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Kaziah May Hancock and Cindy Stewart v. The True and Living Church of Jesus Christ of Saints of the Last Days, James D. Harmston, William B. Lithgow, Keith Larson, Daniel (Dan) Simmons, Kay Crabtree, Jeff Hanks, Bart Mulstrom, John Harper, and John Does Nos. 1-5 : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KAZIAH MAY HANCOCK, and  
CINDY STEWART,

Plaintiffs,

vs.

THE TRUE AND LIVING CHURCH  
OF JESUS CHRIST OF SAINTS OF  
THE LAST DAYS, JAMES D.  
HARMSTON, WILLIAM B.  
LITHGOW, KEITH LARSON,  
DANIEL (DAN) SIMMONS, KAY  
CRABTREE, JEFF HANKS, BART  
MULSTROM, JOHN HARPER, and  
JOHN DOES NOS. 1-5,

Defendants.

APPELLANT'S BRIEF

Appellate Case No. 20030984 -CA  
Trial Court No. 980600126

**UTAH COURT OF APPEALS  
BRIEF**

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**20030984-CA**

THIS IS AN APPEAL FROM THE RULING  
IN THE SIXTH DISTRICT COURT BY JUDGE DAVID L. MOWER  
DENYING THE DEFENDANTS' MOTION TO DISMISS  
ALL OF PLAINTIFF'S CLAIMS

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FILED  
UTAH APPELLATE COURTS  
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### **STATEMENT OF JURISDICTION**

The Utah Supreme Court has original jurisdiction in this matter pursuant to Section 78-2-2(3)(j) U.C.A., the matter has been transferred to the Utah Court of Appeals, and this Court has jurisdiction, pursuant to Section 78-2-2(4), U.C.A.

### **STATEMENT OF ISSUES FOR REVIEW**

1. Are the alleged promises made to the Plaintiffs that, “ they would become members of the Church of the First Born,” “see Christ face to face,” and “receive a “stewardship” of property based on their consecrations;” subject to adjudication by the courts, in light of the First Amendment, the U.S. Supreme Court’s ruling in Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 2105 (1971); and the Utah Supreme Court’s ruling in Franco v. Church of Jesus Christ of Latter-Day Saints, 21 P.3d 198 (Utah 2001)?

2. Are the alleged promises made to the Plaintiffs that, “they would become members of the Church of the First Born,” “see Christ face to face,” and “receive a “stewardship” of property based on their consecrations,” too illusory and indefinite to be enforceable?

3. Is the alleged promise to convey real property in the future in violation of the Statute of Frauds? Are the allegations in the complaint sufficient to allege a breach of contract to convey property against each individual Defendant?

4. Is the alleged promise to provide support for life in violation of the Statute of Frauds? Are the allegations in the complaint sufficient to allege a breach of contract to support for life each individual Defendant?

5. Since the Plaintiffs voluntarily “consecrated” money, goods and services to the Church for spiritual blessing, can they later make a claim for unjust enrichment, after leaving and/or being excommunicated from the Church?

6. Since the money claimed by Hancock was freely given directly to Church members by her then husband, Douglas Jordan (since divorced) as he felt inspired, is Douglas Jordan an indispensable party to the action?

7. Did the Plaintiffs sufficiently state a claim for Breach of Contract and/or Unjust Enrichment, as to each Plaintiff against each individual Defendant?

#### **STANDARD FOR REVIEW**

The standard of review in considering the trial court’s ruling on a motion to dismiss is the correctness standard with no deference left to the trial court. Hall v. Utah State Dept. of Corrections, 24 P.3d 958 (Utah 2001).

#### **PRESERVATION FOR REVIEW**

The Defendants’ claims and defenses raised in this appeal were all previously raised before the trial court, in the Defendants’ Motion to Dismiss and Memorandum in Support. (Rec. 1069-1085, See Addendum “B” hereto).

## **STATEMENT OF THE CASE**

### **Nature of Proceedings**

This case was filed in April of 1998 and involves several claims made against the Church and some of its members, by the Plaintiffs, Kaziah Hancock and Cindy Stewart, who were former members of the Church. Douglas Jordan was included as a Plaintiff when the action was first filed. (Rec. 1-8). The claims involved alleged promises made to the Plaintiffs, i.e. that they would become members of the Church of the First Born, see Christ face to face, and receive a “stewardship” of property based upon their “consecrations” and faithfulness to the Church (Rec. 1-8).

A Motion to Dismiss was filed by the Defendants, relying on the church doctrine defense as well as failure to state a claim with sufficient particularity. (Rec. 59-103) This Motion was denied as far as the church doctrine defense, but was partially granted as to the sufficiency and an Amended Complaint was filed. (Rec. 318-325). Hancock’s husband at the time, Douglas Jordan, was the individual who actually “consecrated” the money claimed by Hancock, and was initially a Plaintiff. Mr. Jordan was removed as a Plaintiff and was listed as a Defendant. (Rec. 318-325). Douglas Jordan and Kaziah Hancock also divorced and Hancock failed to make any claim for the “consecrated” money in the divorce proceeding. (See Decree and findings of Divorce, Addendum, Exhibit “C”). A Motion was filed to dismiss Hancock’s claims based on her waiver in the divorce proceeding. (Rec. 352-417). Douglas Jordan’s deposition was taken and in his deposition

he stated that he freely gave the money to various Church members as he was inspired, the money was freely given “with no strings attached”. (See Depo. pgs. 110-115, Addendum Exhibit “D”) Douglas Jordan was removed as a Defendant.

The matter was tried to a jury in January of 2002. A verdict was rendered against all the Defendants. (See Verdict, Rec. 836-886). The Defendants filed a Motion for New Trial, pursuant to Rule 59 URCP (Rec. 1007-1023). The trial court could not enter judgment against the Defendants based upon the information provided at trial. The Motion for New Trial was granted by the court. (Rec. 1112-1114).

After the court granted a new trial, the Plaintiffs filed a Motion for leave to file a Second Amended Complaint. (Rec. 1058-1068). On March 14, 2003, the Defendants filed a Motion to Dismiss the Second Amended Complaint under Rule 12(b)(6) and 9(b) URCP. (Rec. 1069-1081). The court granted leave for Plaintiffs to file their Second Amended Complaint, without ruling on Defendants’ Motion to Dismiss under Rule 12(b)(6) and 9(b). (Rec. 1248-1250).

Phillip Savage was a member of the Church who was included as a Defendant in this action. Phillip Savage filed bankruptcy and Plaintiffs filed a claim in his bankruptcy proceeding based upon their complaint filed in this case. An evidentiary hearing was held in the Bankruptcy Court in March 2003. The Bankruptcy Court found that there were no agreements or contracts between the Plaintiffs and Phillip Savage, and if there were such promises, as alleged, they would be illusory and unenforceable under the Statute of Frauds.

(See Memorandum Decision and Order Estimating Claims 4 and 7, pgs 12-14; In re: Phillip P. Savage, *Bankruptcy No. 00-32966-JAB*, Addendum, Exhibit “E” attached hereto).

The Second Amended Complaint contains five causes of action. The First Cause of Action is for Breach of Contract; the Second is for Fraud/Constructive Fraud/Negligent Misrepresentation; the Third is for Fraudulent Conversion or alternatively Unjust Enrichment/Implied Contract; the Fourth is for Racketeering under Utah law; and the Fifth is for Intentional Infliction of Emotional Harm. (Rec. 1058-1068) (See Addendum, Exhibit “A” hereto).

This appeal deals with the court’s ruling in August of 2003, wherein the court granted the Defendants’ Motion to Dismiss all of Plaintiffs’ claims, except for their Breach of Contract and Unjust Enrichment claims. (Rec. 1254-1260). In September 2003, the court entered its Order dismissing all of Plaintiffs’ claims, except for Breach of Contract and Unjust Enrichment. (Rec. 1339-1341) (See Decision in Regards to Motion to Dismiss, Addendum, Exhibit “F” hereto).

After the court’s dismissal of the majority of Plaintiffs’ claims, Plaintiffs filed another Motion for Leave to Amend, in order to file a Third Amended Complaint. (Rec. 1319-1321). The Defendants filed an answer to Plaintiffs’ Breach of Contract and Unjust Enrichment claims (Rec. 1343-1363), and filed a Memorandum in Opposition to Plaintiffs’ Motion for Leave to Amend. (Rec. 1460-1462).

The Defendants also filed a Motion for Judgment of Costs and Attorneys Fees for successfully defending the Utah Racketeering claim, as provided under § 76-10-1605(8) U.C.A., with a Memorandum in Support. (Rec. 1481-1491)

The Motion to Amend to file a third complaint was denied by the court. The court ruled that if it were granted, “it would require the fact finder to judge church doctrine, which is not allowed.” The court further ruled that it alleges actions against Douglas Jordan, who is not a party to the action, and without Mr. Jordan, “complete relief cannot be afforded.” (See Order on Motion to File Amended Complaint, Rec. 1511-1512, Addendum Exhibit “G” hereto).

After the court denied Plaintiffs’ Motion to Amend, the parties agreed to continue the upcoming trial and the court certified as final, for purposes of appeal, its decision of August 7, 2003 (dismissing all of Plaintiffs’ claims, except for Breach of Contract and Unjust Enrichment); and its Order of October 16, 2003 (denying Plaintiffs’ Motion to Amend for the third time). This Order was entered on November 12, 2003. (Rec. 1555-1557).

On November 19, 2003, Defendants filed their Notice of Appeal, appealing the trial court’s decision of August 7, 2003, denying the dismissal of Plaintiffs’ Breach of Contract and Unjust Enrichment claims. (Rec. 1564-1566). The Plaintiffs filed a Cross-Appeal on December 1, 2003, appealing the court’s decision of August 7, 2003, dismissing

Plaintiffs' claims and the court's denial of Plaintiffs' Motion to Amend for the third time. (Rec. 1567-1569).

### **Statement of the Facts**

The ruling being appealed by the Defendants, in this case, is the trial court's ruling in August 2003, failing to dismiss Plaintiffs' claims for Breach of Contract and Unjust Enrichment, along with the other claims. The statement of facts, set forth below, are those facts relating to Defendants' Motion to Dismiss the claims for Breach of Contract and Unjust Enrichment, as contained in the Second Amended Complaint.

1. The Plaintiffs claims dismissed by the court's decision of August 7, 2003 are contained in the Plaintiffs' Second Amended Complaint, which contains five causes of action. The First Cause of Action is for Breach of Contract; the Second is for Fraud/Constructive Fraud/ Negligent Misrepresentation; the Third is for Fraudulent Conversion or alternatively Unjust Enrichment/Implied Contract; the Fourth is for Racketeering under Utah law; and the Fifth is for Intentional Infliction of Emotional Harm. (Rec. 1058-1068) (See Addendum, Exhibit "A" hereto).

2. In the Second Amended Complaint, the Plaintiffs allege in their First Claim for Breach of Contract, that they freely "consecrated" their money, goods and services to the Church in exchange for promises that they would receive a "stewardship" of property, become a member of the Church of the Firstborn, and would meet Christ, face to face. (Second Amd. Comp., Add. Ex. "A", ¶s 9 & 10).

3. The Plaintiff, Cindy Stewart, was excommunicated from the Church in May of 1997; and Kaziah Hancock was asked to leave in August of 1997. The Plaintiffs claim that they never received a “stewardship” of any kind and never met Christ, face to face. (Second Amd. Comp., Add. Ex. “A”, ¶s 11, 12 & 13).

4. In Plaintiffs’ Third Cause of Action for Fraudulent Conversion or alternatively Unjust Enrichment, the Plaintiffs allege that the Defendants have been unjustly enriched by receiving the money, services, or property “consecrated” by the Plaintiffs without providing equal value in return. (Second Amd. Comp., Add. Ex. “A”, ¶ 27). The Complaint, however, does not specifically allege how much each individual Defendant was unjustly enriched by the money, services or property “consecrated” by the Plaintiffs.

5. After the Court granted a new trial, the Plaintiffs filed a Motion to Amend to file a Second Amended Complaint, which was granted by the Court, (Rec 1248-1250).

6. The Defendants filed their Motion to Dismiss the Second Amended Complaint under Rule 12(b), Rule 12(b)(6) and 9(b) URCP. (Rec. 1069-1081)

7. The Court granted Defendants Motion to Dismiss as to all claims except the Breach of Contract and Unjust Enrichment claims. (Rec. 1339-1341). The Court denied Defendants’ Motion as to there claims, by looking up the terms in the common dictionary and finding that “stewardship” is a noun and thus a thing. (See Decision in Request to Motion to Dismiss. Addendum, Exhibit “F”)



8. Plaintiffs' Fourth Case of Action was for Racketeering under Utah's Racketeering Statute. This claim was dismissed by the trial court, and the Defendants' filed a Motion for Judgment of Costs and Fees in having to defend this action, which is provided for under Section 76-10-1605(8) U.C.A.

9. The Court denied the Plaintiffs' Motion to Amend to file a Third Amended Complaint finding that such amendment "would require the fact finder to judge church doctrine, which is not allowed;" and that without Mr. Jordan, "complete relief cannot be afforded." (Rec. 1511-1512, Order on Motion to File Amended Complaint, Addendum Exhibit "G")

### **SUMMARY OF ARGUMENT**

The alleged promises that Plaintiffs, "would receive a "stewardship" of property and support," " would become members of the Church of the Firstborn," and "would see Christ face to face," all deal with Church doctrine and are not subject to adjudication by the courts. The First Amendment provides that Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof. These two clauses known as the Establishment Clause and the Free Exercise Clause, limit government activity in religious doctrine. Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d. 745, 91 S.Ct. 2105 (1971); Franco v. Church of Jesus Christ of Latter Day Saints, 21 P.3d 198 (Utah 2001). Furthermore, for the Plaintiffs to receive all of these blessings they were to remain true and faithful to the Church and its teachings, which they failed to do. One left the

Church and the other was excommunicated. Regardless, whether or not they remained true and faithful to the Church is a matter of Church doctrine, and is not for the courts to decide. Id.

The promises allegedly made, if not religious in nature, are so illusory that they cannot be enforced. There is no written contract. No specific piece of real property or any other kind of property described. There is also no time frame specified for any of these alleged promises to occur. In fact, it was understood that the blessings and the “stewardship” would be provided by the Lord. A supposed promise is too illusory when its performance is entirely discretionary, or when it is so indefinite that it cannot be enforced with any certainty. Resource Management v. Weston Ranch, 706 P.2d 1028 (Utah 1985). Lane v. Wahl, 6 P.3d 621 (Wash.App. 2000) (an “illusory promise” is one that is so indefinite that it cannot be enforced, or by its terms, makes performance optional or entirely discretionary on the part of the promisor).

The Plaintiffs have alleged an oral promise to receive a “stewardship” of property. There is no writing to bind the parties to a contract to convey real property. The Statute of Frauds requires that a contract for the sale of, or for any interest in real property, exceeding a year, must be in writing. § 25-5-1 U.C.A. Stangl v. Ernst Home Center, Inc., 948 P.2d 356 (Ut.App. 1997). Furthermore, as far as any claim for continuing support for life, the Statute of Frauds provides that any agreement that by its terms is not to be performed within one year is void, unless the agreement is in writing, signed by the party to

be charged. § 25-56-4 U.C.A. Moreover, the Plaintiffs have failed to adequately state a claim against each individual Defendant, who was not a party to any contract, and did not receive any benefit from the Plaintiffs. The Statute of Frauds requires a writing before any party is required to answer for the debt of another. § 25-5-4(2) U.C.A.; Automotive Mfgs. Warehouse, Inc. v. Service Auto Parts, Inc., 596 P.2d 1033 (Utah 1979).

Furthermore, any money Hancock can claim was freely given directly to Church members by her then husband Douglas Jordan. (See Addendum, Exhibit “D”). The parties divorced and in the divorce proceeding there was no claim made by Hancock against Douglas Jordan for this money. (See Addendum, Exhibit “C”). Douglas Jordan was initially named as a Plaintiff, then was sued as a Defendant, and then was removed as a party before the case went to trial. In the Second Amended Complaint there is no allegation made on behalf of Douglas Jordan or against Douglas Jordan, who is the one who gave the money and claimed he did so of his own free will, with no strings attached, as he felt inspired by the Lord. Douglas Jordan is therefore an indispensable party to the claims asserted in the Second Amended Complaint.

Moreover, since in the Second Amended Complaint, the money was “consecrated” to the Church based on certain promises and spiritual blessings such as a “stewardship” of property, being members of the Church of the Firstborn and seeing Christ, face to face, as alleged in Plaintiffs’ claim for Breach of Contract; there can be no claim for unjust enrichment. Lynch v. Deasoness Medical Center, 776 P.2d 681 (Wash. 1989). These

allegations are totally inconsistent with any claim that the money was “consecrated” based on the agreement of any Defendant, that he would pay the Plaintiffs back for all their consecrations.

Finally, the Plaintiffs have failed to allege any specific contract which they entered into with any specific individual Defendant; and have failed to allege any specific benefit any individual Defendant has unjustly received from the Plaintiffs. Similarly to the Defendant, Phillip Savage, the Plaintiffs have improperly grouped all of the Defendants together without setting forth any specific claim for breach of contract or unjust enrichment against each Defendant.

## **ARGUMENT**

### **I. THE PLAINTIFFS’ CLAIMS INVOLVE CHURCH DOCTRINE AND THE COURT CANNOT ADJUDICATE CHURCH DOCTRINE.**

The alleged promises made to Hancock and Stewart, that, “they would be members of the Church of the First Born,” “would see Christ face to face,” and “would be provided a “stewardship” based on their “consecrations,” all deal with Church doctrine which is not subject to adjudication by the courts.

The First Amendment of the U.S. Constitution, provides that Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof. These two clauses known as the Establishment Clause and the Free Exercise Clause, limit

government activity in religious doctrine. Lemon v. Kurtzman 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 2105 (1971).

It is well settled in the federal courts and in the State of Utah, that the Establishment Clause prohibits judicial review and interpretation of church law, policies, or practices; and the determination of these claims is barred by the First Amendment. Franco v. Church of Jesus Christ of Latter Day Saints, 21.P.3d 198 (Utah 2001). Cf. Lemon v. Kurtzman, 403 U.S. 602 (1971); and Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 97 (1952) wherein the U.S. Supreme Court states: Churches must have power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” Id. at 116. The Utah Supreme Court in State v. Lafferty stated:

Men may believe what they cannot prove. Religious experiences which are as real as life to some may be incomprehensible to others. Similarly due process considerations [under both the state and federal constitutions] bar courts from requiring defendants to prove the truth of their religious beliefs because they would have to prove the unprovable, an obvious unfairness of the most fundamental kind. State v. Lafferty, 749 P.2d 1239, 1246 (Utah 1988).

The Breach of Contract claim deals with religious matters and church doctrine and policies such as “consecration,” “stewardship,” “Church of the Firstborn,” “faith,” “obedience,” and “seeing Christ” (whether in visions or dreams). The Court cannot adjudicate these religious doctrines. For example, the court cannot find that the Church breached the law of “consecration” as taught by the Church. Such a ruling would require the adjudication of church doctrine. Furthermore, such a ruling would greatly interfere with

the teachings of all churches and organized religions as their teachings will become subject to review by the courts. Moreover, such a ruling will greatly inhibit the financing of such charitable organizations as they will no longer be able to accept charitable contributions for fear of being sued for breach of contract, fraud, or unjust enrichment by excommunicated members, over their teachings, beliefs, and religious doctrine.

There can be no finding of breach of contract or unjust enrichment, without the court determining issues of “stewardship,” “consecration,” membership in the “Church of the Firstborn,” and “seeing Christ face to face.” The court would also need to determine the Plaintiffs’ own faith and obedience to the Church’s teaching, since these blessings would be based on their faithfulness, and they were either excommunicated or left the Church. The court simply cannot determine these religious issues.

## **II. THE ALLEGED PROMISES MADE ARE TOO ILLUSORY TO BE ENFORCED.**

The promises allegedly made, even if not religious in nature, are so illusory that they still cannot be enforced. To be a member of the Church of the Firstborn, to see Christ face to face, and to receive a “stewardship” of property are all too indefinite to be enforced by a court of law.

Furthermore, there is no specific property described or piece of real property identified to be enforceable; and there is no time period or time frame set forth for all of these blessings to occur. In fact, it was understood that the “stewardship” would be provided

by the Lord. In fact, the Plaintiffs may still receive all of these blessings at some point, if they repent, return to the Church, and remain faithful to its teachings.

A supposed promise is illusory when it is so indefinite that it cannot be enforced without any certainty. Resource Management v. Weston Ranch, 706 P.2d 1028 (Utah 1985). See also Wharf Restaurant Inc. v. Port of Seattle, 605 P.2d 334 (Wash.App. 1979)(when its provisions are such as to make its performance entirely discretionary on the part of the alleged promissor, the promise is illusory and cannot be enforced); Goodpaster v. Pfizer, Inc., 665 P.2d 414 (Wash.App. 1983)(promise is illusory when it is so indefinite that it cannot be enforced); Lane v. Wahl, 6 P.3d 621 (Wash.App. 2000) (an “illusory promise” is one that is so indefinite that it cannot be enforced, or by its terms, makes performance optional or entirely discretionary on the part of the promissor). The alleged promises in this case, to be a member of the Church of the Firstborn, to see Christ face to face, and to receive a “stewardship” of property, without any more description or time frame, are so indefinite and discretionary that they are illusory and unenforceable. Id.

### **III. ANY ALLEGED PROMISE TO CONVEY REAL PROPERTY IS UNENFORCEABLE UNDER THE STATUTE OF FRAUDS.**

The Plaintiffs do not allege any written contract that would bind the Defendants to a contract for the sale or to provide interest in any real property. Under Utah law, the Statute of Frauds requires that a contract for the sale or for any interest in real property exceeding a year, must be in writing. §25-5-1 U.C.A.

Hancock claims that she had the understanding that land would be purchased for her by the Church in exchange for her husband's donations. However, the existence of a writing necessary to satisfy the Statute of Frauds, has not been alleged, nor does Hancock allege that such a writing ever existed. Furthermore, there is no writing alleged that provides any definite terms as required under general contract law for the sale of property. For instance, no writing is alleged containing any description of the real property to be conveyed, or clearly defining the parties to the contract, the consideration, or any certain time for the performance of the contract. As set forth above, the "stewardship" was actually conditioned on a future religious event, with no set time period, i.e., when the Lord provides it. Regardless, there is no writing to satisfy the Statute of Frauds.

**IV. ANY ALLEGED PROMISE TO PROVIDE SUPPORT FOR LIFE IS UNENFORCEABLE UNDER THE STATUTE OF FRAUDS.**

The Statute of Frauds also provides that any agreement that by its terms is not to be performed within one year from the making of the agreement, is void unless the agreement is in writing, signed by the party to be charged. §25-56-4 U.C.A. Therefore, the alleged verbal promises made to Plaintiffs that in return for their "consecrations" they would taken care of for life, or to provide support for life, are void and unenforceable under the Statute of Frauds. These claims should have been dismissed.



**V. HANCOCK’S MONEY WAS FREELY GIVEN TO THE CHURCH AND OTHERS BY HER THEN HUSBAND, DOUGLAS JORDAN, MAKING DOUGLAS JORDAN, AN INDISPENSABLE PARTY TO THE ACTION.**

Douglas Jordan is the one who “consecrated” or gave any money to the Church or to various Church members. Douglas Jordan was originally included as a Plaintiff, without his consent; and then was removed and listed as a Defendant. The deposition of Dougal Jordan, now deceased was taken, and he testified that he freely gave the money to various Church members as he felt inspired, with no strings attached.

Douglas Jordan and the Plaintiff, Hancock divorced. In their divorce proceedings, Hancock did not make any claim against her husband for the money that he freely gave to Church members. Thus, the money was not Hancock’s premarital funds, and was Mr. Jordan’s to give away as he desired. Therefore, Hancock waived any claim she may have to the money; and any claim based on the “consecration” of the money would be that of Mr. Jordan. Mr. Jordan would need to bring those claims; as the real party in interest , Mr. Jordan, is an indispensable party to this action.

**VI. ANY MONEY RECEIVED WAS VOLUNTARILY GIVEN TO THE CHURCH FOR SPIRITUAL BLESSINGS; THEREFORE THERE CAN BE NO CLAIM FOR UNJUST ENRICHMENT.**

The Plaintiffs have alleged the existence of a verbal contract and have elected to sue for breach of contract. Therefore, Plaintiffs’ claims for unjust enrichment should be dismissed. Recovery under unjust enrichment is available only when no contract exists.

Wood v. Utah Farm Bureau Ins. Co., 19 P.3d 392 (Ut.App. 2001).

Furthermore, based on the alleged verbal agreement, the Plaintiffs have alleged that they “consecrated” their property to the Church, based upon certain promises of spiritual blessing, such as to receive a “stewardship” of property, be members of the Church of the Firstborn, and to see Christ face to face. Therefore, Plaintiffs’ property was freely given without expecting any monetary compensation from the Defendants. Lynch v. Deasoness Medical Center, 776 P.2d 681 (Wash. 1989) (to establish unjust enrichment, plaintiff cannot be a volunteer).

**VII. PLAINTIFFS HAVE FAILED TO ADEQUATELY STATE A CLAIM AGAINST THE DEFENDANTS INDIVIDUALLY, FOR BREACH OF CONTRACT OR UNJUST ENRICHMENT**

The Plaintiffs have also failed to allege what contract was entered into between each Plaintiff and each one of the Defendants, and how that Defendant breached the terms of any binding contract, just as they failed to do with Phillip Savage. Furthermore, the allegations in the Breach of Contract claim deal with religious matters that are not subject to adjudication in the courts.

The Plaintiffs have also failed to allege what benefit each individual Defendant received, or how each individual Defendant was unjustly enriched by Plaintiffs’ contributions. As with Phillip Savage, the Plaintiffs continue to improperly group all the Defendants together in their unjust enrichment claim. All of the Defendants could not have been unjustly enriched to the full amount of Plaintiffs’ claims. For example, if Douglas Jordan gave, \$3,000.00 to one Defendant to help repair a roof, all of the Defendants were

not unjustly enriched. The Plaintiffs have failed to properly state a claim for unjust enrichment; as to each Defendant, and cannot state a claim for unjust enrichment based on the facts alleged. Therefore, this claim should have been dismissed.

### **CONCLUSION**

The alleged promises that Plaintiffs would receive a “stewardship” of property and support, would become members of the Church of the Firstborn, and would see Christ face to face, all deal with Church doctrine and are not subject to adjudication by the courts. Such a determination would interfere with religion and is prohibited by the First Amendment.

The promises allegedly made, if not religious in nature, are so illusory that they cannot be enforced. There is no written contract. No specific piece of real property or any other kind of property described. There is also no time frame specified for any of these alleged promises to occur.

The Plaintiffs have alleged an oral promise to receive a “stewardship” of property. There is no writing to bind the parties to a contract to convey real property. § 25-5-1 U.C.A. Furthermore, any claim for continuing support for life, is in violation of the Statute of Frauds § 25-5-4 U.C.A. Moreover, the Plaintiffs have failed to allege any liability of each individual Defendant for breach of any contract in violation of the Statute of Frauds § 25-5-4(2) U.C.A.

Furthermore, any money Hancock can claim was freely given directly to Church members by her then husband Douglas Jordan. Hancock did not claim this money in their divorce; therefore, Douglas Jordan, the one who gave the money and claimed he did so of his own free will, “with no strings attached”, as inspired by the Lord, is an indispensable party to the claims asserted in the Second Amended Complaint.

Moreover, since the money was “consecrated” to the Church based on certain promises and spiritual blessings such as a “stewardship” of property, being members of the “Church of the Firstborn,” and “seeing Christ, face to face,” as alleged in Plaintiffs’ claim for Breach of Contract; there can be no claim for unjust enrichment. These allegations are totally inconsistent with any claim that the money was “consecrated” with the understanding of each Defendant, that he individually, would pay the Plaintiffs back for all their consecrations.

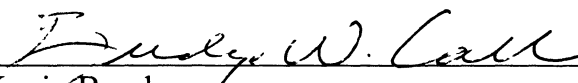
Finally, the Plaintiffs have failed to allege any specific contract which they entered into with the individual Defendants; and have failed to allege any specific benefit any individual Defendant has unjustly received from the Plaintiffs. Similar to the Defendant, Phillip Savage, the Defendants have been improperly grouped together without any specific claim against them for breach of contract or unjust enrichment.

This Court needs to reverse the trial court’s ruling denying Defendants’ Motion to Dismiss Plaintiffs’ claim for Breach of Contract and Unjust Enrichment; and

remand the case back to the trial court, for the sole purpose to determine costs and fees incurred by the Defendants in successfully defending Plaintiffs' Utah Racketeering Claim.

DATED this 7 day of July, 2004.

BOND & CALL, L.C.

  
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F. Kevin Bond,  
Budge W. Call,  
Attorney for Respondent and Appellant

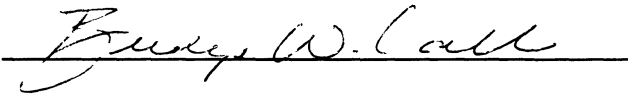
**CERTIFICATE OF MAILING**

I hereby certify on the 7 day of July, 2004, two (2) copies of the foregoing

**BRIEF OF THE APPELLANT** and **APPELLANTS' ADDENDUM** were mailed,  
postage prepaid, to the following:

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