

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case Number: 2012-213071

James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church, Appellant,

v. . .

James Stevenson, Roddie Armstrong, Lyndsay Hopkins, Freddie Armstrong, Janice Samuels, Daisy McGraw, Jeannie Hall, Rosa Chappell, Alzine Woodard and Jean McCory, Respondents,

**REPLY BRIEF OF THE RESPONDENTS TO THE AMICUS CURIAE BRIEF OF
THE AME CHURCH**

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Facts 1

Standard of Review 2

Arguments 3

 I. THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., (HEREINAFTER REFERRED TO AS THE AME CHURCH) THROUGH THEIR AMICUS CURIAW BRIEF IMPROPERLY ATTEMPTS TO BOLSTER THE APPELLANT’S BRIEF IN THIS MATTER BY PROVIDING AN ADDITIONAL ARGUMENT OF CONTRACT LAW NOT PREVIOUSLY RAISED BY APPELLANT EITHER ON APPEAL OR DURING THE TRIAL STAGE OF THIS ACTION AS WELL AS ADDS SUPPORT TO AN ALREADY BRIEFED ARGUMENT, AND AS SUCH SHOULD BE DISREGARDED.3

 II. THE TRIAL COURT DID NOT ERR IN FAILING TO HOLD ITS DECISION IN ABEYANCE UNTIL DEPOSITIONS WERE TAKEN..... 5

 III. THE TRIAL COURT DID NOT ERR IN FINDING THAT IN ABSENCE OF A DOCUMENT TRANSFERRING OWNERSHIP INTEREST IN THE REAL PROPERTY TO APPELLANT, A TRUST COULD NOT HAVE BEEN CREATED FOR THE BENEFIT OF THE PLAINTIFF..... 5

Conclusion 8

TABLE OF AUTHORITIES

CASES

All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina,
385 S.C. 428, 442, 685 S.E.2d 163, 170-71 (2009)..... 5, 6

Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991).....2

Ex parte Brown, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)..... 3

Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987)..... 7

Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722.....2

Sauner v. Pub. Serv. Auth. of S. Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003)..... 5

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710, 96 S.Ct. 2372,
49 L.Ed.2d 151 (1976).....6

State v. Langford, 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012), reh'g denied
(Dec. 20, 2012), cert. denied (Oct. 7, 2013), cert. denied, 134 S. Ct. 60, 187
L. Ed. 2d 51 (U.S.S.C. 2013).....3

Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983).....2

Whitmire v. Adams, supra; Ramantanin v. Poulos, 240 S.C. 13, 124 S.E.2d 611 (1962)... 7

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 56.....2

SOUTH CAROLINA CODE OF LAWS

S.C. Code §62-7-407.....7

SECONDARY SOURCES/LEGAL ENCYCLOPEDIAS

3B C.J.S. Amicus Curiae §1.....3

STATEMENT OF ISSUES ON APPEAL

1. **THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE BOOK OF DISCIPLINE OF THE A.M.E. CHURCH DOES NOT CREATE A TRUST ON BEHALF OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC.**
2. **THE TRIAL COURT DID NOT ERR IN FAILING TO HOLD ITS DECISION IN ABEYANCE UNTIL DEPOSITIONS WERE TAKEN.**

STATEMENT OF THE CASE

This is an appeal of an Order denying Appellant's Motion to Alter or Amend from The Honorable Brooks Goldsmith dated August 31, 2012 and filed on September 4, 2012. Appellant filed their Motion to Alter or Amend on July 30, 2012 in response to the Order denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment from The Honorable Brooks Goldsmith dated and filed July 19, 2012. Briefs from the Appellant and the Respondent were timely submitted to this Court and Oral Arguments were heard on February 6, 2014 at which time the Court granted the motion of the African Methodist Episcopal Church's to file an Amicus Curiae brief in this matter. Appellant and Respondent were then given fifteen (15) days to respond to this filed brief.

FACTS

On May 3, 1919, Eleanor Stroman conveyed 1.25 acres of land in Fairfield County to the "Trustees of Shady Grove Church" by general warranty deed. (Transcript p. 13 lns 18-21)(R. p. 100 lns 18-21). This 1.25 acres is located at 5253 Newberry Road in Winnsboro, South Carolina which is the property in dispute in this appeal. (Transcript p. 13 ln 23)(R. p. 100 ln 23). This property in question has never been conveyed to the AME Church nor has a trust ever been set up wherein the property was held for the benefit of the AME Church. (Transcript p. 12 lns 21-22, p. 13 lns 24-25, p. 14 ln 1)(R. p. 99 lns 21-22, p. 100 lns 24-25, p. 101 ln 1). A current title

search of the property located at 5253 Newberry Road in Winnsboro, South Carolina lists vested title in “Trustees of Shady Grove Independent Church.” (Shady Grove Title Search p. 1)(R. p. 70). On May 11, 2011, Respondents informed Appellant that all members of Shady Grove had unanimously voted to terminate any and all affiliation with the A.M.E. Church. (Transcript p. 14 lns 1-5)(R. p. 101 lns 1-5). Since that time, religious services have continued without interruption. (Transcript p. 14 lns 5-6)(R. p. 101 lns 5-6).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure, Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722. “In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion.” Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983). The most comprehensive statement of the burden of both parties on a motion for summary judgment is set forth in Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991):

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by ‘showing’ – this is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party’s case.’ The moving party need not ‘support its motions with affidavits or other similar materials negating the opponent’s claim.

Once the moving party carried its initial burden, opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with ‘specific facts showing that there is genuine issue for trial.’

Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.

ARGUMENTS

I. THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., (HEREINAFTER REFERRED TO AS THE AME CHURCH) THROUGH THEIR AMICUS CURIAW BRIEF IMPROPERLY ATTEMPTS TO BOLSTER THE APPELLANT’S BRIEF IN THIS MATTER BY PROVIDING AN ADDITIONAL ARGUMENT OF CONTRACT LAW NOT PREVIOUSLY RAISED BY APPELLANT EITHER ON APPEAL OR DURING THE TRIAL STAGE OF THIS ACTION AS WELL AS ADDS SUPPORT TO AN ALREADY BRIEFED ARGUMENT, AND AS SUCH SHOULD BE DISREGARDED.

In examining the legal basis for an amicus curiae brief, it is clear that briefs of this nature are provided and used by the court in order provide additional information to the court regarding a matter of law that will assist in clarifying an otherwise uncertain or mistaken interpretation of the law. (3B C.J.S. Amicus Curiae § 1). This explanation of the purpose of amicus curiae briefs proves important in that a brief filed in this nature is not acting as an advocate, but as a, “friend of the court” providing information. *Id.* In the case at hand, the AME Church has attempted, through its amicus curiae brief to act not as a friend of the court, but as an assistant to the Appellant in supplying arguments to the Court that are not currently present before the Court as they were not presented or even contemplated at the trial level, and have no basis in the record on appeal. This argument finds strengthen in examining the Appellant’s Statement of Issues on Appeal which make no mention of jurisdiction or of contract law, two major issues in the AME Church’s first argument. While this Court has held that they will consider arguments raised only through an amicus curiae brief, they strictly construe this exception to “matters of significant public interest.” State v. Langford, 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012), reh’g denied (Dec. 20, 2012), cert. denied (Oct. 7, 2013), cert. denied, 134 S. Ct. 60, 187 L. Ed. 2d 51 (U.S.S.C. 2013) *citing Ex parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011). This

Court continues on to state that, “this exception to Rule 213 must be applied narrowly and only under the appropriate circumstances so as not to eviscerate the long-standing preservation requirements in our jurisprudence.” *Id.* A review of the filed amicus curiae brief demonstrates that no matters of significant public interest are addressed in the new arguments presented by the AME Church’s brief. The amicus curiae brief appears to propose two arguments through multiple numbered sections. While the brief attempts to characterize its first argument as a contemplation of jurisdiction of South Carolina courts, the main purpose of the argument appears to be an introduction of contract law as a basis for a reversal of the trial court’s decision. (Amicus Curiae Brief pgs. 3-4, 6). The second argument found in the AME Church’s brief expounds on whether any trust created between the parties would be subject to the Statute of Frauds, an issue that has previously been addressed and briefed by the Appellant. (Amicus Curiae Brief pgs. 4-5). Neither of the arguments presented appeal to an public interest or address how the arguments contain any significance outside of this matter. It is also puzzling as to why the AME Church chose only to file an amicus curiae brief in regards to this matter and not also in the companion case pending before this Court of James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church v. Cothran Manning, Jr., Theodore Manning, and Earlene W. Manning; Case No.: 2012-213070, although the issues contained in the companion case are almost identical to the issues in this matter. Finally, the Appellant already represents the position of the AME Church, rendering a second brief on behalf of the AME Church inappropriate and excessive. It would therefore appear that this brief was filed not for the purposes of assisting the Court, but in assisting the Appellant. As such, Respondent would respectfully request that the amicus curiae brief filed on behalf of the AME

Church be disregarded as improper lobbying of the judiciary in an attempt to strengthen the Appellant's case instead of assisting the Court.

II. THE TRIAL COURT DID NOT ERR IN NOT EXAMINING CONTRACT LAW TO FIND A TRUST BETWEEN THE PARTIES PRIOR TO GRANTING SUMMARY JUDGMENT FOR THE RESPONDENT.

III. THE TRIAL COURT DID NOT ERR IN FINDING THAT IN ABSENCE OF A DOCUMENT TRANSFERRING OWNERSHIP INTEREST IN THE REAL PROPERTY TO APPELLANT, A TRUST COULD NOT HAVE BEEN CREATED FOR THE BENEFIT OF THE PLAINTIFF.

Although the Respondent finds the amicus curiae brief of the AME Church to be improperly bolstering of the Appellant's argument and not a proper amicus curiae brief, even if the Court considers this brief, the arguments of the AME Church fail as a matter of law.

The AME Church's position that the trial court should have looked to contract law in order to find a trust is misplaced. Not only did the Appellant never posit an argument that contract law would be applicable at the trial court level, but there is no evidence in the record to support the formation of a contract between the parties. The necessary elements for the formation of a contract under South Carolina law are "an offer, acceptance, and valuable consideration." Sauner v. Pub. Serv. Auth. of S. Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003). In the case at hand, there exists no evidence of any of the required elements. Although the AME Church attempts to posit that the Book of Discipline makes an offer to the individual churches in exchange for the individual churches holding its real property in trust, the only basis for this argument is in the religious doctrine of the AME Church, forcing the court to become entangled in ecclesiastical law instead of rooting itself in the neutral principles of law. To allow a court to unnecessarily dive into religious doctrine directly violates All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina which holds that, "where a civil court can

completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so.” 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009). All Saints continues on to state that, “there is a general constitutional command, based in the First Amendment, mandating that civil courts “decide church ... disputes without resolving underlying controversies over religious doctrine.” *citing* Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina, 385 S.C. 428, 442, 685 S.E.2d 163, 170-71 (2009). Although the Respondent staunchly opposes this position, even assuming *arguendo* that this Court can look to Book of Discipline to find a contract, this position still fails as there is no evidence of the Book of Discipline being an offer to the individual churches or that they ever accepted this offer. As pointed out at the summary judgment hearing of this matter, there exists no evidence that the Book of Discipline was in effect when the Respondent joined the AME Church to even determine what “offer” was present in the doctrine. (R. p. 124, lns. 22-25). Furthermore, there exists no evidence that the Respondents ever ratified or accepted the Book of Discipline as their constitution. (R. p. 122, lns. 7-22). Therefore, there exists no evidence in the record of any offer being made to Respondent for their acceptance and the formation of a contract would fail as a matter of law. With this failing of existence of a contract, there exists no reason to examine, as the AME Church requests, “the obligations imposed on the parties by their voluntary submission to the authority of the church.” (Amicus Curiae Brief p. 6).

Respondent would note that the AME Church’s reference to an 1873 document that purportedly could demonstrate acceptance of an offer from the AME Church confuses the Respondent with the Respondent of the James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church v. Cothran Manning, Jr., Theodore

Manning, and Earlene W. Manning; Case No.: 2012-213070. Respondent in this matter made no reference to the existence of any writing detailing an agreement of any form. Furthermore, the Record contains no copy of any 1873 writing and therefore cannot be examined as to the substance of the referenced agreement and its application here today.

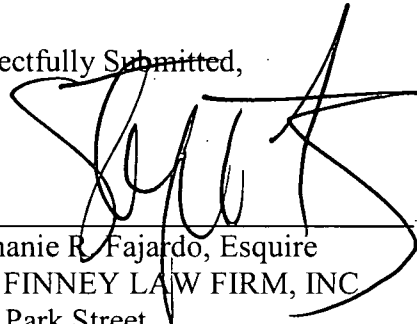
The AME Church's discussion of the Statute of Frauds appears to suggest that a constructive trust could be created, thus bypassing the writing requirement. This argument, along with the previously discussed argument, is also misplaced in light of the facts and circumstances of this matter. South Carolina Code Section 62-7-407 holds that in order to be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. (S.C. Code §62-7-407). The AME Church appears to allege that this code section is not applicable by invoking equitable estoppel. (Amicus Brief p. 5). Respondent finds itself unsure of the basis for this equitable estoppel but can only assume that the AME Church is attempting to find protection in the theory of constructive trusts. South Carolina courts have addressed the formation of a constructive trust in stating that, "A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987) citing *Searson v. Webb*, 208 S.C. 453, 38 S.E.2d 654 (1946). The Court has also required that, "in order to establish a constructive trust, the evidence must be clear, definite, and unequivocal. Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) citing *Whitmire v. Adams, supra; Ramantanin v. Poulos*, 240 S.C. 13, 124 S.E.2d 611 (1962). In the case at hand, there exists no evidence to support any fraud, bad faith, abuse of confident, or violation of a fiduciary duty in order to support the creation of a constructive trust in favor of the AME Church, and therefore this argument must fail as a matter

of law. The AME Church does attempt in their brief to list how the Respondent has voluntarily accepted benefits from the AME Church as evidence of performance, however this argument seemingly contradicts the South Carolina case law cited by the Appellant which prevents courts from inquiring into the administration of the AME Church. (R. p. 123, lns 23-25). As such, the AME Church's argument that equity would allow a trust to be created in contravention of the Statute of Frauds fails as a matter of law and is not persuasive in this situation.

CONCLUSION

As the AME Church, through their amicus curiae brief improperly attempts to bolster the Appellant's brief in this matter by providing an additional argument of contract law not previously raised by Appellant either on appeal or during the trial stage of this action as well as adds support to an already briefed argument regarding the Statute of Frauds, this amicus brief should be disregarded. Even if the Court does take into consideration this brief, as all the AME Church's presented arguments fail as a matter of law and provide no additional support to the Appellant's arguments which also fail, the trial court's decision in this matter should be affirmed.

Respectfully Submitted,



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