



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Charitable Law
150 E. Gay St., 23rd Floor
Columbus, OH 43215-3130

Telephone: (614) 466-3180
Facsimile: (614) 466-9788
www.ag.state.oh.us

July 28, 2005

COPY

Clerk of Courts
Cuyahoga County Court of Common Pleas
Civil Division
1200 Ontario Street
Cleveland Ohio 44113-1678

RE: *Rosie Andujar, et al vs. Bishop Pilla, et al*
Case No.: CV-05-565095

Dear Clerk:

Enclosed for filing with the Court please find the original and one copy of the Memorandum of Attorney General in Support of Motion to Dismiss the Complaint filed by Bishop Anthony M. Pilla.

Please return a time-stamped copy to the undersigned in the enclosed self-addressed stamped envelope.

Very truly yours,

JIM PETRO
ATTORNEY GENERAL

Michael Rzymek/nbg

Michael Rzymek
Assistant Attorney General
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130
(614) 466-3180
(614) 466-9788 Facsimile
Email: mrzymek@ag.state.oh.us

MR/nbg
Enclosure

Cc: All parties

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

COPY

ROSIE ANDUJAR, *et al.*, : Case No.: 565095
: :
Plaintiffs, : JUDGE STUART FRIEDMAN
: :
v. :
: :
ANTHONY M. PILLA, TRUSTEE *et al.*, :
: :
Defendants. :

**MEMORANDUM OF ATTORNEY GENERAL
IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT FILED BY
BISHOP ANTHONY M. PILLA**

Now comes the Ohio Attorney General's Office through the undersigned counsel and hereby requests that this Court grant the motion to dismiss filed by bishop Anthony M Pilla for the reasons stated in the following memorandum.



Michael Rzymek (0040826)
Senior Attorney General
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130
(614) 466-3180
(614) 466-9788 Facsimile

I. Introduction

This is an action for administration and enforcement of a charitable trust brought by claimed beneficiaries of that trust. Plaintiffs are members of various parishes within the Roman Catholic Diocese of Cleveland (“Diocese”). Proposing to act for the benefit of the trust in its administration and enforcement, and citing Church law in support, plaintiffs assert that core Diocesan assets have been inappropriately distributed and related Diocesan affairs mishandled. Their complaint seeks, in summary: recovery of the supposedly misdistributed funds; unquantified monetary recover for unspecified damages to the members of the Diocese; an inspection of Diocesan books and records; and an investigation and legal action by the Attorney General respecting the trust. The complaint should be dismissed because the Court does not have the jurisdiction to order the relief requested by the Plaintiffs regarding the Ohio Attorney General's Office. The Plaintiff's do not have standing to request relief against the Ohio Attorney General's Office.

A. The Court Has No Jurisdiction to Order the Relief Requested by the Plaintiffs Against the Ohio Attorney General's Office.

The plaintiff's complaint does not contain a valid claim for action by the attorney general. Count six of the plaintiff's complaint argues for investigative and enforcement action or litigation by the Attorney General as to the Diocese.

The Attorney General is not required to investigate and/or prosecute this action upon the plaintiff's request. Ohio Revised Code § 109.24 gives the proper guidelines for action by the Attorney General. ORC § 109.24 says “the attorney general shall institute

and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse of it whenever he considers such action advisable or if directed to do so by the governor, the supreme court, the general assembly, or either house of the general assembly. (Emphasis added). The Attorney General has not been directed to take action by the Governor, Supreme Court, or the General Assembly. The Court does not have the statutorily vested power to order the Attorney General to investigate and/or prosecute this action.

Moreover, unless so ordered by one of the statutorily designated entities, the Attorney General's power is wholly discretionary. *State ex. rel. Lee v. Montgomery*, 88 Ohio St.3d at 235 (O.R.C. § 109.24 "generally vests *discretionary* authority in the Attorney General in the investigation and prosecution of matters relating to charitable trusts..."). Absent an abuse of discretion, mandamus cannot compel a public official to act in a certain way in a discretionary matter. *Id.* It follows that, in the event that this Court did have the power to force the Attorney General to act, the legal action would have to be some form of mandamus and show an abuse of discretion on the part of the Attorney General. The complaint does not mention any abuse of discretion on the part of the Attorney General. Count Six of plaintiff's complaint should be dismissed.

B. Plaintiffs Lack Standing to Seek the Relief Requested from the Ohio Attorney General's Office.

Plaintiffs lack the proper standing to prevent a violation of a charitable trust. The Ohio Supreme Court first recognized a diocese of the Roman Catholic Church as a charitable trust in *Mannix v. Purcell* (1888), 46 Ohio St. 102, 19 N.E. 572. Plaintiffs are members of the general public and potential beneficiaries of the relevant trust. It is a

settled general rule that a mere member of the general public, even though a potential beneficiary of services to be rendered or some award to be made, has no standing in court to maintain a suit to enforce a charitable gift or to prevent a violation of a charitable trust. 94 A.L.R.3d 1204, 2. It was held in *Kemper v Trustee of Lane Seminary* (1848) 17 Ohio 293, that a member of a religious denomination did not have an interest as such to maintain a suit to inquire into the manner of conducting a trust by a theological seminary founded by such denomination, to which land was granted on condition of maintaining as professors members of that church. 94 A.L.R. 3d 1204, 4b.

Moreover, ORC 109 § 109.24 says “the attorney general shall institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse of it whenever he considers such action advisable or if directed to do so by the governor, the supreme court, the general assembly, or either house of the general assembly. (Emphasis added).

The plaintiffs are members of the public and have no standing to maintain this action. The Attorney General is the only party with the authority to enforce the performance of a charitable trust. Count Six of plaintiff’s complaint should be dismissed.

C. Plaintiffs Lack Standing to Bring This Action.

The Attorney General agrees with Section A of Memorandum of Bishop M. Pilla in Support of Motion to Dismiss. *See Mot. To Dismiss*, pp. 5-9.

D. Plaintiffs Failed to State a Claim Upon Which Relief Can Be Granted

The Attorney General agrees with Section C of Memorandum of Bishop M. Pilla in Support of Motion to Dismiss. *See Mot. To Dismiss*, pp. 12-19.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 28th day of July 2005, to the following individuals by regular U.S. Mail, postage prepaid:

Santiago Feliciano, Jr.,
1422 Euclid Avenue, Ste 1162
Cleveland, Ohio 44115

Counsel for Plaintiffs

John M. Newman, Jr.,
Robert P. Ducatman, Esq.
Stephen G. Sozio, Esq.
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Counsel for Defendant
Bishop Anthony M. Pilla, Trustee

Joseph M. Smith
31641 Compass Cove
Avon Lake, Ohio 44012

Defendant

Anton Zgoznik
110 West Streetsboro Street
Hudson, Ohio 44236

Defendant

Anton Agoznik, as statutory Agent
For Institutional Business Solutions, formerly
Monastra & Associates, Inc.
7325 Production Drive
Mentor, Ohio 44060

Defendant

Beth A. Sebaugh
Bonezzi, Switzer, Muphy & Polito Co., L.P.A.
1400 Leader Building
Cleveland, Ohio 44114

Counsel for Defendant
Thomas J. Kelley


MICHAEL RZYMEK
Assistant Attorney General