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

VINCENT FORRAS, on behalf of himself and all others of and in the City of New York, County of New York, similarly situated,

Plaintiff,

-against-

FEISAL ABDUL RAUF, and CORDOBA HOUSE/PARK 51, CORDOBA INITIATIVE, SOHO PROPERTIES, and all other aliases known and unknown,

Defendants.

Index #111970/2010

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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PRELIMINARY STATEMENT

Plaintiff's attorney, an infamous publicity hound,[1] has found in Plaintiff the perfect victim, a man who could have comfortably concluded his life as a national hero, a self-described "first responder" to the greatest national tragedy since Pearl Harbor. Instead, thanks to this wholly frivolous lawsuit, he trades in his well deserved laurels for fifteen minutes of fame as a nationally recognized bigot. He, who was to be protecting our Constitution,

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[1] *See generally, Stern v. Burkle,* 20 Misc.3d 1101(A), 867 N.Y.S.2d 20 (Table), N.Y.Sup., 2008.

has been swept up by the forces of intolerance and ignorance to use this Court to attempt to undermine the very first and most fundamental principle of what it is to be an American, the freedom of religion clauses of the Bill of Rights, first of the first principles of American liberty. His cause and his case have all the rationality of one who would seek to tear down New York City's Chinatown as vengeance for Pearl Harbor on the theory that all Asians are alike.

Plaintiff's view is simple. According to him, Islam equates with terrorism, regardless of the fact that Islamic terrorists number a few thousand at most and the Earth's population of Muslims numbers 1.5 billion.

The proposed mosque which is at the center of this controversy is to be a house of prayer and is not even located *at* Ground Zero, but in the general vicinity of New York's financial district, no closer to Ground Zero than dozens of other buildings, ranging from churches to strip joints, hotels, restaurants, tattoo parlors, and business offices. Yet because Plaintiff's revulsion for one particular religion has so poisoned his mind, he claims the right to use the power of this court to destroy American freedom in the hopes of curing his ongoing suffering for the attack made just shy of a decade ago on his native land.

He has elected to transform himself from America's poster child hero to America's Spokesman of Bigotry, but this court can neither tolerate nor

condone its being employed to this nefarious purpose, destructive of the very fabric of our fundamental understandings of who and what we are.

In legal terms, he has no cause of action and this court has no subject matter jurisdiction to entertain his claim. It is that simple.

QUESTIONS PRESENTED

1. Does a person who suffers a morbid aversion to a particular religion have a cause of action against the construction of a house of worship for adherents of that religion on any theory of law at all?

   No. The United States Constitution makes such a purported cause of action anathema through the First and Fourteenth Amendments.

2. Does any court in the United States of America have the subject matter jurisdiction to make any award in law or equity against the construction of a house of worship based solely on the fact that it is to be a house of worship?

   No. Since there can be no law interfering with the free exercise of religion, there can be no court having the power to do such.

STATEMENT OF FACTS[2]

Plaintiff claims to have been a "first responder" to the tragic destruction of the World Trade Center on September 11, 2001. Plaintiff still lives in or near New York City.

Defendants contemplate building a mosque in the same neighborhood where the World Trade Center stood, at a distance of some two blocks from the actual site of the towers. Plaintiff claims that that idea makes him sick.

POINT I

PURSUANT TO THE FIRST AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, DEFENDANTS ARE ENTITLED TO THE FREE EXERCISE OF THEIR RELIGION

Freedom of religion, which necessarily includes the right to follow the tenets of one's faith, is one of the most basic and fundamental concepts of the United States of America. The free practice of one's religion is a right deeply cherished by the citizens of our State and Nation, and one that is zealously protected by the free exercise clause of the First Amendment. *Thomas v. Review Board of Indiana Employment Security Division,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). Indeed, *Thomas* clearly speaks directly to the case before this court where it states:

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[2] For purposes of this Memorandum, all factual allegations in the Complaint to the extent they describe the Plaintiff are treated as if they were true.

> However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; *religious beliefs need not be acceptable,* logical, consistent, or comprehensible *to others in order to merit First Amendment protection.* (emphasis supplied).

That the plaintiff in this suit finds Islam unacceptable to him personally is simply irrelevant to the protection to which Islam is entitled under the First Amendment as explained by *Thomas.*

The United States Constitution First Amendment, in its entirety reads:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Thus, one notes that the very first phrase of the very first Amendment in the Bill of Rights is that of freedom of religion. From this placement, it can be presumed that the Founding Fathers considered this to be the most important right of all to be guaranteed by the Constitution. The free exercise of religion has since been accepted as a fundamental constitutional right, *Johnson v. Robison,* U.S.Mass.1974, 94 S.Ct. 1160, 415 U.S. 361, 39 L.Ed.2d 389, and is applicable to the states by reason of the Fourteenth Amendment *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Intrinsic in that right is the right to construct a house of worship where one chooses. Here, Defendants' decision to build an Islamic Community Center in Lower Manhattan is consistent with the exercise of their religion, and is therefore protected by the First Amendment.

POINT II

THIS COURT LACKS SUBJECT MATTER JURISDICTION AS THE ALLEGEDLY TORTIOUS CONDUCT IS PRIVILEGED BY THE FREE EXERCISE CLAUSE

The First Amendment's protection of religious freedom embraces two concepts, wrote the court in *Cantwell v. Connecticut*, 310 U.S. 296, 308 [1940], the freedom to believe and the freedom to act.

Religious belief enjoys absolute constitutional protection and, when imposition of liability would result in abridgment of the act of exercising those religious beliefs, recovery in tort is barred. (*See*, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15; *see also*, *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151; *Paul v. Watchtower Bible & Tract Soc. of New York*, 819 F.2d 875 (9th Cir. 1987); *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 654 N.Y.S.2d 791; *Madsen v. Erwin*, 395 Mass. 715, 481 N.E.2d 1160; *Paul v.*

Watchtower Bible and Tract Soc. of New York, Inc. 819 F.2d 875 C.A.9 (Wash.),1987.

These cases show the extreme reticence courts have in dealing with religious disputes by those who are currently or formerly members of a particular denomination and absolutely forbid the recognition of tort liability in such cases. How much stronger is the instant case where there is absolutely no connection between Plaintiff and the people he chooses to label as tortfeasors, people with whom he has never had any connection at all and about whom he has nothing to say other than that they *plan* to build a building that he believes he *will* find offensive. If a religious society cannot be held to answer to its own membership in tort by reason of its beliefs, most assuredly, it cannot answer to a stranger either.

In *Paul v Watchtower, supra,* where Plaintiff was upset at being ostracized from her religion, she commenced an action against the church. The U.S. Court of Appeals wrote that the fact that a person might be upset at the acts of a religious body does not mean that the U.S. Constitution should be ignored:

> The constitutional guarantee of the free exercise of religion requires that society tolerate the type of harms suffered by Paul as a price well worth paying to safeguard the right of religious difference that all citizens enjoy.

There can be no dispute that Islam is a *bona fide* religion and such has been confirmed as such by New York courts, *Brown v. McGinnis,* 10 N.Y.2d 531, 180 N.E.2d 791, N.Y. 1962.

The building of a facility where followers of that religion can meet and worship is fundamental to that belief. Defendants are thus absolutely protected by the First Amendment and therefore this Court, and any Court, lacks subject matter jurisdiction to continue this case. The Complaint must be dismissed.

POINT III

A PLURALISTIC SOCIETY DOES NOT ALLOW RELIGIOUS BIGOTRY TO BE A BASIS OF A CAUSE OF ACTION FOR PRIVATE NUISANCE

Although Plaintiff purports to sue in "nuisance," Plaintiff does not specify whether by that he means "public nuisance" or "private nuisance." Thus, for the purposes of this motion, it falls to Defendants to demonstrate to this Court that no possible reading of the Complaint can frame a cause of action either in public nuisance or in private nuisance. This section of this Memorandum deals with private nuisance.

The definition of private nuisance is clear:

> A private nuisance threatens one person or a relatively few, an essential feature being an interference with the use or enjoyment of land

Copart Indus. v. Consol. Edison Co. of NY, 41 N.Y.2d 564, 568 [1977]. According to *Anderson v. Elliott,* 24 AD3d 400, 402 [2005]:

> To recover damages based on the tort of private nuisance, a plaintiff must establish an interference with the use or enjoyment of land, substantial in nature, intentional or negligent in origin, unreasonable in character, and caused by the defendants' conduct (citations omitted)

see also Higgins v. Village of Orchard Park, 277 AD2D 989 [2000].

It is true that if it could be demonstrated that Defendants were actually engaged in promoting terrorism, they could be characterized as interfering with the use or enjoyment of land.[3] However, other than the wholly unsupported assumption in the Complaint that *all* Muslims support terrorism, there is no connection between these defendants and that heinous activity; there is no connection between this proposed mosque and that activity; there is no allegation that anything Defendants have done or propose to do interferes in any manner with anyone's use of land, reasonably or not.

As is well recognized by all studies done on the subject, American Muslims, such as the defendants in this case, generally *oppose* terrorism:

> Many Muslim Americans share the concerns of the broader population about Islamic extremism. Roughly three-quarters (76%) are very or somewhat concerned about the rise of Islamic extremism around the world, compared with 81% of the U.S. general population.[2] About six-in-ten Muslim Americans (61%) are also worried about the potential rise of Islamic extremism in the U.S., although this is lower than the level of concern among the general public (78%).[3]
>
> **Few Endorse Extremism**

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[3] Although there is no allegation in the Complaint that the Plaintiff owns any land that would imply that *his* use or enjoyment of land would suffer interference.

> Very few Muslim Americans hold a positive opinion of al Qaeda -- only 5% give the terrorist organization a favorable rating, while 68% express an unfavorable view, including 58% who describe their view as very unfavorable. About one-quarter (27%) decline to offer an opinion.
>
> Support for suicide terrorism among Muslim Americans is similarly rare: *78% believe that suicide bombing and other forms of violence against civilian targets to defend Islam from its enemies can never be justified, and another 5% say these types of attacks are rarely justified.* Fewer than one-in-ten American Muslims say that suicide bombing is sometimes (7%) or often (1%) justified. (emphasis supplied)

Little Support for Terrorism Among Muslim Americans, by Richard Wike, Pew Global Attitudes Project, Greg Smith, Pew Forum on Religion & Public Life December 17, 2009.[4]

The only allegation that Plaintiff makes that is specific to Defendants with respect to terrorism is to be found in paragraph 15 of the Complaint wherein Plaintiff states, "With regard to the September 11, 2001, terror attacks at Ground Zero, Defendant Feisal has stated in interviews that 'United States' policies were an accessory to the crime that happened.' This underscores Feisal's terrorist sympathies and intent, at a minimum."

Actually, it does the precise opposite. First, it should be noted that Feisal characterizes September 11, 2001 as "the crime." Describing something as a "crime" can hardly be characterized as approval! However, what it does show is merely that Defendant Feisal at times disagrees with the policies of the American government. This, as it turns out, he has in

[4] http://pewresearch.org/pubs/1445/little-support-for-terrorism-among-muslim-americans, (last visited October 5, 2010).

common with the plaintiff. In a video clip posted on http://www.freedomwatchusa.org/[5], Plaintiff states:

> I feel very disappointed in our elected officials and our representatives that it takes us, we the people, to actually utilize our system rather than having our system used against us.

Thus, Plaintiff states that he, like Defendant Feisal, disagrees with what our government has done. If Plaintiff thinks that is the definition of being a terrorist or terrorist sympathizer, then it must be applied equally to him as to Defendants.

POINT IV

PLAINTIFF FAILS TO PLEAD A CAUSE OF ACTION FOR PUBLIC NUISANCE

A public or, as sometimes termed, a common nuisance exists when there is an interference with a public right. The Court of Appeals has stated that a public nuisance:

> consists of conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all in a manner such as to ... interfere with use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons

Copart Industries, Inc. v. Consolidated Edison Co. of New York, Inc., 41 N.Y.2d 564, 362 N.E.2d 968, N.Y. 1977.

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[5] The organization furnishing Plaintiff's attorney. *See generally, Stern v. Burkle,* 20 Misc.3d 1101(A), 867 N.Y.S.2d 20 (Table), N.Y.Sup., 2008.

To sustain a cause of action sounding in public nuisance, a plaintiff must establish by clear and convincing evidence a "substantial and unreasonable interference with the public right," *DeStefano v. Emergency Housing Group, Inc.*, 281 A.D.2d 449, 722 N.Y.S.2d 35, N.Y.A.D. 2 Dept., 2001.

A public nuisance is actionable by a private person only if it is shown that the person suffered special injury beyond that suffered by the community at large. *532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Center, Inc.* 96 N.Y.2d 280, 750 N.E.2d 1097 N.Y.,2001.

Here, Plaintiff has failed to show that he has suffered any special injury. Moreover he has failed to show injury to anyone but himself. The fact that Plaintiff might be bothered or offended by the presence of the mosque in Lower Manhattan falls dramatically short of the requirements for a public nuisance.

The Court of Appeals has also recognized that claims for economic loss are beyond the scope of duty owed other members of a community. In *532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Center, Inc.* 96 N.Y.2d 280, 750 N.E.2d 1097 N.Y.,2001, following construction collapses that caused extensive street closures, various businesses brought suits, against the building owner, the construction company and others, variously alleging negligence and public and private nuisance.

The Court held that

> (1) negligence claims based on economic loss alone fell beyond the scope of the duty owed to businesses closed and area residents evacuated from their homes by reason of city's closure of streets for safety reasons, and (2) plaintiffs did not suffer a special injury beyond that of the community, so as to support their damages claims for public nuisance. (96 N.Y.2d at 280).

Clearly, there is a difference between something that is bothersome to one or a few individuals and something being a "substantial and unreasonable" interference to the public at large.

That Plaintiff is offended by the lawful and peaceful acts of Defendants is not in question, but those acts do not therefore amount to a public nuisance.

POINT V

PLAINTIFF FAILS TO PLEAD INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The elements of a claim for intentional infliction of emotional distress are:

> (i) extreme and outrageous conduct, (ii) an intent to cause - or disregard of a substantial probability of causing - severe emotional distress, (iii) a causal connection between the conduct and the injury, and (iv) the resultant severe emotional distress

Howell v. New York Post Co., 81 N.Y.2d 115, 121, 596 N.Y.S.2d 350, 612 N.E.2d 699 [1993]).

It is clear that proposing to build a community center in Lower Manhattan does not amount to extreme and outrageous conduct. The core

standard of this tort is that it includes behavior that is intolerable in a civilized society. It is clear that the construction of a house of worship could never meet such a standard. As the Court of Appeals explained in *Fischer v. Maloney,* 43 NY2d 553, 557:

> Similarly no cause of action is stated for intentional infliction of severe emotional distress, the allegations of the complaint and the assertions in their support being viewed in the perspective most favorable to plaintiff... An action may lie for intentional infliction of severe emotional distress "for conduct exceeding all bounds usually tolerated by decent society" (Prosser, Torts [4th ed], § 12, p 56). The rule is stated in the Restatement, Torts 2d, as follows: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress" (§ 46, subd [1]; see for one aspect Comment d: "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community").

Since intentional infliction of emotional distress may encompass otherwise lawful conduct, it is a theory of liability that is to be invoked only as a last resort. *McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc.* 256 A.D.2d 269, 270, 682 N.Y.S.2d 167 (1st Dept.1998) . Clearly, Plaintiff does not even begin to approach this standard in this case.

POINT VI

PLAINTIFF FAILS TO PLEAD NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Plaintiff fares no better with the doctrine of negligent infliction of emotional distress. In *Kennedy v. McKesson Co.,* 58 N.Y.2d 500, 448 N.E.2d 1332, N.Y.,(1983), the Court of Appeals examined three distinct lines of cases and established the following rule:

> The rule to be distilled from those cases is that there is no duty to protect from emotional injury a bystander to whom there is otherwise owed no duty, and, even as to a participant to whom a duty is owed, such injury is compensable only when a direct, rather than consequential, result of the breach.

58 N.Y.2d at 506, 462 N.Y.S.2d 421, 448 N.E.2d 1332.

An exception to this general rule prohibiting "bystander claims" for emotional distress was examined in detail in *Bovsun v. Sanperi,* 61 N.Y.2d 219, 473 N.Y.S.2d 357, 461 N.E.2d 843 [1983] and is commonly referred to as a "Zone of Danger" claim.

In order to recover under a "Zone of Danger" theory, "a plaintiff must establish that he suffered serious emotional distress that was proximately caused by the observation of a family member's death or serious injury while in the zone of danger." (*Stamm v. PHH Vehicle Management Services, LLC,* 32 A.D.3d 784, 786, 822 N.Y.S.2d 240 [1st Dept.2006] [emphasis added]; *citing, Bovsun v. Sanperi, supra*).

It is clear that the plaintiff in this case is not only a bystander, but indeed someone who has no reason to arrive upon the scene of the proposed mosque at all, unless he choose to do so. As he has no previous relationship with Defendants, there is no particular duty to him. He does not qualify for the "Zone of Danger" doctrine because the only way he could observe a family member's death or serious injury at the site of the proposed mosque would be if he transported them there for the purpose. So, there is nothing that qualifies Plaintiff for this doctrine.

POINT VII

PLAINTIFF FAILS TO PLEAD ASSAULT

To sustain a claim for assault, there must be proof of physical conduct placing a plaintiff in imminent apprehension of harmful contact. *Holtz v. Wildenstein & Co., Inc.* 261 A.D.2d 336, 693 N.Y.S.2d 516, N.Y.A.D. 1 Dept.,1999. While Plaintiff purposely obscures the events of September 11, 2001 with events taking place now, nine years later, the truth is that there is no present danger presented to Plaintiff by this mosque. If he chooses to go there and incite a riot, then he will be in danger, but a danger of his own manufacture. There is no credible threat of harmful contact unless he chooses to get himself some.

POINT VIII

A RELIGIOUS LEADER DOES NOT HAVE A FIDUCIARY DUTY TO THE WHOLE WORLD AND IN NEW YORK NO FIDUCIARY DUTY HAS BEEN RECOGNIZED BETWEEN CLERGY AND CONGREGANT

In rejecting the notion that the statutory cleric-penitent privilege created a fiduciary relationship, the Court of Appeals noted that a cause of action for clergy malpractice had "troubling constitutional implications" under the First Amendment where the finder of fact would be required to decide whether a cleric's actions comported with religious doctrine *Lightman v. Flaum,* 97 N.Y.2d 128, 736 N.Y.S.2d 300, 761 N.E.2d 1027 (2001), cert. denied 535 U.S. 1096, 122 S.Ct. 2292, 152 L.Ed.2d 1050 (2002).

The duties owed by a religious leader to a congregant are very limited in scope. Specifically, the Court of Appeals held that in order to demonstrate the existence of a fiduciary duty between a cleric and a congregant involved in a formal counseling relationship, "a congregant must set forth facts and circumstances in the complaint demonstrating that the congregant became uniquely vulnerable and incapable of self-protection regarding the matter at issue" *Doe v. Roman Catholic Diocese of Rochester* 12 N.Y.3d 764, 907 N.E.2d 683 N.Y.,2009. *citing Marmelstein,* 11 N.Y.3d at 22, 862 N.Y.S.2d 311, 892 N.E.2d 375).

Since Plaintiff does not claim that he is himself Muslim, and by the conduct of this lawsuit would no doubt resent the implication that he could

be, he can lay no claim to fiduciary obligation on the part of any Muslim cleric. Nor can he claim such an obligation owed to the entire City of New York.

POINT IX

ALTHOUGH DEMANDING IT, PLAINTIFF FAILS TO PLEAD ENTITLEMENT TO INJUNCTIVE RELIEF

In the "wherefore clause" of Plaintiff's Complaint, Plaintiff demands that "the Defendants, during the pendency of this action and perpetually thereafter, be enjoined from continuing their nuisance".

Though not addressed anywhere else in Plaintiff's pleadings, it is apparent that Plaintiff is seeking some form of preliminary and permanent injunctive relief. Regardless of the relief sought, Plaintiff's demands fail as a matter of law.

Although Plaintiff has brought no motion for a preliminary injunction, since it is requested in the Complaint, we will address it here.

A preliminary injunction may only be granted under CPLR article 63 when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor, *Doe v. Axelrod,* 73 N.Y.2d 748, 532 N.E.2d 1272, N.Y.,1988.

Here, Plaintiff has failed to address any of these elements. However, as previously detailed, the likelihood of Plaintiff overturning the U.S.

Constitution and prevailing on this litigation is non-existent. Further, Plaintiff has failed to demonstrate any rational prospect of irreparable injury or that the balance of equities are tilted in his favor. As a consequence there can be no preliminary injunction.

In order to obtain a *permanent* injunction, a plaintiff must show (1) the violation of a right that is presently occurring or imminent (*see e.g. People v. Canal Bd.,* 55 N.Y. 390, 394-395 [1874]), (2) that the plaintiff has no adequate remedy at law (*see e.g Kane v. Walsh,* 295 N.Y.198, 205-206 [1946]), (3) that serious and irreparable injury will result if the injunction is not granted (*see e.g. Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]), and (4) that the equities are balanced in the plaintiff's favor (*id.*).

Here, as set forth in detail above, Plaintiff has failed to show the violation of any right or that serious and irreparable injury will occur.

Moreover, Plaintiff has failed to establish a *prima facie* case for a permanent injunction by, at a minimum, failing to establish that he does not have an adequate remedy at law. Not only do the moving papers fail to address this legal point, but otherwise in the Complaint, based on the same conditions, Plaintiff makes claims for monetary damages in the amount of 350 million dollars.

POINT X

THE COMPLAINT, FAILING TO STATE A CAUSE OF ACTION MUST BE DISMISSED

A party can move to dismiss a complaint, in relevant part, pursuant to CPLR § 3211(a)(7) on the basis that the pleadings fail to state a cause of action against the party.

It is well settled in the State of New York that a motion to dismiss on the basis that the pleadings fail to state a cause of action is appropriately granted where a Court determines that, even after accepting the facts alleged in the complaint as true and affording the plaintiff the benefit of every possible favorable inference, the facts alleged do not make out any cognizable legal theory, *Leon v. Martinez* 84 N.Y.2d 83, 614 N.Y.S.2d 972, N.Y. 1994, *Morone v. Morone*, 50 N.Y.2d 481, 429 N.Y.S.2d 592, N.Y. 1980.

And even though the pleaded facts are presumed true and accorded the most favorable inference, allegations consisting of bare legal conclusions, as well as facts that are inherently incredible or flatly contradicted by documentary evidence will not be given such consideration, *Roberts v. Pollack*, 92 A.D.2d 440, 461 N.Y.S.2d 272, N.Y.A.D. 1 Dept.,1983.

Applying these principles to this case, we find that Plaintiff has nothing to offer but his bigoted assumption that all Muslims approve terrorism, as otherwise herein directly contradicted, and his allegations that

there are those who favor terrorism who provide support to the proposed mosque project.

This argument collapses on two logical points. First, the law has long since determined that so-called "guilt by association" is utter nonsense. *People v. Chincillo*, 120 A.D.2d 266, 509 N.Y.S.2d 153 (Third Dept. 1986. The court wrote:

> In their brief, the People concede that the only reason defendant was approached was his presence near Walsh, who was known to be involved in drug trafficking and considered dangerous. This inference of guilt by association was impermissible (*see*, *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 342, 62 L.Ed.2d 238; *People v. Ballejo*, 114 A.D.2d 902, 904, 495 N.Y.S.2d 75; *People v. St. Clair*, 80 A.D.2d 691, 692, 436 N.Y.S.2d 449).

Secondly, Plaintiff's theoretical arrows of support are running in the wrong direction!

To argue that a terrorist providing funding to a mosque implies that the mosque supports the terrorist is logically indistinguishable from arguing that a mud puddle caused a rain storm.

When stripped of the plainly nonsensical allegations, the Complaint is deprived of any allegation that Defendants are engaged in any kind of wrongful conduct, real, imagined, or potential. Thus, there is no kind of cause of action that the Complaint can possibly frame, no matter how favorable the inferences accorded it.

POINT XI

PLAINTIFF'S SUIT FAILS TO QUALIFY FOR A CLASS ACTION

In determining whether an action should proceed as a class action, courts may consider the merits of the action with a view towards eliminating spurious and sham suits as early as possible. *Yollin v. Holland America Cruises, Inc.* (1 Dept. 1983) 97 A.D.2d 720, 468 N.Y.S.2d 873, *Bloom v. Cunard Line, Ltd.* (1 Dept. 1980) 76 A.D.2d 237, 430 N.Y.S.2d 607.

Likewise, courts may consider the question "whether on the surface there appears to be a cause of action which is not a sham." *Brandon v. Chefetz*, 1985, 106 A.D.2d 162, 168, 485 N.Y.S.2d 55, 59 (1st Dep't) .

As detailed above at great length, there are no causes of action upon which this plaintiff can proceed. This action meets the dictionary definition of spurious and is a thinly disguised sham that should be dismissed.

Additionally, the claims of Plaintiff Forres are so specific and so varied that a class action is entirely inappropriate.

The introductory clause of CPLR 901(a) imposes a requirement that the named plaintiff be a member of the proposed class, and CPLR 901(a)(3) additionally requires that the plaintiff's claims be typical of those of the rest of the class.

Typicality is said to advance the goal of judicial economy underlying class actions and to help assure that the interests of the class will be fairly

and adequately represented. See *General Telephone Company of the Southwest v. Falcon,* 1982, 457 U.S. 147, 157 n.13, 102 S.Ct. 2364, 2370, 72 L.Ed.2d 740, 750.

However, if the class representative's claims are atypical, separate adjudication may be needed. *See id. at* 159-61, 102 S.Ct. at 2371-72, 72 L.Ed.2d at 751-52.

Plaintiff Forras claims that he suffers a variety of mental and physical symptoms when he contemplates Defendants' community center and he has fainted, lost consciousness, and actually fallen over as a result of his fright and shock, (*see* Forres Complaint at paragraph 41).

Additionally Forres claims that his proposed class of Plaintiffs, who frequent and use the areas in and around Ground Zero, are identically affected by the activities of Defendants.

However, as set forth above, it is apparent that Forres' claims and alleged injuries are so absolutely unique and spurious, that it is highly improbable that his claims would satisfy the requirement of CPLR 901(a)(3) that "the claims or defenses of the representative parties are typical of the claims or defenses of the class."

Accordingly, this matter should not be permitted to continue as a class action and Forres' Complaint should be dismissed outright.

POINT XII

PLAINTIFF LACKS STANDING TO BRING THIS SUIT

Plaintiff Forres has no standing to make such claims "on behalf of himself and all others of and in the City of New York, County of New York".

The Court of Appeals have recognized the common law principle of "taxpayer standing", in limited circumstances, for individuals to maintain causes of action on behalf of the general public against important government actions, despite such parties being otherwise insufficiently interested for standing purposes, when "the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action" (*Boryszewski v. Brydges,* 37 N.Y.2d 361, 364, 372 N.Y.S.2d 623, 334 N.E.2d 579).

However, the taxpayer standing theory is very limited in scope and the Court of Appeals have made clear that it should not be applied:

> "to permit challenges to determinations... having no appreciable public significance beyond the immediately affected parties, by persons having only the remotest legitimate interest in matter."
>
> *Colella v. Board of Assessors of County of Nassau,* 95 N.Y.2d 401, 741 N.E.2d 113 N.Y.,2000.

In *Colella,* real property owners whose only complaint was that they had been taxed too much, because another property was improperly granted "religious use" exemption and omitted from rolls, were held to have no

standing to complain of the tax exemption granted with respect to this other property.

Similarly, Plaintiff's interests have no appreciable public significance and as an alleged resident and visitor to Lower Manhattan, he has only the remotest interest in the proposed mosque.

Forres has no standing to complain of the construction of a mosque and he has no standing to make such a complaint on behalf of the eight million people who live in New York City.

POINT XIII

ATTORNEY FEES AND COSTS AND SANCTIONS

This court should grant Plaintiff 's attorney Larry Klayman's motion to be admitted *pro hac vice* in this matter for the purpose of imposing sanctions on him. It is clear that this case is brought knowingly to advance a claim that is unwarranted under existing law, with knowledge that it cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

Though not admitted to practice law in the State of New York, Larry Klayman's politically-motivated, publicity-seeking agenda has previously been documented by New York Courts.

In *Stern v. Burkle*, 20 Misc.3d 1101(A), 867 N.Y.S.2d 20 (Table), N.Y.Sup., 2008, a case that alleged that former President Clinton and

Senator Hillary Rodham Clinton participated in the plot to ruin the reputation of a New York Post gossip columnist, Judge Walter Tolub described a Complaint drafted by Klayman as follows:

> The First Verified Amended Complaint, a thirty-eight page, one-hundred and eight paragraph document, can most accurately be described as a political diatribe drawn by Larry Klayman of Freedom Watch, Inc., an avowed enemy of the Clintons.
>
> The Complaint contains all of the buzzwords calculated to evoke visions of licentious behavior, conspiracy and criminality. There are references to Anthony Pellicano, Monica Lewinsky, "Whitewater", "Filegate", "Travelgate", "Chinagate" and Mr. Burkle's alleged illicit sexual liaisons.
>
> In short, the Complaint reads more like a Mickey Spillane novel than a "statement ... sufficiently particular to give the court and parties notice of the transactions or occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action ..." (id. at 2, emphasis added)

Judge Tolub went on to grant Defendants' motions to dismiss the Complaint in that case and awarded costs and disbursements to Defendants.

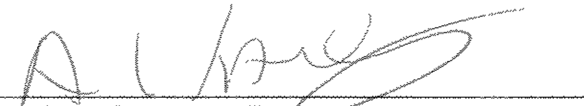
As in *Stern*, Klayman's politically motivated Complaint should be dismissed, costs and disbursements awarded to Defendants and Klayman should be sanctioned. In addition, due to the frivolous nature of this lawsuit, costs and attorney fees should be awarded to Defendants.

CONCLUSION

The Complaint should be dismissed, Plaintiff's attorney admitted *pro hac vice* for the purposes of imposing sanctions against him, and sanctions imposed against Plaintiff and his attorney, including but not limited to costs and attorneys' fees.

Dated: New York, New York
October 7, 2010

Respectfully submitted,
Adam Leitman Bailey, P.C.
by



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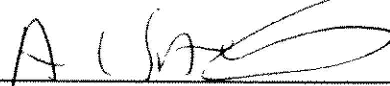
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VINCENT FORRAS, on behalf of himself and all others of and in the City of New York, County of New York, similarly situated, *Plaintiff,* -against- FEISAL ABDUL RAUF, and CORDOBA HOUSE/PARK 51, CORDOBA INITIATIVE, SOHO PROPERTIES, and all other aliases known and unknown, *Defendants.*	Index #111970/2010 **DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: October 7, 2010 *Signature:* 
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