THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000804

John Doe,……..……..Appellant,

v.

Bishop of Charleston, a Corporation Sole, and
The Bishop of the Diocese of Charleston, in his
official capacity,……..…….Respondents.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO RECONSIDER

Richard S. Dukes, Jr. (SC Bar No.: 16563)
40 Calhoun Street, Suite 200
Charleston, South Carolina 29401
Telephone: 843-576-2810
Facsimile: 843-577-1646 (direct fax)
Email: RDukes@turnerpadget.com

R. Hawthorne Barrett (SC Bar No.:16973)
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: 803-227-4219
Email: TBarrett@turnerpadget.com

ATTORNEYS FOR RESPONDENTS

On March 15, 2023, Appellant filed what was styled as a Motion to Reconsider this Court's decision to proceed without oral argument and to decide this matter based upon the briefing submitted by the parties. Respondents have found no provision in the South Carolina Rules of Appellate Procedure for such reconsideration, and Respondents recognize that the determination of whether to hold oral argument is within the discretion of the Court. Nevertheless, Appellant has offered no actual *reason* to have oral argument, but rather only offers a truncated version of the arguments contained in his briefs. For these reasons, Petitioner's Motion should be denied.

Second, Appellant now appears to withdraw his appeal of summary judgment regarding claims of negligence/gross negligence, breach of fiduciary duty, and negligent retention. Still, the Record on Appeal contains nothing that was before the Circuit Court – no affidavits, no discovery, no briefing, no deposition excerpts, no admissible evidence of any sort – establishing a genuine issue of material fact regarding *any* of Appellant's claims or causes of action. In fact, the only evidence before the Circuit Court was contained in Respondents' summary judgment motions showing no issue for trial. Summary judgment was appropriate as to each and every cause of action, and the Circuit Court is due to be affirmed.

Third, the Circuit Court correctly rejected Appellant's baseless allegations in his Complaint (that were unsupported by any evidence at summary judgment stage) – there is no evidence in the record the Diocese intended to harm Appellant whatsoever; there was no evidence to support a contract claim of any sort; there was no evidence that Appellant was injured in a commercial venture unrelated to the charitable mission of the Respondents. Thus, contrary to the summary of potential argument provided in Appellant's Motion to Reconsider, there is no evidence in the record to support Appellant's assertions that there were genuine issues of fact regarding his contract, fraud-based, and intentional acts claims.

Finally, Appellant's Motion to Reconsider offers nothing more than an incorrect recitation of the law that has nothing whatever to do with the merits, or lack thereof, of the motion to reconsider the denial of oral argument. Indeed, Appellant misapprehends the history of the common law of charitable immunity in South Carolina. As Respondents have argued in their briefing, the Circuit Court correctly analyzed South Carolina's law of charitable immunity and should be affirmed. As Respondents' have argued:

- *Lindler v. Columbia Hosp.,* "[a] charitable corporation is not liable for injuries resulting from the *negligent or tortious* acts of a servant, in the course of his employment, where the corporation has exercised due care in his selection."[1]
- *Vermillion v. Women's College of Due West*, expanded the doctrine of charitable immunity, holding that charitable immunity rendered charitable entities exempt from liability "for the torts of their superior officers and agents as well as for those of their servants or employees, whether these be selected with or without due care."[2]
- The *Vermillion* decision makes clear that the doctrine of charitable immunity stood as an exception to *respondeat superior* based upon public policy. At the time *Lindler* and *Vermillion* issued, the law in South Carolina was clear - an employer *could* be held liable for both the negligent and willful or intentional acts of an employee done in the course of his employment.[3] Charitable immunity was a blanket exception to *respondeat superior* liability.

[1] *Lindler v. Columbia Hospital*, 98 S.C. 25, 27, 81 S.E. 512 (1914) (emphasis added) (internal citation omitted).
[2] *Vermillion v. Women's College of Due* West, 104 S.C. 197, 202, 88 S.E. 649, 650 (1916).
[3] *Jones v. Atl. C. L. R. Co.*, 108 S.C. 217, 94 S.E. 490 (1916); *Taber v. Seaboard A. L. Ry.*, 81 S.C. 317, 62 S.E. 311 (1908).

- *Vermillion* went on to say "this rule does not put such charities above the law, for their conduct is subject to the supervision of the Court of equity."[4] The clear implication of this statement is that the Court held that charities could not be hauled into courts of law to answer for torts committed by their employees. Charities enjoyed "*full* immunity from tort liability."[5]
- *Eiserhardt v. State Agricultural and Mechanical Society of South Carolina*, held that a charitable organization could be liable for injuries on its property – but only where the "activity out of which the alleged liability arose is primarily commercial in character and wholly unconnected with the charitable purpose for which the corporation was organized."[6] The record is bereft of any evidence to support Appellant's mere allegation that religious schools were commercial endeavors. Quite the contrary, religious schools are part and parcel of the evangelical religious mission of the Roman Catholic Church.[7]
- In 1971, when the acts complained of allegedly took place, the law of charitable immunity was controlled by *Lindler* and *Vermillion*, which clearly held that charitable organizations could not be held liable for the torts or negligence of their officers, agents, or employees. "[T]he injured person has his remedy against the actual wrongdoer," as opposed to the charitable organization itself.[8]

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[4] *Id*., 104 S.C. at 201; 88 S.E. at 649.
[5] *Bush v. Aiken Elec. Coop. Inc.*, 226 S.C. 442, 448, 85 S.E.2d 716, 719 (1955) (emphasis added) (electric cooperative was not entitled to charitable immunity solely based on its non-profit status).
[6] *Id.*, 235 S.C. at 312, 111 S.E.2d at 572.
[7] *See, e.g. Our Lady of Guadalupe v. Morrissey-Berru*, 140 S.Ct. 2049, 2064 (2020)("[t]he religious education and formation of students is the very reason for the existence of most private religious schools, and, therefore, the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of this mission.").
[8] *Vermillion*, 104 S.C. at 201, 88 S.E. at 650.

- Appellant's argument that *Jeffcoat v. Caine*[9] is in any way applicable to this case is entirely misplaced. The *Jeffcoat* Court's discussion and apparent criticism of *Lindler* and *Vermillion* are nothing more than *dicta* as the Court steadfastly refused to overturn charitable immunity.[10] Further, *Jeffcoat* was not the law of South Carolina in the years relevant in this case.
- In 1971, *Jeffcoat* had not been decided, *Jeffcoat* altered the common law in a manner that created limited liability where a charitable organization itself committed false imprisonment. Accordingly, *Jeffcoat* could only affect future claims, and it is irrelevant to this appeal.

Oral argument is unnecessary. Because Respondents were unquestionably charitable entity and the law of South Carolina exempted charities from liability for the tortious actions of their employees, agents, servants, and officers. For that reason, the Circuit Court should be affirmed.

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.
Richard S. Dukes, Jr. (SC Bar No.: 16563)
40 Calhoun Street, Suite 200 (29401)
Post Office Box 22129
Charleston, South Carolina 29413-2129
Telephone: 843-576-2810
Email: RDukes@turnerpadget.com

R. Hawthorne Barrett (SC Bar No.: 16973)
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: 803-227-4219
Email: TBarrett@turnerpadget.com

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April 10, 2023

[9] *Jeffcoat v. Caine*, 261 S.C. 75, 198 S.E.2d 258 (1973).
[10] At best, *Jeffcoat* may be considered a change in prior precedent regarding charitable immunity and, as such, its effect is solely prospective.

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Proof of Service

The undersigned hereby certifies that a copy of the Respondents' Return to Appellant's Motion to Reconsider has been served upon the following via electronic mail on April 10, 2023:

Lawrence E. Richter
The Richter Firm, LLC
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
LRichter@richterfirm.com

David K. Haller
Haller Law Firm
604 Savannah Highway
Charleston, SC 29407
dhaller@hallerlawfirm.com

(signature page to follow)

TURNER PADGET GRAHAM LANEY, PA

s/Richard S. Dukes, Jr.
Richard S. Dukes, Jr. (SC Bar No.: 16563)
40 Calhoun Street, Suite 200
Charleston, South Carolina 29401
Telephone: 843-576-2810
Facsimile: 843-577-1646 (direct fax)
Email: RDukes@turnerpadget.com

R. Hawthorne Barrett (SC Bar No.:16973)
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Telephone: 803-227-4219
Email: TBarrett@turnerpadget.com

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