

**IN THE CHANCERY COURT FOR TWENTIETH JUDICIAL DISTRICT
OF TENNESSEE**

*****)
JACK PELHAM, and)
KAY PELHAM,)
)
Plaintiffs,)
)
vs.) Case No. 05-2259-III
)
THE NASHVILLE CHURCH, INC.,)
INTERNATIONAL CHURCHES OF)
CHRIST, INC., HOPE WORLDWIDE, LTD.,)
and CENTRAL AND SOUTH AMERICA)
WORLD SECTOR, INC.,)
)
Defendants.)
*****)

**PLAINTIFFS' RESPONSE TO MOTION TO DISMISS BY DEFENDANT
HOPE WORLDWIDE, LTD.**

Come now the Plaintiffs, JACK PELHAM and KAY PELHAM, by and through their undersigned counsel, and for response to the Motion to Dismiss filed herein by the Defendant, HOPE WORLDWIDE, LTD. (“HOPE”), would state as follows:

INTRODUCTION

For the sake of avoiding unnecessary repetition, the Plaintiffs adopt by reference herein the Introduction and Factual Allegations set forth in their Memorandum In Opposition To the Motion To Dismiss filed by The Nashville Church (“TNC”). This Defendant has moved to dismiss based on the same grounds asserted by TNC, and does not challenge this Court’s exercise of personal jurisdiction.

No further fact which distinguishes this defendant from the others that during the relevant time period of this action, it conducted business in the State of Tennessee and under a corporate affiliate known as HOPE Worldwide of Tennessee, Inc. (Amended Complaint at ¶ 6).

LAW AND ARGUMENT

Plaintiffs adopt by reference herein their points and authorities set forth in their brief filed in opposition to TNC's Motion To Dismiss, and would further state as follows:

In their amended complaint, the Plaintiffs plead the following specific averments as to HOPE:

1. The Defendant, Hope Worldwide, LTD., is a Delaware not for profit limited liability company founded by ICOC and at all times relevant was an integrated auxiliary of ICOC. It maintains its corporate headquarters at 353 W. Lancaster Avenue, Wayne, Pennsylvania 19087. It has designated as its corporate agent for service of process: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. During the relevant time period of this action, this Defendant conducted business in the State of Tennessee and also maintained an affiliate corporation in this state known as HOPE Worldwide of Tennessee, Inc., which had its corporate offices at 264 Malloy Station, Suite 11, Franklin, Williamson County, Tennessee. (Amended Complaint at ¶ 6).

2. In addition, during the period that the Pelhams were members of TNC and ICOC, the Defendants ICOC, CSA and HOPE all regularly solicited and received

donations from their local churches within the State of Tennessee through the collection of what were referred to as “management fees”. These fees were based on the average weekly offerings received by the local member church. The Defendants’ practice of soliciting these funds from the local church congregations is well documented in the following ICOC policies:

ICOC Policy 02.01.02 ICCMS (International Churches of Christ Mission Society)

ICCMS is an "integrated auxiliary" of ICOC. The sole purpose of ICCMS is the receipt and distribution of mission funding pursuant to the World Financial Plan (WFP). The WFP is a detailed financial plan for the funding and support of world evangelism. Specifically, it is the intent of ICOC to establish a church in every nation that has a city with a population exceeding 100,000 inhabitants by the year 2000. The WFP accommodates this goal by allocating the receipt and distribution of funding from the various churches and other entities associated with or affiliated with the International Churches of Christ. **ICCMS and its board will be responsible for the receipt and distribution of these funds.** The board of ICCMS shall be approved by ICOC. (From ICOC Administrative Policies, 2001)

ICOC Policy 12.03.03.01 HOPE Worldwide Support

For a church entity, HOPE Worldwide support is determined through the World Sector Administration in accordance with the ICOC World Financial Strategic Plan. This amount is usually a percentage of the church’s average weekly contribution from a month in the prior year. This same percentage should then be allocate to sub-entities. (From ICOC Administrative Policies, 2001)

ICOC Policy 12.03.03.02 ICOC Management Fee

The ICOC management fee is determined in the same manner as the HOPE Worldwide Support and should therefore be allocated using the same procedure described above. (From ICOC Administrative Policies, 2001)

ICOC Policy 12.03.04 World Missions Support

The fixed amount of World Missions support is determined annually in the World Financial Plan. This fixed amount is sent to the respective World Sector Corporation as the local church’s funding commitment per the Strategic Plan. (From ICOC Administrative Policies, 2001)

(Amended Complaint at ¶ 32).

3. Specifically, on one occasion during the period of the Plaintiffs’ membership in TNC, Jim Taylor, a former member and former director of HOPE Worldwide—Tennessee, informed the Plaintiff Jack Pelham that his own salary was

funded in part from the receipts of the “Contribution for the Poor” received from TNC. (Amended Complaint at ¶ 35).

4. On or about May 16, 2003, Bob Gempel, the former President of HOPE Worldwide, Ltd., gave a presentation at The Radisson Ivanhoe in Orlando, FL, wherein he explained that HOPE collected funds from **all** ICOC local churches through what he described as a “Management Fee.” This “Management Fee” was 4% of the budget of each local church. Mr. Gempel further explained that each local church, including TNC, collected this fee from their individual members in various methods, including weekly “poor contributions.” (Amended Complaint at ¶ 36).

5. During this presentation, President Bob Gempel also stated that HOPE treated these “Management Fees” received from the contributions of local churches as “unrestricted funds.” He also explained that as “unrestricted funds” HOPE was free to use these monies to **pay salaries and administrative overhead**. According to Mr. Gempel, this allowed HOPE then to approach outside corporate donors and promise them that 100% of their donations would be earmarked to a specific relief effort because its administrative costs were covered by ICOC donations, thus making HOPE more attractive to corporate donors. (Amended Complaint at ¶ 37).

6. Plaintiffs have attached hereto as "Exhibit B" a true and correct copy of a letter on HOPE Worldwide letterhead signed by Bob Gempel and dated April 15, 2003, in which he states:

An Apology

In my discussions with church leaders in recent weeks, I've learned that from a financial perspective, the corporate operation of HOPE Worldwide is a mystery. They tell me that they have no idea how their money is being used and that, in the absence of feedback, it is becoming increasingly difficult to justify continued support.

We take full responsibility for this problem. We have always been accountable to our Board and more than fully compliant with outside audits as well as to the regulatory authorities. . . However, we realize that, despite being **our most important and committed donor**, the churches have not felt the same transparency and accountability towards them. I deeply apologize for having taken you and your tremendous sacrifices for granted and want to communicate that HOPE *Worldwide* is committed to changing our relationship with you.
(emphasis added).

(Amended Complaint at ¶ 38).

7. Mr. Gempel's letter further corroborates that HOPE Worldwide received "consistent financial support from the first world churches of the ICOC (which would include TNC), and that this "funding covered essential managerial and administrative expenses at the HOPE Worldwide Corporate Office. . ." (Exhibit B to Amended Complaint at ¶¶ 4 - 5). (Amended Complaint at ¶ 39).

8. Prior to this revelation by Mr. Gempel, and throughout the period that the Plaintiffs were members of TNC, they and other unsuspecting members of churches within the ICOC network of churches, were fraudulently informed that their donations to the "contributions to the poor" fund would not be used for salaries or administrative expense and overhead of ICOC or its corporate affiliates. Instead, the Plaintiffs and other parishioners were consistently told that these weekly contributions would be used exclusively to help people who were in need, both locally and on a worldwide level through HOPE Worldwide. (Amended Complaint at ¶ 40).

9. Throughout their involvement as members of TNC and other ICOC churches, the Plaintiffs have participated in fund raising activities such as walk-a-thons

and door-to-door solicitation campaigns, organized by the various churches and ICOC to “raise funds for HOPE.” It was the Plaintiffs’ shared and sincere belief, based on the representations of TNC and ICOC leaders, that these funds too were designated exclusively to benevolent endeavors, and would not be used to underwrite the administrative and salary expenses of HOPE Worldwide. (Amended Complaint at ¶ 41).

10. The funds which were solicited by TNC and ICOC within the State of Tennessee were also funneled to the Defendant, Central and South America World Sector, Inc., (“CSA”), an affiliate of ICOC. During a CSA conference in April of 2003, CSA leadership made the following admission of the miscommunications within ICOC and its member churches with regard to the use of funds:

The CSA Leadership has failed to communicate adequately with the churches in our group especially about the finances and administration of special contributions. Peter Garcia and Jaime De Anda sincerely apologize for this lack of sensitivity to the continual sacrifices of the individual churches and members. Their failure to provide an effective communication channel caused many disciples to feel excluded and disconnected from the administration and finances of the CSA World Sector. In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches’ special contributions was distributed directly to Latin America. Although the majority of the CSA contributions were sent directly to the mission field, a percentage was also used to support the administrative and ministry oversight of the world sector.

(Amended Complaint at ¶ 42).

The preceding allegations are fact specific and are not mere conclusory allegations. Taken as a whole, and construed in a light most favorable to the Plaintiffs they are sufficient to state a cause of action against this Defendant for fraudulent misrepresentation.

Turning to this Defendant’s argument regarding the sufficiency of the complaint regarding the theory of civil conspiracy, since HOPE’s argument is identical to that presented by the co-

defendants, Plaintiffs again adopt the points and authorities set forth in their legal memoranda filed in opposition to the other motions to dismiss.

CONCLUSION

For the reasons cited by the Plaintiffs in their companion briefs filed in opposition to the Defendants' motions, this motion should likewise be denied as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Larry L. Crain, do hereby certify that a true and correct copy of the foregoing pleading was delivered to the following individuals on this the _____ day of _____, 2005, in the manner indicated below:

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