

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROSIE ANDUJAR, *et al.*,

Plaintiffs,

v.

ANTHONY M. PILLA, TRUSTEE
et al.,

Defendants.

) CASE NO. 565095

) JUDGE STUART FRIEDMAN

) MOTION OF JOSEPH H. SMITH, JHS
) ENTERPRISES, AND TEE SPORTS, INC.
) TO DISMISS COMPLAINT

Defendants Joseph H. Smith, JHS Enterprises, and Tee Sports, Inc., by counsel, hereby move to dismiss the complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Ohio Rules of Civil Procedure, on the following grounds:

1. Plaintiffs lack standing to assert these claims. Plaintiffs are parishioners who bring this complaint as purported beneficiaries of a charitable trust – the Roman Catholic Diocese of Cleveland – regarding the administration and enforcement of the trust. Ohio law provides that beneficiaries of a charitable trust, such as plaintiffs claim to be, lack the authority to bring such an action. As a result, the complaint must be dismissed for lack of standing.

2. The Court lacks subject matter jurisdiction over the claims. The complaint challenges the financial conduct of the Diocese. The courts have held that, based on the First Amendment Establishment Clause, the courts lack subject matter jurisdiction over such claims. *See, e.g., Tibbs v. Kendrick*, 93 Ohio App.3d 35 (1994) (court lacked subject matter jurisdiction over breach of fiduciary duty claim against church trustee); *Robinson v. Freedom Faith*

Missionary Baptist Church, 2004 WL 1145914 (Ohio App. 2d Dist.) (court lacked jurisdiction over accounting for church funds). As a result, the complaint must be dismissed for lack of subject matter jurisdiction.

In further support of this motion, the defendants rely upon the additional arguments and authority contained in the Memorandum of Bishop Anthony M. Pilla in support of his Motion to Dismiss filed July 15, 2005, which are applicable to the claims against these defendants.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Joseph H. Smith, JHS Enterprises, and Tee Sports, Inc. to Dismiss Complaint was served by regular United States Mail, postage pre-paid, this 26th day of July, 2005, upon the following:

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