

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4006527

Reginald Byrden

Gill Creek Baptist Church

PLAINTIFF(S)

Kenneth Worthy

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonset);  Rule 43(k), SCRCP (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 19 May 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Donald Gist

Henry Ronald Stanley

Reginald Wayne Belcher

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeannette W. McBride*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION: 2013-CP-400-6527

REVEREND DR. REGINALD )  
BYRDEN, PASTOR OF )  
GILL CREEK )  
BAPTIST CHURCH, )

Plaintiff, )

vs. )

GILL CREEK )  
BAPTIST CHURCH, )  
KENNETH WORTHY, )  
DOROTHY FULWOOD, )  
WILLIE GRIER, JR., )  
CEASAR LEYSATH, III, )  
DAVID JACOBS, )  
JULIA HARRELL, )  
ROSCOE BUSH, )  
EVELYN MOORE, )  
AND GLORIA PRYOR )  
(ACTING IN THEIR OFFICIAL )  
CAPACITIES AS DEACONS )  
AND IN THEIR INDIVIDUAL )  
CAPACITIES ), )  
BARBARA BROWN, )  
LAVERNE SANDERS, )  
CHRIS MOORE, )  
SANDRA HINES, )  
DONALD WORTHY, )  
INEZ BUSH, )  
RON TILLMAN, )  
ORETHA YOUNG, )  
BOBBIE MARTIN, )  
CHARLES BERRY AND )  
SHARON GRIER )  
(ACTING IN THEIR )  
OFFICIAL CAPACITIES AS )  
TRUSTEES AND IN THEIR )  
INDIVIDUAL CAPACITIES) )

**ORDER DISMISSING  
PLAINTIFF'S CAUSES OF  
ACTION FOR CIVIL  
CONSPIRACY AND NEGATIVE  
INFLECTION OF EMOTIONAL  
DISTRESS AS AGAINST ALL  
DEFENDANTS**

2014 MAY 14 PM 3:47  
JEANNETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

**SCANNED**

AND DONALD WORTHY )  
 (ACTING IN HIS OFFICIAL )  
 CAPACITY AS TREASURER )  
 AND IN HIS )  
 INDIVIDUAL CAPACITY) )  
 AND CHARLES GREENE )  
 (ACTING IN HIS OFFICIAL )  
 CAPACITY AS ASSISTANT )  
 TREASURER AND IN )  
 HIS INDIVIDUAL CAPACITY), )  
 )  
 Defendants. )  
 )  
 )  
 \_\_\_\_\_)

Before the Court are Defendants' Motion to Dismiss the Complaint in Part and Motion to Amend its Motion to Dismiss. For the reasons stated below, Defendants' Motion to Dismiss in Part is GRANTED. Defendants' Motion to Amend its Motion to Dismiss is DENIED.

**Facts**

Defendant Gill Creek Baptist Church, which is located on Cushman Drive in Columbia, South Carolina, formerly employed Plaintiff as a pastor. According to the Complaint, the individually-named Defendants served the Church as employees, trustees, administrators, deacons, and/or members of the congregation.

The Complaint alleges that some of the individually-named Defendants wrongfully accused Plaintiff of engaging in "an alleged extramarital sexual relationship and physical assault of a member of the community." Some of the individually-named Defendants allegedly asked Plaintiff to resign from his position as pastor as a result of the purportedly inappropriate relationship and physical assault, but Plaintiff refused to do so.

After Plaintiff refused to resign from his position, some of the individually-named Defendants allegedly "conspired to terminate Plaintiff's employment" by meeting and discussing the situation.

On or around July 29, 2013, some of the individually-named Defendants allegedly “conspired to . . . cause Plaintiff to be suspended from his employment” for ninety (90) days. The Church later terminated Plaintiff’s employment in October 2013.

Plaintiff alleges that Defendants’ actions breached his employment contract and caused him pain and suffering, mental anguish and distress, and emotional and physical distress and injuries—all of which allegedly arose out of and in the course of Plaintiff’s employment with Gill Creek.

### **Procedural History**

Plaintiff filed this action on October 25, 2013, setting forth claims of Breach of Contract, Breach of Contract with Fraudulent Intent, Civil Conspiracy, Defamation, Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress. Defendants answered on November 19, 2013 and filed an Amended Answer as a matter of course on December 19, 2013. In conjunction with the Amended Complaint, Defendants moved to dismiss Plaintiff’s claims for Civil Conspiracy, Defamation, Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress pursuant to Rule 12(b)(6). Thereafter, Defendants withdrew its motion to dismiss the Defamation claim and moved to amend their Motion to Dismiss to include the Breach of Contract with Fraudulent Intent claim. Plaintiff opposed Defendants’ Motion to Amend.

### **Standard Of Review**

The South Carolina Supreme Court has stated the following standard of review for assessing a motion to dismiss pursuant to Rule 12(b)(6), SCRPC:

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts alleged and inferences reasonably deducible there from, viewed in the light most favorable to the



plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

*Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007) (internal citations omitted).

“Rule 12(b)(6), SCRPC, ‘retains the Code Pleading standard . . . rather than the more lenient notice pleading standard found in the federal rules.’” *Gaskins v. S.C. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 541 S.E.2d 269, 271 (Ct. App. 2000), *aff’d as modified*, 354 S.C. 169, 581 S.E.2d 169 (2003). Further, while the “well-pleaded facts in the complaint” are deemed admitted, conclusions of law set forth in the pleadings are not deemed admitted.” *Carolina Winds v. Joe Harden Builder*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (Ct. App. 1988), *overruled on other grounds*, *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 384 S.E.2d 730, 299 S.C. 335 (1989). “A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004), *aff’d*, 373 S.C. 390, 645 S.E.2d 245 (2007).

#### **Motion to Amend**

Defendants moved to amend its motion to dismiss to include the breach of contract with fraudulent intent claim. This motion is denied. Defendants may make a new motion under Rules 12(b)(6) and 12(h) if they so choose.

#### **Motion to Dismiss**

Defendants also moved to dismiss Plaintiff’s claims for Civil Conspiracy, Intentional Infliction of Emotional Distress, and Negligent Infliction of Emotional Distress. Plaintiff asserted these causes of action against the individually named defendants in their individual

capacities, and Plaintiff is not seeking to hold Gill Creek Baptist Church itself liable under any of these claims.

### Civil Conspiracy

A civil conspiracy “consists of a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing him special damage.” *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1998). “[T]he gravamen of the tort is the damage resulting to [the] plaintiff from an overt act done pursuant to a common design.” *Vaught v. Waites*, 300 S.C. 201, 208-09, 387 S.E.2d 91, 95 (Ct. App. 1989) (citation omitted). To properly plead “a civil conspiracy claim, one must plead *additional acts* in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC.*, 385 S.C. 110, 115-17 682 S.E.2d 871, 875 (Ct. App. 2009) (emphasis added); *See also Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379, 382 (Ct. App. 1986) (holding that to have a successfully civil conspiracy claim, a plaintiff “must allege certain acts carried out pursuant to the conspiracy”).

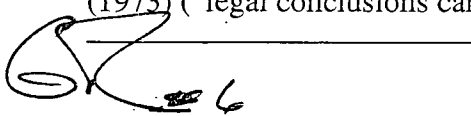
Further, in a claim for civil conspiracy, a plaintiff must plead and prove that he suffered “special damages” as a result of the conspiracy. *Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875 (citing *Sheek v. Lee*, 289 S.C. 327, 345 S.E.2d 496 (1986)) (“Special damages must . . . be specifically alleged in the complaint to avoid surprise to the other party.”). Special damages “are those elements of damages that are the natural, but not the necessary or usual consequence of the defendant’s conduct,” and they “are not implied at law because they do not necessarily result from the wrong.” *Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875. If a “plaintiff merely repeats the damages from another claim instead of *specifically listing* special damages as part of the civil

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conspiracy claim, their conspiracy claim should be dismissed.” *Id.* (emphasis added); *see also Vaught v. Waites*, 300 S.C. 201, 208-09, 387 S.E.2d 91, 95 (Ct. App. 1989) (“The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under *Todd*.”) (citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981), *rev’d on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985)).

In this case, Plaintiff fails to make a single specific allegation of an overt action done in furtherance of the conspiracy that caused him injury or damage. Many of Plaintiff’s allegations fail to identify any action on the part of the Defendants at all. *See, e.g.*, Complaint ¶ 13 (alleging that Defendants allowed accusations to be read); ¶ 14 (alleging that Defendants caused Plaintiff to be suspended but failing to allege how or by what actions they caused it); ¶ 31 (alleging that Defendants were “acting through concerted actions” but failing to name a single action). Where the complaint makes allegations regarding Defendants’ actions, it alleges that Defendants’ acted “in violation of Plaintiff’s employment contract.”<sup>1</sup> (Complaint, ¶ ¶ 8, 9, 11, 14, 18, 31). Thus, Plaintiff failed to allege “*additional acts* in furtherance of the conspiracy” as required. *See Hackworth*, 385 S.C. at 117, 682 S.E.2d at 875 (emphasis added).

Additionally, Plaintiff failed to specifically list what special damages were caused by the alleged conspiracy. Plaintiff’s conclusory claim that “Defendants’ civil conspiracy . . . has caused, continues to cause, and will cause Plaintiff to suffer special damages” is not sufficient to support this cause of action. *See, e.g., Stroud v. Riddle*, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973) (“legal conclusions cannot be substituted for ultimate facts” in the Complaint).

A handwritten signature, possibly 'S. G.', is written over a horizontal line. Below the signature is a large, dark scribble or mark.

Accordingly, the Court dismisses Plaintiff's claim for civil conspiracy with prejudice.

**Intentional Infliction of Emotional Distress**

To recover for the intentional infliction of emotional distress ("IIED" or "outrage"), a plaintiff must establish: "(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it." *Ford v. Hutson*, 276 S.C. 157, 164, 276 S.E.2d 776, 779 (1981) (internal citations omitted).

After careful and thorough consideration of the pleadings, memoranda, and arguments of Counsel at the hearing, the Court finds that Plaintiff's Complaint, when taken in the light most favorable to it, properly states a claim for relief under South Carolina law as to Plaintiff's IIED claim. Defendant's Motion to Dismiss as to that claim is hereby denied.

**Negligent Infliction of Emotional Distress**

In South Carolina, Negligent Infliction of Emotional Distress ("NIED") claims are limited to instances involving bystander recovery. *E.g., Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 67, 651 S.E.2d 305, 307 (2007) (strictly limiting the tort of negligent infliction of emotional distress to claims involving bystander liability involving an accident death or serious physical injury). *Id.* In other words, to properly state a claim for NIED, Plaintiff must allege that (1) Defendants negligently injured Plaintiff's close relative, (2) Plaintiff was in a position to witness the injury, and (3) Plaintiff suffered emotional distress that manifested itself physically as a result of witnessing this event.




Plaintiff has not made such allegations, and therefore this cause of action is dismissed.

**IT IS THEREFORE ORDERED** that Plaintiff's claims for Civil Conspiracy and Negligent Infliction of Emotional Distress are dismissed as against all defendants.

**IT IS SO ORDERED.**

Richland County, South Carolina

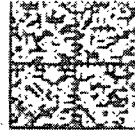
May 13, 2014

  
\_\_\_\_\_  
G. Thomas Cooper, Jr.  
Circuit Court Judge for the 5<sup>th</sup> Circuit

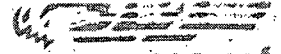
**Donald Gist  
PO Box 30007  
Columbia, SC 29230**

Jeanette W. McBride  
CLERK OF COURT  
RICHLAND COUNTY  
P.O. Box 2766  
Columbia, SC 29202-2766

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