

2003

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 : Appellants' Addendum

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. )

APPELLANTS' ADDENDUM

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

**UTAH COURT OF APPEALS  
BRIEF**

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**DOCKET NO. 20030984-CA**

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IN THE UTAH COURT OF APPEALS

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APPELLANTS' ADDENDUM

vs. )

THE TRUE AND LIVING CHURCH )  
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THE LAST DAYS, JAMES D. )  
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MULSTROM, JOHN HARPER, and )  
JOHN DOES NOS. 1-5, )

Defendants. )

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

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### **APPELLANT'S ADDENDUM**

- A. Second Amended Complaint.
- B. Memorandum in Support of Motion to Dismiss.
- C. Divorce Decree and Findings  
Douglas Jordan v. Kaziah Jordan (Hancock)  
Case No. 984600002.
- D. Deposition Douglas Jordan, pages 110-115.
- E. Memorandum Decision and Order Estimating Claims  
4 and 7, pgs 12-14; In re: Phillip P. Savage,  
*Bankruptcy No. 00-32966-JAB*
- F. Decision in Regards to Motion to Dismiss.
- G. Order on Motion to File Amended Complaint.

Tab A

 **COPY**

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IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR  
SANPETE COUNTY, STATE OF UTAH

---

KAZIAH MAY HANCOCK and	)	
CINDY STEWART,	)	
	)	
Plaintiffs,	)	
	)	
<b>vs.</b>	)	SECOND
	)	AMENDED COMPLAINT
THE TRUE AND LIVING CHURCH	)	
OF JESUS CHRIST OF THE 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 DOE'S NOS. 1 TO 5,	)	Civil No. 980600126
	)	
Defendants.	)	

---

COMES NOW Don S. Redd, Attorney for and in behalf of Plaintiffs, Kaziah May Hancock (hereinafter "Ms. Hancock") and Cindy Stewart (hereinafter "Ms. Stewart") and Complains and alleges as follows:

**JURISDICTION AND PARTIES**

1. (a) That plaintiffs are individuals residing in Sanpete County, State of Utah.
- (b) Defendant "The True and Living Church of Jesus Christ of the Saints of the Last Days is an unincorporated entity headquartered in Sanpete County, State of Utah.
- (c) Defendant James D. Harmston ("Mr. Harmston") is an individual residing in

Sanpete County, State of Utah.

(d) Defendant William B. Lithgow is an individual who was residing in Sanpete County, State of Utah at the time of these causes of action.

(e) Defendant Keith Larson is an individual residing in Sanpete County, State of Utah.

(f) Defendant Daniel Simmons is an individual residing in Sanpete County, State of Utah.

(g) Defendant Kay Crabtree is an individual who was residing in Sanpete County, State of Utah at the time of these causes of action.

(h) Defendant Jeff Hanks is an individual who was residing in Sanpete County, State of Utah at the time of these causes of action.

2. James D. Harmston is the founder and ultimate leader of the True and Living Church of Jesus Christ of The Saints of the Last Days. (hereinafter "the TLC")

3. Mr. Harmston is also the head of an organization referred to as "The Church of the Firstborn."

4. On or about November of 1993 Ms. Hancock became affiliated with the True and Living Church of Jesus Christ of The Saints of the Last Days.

5. On or about April 11, 1995 Ms. Stewart became affiliated with the True and Living Church of Jesus Christ of The Saints of the Last Days.

**FIRST CAUSE OF ACTION  
(BREACH OF CONTRACT -- all defendants)**

6. In support of her First Cause of Action, Plaintiffs re-allege each and every allegation contained in paragraphs #1 through #5 of this Complaint as if fully set forth herein.

7. After becoming affiliated with the TLC the Plaintiff's were induced by Mr. Harmston and his religious subordinates to liquidate their assets and place them into the control of the Defendants.

8. On or about March 25, 1996 the Plaintiff, Kaziah May Hancock, met with the

"Bishopric" of the TLC, Keith Larson, Kay Crabtree, and Kent Braddy, to establish a stewardship for her in exchange for her contribution of money and time to the TLC.

9. In exchange for money, goods, and services to be given by the Plaintiff, Kaziah May Hancock, to the Defendants the Plaintiff was assured and promised by the TLC and/or its representatives that she would receive back a "stewardship" of property and support in exchange for the funds she "consecrated" to the TLC.

10. As a further inducement for the Plaintiff to "consecrate" her wealth over to the Defendants, Plaintiff was promised by Mr. Harmston that they would become members of The Church of the Firstborn and would meet Christ face to face.

Cindy Stewart liquidated her entire retirement savings at the insistence of Mr. Harmston and turned all the funds over to him for the use of the TLC.

Harmston and other acting as TLC officers promised Cindy Stewart full repayment of her money plus payment of all her costs and losses for early withdrawal of her retirement funds.

11. Kaziah May Hancock did deliver money, goods and services to the Defendants after this time and continued to do so until Ms. Stewart was excommunicated in or about May 1997 and Ms. Hancock was asked to leave in or about August 1997.

12. Plaintiff, Kaziah May Hancock, never received a "stewardship" of any kind as promised.

13. Plaintiff, Kaziah May Hancock, never met Christ face to face as promised.

14. Plaintiff, Cindy Stewart was never repaid her retirement or the costs and penalties she incurred for the early withdrawal.

**SECOND CAUSE OF ACTION**  
**(FRAUD/CONSTRUCTIVE FRAUD/NEGLIGENT**  
**MISREPRESENTATION - all defendants)**

15. In support of their Second Cause of Action, Plaintiffs re-allege each and every allegation contained in paragraphs #1 through #14 of this Complaint as if fully set forth herein.

16. By appealing to the Plaintiffs deepest spiritual needs and commitments, Mr.



Harmston, along with other Defendants, persuaded the Plaintiffs that Mr. Harmston was the sole spokesman on earth for God and thus gained the confidence of the Plaintiffs.

17. After gaining a superior position of confidence with the Plaintiffs, Mr. Harmston and other Defendants took unfair advantage of that position by persuading the Plaintiffs that they must turn over their wealth to the Defendants.

18. Promises were made by many of the Defendants, including Mr. Harmston, acting in his own person and as an agent of the TLC to Ms. Hancock that if she sold her ranch in Indianola and consecrated her assets to the TLC, she would receive back a "stewardship," ~~or a place~~ where she could continue to raise her animals.

19. Promises were made by Mr. Harmston, acting in his own person and as an agent of the TLC, to Ms. Stewart that if she liquidated her IRA account and consecrate the monies from the account to him he would repay her and pay any tax liability she would incur for early withdrawal.

20. Mr. Harmston, acting in his own person and as an agent of the TLC, also promised Ms. Stewart that she shouldn't be concerned about giving up her IRA account because he and/or the TLC would always take care of her.

21. Mr. Harmston, along with other officers of the TLC:

- (i) made representations to the Plaintiffs promising future performance;
- (ii) the statements of future performance was false;
- (iii) the false statements of future performance was material;
- (iv) the Defendants either knew that the statements of future performance made to the Plaintiffs were false or were ignorant of their truth;
- (v) the Defendants intended that the Plaintiffs would act upon the false statements and in the manner reasonably contemplated;
- (vi) the Plaintiffs were ignorant of the falsity of the statements of future performance made to them by the Defendants;
- (vii) the Plaintiffs relied on the false statements of future performance made to them by the Defendants;
- (viii) The Plaintiffs had a right to rely on the statements of future performance to be true;

(ix) The Plaintiffs turned over their property and means to Mr. Harmston and/or the TLC and consequently suffered the loss and conversion of nearly all their assets.

22. Plaintiffs allege that the above actions were intentional on the part of Mr. Harmston acting in his own person and/or as an agent of the TLC, and some of the Defendants, and constitute **actual fraud**; or the above actions were unintentional on the part of the Defendants and constitute **constructive fraud** and/or **negligent misrepresentation**.

23. Failure to perform on a future promise constitutes a **false statement** under the circumstances required by law and/or equity as follows:

- (i) the promisor(s) had a pecuniary interest in the transaction; [*Galloway v. AFCO Development Corp.* 777 P.2d 506 (Utah App 1989)].
- (ii) the promisor(s) had control over whether or not the promise was fulfilled; ["Statements ... relating to future events may be actionable ... where the future event is full within the declarant's control." 37 C.J.S. 14(b) (Fraud); also *Logan Equipment Co. v. Simon Aerials, Inc.*, 736 F.Supp. 1188. "Generally, redress may be had ... for an unfulfilled promise to perform in the future made with the undisclosed intention not to perform, or without the intention to perform, and for the purpose of inducing action." 37 C.J.S. 15 (Fraud)].
- (iii) the promise has a fiduciary, confidential, or superior relationship with the promisee; ["Where a relation of trust and confidence exists between two parties, so that one of them places peculiar reliance in the other's trustworthiness, the latter is liable for representations as to future conduct, and not merely as to past facts." 37 C.J.S. 14(b) (Fraud); also *Southern Mortg. Co. v. O'Dom*, 699 F.Supp 1227; *Stewart v. Phoenix Nat. Bank*, 64 P.2d 101, 49 Ariz. 34; *Edmunds v. Valley Circle Estates*, 2 Dist., 20 Cal.Rptr.2d 701, 16 C.A. 4 1290].

Plaintiff alleges that some or all three of the above exceptions existed in their relationships and dealings with the Defendants.

**THIRD CAUSE OF ACTION**  
**(FRAUDULENT CONVERSION or in the alternative UNJUST**  
**ENRICHMENT/IMPLIED CONTRACT -- all defendants)**

24. In support of their Third Cause of Action, Plaintiffs re-allege each and every allegation contained in paragraphs #1 through #23 of this Complaint as if fully set forth herein.

25. Defendants have acquired about two hundred fifty thousand dollars (\$250,000.00) of money, services, or property from Ms. Hancock, and fifteen thousand seven hundred sixty-six dollars (\$15,766.00) from Ms. Stewart by fraudulent conversion and/or unjust enrichment. The bulk of Ms. Stewart's money represented a retirement account awarded her in a divorce settlement and constituted nearly all of her assets.

26. Defendants have breached an implied contract with Plaintiffs by refusing to provide valuable consideration, as promised, in the full amount of money, services, or property taken by the Defendants.

27. By receiving or taking money, services, or property from Plaintiffs without providing equal value in return, Defendant's have been unjustly enriched to Plaintiffs detriment.

28. As a result of Defendants unjust enrichment, Ms. Hancock have been damaged in the amount of two hundred fifty thousand dollars (\$250,000.00); and Ms. Stewart has been damaged in the amount of fifteen thousand seven hundred sixty-six dollars (\$15,766.00), plus pre-judgment interest accruing since the time of the conversion of their money as permitted by Utah Code Annotated 1953 (hereinafter "U.C.A.")15-1-1(2).

**FOURTH CAUSE OF ACTION**  
**(RACKETEERING -- all defendants)**

29. In support of their Fourth Cause of Action, Plaintiffs re-alleges each and every allegation contained in paragraphs #1 through #28 of this Complaint as if fully set forth herein.

30. Plaintiffs allege that the TLC qualifies as a racketeering enterprise under the Utah Criminal Code "Pattern of Unlawful Activity Act" U.C.A. 76-10-1601 et. seq. Defendants

affiliated with the TLC have committed at least three acts in violation of the "Pattern of Unlawful Activity Act." Defendants violations are stated in particularity as follows:

(a) James D. Harmston and each other Defendant in conjunction with their leadership positions in the TLC and "The Church of the Firstborn", has violated the Utah Criminal Code "Pattern of Unlawful Activity Act" U.C.A. 76-10-1601 et. seq. They have engaged in unlawful activity. Some of these unlawful activities are including, but not limited to: Theft by Deception, U.C.A. 76-6-405; Theft of Services, U.C.A. 76-6-409; Unlawful Dealing with Property by Fiduciary, U.C.A. 76-6-513; Communications Fraud, U.C.A. 76-10-1801, either directly or did aid and abet other Defendant's by some or all of the above actions.

**FIFTH CAUSE OF ACTION**  
**(INTENTIONAL INFLICTION OF EMOTIONAL**  
**HARM -- all defendants)**

31. In support of their Fifth Cause of Action, Plaintiffs re-allege each and every allegation contained in paragraphs #1 through #30 of this Complaint as if fully set forth herein.

32. Plaintiffs have suffered great mental anguish and pain as a result of the loss from their life savings effected by the conversion their money by the Defendants.

33. The actions of the Defendants named in this Complaint have significantly harmed and damaged the Plaintiffs.

WHEREFORE Plaintiffs pray for judgment against the Defendants individually and severally and in their favor as follows:

1. An award of two hundred fifty thousand dollars (\$250,000.00) representing the actual value of money, goods, and services fraudulently converted from Ms. Hancock to the Defendant's use; and an award of fifteen thousand seven hundred sixty-six dollars (\$15,766.00) representing the actual value of money received from Ms. Stewart by fraudulent conversion.

2. An award of interest accruing at ten percent per annum on the amount of money converted from the Plaintiffs to the Defendant's use as allowed by Utah Code Annotated 15-1-1

since the date of the conversion.

3. An award of damages as allowed as a civil penalty by Utah's "Pattern of Unlawful Activity Act," Utah Code Annotated 76-10-1605 et. seq. equal to double the total amount of Plaintiffs actual damages in the loss of their principle plus accrued interest, and costs of litigation including reasonable attorney fees.

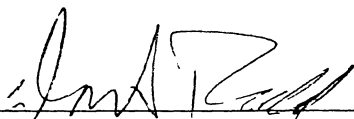
4. An award of punitive damages as allowed by, and in keeping with, Utah Code Annotated 78-18-1 et. seq. in the amount of treble the total amount of Plaintiffs actual damages in the loss of their principle plus accrued interest.

5. An award of two hundred fifty thousand (\$250,000.00) for the mental anguish suffered by Cindy Stewart and Ms. Hancock which represents the amount of the funds taken from her; and as award of fifteen thousand seven hundred sixty-six dollars (\$15,766.00) for the mental anguish suffered by Ms. Stewart which represents the amount of the funds taken from her.

6. An award of attorney's fees and costs.

7. And such other relief as the court deems appropriate.

RESPECTFULLY SUBMITTED this 19 day of February 2003.

  
\_\_\_\_\_  
DON S. REDD, Attorney for Plaintiffs,  
44 North Main  
Layton, Utah 84041

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Amended Complaint was mailed on the 19 day of February 2003 by depositing same in the U.S. Mail to the following:

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IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR  
 SANPETE COUNTY, STATE OF UTAH

KAZIAH MAY HANCOCK, and	)	MEMORANDUM IN SUPPORT
CINDY STEWART,	)	OF MOTION TO DISMISS UNDER
	)	12(b)(6) and 9(b) U.R.C.P.
Plaintiffs,	)	
	)	
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, KENT BRADDY,	)	
JEFF HANKS, BART MUSTROM,	)	Civil No. 980600126
JOHN HARPER and JOHN DOES	)	Judge David L. Mower
NOS. 1-5,	)	
Defendants.	)	

COME NOW, the Defendants, The True and Living Church of Jesus Christ of Saints of the Last Days (hereinafter "TLC"), James D. Harmston, Daniel Simmons, Kent Braddy, Bart Mulstrom, and John Harper and hereby submit this Memorandum in Support of their Motion to Dismiss the all of the claims raised by the Plaintiffs in the above-captioned matter.



## ARGUMENT

### **I. THE COURT CANNOT ADJUDICATE CHURCH DOCTRINE.**

The alleged promises that Hancock would be a member of the Church of the First Born, would see Christ face to face, and at some point would receive a “stewardship” of property from the Lord; all deal with Church doctrine, not subject to adjudication by the Court.

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).

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 states

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).

Plaintiffs' Breach of Contract claim deals with church doctrine such as consecration, obedience and faith. Things that Church members believe which cannot be proven. The Court cannot adjudicate these issues. Not only would such litigation be in violation of the First Amendment, but it would have a drastic chilling effect, prohibiting all churches from accepting charitable contributions based upon their inability to prove their doctrine and beliefs in a court of law.

The case of Jefferies v. Stubbs, 970 P.2d 1234 (Utah 1998) does not provide for the adjudication of church doctrine. Jefferies v. Stubbs involved a property dispute over certain land possessed by the claimants. There was no question of church doctrine central to the case, but issues of real property law, i.e. whether the occupants had a life estate or were tenants at will. However, facts alleged in this case "consecrating" money to see Christ face to face, to be a member of the Church of the Firstborn, and to receive a stewardship from the Lord, do necessarily involve issues of church government, faith and doctrine.

If Hancock wanted to purchase a piece of property from the Church, she could have negotiated a price, and had the necessary deeds prepared, signed and recorded. The Court then would have been able to enforce the written contract according to its terms without interfering or entangling itself in questions of Church doctrine. Jefferies v. Stubbs would not have prevented the Court from doing this simply because a religious entity was involved.

However, in this case the claim is that money was donated or "consecrated" to the Church and that verbal promises were made regarding membership in the Church of the Firstborn, seeing Christ face to face, and receiving a "stewardship" of property from the Lord. There are no legal contracts for the Court to enforce or legal issues for the Court to decide, that are not intertwined with Church doctrine.

## **II. THE ALLEGED PROMISES ARE TOO ILLUSORY TO ENFORCE.**

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 from the Lord; are all too indefinite to be enforced. In fact, the Plaintiff, may still receive all of these blessings at some point, if she remains faithful. A supposed promise is illusory when it is so indefinite that it cannot be enforced with 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 promisor, 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 promisor). 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, are so indefinite and discretionary that they are illusory and unenforceable. Id.

## **III. ANY PROMISE TO CONVEY REAL PROPERTY OR SUPPORT FOR LIFE IS INVALID UNDER THE STATUTE OF FRAUDS.**

The Plaintiffs have alleged an oral promise to receive a “stewardship” of property. There is no writing to bind the Defendants to a contract to convey, or provide any interest in, real property. Under Utah law, 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) (agreement to enter into real estate lease for period longer than one year is within Statute of Frauds and must be in writing to be enforceable); Martin v. Allbritton, 862 P.2d 569 (Or.App.1993). Hancock has failed to allege any writing providing for such an interest in property, therefore this claim must fail as a matter of law.

The Statute of Frauds further 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, any alleged verbal promise made to Hancock that in return for her donations the Church would take care of her for the rest of her life, or provide support to her for the rest of her life, is also void and unenforceable under the Statute of Frauds. Id.

Part performance has not been alleged in this case, nor can it be, because there was no delivery of real property. Binninger v. Hutchison, 355 So.2d 863 (Fla.App. 1978) (before partial performance exception to the statute of frauds may be applied, delivery of possession must be made pursuant to the terms of the contract); Robertson v. Melton, 115 SW.2d 624 (possession by the purchaser of realty is an indispensable element of part performance); Leverett v. Leverett, 59 SW.2d 252 (possession of realty is necessary for part performance, in addition to the payment of consideration and the making of valuable improvements). Hancock did not take possession of, or make any improvements, to any real property.

Furthermore, part performance of an oral contract not to be performed within a year, does not take it out of the Statute of Frauds. Trethewey v. Bancroft-Whitney Co., 534 P.2d 1382 (Wash.App. 1975) (the doctrine of part performance does not apply to the clause of the statute of frauds declaring void every oral contract not to be performed within one year, such

application would in effect repeal this clause of the statute); Manning v. Woods, Inc., 357 P.2d 757 (Kan. 1960) (a parol contract not to be performed within a year, is not enforceable or taken out of the statute by part performance). Therefore, any oral agreement or promise to provide support for the rest of Hancock's life, is void and unenforceable under the Statute of Frauds.

Finally, the Plaintiffs cannot seek liability against the other Defendants, who were not a party to the alleged promises. The Statute of Frauds requires a writing before any party is required to answer for the debt of another. Automotive Mfgs. Warehouse, Inc. v. Service Auto Parts, Inc., 596 P.2d 1033 (Utah 1979) § 25-5-4(2) U.C.A. Without the necessary writing signed by each Defendant, such a claim is unenforceable as a matter of law. Commodore Home Systems Inc. v. Citicorp., 780 P.2d 674 (Okl. 1989)

#### **IV. ALLEGATIONS OF FRAUD HAVE NOT BEEN MADE WITH SUFFICIENT PARTICULARITY UNDER RULE 9(b).**

Rule 9(b) U.R.C.P. requires that allegations of fraud be plead with sufficient particularity. The Plaintiffs have made reference to one Bishopric Meeting where promises were allegedly made with only three Defendants present. However, the Plaintiffs have included all of the Defendants in their Fraud claim, claiming that they also persuaded them. This is insufficient to establish a meritorious claim.

Under Rule 9(b) U.R.C.P. the Plaintiffs must set forth the circumstances constituting the fraud as to each individual Defendant, i.e, what representations were made by whom, and at what time. This is particularly important in this case, since the Utah Liability Reform Act, abolishing joint and several liability. requires an apportionment of fault as to each

Defendant, or other potentially liable parties. Farmers Insurance Exchange v. Parker, 936 P.2d 1088 (Ut.App. 1997).

Furthermore, this Court has already found that the information provided in this case was insufficient as to each of the individual Defendants to enter a judgment. Use of the terms “fraud” and “conspiracy” and “negligence” in the complaint, constitutes general accusations in the form of conclusions, without setting forth the basic facts sufficient to constitute the fraud, and will not stand up to a motion to dismiss. Heathman v. Hatch, 372 P.2d 990 (Utah 1962).

**V. THERE IS NO CLAIM IN UTAH FOR CLERICAL MALPRACTICE FOR BREACH OF FIDUCIARY DUTY**

Rule 9(b) would also apply to Plaintiffs’ Constructive Fraud claim. Furthermore, there can be no claim for Constructive Fraud in this case. Constructive Fraud requires a fiduciary relationship. Von Hake v. Thomas, 705 P.2d 766 (Utah 1985). The Utah Courts have refused to establish a fiduciary relationship between religious leaders and their members. To determine whether a cleric in a particular religion is prudent, i.e., a reasonably prudent bishop, priest, rabbi, minister or other cleric in the state, would require the courts to evaluate and investigate religious tenants and doctrine, forcing the courts to establish an official religion of the state, in violation of the Establishment Clause of the First Amendment. Franco v. L.D.S. Church, 21 P.3d 198 at 206 (Utah 2001). See also White v. Blackburn, 787 P.2d 1315, 1318 (Ut.App. 1990) where the court declined to establish a cause of action for clerical malpractice.

**VI. THE CLAIM OF NEGLIGENT MISREPRESENTATION IS NOT RECOGNIZED FOR FUTURE PROMISES.**

The tort of negligent misrepresentation applies only when there has been a negligent misrepresentation of an existing fact. High Country Movin’, Inc. v. U.S. West Direct Co., 839

P.2d 469 (Colo.App.1992) (a claim of negligent misrepresentation cannot be based solely on a claim of nonperformance of a promise to do something in the future). The Plaintiffs have not alleged the misrepresentation of any existing material fact, but have claimed that statements made concerning some future performance were false. Since the Plaintiffs have failed to allege the negligent misrepresentation of an existing material fact, this claim should be dismissed. Id.

## **VII. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR FRAUDULENT CONVERSION.**

Conversion is a distinct act of dominion wrongfully exerted over another's personal property, without lawful justification. The elements for conversion are: (1) plaintiff's ownership or right to possession of the property at the time of the conversion; and (2) defendant's conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages. Therefore, there can be no cause for the conversion money.

Plaintiffs in this case have alleged that money was consecrated to the Church in return for certain promises, i.e., being a member of the Church of the Firstborn, seeing Christ face to face and receiving a stewardship of property to raise goats. The Plaintiffs have not alleged that the Defendants obtained any personal property of the Plaintiffs by any wrongful act, but that the property was freely given.

Moreover, conversion applies to the wrongful possession of tangible personal property, not for the return of money, or damages on a cause of action. The Plaintiffs have not been deprived of ownership of personal property. Allied Inv. Corp. v. Jasen, 731 A.2d 957 (Md. 1999). (conversion applies to rights in specific tangible property not for the return of

money). It is not alleged that the Defendants exerted any wrongful dominion over the Plaintiff's tangible property by a wrongful act, therefore, this claim should be dismissed.

**VIII. PLAINTIFFS HAVE ALLEGED A VERBAL CONTRACT; THUS THERE CAN BE NO CLAIM FOR UNJUST ENRICHMENT.**

Plaintiffs have alleged the existence of a verbal contract and have elected to sue for breach of that contract. Therefore, Plaintiffs' claim 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, the Plaintiffs have admitted that the property was freely given or consecrated to the Church in exchange for certain promises. The fact the Plaintiffs voluntarily gave this money, also precludes their claim for unjust enrichment. Lynch v. Deasoness Medical Center, 776 P.2d 681 (Wash. 1989) (to establish unjust enrichment, plaintiff cannot be a volunteer).

**IX. PLAINTIFFS HAVE FAILED TO ALLEGE A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.**

In order to state a claim for Intentional Infliction of Emotional Distress the party must allege that: (1) the conduct complained of was outrageous and intolerable in that it offended against the generally accepted standards of decency and morality; (2) the offending party intended to cause, or acted in reckless disregard of the probability of causing, emotional distress; (3) the plaintiff suffered severe emotional distress; and (4) defendants' actions was an actual and proximate cause of the emotional distress. White v. Blackburn, 787 P.2d 1315, 1317 (Ut.App. 1990); Retherford v. AT & T Communications of the Mountain States, Inc., 844 P.2d 949, 970-971 (Utah 1992.)



Plaintiffs have failed to properly allege these four necessary elements. Plaintiffs simply allege that they have suffered great mental anguish from losing money as a result of the Defendants' alleged failure to keep their promises. The loss of money, or breach of contract alone, is not sufficient to recover for intentional infliction of emotional distress. Id.

Furthermore, the Plaintiffs have failed to allege what conduct by each individual Defendant, was so outrageous and intolerable; and how the conduct of each Defendant was the direct cause of any severe emotional distress. Without specific facts, it is impossible to determine whether or not any of the Defendants acted outrageously or intolerable or was the cause of Plaintiffs' harm.

**X. SINCE THE PLAINTIFFS HAVE FAILED TO ALLEGE ANY UNLAWFUL ACTIVITY ON THE PART OF THE DEFENDANTS THE RICO CLAIM SHOULD ALSO BE DISMISSED.**

The Plaintiffs' RICO claim should also be dismissed. As set forth above, the Plaintiffs have failed to allege any unlawful activity on the part of the Defendants, or any unlawful activity that would fall under the RICO statute.

Plaintiffs have not alleged any facts to constitute Theft by Deception or Theft of Service under Utah's statutes. Plaintiffs have also failed to allege any facts constituting Communications Fraud or the Unlawful Dealing with Property by a Fiduciary. Plaintiffs have merely cited the statutory reference for these claims. They have not alleged any facts to support these claims.

Merely citing statutes in conclusory form, without facts to substantiate the substance of the allegation, is not sufficient to withstand a motion to dismiss. Utah Steel & Iron Co. v. Bosch, 475 P.2d 1019 (Utah 1970) (motion to dismiss should have been granted where complaint

alleged defendants conspired to harass, annoy, threaten and intimidate plaintiff, but gave no notice of nature or substance of alleged acts, and did not mention causation between acts and alleged effects); Williams v. State Farm Ins. Co., 656 P.2d 966 (Utah 1982) (the allegation of the conclusion is not sufficient; the pleading must set forth the nature or substance of the acts complained of).

The Plaintiffs cannot simply allege that the Defendant violated a statute and cite the statute they must set forth the nature and substance of the facts constituting the violation. Id. The RICO claim fails to do this, and should be dismissed.

### **CONCLUSION**

Plaintiffs' Breach of Contract claim cannot be adjudicated as it involves Church doctrine; is illusory; and in violation of the Statute of Frauds, § 25-5-1 et. seq. U.C.A., Therefore it fails as a matter of law. Plaintiffs' Fraud claim fails to set forth the facts and circumstances constituting the alleged fraud with sufficient particularity, as to each individually-named Defendant, as required under Rule 9(b) U.R.C.P. This claim should be dismissed.

Negligent Misrepresentation is not a recognized cause of action, as to promises to be performed in the future, as alleged in this case. This claim should be dismissed. The State of Utah also does not recognize a claim for breach of fiduciary duty, i.e. Constructive Fraud, against clerical ministers, as such a finding would require the courts to establish, or favor, one religion over another, in violation of the First Amendment Establishment Clause. This claim cannot stand.

The Plaintiffs allege that they freely "consecrated" money to the Church for spiritual reasons, i.e. being a member of the Church of the Firstborn and seeing Christ face to face. There is no allegation of any specific personal property that was converted; and based on

the Plaintiffs' own allegations, the Defendants did not obtain their donations through any unlawful means, as required for conversion. The Plaintiffs seeking a return of their money does not state a claim for conversion.

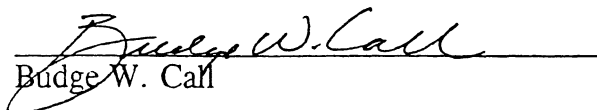
Plaintiffs' claim for Unjust Enrichment also fails based on the pleadings, as Plaintiffs have alleged that they freely "consecrated" their money based on an alleged verbal contract. Plaintiffs have elected to sue under this alleged contract. Plaintiffs cannot allege the existence of a contract and that they voluntarily gave money to the Church and maintain their claim for Unjust Enrichment.

Plaintiffs' RICO claim fails, as a matter of law, for the reasons stated above. Furthermore, the Plaintiffs have failed to sufficiently allege any type of wrongful act on the part of the Defendants, or unlawful activity, that would fall under the "Pattern of Unlawful Activity Act" (RICO) statutes.

Plaintiffs' claim of Intentional Infliction of Emotional Distress also fails. Plaintiffs have failed to allege the proper elements for intentional infliction of emotional distress. Plaintiffs claim that losing their money caused them great mental anguish, alone is insufficient to state a claim for Intentional Infliction of Emotional Distress.

Based on the foregoing all of Plaintiffs' claims should be dismissed.

DATED this 12 day of March 2003.

  
Budge W. Call

CERTIFICATE OF MAILING

I hereby certify on the 12<sup>th</sup> day of March, 2003, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** was mailed, postage prepaid, to the following:

Don S. Redd  
Attorney for Kaziah May Hancock  
and Cindy Stewart  
Attorney for Plaintiffs  
44 North Main  
Layton, UT 84041

Clark R. Nielson  
68 South Main Street, Suite 600  
Salt Lake City, Utah 84101

Daniel Simmons  
True and Living Church of Jesus Christ  
of Saints of the Last Days  
37 South Main  
Manti, Utah 84642

John H. Jacobs  
JACOBS & EDDY, P.C.  
Attorney for Kay Crabtree  
75 North Center Street  
American Fork, UT 84003

William Lithgow  
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Palm Desert, CA 92211

Keith Larson  
111 Center  
Snowflake AR 85937

Phillip P. Savage  
340 West 400 South  
Manti, Utah 84642

William Lithgow

Tab C

Name: I. Douglas Jordan  
Address: 292 W. 4th St.  
Manti, UT 84642  
Phone: 835-9429

FILED  
SARFET & UTHMAN  
'98 JAN 6 PM 4 28  
KRISTINE L. ANDERSON  
CLERK

IN THE Sixth JUDICIAL DISTRICT COURT  
OF Saratoga COUNTY, STATE OF UTAH  
BY Terrell DEPUTY

I. Douglas Jordan,

Plaintiff,

vs.

Kaziah May Jordan,

Defendant.

STATE OF UTAH, Dept of  
Human Services  
Intervenor.

DECREE OF DIVORCE  
AND JUDGMENT

Case No. 984600002

Judge LOUIS G. TERRELL

[ ] The above-entitled matter came on for hearing on \_\_\_\_\_,  
before the Honorable \_\_\_\_\_. The  
Plaintiff appeared in person.

[ ] The above-entitled matter came on before the court on  
Plaintiff's Affidavit for Entry of Divorce Decree in  
accordance with Rule 4-913 Code of Judicial Administrations.

[ ] The Defendant was regularly served but failed to appear in  
person or otherwise file responsive pleadings and the Court  
therefore enters the Defendant's default.

[ ] The Court issued an Order for Publication of Summons and said

FILED  
JAN 10 1998  
CLERK

Summons was published in the \_\_\_\_\_,  
a newspaper of general circulation in the above-entitled  
county once a week for four (4) consecutive weeks from  
\_\_\_\_\_ to \_\_\_\_\_ inclusive. The Clerk of Court  
mailed a true and correct copy of the Summons and Complaint to  
the Defendant at his last known address and duly executed an  
Affidavit of Mailing certifying said mailing.

[ ]The Defendant appeared in person and was represented by \_\_\_\_\_  
\_\_\_\_\_.

[ ]More than ninety days has passed since this matter was filed  
with the Court or the parties have completed the Divorce  
Education Course.

The Court, having found and entered its Findings of Fact and  
Conclusions of Law and being otherwise fully advised, it is  
hereby,

ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff is hereby awarded a Decree of  
Divorce from the Defendant, such to become final upon signature  
and entry herein.

*Does not apply*

2. That there have been 0 children born as issue of this marriage to wit: *True*

CHILDREN BORN OF THIS MARRIAGE		
NAME	DATE OF BIRTH	SOCIAL SECURITY NUMBER

[ ] 3. That the [ ]Plaintiff [ ]Defendant is a fit and proper person to be awarded the permanent care, custody and control of the minor children of the parties, subject to the [ ]Plaintiff's [ ]Defendant's right to visit with the children at reasonable times and places.

[ ] 3. That both parents be awarded the joint legal custody of the minor children, but that the [ ]Plaintiff [ ]Defendant be awarded the primary physical custody of the children, subject to the other party's right to visit with the children at reasonable times and places.

[ ] 3. That each parent be awarded the permanent care, custody, and control of the minor children as specified below, subject to the



*Does not apply*

non-custodial parent's right to visit with the children at reasonable times and places.

[ ] 3. That both parties be awarded the joint legal custody of the minor children, but that the primary physical custody of the children be given to each parent as specified below, subject to the non-custodial parent's right to visit with the children at reasonable times and places.

CHILDREN BORN OF THIS MARRIAGE	
NAME	CUSTODIAN

4. That pursuant to U.C.A. 78-45-7 et seq. (1953 as amended), the [ ]Plaintiff [ ]Defendant be ordered to pay to the [ ]Plaintiff [ ]Defendant as and for child support:

a. A sum of not less than \$\_\_\_\_\_ per month as base support for the minor children of the parties, pursuant to the Uniform Child Support Guidelines until said children become 18 years of age, or have graduated from high school during the children's normal and expected year of graduation, whichever occurs later.

b. The base child support award should be reduced by 50% for each minor child for time periods during which such minor child is with the non-custodial parent by order for at least 25 of any 30 consecutive days. If the dependent child is a recipient of Aid to Families with Dependent Children, any agreement by the parties for reduction of child support during extended visitation shall be approved by the Office of Recovery Services. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

c. The obligee (custodial parent) shall be entitled to mandatory income withholding relief pursuant to U.C.A. 62A-11 parts 4 and 5 (1953 as amended), and any Federal and State tax refunds or rebates due the Defendant may be intercepted by the State of Utah and applied to existing child support arrearages. This income withholding procedure should apply to existing and future payors. All withheld income should be submitted to the Office of Recovery Services until such time as the Defendant no longer owes child support to the Plaintiff.

d. The issue of child support arrearages may be determined by further judicial or administrative process.

e. Each of the parties should be under mutual obligation to notify the other within ten (10) days of any change in monthly income.

5. That pursuant to U.C.A. 78-45-7.15 (1953) as amended:

a. Both parties should be required to maintain insurance for medical expenses for the benefit of the minor children where available at reasonable cost.

b. Both parties shall share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of the insurance.

c. Both parties should share equally all reasonable and necessary uninsured medical expenses, including deductibles and co-payments, incurred for the minor children and actually paid by the parties.

d. The parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

e. A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with the Subparagraph "d" above.

6. That pursuant to U.C.A. 78-45-7.16 (1953 as amended) both parties should share equally the reasonable work-related or career or occupational training for child care expenses of the custodial parent.

a. The non-custodial parent shall begin paying his or her share of child care expenses on a monthly basis immediately upon presentation of proof of the child care expense.

b. The parent who incurs child care expenses shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent. The parent shall notify the other parent of any change of a child care provider or the monthly expense of child care within 30 calendar days of the date of the change. A parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with these provisions.

[ ] 7. That each party be ordered to assume and pay the following:

a. The Plaintiff:

Obligation	Amount
Anderson Lumber	\$ 89.00
Home Base	\$ 357.00
Harmon's Artwork	\$ 250.00
Gunnison Valley Hosp -	\$ 783.00
Dr. Nay	\$ 107.00
Dr. Beck	\$ 469.70
	\$
	\$

b. The Defendant:

Obligation	Amount
loan on truck \$14,000.00	\$ 150.00 mo
pay on property	\$1,000.00
	\$
	\$
	\$
	\$
	\$
	\$

c. All remaining debts and obligations should be the responsibility of the party who incurred the particular debt.

[ ] 8. That personal property of the parties should be distributed as follows:

a. To the Plaintiff: Hay trailer, 7 horses

b. To the Defendant: title to home & property, truck (Nissan)  
all animals except horses, remaining house hold furnishings

c. All remaining personal property should be awarded to each of the parties as they have heretofore divided it.

[X] 9. That during the course of the marriage, the parties acquired certain real property to wit:

[ ] a. A home located at:

2920 4th So., Manti, UT.

more particularly described by the following legal description:

Lot 2, Block 27, Plat "A", MANTI CITY SURVEY, San Pete  
County, State of Utah

[X] b. Such property should be sold as soon as reasonably practicable and the proceeds of the sale applied as follows:

- i. First, to pay expenses of sale;
- ii. Second, to retire any and all mortgages and liens;
- iii. Third, to pay all marital debts and obligations;
- iv. Last, the balance remaining thereafter to be divided equally between the parties.

[ ] b. That the [ ]Plaintiff ☒Defendant be awarded the home and real property as [ ]Plaintiff's ☒Defendant's sole and exclusive property.

[ ] b. That the [ ]Plaintiff ☒Defendant should be awarded the exclusive use and possession of the parties' home until the occurrence of the first of the following conditions:

- i. The youngest child of the parties reaches eighteen (18) years of age, marries, or otherwise becomes emancipated; or/
- ii. The party remarries;
- iii. The party ceases to use the home as the primary residence;
- iv. The party cohabits with a non-relative adult of the opposite sex in the home.

[ ] c. Upon the occurrence of the first of the conditions enumerated above, the Defendant should receive an appropriate share

of the equity existing at the date of the entry of the Decree of Divorce in this matter in said home as determined by an appraisal conducted by a mutually agreed upon appraiser, and deducting from the appraised value the amount of all encumbrances. The Plaintiff should receive all equity in excess of the Defendant's aforementioned share of equity in said home existing at the time of the entry of the Decree in this matter.

[ ] d. A home located at:

292 W. 4th So. , Manti, Ut. ,

more particularly described by the following legal description:

Lot 2, Block 17, Plat "A", MANTI CITY SURVEY, Sanpete  
County, State of Utah.

[ ] e. Such property should be sold as soon as reasonably practicable and the proceeds of the sale applied as follows:

- i. First, to pay expenses of sale;
- ii. Second, to retire any and all mortgages and liens;
- iii. Third, to pay all marital debts and obligations;
- iv. Last, the balance remaining thereafter to be divided equally between the parties.

[ ] e. That the [ ] Plaintiff [ ] Defendant be awarded the home



and real property as ☐ Plaintiff's ☐ Defendant's sole and exclusive property.

☐ e. That the ☐ Plaintiff ☒ Defendant should be awarded the exclusive use and possession of the parties' home until the occurrence of the first of the following conditions:

- i. The youngest child of the parties reaches eighteen (18) years of age, marries, or otherwise becomes emancipated; or/
- ii. The party remarries;
- iii. The party ceases to use the home as the primary residence;
- iv. The party cohabits with a non-relative adult of the opposite sex in the home.

☐ f. Upon the occurrence of the first of the conditions enumerated above, the Defendant should receive an appropriate share of the equity existing at the date of the entry of the Decree of Divorce in this matter in said home as determined by an appraisal conducted by a mutually agreed upon appraiser, and deducting from the appraised value the amount of all encumbrances. The Plaintiff should receive all equity in excess of the Defendant's aforementioned share of equity in said home existing at the time of the entry of the Decree in this matter.

#### Provisions Relating to Alimony

☒ 10. That neither party should be awarded alimony.

[ ] 10. That the Plaintiff be awarded a sum of not less than \$ 0 per month as alimony from Defendant.

[ ] 10. That the Defendant be awarded a sum of not less than \$ 650.00 per month as alimony from Plaintiff.

[ ] 11. That the Defendant has pension and/or profit sharing plans or other retirement benefits through Defendant's place of employment. It is reasonable and proper that the Plaintiff receive one-half ( $\frac{1}{2}$ ) of all benefits accrued pursuant to such plans during the marriage.

[ ] 12. That the Plaintiff should be entitled to claim the parties' minor children as a tax deduction.

[ ] 12. That the Defendant should be entitled to claim the parties' minor child as a tax deduction.

[ ] 13. That the Defendant should be permanently restrained from bothering, harassing, annoying, threatening, or harming the Plaintiff at Plaintiff's place of residence, employment or any other place.

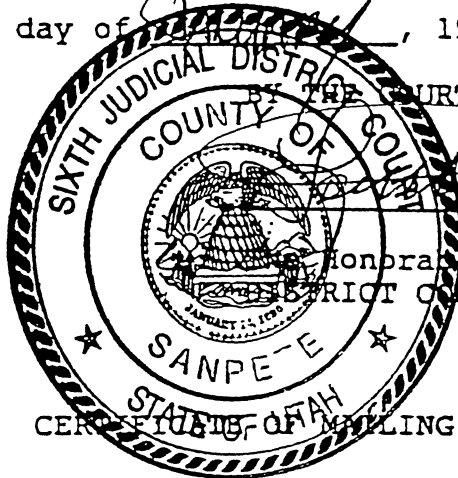
[ ] 14. That each party should be ordered to assume his/her own costs and attorney's fees incurred in prosecuting this action.

[ ] 14. That the Defendant be required to pay the Plaintiff's

attorney's fees.

[ ] 15. That the [ ] Plaintiff [☒] Defendant be restored the use of her former name, Hancock.

DATED this 11th day of February, 1995.



Louis G. TerVorp  
Honorable  
DISTRICT COURT JUDGE

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a true and correct copy of the foregoing Decree of Divorce and Judgment was mailed, postage prepaid to \_\_\_\_\_.

#### CERTIFICATE OF DELIVERY

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I mailed a true and correct copy of the foregoing Decree of Divorce and Judgment of Law, postage prepaid, to \_\_\_\_\_ and placed a true and correct copy of the same in the Attorney General's box in the Clerk's Office of the \_\_\_\_\_ Judicial District Court.

Name: I. Douglas Jordan  
Address: 292 W. 4th St.  
Manti, Ut.  
Phone: 835-9429

FILED  
SANPETE COUNTY, UTAH  
33 JAN 6 PM 4 28

IN THE Sixth JUDICIAL DISTRICT COURT  
OF Sanpete COUNTY, STATE OF UTAH

I. Douglas Jordan,

Plaintiff,

vs.

Kaziah May Jordan,

Defendant.

STATE OF UTAH, Dept of  
Human Services  
Intervenor.

FINDINGS OF FACT  
AND CONCLUSIONS  
OF LAW

Case No. 984600002

Judge Louis G Tervort

[ ] The above-entitled matter came on for hearing on \_\_\_\_\_,  
before the Honorable \_\_\_\_\_. The  
Plaintiff appeared in person.

[ ] The above-entitled matter came on before the court on  
Plaintiff's Affidavit for Entry of Divorce Decree in  
accordance with Rule 4-913 Code of Judicial Administrations.

[ ] The Defendant was regularly served but failed to appear in  
person or otherwise file responsive pleadings and the Court  
therefore enters the Defendant's default.

[ ] The Court issued an Order for Publication of Summons and said Summons was published in the \_\_\_\_\_, a newspaper of general circulation in the above-entitled county once a week for four (4) consecutive weeks from \_\_\_\_\_ to \_\_\_\_\_ inclusive. The Clerk of Court mailed a true and correct copy of the Summons and Complaint to the Defendant at his last known address and duly executed an Affidavit of Mailing certifying said mailing.

[ ] The Defendant appeared in person and was represented by \_\_\_\_\_.

[ ] More than ninety days has passed since this matter was filed with the Court or the parties have completed the Divorce Education Course.

The Court, having heard sworn testimony of the Plaintiff, having reviewed the file in this matter and being otherwise fully advised, enters its

#### FINDINGS OF FACT

1. The Plaintiff and/or the Defendant are bona fide residents of San Pete County of the state of Utah and have been for three months immediately prior to the filing of this action.

2. The parties resided in the marital relationship in the

State of Utah or the acts complained of by the Plaintiff were committed by the Defendant in the State of Utah and therefore this Court has long-arm jurisdiction over the Defendant pursuant to U.C.A. 78-27-24(6) (1953 as amended).

3. The Plaintiff and the Defendant were married on 3/23/91, in Indianola, Utah and are presently married. The parties separated on or about 11/7/97

4. During the course of the marriage the parties have experienced difficulties that cannot be reconciled that have prevented the parties from pursuing a viable marriage relationship.

5. There have been 0 children born as issue of this marriage to wit: True

CHILDREN BORN OF THIS MARRIAGE		
NAME	DATE OF BIRTH	SOCIAL SECURITY NUMBER

6. Pursuant to Rule 4-901(b), Utah Code of Judicial Administration, the Plaintiff states, upon information and belief,

*Does not apply*

that there are no proceedings for custody of the above-named minor children filed or pending in the Juvenile Court.

7. Utah is the home State of said minor children pursuant to U.C.A. 78-45c-3(1)(a) (1953) as amended in that:

- a. Utah is the home state of the minor children at the time of commencement of this proceeding or it is in the best interest of the minor children that a court of this state assume jurisdiction because the minor children in addition to his parents or one of the contestants have a significant connection with this state and there is available in this state substantial evidence concerning the minor children's present or future care, protection, training, and personal relationships.
  
- [ ] b. Said minor children have resided at the following places and with the following parties outside of Utah:

*Does not apply*

Child's Name: _____		
NAME & RELATION	DATE	ADDRESS

Child's Name: _____		
NAME & RELATION	DATE	ADDRESS

Child's Name: _____		
NAME & RELATION	DATE	ADDRESS

c. The Plaintiff has not been a party, witness or participated in any other capacity in any other litigation concerning the custody of the subject minor children in this State or any other State.

[ ] d. The Plaintiff has no information of any custody proceeding concerning the subject minor



*Does not apply*

children pending in a court of this or any other State.

[ ] d. The Plaintiff has information regarding a custody proceeding concerning the subject minor children pending in a court of this or another state as described below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] e. The Plaintiff does not know of any person, not a party to these proceedings who has physical custody of the subject minor children and who claims to have custody or visitation rights with respect to said children.

[ ] e. The Plaintiff knows of a person, not a party to these proceedings who has physical custody of the subject minor children and who claims to have custody or visitation rights with respect to said children as described below: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Child Custody and Visitation

[ ] 8. The [ ]Plaintiff [ ]Defendant is a fit and proper person to be awarded the permanent care, custody and control of the minor children of the parties, subject to the [ ]Plaintiff's [ ]Defendant's right to visit with the children at reasonable times and places.

[ ] 8. It is fair and reasonable that both parents be awarded the joint legal custody of the minor children, but that the [ ]Plaintiff [ ]Defendant be awarded the primary physical custody of the children, subject to the other party's right to visit with the children at reasonable times and places.

[ ] 8. It is fair and reasonable that each parent be awarded the permanent care, custody, and control of the minor children as specified below, subject to the non-custodial parent's right to visit with the children at reasonable times and places.

[ ] 8. It is fair and reasonable that both parties be awarded the joint legal custody of the minor children, but that the primary physical custody of the children be given to each parent as specified below, subject to the non-custodial parent's right to visit with the children at reasonable times and places.

Does not apply

CHILDREN BORN OF THIS MARRIAGE	
NAME	CUSTODIAN

[ ] 9. The Plaintiff is voluntarily underemployed or unemployed but is capable of working at a job which would pay \$\_\_\_\_\_ per hour based upon Plaintiff's work experience during the period of the parties' marriage and income should be attributed to the Plaintiff in the amount of \$\_\_\_\_\_ per month.

[ ] 9. The Plaintiff is employed at \_\_\_\_\_, earns \$\_\_\_\_\_ per hour, works \$\_\_\_\_\_ hours per week and therefore grosses \$\_\_\_\_\_ per month.

[ ] 9. The Plaintiff is not employed and receives \_\_\_\_\_ per month unemployment, social security (or other countable public benefits as defined in 75-45-7.5 (1)) and receives \$\_\_\_\_\_ per month AFDC (or other non-countable public benefits as defined in 75-45-7.5 (3)).

[X] 10. The Defendant is voluntarily unemployed or underemployed

*Does not apply*

but is capable of working at a job which pay \$\_\_\_\_\_ per hour based upon Defendant's work experience during the period of the parties' marriage and income should be attributed to the Defendant in the amount of \$\_\_\_\_\_ per month.

[ ] 10. The Defendant is not employed and receives \$<sup>#1500.00</sup>~~500~~ - <sup>#15,000.00 (Artist)</sup> per month unemployment, social security (or other countable public benefits as defined in 75-45-7.5 (1)) and receives \$\_\_\_\_\_ per month AFDC (or other non-countable public benefits as defined in 75-45-7.5 (3)).

[ ] 10.. The Defendant is employed at self-employed - Artist - earns \$\_\_\_\_\_ per hour, works \_\_\_\_\_ hours per week and therefore grosses <sup>approx</sup> \$~~1200.00~~ per month.

[ ] 10. The Defendant's workplace is unknown, but Plaintiff estimates Defendant earns \$\_\_\_\_\_ per hour, works \_\_\_\_\_ hours per week, and therefore grosses \$\_\_\_\_\_ per month.

11. Pursuant to U.C.A. 78-45-7 et seq. (1953 as amended) it is reasonable and proper that the [ ]Plaintiff [ ]Defendant be ordered to pay to the [ ]Plaintiff [ ]Defendant as and for child support:

a. A sum of not less than \$\_\_\_\_\_ per month as base support for the minor children of the parties, pursuant to the Uniform Child Support Guidelines until said children become 18 years of age, or have graduated from high school during the children's normal and expected year of graduation, whichever occurs later.

*Does not apply*

b. The base child support award should be reduced by 50% for each minor child for time periods during which such minor child is with the non-custodial parent by order for at least 25 of any 30 consecutive days. If the dependent child is a recipient of Aid to Families with Dependent Children, any agreement by the parties for reduction of child support during extended visitation shall be approved by the Office of Recovery Services. However, normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

c. The obligee (custodial parent) shall be entitled to mandatory income withholding relief pursuant to U.C.A. 62A-11 parts 4 and 5 (1953 as amended), and any Federal and State tax refunds or rebates due the Defendant may be intercepted by the State of Utah and applied to existing child support arrearages. This income withholding procedure should apply to existing and future payors. All withheld income should be submitted to the Office of Recovery Services until such time as the Defendant no longer owes child support to the Plaintiff.

d. The issue of child support arrearages may be determined by further judicial or administrative process.

e. Each of the parties should be under mutual obligation to notify the other within ten (10) days of any change in monthly income.

*Does not apply*

12. Pursuant to U.C.A. 78-45-7.15 (1953) as amended, it is reasonable and proper that:

a. Both parties should be required to maintain insurance for medical expenses for the benefit of the minor children where available at reasonable cost.

b. Both parties shall share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of the insurance.

c. Both parties should share equally all reasonable and necessary uninsured medical expenses, including deductibles and co-payments, incurred for the minor children and actually paid by the parties.

d. The parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

e. A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with the Subparagraph "d" above.

13. Pursuant to U.C.A. 78-45-7.16 (1953 as amended) both parties should share equally the reasonable work-related or career or occupational training for child care expenses of the custodial

*Does not apply*

parent.

a. The non-custodial parent shall begin paying his or her share of child care expenses on a monthly basis immediately upon presentation of proof of the child care expense.

b. The parent who incurs child care expenses shall provide written verification of the cost and identity of a child care provider to the other parent upon initial engagement of a provider and thereafter on the request of the other parent. The parent shall notify the other parent of any change of a child care provider or the monthly expense of child care within 30 calendar days of the date of the change. A parent incurring child care expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if the parent incurring the expenses fails to comply with these provisions.

[ ] 14. The parties have no outstanding debts or obligations.

[ ] 14. During the course of the marriage, the parties have acquired certain debts and obligations. It is fair and reasonable that the parties pay the following:

a. The Plaintiff:

Obligation	Amount
Anderson Lumber	\$ 89.00
Home Base	\$ 357.00
Harmon's Hair	\$ 250.00
Gunnison Valley Hosp.	\$ 783.00
Dr. Nay	\$ 107.00
Dr. Beck	\$ 469.70
	\$
	\$

b. The Defendant:

Obligation	Amount
loan on truck \$4,000.00	\$ 150.00
mort on land	\$ 1000.00
	\$
	\$
	\$
	\$
	\$
	\$

c. All remaining debts and obligations should be the responsibility of the party who incurred the particular debt.

[ ] 15. During the course of the marriage relationship, the parties have acquired certain items of personal property. Said personal property of the parties should be distributed as follows:



a. To the Plaintiff: Hay trailer, 7 horses

b. To the Defendant: title to home + property, truck  
(Asson) all animals except the horses, household furnishings  
that remain

c. All remaining personal property should be awarded to each of the parties as they have heretofore divided it.

[ ] 16. The parties acquired no real property during the course of this marriage, nor do they presently own an interest in real property.

[X] 16. During the course of the marriage, the parties acquired certain real property to wit:

[ ] a. A home located at:

292 W - 4th So. , Manti, Utah,

more particularly described by the following legal  
description:

lot 2, Block 27, Plat "A", MANTI CITY SURVEY, Sanpete Co.,  
State of Utah

---

☐ b. The Plaintiff alleges that such property should be sold as soon as reasonably practicable and the proceeds of the sale applied as follows:

- i. First, to pay expenses of sale;
- ii. Second, to retire any and all mortgages and liens;
- iii. Third, to pay all marital debts and obligations;
- iv. Last, the balance remaining thereafter to be divided equally between the parties.

☐ b. It is fair and reasonable that the ☐ Plaintiff ☒ Defendant be awarded the home and real property as ☐ Plaintiff's ☐ Defendant's sole and exclusive property.

☐ b. The ☐ Plaintiff ☒ Defendant should be awarded the exclusive use and possession of the parties' home until the occurrence of the first of the following conditions:

- i. The youngest child of the parties reaches eighteen (18) years of age, marries, or otherwise becomes emancipated; or/
- ii. The party remarries;
- iii. The party ceases to use the home as the primary residence;
- iv. The party cohabits with a non-relative

adult of the opposite sex in the home.

[ ] c. Upon the occurrence of the first of the conditions enumerated above, the Defendant should receive an appropriate share of the equity existing at the date of the entry of the Decree of Divorce in this matter in said home as determined by an appraisal conducted by a mutually agreed upon appraiser, and deducting from the appraised value the amount of all encumbrances. The Plaintiff should receive all equity in excess of the Defendant's aforementioned share of equity in said home existing at the time of the entry of the Decree in this matter.

[ ] d. A home located at:

292 W. 4th St. Manti, Utah

more particularly described by the following legal description:

Lot 2, Tract 27, Plat "A", MANTI CITY SURVEY, Sanpete Co. State of Utah

[X] e. The Plaintiff alleges that such property should be sold as soon as reasonably practicable and the proceeds of the sale applied as follows:

- i. First, to pay expenses of sale;
- ii. Second, to retire any and all mortgages and liens;
- iii. Third, to pay all marital debts and obligations;

iv. Last, the balance remaining  
thereafter to be divided equally  
between the parties.

☐ e. It is fair and reasonable that the ☐Plaintiff  
☐Defendant be awarded the home and real property as  
☐Plaintiff's ☐Defendant's sole and exclusive property.

☐ e. The ☐Plaintiff ☐Defendant should be awarded the  
exclusive use and possession of the parties' home until the  
occurrence of the first of the following conditions:

- i. The youngest child of the parties reaches  
eighteen (18) years of age, marries, or  
otherwise becomes emancipated; or/
- ii. The party remarries;
- iii. The party ceases to use the home as the  
primary residence;
- iv. The party cohabits with a non-relative  
adult of the opposite sex in the home.

☐ f. Upon the occurrence of the first of the conditions  
enumerated above, the Defendant should receive an appropriate share  
of the equity existing at the date of the entry of the Decree of  
Divorce in this matter in said home as determined by an appraisal  
conducted by a mutually agreed upon appraiser, and deducting from  
the appraised value the amount of all encumbrances. The Plaintiff  
should receive all equity in excess of the Defendant's  
aforementioned share of equity in said home existing at the time of

the entry of the Decree in this matter.

☒ 17. Neither party should be awarded alimony.

☐ 17. It is reasonable that the Plaintiff be awarded a sum of not less than \$ 0 per month as alimony from Defendant.

☐ 17. It is reasonable that the Defendant be awarded a sum of not less than \$ 650.00 per month as alimony from Plaintiff.

☒ 18. The parties have acquired no interest in any pension or profit sharing plan during the course of the marriage.

☐ 18. The Defendant has pension and/or profit sharing plans or other retirement benefits through Defendant's place of employment. It is reasonable and proper that the Plaintiff receive one-half ( $\frac{1}{2}$ ) of all benefits accrued pursuant to such plans during the marriage.

☐ 19. The Plaintiff should be entitled to claim the parties' minor children as a tax deduction.

☐ 19. The Defendant should be entitled to claim the parties' minor child as a tax deduction.

☐ 20. The Defendant should be permanently restrained from bothering, harassing, annoying, threatening, or harming the Plaintiff at Plaintiff's place of residence, employment or any other place.

[ ] 21. Each party should be ordered to assume his/her own costs and attorney's fees incurred in prosecuting this action.

[ ] 21. It has been necessary for the Plaintiff to secure the services of an attorney to represent the Plaintiff in this action and it is reasonable that the Defendant be required to pay the Plaintiff's attorney's fees.

[ ] 22. It is reasonable and proper that the [ ]Plaintiff  
[X]Defendant be restored the use of her former name,  
Hancock.

[ ] 23. The Plaintiff has received public assistance from the State, and has assigned the right to collect child support accrued during the time public assistance was received to the State of Utah. Therefore, pursuant to the Utah Code Ann. 78-45-9, (1953), as amended, the State of Utah should be joined as a party in interest in the above-entitled action.

From the foregoing Findings of Fact, the Court now makes and enters its:

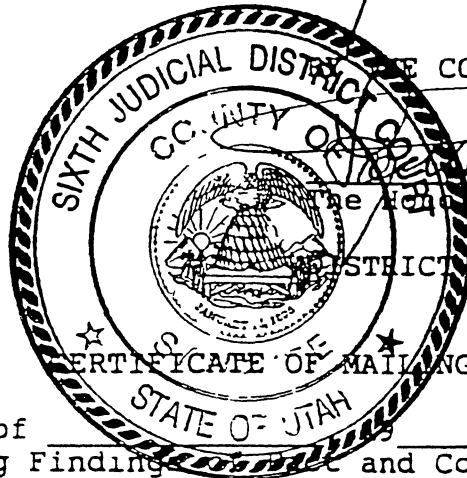
#### CONCLUSIONS OF LAW

The Court concludes that the parties are subject to the jurisdiction of the Court as set out above under the Court's

Findings of Fact, and that the Plaintiff is entitled to a Decree of Divorce, the same to become final upon entry herein.

The Court concludes that all other issues of dispute have been resolved by the Court pursuant to the above Findings of Fact.

DATED this 11th day of January, 1998.



On this \_\_\_\_\_ day of \_\_\_\_\_, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was mailed, postage prepaid to \_\_\_\_\_

#### CERTIFICATE OF DELIVERY

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, postage prepaid, to \_\_\_\_\_ and placed a true and correct copy of the same in the Attorney General's box in the Clerk's Office of the \_\_\_\_\_ Judicial District Court.

Tab D



IN THE SIXTH JUDICIAL DISTRICT COURT MAR - 6 2003  
IN AND FOR SANPETE COUNTY, STATE OF UTAH

KAZIAH MAY HANCOCK, and :  
CINDY STEWART, :  
 :  
Plaintiff, : Civil No. 980600126  
 :  
vs. : Judge David Mower  
 :  
THE TRUE AND LIVING CHURCH :  
OF JESUS CHRIST OF LATTER- :  
DAY SAINTS OF THE LAST DAYS, : Deposition of:  
JAMES D. HARMSTON, WILLIAM : DOUG JORDAN  
B. LITHGOW, KEITH LARSON, :  
DANIEL (DAN) SIMMONS, KAY :  
CRABTREE, KENT BRADDY, : Reported by:  
PHILLIP P. SAVAGE, IVAN : JILL RINGEL \* CSR, RPR  
DOUGLAS JORDAN, JOHN DOES :  
1-5, :  
 :  
Defendants. : ORIGINAL

The Deposition of DOUG JORDAN was taken on behalf  
of the Defendants pursuant to Notice on 5/22/00 at the  
hour of 1:10 p.m. at the Utah County Courthouse, 125  
North 100 West, Provo, Utah.



525 WELLS FARGO PLAZA  
170 SOUTH MAIN STREET  
SALT LAKE CITY UTAH 84101  
(801) 328 1188 / 1 800 DEPOMAX  
FAX 328 1189



1 financial bind?

2 A. That's right.

3 Q. And he is the head of the TLC church?

4 A. That's true.

5 Q. And he didn't go to Andy Ericson?

6 A. That's true.

7 Q. Why is that?

8 A. Because it had to do as a person in  
9 need of money.

10 Q. For his personal need?

11 A. I don't know if it was for his personal  
12 need or what he as going to do with it.

13 Q. He didn't tell you what he needed the  
14 money for?

15 A. I didn't ask.

16 Q. So when people came to you, you didn't  
17 ask what they needed it for?

18 A. No, I had already known that they were  
19 going to ask.

20 Q. But not what for?

21 A. I never asked. They told me if they  
22 wanted to. If they didn't and it didn't line up with  
23 what was involved and what was given to me, I  
24 wouldn't participate.

25 So if Jim came down and asked me for

1 money, I would have to think about it. I did pray  
2 about it. And I was told to give him double what he  
3 needed. And not to put a feather in my hat, but  
4 that's what I was told.

5 Q. So if it's not a feather in your hat,  
6 it's doing your duty; isn't it? Wasn't it your duty  
7 to give that money to him?

8 A. My duty to God.

9 Q. Yeah. That's what a stewardship is;  
10 isn't it?

11 A. Well, I had the money and I gave it.

12 Q. You had a big chunk of money that Jim  
13 had handed you this check back that you consecrated  
14 and you were to use it for doing things as directed  
15 by the spirit?

16 A. Yeah, because you got the direction.

17 Q. And one of the things the spirit  
18 directed you to do was give a chunk of it back to Jim  
19 on this occasion when he asked for it?

20 A. Yeah.

21 Q. And a lot of people came to you and  
22 said, We understand you have got money. Can we have  
23 some? And sometimes you said yes and sometimes you  
24 said no?

25 A. That's true.

1           Q.    That was your stewardship, to sort that  
2 out and decide?

3           A.    Well, if you want to classify that, the  
4 money was handed back to me and I could do with it  
5 what I wanted to do with it.

6           Q.    What you wanted to do?

7           A.    What I wanted to do was bring forth  
8 Zion. Now, if I did it gambling or if I did other  
9 things, then I would not be in good standing with  
10 God, I would assume.

11                   Whether or not you call it a  
12 stewardship or what you call it, you know, there's so  
13 many names that you could tag this to. It boggles  
14 the mind to get tied up in little words.

15                   What I did was I had money. I gave it.  
16 It was May's money. It was also my money. I gave it  
17 away no strings attached. Whether or not you  
18 classify it as consecration or not, I don't.

19                   I classify it as God said, Okay, you go  
20 ahead and do it. And whenever I have not done that,  
21 I have always got in trouble. I know people don't  
22 understand me. They think I'm cooky, I'm a  
23 right-brainer, I can't express myself, but what I'm  
24 saying here is the gospel truth.

25                   I don't want to be classified as a

1 person giving away other people's money when other --  
2 when the person that it's their money gave it to me  
3 to consecrate with.

4 I want to make that pertinent, that  
5 people understand that I'm -- that I was doing it as  
6 a head of a household. I was doing it for a cause  
7 that I thought would take place.

8 Q. And you were committed to use all your  
9 money of your family for that cause?

10 A. Not all the money. You know, we had to  
11 eat and we had to pay bills and we had to do things.

12 Q. All of the surplus money of your  
13 family?

14 A. It was not squandered.

15 Q. All the surplus money of your family  
16 for that cause?

17 A. To bring forth Zion? Oh, absolutely.

18 Q. All that money that was returned to you  
19 from the altar was for that purpose; wasn't it?

20 A. To bring forth Zion. To help the cause  
21 of establishing a society that was -- that was far  
22 beyond the society of today.

23 Q. Okay. Now, tell us with hindsight,  
24 were those good decisions? Did they build the cause?

25 A. You know, that could be a trick

1 question. At the time it was helping the cause. And  
2 I still think it was to help the cause.

3 Q. Okay. So with hindsight you still  
4 think it built the cause?

5 A. Uh-huh. I think there's a cause beyond  
6 the cause that I don't want to get involved with  
7 because it will bother your mind of getting involved  
8 with scripture and that type of -- it would be better  
9 if we just put that to rest.

10 Q. Okay.

11 --o0o--

12 FURTHER EXAMINATION

13 BY MR. HILTON:

14 Q. Were you married to Kaziah May before  
15 the Indianola property was sold?

16 A. Before, yes.

17 Q. Did you have a prenuptial agreement?  
18 Prenuptial being an agreement before you got married  
19 on how you would hold different property or different  
20 assets in your marriage.

21 A. No, we just played it by ear.

22 Q. And was there any time where she  
23 requested to do a postnuptial agreement, some kind of  
24 agreement after you were married?

25 A. That agreement on using the money?

1           Q.    An agreement saying this was my  
2           property I brought into the marriage.  I want to keep  
3           it separate.

4           A.    No, she gave it to me.  I was on the  
5           account.

6           Q.    But you never had a written agreement  
7           where you sat down and spelled it out?

8           A.    No.

9           Q.    That's all.

10           (The Deposition concluded at 4:40 p.m.)

11                               --o0o--

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Tab E



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

THIS ORDER / JUDGMENT  
ENTERED AND MAILED  
TO PARTIES ON:

APR - 4 2008

DEPUTY CLERK  
U.S. BANKRUPTCY COURT

In re:

PHILLIP P. SAVAGE,

Debtor.

Bankruptcy Number 00-32966 JAB

[Chapter 7]

MEMORANDUM DECISION AND ORDER  
ESTIMATING CLAIMS 4 AND 7

Don S. Redd, Layton, Utah, appeared representing Kaziah May Hancock and Cindy Sue Stewart, Claimants.

Budge W. Call and Kevin Bond, Salt Lake City, Utah, appeared representing Phillip P. Savage, Debtor.

This seemingly innocuous estimation proceeding under 11 U.S.C. §502(c)(1) disguises not only the unusual basis for the claims asserted against this solvent chapter 7 estate, but also the heavy emotional toll exacted upon the parties by the underlying events. The claimants, Kaziah May Hancock (Hancock) and Cindy Sue Stewart (Stewart) (collectively the Claimants) filed unliquidated claims against the estate declaring "Law suit for fraud, breach of contract, etc." as the basis for each of their respective claims (Claims). Phillip P. Savage (Savage), the Chapter 7 debtor, objects to the allowance of the Claims.

Notwithstanding the unusual factual setting for these Claims and stripped of their unique

origin, the resolution of the issues presented is quite straightforward. Based upon the evidence presented, having made an independent review of applicable law, and having set for the rationale of the decision below, the Court estimates both Claims at zero.

## FACTS

### *Savage and the TLC*

At the times the events occurred that gave rise to the disputed Claims, Savage was a member of The True and Living Church of Jesus Christ of Saints of The Last Days (TLC), a fundamentalist religious organization located near Manti, Utah. James D. Harmston (Harmston) was the President and Prophet of the TLC. Savage believed in Harmston's teachings and that Harmston was God's spokesperson on earth. Savage originally occupied the governing position of an Apostle in the TLC's Quorum of the Twelve. Savage later occupied the position of Patriarch for the TLC as one charged with the responsibility for giving religious blessings to the members of the church.

The TLC taught a religious doctrine entitled the Law of Consecration. This doctrine is evidenced by a Revelation on Consecration dated 19 March 1996, a document in which Harmston described a communication that he declares he had with the Lord. It states, in part,

And it shall come to pass, that the Bishop of my Church, after that he has received the properties of My Church, that it cannot be taken from the Church, he shall appoint every man a steward over his own property, or that which he has received, inasmuch as is sufficient for himself and family.<sup>1</sup>

The Revelation on Consecration was signed by Harmston, as President of the TLC, and affirmed by the members of the Quorum of the Twelve, including Savage. The document was not signed

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<sup>1</sup> Exhibit B.

by any other member of the TLC or by the Claimants. Hancock testified that she was aware of this teaching and that the Revelation itself was brought to church meetings, circulated among the members and accepted as a revelation from God to Harmston.

The Law of Consecration was described differently by various witnesses. One witness described it as everything a member is and all of the member's possessions belonged to God and that TLC members were to covenant to make available all the member's time and talents to build up the kingdom of God. The Law of Consecration was also described as a symbolic proceeding. TLC members would draft a list of physical assets and personal talents that were being committed to the TLC and then submit the list to members of the TLC Bishopric. The Bishopric would, in turn, commit the assets back to the church member's possession as a steward for the TLC. Others, including the Claimants, took a more literal view of the Law of Consecration. They believed that their property would be physically, rather than symbolically, transferred to the TLC. Thereafter, they would physically receive back property as their stewardship.

### *Hancock*

Hancock owned real property in the Indianola, Utah area (Indianola Property) that she acquired in the late 1980's and upon which she raised cattle and goats. She married Ivan Douglas Jordan (Jordan) in 1991 and he moved to her Indianola Property. Jordan was a member of the TLC. Hancock joined the TLC in 1993, adopted the TLC doctrine of plural marriage, and she and Jordan eventually decided to move to Manti, Utah. Hancock proceeded to sell her Indianola Property to effectuate the move, which sale was concluded in March of 1996.

Harmston taught Hancock that the Law of Consecration required that she was to put all her belongings in the hands of the TLC through Jordan. It was Hancock's understanding that she

should deliver certain of the Indianola Property sale proceeds to Jordan to then be delivered to the TLC. Jordan, described by all as a very caring and generous man, distributed upwards of \$250,000 of the Indianola Property sale proceeds to various entities and individuals, including Harmston and the TLC. He also gave approximately \$2,500 to Savage as a gift to be used to remodel his home.

On approximately September 6, 1996, Savage, in his capacity as Patriarch, gave Hancock a religious Patriarchal Blessing. This blessing led her to believe that she had a heightened obligation to participate in the Law of Consecration. Hancock testified that she believed that Savage, acting in his capacity as Patriarch and pronouncing a blessing upon her, was functioning as the mouthpiece for God. As such, it was God making promises to her, not Savage. Savage also testified that his statements to Hancock were statements of God, not his own statements. Hancock testified that as a result of the blessing, she felt obligated to surrender her property to Jordan for delivery to the TLC and that Savage “shamed” her in to doing so. The evidence establishes that the liquidation of the Indianola Property took place several months prior to the blessing. The evidence is unclear however, as to whether the transfers of the sale proceeds from Hancock to Jordan, and then from Jordan to others including the TLC, occurred before or after the blessing was given in September 1996.

At a meeting on a date uncertain between members of the Bishopric, Jordan, Hancock and Jordan’s other wives, Hancock believes she was promised a stewardship. She testified she believed she was to receive 20 acres of real property upon which she could raise livestock and 20 shares of water as her stewardship in return for surrendering the Indianola Property sale proceeds to Jordan and the TLC. Others present at the meeting dispute Hancock’s allegation that she was

promised any real property. Savage was not present at the meeting.

Hancock introduced selected pages of Jordan's May 22, 2000, deposition in an effort to establish that an agreement had been reached regarding Hancock's receipt of a stewardship. Taken as a whole, this testimony is vague and inconclusive in establishing any agreement. It does not establish specific terms or obligations, the parties to the conversations, the relative dates or the specific subject matter. The testimony references various conversations, but it does not establish any agreements.

Hancock eventually located 15 acres of real property she wished to have as her stewardship upon which she and Jordan made a down payment in June of 1997. She believed that members of the hierarchy of the TLC, including Savage, approved of the purchase of the 15 acres. No document between Hancock and the TLC or Savage exists that memorializes that understanding. Hancock also asserts that she was promised that the TLC would make the payments on the real property for her. It did not.

Eventually, Jordan was excommunicated from the TLC, and on August 25, 1997, Hancock resigned her membership in the church. Jordan<sup>2</sup> and Hancock were subsequently divorced by a Decree dated January 6, 1998. The Decree does not set forth any claims held by Hancock against Jordan or the TLC for the proceeds from the sale of the Indianola Property.

Hancock claims that she is emotionally devastated as a result of the alleged "abusive conspiracy" to obtain her money and the TLC's refusal to provide her property for her stewardship. She is genuinely fearful that she will suffer bodily harm at the hands of TLC members for bringing this and other actions against the TLC to regain the Indianola Property

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<sup>2</sup> Jordan eventually died, although the date of that occurrence is not in the record.

sales proceeds.

Stewart

Stewart's introduction to the TLC is also premised upon a close family association. Her claim is all the more difficult for her emotionally because of her strained relationship with Savage. Stewart was adopted by Savage as a 12-year-old child who had already experienced a painful and difficult childhood. Over the years, the relationship between Stewart and Savage became uneasy. Savage testified that Stewart had "disowned him" as her father three times.

As an adult, and following a troubling divorce, Stewart was convinced by Savage to join him in Manti, Utah so she could investigate Harmston, the TLC and its teachings. Yet, Stewart testified that at the time she joined Savage in Manti, it was her desire to do everything she could to please her father.

Stewart eventually chose to join the TLC. Stewart was convinced by Harmston to give approximately \$12,000 in proceeds from her 401(k) retirement account to Harmston and the TLC. The 401(k) was essentially the only asset Stewart owned. Stewart testified that she believed the transfer of the \$12,000 to the TLC was a loan, that the loan would eventually be repaid by the TLC, and that the TLC would pay any tax penalties that arose as a result of the early liquidation of her 401(k).

Harmston testified that the transfer was not a loan, although Harmston's overall testimony is not particularly credible. Stewart believes that Savage "vouched" for Harmston, that Harmston, not Savage, promised she would be repaid money lent to the TLC, and that the TLC would take care of all her needs for the remainder of her life. Stewart admits that she gave all her funds to Harmston, not Savage. Stewart testified that Savage did not receive any direct benefit

from the transaction, except to be proud of his daughter for having embraced the TLC and its teachings. Like Hancock, Stewart appears genuinely fearful that bodily harm will befall her for asserting her claims against Savage and the TLC.

### **This Proceeding**

Savage filed this Chapter 7 case on November 8, 2000. The trustee requested and the Court fixed August 22, 2001, as a bar date for filing claims. Hancock filed claim number 4 for \$462,681.33 and Stewart filed claim number 7 for \$32,839.84. Both claims were filed on April 12, 2002. The Claimants both represented by the same attorney and the Claims were signed on the Claimants' behalf by their attorney. The description listed as the basis for each claim is the same: "Law suit for fraud, breach of contract, etc." No supporting documentation is attached to the Claims and there is no information presented on the face of either claim to identify the bona fides of the lawsuit. Hancock's claim indicates that the purported debt upon which the claim is based arose in "1993 through 1997." Stewart's claim fixes the dates that the purported debt arose as "1995 through 1997." The Court looks to these facts to make an initial determination as to the allowability of the Claims.

## **DISCUSSION**

### **I. Procedural Posture of the Case**

Savage filed objections to claims number 4 and 7 asserting the Claims were not timely filed and that no liability existed. The Claimants responded, referencing certain related proceedings in state court as the underlying basis of their Claims. The Court determined that the most efficient manner for dealing with these unliquidated Claims and avoiding undo delay in

administering the estate was through an estimation proceeding.<sup>3</sup> The scope of the evidentiary hearing was further narrowed to make a preliminary determination of whether Savage was liable to the Claimants prior to any determination of the estimated amount of any allowed claims. Upon conclusion of the evidentiary hearing, the matter was taken under advisement.

## ***II. Jurisdiction and Burden of Proof***

The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334 and 157. Venue in this division is proper. This is a core proceeding as contemplated by 28 U.S.C. § 157(b)(2)(A), (B) and (O), except to the extent precluded by 28 U.S.C. § 157(b)(5).

A properly filed proof of claim constitutes prima facie evidence of the validity and amount of the claim.<sup>4</sup> Such a claim is deemed allowed unless a party in interest objects.<sup>5</sup> The objecting party has the burden of going forward with evidence supporting the objection. Such evidence must be of a probative force equal to that of the allegations contained in the proof of claim. However, an objection raising only legal issues is sufficient. Once the objecting party has reached this threshold, the creditor has the ultimate burden of persuasion as to the validity and amount of the claim.<sup>6</sup>

## ***III. Timeliness***

Savage objects to the Claims stating that they are untimely and should therefore be disallowed. Fed. R. Bankr. P. 3002(c)(5) governs the filing of a Proof of Claim in these

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<sup>3</sup> 11 U.S.C. § 502(c).

<sup>4</sup> Fed. R. Bankr. P. 3001(f).

<sup>5</sup> § 502(a).

<sup>6</sup> *In re Geneva Steel Co.*, 260 B.R. 517 (10th Cir. B.A.P. 2001).



circumstances. It states that if notice of insufficient assets to pay a dividend was given to creditors and thereafter the clerk of court gives notice that payment of a dividend appears possible, creditors may file proofs of claim within 90 days after the mailing of the notice. That date was fixed as August 22, 2001.

The Claims were filed April 11, 2002, at, the Claimants assert, the invitation of the chapter 7 trustee who was having difficulty obtaining sufficient claims to deplete the liquidated assets on hand in the estate. Section 502(b)(9) of Title 11 provides that an untimely filed claim may be disallowed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of § 726(a).<sup>7</sup> Since no distribution has been made in this case, and the case appears to be able to satisfy all timely filed claims, there is no basis for disallowing the claims, only for subordinating payment as set forth in the Code.<sup>8</sup>

Therefore, as properly filed Claims, they constitute prima facie evidence of the validity and amount of the Claims and are deemed allowed subject to the objection of a party in interest. In this case, Savage has objected and presented sufficient legal argument, in light of the unliquidated nature of the claims and the lack of any supporting documentation to state the basis of the claims, that the burden of going forward with evidence supporting the Claims has shifted to the Claimants.

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<sup>7</sup> § 502(b)(9).

<sup>8</sup> *Drew v. Royal (In re Drew)*, 256 B.R. 799, 804 (10th Cir. B.A.P. 2001) (§ 502(b)(9) indicates that tardily-filed claims are to be allowed if they are covered by § 726(a)(3). In a chapter 7 case, claims tardily filed by creditors who had notice of the bankruptcy case are covered by § 726(a)(3), which indicates that such claims are penalized by being subordinated to timely-filed ones, but are still to be paid before any surplus is distributed to the debtor).

#### **IV The Parties' Positions**

In their response to Savage's claim objection, the Claimants eventually submitted a copy of the amended state court complaint filed in the 6<sup>th</sup> Judicial Court in and for Sanpete County, State of Utah, case no. 980600126. This appears to be the missing complaint which names Savage as a party but against whom no judgment was ever entered because of Savage's bankruptcy filing, and the Claimants' joint pleadings admit that there is no judgment against Savage from the state court action.

The Claimant's response incorporates the state court complaint which sets forth five basis for the Claims: (1) breach of a parole contract between the claimants, Savage and the TLC; (2) fraud by Savage founded upon promises of Savage and his religious colleagues which wrongfully induced the claimants to give them money; (3) that Savage was unjustly enriched via his religious organization and the funds TLC received from the Claimants; (4) the activities engaged in by Savage and his TLC colleagues constitute a racketeering enterprise under Utah Code Annotated §76-10-1601 et seq.; and (5) Savage intentionally inflicted emotional harm on each of the Claimants.<sup>9</sup>

Having now conducted the evidentiary hearing, it appears that the specific facts related to

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<sup>9</sup> Claimants also seek a ruling of non-dischargeability in the final sentences of their trial brief and in oral argument. Such a request must be brought as an adversary proceeding within time limits set by the Bankruptcy Code. The applicable time limits have long since expired. Fed.R.Bankr.P. 4007(c) requires that a complaint under § 523(c) be filed no later than 60 days after the first meeting of creditors. *Themy v. Yu (In re Themy)*, 6 F.3d 688,689 (10th Cir. 1993) (adopting strict interpretation of rule 4007 (c) sixty day time limit and binding creditor with actual notice of bankruptcy time limit); *Walker v. Wilde (In re Walker)* 927 F.2d 1138, 1144-45 (10th Cir. 1991) (holding that § 523 (c) claims can not find refuge under § 523(a)(3) if creditors had actual knowledge of bankruptcy case in time to timely file proof of claim and request determination of discharge). Although the trustee sought various extensions of time to file a proceeding under § 727, the subsequent proceeding was dismissed with prejudice and Savage's discharge was issued on May 16, 2001. Therefore, a ruling of non-dischargeability is procedurally improper and time barred. The Court declines to rule on whether the Claims asserted by the Claimants are dischargeable and makes no finding as to whether the Claimants received timely notice of this case, in the context of this claims estimation proceeding.

Hancock which give rise to her claim are premised upon her failure to receive a stewardship of land that she believes she was promised. As to Stewart, her claim is that the 401(k) funds given to Harmston were a loan that has not been repaid.

Savage responds that the state court law suit provides no basis for the Claims because (1) he was not subject to the state court judgment, (2) the actual state court judgement was not attached to the Claims as filed and that such a failure is fatal to the validity of the Claims, (3) the referenced law suit and accompanying judgment does not include Savage, and (4) the Claimants have no legal basis upon which to file a claim. More to the substance of the matter, Savage argues that he did not commit any fraud or breach any contract with the Claimants. Savage asserts he could not have breached any contract or committed any fraud relative to the Claimants because he did not receive any money from the Claimants, did not enter into any contracts with them and did not make any representations to them. Savage also argues that any assertion by Hancock that she was entitled to a stewardship of land is void under the statute of frauds. Further, Savage asserts that this Court may not meddle in matters based on the parties' religious beliefs because any such ruling would necessarily implicate an excessive governmental entanglement with religion thus implicating the First Amendment to the United States Constitution. Finally, Savage argues that if a claim existed in Hancock's favor, it was against Jordan, not Savage, and any such claims against Jordan were resolved in the subsequent divorce proceeding.

V. *Core Matters and the First Amendment*

The Court has previously ruled that this is a core proceeding as contemplated by 28 U.S.C. § 157(b)(2)(A), (B) and (O), except to the extent precluded by 28 U.S.C. § 157(b)(5).

Section 157(b)(5) prevents this Court from trying personal injury tort claims. Therefore, to the extent that the Claims assert a debt owed by Savage as a result of the intentional infliction of emotional distress while acting in his ecclesiastical role with the TLC, those tort claims cannot be adjudicated in this forum. Indeed, it appears that they cannot be adjudicated elsewhere if premised upon a state law tort of intentional infliction of emotional distress, for “it is well settled that civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by the First Amendment under the entanglement doctrine.”<sup>10</sup>

## **VI. Breach of Contract**

The Claimants assert that they were promised a stewardship under the TLC Law of Consecration and that this promise constitutes a binding contract between them and Savage. This assertion is unavailing. “It is fundamental that a meeting of the minds on the integral features of an agreement is essential to the formation of a contract.”<sup>11</sup> The evidence indicates that there was no meeting of the minds between Savage and either Claimant.

As to Hancock, if the meeting between members of the Bishopric, Jordan, Hancock and Jordan’s other wives, forms the basis of Hancock’s contract claim, others present at the meeting, including members of the TLC, dispute that an agreement was reached that she would be supplied land. Even if such an agreement was reached, it would have been between the TLC and Hancock, and not Savage and Hancock. Indeed, as to Hancock’s claim, there was no evidence

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<sup>10</sup> *Franco v. The Church of Jesus Christ of Latter-day Saints*, 21 P.3d 198, 203 (Utah 2001) and cases cited therein.

<sup>11</sup> *Richard Barton Ent. Inc., v. Tsern*, 928 P.2d 368, 373 (Utah 1996) (citing *Pingree v. Cont’l Group of Utah, Inc.*, 558 P.2d 1317, 1321 (Utah 1976))

admitted at the hearing which established that Hancock and Savage had a meeting of the minds relative to any obligations which Savage individually owed to Hancock. The only direct payment received by Savage came from Jordan, Hancock's husband, in the form of the \$2,500 gift. There is no evidence that there was any agreement between Hancock, Jordan and Savage that those funds should be repaid to Hancock. To the contrary, from the uncontroverted testimony, Jordan was a generous man who regularly shared his wealth with others.

Similarly as to Hancock, and even though there is conflicting evidence as to whether her 401(k) transfer was a consecration or a loan, there is no evidence in the record to indicate that Stewart and Savage had a meeting of the minds relative to any obligation Savage had to repay Stewart the 401(k) funds. Assuming that indeed Savage "vouched" for Harmston, such an endorsement from a believing father to his obedient adult child is insufficient at law to make Savage a party to any contract which may have existed between Stewart and Harmston, or Stewart and the TLC. There is no evidence establishing that Savage was present at the time Stewart and Harmston agreed that Stewart would make the transfer of her 401(k) assets. Nor is there any documentation establishing any rights or obligations between the parties. While Stewart may have been trying to please her father when she delivered the funds to Harmston, such action does not make Savage liable for repayment of the funds to Stewart.

Further, "[w]hen there exists only the facade of a promise, i.e., a statement made in such vague or conditional terms that the person making it commits himself to nothing, the alleged promise is said to be 'illusory'".<sup>12</sup> Assume for the moment that Savage, because he was once a member of the Quorum of the Twelve, was somehow authorized to enter into a contract with the

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<sup>12</sup> *Resource Mgmt. Co. v. Weston Ranch & Livestock Co.*, 706 P.2d 1028, 1036 (Utah 1985).

Claimants on behalf of the TLC. Also assume that the basis of the promise to the Claimants regarding their stewardship was the Revelation on Consecration. Even with these assumptions, the contract argument nevertheless fails because the Revelation on Consecration is vague and conditional. It does not specifically refer to either Hancock or Stewart. Nor does it set forth what property may be the subject of the stewardship. It “neither binds the person making it, nor functions as consideration for a return promise.”<sup>13</sup> It is simply a statement of religious doctrine and cannot be found to be an offer that would be contractually binding.

Finally, if the crux of Hancock’s contract claim is that the TLC failed in its promise to make payments on Hancock’s 15 acres, the claim also fails as a matter of law because it violates several aspects of the statute of fraud. If the TLC was to be the purchaser of the 15 acres, no document exists to support that critical fact, and without documentation, any such contract must fail.<sup>14</sup> If Hancock asserts that the agreement was that the TLC would answer for the debt incurred by Hancock and Jordan, it would likewise be unenforceable.<sup>15</sup> Had there been such an agreement, it likely would have taken longer than a year to perform, and without a writing to support the promise, would be unenforceable.<sup>16</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> UTAH CODE ANN. § 25-5-1(2002) (No interest in real property, other than a lease for less than a year, may be created unless conveyed in writing subscribed by the party creating the same); *Stangle v. Ernst Home Ctr., Inc.*, 948 P.2d 356 (Utah Ct. App. 1997) (accord).

<sup>15</sup> UTAH CODE ANN. § 25-5-4 (2) (an agreement is void unless in writing if it promises to answer for the debt of another).

<sup>16</sup> UTAH CODE ANN. § 25-5-4 (1) (Every agreement that by its terms is not to be performed within one year from the making of the agreement must be in writing).

## VII. Fraud

The more interesting argument made by the Claimants is that they were defrauded out of their funds. To establish fraud, the Claimants must prove the following by clear and convincing evidence:

(1) That a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage.<sup>17</sup>

These Claims, to the extent they assert fraud as a basis, are not impacted by the First Amendment.<sup>18</sup> While a compelling case might be made in a different forum to establish that the Claimants may have been deceived by someone affiliated with the TLC, or may have been intimidated with threats of serious bodily harm and as a result parted with their funds, such a compelling case has not been made here against Savage.

Hancock asserts that Savage gave her a Patriarchal Blessing, the contents of which compelled her to deliver the Indianola Property sale proceeds to Jordan, with Jordan having the responsibility under TLC doctrine to then deliver the same to the TLC. However, the Patriarchal Blessing did not cause Hancock to liquidate the Indianola Property in the first place. The liquidation predated the Patriarchal Blessing given to Hancock. Therefore, in order to make a case for fraud, Hancock would have to prove that the representations made to her by Savage in

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<sup>17</sup> *Mikkelsen v. Quail Valley Realty*, 641 P.2d 124, 126 (Utah 1982) (quoting *Pace v. Parish*, 247 P.2d 273, 274-75 (Utah 1952)).

<sup>18</sup> *Franco*, 21 P.3d at 207.

the Patriarchal Blessing concerned a presently existing material fact that was false, that Savage knew of the falsity or made the statements recklessly in order to induce Hancock to part with her money, and that she acted reasonably and in reliance upon those statements to her injury. In addition, she must prove this by clear and convincing evidence.

This Court cannot find that Savage knew the statements he made in the Patriarchal Blessing were false at the time made. And, it is impossible to prove that they are, in fact, false. More to the point, it is difficult to conclude that it was those statements that induced Hancock to surrender her assets to Jordan. At the time she liquidated the Indianola Property and at the time she consecrated her funds to Jordan and then to others including the TLC, Hancock apparently truly believed in the teachings of Harmston and the TLC. Although she may have felt an added responsibility or urgency to surrender her funds as a result of the Patriarchal Blessing, it is impossible to separate her actions that were motivated by her religious convictions from her reliance upon the statements in the Patriarchal Blessing.

Stewart has not presented any clear and convincing evidence that Savage defrauded her of the funds in her 401(k). Since “vouching” for Harmston is the evidentiary link between Savage and Harmston’s or the TLC’s acquisition of Stewart’s funds, Stewart must prove that Savage knew at the time he urged Stewart to transfer the funds that Harmston was not trustworthy or reliable, or further, that he was not worthy of the religious devotion that Savage placed in him. Although Stewart may now disbelieve Harmston’s credentials, and indeed may have good reason to, there is no evidence that Savage held such disbelief relative to Harmston at the time Stewart



parted with her funds. Further, it appears that much, if not all, of Stewart's motivation was to prove herself to be "the golden child," a devoted daughter to Stewart, rather than by placing an objective reliance upon Savage's opinion of Harmston. Therefore, Stewart has failed to carry her burden to prove fraud.

Both Claimants assert that they have received threats of physical harm by persons associated with the TLC; presumably resulting from Claimants' attempts to retrieve their funds. The Court has no doubt that the Claimants fears are real and substantial, and may, in fact, be based upon threats received from individuals that may be connected with the TLC. However, those threats would only be relevant to this proceeding in two ways: (1) if the threats of physical harm induced the Claimants to surrender their funds, and (2) if Savage made the threats or caused them to be made. Neither scenario has been alleged or proved.<sup>19</sup>

## CONCLUSION

This ruling will seem harsh to the Claimants for they have lost both their money and their once devoutly held religious convictions. Sometimes the law can remedy the first - it can seldom remedy the second. The Claimants have simply failed to muster sufficient evidence to prove their claims against Savage. Whether the Claimants have a cause of action against Harmston, the TLC or others is not within the province of this Court. Therefore, it is hereby

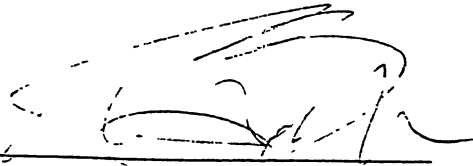
**ORDERED**, that claim number 4 is estimated at zero, and it is further

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<sup>19</sup> The Claimants assert that their Claims also arise under the civil penalty provisions of the Utah Pattern of Unlawful Activity Act, UTAH CODE ANN. § 76-10-1605 (2002) apparently as itemized in the State Court Complaint. The Complaint recites that Harmston is the person who has allegedly committed theft by deception, theft of services, unlawful dealing with property by a fiduciary, and communications fraud. The Court expresses no opinion regarding these allegations against Harmston, the TLC or others associated therewith besides Savage. Section 76-10-1605(1) requires that the plaintiff be injured by the person who is engaged in conduct forbidden by the statute. The Claimants have failed, as set forth above, to prove by clear and convincing evidence that Savage engaged in such conduct.

**ORDERED**, that claim number 7 is estimated at zero.

**DATED** this 4/<sub>,</sub> day of April, 2003.

A handwritten signature in black ink, appearing to read 'J. Boulden', written over a horizontal line.

JUDITH A. BOULDEN  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **MEMORANDUM DECISION AND ORDER ESTIMATING CLAIMS 4 AND 7** upon the following at the address set forth below, postage prepaid, by depositing the same in the United States Mail on the 4th day of April, 2003.

Don S. Redd  
44 North Main  
Layton, UT 84041  
Attorney for Kazaih May Hancock and Cindy Stewart, Claimants

Budge W. Call  
311 South State , Suite 450  
Salt Lake City, UT 84111  
Attorney for Phillip P. Savage, Debtor

Stephen W. Rupp  
McKay, Burton & Thurman  
10 E. South Temple, # 600  
Salt Lake City, UT 84133

  
\_\_\_\_\_  
Law Clerk

To Phil Savage \$ 31,659.<sup>92</sup>

Tab F

DISTRICT COURT, SANPETE COUNTY, UTAH  
160 North Main  
Manti, Utah 84642  
Telephone: 435-835-2131 Fax: 435-835-2135

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,  
KENT BRADDY, JEFF HANKS, BART  
MUSTROM, JOHN HARPER and JOHN  
DOES NOS. 1-5,

Defendants.

**DECISION IN REGARDS TO  
MOTION TO DISMISS**

Case No. 980600126

Assigned Judge: DAVID L. MOWER

A portion of this case is presently at issue and ready for a decision. The issue is raised by the combination of the Amended Complaint and a Motion to Dismiss.

The Amended Complaint was filed on March 10, 1999. The Motion to Dismiss was filed on March 14, 2003 by Attorney Kevin Bond on behalf of the defendants represented by him.

**INTRODUCTION**

The analytical method to be used is this: Assume that the complaint is true and then analyze its claims to see if any are deficient.

ANALYSIS

The Amended Complaint contains five separate claims or causes of action. I intend to analyze each one separately.

Part One - First Cause of Action

“BREACH OF CONTRACT–ALL DEFENDANTS.” The analytical method I prefer to use is to search for the verbs in the language of the document. This helps me focus in on the most relevant language of the claim. This method has led me to the following language which is quoted directly from paragraphs 9, 11, and 12 of the Amended Complaint. I believe that this language is the essence of the claim in the first cause of action.

Plaintiffs **were ... promised** by the [defendants] that they would receive ... a “stewardship” of property or support ... .

Plaintiffs **did deliver** money, goods, and services ... .

Plaintiffs **never received** a “stewardship ... .”

There are two types of defendants in this case, individuals and organizations. Two organizations are referred to by name in the Amended Complaint. One of those is “The True and Living Church of Jesus Christ of The Saints of the Last Days.” The other is “The Church of the Firstborn.”

The Amended Complaint contains several instances of words in quotation marks. I will list them here.

“the TLC”

“Bishopric”  
“stewardship”  
“consecrate”  
“consecrated”

Sometimes an author uses quotation marks to signify words with special or unique meaning based on circumstances or relationships. That could certainly be true in this case. However, the drafter of the Amended Complaint has not explained the reason for placing certain words in quotation marks. I will use the common dictionary definitions for these words.

Here are two of those definitions:

**Stewardship**

Pronunciation: 'stüü-&rd-"ship, 'styüü-; 'st(y)u(-&)rd-

Function: **noun**

Date: 15th century

- 1 : the office, duties, and obligations of a steward
- 2 : the conducting, supervising, or managing of something;  
especially : the careful and responsible management of something  
entrusted to one's care <stewardship of our natural resources>

**Steward**

Pronunciation: 'stüü-&rd, 'styüü-; 'st(y)u(-&)rd

Function: **noun**

Etymology: Middle English, from Old English stIweard, from stI, stig hall, sty + weard ward -- more at STY, WARD

Date: before 12th century

- 1 : one employed in a large household or estate to manage domestic concerns (as the supervision of servants, collection of rents, and keeping of accounts)
- 2 : SHOP STEWARD
- 3 : a fiscal agent
- 4 a : an employee on a ship, airplane, bus, or train who manages the provisioning of food and attends passengers b : one appointed



to supervise the provision and distribution of food and drink in an institution

5 : one who actively directs affairs : MANAGER  
Merriam-Webster On-Line Dictionary ([www.m-w.com](http://www.m-w.com))

Since a stewardship is a noun then it is a thing. One may wonder if the right to manage someone else's property is a thing of value. However, the analysis here is not concerned with value, only with whether or not a claim is stated. Here we have this claim: I was promised one thing in exchange for another. I gave but didn't receive. I am entitled.

My conclusion is that a claim is stated.

### **Part Two - Second Cause of Action**

"FRAUD/CONSTRUCTIVE FRAUD/NEGLIGENT MISREPRESENTATION - all defendants."

#### **Part 2.a. - Second Cause of Action - Fraud**

The words "fraud" and "particularity" have become linked by the jurisprudence of our state. For example, see P36 of *Franco v. The Church of Jesus Christ of Latter-Day Saints and Others*, 21 P.3d 200, Utah Supreme Court, 2001. I refer specifically to this sentence: "We have stressed, and continue to hold, that mere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude ... summary judgment."

As I read the text of this cause of action I looked for information about particular dates, times, places, names of people, words that were spoken. I found none. Hence the cause of action is deficient and should be dismissed.

**Part 2.b. Second Cause of Action - Constructive Fraud**

Constructive Fraud must also be plead with particularity. The complaint is lacking in particulars about times, places, names of people, words that were spoken. This cause of action is deficient and should be dismissed.

**Part 2.c. - Second Cause of Action - Negligent Misrepresentation**

This cause of action is plead as an alternative to Constructive Fraud. It should contain the same specific information as the fraud claims. Since it does not it is deficient and should be dismissed.

**Part Three - Third Cause of Action**

“FRAUDULENT CONVERSION or in the alternative UNJUST ENRICHMENT/IMPLIED CONTRACT—all Defendants.”

The special words from this cause or action are:

Defendants have acquired ... money ... by fraudulent conversion and/or [sic] unjust enrichment.

Defendants have breached an implied contract ... by refusing to provide ... valuable consideration, as promised in the full amount... .

... Defendants have been unjustly enriched.

This cause of action is essentially the same as the first cause since its resolution depends on the value of a stewardship. The Third Cause of Action does state a claim and will not be dismissed.

**Part Four - Fourth Cause of Action**

“RACKETEERING – all Defendants.”

Private, civil lawsuits are authorized for violation of Utah’s Racketeering Enterprises Act. The authorization is found in Section 76-10-1605(1), Utah Code.

The same statute requires that the elements of each claim be stated with particularity. See Section 76-10-1605(7).

There is nothing in the fourth cause of action that refers to particular dates, times, places, people, words or actions. Hence, this cause of action is deficient and should be dismissed.

**Part Five - Fifth Cause of Action**

“INTENTIONAL INFLICTION OF EMOTIONAL HARM – All Defendants.”

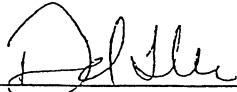
A required element of this tort relates to intent. More specifically, the element relates to the defendants’ intent. The element is that the defendant “ ... intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress ... .” *Retherford v. AT&T Communications of the Mountain States, Inc.*, 844 P.2d 949, 970-971 (Utah Supreme Court 1992).

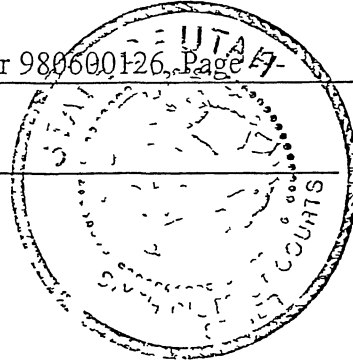
The Complaint is silent as to this element. Hence it is deficient, and the cause of action should be dismissed.

Mr. Bond is appointed to draft an appropriate order and to submit it for execution by following the procedure set forth in Rule 4-504.

DECISION IN REGARDS TO MOTION TO DISMISS, Case number 980600126, Page 47

Date 7 Aug, 2003

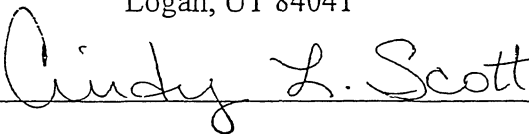
  
David L. Mower  
District Court Judge



CERTIFICATE OF SERVICE

On August 7, 2003 a copy of this DECISION IN REGARDS TO MOTION TO DISMISS was sent by M=first- class mail, P=Clerk's office pickup box, F=Fax to:

<u>Addressee</u>	<u>Method</u>	<u>Addressee</u>	<u>Method</u>
F Kevin Bond	M	Don S. Redd	M
Budge W Call		Clark R. Nielsen	
311 S State, Suite 450		44 North Main	
Salt Lake City, UT 84111		Logan, UT 84041	



F. Kevin Bond (5039)  
 Budge W. Call (5047)  
 Attorneys for Defendants  
 311 South State, Suite 450  
 Salt Lake City, UT 84111  
 Telephone: (801) 521-8900  
 Facsimile: (801) 521-9700

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR

SANPETE COUNTY, STATE OF UTAH

---

KAZIAH MAY HANCOCK, and	)	
CINDY STEWART,	)	ORDER REGARDING DEFENDANTS'
	)	MOTION TO DISMISS
Plaintiffs,	)	
	)	
THE TRUE AND LIVING CHURCH	)	
OF JESUS CHRIST OF LATTER-	)	
DAY SAINTS OF THE LAST DAYS,	)	
JAMES D. HARMSTON, WILLIAM	)	
B. LITHGOW, KEITH LARSON,	)	Civil No. 980600126
DANIEL (DAN) SIMMONS, KAY	)	Judge David L. Mower
CRABTREE. KENT BRADDY,	)	
PHILLIP P. SAVAGE, JEFF HANKS and	)	
JOHN DOES NOS. 1-5,	)	
	)	
Defendants.	)	

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The above entitled matter having been submitted for decision, the Court having reviewed the Plaintiffs' memorandums and the Defendants' memorandums, and otherwise being fully advised in the premises, hereby Orders. Adjudges, and Decrees as follows:

1. The Plaintiffs' Second Cause of Action, Fraud/Constructive Fraud/Negligent Misrepresentation is dismissed.

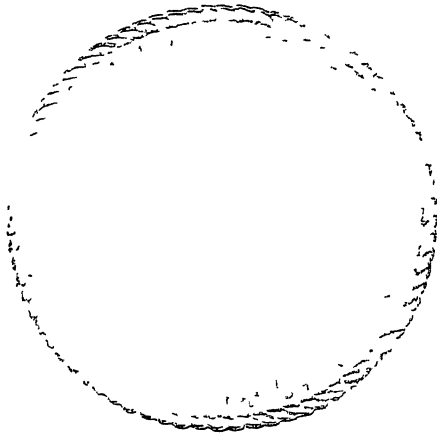
2. The Plaintiffs' Fourth Cause of Action under the Utah's Racketeering Enterprises Act is dismissed.

3. The Plaintiffs' Fifth Cause of Action for Intentional Infliction of Emotional Harm is dismissed.

4. The only actions remaining in the case are Plaintiffs' Breach of Contract Claim and Plaintiffs' Claim for Unjust Enrichment which are not dismissed.

DATED this 5 day of Sept, 2003.

BY THE COURT:



David L. Mower  
District Court Judge

Tab G

DISTRICT COURT, SANPETE COUNTY, UTAH

160 North Main

Manti, Utah 84642

Telephone: 435-835-2131 Fax: 435-835-2135

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KAZIAH MAY HANCOCK, and CINDY  
STEWART,

Plaintiff,

vs.

THE TRUE AND LIVING CHURCH OF  
JESUS CHRIST OF SAINTS OF THE LAST  
DAYS, et al.,

Defendant.

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**ORDER ON MOTION TO FILE  
AMENDED COMPLAINT**

Case No. 980600126

Assigned Judge: DAVID L. MOWER

The Plaintiff's have made a motion to file an amended complaint. It was accompanied by a proposed pleading entitled Third Amended Complaint. There have been memoranda filed in opposition to the motion, and it is now ripe and ready for decision.

**DECISION**

The motion should be denied.

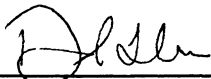
**ANALYSIS**

The motion is not timely. Were it to be granted, it would require the fact finder to judge church doctrine which is not allowed. Were it to be allowed, it alleges actions by Ivan Douglas Jordan, who is not a party to this action, and complete relief could not be afforded. Mr. Call is



appointed to draft an appropriate order and submit it for execution by following the procedures set forth in Rule 4-504 CJA.

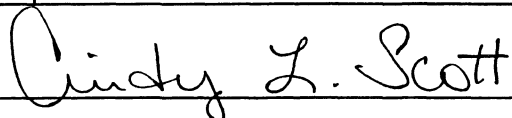
Date 16 OCT, 2003

  
\_\_\_\_\_  
David L. Mower  
District Court Judge

**Certificate of Notification**

On Oct. 16<sup>th</sup>, 2003, a copy of the above was sent to:

Name	Address
Don S. Redd Attorney at Law	44 N. Main Layton, Utah 84041
John H. Jacobs Attorney for Crabtree	75 N. Center St. American Fork, Utah 84003
F. Kevin Bond Budge W. Call Mark S. Middlemas	311 S. State, Suite 410 Salt Lake City, Utah 84111
Clark R. Nielsen	68 S. Main St., Suite 600 Salt Lake City, Utah 84101
William Lithgow	37550 Pine Knoll Ave. Palm Desert, CA 92211
Keith Larson	524 W. Juniper Snowflake, AZ 85937

x   
\_\_\_\_\_

F. Kevin Bond (5039)  
Budge W. Call (5047)  
Attorneys for Defendants  
311 South State, Suite 450  
Salt Lake City, UT 84111  
Telephone: (801) 521-8900  
Facsimile: (801) 521-9700

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BY

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR  
SANPETE COUNTY, STATE OF UTAH

KAZIAH MAY HANCOCK, and  
CINDY STEWART,

Plaintiffs,

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 MUSTROM, JOHN HARPER  
and JOHN DOES NOS. 1-5,

Defendants.

ORDER ON MOTION TO FILE  
THIRD AMENDED COMPLAINT

Civil No. 980600126  
Judge David L. Mower

The Plaintiffs' Motion for Leave to Amend, accompanied by a proposed Third Amended Complaint, and with memoranda filed in opposition to the Motion, the Motion now being ripe for decision; the Court having reviewed the memoranda and record on file, hereby rules as follows:

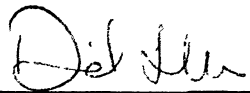
1. IT IS HEREBY ORDERED that the Plaintiffs' Motion is denied.
2. The Motion was not timely filed.

3. For the Motion to be granted, it would require the fact finder to judge church doctrine, which is not allowed.

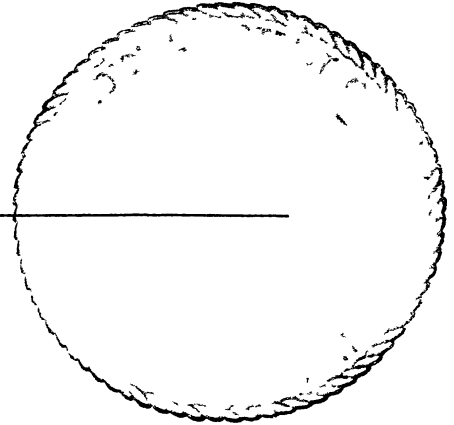
4. It alleges actions by Ivan Douglas Jordan, who is not a party to this action, and complete relief could not be afforded.

DATED this 5 day of <sup>Nov</sup>~~October~~, 2003.

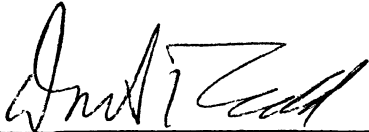
BY THE COURT:



David L. Mower  
District Court Judge



APPROVED AS TO FORM:



Don S. Redd  
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify on the 20<sup>th</sup> day of October, 2003, a true and correct copy of the foregoing **ORDER ON MOTION TO FILE THIRD AMENDED COMPLAINT** was mailed, postage prepaid, to the following:

Don S. Redd  
Attorney for Kaziah May Hancock  
and Cindy Stewart  
Attorney for Plaintiffs  
44 North Main  
Layton, UT 84041

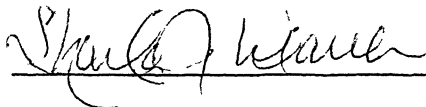
Clark R. Nielson  
68 South Main Street, Suite 600  
Salt Lake City, Utah 84101

John H. Jacobs  
JACOBS & EDDY, P.C.  
Attorney for Kay Crabtree  
75 North Center Street  
American Fork, UT 84003

Kay Crabtree  
P.O. Box 427  
Babb, MT 59411

William Lithgow  
37550 Pine Knoll Ave.  
Palm Desert, CA 92211

Keith Larson  
524 W. Juniper  
Snowflake AR 85937

  
\_\_\_\_\_

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 980600126 by the method and on the date specified.

METHOD	NAME
Mail	KAY CRABTREE DEFENDANT 1050 West Middleton Dr. #105 Washington, UT 84780
Mail	KEITH LARSON DEFENDANT 524 W. Juniper Snowflake AZ 85937
Mail	WILLIAM B. LITHGOW DEFENDANT 37550 Pine Knoll Ave Palm Desert CA 92211
Mail	JOHN H JACOBS PAYOR 75 NORTH CENTER AMERICAN FORK UT 84003
Mail	F KEVIN BOND ATTORNEY DEF 311 SOUTH STATE, SUITE 410 SUITE 410 SALT LAKE CITY UT 84111
Mail	BUDGE W CALL ATTORNEY DEF 311 S STATE ST #450 SALT LAKE CITY UT 84111-5210
Mail	CLARK R NIELSEN ATTORNEY PLA 68 S MAIN ST SUITE 600 SALT LAKE CITY UT 84101
Mail	DON S REDD ATTORNEY PLA 44 NORTH MAIN LAYTON UT 84041

Dated this 12 day of November, 2003.

Case No: 980600126  
Date: Nov 12, 2003

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Deputy Court Clerk