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STATE OF NEW YORK COURT OF APPEALS

John P. Asiello
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

December 5, 2018

Mr. Xiu Jian Sun
54-25 153rd Street, 2nd Floor
Flushing, NY 11355

Re: Sun v Ohene,

Dear Mr. Xiu Jian Sun:

The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether any jurisdictional basis exists for an appeal as of right. This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns in the future.

You should file within ten days after this letter's date your comments in letter format justifying the retention of subject matter jurisdiction. By copy of this letter, your adversary is likewise afforded the opportunity to comment in letter format on the Court's

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subject matter jurisdiction within the same ten-day period after this letter's date. All letters shall be filed with proof of service of one copy of the letter on each party.

If applicable, the disclosure statement required to be filed by corporations and other business entities pursuant to section 500.1(f) of the Court of Appeals Rules of Practice shall be filed with the written submissions discussed above.

The times within which briefs on the merits must be filed are held in abeyance during the pendency of this jurisdictional inquiry. If this inquiry is terminated by the Court, the Clerk will notify counsel in writing and set a schedule for the perfecting of the appeal. This communication is without prejudice to any motion any party may wish to make.

If you have any questions regarding this letter, you may contact Susan Dautel (518-455-7701) or Margaret N. Wood (518-455-7702).

Very truly yours,

John P. Asiello

John P. Asiello

JPA/ssd/ai

cc: Philip O. Ohene, Esq.

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

December 12, 2017

The Church of Jesus Christ of Latter
Day Saints Servant Xu
54-25 153rd Street
2nd Floor
Flushing, NY 11355

A file has been opened in the case of:

TITLE: The Chuch of Jesus Christ of Latter Day Saints
Servant Xu Jian Sun v

COURT: Supreme **COUNTY:** Richmond
PAPER: Order

DATED: 11/03/2017 **INDEX NO.:** 100041/2017

This case has been assigned the following number on
the docket of this court: 2017-12815

ALL PAPERS AND CORRESPONDENCE RELATING
TO THIS MATTER MOST HEREAFTER BEAR THIS
CASE NUMBER.

Aprilanne Agostino
Clark of the Court

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**SUPREME COURT OF THE STATE OF NEW
YORK APPELLATE DIVISION: SECOND
JUDICIAL DEPARTMENT**

M255594

E/mm

ALAN D. SCHEINKMAN, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
MARK C. DILLON
RUTH C. BALKIN, JJ.

2017-12815

ORDER TO SHOW CAUSE

Church of Jesus Christ of Latter
Day Saints Servant Xu Jian Sun,
etc., appellant, v Philip O. Ohene,
etc., respondent.

(Index No. 100041/17)

Appeal by Church of Jesus Christ of Latter Day
Saints Servant Xu Jian Sun from an order of the
Supreme Court, Richmond County, dated November 3,
2017.

On the Court's own motion, it is

ORDERED that the parties are directed to show
cause before this Court why an order should or should

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not be made and entered dismissing the appeal in the above-entitled action on the ground that no appeal lies from an order entered upon the default of the appealing party (see CPLR 5511), by each filing an affirmation or affidavit on that issue in the office of the Clerk of this Court and serving one copy of the same on each other on or before October 16, 2018; and it is further,

ORDERED that the Clerk of this Court, or her designee, is directed to serve a copy of this order to show cause upon the parties by regular mail.

SCHEINKMAN, P.J., MASTRO, RIVERA, DILLON and BALKIN, JJ., concur.

ENTER:

Aprilanne Agostino
Aprilanne Agostino
Clerk of the Court

September 24, 2018

CHURCH OF JESUS CHRIST OF LATTER DAY
SAINTS SERVANT XU HAN SUN v OHENE

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**SUPREME COURT OF THE STATE OF NEW
YORK APPELLATE DIVISION: SECOND
JUDICIAL DEPARTMENT**

M257149

E/mm

REINALDO E. RIVERA, J.P.
SHERI S. ROMAN
JEFFREY A. COHEN
SYLVIA O. HINDS-RADIX, JJ.

2017-12815 DECISION & ORDER ON MOTION

Church of Jesus Christ of Latter
Day Saints Servant Xu Jian Sun,
etc., appellant, v Philip O. Ohene,
etc., respondent.

(Index No. 100041/17)

Appeal by Church of Jesus Christ of Latter Day
Saints Servant Xu Jian Sun from an order of the
Supreme Court, Richmond County, dated November 3,
2017. By order to show cause dated September 24,
2018, the parties were directed to show cause before
this Court why an order should or should not be made
and entered dismissing the appeal in the above-entitled
action on the ground that no appeal lies from an order
entered upon the default of the appealing party.

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Now, upon the order to show cause and no papers having been filed in response thereto, it is .

ORDERED that the motion to dismiss the appeal is granted, and the appeal is dismissed, without costs or disbursements (see CPLR 5511).

RIVERA, J.P., ROMAN, COHEN and HINDS-RADIX, JJ., concur.

ENTER:

Aprilanne Agostino
Aprilanne Agostino
Clerk of the Court

November 5, 2018

CHURCH OF JESUS CHRIST OF LATTER DAY
SAINTS SERVANT XU HAN SUN v OHENE

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FILED: RICHMOND COUNTY CLERK
09/07/2017 11:54 PM Index No.: 100041/2017
NYSCEF DOC.NO.5 RECEIVED NYSCEF: 09/07/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
JUDGE MARRAZZO, ORLANDO

THE CHURCH OF JESUS CHIDST OF LATTER
DAY SAINTS,

- v. -

PHILIP O. OHENE: Index No.: 100041/2017

COURT NOTICE

This matter has been scheduled for a Conference
(hearing) for Monday October 23, 2017 at 9:30am in
Part DCM21 18 Richmond Terrace Room 320 in front of
Hon. Orlando Marrazzo Jr. Please notify all sides.

DATED 09/07/2017

FILED By Luz Rodriguez

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**RICHMOND SUPREME COURT JUSTICE HON.
ORLANDO MARRAZZO, JR
DCMPART21
18 Richmond Terrace
Staten Island, New York 10301**

Sep 20, 2017

CHURCH OF JESUS CHRIST OF -Prose
CHURCH OF JESUS CHRIST OF -Prose
LATTER DAY SAINTS FLUSHING NY 11355-

0100041/2017

CHURCH OF JESUS CHRIST -vs- OHENE, PHILIP O.

Dear Sir/Madam:

A Conference scheduled for October 23, 2017 before Justice HON. ORLANDO MARRAZZO, JR has been **administratively adjourned to October 30, 2017 at 9:30 A.M. at 18 Richmond Terrace room320.**

Kindly mark your calendar accordingly and notify all sides. If you are no longer the attorney of record, please notify the new party and have them notify the court in writing of changes.

Thank you.

Very truly yours,

Luz Rodriguez
SENIOR COURT CLERK

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FILED: RICHMOND COUNTY CLERK
11/15/2017 01:14 PM Index No.: 100041/2017
NYSCEF DOC.NO.9 RECEIVED NYSCEF: 11/15/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
DCM PART 21

HON. ORLANDO MARRAZZO, JR.

THE CHURCH OF JESUS CHIDST OF LATTER
DAY SAINTS, SERVANT XU JIAN SUN,
THE SPIRITUAL ADAM,

Plaintiff(s),

DECISION AND ORDER

-against-

Index No.: 100041/2017

PHILIP O. OHENE:

Motion No. 1

ATTORNEY FROM PHILIP O. OHENE, ESQ.,

Defendant(s).

The following papers numbered 1 were fully submitted
on the 31st day of October, 2017

Papers

Numbered

Defendant's motion to dismiss complaint with
Supporting Papers and exhibits 1

Upon the foregoing papers, defendant's motion to
dismiss is granted.

A review of the court file indicates that plaintiff failed

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to present a cause of action against the defendant herein.

Accordingly, the complaint is dismissed with prejudice.

This constitutes the order and decision of the court.

Staten Island, New York
November 3, 2017

Orlando Marrazzo
Orlando Marrazzo, Jr.
Acting Justice, Supreme Court

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FILED: RICHMOND COUNTY CLERK
09/21/2017 02:31 PM Index No.: 100041/2017
NYSCEF DOC.NO.8 RECEIVED NYSCEF: 09/21/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

THE CHURCH OF JESUS CHRIST OF Index No.:
LATTER DAY SAINTS SERVANT: 100041/2017
XIU JIAN SUN, THE SPIRITUAL ADAM
Plaintiff

-against- ANSWER
PHILIP O. OHENE:
ATTORNEY FROM PHILIP O. OHENE, Esq.

-----X

Defendant PHILIP O. OHENE, answering the
complaint in this action alleges as follows:

1. Denies any and all allegations contained in the
complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

2. The complaint does not allege a cause of action for
which a relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

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3. The court lacks jurisdiction over religious matters

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

4. The court lacks jurisdiction over Defendant as Defendant was not served with the papers in the manner prescribed by the Civil Procedure Law Rules.

WHEREFORE, Defendant demands that the complaint be dismissed in its entirety and for such other and further relief as this Court deems fair and proper.

Dated: Staten Island, New York
September 1, 2017

Philip O. Ohene, Esq.
Philip O. Ohene, Esq.
Defendant Pro Se
805 Castleton Avenue
Staten Island, NY 10310
(718) 727-6607

TO: XIU JIAN SUN, the Spiritual Adam
54-25 153rd Street, 2nd Floor
Flushing, NY 11355

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

THE CHURCH OF JESUS CHRIST OF
LATTER DAY SAINTS SERVANT:
XIU JIAN SUN, THE SPIRITUAL ADAM
Plaintiff

-against- Index No.: 100041/2017
PHILIP O. OHENE:
ATTORNEY FROM PHILIP O. OHENE, Esq.
Defendant

ANSWER

PHILIP O. OHENE
Attorney for Respondent
805 Castleton Avenue
Staten Island, New York, 10310
(718) 727-6607

To:

Service of a copy of the within is hereby admitted.
Dated: February 6, 2017
PHILIP O.OHENE, Esq.
805 Castleton Avenue
Staten Island, NY 10310

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FILED: RICHMOND COUNTY CLERK
09/25/2017 01:15 PM Index No.: 100041/2017
NYSCEF DOC.NO.8 RECEIVED NYSCEF: 09/25/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

THE CHURCH OF JESUS CHRIST OF Index No.:
LATTER DAY SAINTS SERVANT: 100041/2017
XIU JIAN SUN, THE SPIRITUAL ADAM

Plaintiff

-against- NOTICE OF MOTION TO DISMISS
PHILIP O. OHENE:
ATTORNEY FROM PHILIP O. OHENE, Esq.

-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation of Philip O. Ohene, Esq. dated September 22, 2017 and upon the summons and complaint, answer and all the proceedings heretofore had, the undersigned will move this Court at Part DCM21 located at 18 Richmond Terrace, Room 320 Staten Island, New York on October 23, 2017, at 9:30 a.m. or as soon as counsel can be heard for an order under Rule 3211 (a) (7) granting Defendant's motion dismissal of the complaint upon grounds that the complaint fails as a matter of law to state a cause of action cognizable in law, granting Defendant cost and disbursement and attorney's fees,

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imposing sanctions upon Plaintiff, together with such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, THAT PURSUANT TO CPLR Rules 2214 and 2215, Plaintiff must serve any answering papers, if any on Defendant seven (7) days before the time at which the motion is noticed to be heard.

Dated: Staten Island, New York
September 22, 2017

Philip O. Ohene, Esq.
Philip O. Ohene, Esq.
Defendant Pro Se

805 Castleton Avenue
Staten Island, NY 10310

TO: XIU JIAN SUN, the Spiritual Adam
54-25 153rd Street, 2nd Floor
Flushing, NY 11355

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

THE CHURCH OF JESUS CHRIST OF Index No.:
LATTER DAY SAINTS SERVANT: 100041/2017
XIU JIAN SUN, THE SPIRITUAL ADAM
Plaintiff

-against- AFFIRMATION IN SUPPORT OF
PHILIP O. OHENE: DISMISSAL OF COMPLAINT
ATTORNEY FROM PHILIP O. OHENE, Esq.

-----X

PHILIP O. OHENE, an attorney duly admitted to
practice law before the Courts of the State of New York
makes the following statements under the penalty of
perjury:

1. That I am the defendant in the above entitled action.
2. This affirmation is being made in support of my
motion to have this matter dismissed in its entirety
pursuant to CPLR 3211 (a)(7) on the grounds that the
complaint fails to state a cause of action for which
relief can be granted.
3. The Plaintiff's complaint is entirely silly and hundred
percent frivolous.
4. I was legal counsel on a similar case where this same
Plaintiff brought an action against my client on the
same frivolous grounds. I as counsel, made a motion

to dismiss the action on that case and the Court there agreed with me and dismissed that matter.

5. As far as I am aware, that was the only time I met with Plaintiff herein, otherwise there is no privity between the parties.
6. Paragraph 3 of the within complaint states " Lord God of host sent the messenger through angel said to spiritual Adam: take him (her) to the law to confront it." The rest of the complaint is plain jeberish and stupid.
7. The aforesaid paragraph 3 does not fit within any cognizable legal theory.
8. While it is well settled law that in a motion to dismiss pursuant to CPLR 3211(a)(7), the Court must accept the facts alleged in the complaint as true and accord the Plaintiff the benefit of every possible favorable inference, the facts as alleged here, does not fit, even by the stretch of one's imagination, a cognizable legal theory. Stucklen v. Kabio Assocs. 18 A.D. 3d 464 (2d Dept. 1996).
9. Bare conclusions as alleged here, are not entitled to the benefit of truth and should not be accorded any favorable inference. Doria v. Masucci, 230 A.D 2d 764 (2d Dept. 1996)
10. Besides Supreme Court of the United States has held that Courts of law under the First Amendment are prohibited from intermeshing themselves in and adjudicating questions of religious doctrine. See e.g. Presbyterian Church in US v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 US 440, 89

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SCT 601.

11. To have recognized a cause of action to enforce a commandment of the Lord would "cede governmental powers to a religion in violation of the First Amendment to the US Constitution. State v. Celmer, 80 N.J. 405, 404 A.D. 2d 1 (1979); Grumet v. Pataki, 93 N.Y. 2d 667, 720 N.E. 2d 66, (1999) cert. den 528 U.S. 946 120 S. ST. 363, (1999).

WHEREFORE, Defendant moves this Court to dismiss the complaint, granting defendant cost and disbursement, attorney's fees, and for the Court to SANCTION this Plaintiff for further filling of frivolous complaints IN THIS JURISDICTION.

Philip O. Ohene

PHILIP O. OHENE, Esq.

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF RICHMOND))ss.:

PHILIP O. OHENE, being duly sworn deposes and says:

I am a party to the action herein and I am over 18 years of age and reside at 805 Castleton Avenue, Staten Island, New York.

On September 25, 2017 I served the within Motion to Dismiss upon the Plaintiff listed below, at his listed address which was so designated by him for said purpose, by depositing a true copy of same enclosed in a post paid properly addressed wrapper at a post office under the exclusive care and custody of the U.S. Postal Service within New York State.

TO: XIU JIAN SUN, The Spiritual Adam
54-25 153rd Street
Flushing, NY 11355

Philip O. Ohene
Philip O./Ohene

Sworn to before me this 25th
day of September, 2017

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

THE CHURCH OF JESUS CHRIST OF
LATTER DAY SAINTS SERVANT:
XIU JIAN SUN, THE SPIRITUAL ADAM

Plaintiff

-against-

Index No.: 100041/2017

PHILIP O. OHENE:

ATTORNEY FROM PHILIP O. OHENE, Esq.

Defendant

MOTION TO DISMISS

PHILIP O. OHENE
Attorney for Respondent
805 Castleton Avenue
Staten Island, New York, 10310
(718) 727-6607

To:

Service of a copy of the within is hereby admitted.

Dated: February 6, 2017

PHILIP O. OHENE, Esq.

805 Castleton Avenue

Staten Island, NY 10310

