

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
In The Circuit Court

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-000987

Saint Luke Baptist Church,

Respondent,

v.

Rayshawn Terry,

Appellant.

INITIAL BRIEF OF APPELLANT

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731
803 324-8100
Attorney for Appellant

RECEIVED

Dec 02 2022

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities..... iii

Statement of Issues on Appeal.....1

Statement of the Case.....1

Standard of Review.....

Arguments

I. DOES INCOMPLETE DISCOVERY PRECLUDE SUMMARY JUDGMENT?

II. DOES THE EVIDENCE, OR ANY REASONABLE INFERENCES THEREFROM, SHOW THE EXISTENCE OF A GENUINE ISSUE OF MATERIAL FACT, OR THAT THE RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW?.....

Conclusion.....

TABLE OF AUTHORITIES

CASES: UNITED STATES SUPREME COURT

Reynolds v. United States, 8 Otto 145, 98 U.S. 145, 25 L.Ed. 244 (1878).....

CASES: SOUTH CAROLINA SUPREME COURT

David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).....

Elkins v. Plywoods-Plastics Corp., 219 S.C. 296, 65 S.E.2d 243 (1951).....

McGehee v. South Carolina Power Co., 187 S.C. 79, 196 S.E. 538 (1938).....

Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).....

CASES: SOUTH CAROLINA COURT OF APPEALS

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1990).....

Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct.App. 2009).....

Glasscock, Inc. v. US Fidelity & Guar., 348 S.C. 76, 80, 557 S.E.2d 689 (Ct.App. 2001).....

Middleborough v. Montedison, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct.App. 1995).....

S.C. Dept. of Social Services v. Father and Mother, 294 S.C. 518, 366 S.E.2d 40 (Ct.App. 1972)..

Steele v. Rogers, 306 S.C. 546, 413 S.E.2d 329 (Ct.App. 1992).....

RULES

Rule 56(c), S.C.R.C.P.

Rule 56(f), S.C.R.C.P.

OTHER AUTHORITIES

72 AM.JUR.2D *Statute of Frauds* § 42 (1994).....

STATEMENT OF ISSUES ON APPEAL

- I. DOES INCOMPLETE DISCOVERY PRECLUDE SUMMARY JUDGMENT?
- II. DOES THE EVIDENCE, OR ANY REASONABLE INFERENCES THEREFROM, SHOW THE EXISTENCE OF A GENUINE ISSUE OF MATERIAL FACT, OR THAT THE RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW?

STATEMENT OF THE CASE

In or about August, 2019, the Appellant RAYSHAWN TERRY was engaged by the Respondent SAINT LUKE BAPTIST CHURCH as its Pastor. Controversy arose between TERRY and the head deacon at SAINT LUKE, Kirk Chappell. Chappell and his allies called a December 26, 2020 church meeting to fire TERRY from his position, having told TERRY he could not be present. The parties dispute the propriety of the meeting and its call under the By-Laws of SAINT LUKE and under TERRY's terms of engagement.

The said meeting declared TERRY fired. By its Complaint filed January 14, 2021, SAINT LUKE sought an injunction against TERRY's involvement with church affairs and finances. After hearing on January 27, 2021, on February 4, 2021 the Circuit Court, per the Honorable Eugene C. Griffith, Jr. granted the relief sought under a Temporary Injunction.

By his Answer and Counterclaim filed February 18, 2021, TERRY:

denied the legality of his firing and any interference with Church finances, and alleged:

conversion of his personal property by SAINT LUKE;

slander and slander *per se* by SAINT LUKE and its agents;

breach of contract and breach of contract with fraudulent intent; and

violation of the S.C. Wage Payment Act.

On March 15, 2021, SAINT LUKE filed its Reply denying the Counterclaims and interposing defenses. By Motion filed August 12, 2021 and Order filed September 23, 2021, the

Appellant TERRY's initial counsel was relieved; his counsel appeared October 11, 2021.

Discovery began between the parties; no Scheduling Order was sought or entered by the Circuit Court. On February 4, 2022, SAINT LUKE filed its Motion for summary judgment. This was granted by Order of the Circuit Court, per the Honorable Brian Gibbons, filed April 21, 2022.

The Appellant filed his Rule 59 Motion to Reconsider on April 29, 2022. This was denied by Order of the Circuit Court filed June 14, 2022. This appeal followed.

STANDARD OF REVIEW

An appellate court reviews the grant of Summary Judgment under the same standard applied by the Trial Court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).¹ The Trial Court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), S.C.R.C.P.; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

A Court considering Summary Judgment makes neither factual determinations nor considers the merits of competing testimony. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5. (2006). In ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving party. *Glasscock, Inc. v. US Fidelity & Guar.*, 348 S.C. 76, 80, 557 S.E.2d 689, ___ (Ct.App. 2001)

However, Summary Judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, *SUPRA*. To survive a motion for Summary Judgment, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. *Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct.App. 1992).

1. This paragraph is quoted, with stylistic changes only, from *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct.App. 2009).

ARGUMENT:

I. INCOMPLETE DISCOVERY PRECLUDES SUMMARY JUDGMENT.

This action was filed January 14, 2021. As of the date of hearing on the Defendant's Summary Judgment Motion by the Circuit Court, the Plaintiff had conducted one deposition, and had received the Defendant's responses to its first discovery request. [RECORD ON APPEAL, p.]

The Defendant TERRY served Requests for Production on the Plaintiff dated October 21, 2021, and received responses consisting mainly of objections. [RECORD ON APPEAL, p.] No Scheduling Order was issued in this case setting discovery deadlines.

The Appellant maintains there is every indication that the Respondent is in possession of, or has suppressed, other documents relevant to this case. The Respondent has failed to produce the covenant contract entered into between the parties for the Appellant's service as Pastor of the Plaintiff Church. On knowledge and information, the Respondent has committed, or is chargeable with, spoliation of that evidence. [RECORD ON APPEAL, p.]

The Respondent has refused production of its relevant financial records on the grounds that the request was "not defined." [RECORD ON APPEAL, p.] Yet with in Memo in Support, it produced what purports to be the Appellant's Wage Report. [RECORD ON APPEAL, p.] The Appellant maintains the production request was clear enough to allow production of any evidence as to wages.

In response to the Respondent's Motion for Summary Judgment, the Appellant filed his Memo and Affidavit of March 28, 2022. [RECORD ON APPEAL, p.] That Affidavit listed items missing from the Respondent's answers to discovery.

Discovery in this matter is not complete, as recited herein. There is every indication that the Plaintiff is in possession of other information and documents relevant to this case. By the standard stated above, Summary Judgment cannot be appropriate.

ARGUMENT:

- II. THE EVIDENCE, OR ANY REASONABLE INFERENCE THEREFROM, SHOWS THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT, OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

This matter arises out of Reverend TERRY's firing by the Respondent Church. The Appellant notes the natural diffidence of our Courts to involve themselves in a religious dispute. It remains true, however, that a contract is a contract wherever it arises, and mere organization as a church does not justify illegal activity.²

ARGUMENT:

- II.A. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S FIRING, OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW?

The Respondent Church maintains that the Appellant TERRY's firing as pastor was done in compliance with the By-Laws of the Church. This is denied, and the Appellant pleads the terms of his Covenant Contract with the Church.

Page 4 of the By-Laws of the Plaintiff Church provides, in relevant part, as follows:

-
2. "Almost a hundred years later, Chief Justice Waite, writing for the United States Supreme Court, [*Reynolds v. United States*, 8 Otto 145, 98 U.S. 145, 25 L.Ed. 244 (1878)] used the words of Thomas Jefferson as a basis to knock the hard edge off the guarantee of religious liberty: "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." In other words, the First Amendment embraces two concepts: the freedom to believe and the freedom to act. The first is absolute, but the second is not. The law cannot regulate what people believe, but the law can regulate how people act, even if how they act is based on what they believe."
[*South Carolina Dept. of Social Services v. Father and Mother*, 294 S.C. 518, ___, 366 S.E.2d 40, 43 (Ct.App. 1972); footnotes omitted.]

MEETINGS OF THE CHURCH

Church conference meetings for business shall be held every quarter, three (3) months. Special meetings may be called by the Pastor, or in case of sickness of the Pastor, by the Assistant Pastor, in the absence of both of the above, the chairman of the Board of Deacons. Twenty-five (25) members shall constitute a quorum for transaction of business. The church shall regularly meet every Lord's Day for public worship of Almighty God. The ordinance of the Lord's Supper shall be observed by the church each First Sunday. there *shall be* no meeting of the church without an approved agenda.

The alleged meeting of the Church resulting in firing the Appellant TERRY was not called by the Defendant as Pastor, nor by Barzelle Manning, the Assistant Pastor. The Chairman of the Board of Deacons had resigned prior to the meeting. [RECORD ON APPEAL, p. ____.]

In addition, the By-Laws contain no requirement for notice, for time of notice, or for procedure of meetings. No proper proof of notice, of time of notice, of receipt of notice, nor of quorum at the alleged meeting exists in the documents in discovery. The Appellant notes that the "procedure" of the said meeting, due to Covid, was to have people attend in their cars and beep their horns to indicate agreement. [RECORD ON APPEAL, p. ____.] There is no provision for such procedure in the By-Laws.³ The Appellant TERRY was dis-invited to attend the meeting that purports to have fired him. [RECORD ON APPEAL, p. ____.]

The Memo of the Plaintiff Church apparently maintained that the failure to follow either the By-Laws or due process is excused by the fact that it was a regular quarterly meeting. The question would then be 1) who had the right to call a quarterly meeting, and 2) by what right was the Appellant TERRY excluded?

Regardless of the Respondent's invocation of "Baptist doctrine", the legal fact is that having promulgated the By-Laws, it was bound by those By-Laws and the Appellant TERRY had the right to rely upon them. The Respondent Church is also bound by the normal requirements of due process. In the absence of proof that it has followed either the By-Laws or due process.

3. The Appellant would note that if the meeting took place by people sitting in cars, the purported list of attendees signing as present was composed at another time.

There is evidence that a genuine issue of material fact, and of legality, exists as to the firing of the Appellant TERRY.

The Appellant would add one other matter for discussion. The Order of the Circuit Court filed April 21, 2022, as signed, contains two pages headed FINDINGS OF FACT and purporting to state the history of the Appellant's firing. [RECORD ON APPEAL, p. ____.] To counsel's understanding, this is completely improper procedure; if the Circuit Court has found that the evidence and law mandates summary judgment, its task ends at that point. In that case, there is no need for a recitation of a narrative of how the firing took place. Counsel would further note that it is his understanding that many of the matters so "found" in the said Order are not present in the evidence presented to the Circuit Court.

ARGUMENT:

II.B. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM OF CONVERSION, OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW?

The Appellant TERRY testified as to the Respondent's retention of items belonging to him. [RECORD ON APPEAL, p. ____.] He testified to items he brought to the Church. [RECORD ON APPEAL, p. ____.] He testified as to his prohibition from the property. [RECORD ON APPEAL, p. ____.] There was no denial of the Church's continued retention of that property, or any grounds stated for such retention. [RECORD ON APPEAL, p. ____.] There is no evidence of an intent on TERRY's part to gift the items to the Church, or his abandonment of those items. Thus the Appellant has set out grounds for conversion *pro* *se.*

There is evidence that a genuine issue of material fact, and of legality, exists as to the conversion of property belonging to the Appellant TERRY.

ARGUMENT:

II.C. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE

APPELLANT’S CLAIM OF BREACH OF CONTRACT WITH FRAUDULENT INTENT,
OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS
A MATTER OF LAW?

In its Memo to the Circuit Court, the Respondent Church sought to dismiss TERRY’ claim for breach of contract with fraudulent intent by claiming the lack of a contract between the parties.

The Appellant reiterates his sworn testimony that such a contract, characterized as a “Covenant Contract” existed. As no such document has been produced by the Respondent, the Appellant reiterates his position that the same has been suppressed, or destroyed, by the Respondent. [RECORD ON APPEAL, p. ____.] Despite the existence of conflicting evidence, the Circuit Court has found that there was no binding contract and his claim fails as a matter of law. [RECORD ON APPEAL, p. ____.] It further asserts his employment was under at at-will contract. [RECORD ON APPEAL, p. ____.] Again, evidence was presented disputing this conclusion. [RECORD ON APPEAL, p. ____.]

The Respondent has plead the Statute of Frauds as a defense to the lack of a written contract. Even assuming there were no written contract with the Defendant TERRY – which conclusion would be outside the Circuit Court’s power in a Summary Judgment hearing - that fact would be insufficient as basis to dismiss the cause of action. The fact that such an oral contract might have had no expiration date is not a bar to its enforcement on the basis of the Statute of Frauds. 72 AM.JUR.2D *Statute of Frauds* § 42 (1994) states:

It is a well-settled general rule that a contract for personal services for an indefinite time . . . or a contract of employment upon such terms purporting to give permanent employment, is not within the scope of the provision of the statute of frauds requiring contracts incapable of performance within a year from the time of their formation to be in writing for the reason that contracts of this description are deemed possible of performance within one year of their formation, since, for example, the employee may die within that period. [ID., *emphasis added*.]

The rule stated above was adopted by our Supreme Court in *McGehee v. South Carolina*

Power Co., 187 S.C. 79, 196 S.E. 538 (1938); *affirmed*, *Elkins v. Plywoods-Plastics Corp.*, 219 S.C. 296, 65 S.E.2d 243 (1951).

As a further basis for breach with fraudulent intent, the Appellant notes his being uninvited to attend the meeting that purported to have fired him. [RECORD ON APPEAL, p. ____.]

There is evidence that a genuine issue of material fact, and of legality, exists as to the claim of breach of contract with fraudulent intent by the Appellant TERRY.

ARGUMENT:

II.D. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM OF SLANDER and SLANDER *PER SE*, OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW?

By its Memo below, the Respondent Church correctly recited that a slanderous statement cannot be one in the pleadings alone, but must have been made to a third party. In its pleading, the Respondent Church Church made a claim that the Appellant TERRY had stolen funds. TERRY stated in his Memo in Opposition, as affirmed by his Affidavit of March 28, 2022, as follows:

The Defendant TERRY heard of the claim from Brenda Anderson of Winnsboro, S.C., as coming from Kirk Chappell of the Church.⁴ On knowledge and information, that spreading of this claim to the local community will also be confirmed by other persons in further discovery.

[RECORD ON APPEAL, p. ____.]

The Appellant notes that the Respondent Church made no effort in submissions below to confirm the allegation of theft against the Appellant TERRY. [RECORD ON APPEAL, p. ____.] Rather, it relied wholly upon the absence of repetition to a third party.

4. Kirk Chappell is the head deacon of the Respondent Church and the Respondent Church is thus chargeable with his actions.

As noted above, Ms. Anderson had not yet been deposed. It is nevertheless sufficient for the purpose of a summary judgment motion for the Appellant to have put forward his knowledge as to the spread of the slanderous statements. This is especially the case where, as shown, there is a lack of discovery.

There is evidence that a genuine issue of material fact, and of legality, exists as to the claim of slander and slander *per se* by the Appellant TERRY.

ARGUMENT:

II.E. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM FOR NON-PAYMENT OF WAGES, OR THAT THE RESPONDENT WAS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

The Appellant notes that the Respondent refused production of its relevant financial records on the grounds that the request was “not defined.” [RECORD ON APPEAL, p. ____.] As Exhibit M to its summary judgment motion, it then produced what purports to be the Defendant’s “Wage Report”. The Appellant maintains that his earlier production request was clear enough to allow production of any evidence as to wages prior to that motion.

The Respondent’s Exhibit M - “wage report” - to its summary judgment motion was the first disclosure of those figures to the Appellant, despite its earlier Requests for Production. Thus, we are once again faced with uncompleted discovery.

The sworn testimony of the Appellant TERRY directly and specifically contradicts the figures thus claimed by the Respondent in its “Exhibit M”. [RECORD ON APPEAL, p. ____.]

The Respondent also asserted the effect of the report from the South Carolina Department of Labor, by Exhibit N to its original Summary Judgment Motion. [RECORD ON APPEAL, p. ____.] The document referred to is a standard investigation letter stating that the Department will go no further; this is, to counsel’s knowledge, a letter sent in every non-payment case that he has either prosecuted or

defended. It does not preclude action by the individual party seeking lost wages.

CONCLUSION

Our Courts recognize the requirement that summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law. *Middleborough v. Montedison*, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct.App. 1995). They have further stated that summary judgment must not be granted until an opposing party has had a full and fair opportunity to complete discovery. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1990).

No scheduling Order limiting discovery exists in this case. The Appellant submitted his Affidavit as to the lack of discovery sought. [RECORD ON APPEAL, p. ____.] That Affidavit, under Rule 56(f), S.C.R.C.P., is sufficient for proof of the discovery lacked.

As to those matters on which a lack of discovery is not specifically referenced, the Appellant has demonstrated the existence of genuine issues of material fact or the grounds by which the Respondent is not entitled to summary judgment as a matter of law.

Respectfully submitted,

John Martin Foster
SC Bar No. 2086\
Attorney for Appellant

Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
jmfoster@comporium.net

December 2, 2022

Rock Hill, South Carolina