Lawrence Wollersheim v. Church of Scientology of California C332027

Order on Submitted Motions

This action came on regularly before the Court, the Honorable Robert L. Hess, Judge, presiding, on April 13, 2001, for hearing on selected preliminary issues raised by respondents in connection with plaintiff's Motion to Amend the Judgment. Plaintiff was represented by Daniel A. Leipold, Esq., of Leipold, Donohue & Shipe, LLP, Ford Greene, Esq., of Hub Law Offices, and Craig J. Stein, Esq., of Gelfand & Stein, LLP; respondent Church of Scientology International ("CSI") was represented by William T. Drescher, Esq, and by Gerald L. Chaleff, Esq., of Orrick, Herrington & Sutcliffe, LLP; and respondent Religious Technology Center ("RTC") was represented by Samuel D. Rosen, Esq., of Paul, Hastings, Janofsky & Walker, LLP. Having considered the moving and opposition papers, and the arguments of counsel, and being fully advised, the Court rules as follows.

Background

This proceeding arises from plaintiff's attempt to amend his 1986 judgment against the Church of Scientology of California ("CSC") to add CSI and RTC as judgment debtors. The convoluted history of this action (and various related actions) will only be mentioned as is particularly pertinent to the discussion below. The Court requested oral argument addressed to five specific points, which it conceived to raise threshold issues. These are:

1. Whether plaintiff's renewed motion to amend the judgment is foreclosed by what plaintiff knew prior to trial (in 1986) about respondents' alleged unity of interest with CSC?
2. Whether plaintiff's renewed motion to amend the judgment is precluded by his alleged untimely delay in moving to amend and/or collect on his judgment?
3. Whether the doctrine of judicial estoppel precludes respondents from asserting their untimely delay arguments?
4. Whether plaintiff's alter ego analysis is precluded as a constitutionally prohibited intrusion into the doctrine, internal administration and governance of Scientology's ecclesiastical hierarchy?
5. Whether plaintiff's motion is precluded because the law forbids imposition of alter ego liability horizontally on sister churches based on alleged joint control by a common superior ecclesiastical body or person?

Issue # 1:

Respondents primarily rest their argument on this issue upon Jines v. Abarbanel, 77 Cal. App. 3d 702 (1978). As is pertinent to this proceeding, Jines holds that where a medical doctor and his professional medical corporation have been openly conducting themselves as employee and employer, and plaintiff's counsel were aware of that fact at all pertinent times but sued only the medical doctor, there was no legal basis for a post-judgment order adding the corporation as a judgment debtor. In addition, there was no suggestion of any abuse of the corporate privilege in that case.

Id. at 714-17. The Jines argument fails for three separate reasons.

The first reason why respondents' argument fails is that the factual basis for the ruling in Jines is missing here. The various Scientology entities have not continuously and unequivocally held themselves out as having the common identity, or anything even remotely resembling the employee/employer relationship, which was the factual underpinning in Jines. Rather, the Scientology entities have vigorously and vehemently denied that the requisite relationship actually exists, and have insisted that the various entities are completely separate. Absent both the fact of and knowledge of the necessary relationship between the Scientology entities, Jines simply does not apply. Neither Jines nor the other cases cited by respondents preclude plaintiff from asserting after the trial later-discovered facts in support of a post-trial motion to amend the judgment.

The second reason why respondents' argument fails is that it rests in large part on the notion--stressed at oral argument--that timely inquiry by plaintiff (before July 1986) would have revealed all the facts necessary to make this motion. The Court is not persuaded that if it focuses only on the period before July 1986, plaintiff's discovery would have revealed what he now claims is the true nature of the relationships between the various Scientology persons and entities. Various courts have already found that individuals and entities under what might broadly be described as the Scientology umbrella engaged in a pattern and practice of deception, including creation of false documents and the giving of deliberately false and misleading information, about the control, finances, and organization of various entities under that umbrella. In large measure, that falsification and deception may have been undertaken in connection with

the individuals' and entities' resistance to inquiries by tax authorities, as documented in such cases as Church of Scientology of California v. Commissioner of Internal Revenue, 83 T.C. 381 (1984), United States v. Zolin, 905 F.2d 1334 (9th Cir. 1990), and Church of Spiritual Technology v. United States, 26 Ct. Cl. 713 (1992).

Nevertheless, because these false statements and deceptions were made concerning reorganizations and relationships which were actually or purportedly occurring within the same time frame as those on which respondents now rely, the Court is not persuaded that prior to 1986, prompt, full and truthful disclosure would have been made in this case. Rather, the Court is persuaded that, at that time, whether as a continuation of the "fair game" policy previously practiced against plaintiff (Wollersheim v. Church of Scientology of California, 212 Cal. App. 3d 872, 879-80, 893 (1989)), or as a necessary adjunct to strategies being employed in connection with other matters, the details of the true relationships of persons and individuals under the Scientology umbrella would not have been disclosed to plaintiff. This conclusion is not meant to disparage either respondents' present hierarchy or their counsel; rather, it reflects prior judicial findings that, at an earlier time which is relevant to events in this case, various individuals and entities associated with Scientology engaged in a calculated program of deception as to these subjects for their own purposes.

The third reason respondents' argument fails is that the Court is persuaded that the core evidence on which plaintiff relies in support of its renewed motion simply was not available prior to the conclusion of trial. Setting aside the issue of the credibility of the declarants, the declarations of Vicki Aznaran, Jesse Prince and Joseph Yanny, for example, which tend to support plaintiff's argument that persons or

entities outside CSC controlled CSC's posture in this litigation, were not available until various times the 1990s. In addition, commencing with the judgment debtor examination of CSC President Neil Levin on May 31, 1995, other testimony and documentary evidence began to become available. The generalized information about organizational structure which was available to plaintiff prior to trial may have raised certain suspicions, but it is these later declarations and documents, among other evidence, which plaintiff relies upon to give substance to the present motion.

Issue # 2

The second issue is whether plaintiff's motion to amend the judgment is precluded because of his alleged excessive delay in moving to amend or to collect on his judgment. Both parties have addressed this issue in detail. Respondents rely primarily on Alexander v. Abbey of the Chimes, 104 Cal. App. 3d 39 (1980), for the proposition that an unjustified seven-year delay precludes an amendment of the judgment here, where the delay is asserted to be 11 years .

At the threshold, the Court is inclined to agree with respondents on two preliminary points. First, the Court is not persuaded that respondents must demonstrate "prejudice" in opposing the due diligence showing; that is, the test is not the same as laches. While Abbey of the Chimes emphasizes the equitable nature of the determination whether to permit the amendment, that decision did not address any aspect of "prejudice" to the non-moving party except insofar as the control of the litigation/due process issues implicate prejudice. Indeed, the Abbey of the Chimes decision clearly implies that there was no prejudice in that case, although the

unexplained delay made it an abuse of discretion to grant the amendment. Nothing in Ukegawa Brothers v. Agricultural Labor Relations Board, 212 Cal. App. 3d 1314 (1989), is to the contrary.

Second, the Court rejects what appears to be plaintiff's argument that respondents are somehow collaterally estopped from raising the due diligence issue by the outcome of Church of Scientology of California v. Wollersheim, 42 Cal. App. 4th 628 (1996), and/or by the unpublished portion of the decision in Wollersheim v. Church of Scientology International, No. B118114, 2d. Dist., Div. 2, filed Feb. 4, 1999. The due diligence issue presented here is not identical to that in Church of Scientology v. Wollersheim, nor was it actually or necessarily decided in that prior action, and the Court of Appeal in last appeal in this case expressly declined to address this issue.

As a further threshold issue, the question with respect to due diligence under Abbey of the Chimes is the timeliness of the filing of a motion to amend the judgment, not to attempts to collect on the judgment. To the extent respondents' argument vacillates between the two concepts, only diligence in filing the motion to amend is pertinent.

This case involves an attempt to amend the judgment under C.C.P. § 187. It does not fall within C.R.C. 48(a), which applies in circumstances such as when a party to an action dies and a personal representative takes over the litigation. See 9 B. Witkin, California Procedure, Appeals § 175, at 232 (4th ed. 1997).

Under C.C.P. § 916(a), a perfected appeal generally divests the trial court of further jurisdiction as to all questions affecting the validity of the judgment or order being appealed. Thus, the trial court has no power during an appeal to correct or

amend that judgment or order. E.g., Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc., 43 Cal. App. 4th 630, 641 (1996); Elsea v. Saberi, 4 Cal. App. 4th 625, 629 (1992). However, the trial court retains jurisdiction to determine ancillary or collateral matters that do not affect the judgment. People v. Hedge, 72 Cal. App. 4th 1466, 1477 (1999).

The rationale for this rule is simple.

> "The purpose of the rule depriving the trial court of jurisdiction during the pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it. [Citation omitted.] Accordingly, whether the matter is 'embraced' in or 'affected' by a judgment within the meaning of section 916 depends on whether post-judgment trial court proceedings on the particular matter would have any impact on the "effectiveness' of the appeal. If so, the proceedings are stayed; if not, the proceedings are permitted."

In re Marriage of Varner, 68 Cal. App. 4th 932, 936 (1998), quoting Elsea v. Saberi, supra, 4 Cal. App. 4th at 629.

This case well illustrates the application of the rule to preclude the exercise of trial court jurisdiction to amend the judgment while the appeal was pending. To give but one example, an important issue in the original appeal was the propriety of the compensatory and punitive damages awards. Wollersheim v. Church of Scientology of California, supra, 212 Cal. App. 3d at 905-07. The identity of the parties who would be subject to any award (as well as its amount) was manifestly "embraced" in or "affected" by the judgment. The Court therefore concludes that from the filing of the notice of appeal on or about September 29, 1986, until the conclusion of the direct appeals with the issuance of the remittitur following final dismissal of the grant of the

writ of review by the California Supreme Court on or about March 7, 1994, the trial court had no jurisdiction to amend the judgment.

In addition, post-trial proceedings with respect to the question of interest were held in the second half of 1994, during which CSC claimed that no final judgment existed. The trial court's adverse determination of those issues was followed by a further notice of appeal by CSC on or about December 21, 1994. That further appeal again divested the trial court of jurisdiction. The California Supreme Court's remittitur following denial of CSC's petition for review issued on or about February 15, 1996, once again restored the trial court's jurisdiction. The motion to amend the judgment to add RTC and CSI was filed on or about May 7, 1997.

In addition, there is another set of factors which the Court believes is pertinent to the due diligence issue: the pendency of other litigation involving the parties. On or about November 4, 1985, prior to trial in this case, present respondents RTC and CSI filed two suits (later consolidated) in federal court alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962, the Copyright Act, 17 U.S.C. § 501(b), and state tort law. Religious Technology Center and Church of Scientology International v. Wollersheim, U.S.D.C., C.D. Cal. No. CV-85-7191. RTC and CSI sued, among others, plaintiff Wollersheim, as well as his then-attorneys and some of Wollersheim's expert witnesses in this action, to prevent the dissemination and use in this action of certain allegedly stolen religious materials which were alleged to be "trade secrets." That case resulted in published decisions in Religious Technology Center v. Wollersheim, 796 F.2d 1076 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987) (reversing a preliminary injunction in favor of RTC and

CSI), Religious Technology Center v. Scott, 869 F.2d1306 (9th Cir. 1989) (reversing summary denial of renewed application for preliminary injunction on different grounds), and Religious Technology Center v. Wollersheim, 971 F.2d 364 (9th Cir. 1992) (affirming dismissal of the claims against the attorneys and experts).

The next suit was Church of Scientology of California v. Superior Court, U.S.D.C. C.D. Cal. No. CV 86-1362, which arose after Judge Swearinger ordered CSC to produce its entire "auditing" and "pre-clear" files on plaintiff for this case. CSC sued Judges Margolis and Swearinger, as well as the entire Los Angeles Superior Court bench. That action was dismissed by the federal district court in 1987.

While the various proceedings on its direct appeals from the judgment were still pending, CSC launched a collateral attack on the judgment by filing Church of Scientology of California v. Wollersheim on February 16, 1993. It attempted to have the original judgment against CSC set aside on the grounds of judicial bias. Wollersheim filed a special motion to strike the complaint based on C.C.P. § 425.16, the anti-SLAPP suit statute, which was granted, and substantial attorneys fees were awarded. That decision was affirmed on appeal in a published decision at 42 Cal. App. 4th, 628 (1996), and review was denied by the California Supreme Court on May 22, 1996 (1996 Cal. Lexis 2783 (May 22, 1996)).

On August 21, 1995, after the trial court had dismissed Church of Scientology v. Wollersheim, but before the Court of Appeals had issued its decision, yet another action was filed called Religious Technology Center and Bridge Publications, Inc. v. F.A.C.T.Net and Wollersheim, et al., U.S.D.C. D. Colo. No. 95 K2143. This suit apparently related to the alleged wrongful appropriation or dissemination of various

Scientology documents. Pursuant to a civil writ of seizure, hundreds of thousands of documents were seized relating to various of Wollersheim's attorneys, the trial judges in both Wollersheim v. Church of Scientology of California and Church of Scientology of California v. Wollersheim, and various other persons, arguably in violation of C.C.P. § 425.16. The case as to Wollersheim was apparently settled.

The Court finds this history to be significant because it demonstrates that, from well prior to trial, Scientology entities–including not only CSC, but also RTC and CSI–almost continuously were maintaining one or more separate suits against Wollersheim. This separate litigation has been characterized not only by the use of deep pockets to pursue virtually every possible appeal, but also–until the Colorado case–by its almost unbroken lack of success on the merits. See Church of Scientology v. Wollersheim, supra, 42 Cal. App. 4th at 649-50. Under these circumstances, the Court concludes that the necessary diversion of Wollersheim's attention, resources and effort caused by these countersuits constitute valid and persuasive reasons for such delay as has actually occurred. The Court therefore concludes that respondents (as moving parties) have not carried their burden of persuasion that this motion to amend should be precluded under either Abbey of the Chimes or any other decision cited by respondents.

Issue # 3

Plaintiff has argued that the doctrine of judicial estoppel should preclude respondents from raising Issue # 2. Plaintiff's theory is that as recently as October 1994, CSC's counsel, William Drescher, argued in submissions in opposition to

plaintiff's motion for appointment of a receiver that there was no judgment in effect to enforce. Having taken this position in 1994, plaintiff argues, respondents cannot now be heard to claim undue delay in seeking to amend a judgment they claimed did not exist.

The Court understands the argument, but need not reach it in view of the fact that respondents' position on Issue # 2 has been rejected on the merits. The Court therefore need not address two underlying questions: whether the position taken was an issue of fact, or of law, or of mixed fact and law; and what significance there may be to the fact the Mr. Drescher asserted one position on behalf of CSC in 1994, and the contrary position on behalf of CSI in 1997 and subsequently.

Issue # 4

Respondents contend that plaintiff's alter ego analysis will necessarily involve a constitutionally prohibited intrusion by the Court into the doctrine, internal administration and governance of Scientology's ecclesiastical hierarchy. The two principal decisions on which respondents rely are Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), and National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

At the threshold, this argument may seem premature. It is not yet clear what precise evidence may be proffered in connection with the hearing, and precisely what subjects will be addressed. Certainly, respondents have made it known that they believe oral testimony will be required to reach the merits, notwithstanding the voluminous exhibits and declarations which have already been tendered. Nevertheless,

the Court believes it can now address what it construes as the functional equivalent to a facial challenge to holding any hearing on the merits, as opposed to a challenge to the admissibility of particular pieces of evidence toward the merits.

National Labor Relations Board v. Catholic Bishop of Chicago, supra, is of little help on these issues. The question in that case was whether the N.L.R.B. had jurisdiction over private, non-profit religious schools. The Supreme Court noted the potentially serious issues raised by the N.L.R.B.'s differentiation between "completely religious" and "merely religiously affiliated" (440 U.S. at 495-99), and the need for an examination into the good faith adherence of religious beliefs by administrators in the resolution of unfair labor practice charges (Id. at 501-03). The Court concluded that, in the absence of a clearly expressed Congressional intent that religious schools should be covered by the National Labor Relations Act, it would construe the Act to deny jurisdiction rather than be required to confront the constitutional questions raised by the alternative construction. Id. at 504-07.

Serbian Eastern Orthodox Diocese v. Milivojevich involved a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church. The Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (the mother church) suspended and ultimately removed Milivojevich as Bishop of the American-Canadian Diocese. The mother church also reorganized the former American-Canadian Diocese into three dioceses. Milivojevich refused to recognize these acts by the authorities of the mother church, and challenged them in Illinois state court, including seeking a ruling that he was the true Diocesan Bishop. The Illinois Supreme Court ruled that both Milivojevich's removal and the reorganization were invalid under its

interpretation of governing church law. 426 U.S. at 697-708.

The Supreme Court reversed. The Court quoted Watson v. Jones, 13 Wall. 679 (1872), a diversity case decided before the First Amendment had been rendered applicable to the States through the Fourteenth Amendment, for the guiding principles applicable to hierarchical churches.

> "[T]he rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

426 U.S. at 710, quoting Watson v. Jones, 13 Wall. at 727.

This principle means that the court may not decide issues of theological controversy, review determinations of church members' moral standing , and similar issues. However, it is well recognized that the courts may make decisions relating to church property, where neutral principles of law, developed for use in all property disputes, are applied, as opposed to having the issue turn on resolution of controversies over religious doctrine and practice. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969) (reversing a Georgia state court decision where the jury had been instructed to determine whether there had been a "departure from doctrine" by the mother church). The Supreme Court expressly reaffirmed the "neutral principles of law" approach in Jones v. Wolf, 443 U.S. 595, 602-06 (1979). Moreover, Hull Memorial Presbyterian Church (393 U.S. at 447, 450-51) mentions a "fraud, collusion, or arbitrariness" exception, although Serbian Eastern Orthodox Diocese (426 U.S. at 412-13) points out that its content has never

been defined.

Respondent's argument that there is a blanket prohibition on any examination of the structure or operation of any Scientology entity was squarely rejected by the Tax Court in Church of Scientology of California v. Commissioner of Internal Revenue, supra, 83 T.C. at 454-69. The Tax Court used Scientology policy documents, not to resolve doctrinal issues, but to determine (among other things) its corporate structure and management practices. The Tax Court articulated the following principles which may apply to this case:

1. "The establishment clause does not prevent the government from making a threshold inquiry into whether or not a given practice is religious in nature and therefore entitled to First Amendment protection." Id. at 462.
2. "The establishment clause does not cloak a church in utter secrecy, nor does it immunize a church from all governmental authority. The thrust of the entanglement component of the establishment clause is to keep Government out of the business of umpiring matters involving religious practice and belief." Id.
3. "[C]ivil authorities are not barred from settling disputes implicating the secular side of church affairs as long as they rely upon neutral principles of law." Id.
4. The state may "examine Church [of Scientology] documents, including the constitution of a church, provided the documents are scrutinized in purely secular terms and the facts determined are not attendant on the resolution of doctrinal issues." Id. at 463.

These principles suggest that the inquiry sought by plaintiff is not barred by the First Amendment. Two examples of possible factual issues will suffice. First, a central character in plaintiff's alter ego theory is David Miscavige. During oral argument, Mr. Drescher advised the Court that at the time of trial in 1986, Mr. Miscavige was associated with a for-profit non-church entity called Author Services, Inc., and he allegedly had no relationship whatsoever with RTC or CSI Clearly, to the extent Mr. Miscavige had no ecclesiastical position prior to or at the time of trial, scrutiny of his role (if any) in controlling this litigation does not in any sense implicate the First Amendment. Moreover, as Mr. Drescher further stated at oral argument, when Mr. Miscavige was Chairman of the Board of Directors of RTC beginning in or about 1987, he wore two separate hats. He was the senior corporate administrative officer of RTC, and he was simultaneously serving as the senior ecclesiastical official of the Scientology religion. Which, if either, of these two hats Mr. Miscavige wore at any particular time and with respect to any particular conduct is undoubtedly the appropriate subject for judicial inquiry.

The second example is also suggested by Mr. Drescher's remarks at oral argument. He alluded to Mr. Miscavige's membership in something called the Sea Organization, also known as "Sea Org." This Mr. Drescher characterized as a "religious order," and analogized it to the Jesuits. However, in the pre-RTC period, according to Mr. Drescher, Mr. Miscavige's membership in Sea Org did not put in him a position of religious authority, and he was not interpreting doctrine.

An alternative view of Sea Org is presented in Church of Spiritual Technology v. United States, supra.

> After carefully examining the record and attempting to understand the nominal corporate structure of Scientology it is apparent to the court that it is something of a deceptis visus. Real control is exercised less formally, but more tangibly, through an unincorporated association, the Sea Organization, more commonly referred to as the Sea Org. This group, in the nature of a fraternity or clan, began with Scientologists who pledged themselves eternally to Scientology . . . .
>
> The Sea Org appellation survives in Scientology as a distinction afforded to those Scientologists who have dedicated themselves to serving Scientology for the next billion years. It is described by CST [Church of Spiritual Technology] as a way to distinguish those Scientologists worthy of great deference and respect. Sea Org members are initiates into the highest levels of Scientology, and bear concomitant responsibilities.
>
> CST staff and officers are required to be members of the Sea Org. which gives CST the distinction of being a Sea Org Church. CSI, RTC The Flag Services Org (which employs over 900 Sea Org members), the Saint Hill Church, in short all high ranking organizations are Sea Org Churches. Being a "Sea Org church" means that the church's function is important enough to Scientology to warrant the attention of a significant number of Sea Org members.
>
> Sea Org rank nominally carries with it no ecclesiastical authority in the sense that Sea Org members still take orders from the ecclesiastical leaders of whatever Scientology organization they join. Upon closer analysis, however, this appears to be a distinction without a difference because in a Sea Org church the ecclesiastical authority necessarily resides in a Sea Org member.
>
> Furthermore, the Sea Org appears to have considerable financial importance. . . . Sea Ord members also exercise considerable control over Scientology money through SOR Management Services, Ltd.

26 Ct. Cl. at 718-19. SOR Management Services, Ltd., was further described as a United Kingdom for-profit corporation which acts as an agent in managing money for, among other organizations, CSI and CSC. Id. at 724 n.23.

Plaintiff's motion argues that Sea Org members, including Mr. Miscavige, while having no formal corporate positions in the pertinent organizations, and while not exercising ecclesiastical functions by virtue of a specific hierarchical position, have in fact controlled and directed the activities of CSC, CSI and/or RTC as it relates to the

litigation involving plaintiff. Plaintiff apparently further argues that the conduct of the litigation involving him is a secular function, rather than a religious function. Plaintiff urges that, under all the circumstances, adherence to the fiction of separateness would sanction a fraud or injustice.

These arguments, if proven, suggests that the corporate formalities have been disregarded and that there was at pertinent times an effective unity of control and direction, which might support the imposition of alter ego liability. This particular issue is susceptible to examination and analysis using neutral legal principles, without impermissibly involving the Court in issues of religious practice or belief, faith, doctrine, or ecclesiastical administration. The First Amendment offers no bar to a properly structured evaluation of this question.

Issue # 5

Respondents' final issue is predicated on principles articulated in Roman Catholic Archbishop of San Francisco v. Superior Court, 15 Cal. App. 3d 405 (1971). In that case, plaintiff had arranged to buy a Saint Bernard dog in Switzerland from the Canons Regular of St. Augustine, a Roman Catholic order. When a dispute arose, he sued not only all those involved in Switzerland, but also "The Roman Catholic Church d.b.a., The Roman Catholic Bishop of San Francisco, a corporation sole, the Bishop of Rome, [and] The Holy See." He alleged essentially that all the subordinate entities were alter egos of the Roman Catholic Church, the Bishop of Rome and the Holy See. Id. at 408-09. The Court of Appeal reviewed the trial court's denial of the Archbishop's motion for summary judgment. The Court of Appeal held that, regardless whether the Canons

Regular of St. Augustine might be an alter ego of the Pope, that there was no evidence that the Archbishop was the alter ego of the Canons Regular. Id. at 409-12.

The Court of Appeal pointed out:

> The *"alter ego"* theory makes a "parent" liable for the actions of a "subsidiary" which it controls, but it does not mean that where a "parent" controls several subsidiaries each subsidiary then becomes liable for the actions of all other subsidiaries. There is no *respondeat superior* between subagents.

Id. at 412.

In order to fall within Roman Catholic Archbishop of San Francisco, the fundamental claim implicit in respondents' argument must be that they are really subordinate sister churches with CSC under common, superior ecclesiastical control. As a factual premise, that remains unproven.

There are divergent views of the respective roles of the different Scientology entities. One of these is that implicit in respondents' argument. Another is reflected in Church of Spiritual Technology v. United States, supra.

> Before 1981, the Church of Scientology of California ("CSC") acted as the mother church for all of Scientology. It was organized as a non-profit corporation in California, and was responsible for running all aspects of Scientology with the exception of some specialized financial arrangements. It had ultimate ecclesiastical authority, provided all levels of scientology services, and was the center of management for all other Scientology organizations. . . .
>
> . . .
>
> . . . [I]n 1981, Scientology underwent a reorganization. The goal of the new structure was for Scientology to "simplify its corporate structure." CSC was broken up and replaced by several new higher level entities. Church of Scientology International ("CSI"), Religious Technology Center ("RTC"), Church of Scientology San Francisco, and Church of Scientology Los Angeles were all products of the reorganization. . . . CSI became the new mother church of Scientology. It sits at the top of a complex corporate hierarchy. RTC is the entity charged with maintaining doctrinal purity in the church. CSI along with RTC form the top-level ecclesiastical

> management of Scientology, although there are numerous other churches and other entities that have a role in management, finance or spiritual affairs.

26 Ct. Cl. at 716-17. The term "simplify" is in quotes because the Court of Claims listed 305 separate organizations as constituting the church of Scientology after the reorganization. Id. at 717 n.9.

The Court of Claims description is significant because it does not depict CSC, on the one hand, and CSI and RTC, on the other hand, as subordinate sister churches, but rather as successive entities at the top of the pyramid. If this is in fact the case, respondents' entire argument premised upon Roman Catholic Archbishop of San Francisco lacks any factual foundation. That, however, is a decision which must be made on the basis of all the evidence, and not on the basis of a theoretical legal construct.

As Church of Scientology of California v. Commissioner of Internal Revenue, supra, teaches, it is permissible for the Courts to look at Scientology's corporate structure and management practices, including through the use of internal documents. The issues can be examined in purely secular terms, and not to resolve any doctrinal issues. No preclusion principle acts as a matter of law to bar a properly structured factual inquiry.

Conclusion

The Court wishes to emphasize that it has not yet decided the factual issues which will be necessary to address the motion on the merits. What it has decided is that respondents' preliminary objections to even conducting a merits inquiry

are not persuasive. The Court is cognizant of the volume of declarations, exhibits, evidentiary objections, and transcripts which already have been submitted. The Court will address the procedures by which the evidence is to be evaluated in a separate Order.

The Clerk will give notice.

Dated: May 4, 2001

Robert L. Hess
Judge of the Superior Court