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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM FAIRFIELD COUNTY  
In The Circuit Court

Brian M. Gibbons, Circuit Court Judge

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Case No. 2022-000987

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Saint Luke Baptist Church,

Respondent,

v.

Rayshawn Terry,

Appellant.

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FINAL REPLY BRIEF OF APPELLANT

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## 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.574, p.91, l.7-22; DEPOSITION, p.420, Depo.Page 91,l. 7-18.]

The Defendant TERRY served Requests for Production on the Plaintiff dated October 21, 2021, and received responses consisting mainly of objections. [RECORD ON APPEAL, RESPONSES TO REQUEST FOR PRODUCTION, p.609.] 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, DEPOSITION, p.492. Depo.Page 91, l.7 – 18; p.373, l.7-22.]

The Respondent has refused production of its relevant financial records on the grounds that the request was "not defined." [RECORD ON APPEAL, RESPONSES TO REQUEST FOR PRODUCTION, p.611, Request 7.] Yet within Memo in Support, it produced what purports to be the Appellant's Wage Report. [RECORD ON APPEAL, Exhibit M, p.346-347.] 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, Exhibit M, p.373-396.] That Affidavit listed items missing from the Respondent's answers to discovery. [RECORD ON APPEAL, Exhibit M, p.395, Para.2.]

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.

III. THERE WAS EVIDENCE OF INCOMPLETE DISCOVERY AND A SHOWING BY AFFIDAVIT.

First, there is every indication that the Plaintiff is in possession of, or has suppressed, other documents relevant to this case. The Plaintiff has specifically failed to produce the covenant contract entered into between the parties for the Defendant's service as pastor. On knowledge and information, the Plaintiff has committed, or is chargeable with, spoliation of that evidence. As recited in the Defendant's Deposition, and confirmed by his Affidavit in Opposition to Summary Judgment<sup>1</sup>:

19	Q Okay. Did you ever work at the church under	<b>Page 62</b>
20	the terms of an employment contract?	
21	A I believe the terminology was covenant	
22	contract.	
23	Q Okay. Did you ever work under the terms of	
24	an employment contract?	
25	A No, not that terminology. No, not	
1	employment contract. No.	<b>Page 63</b>

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7	Q According to the documents that we've been	<b>Page 91</b>
8	provided and have provided on your behalf, there are	
9	references to a covenant that you signed with Mr.	
10	Chappell, I'm going to say in August of 2019. Do you	
11	recall such a document?	
12	A Yes, I do.	
13	Q You have not supplied that document to me,	
14	and for the record, I would notice it was not supplied	
15	to us in discovery. There is reference to it, I	
16	believe I'm allowed to say, in your contact with Ms.	
17	Able and with Mr. Chappell. I believe in fact there	
18	are at least two requests they'd turn it over. All	

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1. The page numbers cited to the side are to the Deposition pages.

19 this is background to saying, to the best of your  
20 recollection, does that covenant that you signed  
21 contain the words Baptist doctrine?  
22 A Not from my recollection or memory, no.

[RECORD ON APPEAL, DEPOSITION, p.413, Depo.Page 62, l.19 – p.63, l.1; p.420, Depo.Page 91, l.7-22.]

In his Affidavit in Opposition filed March 28, 2022 with the Court, Reverend Terry stated:

2. I had a contract with the Church, designated as a Covenant Contract. This document was in writing and signed by me and by Deacon Chappell. That document set out my duties, my position and my pay. It has not been produced in this case.

[RECORD ON APPEAL, AFFIDAVIT, p.393.]

Secondly, the Appellant would note his discovery of a witness to slander by the church. According to that witness, the Church, by its members and alleged officer, had in fact spread its claim of theft to third parties and to the community at large. The Appellant TERRY heard of the claim from Brenda Anderson of Winnsboro, S.C., as coming from Kirk Chappell, a claimed officer of the Church.<sup>2</sup> The spreading of this claim to the local community could be confirmed by other persons in further discovery. [RECORD ON APPEAL, MEMO IN OPPOSITION, p.377; AFFIDAVIT, p.393.]

The Appellant would note that the Respondent has made no effort in its Memos or submissions to the Circuit Court to deny the allegation of theft against Appellant TERRY. Rather, it has side-stepped the facts to discuss the procedural lack of a named witness in the Appellant's Counterclaim.

Thirdly, the Respondent refused production of its relevant financial records on the grounds that the request was "not defined." [RECORD ON APPEAL, RESPONSES TO REQUEST FOR PRODUCTION, p.611, Request 7.] Despite this objection, it produced with its Memo to the Circuit Court what purports to be the Appellant's Wage Report. [Plaintiff's Exhibit M, p.373-396.] The Appellant maintains the production request was clear enough to allow production of any evidence as to wages prior to the Respondent's Memo on summary judgment.

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2. Ms. Anderson had already been listed as a witness in the Defendant's Response to Interrogatories.

No Scheduling Order had been requested or entered in this case as of the hearing on summary judgment. The Appellant raised each of the omissions in discovery above to the Circuit Court by his Memos. Pursuant to Rule 56(f), S.C.R.C.P., he submitted his Affidavit stating the need for further discovery. Even assuming a finding by the Circuit Court that discovery was dilatory (which Appellant denies), no basis existed to deny the Appellant discovery on these issues, or to deny an order setting a deadline for the time in which such discovery could be completed. Summary Judgment should not have issued given the submitted and sworn issues of incomplete discovery.

### III.A. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE PROCEDURE USED TO FIRE THE APPELLANT FROM HIS POSITION AS PASTOR?

The Respondent Church maintains that the Appellant TERRY's firing as pastor was done in compliance with the By-Laws of the Church. This was denied, and the Appellant pled the terms of his Covenant Contract with the Church. The points on which the Respondent failed to follow its By-Laws are set out in the Appellant's Brief, as in its Memo and Motion to Reconsider. [RECORD ON APPEAL, MEMO TO ALTER OR AMEND, p.573-575.]

In *All Saints Parish v. Episcopal Church*, 685 S.E.2d 163, 385 S.C. 428 (2009), our Supreme Court stated the standard for review of church disputes:

In 1979, the Supreme Court of the United States expressly approved the use of a second method of resolving church disputes. In *Jones v. Wolf*, the Supreme Court affirmed a Georgia court's use of the neutral principles of law approach to resolve church disputes. 443 U.S. at 603, 99 S.Ct. 3020 (holding that a state is constitutionally entitled to adopt the neutral principles of law approach as a means of adjudicating church disputes). This method "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.* at 603, 99 S.Ct. 3020. Church disputes that are resolved under the neutral principles of law approach do not turn on the

single question of whether a church is congregational or hierarchical. Rather, the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes.

[*Id.*, 685 S.E.2d 163, 172, 385 S.C. 428, \_\_\_\_.]

In *Bowen v. Green*, 275 S.C. 431, 272 S.E.2d 433 (1980), our Supreme Court dealt with the firing of a Baptist pastor, and stated the applicable standard for review for such a case.

The premise upon which the foregoing authority is built is that the ecclesiastical matter was decided by the duly constituted ecclesiastical body having jurisdiction. Obviously then, if a decision is reached by some body not having ecclesiastical jurisdiction over the matter, then the civil court would not be bound by that decision. . . .

Once determination is made that the proper ecclesiastical authority has acted in its duly constituted manner, no civil review of the substantive ecclesiastical matter may take place as this would be prohibited by Amendments I and XIV of the Federal Constitution and Article I, Section 2 of the State Constitution.

[*Id.*, 275 S.C. 431, 434, 272 S.E.2d 433, 435.]

The Respondent argues the ecclesiastical limitation stated above without considering the initial question for the Court: did the Respondent, in discharging the Appellant, in fact act in a “duly constituted manner”: that is to say, did it act according to its By-Laws? The Appellant has laid out the facts showing a failure to follow those By-Laws, and thus a failure to act as the church proper. This point is relevant in light of those church members who opposed the discharge.

Having promulgated the By-Laws of record, the Respondent church was bound by them in its dealings with the Appellant Pastor. The Appellant has demonstrated a *prima facie* case that the By-Laws were not followed. Summary judgment cannot be premised as to his discharge.

### III.B. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM OF CONVERSION?

The Appellant TERRY testified as to the Respondent's retention of items belonging to him. [RECORD ON APPEAL, Deposition, p.413-414, Depo.Page 64, l.14 – p.65, l.9; p.66,l.18 – p.67, l.25.] There was no denial of the Church's continued retention of that property, or any grounds stated for such retention. [RECORD ON APPEAL, MEMO IN SUPPORT, p.2012-202.] 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 a factual claim 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.

### III.C. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM OF BREACH OF CONTRACT WITH FRAUDULENT INTENT.

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

The Appellant swore under oath that such a contract, characterized as a "Covenant Contract" existed. [RECORD ON APPEAL, DEPOSITION, p.492. Depo.Page 91, l.7 – 18; p.373, l.7-22.] The Respondent contends that no such document exists, and such has been produced by the Respondent. 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, ORDER, p.10-11.] It further asserts his employment was under at-will contract. [RECORD ON APPEAL, ORDER, p.11-12.] Again, evidence was presented disputing this conclusion. [RECORD ON APPEAL, Deposition, p.492, Depo.Page 91, l.7 – 18; p.373, l.7 - 22.]

Even if the parties' contract was oral, and had no expiration date, this would not bar to its enforcement on the basis of the Statute of Frauds. *See 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 un-invited to attend the meeting that purported to have fired him. [RECORD ON APPEAL, E-MAIL, p.395.]

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.

III.D. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT'S CLAIM OF SLANDER and SLANDER *PER SE*.

The Respondent Church has made no effort in its submissions to confirm the allegation of theft against the Appellant TERRY. [RECORD ON APPEAL, MEMO IN SUPPORT, p.204-205.] Rather, it relied wholly upon the absence in the Appellant's Counterclaim of repetition to a third party.

The Appellant has a witness to slander by the church. According to that witness, the Church, by its members and alleged officer, had spread its claim of theft to third parties and to the community at large. The Appellant TERRY heard of the claim from Brenda Anderson of Winnsboro, S.C., as coming from Kirk Chappell, a claimed officer of the Church.<sup>3</sup> The spreading of this claim to the local community could be confirmed by other persons in further discovery.

As noted above, the known witness 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.

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3. Ms. Anderson had already been listed as a witness in the Defendant's Response to Interrogatories.

### III.E. THE EVIDENCE SHOWS A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPELLANT’S CLAIM FOR NON-PAYMENT OF WAGES.

The Appellant has noted that the Respondent refused production of its relevant financial records on the grounds that the request was “not defined.” [RECORD ON APPEAL, Responses to Request to Produce, p.346-347.] 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 sworn testimony of the Appellant TERRY directly and specifically contradicts the figures thus claimed by the Respondent in its “Exhibit M” to the motion for summary judgment. [RECORD ON APPEAL, Affidavit, p.396, Para.s 6,7; Deposition, p.416, Depo.Page 77, l.17 – 22; p.418, Depo.Page 84, l.12 – p.85,l.13.]

There is evidence that a genuine issue of material fact, and of legality, which exist as to the claim of non-payment of wages to the Appellant.

### CONCLUSION

Discovery in this case was not complete as of the hearing on summary judgment. This fact, with specific areas indicated, was before the Circuit Court by Affidavit as required by Rule 56(f), S.C.R.C.P. The Appellant has the right to complete discovery prior to a summary judgment hearing.

Even with the lack of complete discovery, the Appellant set out clear evidence of genuine issues of material fact.

For the reasons cited, the grant of summary judgment herein should not have been entertained by the Circuit Court and should be set aside.

Respectfully submitted,

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