result of the trust defendants had for him to assist in the banking and bookkeeping of MHFM.

73. This account housed almost all of MHFM's financial assets, worth more than \$1.1 million. Plaintiff was given access to this information only as part of his work at MHFM and only because he had demonstrated a strong aptitude for investment-related matters and had developed so much trust in him after living and working at MHFM for more than two years.

74. Plaintiff knew or reasonably should have known that his access to MHFM's confidential and proprietary business and financial records was solely for the purposes of doing business on behalf of MHFM.

75. On December 31, 2007, after having spent more than two years at MHFM, plaintiff abruptly and without notice departed MHFM.

76. When plaintiff left MHFM on December 31, 2007, he took with him MHFM's business records including bank, investment account, customer, benefactor, and donor records. (Hoyle T. 64: 2 – 5).

77. When plaintiff abruptly left MHFM on December 31, 2007 he took with him records and materials including but not limited to MHFM's Scottrade brokerage account application and records; historical M&T Securities investment account records and other financial records; MHFM's flash drive containing various computer files and databases; an Apple laptop computer, which contained databases housing the personal contact information for some of MHFM's more than 90,000 supporters, donors, benefactors, and clients, including credit card information for some; computer passwords; technology purchase information; phone system information; customer ordering data; customer information, and other data and intellectual property contained on a laptop computer, flash drive, and in hard copy. (See Hoyle T. 51: 1 - 10). Such information was not readily or publicly available.

78. On December 31, 2007, the day of his departure, plaintiff used the bank and investment account information that he took from MHFM in attempts to transfer to himself MHFM's funds. (Hoyle T. 64: 2 – 19).

79. Following plaintiff's departure, he engaged in a campaign of contacting MHFM supporters in an attempt to convince them that MHFM was a fraud.

80. Plaintiff disseminated emails to MHFM customers and supporters referring recipients to visit Plaintiff's website which condemns MHFM as heretical. (Bro. Michael Decl. Exhs. J & K).

81. Plaintiff used the confidential and proprietary information to contact MHFM followers/customers for the purpose of directing them away from MHFM. For example, on or about February 19, 2008, plaintiff conducted and recorded a telephone conversation with former MHFM customer and supporter Christy Awana. (Bro. Michael Decl. Exhs L).

82. Beginning in or around December 31, 2007, plaintiff published and/or caused to be published certain statements about all defendants, in particular, he made statements to people that the individual defendants stole money from plaintiff. plaintiff contacted MHFM's supporters, customers and readers and portrayed MHFM as fraudulent and criminal, as set forth below in further detail.

83. Stephen Hand was a customer of MHFM, who spoke with plaintiff on or about December 26, 2007 when he called MHFM to order a book. (Bro. Michael Decl. Exh. N)..

84. On or about January 12, 2008, plaintiff told Stephen Hand that Brother Michael and Brother Peter had stolen money from him and another person. (Bro. Michael Decl. Exh N).

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**FREDERICK DIMOND, ROBERT DIMOND,
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Defendants.

CERTIFICATION OF SERVICE

I hereby certify that on January 6, 2012, I served the foregoing papers, with the Clerk of the Western District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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