

RECEIVED

Jul 14 2022

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Saint Luke Baptist Church,

Plaintiff,

v.

Rayshawn Terry,

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE SIXTH JUDICIAL CIRCUIT

Case No. 2021-CP-20-00024

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S ACTIONS FOR
DECLARATORY AND PERMANENT
INJUNCTIVE RELIEF AND DEFENDANT
RAYSHAWN TERRY'S
COUNTERCLAIMS**

INTRODUCTION

This matter came before the Court upon Plaintiff Saint Luke Baptist Church's (hereinafter "Church" or "Plaintiff") Motion for Summary Judgment as to the Church's claims for Declaratory Judgment and Permanent Injunctive Relief, and as to Defendant Rayshawn Terry's (hereinafter, "Defendant" or "Terry") counterclaims for Conversion, Slander/Slander *per se*, Breach of Contract/Breach of Contract with Fraudulent Intent and Violation of the Payment of Wages Act..

Plaintiff filed this lawsuit in the Fairfield County Court of Common Pleas on January 14, 2021, after Terry, the Church's former Pastor, continued to interfere with the Church congregation's vote to end his employment as pastor during a duly called meeting on December 26, 2020. On January 19, 2021, the Church filed a Motion for Temporary Injunction against Terry, seeking an order restraining and enjoining Terry from interfering with the Church's operations. The Honorable Eugene Griffith, Jr. entered an Order on February 4, 2021, granting Plaintiff's Motion for Temporary Injunction. Thereafter, on February 18, 2021, Terry filed an Answer, asserting the four counterclaims listed above.

Following discovery, on February 4, 2022, Plaintiff filed a Motion for Summary Judgment as to its claims for Declaratory and Permanent Injunctive Relief and as to Terry's Counterclaims, which was heard on March 31, 2022. After considering the oral arguments and memoranda presented by the

parties, I hereby grant the Church's Motion for Summary Judgment because, in viewing the facts in the light most favorable to Defendant, there are no genuine issues of material fact and Plaintiff is entitled to Summary Judgment as a matter of law as to the Church's claims for Declaratory and Permanent Injunctive Relief and as to each of Terry's Counterclaims.

FINDINGS OF FACT

The Church operates as a Baptist Church in Winnsboro, South Carolina, established in 1893. As a Baptist Church, Plaintiff operates as a "congregational rule" Church in accordance with its Bylaws, which govern the Church. The most recent Bylaws have been in use since May 23, 1984. The Church is led by a Pastor appointed by the congregation on recommendation of the Board of Deacons. Pursuant to the Bylaws, Terry was hired as the Church's 11th Pastor on or about August 1, 2019, following a recommendation of the Board of Deacons and a vote by the congregation.

The Bylaws provide in part that, "[c]hurch conference meetings for business shall be held every quarter, three (3) months." Prior to December 2020, due in part to the COVID-19 pandemic, the Church had not held a quarterly business meeting, although members of the Board of Deacons requested that Terry as Pastor call such meetings. The Bylaws require at least twenty-five (25) members to be present for any meeting of the Church in which business is transacted.

The Bylaws further provide that, "[t]he Church shall select as many Deacons as the Pastor and Church deems necessary to serve the congregation." On December 20, 2020, the Board of Deacons convened a duly called meeting of the Board, at which seven Deacons were present, constituting a majority. The Deacons present at this meeting voted unanimously to recommend the termination of employment of Terry to the congregation. Thereafter, on December 22, 2020, Terry attempted to unilaterally remove several of the Deacons from the Board.

After the December 20, 2020 meeting of the Board of Deacons, a quarterly Church business meeting was scheduled for December 26, 2020. Congregation members were given notice of the Church business meeting by telephone calls and text messages three days in advance of the meeting. Some members of the congregation also received notice of the Church business meeting through “GroupMe” messages, a messaging platform that Terry began using to communicate with Church members regarding Church business at the onset of the COVID-19 pandemic. Prior to the duly called Church business meeting, Terry along with Barzelle Manning, the Director of Evangelism, discouraged members from attending. Terry admits to discouraging members from attendance using GroupMe messages while Manning threatened disfellowship of members who attended.

At the duly called meeting held on December 26, 2020, 68 of the 125 active members of the Church were present, accepted the recommendation of the Deacons, and voted to remove Terry as Pastor. This number exceeded the 25-member quorum requirement and also constituted a majority of the active membership. To ensure the legitimacy of the vote taken during the meeting, Rev. Dr. Preston Harrison, the Gethsemane Missionary Baptist Association Area Representative of the Midlands, served as a mediator for the vote. As the mediator, Dr. Harrison certified the vote and attested that the vote was carried out in accordance with the Church’s Bylaws.

Despite being removed as Pastor, Terry continued to contact members of the Church and financial institutions and held himself out as having authority to act on behalf of the Church. Terry also removed the access of church officers and staff members to the Church’s online giving platform and advised church members to give only through the online platform, for which only he had access. On December 30, 2020, the Church mailed a letter to Terry notifying him of his removal as Pastor and requesting that he cease and desist all attempts to act with the authority of Pastor; this letter was also personally served on Terry on January 5, 2021, by the Lancaster County Sheriff’s Office.

The Church then initiated this action and obtained the aforementioned Order for Temporary Injunction from Judge Griffith, Jr. The Order for Temporary Injunction included a provision as follows:

“Saint Luke Baptist Church shall have a meeting of the members of the Church, not to be held before February 15, 2021, but within 30 days of this Order, wherein the congregation shall vote on the matter of who will be the Pastor or Interim Pastor of the Church moving forward. The Defendant’s attendance is prohibited. The meeting will be noticed by announcement each Sunday during Saint Luke Baptist Church service two (2) weeks prior to the date of the meeting and such other means ordinarily used by the Church.”

Thereafter, the Church timely held the meeting required by the order on February 20, 2021. At this meeting, the congregation voted to appoint Rev. Jerome Boyd as Interim Pastor. No person offered a motion to reinstate Terry as Pastor.

STANDARD OF REVIEW

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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), SCRCP; See also, Tupper v. Dorchester County, 487 S.E.2d 187, 191 (1997); Wells v. City of Lynchburg, 501 S.E.2d 746, 749 (Ct. App. 1998). Summary judgment expedites disposition of issues which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001).

The party seeking summary judgment has the initial burden of establishing the absence of a genuine issue of material fact. Bradley v. Doe, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rife v. Hitachi

Constr. Mach. Co., Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005). In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994); Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The South Carolina Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to 15-53-140 (1976 & Supp. 2002), provides that courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann. § 15-53-20 (1976). Any person whose rights, status, or other legal relations are affected by a statute or municipal ordinance may have determined any question of construction or validity arising under the statute or ordinance and obtain a declaration of rights, status, or other legal relations thereunder. S.C. Code Ann. § 15-53-30 (1976), S.C. R. Civ. P. 57.

The purpose of the Declaratory Judgments Act "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15-53-130 (2005); See also, Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). Moreover, the Act "is to be liberally construed and administered." S.C. Code Ann. § 15-53-130.

CONCLUSIONS OF LAW

I. THE CHURCH IS ENTITLED TO A DECLARATORY JUDGMENT AS A MATTER OF LAW BECAUSE THE CHURCH, AS A "CONGREGATIONAL RULE" CHURCH, REMOVED TERRY AS PASTOR BY A MAJORITY OF THE CONGREGATION AND IN COMPLIANCE WITH THE CHURCH'S BYLAWS.

Based on the record in this case, there are no genuine issues of material fact and as a matter of law, the Church is entitled to an order declaring that it acted within its authority and that the removal of Terry as Pastor is valid pursuant to its Bylaws. Church disputes in South Carolina are resolved

following the “neutral principles of law” approach articulated in All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C., 685 S.E.2d 163 (S.C. 2009). Following this approach, "where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so." Id. at 172. In this case, neutral principles of law allow the Court to look to the secular processes established by the Church for conducting business, including removal of its Pastor.

The record shows that Saint Luke is a “congregational rule” Baptist Church in which the congregation is the final decision maker for the hiring and termination of the Church’s Pastor as set forth in the Church’s Bylaws. "The law is clear that the majority controls the decisions of a congregational church." McCain v. Brightharp, 399 S.C. 240, 248 (Ct. App. 2012). In a case involving the dismissal of a pastor in a Baptist church, the South Carolina Supreme Court has held that the only questions it had the power to consider were: (1) whether the congregation met, and (2) whether the congregation disposed of the defendant as pastor. McCain, at 248-249 (citing Morris Street Baptist Church v. Dart, 45 S.E.2d 753, 754 (S.C. 1903)). The Church’s Bylaws provide in part that, “[c]hurch conference meetings for business shall be held every quarter, three (3) months.”

The Church’s Bylaws also provide that at least twenty-five (25) members must be present at any meeting of the Church for which business is transacted. At a Church meeting held on December 26, 2020, in which a quorum was present, 68 members voted unanimously to terminate the services of Terry as Pastor. The total of 68 members voting to terminate Terry is also a majority of the Church’s total membership of 125 members.

The Bylaws are silent as to how notice of a church meeting is given. However, members were notified of the meeting in accordance with a practice that had been used historically to call meetings, including telephone calls and text messages using the Church’s robocall service over a 4-day period.

Terry acknowledged notice of the meeting, as Terry and at least one other member contacted members in an attempt to prevent the meeting from taking place.

In addition to following the Bylaws in the calling of the December 26, 2020 meeting, the record also reflects that the voting procedure also complied with the Bylaws. Rev. Dr. Preston Harrison, who is the Gethsemane Missionary Baptist Association Area Representative of the Midlands and Pastor of Blackjack Baptist Church, served as a mediator at the meeting, certified the vote and attested that the vote was in accordance with the Bylaws. Rev. Dr. Harrison is not a member of the Church's congregation and had no personal interest in the outcome of the vote. Furthermore, Judge Griffith previously determined in his Order Granting Temporary Injunction, that "in accordance with its Bylaws, Plaintiff acted within its authority and the removal of Terry was valid."

Terry argues that the vote was improper, however, he was not present at this meeting to observe the procedure and he has not presented evidence of any other applicable procedure for conducting church business. Terry's dispute of the facts relating to the vote is deficient to survive summary judgment, as he may not use the contradictions in his own testimony to create an issue of fact for the jury. See David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006); see also, Barwick v. Celotex Corp., 736 F.2d 946, 960 (4th Cir. 1984).

Based on the record, there are no genuine issues of material fact regarding the Church's compliance with its Bylaws in the removal of Terry as Pastor; therefore, the Church is entitled to a declaration that it acted within its authority and the removal of Terry as Pastor is valid, as a matter of law.

II. THE CHURCH IS ENTITLED TO A PERMANENT INJUNCTION AS A MATTER OF LAW BECAUSE THE CHURCH'S REMOVAL OF TERRY IS VALID AND SUCH ACTION IS NECESSARY TO PREVENT FUTURE HARM TO THE CHURCH BASED UPON TERRY'S CONDUCT AFTER HIS REMOVAL.

As explained in Section I, *supra*, the Church acted within its authority and in accordance with its Bylaws with regard to the removal of Terry as Pastor. The undisputed record of Terry's conduct after removal is such that a permanent injunction is appropriate to prevent further irreparable harm to the Church.

"[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation." County Council of Charleston v. Felkel, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964). In contrast, "[a] permanent injunction is issued primarily to prevent future acts of harm and, unless specified otherwise in the order, is unlimited in respect of time." S.C. Dep't of Soc. Servs. v. Almeida, 2004 S.C. App. Unpub. LEXIS 502, 504 (cited for illustration rather than persuasion). Based on the record, the Church is entitled to an order to permanently enjoining Terry from interfering with the Church's business and operations, as a matter of law.

The record shows that Terry has a history of taking actions to interfere in the operations of the Church. For example, prior to the Court's Order for Temporary Injunction on February 4, 2021, the Church was denied access to its online giving platform financial accounts for the purpose of conducting its normal operations. Despite being removed as Pastor, Terry continued to contact members of the Church and financial institutions and held himself out as having authority to act on behalf of the Church. Accordingly, Terry should be permanently and forever enjoined from interfering with the Church's affairs and operations, to prevent future harm to the Church, and to allow the Church to move forward

with new leadership. Based on the record, there are no genuine issues of material fact and summary judgment is proper as to the Church's claim for permanent injunctive relief, as a matter of law.

III. THE CHURCH IS ENTITLED TO SUMMARY JUDGMENT AS TO ALL OF TERRY'S COUNTERCLAIMS.

A. Terry's claim for conversion fails as a matter of law because Terry has failed to produce any evidence that the Church assumed and exercised the right of ownership of the items allegedly belonging to Terry to the exclusion of Terry's rights.

Terry's conversion action fails as a matter of law because Terry cannot satisfy the elements of his claim. Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property. Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); Castell v. Stephenson Fin. Co., 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964).

During his deposition, Terry did not, within any reasonable degree of certainty, identify the specific items that he alleges the Church converted. Further, Terry stated that most of the items that he left on the Church's premises after his removal were returned to him; however, as to the items that he asserted were not returned, he failed to provide a description sufficient enough to identify such items. Terry admitted that none of the Church's staff or members assumed any responsibility for any of the items that he allegedly brought to the church.

Thus, Terry's own admission indicates that the Church's alleged retention of any alleged items owned by Terry was neither wrongful nor intentional. Further, the record reflects that the Church provided Terry an opportunity to retrieve any of his personal belongings that remained at the Church, as reflected in a letter dated January 5, 2021 from Deacon Kirk Chappell requesting that Terry arrange

a time to retrieve any belongings (“if your personal belongings have not been removed from the Church within 30 days, we will consider the items abandoned”).

Based on the record, the Church never exercised the right of ownership over or wrongfully detained any alleged items Terry left on the Church’s premises, as the Church attempted in good faith, to return any items Terry left on the premises. As such, Terry cannot establish the requisite elements of his claim for conversion and his claim fails as a matter of law. Accordingly, Terry’s claim for conversion against the Church is dismissed.

B. Terry’s claim for breach of contract/breach of contract with fraudulent intent fails as a matter of law because no binding contract exists between the parties.

Defendant also alleges that the Church breached his alleged employment contract. To establish a breach of contract claim, Terry must show that he entered into an enforceable contract with the Church. The elements required to establish a contract are an offer, acceptance, and valuable consideration. Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771, 773 (1997) (citing Carolina Amusement Co., Inc. v. Connecticut Nat’l Life Ins., Co., 313 S.C. 215, 437 S.E.2d 122 (1993)).

The record reflects that Terry never entered into an enforceable contract with the Church for employment. In fact, Terry admits in his deposition that he did not work for the Church under an employment contract at all; however, Terry insists that he worked under a “covenant contract.” Despite this assertion, Terry has not produced any evidence to support the existence of this alleged “covenant contract”, aside from Terry’s own vague testimony.

It is clear, based on the record, that no binding contract exists between the parties. Moreover, Terry’s testimony that he believed he would be employed for an indefinite period of time as the purported “covenant contract” had no expiration date, would be valid only if it complied with the Statute of Frauds. Under South Carolina law, a contract for an indefinite term, falls within the Statute

of Frauds as it is incapable of being performed within one year. The Statute of Frauds provides a contract that cannot be performed within one year is unenforceable unless it is in writing and signed by the party against whom enforcement of the contract is sought. Springob v. Univ. of S.C., 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014). The burden of proof is on the party seeking to enforce the contract. Id. Terry has offered no evidence of a contract. For this reason, there exist no genuine issues of material fact regarding the existence of an enforceable contract. Therefore, Terry's contract claims¹ fail as a matter of law.

C. Terry's contract claims also fail as a matter of law because the record reflects that he was employed by the Church in an at-will relationship.

Terry's failure to produce any evidence of an enforceable contract, in addition to his own omission that his employment arrangement was for an indefinite term, supports the Church's position that Terry was employed under an at-will relationship. In South Carolina, there is a presumption of at-will employment. Prescott v. Farmer's Tel. Co-Op., Inc., 335 S.C. 330, 516 S.E.2d 923, 927, n.8 (1999). Under South Carolina law, if an employee is employed for an indefinite period of time, the employment relationship is considered to be "employment at will." See Shealy v. Fowler, 182 S.C. 81, 188 S.E. 499, 1936). Generally, an employer may terminate an at-will employee for any reason or no reason and will not be subjected to a breach of employment contract claim. Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002).

Based on the record, and Terry's own admission, Terry was employed at will. Thus, his tenure was subject to end at the discretion of either party. As Terry fails to produce any evidence of an

¹ A valid claim for breach of contract accompanied by fraudulent act requires, as a threshold matter, the existence of a contract. Maro v. Lewis, 389 S.C. 216, 697 S.E.2d 684, 688 (S.C. Ct. App. 2010). Because Terry has failed to establish the existence of a contract that changed his at-will employment, Terry's cause of action for breach of contract accompanied by a fraudulent act also fails as a matter of law.

enforceable employment contract that changed his at-will employment relationship, there is no genuine issue of material fact as to Terry's at-will employment relationship. Accordingly, Terry's contract claims fail as a matter of law.

D. Terry's claim for slander/slander *per se* fails as a matter of law as Terry cannot establish the requisite elements of this claim, and any such alleged defamatory statements are privileged.

A party asserting a claim of defamation must prove the following elements: "(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm." Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 302–03, 631 S.E.2d 286, 292 (Ct. App. 2006).

Terry testified during his deposition that the allegation of Plaintiff's Complaint that suggest he stole funds was the basis for his defamation claim. It is well settled under South Carolina law that allegations found in relevant pleadings, even if defamatory, are absolutely privileged. McKesson & Robbins v. Newsome, 206 S.C. 269, 33 S.E.2d 585 (1945); Texas Co. v. C.W. Brewer & Co., 180 S.C. 325, 185 S.E. 623 (1936); Rodgers v. Wise, 193 S.C. 5, 7 S.E.2d 517 (1940) (court held that, pleadings, although they may constitute libel on their own, are absolutely privileged if they are relevant and legitimately related to the issues and inquiry at trial).

Here, the Church's allegations in the complaint are certainly relevant to this case, and therefore, any allegations made within the complaint constitutes a privileged communication. As such, Terry cannot satisfy the third element of his claim for defamation, as a matter of law, the claims claim should be dismissed.

E. Terry's claim for violation of the South Carolina Payment of Wages Act fails as a matter of law as Terry has failed to produce any evidence that Plaintiff failed to pay Terry's wages.

The South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10, *et seq.* (Supp. 2021), provides that when an employer fails to pay wages, an employee may recover an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. S.C. Code Ann. § 41-10-80(C). In support of Terry's claim for a Payment of Wages Act violation, Terry contends that the Church failed to pay his annual salary of \$41,000.00 in 2020.

However, the record reflects that the Church paid Terry all wages due to him in 2020. In fact, the Church paid Terry a gross amount of \$42,576.84, which includes his total salary, and also reflects an additional check paid to him in 2021, despite his termination on December 26, 2020.

The Church's position is supported by the South Carolina Department of Labor, Licensing and Regulation's ("Department") determination based on its investigation of Terry's wage complaint, that Plaintiff did not violate the South Carolina Payment of Wages Act. Based on the findings of the Department's investigation, the Department did not impose sanctions against the Church, and closed Terry's file. Therefore, based on the record, there exist no genuine issues of material fact and summary judgment is appropriate as to Terry's wage claim.

CONCLUSION

Based on the aforementioned findings of fact and conclusions of law, this Court grants Plaintiff's Motion for Summary Judgment as to each of Plaintiff's claims, and as to all of Defendant's Counterclaims.

WHEREFORE, IT IS ORDERED that Defendant Terry's claims for Conversion, Breach of Contract/Breach of Contract With Fraudulent Intent, Slander/Slander *per se*, and Violation of the South Carolina Payment of Wages Act are hereby dismissed.

Furthermore, IT IS DECLARED that the Church acted within its authority and the removal of Terry as Pastor is valid pursuant to its Bylaws.

IT IS FURTHER ORDERED that a Permanent Injunction be issued against Defendant Terry prohibiting Terry and those acting in concert with Terry from:

- (1) attempting to act on behalf of Saint Luke Baptist Church in any capacity, to include the position of Pastor;
- (2) interfering in any way with the ministerial and business operations of Saint Luke Baptist Church;
- (3) taking any action that interfere with Saint Luke Baptist Church's enjoyment and use of its real or personal property;
- (4) taking any action with respect to Saint Luke Baptist Church's banking and financial accounts and accessing financial and banking platforms; including the username and password;
- (5) otherwise interfering with the normal duties and responsibilities of the officers; ministers and/or other employees of Saint Luke Baptist Church or the governing body of Saint Luke Baptist Church; and
- (6) engaging in the use of Saint Luke Baptist Church's social media accounts.

IT IS SO ORDERED.

The Honorable Brian M. Gibbons
Circuit Judge

April __, 2022
Fairfield, South Carolina



Fairfield Common Pleas

Case Caption: Saint Luke Baptist Church VS Rayshawn Terry

Case Number: 2021CP2000024

Type: Order/Summary Judgment

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge