UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**

Civil Action No. 08-CV-347C

## INTRODUCTION

Defendants Frederick Dimond ("Bro. Michael"), Robert Dimond ("Bro. Peter") and Most Holy Family Monastery ("MHFM") (collectively, "defendants") submit this Memorandum of Law in opposition to plaintiff Eric Hoyle's ("plaintiff" or "Hoyle") motion for reconsideration of the Court's June 22, 2012 Decision and Order dismissing plaintiff's Amended Complaint in its entirety (the "Decision").

Plaintiff's motion for reconsideration of the Decision must be denied because the Court properly determined that 1) all of plaintiff's claims are barred by the First Amendment because they require the Court to examine issues of religious doctrine, and 2) plaintiff failed to raise a genuine issue of fact on the original motion as to MHFM's establishment and is precluded from now introducing new factual assertions.

## ARGUMENT

### Point I

### THE COURT PROPERLY DETERMINED THAT ALL OF PLAINTIFF'S CLAIMS ARE BARRED BY THE FIRST AMENDMENT BECAUSE THEY REQUIRE DETERMINATION OF ISSUES OF RELIGIOUS DOCTRINE

It cannot be disputed that the Court applied the proper standard for granting summary judgment in reviewing each alleged count on the original motion. (See, Item 106). As to the standard to be applied to the instant motion, reconsideration should not be granted where the moving party: (1) seeks to introduce additional facts not in the record on the original motion; (2) advances new arguments or issues that could have been raised on the original motion; or (3) is solely attempting to relitigate an issue that already has been decided. United States v. Sasbon, 10-CR-133 SJF (E.D.N.Y. 2011); New York v. Parenteau, 382 Fed. Appx. 49, 50 (2d Cir. 2010); Lesch v. U.S., 372 Fed. Appx. 182, 183 (2d Cir. 2010). It is within the sound discretion of the Court whether or not to grant a motion for reconsideration. See, Anwar v. Fairfield Greenwich Ltd., 745 F.Supp.2d 379 (S.D.N.Y. 2010); Metso Materials. Inc. v. Powerscreen Intern., Distribution Ltd., 722 F.Supp.2d 316, 320 (E.D.N.Y.2010).

On this motion, plaintiff contends that the Court required plaintiff to prove fraudulent conduct on defendants' part to sustain plaintiff's equitable claims of unjust enrichment (count three) and money had and received (count five) (see plaintiff's Memo. of Law at 2). This contention is wholly without merit. The Court properly identified the common third element of a claim for unjust enrichment and a claim for money had and received as being dependent upon the circumstances and principles of equity and good conscience. (Item 106 at 23). While unjust enrichment "does not require the performance of any wrongful act by the one enriched" (Simonds v. Simonds, 45 N.Y.2d 233, 242 (1978)), "what is required, generally, is that a party hold property 'under such

circumstances that in equity and good conscience he ought not to retain it'". Id. The Court here examined these elements and correctly decided not to invoke its equity powers.

Of paramount significance here is that the Court properly determined that all of plaintiff's claims are barred by the First Amendment, and expressly held that "Under the 'neutral principles of law' approach, this court could possibly determine whether Joseph Natale took vows as a Benedictine monk and/or whether he had the permission of the Archabbot of St. Vincent's to establish MHFM. However, the court is not convinced it should delve into the genesis of MHFM, just as it would be improper for a civil court to question the circumstances of the establishment of any religious group or sect." (Item 106 at 17-18).

The Court recognized that plaintiff's equitable claims "are based on the premise that plaintiff was falsely led to believe that the defendants were Benedictine monks, that MHFM was a Benedictine monastery, and that he could become a Benedictine monk through study at MHFM" and correctly held that determining whether MHFM is truly a Benedictine community would be a doctrinal determination **"that is outside this court's jurisdiction**." (Item 106 at 22) (emphasis added). In specifically analyzing plaintiff's equitable claims, the Court expressly stated that plaintiff:

> …asks this court to examine the equities and find that the defendants have been wrongfully enriched by his donations to MHFM. **The record reflects that plaintiff was not misled regarding MHFM's lack of affiliation with the recognized Order of St. Benedict and that he agreed with the defendants' view of traditional Catholicism.** Plaintiff admitted that the Dimonds never required that he donate all his money to the monastery, yet he chose to make substantial donations to MHFM and never specified in writing the amount he sought upon leaving the monastery. **His assertion now that he was misled as to the establishment of MHFM as a Benedictine community requires a[n] examination of doctrinal issues that is prohibited by The First Amendment**. 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.

(Item 106 at 24) (emphasis added). Plaintiff ignores the above context within which the Court referenced plaintiff's failure to raise a genuine issue of fact to suggest that he was the victim of a fraudulent misrepresentation; the record is clear that his contention that he was a victim of fraudulent misrepresentations is the underlying theme of his claims for unjust enrichment and money had and received. (See, Complaint/Item 42 ¶¶ 70, 79, alleging that plaintiff was falsely led to believe that Bro. Michael and Bro. Peter were Benedictine monks, that MHFM was a Benedictine community, and "that they would, indeed, instruct him in the path to becoming a Benedictine monk."). There is no way for the Court to resolve plaintiff's claims for unjust enrichment and money had and received without stepping into the territory of determining issues of religious doctrine, which the First Amendment prohibits.

Furthermore, plaintiff improperly seeks to relitigate his equitable claims which the Court expressly analyzed and rejected under the correct legal standard. The undisputed factual record, which demonstrated the allegations of the Complaint to be wholly without merit, supported the Court's determination to grant summary judgment dismissing plaintiff's equitable claims. Accordingly, the Court properly determined that all of plaintiff's claims are barred by the First Amendment and the factual record established plaintiff's claims are meritless and therefore plaintiff's motion for reconsideration must be denied.

## Point II

## PLAINTIFF FAILED TO PRESENT ADMISSIBLE PROOF SUFFICIENT TO RAISE A GENUINE ISSUE OF MATERIAL FACT REGARDING MHFM'S ESTABLISHMENT

Plaintiff contends that for his equitable claims, "it is a 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." As set forth in Point I (supra), this

contention must be rejected as barred by the First Amendment because it requires the Court to make determinations as to religious doctrine. In addition, facts cited in plaintiff's supporting memorandum are new factual assertions that must be precluded for that reason on this motion.

"A summary judgment 'opponent must do more than simply show that there is some metaphysical doubt as to the material facts.'" (Item 106 at 18, quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). On the original motion, the Court held that plaintiff failed to establish a genuine issue of material fact regarding MHFM's establishment. (Item 106 at 18-19).

"[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir.1995). Moreover, motions for reconsideration "are not vehicles for taking a second bite at the apple * * * and [the court] [should] not consider facts not in the record to be facts that [it] 'overlooked.'" Rafter v. Liddle, 288 Fed. Appx. 768, 769 (2d Cir. 2008). On a motion for reconsideration, the moving party may not seek to introduce additional factual assertions. Adams v. Warner Bros. Pictures, 289 Fed. Appx. 456, 458 (2d Cir. 2008).

Here, plaintiff attempts to cure his failure to raise a genuine issue of material fact by referring to an alleged 1992 promotional video for the monastery in which Joseph Natale speaks about MHFM (Plaintiff's Memo. of Law at 4). **This video was not part of the record on the original motion and constitutes a new factual assertion that must be rejected by the Court.** However, even if the video or its characterization were in the record or considered on this motion, it still would not require a different decision because it is nothing more than an unsupported

conclusory allegation akin to the inadmissible evidence plaintiff tendered in efforts to rebut the original motion. So held the Court:

> An affidavit or declaration submitted in opposition to a motion "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). Plaintiff's Declaration (Item 97), in which he disputes the circumstances of the establishment of MHFM, is not based on plaintiff's personal knowledge, but rather on the hearsay statements found in the article by Richard Ibranyi and the e-mail from the current Archabbot of St. Vincent's. At this point in time, it appears there are no living witnesses with personal knowledge as to whether Joseph Natale received "permission" to establish MHFM. **Hearsay and conclusory assertions that would not be admissible at trial are insufficient to create a genuine issue for trial.** *See Patterson v. County of Oneida,* 375 F.3d 206, 219 (2d Cir. 2004).

(Item 106 at 18) (emphasis added). Moreover, the Court also held that "[t]o the extent that plaintiff now argues that the defendants misrepresented the history of the monastery on the MHFM website, he has presented no admissible proof to raise a genuine issue of material fact." (Item 106 at 22). Plaintiff's motion for reconsideration will not cure this fatal defect of his opposition to defendants' summary judgment motion.

Plaintiff also argues that a further basis for his equitable claims is the alleged terms upon which he transferred money to MHFM. (Plaintiff's Memo. of Law at 5). This issue was also addressed, and rejected, by the Court. (See, Item 106 at 22-24, rejecting equitable claims alleged by plaintiff to arise from a purported "informal written instrument"). A motion to reconsider should not be granted where the moving party is solely attempting to relitigate an issue that already has been decided, which is exactly what plaintiff here is doing. See, Lesch v. United States, 372 F. App'x 182, 183 (2d Cir. 2010) (holding that the district court properly found that plaintiff sought only to re-argue his previously submitted claims and that the reconsideration motion was correctly denied).

Thus, in addition to the Court's proper refusal to delve into the genesis of MHFM because it would violate the First Amendment, it also properly concluded that plaintiff failed to raise a genuine issue of material fact regarding the establishment of MHFM.

## CONCLUSION

Based on the foregoing, it is respectfully requested that the Court deny plaintiff's motion for reconsideration in its entirety.

Dated: July 25, 2012

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