

JURISDICTION

STATE OF NEW YORK COURT OF APPEALS

**Decided and Entered on the
second day of April, 2020**

Present, Hon. Janet DiFiore, Chief Judge, Presiding.

Mo. No. 2020-25

The Church of Jesus Christ of Latter
-Day Saints, Servant, Xiu Jian Sun, &c.,
Appellant,

v.

Charles F. Sanders, et al.,
Respondents,
Demidchik Law Firm, P.L.L.C., et al.,
Defendants.

The Church of Jesus Christ of Latter- Day Saints,
Servant, Xiu Jian Sun, &c.,
Appellant,

v.

Oren L. Zeve,
Respondent,

Appellant having appealed to the Court of Appeals
and respondents having moved for sanctions &c. in the
above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question; and it is further

ORDERED, that the motion for sanctions &c. is denied.

Heather Davis

Heather Davis
Deputy Clerk

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

November 4, 2019

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

Re: Sun v Stephen: Sun v Zeve

Dear Mr. Xiu Jian Sun:

The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether on 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 the letter, your adversary is likewise afforded the opportunity to comment in letter format on the Court's

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 either Margaret N. Wood at 518-455-7702 or Edward J. Ohanian at 518-455-7701.

Very truly yours,
Heather Davis
Heather Davis
Deputy Clerk

JPA/MNW/ni
cc: David Lawrence, III, Esq
Oren L. Zeve, Esq
Stephen E. Mullkoff, Esq

**SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT**

OCTOBER 1, 2019

**THE COURT ANNOUNCES THE FOLLOWING
DECISIONS:**

Richter, J.P., Gische, Kapnick, Kern, Moulton, JJ.

9944-

9945

Church of Jesus Christ of Latter-Day
Saints, Servant: Xiu Jian Sun, the
Spiritual Adam, Index 101013/17
Plaintiff-Appellant, 100603/17

-against-

Charles F. Sanders, et al.,
Defendants-Respondents,
Demidchik Law Firm, P.L.L.C., et al.,
Defendants.

Church of Jesus Christ of Latter-Day Saints,
Servant: Xiu Jian Sun, the Spiritual Adam,
Plaintiff-Appellant,

-against-

Oren L. Zeve,
Defendant-Respondent.

Xiu Jian Sun, appellant pro se.

Letitia James, Attorney General, New York (Oren L

Zeve of counsel), for Charles F. Sanders, Eric T. Schneiderman, D. Stan O'Loughlin and David Lawrence, III, respondents, and (David Lawrence III of counsel), for Oren L. Zeve, respondent.

Order, Supreme Court, New York County (Barbara Jaffe, J.), entered February 28, 2018, which granted defendant Oren L. Zeve's motion to dismiss the complaint, unanimously affirmed, without costs. Order, Supreme Court, New York County (Nancy M. Bannon, J.), entered February 26, 2018, which granted defendants' motion to dismiss the complaint, unanimously affirmed, without costs.

Construing the pleadings liberally, accepting all the facts alleged in the complaints to be true, and according plaintiff the benefit of every possible favorable inference (Leon v Martinez, 84 NY2d 83, 87-88 [1994]), there are simply no viable causes of action against defendants that are discernible from plaintiff's complaints.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 1, 2019

Susanna Rojas
CLERK

100603/2017 NOTICE OF APPEAL, Page 7 of 10
COPY FORWARDED TO AD1
100603/2017 PT 12 SEQ 001 Page 1 of 1
DECISION Order filed 04/23/2018

EA 2/27/18

**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE Justice PART 12

x
INDEX NO. 100603/2017

The Church of Jesus Christ of MOTION DATE
Latter - day saints, Servant: MOTION SEQ NO. 1
XIU JIAN SUN,
the spiritual Adam DECISION AND ORDER
Petitioner
-v- FILED
OREN L. ZEVE FED 28 2018
Respondent COUNTY CLERK OFFICE
x NEW YORK

Absent any dispute that plaintiff failed to serve defendant with process according to CPLR 307 (2) or 308, and to the extent that plaintiff apparently intends to sue plaintiff in his capacity as a Managing Assistant Solicitor General with the New York State Office of the Attorney General, defendant is absolutely immune from such prosecution. In any event, the complaint sets

C2

forth no cognizable cause of action.

Accordingly, it is hereby

ORDERED, that defendant's motion to dismiss is granted in its entirety; and it is further

ORDERED, that the complaint is dismissed and the clerk is directed to enter judgment accordingly.

DATED: 2/23/2018

Barbara Jaffe

HON. BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE

CHECK ONE [X] CASE DISPOSED

[X] GRANTED

APPLICATION [] SETTLE ORDER

CHECK IF APPROPRIATE [] DO NOT POST

[] DENIED

[] NON-FINAL DISPOSITION

[] GRANTED IN ART

[] SUBMIT ORDER

[] FIDUCIARY APPOINTMENT

[] OTHER

[] REFERENCE

Printed: 3/5/2018

Printed: 10/19/2018

101013/2017 NOTICE OF APPEAL, Page 8 of 11
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PART 42

DG 2/26/18 E

**SUPREME COURT OP THE STATE OP NEW
YORK NEW YORK COUNTY**

PRESENT: Hon.
Nancy Bannon
Justice

RECEIVED
JAN 12 2018
NYS SUPREME COURT CIVIL
GENERAL CLERK'S OFFICE

INDEX NO.101013/2017
The Church of Jesus MOTION DATE 9/28/2017
Christ of Latter - day saints, MOTION SEQ NO. 001
Servant: XIU JIAN SUN,

DECISION AND ORDER
FILED
-v-
CHARLES SANDERS, et al FED 26 2018
COUNTY CLERK OFFICE
NEW YORK

The following papers were read on the petition/
complaint and motion to dismiss the
petition/complaint.

SEQ 001 Notice of Motion/Order to Show Cause-
Affirmation-Affidavit(s)-Exhibits-Memorandum of Law
No (s). 1

Answering Affirmation(s)-Affidavit(s)-Exhibits----
No (s). _____

Replying Affirmation-Affidavit(s)-Exhibits----
No (s). _____

SEQ 002 Notice of Motion/Order to Show Cause-
Affirmation-Affidavit(s)-Exhibits-Memorandum of Law

No (s). 1

In this action for unspecified relief, the plaintiff, in effect, moves for unspecified injunctive relief (SEQ 001) and the defendants move pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action (SEQ 002). The court grants the defendants' motion and denies the plaintiffs request for relief.

When assessing the adequacy of a complaint in the context of a CPLR 3211(a)(7) motion to dismiss the court's role is "to determine whether plaintiffs' pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-152 (2002). In the context of a CPLR 3211(a)(7) motion to dismiss made on the ground that New York law does not recognize a cause of action, the inquiry is whether the proponent of the pleading has a cause of action. See Davis v South Nassau Communities Hosp., 26 NY3d 563,572 (2015).

To accomplish the task of determining whether a complaint adequately states a cause of action, the court must "liberally construe the complaint," accept the facts alleged in it as true, and accord the plaintiff "the benefit of every possible favorable inference." Id. at 152; see Romanello v Intesa Sanpaolo. S.D.A. 22 NY3d 881, 887 (2013); Simkin v Blank, 19 NY3d 46, 52 (2012); CPLR 3026). The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. "511 W. 232nd Owners Corp. v Jennifer Realty Co supra, at 152 (internal quotation marks omitted); see Romanello v Intesa Sanpaolo. S.D.A. supra at 887; Leon v Martinez, 84 NY2d 83, 87 (1994); Guggenhelmer v Ginzburg, 43 NY2d 268 275 (1977). However, "'factual

allegations... that consist of bare legal conclusions, or that are inherently incredible . . . are not entitled" to such a favorable inference. Mamoon v Dot Net Inc., 135 AD3d 656, 658 (1st Dept 2016), quoting Leder v Spiegel, 31 AD3d 266, 267 (1st Dept 2006), affd 9 N.Y.3d 836 (2007); see Ullmann v Norma Kamall, Inc., 207 AD2d 691,692 (1st Dept 1994).

The complaint here too vague and confusing to have apprised the defendants of the claims asserted against them (see New Dimension Solutions, Inc. v Spearhead Sys, Consultants (US), Ltd., 28 AD3d 260, 260 [1st Dept 2006]), consisting as it does of numerous rambling, disjointed allegations, none of which, even if read together and liberally construed, state a cause of action against the defendants. Moreover, many of the allegations against the defendants are inherently incredible or unworthy of belief (see e.g. Reyes v New York Unjy., 305 AD2d 392, 393 (2nd Dept 2003}) such as vague religious-sounding statements that seem to request that some divine intervention be visited upon the defendants, See Victoria I, Enters, Inc v Charmer Indus., Inc, 63 AD3d 1698, 1698 (4th Dept 2009). Thus, the complaint does not state a cause of action, and must be dismissed.

Although the plaintiff does not expressly provide a notice of motion along with the request for Judicial intervention (RJI) that he filed, to the extent that any specific request for relief may be inferred from the statement on the RJI that the plaintiff seeks to "prevent insult and unfair behavior," the court deems the request to be for a preliminary Injunction or restrain some unspecified conduct. To obtain a preliminary injunction, a movant must demonstrate, by