

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

**SECOND
AMENDED
COMPLAINT**

Index No. 08-cv-00347-JTC

ERIC E. HOYLE, by his attorney, Wynn L. Bowman, Esq., for his Second Amended
Complaint against the defendants, alleges as follows:

INTRODUCTION

1. This is an action to recover damages and restitution from defendants, Frederick Dimond, Robert Dimond, and Most Holy Family Monastery. The plaintiff's claims are based on the defendants' operation of Most Holy Family Monastery and sound in fraud, constructive fraud, unjust enrichment, monies had and received, deceptive trade practice, and breach of contract.

PARTIES

2. Plaintiff, Eric E. Hoyle, resides in Winston-Salem, North Carolina and is a citizen of North Carolina.

3. Defendant Frederick Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym "Brother Michael Dimond."

4. Defendant Robert Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym “Brother Peter Dimond, O.S.B.”

5. Defendant Most Holy Family Monastery (“MHFM”) is a not-for-profit corporation formed pursuant to the New York Not-for-Profit Corporation Law and maintains its principal offices at 4425 Schneider Road, Fillmore, New York.

6. Upon information and belief, MHFM was formed on or about August 20, 1993 under the name Queen of Angels Corp. The original incorporators of Queen of Angels Corp. were Joseph A. Natale, Paul E. Wedekind, and Joseph J. Vennari, each residing at 261 Cross Keys Road, Berlin, New Jersey.

7. On February 27, 2001, a Certificate of Amendment to the Certificate of Incorporation to change the name of the corporation to Most Holy Family Monastery was filed with the New York Secretary of State.

8. Upon information and belief, said Certificate of Amendment was signed by Frederick Dimond using the pseudonym “Brother Michael Dimond, O.S.B.”

JURISDICTION AND VENUE

9. The Court has jurisdiction over this dispute pursuant to 28 USC §1332(a) (1). The plaintiff is a citizen of the State of North Carolina, and none of the defendants are citizens of the State of North Carolina. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

10. Venue is properly laid in this judicial district pursuant to 28 USC §1391(a) (2) on the ground that a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS

Eric Hoyle Learns of MHFM

11. In the fall of 2003, Eric E. Hoyle was 22 years old and was teaching chemistry at a public high school in Edgewater, Maryland.

12. A primary focus of his private activities at that time was the search for religious doctrines that were true and good.

13. In 2004, believing that the Catholic Church held and taught the religious doctrines he was looking for, the plaintiff gave up his teaching position to pursue entrance into a seminary to become a priest.

14. The plaintiff's experiences, research and conversations with various individuals eventually led him to set aside his pursuit of priestly training and to study the Catholic religion on his own for a time.

15. In early 2005, while living a solitary life of prayer and study, the plaintiff learned of the existence of a Benedictine monastery in upstate New York going by the name Most Holy Family Monastery.

16. The plaintiff sought information from the MHFM website, www.mostholymonastery.com, which stated that MHFM was a Benedictine monastery supervised by Brother Michael Dimond, O.S.B., a Benedictine monk.

17. The plaintiff contacted Frederick Dimond to learn more about MHFM and the procedures required for the plaintiff to become a Benedictine monk through MHFM.

18. In reliance on information provided by Frederick Dimond, the plaintiff made a cash contribution of Seven Hundred (\$700.00) Dollars to MHFM on or about April 1, 2005. The

transfer was made by delivery of check number 1014 from checking account number 218-2871-7 at USAA Federal Savings Bank.

19. The plaintiff made a further cash contribution to MHFM on May 2, 2005 in the amount of Sixty-Five Thousand (\$65,000.00) Dollars. The transfer was made by delivery of check number 1179 from checking account number 1087375695120 at Wachovia Bank, N.A.

20. The plaintiff made visits to MHFM in late June and again for several weeks beginning in mid-July 2005.

21. In reliance on his discussions with Frederick Dimond and his visits to MHFM, the plaintiff decided in September 2005 that he would seek to become a Benedictine monk under the auspices of Frederick Dimond and MHFM.

22. Frederick Dimond agreed to receive the plaintiff as a postulant and to undertake his training to become a Benedictine monk, conditioned upon the plaintiff's agreement to turn over most of his worldly possessions to MHFM.

23. Frederick Dimond conveyed to the plaintiff that the shedding of material possessions was a requirement of the Order of St. Benedict and MHFM. Frederick Dimond also told the plaintiff that the plaintiff must specify in writing what portion, if any, of money he would be transferring to MHFM must be returned to him should he leave MHFM (Agreement).

24. Based on representations made by Frederick Dimond, the plaintiff took up residence at MHFM on September 27, 2005.

25. At that time, the plaintiff was the owner of approximately 1,350,000 shares of Guinor Gold Corporation.

26. On or about November 4, 2005, the plaintiff transferred 1,045,000 shares of Guinor Gold Corporation, valued at \$1,233,100.00 to MHFM. This transfer was made by wire from the plaintiff's account number 506-66358-1-3 at TD Waterhouse, Inc.

27. The plaintiff retained sufficient assets to pay his capital gains taxes for 2005.

28. In the late-spring/summer of 2006, Frederick Dimond renewed his request that the plaintiff specify in writing the amount of the plaintiff's transfers that must be returned to him if and when he left MHFM.

29. The plaintiff chose the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars, executed a document stating how much would be returned to him on his departure from MHFM, and delivered it to Frederick Dimond.

30. On or about September 12, 2006, the plaintiff made an additional transfer to MHFM of 37,400 shares of Central Fund of Canada from his USAA Investment Management Company brokerage account number 11590502. These shares had an approximate value of \$307,989.00 on the date of transfer.

31. Subsequent to his move to MHFM and the transfer of his assets to MHFM, the plaintiff learned that, contrary to Frederick Dimond's representations, he was not a member of the Order of St. Benedict and that MHFM was neither founded nor operated in accordance with the requirements of the Order of St. Benedict.

32. This revelation also meant that the plaintiff could not achieve the status of a Benedictine monk through his association with the Dimond defendants or MHFM.

33. On December 31, 2007, the plaintiff left MHFM.

34. Subsequently, representatives of the plaintiff demanded the return of all property turned over to MHFM, including the \$1,606,789.00 previously "donated" to MHFM.

35. The defendants have refused to comply with the demand that all funds and personal property, or their monetary equivalent, previously transferred to the defendants be returned to the plaintiff.

COUNT I

(Fraud)

36. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 35.

37. Defendants Frederick Dimond and Robert Dimond intentionally made false representations to the plaintiff, including but not limited to that he could specify how much money would be returned to him if he left MHFM, in an effort to persuade him to transfer all of his personal assets to them or to MHFM.

38. The plaintiff reasonably relied on the false representations made by defendants Frederick Dimond and Robert Dimond.

39. Based on his reasonable belief in the truth of the representations made by the Dimond defendants, the plaintiff transferred his personal assets, whose value exceeded \$1,606,789.00, to the defendants.

40. As a direct result of the defendants' fraudulent conduct, as hereinabove set forth, the plaintiff suffered damages exceeding \$1,606,789.00.

COUNT II

(Constructive Fraud/Negligent Misrepresentation)

41. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 40.

42. As of September 27, 2005, the relationship between the plaintiff and the Dimond defendants had taken on the attributes of a fiduciary, confidential, or “special” relationship based on their superior knowledge of essential facts related to the plaintiff’s desire to become a Benedictine monk.

43. By that time, the plaintiff had reasonably come to place his trust and confidence in the Dimond defendants and to rely on their good faith, sincerity, and knowledge in matters related to the plaintiff’s desire to become a Benedictine monk.

44. The Dimond defendants possessed superior knowledge of essential facts related to the plaintiff’s desire to become a Benedictine monk, to wit, that they had no intention of returning any of the money that he transferred to MHFM.

45. This information was not readily available to the plaintiff.

46. The Dimond defendants knew that the plaintiff was acting on the basis of the mistaken belief that MHFM would return money he transferred to them if he left MHFM.

47. The Dimond defendants were under a duty to disclose to the plaintiff that they had no intention of returning any money to him if he left MHFM.

48. The Dimond defendants failed to disclose to the plaintiff that they would not return any money to plaintiff if he left MHFM

49. Had the Dimond defendants disclosed the fact that they would not return the money if he left MHFM, the plaintiff would not have transferred assets to the defendants.

50. The plaintiff suffered damage as the result of the failure of the Dimond defendants to disclose to the plaintiff that they would not return any money if he left MHFM.

COUNT III

(Unjust Enrichment/Constructive Trust)

51. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 50.

52. During the summer of 2005, a relationship of trust and confidence arose between the plaintiff and the Dimond defendants, which resulted in the plaintiff's decision to take up residence at MHFM and to have defendants Frederick Dimond and Robert Dimond instruct him in the path to becoming a Benedictine monk.

53. Defendants Frederick Dimond and Robert Dimond led the plaintiff to believe that they would, indeed, instruct him in the path to becoming a Benedictine monk, and if he left MHFM they would return money to him.

54. In reliance on these promises made by the defendants, the plaintiff turned over to the defendants personal assets with a value in excess of \$1,541,089.00.

55. Defendants Frederick Dimond and Robert Dimond thereafter failed and refused to return the money when he left MHFM.

56. Under the circumstances of this case, the defendants, including MHFM, may not in good conscience retain the assets turned over to them by the plaintiff.

57. The defendants, including MHFM, have thereby been unjustly enriched in an amount in excess of \$1,541,089.00.

58. In order to protect the assets of the plaintiff, a constructive trust must be imposed on the assets turned over to the defendants by the plaintiff and the defendants must be ordered to return them to the plaintiff.

COUNT IV

(Mandatory Accounting)

59. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 58.

60. The plaintiff transferred substantial sums to MHFM at a time when there existed a fiduciary relationship between him and the Dimond defendants.

61. These transfers were based on the plaintiff's false belief that the Dimond defendants would return money to him if he left MHFM.

62. The plaintiff is therefore entitled to a full and accurate accounting of all sums transferred to the defendants between September 1, 2005 and the present.

COUNT V

(Money Had and Received)

63. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 62.

64. When the plaintiff transferred his assets to the defendants, he did so in the mistaken belief that the Dimond defendants would return money to him if he left MHFM.

65. Because the plaintiff transferred his assets while entertaining the mistaken belief that the Dimond defendants would return money to him if he left MHFM, the defendants ought not, in equity and good conscience, retain possession of the money and personal property transferred to them by the plaintiff.

66. Based on the foregoing, the defendants should return to the plaintiff the personal property transferred to them, or its monetary value.

COUNT VI

(Deceptive Trade Practice)

67. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 66.

68. The conduct of the Dimond defendants heretofore alleged constitutes the engaging in a deceptive practice in violation of New York General Business Law §349.

69. The deceptive acts of the Dimond defendants have affected the public at large.

70. Plaintiff has been directly damaged by the Dimond defendants' deceptive practices, in that he transferred \$1,606,789.00 worth of personal assets to MHFM based on the false representation of the Dimond defendants that MHFM would return money to him if he left MHFM.

COUNT VII

(Breach of Contract)

71. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 70.

72. Defendants have failed to refund to plaintiff the money he specified would be returned to him if he left MHFM, and thus breached that Agreement.

73. Plaintiff has suffered damages as a result of Defendants breach of the Agreement.

COUNT VIII

(Vicarious Liability of MHFM)

74. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 73.

75. The Dimond defendants' conduct as related herein was undertaken as representatives, employees or agents of MHFM and resulted in the unlawful enrichment of MHFM.

76. MHFM is vicariously liable to the plaintiff for any and all damages assessed against the Dimond defendants.

DEMAND FOR RELIEF

WHEREFORE, the plaintiff Hoyle prays for judgment against the defendants, jointly and severally, as follows:

1. as to Count I, judgment in the amount to be proved at trial, but not less than \$1,606,789.00;

2. as to Count II, judgment in the amount to be proved at trial, but not less than \$1,541,089.00;

3. as to Count III, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

4. as to Count IV, requiring an accounting of all moneys and things of value transferred by the plaintiff to any of the defendants, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds

attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

5. as to Count V, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

6. as to Count VI, actual damages, treble damages, attorney's fees and a permanent injunction prohibiting the Dimond defendants from engaging in conduct found to be unlawful;

7. as to Count VII, actual damages, treble damages and attorney's fees; and

8. as to Count VII, judgment in the amount to be proved at trial, but not less than \$750,000, pre-judgment and post-judgment interest; and

9. as to Count VIII, judgment against defendant MHFM in an amount to be proved at trial, but not less than \$750,000; and

10. judgment for such other and further relief as the Court shall deem just and necessary, including interest, costs and attorney's fees.

Dated: May 22, 2013.

/s/ Wynn L. Bowman

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