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IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

KRISTINE PATICO KOUMENTAKOS, et. ux	:	
	:	
	:	
Plaintiffs	:	
	:	
v.	:	Case No.: 13-C-08-073089 OT
	:	
THE ORTHODOX CHURCH IN AMERICA, et. al	:	
	:	
Defendants	:	

**MOTION FOR SUMMARY JUDGMENT BY DEFENDANT THE ORTHODOX CHURCH IN AMERICA AND REQUEST FOR HEARING**

Comes now the Defendant, THE ORTHODOX CHURCH IN AMERICA (hereafter "OCA"), by and through its attorneys, Michael J. McAuliffe and Ethridge, Quinn, McAuliffe, Rowan & Hartinger, and moves this Honorable Court to enter summary judgment as to all Counts against it, and for cause states as follows:

1. This Defendant is a New York corporation created by specific New York statute in 1972. (Prior to 1972, this Defendant had operated as an unincorporated association.)
2. This Defendant has certain canonical rules governing the Orthodox Church in America. However, this Defendant is a completely separate corporation from the parish and the Dioceses. At no time did the OCA employ Father Velencia. At no time did OCA have the authority to hire, fire, retain, supervise or control Father Velencia's daily work activities.
3. While the Third Amended Complaint is quite lengthy, the basic Counts against the OCA are relatively few. Plaintiffs allege torts based on the actions of Defendant Velencia under a theory of *respondeat superior*, as well as claims regarding negligent hiring or retention. Since this Defendant, as a matter of law, did not employ Fr. Velencia and had no authority whatsoever

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to hire, fire, retain or supervise Father Velencia, all claims against this Defendant fail as a matter of law.

4. The Memorandum of Points and Authorities in Support of this Motion for Summary is respectfully incorporated by reference.

5. Because there is no genuine dispute as to any material fact and because this Defendant is entitled to judgment as a matter of law, this Court should grant summary judgment in favor of The Orthodox Church in America as to all Counts.

Respectfully submitted,

ETHRIDGE, QUINN, McAULIFFE  
ROWAN & HARTINGER

By Michael J. McAuliffe  
MICHAEL J. McAULIFFE  
33 Wood Lane  
Rockville, Maryland 20850  
(301) 762-1696  
Attorney for the Defendant  
The Orthodox Church in America

**REQUEST FOR HEARING**

The Defendant, The Orthodox Church in America, respectfully requests a hearing on the merits.

Michael J. McAuliffe  
Michael J. McAuliffe

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

KRISTINE PATICO KOUMENTAKOS, et. ux :

Plaintiffs :

v. :

Case No.: 13-C-08-073089 OT

THE ORTHODOX CHURCH IN AMERICA, et. al :

Defendants :

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT BY DEFENDANT THE ORTHODOX CHURCH IN AMERICA**

**I. INTRODUCTION**

Plaintiffs Kristine Koumentakos and her husband Nicholas Koumentakos have brought this Complaint arising from the alleged actions of Father Raymond Velencia. Father Velencia is alleged to be the President of St. Matthew House and The Orthodox Church of St. Matthew. (Complaint, Paragraph 12.) Plaintiffs generally allege that Father Velencia “was an ordained priest within OCA [Orthodox Church in America] and was an agent, servant and/or employee of the OCA, the Diocese, OCSM and SMH.” (Complaint, Paragraph 12.) For the reasons set forth below, it is clear as a matter of law that The Orthodox Church in America is not Father Velencia’s employer, nor does it supervise him or have the right to fire him. For these reasons, The Orthodox Church in America (“OCA”) is entitled to summary judgment as a matter of law.

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HOWARD COUNTY, MARYLAND

## II. Summary Judgment – Legal Standard

A party is entitled to summary judgment when it can demonstrate that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. *Syme v. Marks Rental, Inc.*, 70 Md. App. 235, 238, 520 A. 2d 1110, 1111 (1987). See also Rule 2-501.

The first question before the Court is whether the party opposing summary judgment can demonstrate that any dispute of any material fact exists. The Court of Appeals has specifically stated that, to defeat summary judgment, the opposing party must not only show that a fact is disputed. That party must also show that the resolution of that disputed fact will affect the outcome of the case. Mere general allegations are insufficient to defeat a Motion for Summary Judgment. The party opposing such summary judgment must set forth facts in sufficient detail for the Court to determine whether a dispute of material fact exists. *Tri-State Properties, Inc. v. Middleman*, 238 Md. 41, 207 A. 2d 499 (1965). See also *Syme v. Marks Rental, Inc.* 70 Md. App. 235, 520 A. 2d 1110 (1987).

Applying these standards shows that there is no genuine dispute as to any material fact and that this Defendant is entitled to summary judgment as a matter of law.

## III. BACKGROUND OF THE ORTHODOX CHURCH IN AMERICA.

### A. *Brief History of OCA and How It Was Created.*

In 1054, the Eastern and Western branches of Christianity split when the Bishop of Rome and the Patriarch of Constantinople exchanged decrees of excommunication and anathema.<sup>1</sup> This

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<sup>1</sup> This brief discussion is drawn from T. Ware, *The Orthodox Church* (9<sup>th</sup>) printing, 1980. See discussion in *Mikilak v. Orthodox Church in America*, 99 Pa. Commw. 264, 513 A. 2d 541 (1986).

schism created The Orthodox Church and the Catholic Church. In 988, the Russian ruler, Vladimir, married the sister of the Byzantine Emperor and proclaimed Orthodoxy the state religion of Russia, which it remained until 1917. In the spring of 1453, Constantinople fell to the Turks with the death of the last Byzantine Emperor, Constantine, XI. At this point, the Russian Orthodox Church became formally autocephalous (independent of external patriarchal authority).

The Russian Revolution resulted in a scattering of more than a million Russian Orthodox clergy and laity. In 1920, Archbishop Tikhon, then the titular patriarch of Russian Orthodoxy decreed that Russian bishops could set up temporary organizations of their own in the event that normal relations could not be maintained with the Russian Patriarchate. In the years that followed, several rival jurisdictions of Russian Orthodoxy claimed hierarchy over Russian Orthodox practitioners living outside of Russia.

Consequently, by the middle of the twentieth century, there were four different organizations to which Russian Orthodox faithful could turn. The first was the Russian Church Outside Russia. The second was the Moscow Patriarchate. The third was the Russian Archdiocese of Western Europe, and the fourth was the Orthodox Church in America.

In 1970, the Moscow Patriarchate extended autocephaly to The Orthodox Church in America. In 1972, the State of New York created the corporation known as The Orthodox Church in America. A copy of the Act of the New York Senate is attached hereto as Exhibit 1. Prior to the enactment of the statute, the Orthodox Church in America was an unincorporated association.

B. *The Statute of the Orthodox Church in America.*

The Orthodox Church in America is governed by “the Statute of The Orthodox Church in America.” Articles I, II, VI and X are attached hereto as Exhibits 2, 3, 4 and 5, respectively. A brief review of these fundamental articles will show that The Orthodox Church in America does not employ Fr. Velencia, does not have the authority to hire, fire, retain or supervise Fr. Velencia, and is entitled to summary judgment in this lawsuit.

Article I (Exhibit 2) describes the Church itself, and it gives it canonical authority over the United States of America and the Commonwealth of Canada. It does not provide legal authority over such areas.

Article II (Exhibit 3) establishes the Holy Synod as the supreme canonical authority in the Church. Section 7 of Article II lists the matters which are within the jurisdiction and competence of the Holy Synod, including matters of doctrine, canonical order, morals and liturgical practice. While the Holy Synod possesses certain specific authorities over bishops and Armed Forces chaplaincies, the Holy Synod does not possess any authority to supervise individual priests or to hire or fire them within any diocese.

Article VI (Exhibit 4) describes a Diocese as “the basic church body which comprises all the parishes of a determined geographical area. It is governed by the Diocesan Bishop with the assistance of a Diocesan Assembly and a Diocesan Council.” The statute does not provide for direct authority by The Orthodox Church in America over the Diocese. Only the bishop can appoint and transfer priests and other parish clergy.

Finally, Article X of the Statute describes the Parish. The statute defines the Parish as the “local community of the Church having at its head a duly appointed priest and consisting of

Orthodox Christians who live in accordance with the teachings of the Orthodox Church, comply with the discipline and rules of the Church, and regularly support their parish. Being subordinate to the Diocesan Authority, it is a component part of the Diocese.” The Statute provides that the parish is run by the rector, who is appointed by the bishop. At no time does the Orthodox Church in America have any authority to hire, fire or supervise the rector or any other priest within the parish.

This Court is respectfully referred to the decisions of the Commonwealth Court of Pennsylvania in *Mikilak v. Orthodox Church in America*, 513 A. 2d 541 (1986) and *Orthodox Church in America v. Pavuk*, 538 A. 2d 632 (1988). In each case, the Court found that the control of church property rested in the parish members, not in the Orthodox Church in America. In each case, the parishioners were upset about a change in the church calendar, and voted to disassociate themselves with the Orthodox Church in America. The Court found that the *parishioners* themselves could control the parish assets, and that The Orthodox Church in America had no right to this church property.

**VI. THE CLAIMS MADE IN THE THIRD AMENDED COMPLAINT FAIL AS A MATTER OF LAW.**

The Third Amended Complaint contains twenty-two separate Counts. Not all of these include The Orthodox Church in America. In addition, the Court will obviously see that each Count is stated once for Mrs. Koumentakos and once for Mr. Koumentakos. Therefore, the analysis below will focus on each pair of Counts. (For example, Counts 1 and 2 are essentially identical, except Count 1 deals with Mrs. Koumentakos and Count 2 deals with Mr. Koumentakos. The same can be said of Counts 3 and 4, etc.)

*A. Counts 1 and 2 fail as a matter of law.*

In Counts 1 and 2, Plaintiffs allege intentional infliction of emotional distress. Plaintiffs allege that they relied upon various confidentiality promises, and that Defendant Velencia breached these rules of confidentiality by disclosing personal information. The basis for including this Defendant in this Count is found in Paragraphs Nos. 56 and 67, in which Plaintiffs allege “Furthermore, this conduct was perpetrated within the scope of Defendant Velencia’s employment with OCA, the Diocese, The Deanery, OCSM and SMH.”

For the reasons set forth above, it is clear that Father Velencia is not employed by OCA. Under the terms of its own governing rules, OCA makes decisions regarding “doctrine, canonical order, morals and liturgical practice,” along with other specific items set forth in Article II, Section 7 of the Statute of The Orthodox Church in America (See Exhibit 3). At no time does The Orthodox Church in America have any authority to manage the day-to-day affairs of priests such as Father Velencia.

Counts 5 and 6 allege negligence in hiring and retaining priests and spiritual leaders. Specifically, Paragraphs 86 and 90 allege that “Defendants OCA, Metropolitan Herman, the Diocese, The Deanery, Dean White, OCSM, SMH and the BOD breached said duties owed to Plaintiff... by failing to hire and retain priests and spiritual leaders who met appropriate standards of conduct; failing to investigate complaints with regard to priests and spiritual leaders regarding alleged violations of the appropriate standards of conduct; failing to remove individuals who violated the code of conduct;...”

Simply put, OCA has no authority whatsoever to hire or retain priests, or to enforce the “standards of conduct” the Plaintiffs seek to enforce. OCA neither hired nor supervised Father

Velencia, and it has no authority to fire him. Such authority clearly rests with the Bishop, pursuant to Article VI, Section 4 (f) of the statute. (See Exhibit 4.)

The same analysis applies to Counts VII and VIII. In these Counts, Plaintiffs allege that Defendants OCA, Metropolitan Herman, the Diocese, The Deanery, Dean White, OCSM, SMH and BOD negligently retained Father Velencia. However, since The Orthodox Church in America has no authority whatsoever to dismiss or retain Father Velencia, it can have no duty to retain him. Therefore, no cause of action may lie against OCA for the fact that Father Velencia was retained.

Counts IX and X are titled "Loss of Consortium – All Defendants." It is unclear why these Counts are brought separately, once for Mrs. Koumentakos and one for Mr. Koumentakos. However, these Counts relied upon Counts II through VIII. Therefore, granting summary judgment in favor of OCA on the other Counts will also effectively mean granting summary judgment on Counts IX and X.

Counts XI and XII allege "*respondent superior*." Counts would suggest that this is a theory of vicarious liability and not a separate tort in itself. However, the same analysis applies here as set forth above. Father Velencia was not an employee of OCA. OCA had no authority to control the details of Father Velencia's work, nor did it have the authority to discipline Father Velencia. Only the Diocese could do such a thing. Therefore, no cause of action can be maintained against OCA.

Counts XIX and XX allege a breach of fiduciary duty against "all Defendants." Counts do not mention OCA, so it is impossible to know exactly what OCA is alleged to have done.

The remaining Counts do not address OCA. Therefore, this Defendant cannot properly respond to such Counts.

**V. THIS COURT LACKS JURISDICTION OVER THE ORTHODOX CHURCH  
IN AMERICA.**

As set forth above, OCA is a New York corporation created by New York statute. It does not operate in the State of Maryland. Various dioceses around the country choose to adhere to the moral and canonical doctrine adopted and propounded by the Holy Synod of The Orthodox Church in America. However, each diocese is a separate legal entity. OCA has no more authority to regulate the diocese than it has to regulate Microsoft.

Before personal jurisdiction can be exerted by Maryland, Plaintiffs must show some act by which OCA purposefully availed itself of the “privilege of conducting activities within Maryland’s borders, thereby invoking the benefit and protection of Maryland law. *Annotated Code of Maryland, Courts and Judicial Proceedings Article*, §6-103 (the “long-arm statute”); *Harris v. Arlen Properties, Inc.*, 256 Md. 185, 260 A.2d 22 (1969). The unilateral activity of someone who has (or claims to have) a relationship with a nonresident defendant does not satisfy the statutory and constitutional requirement of contact with the forum state. *Piracci v. New York City Employees’ Retirement Sys.* 321 F. Supp. 1067 (D. Md. 1971); *Geelhoe v. Jensen*, 277 Md. 220 (1976). *See also Camelback Ski Corp. v. Behning*, 307 Md. 270 (1986), vacated for further consideration, 480 U.S. 901 (1988). Therefore, any statements by those in Maryland who adhere to the tenets of the Orthodox Church in America do not satisfy this requirement. Since OCA does no business in Maryland, it lacks sufficient contacts with the state for purposes of jurisdiction.

**VI. THIS COURT HAS NO JURISDICTION TO RESOLVE DOCTINAL DISPUTES.**

In the event the Court were to decide that OCA had some duty to investigate or address the issues raised by the Plaintiffs, OCA is still entitled to judgment as a matter of law. *In Jones v. Wolf*, 443 U.S. 595 (1979), the Supreme Court affirmed that the First Amendment to the Constitution prohibits civil courts from resolving disputes on the basis of religious doctrine and practice. The First Amendment further requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. (*id.*) To the extent Plaintiffs seek to impose some type of religious or moral duty on OCA to investigate these matters, Plaintiffs seek to change the relationship between OCA and the various diocese. Courts in every jurisdiction have deferred to church authority on questions of “discipline, or of faith, or an ecclesiastical rule, custom or law.” *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 10 F. Supp. 2d 138 (D. Ct. 1998); *Sherr v. Northport – East Union Preschool District*, 672 F. Supp. 2d 81 (E. D. N. Y. 1987); *Petruska v. Gannon University*, 448 F. 3d 615 (3<sup>rd</sup> Cir. 2006).

**VII. PUNITIVE DAMAGES.**

The Maryland Court of Appeals has held that punitive damages are permitted only when the Plaintiff has established that the Defendant’s conduct was characterized by “actual malice.” The term “actual malice” is defined as evil motive, intent to injure, ill-will for fraud. *Ellerin v. Fairfax Savings FSB*, 337 Md. 216 (1995). See also *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992).

Plaintiffs have not explained the basis for their punitive damage claims against this Defendant. At no time have they alleged that OCA (as opposed to any other Defendant) harbors any ill-will, evil motive or intent to injure. At no time have Plaintiffs alleged that anyone in OCA even knows the Plaintiffs. The mere allegation that Father Velencia behaved badly is insufficient to justify punitive damages against a separate corporation, no matter what the relationship may be.

### VIII. CONCLUSION.

For the foregoing reasons, this Court should grant summary judgment in favor of The Orthodox Church in America as to all Counts.

Respectfully submitted,

ETHRIDGE, QUINN, McAULIFFE  
ROWAN & HARTINGER

By Michael J. McAuliffe  
MICHAEL J. McAULIFFE  
33 Wood Lane  
Rockville, Maryland 20850  
(301) 762-1696  
Attorney for the Defendant  
The Orthodox Church in America