

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

Court of Common Pleas

Judge Frank Addy, Jr., Circuit Court Judge

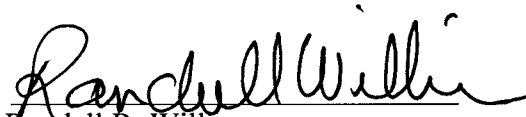
Case No. 2013-002236

Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African
Methodist Episcopal (A.M.E.) Church.....Appellant-Respondent,

v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison,
..... Respondents- Appellants.

RESPONDENT'S INITIAL BRIEF OF APPELLANT-RESPONDENT



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SC Court of Appeals

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STATEMENT OF THE CASE

The Appellant-Respondent filed a Summons and Complaint alleging that Rockford A.M.E. Church, as a member of a hierarchical denomination, holds its real and personal property in trust for the denomination, namely, the African Methodist Episcopal Church, Inc. as stated in the Book of Discipline of the A.M.E. Church. Appellant-Respondent also claimed that the Respondents-Appellants were no longer members of the local or national churches and therefore had no claim to the real and personal property of Rockford A.M.E. Church. Appellant-Respondent requested a declaratory judgment holding that Rockford A.M.E. Church holds all local church property, both real and personal, in trust for the African Methodist Episcopal Church, Inc. and an injunction enjoining the Respondents-Appellants from entering onto local church property disturbing the normal African Methodist Episcopal Church worship service. (R. pp. 31-35). Appellant-Respondent also filed a Motion for temporary restraining order and temporary injunction. (R. pp. 207-208, pp. 209-211).

The Respondents-Appellants served an Answer and Counterclaim and asserted defenses of failure to state a claim upon which relief may be granted, lack of subject matter jurisdiction, waiver, res judicata, equitable estoppel, accord and satisfaction, collateral estoppel and alleged that Appellant-Respondent's complaint was contrary to the governing rules and regulations of the African Methodist Episcopal Church. The Respondents-Appellants' counterclaims were defamation, negligent misrepresentation, breach of fiduciary duty, and intentional infliction of emotional distress. The Respondents-Appellants counterclaims of defamation and emotional distress are intertwined, as are the counterclaims of breach of fiduciary duty and negligent misrepresentation so entwined. (R. pp. 36-48) The counterclaims of defamation and emotional distress are based on Respondents-Appellants assertion that Appellant-Respondent, knowing

that Respondents-Appellants were members in good standing at Rockford A.M.E. Church, knowingly and willfully made false and defamatory statements to third parties about the Respondents-Appellants standing in the church and their involvement in the removal of church property. Respondent-Appellant also claimed that they incurred damages due to Appellant-Respondent's outrageous conduct, including telling lies and untruths about the Respondents-Appellant to third parties and forcing them to pay excessive fees to the national church. (R. pp. 36-48).

The Respondents-Appellants counterclaims of negligent misrepresentation and breach of fiduciary duty are based on the common argument that Appellant-Respondent as elder of the church, held a position of trust and owed a fiduciary duty to members of the church to speak truthfully. Nevertheless, for pecuniary gain, he knowingly and negligently, or negligently caused to be made, false and misleading statements to Respondents-Appellants about their right to practice religion at Rockford A.M.E. Church, as well as false statements that Respondents-Appellants improperly removed church property. (R. pp. 36-48)

Respondents-Appellants also filed a Motion to Dismiss Appellant-Respondents' complaint on April 15, 2011 claiming the Establishment Clause of the United States Constitution prevents the courts from exercising subject matter jurisdiction over the assertions raised in the complaint and in the motions for injunctive relief. They further alleged that even if the courts do have subject matter jurisdiction, the complaint fails to state any claims upon which relief may be granted under South Carolina law and the motions for temporary restraining order and temporary injunction should be denied because there is no showing of irreparable harm and or that plaintiffs could demonstrate success on the merits. They further claimed that Appellant-Respondent did not have standing to bring this action. (R. pp. 212-214).

In response to Respondents-Appellants motion to dismiss Appellant-Respondent filed Plaintiffs' Response To Defendants' Motion To Dismiss on April 28, 2011 and Plaintiff's Amended Response To Defendants' Motion To Dismiss on September 10, 2011. (R. pp. 228-229- pp. 230-232). Plaintiff's 2nd Amended Response To Defendants' Motion To Dismiss was filed on August 29, 2012. (R. pp. 233-237). Appellant-Respondent pursuant to motion titled Plaintiffs' 2nd Amended Response To Defendants' Motion To Dismiss alleged Rockford A.M.E. Church is a member of the African Methodist Episcopal Church, Inc., a hierarchical denomination governed in accordance with the Doctrine and Discipline of the African Methodist Episcopal Church, which states that all property held by the local churches are held in trust for the African Methodist Episcopal Church, Inc. Appellant-Respondent also alleged standing under the constitution of the A.M.E. Church to bring the action as he is required thereby to see that all charters, deeds and other church property conforms to the Book of Discipline of the African Methodist Church and that he is entitled to bring this action as there were no local trustees at the time of litigation. Appellant-Respondent claimed that he was authorized to bring this action. He further claimed that the Establishment Clause does not prevent the court from exercising subject matter jurisdiction in property disputes.

The Appellant-Respondent filed a Reply to Respondents-Appellants' Counterclaim on September 7, 2011. Appellant-Respondent denied Respondents-Appellants' allegations. Appellant-Respondent alleged defenses of failure to state a claim upon which relief may be granted and lack of subject matter jurisdiction over the claims (12(b)(1). (R. pp. 49-51).

Appellant-Respondent's motions for temporary restraining order and temporary injunction were heard by the Honorable R. Knox McMahon on April 13, 2011. The trial judge therein found "In considering the Book of Discipline's rules governing church property, the

evidence that the property is held in trust for the higher connectional church, the testimony and affidavits of both parties that Rockford A.M.E. Church remains affiliated with the African Methodist Episcopal Church, Inc. the Appellant-Respondent's Motion for temporary injunction is granted with the exception of allowing the Respondents-Appellants to enter church property as long as there are no disruptions". . As a result the Appellants-Respondents were ordered to return church property, including the books and keys, to the pastor in order for the accounts of Rockford A.M.E. to be maintained, to pay church bills, and to return the sign outside of the church to its original state, "Rockford A.M.E.". (R. pp. 5-10).

Subsequently Appellant-Respondent filed a Rule To Show Cause seeking to prohibit Respondents-Appellants from retaining church property and to require Respondents-Appellants to return church property to Appellant-Respondent. Appellant-Respondent alleged Respondents-Appellants, instead of turning over all of the property of Rockford A.M.E. Church, removed 117,536.00 from the church banking account, as well as, retained keys, check books and financial information regarding the church. (R. pp. 246-248). Although the Honorable R. Knox McMahon did not hold the Respondents-Appellants in contempt, he ordered Respondents-Appellants to deliver certificates of deposit totaling \$117,536.00 to the McCormick County Clerk of Court to be held in trust until further order of the court; provide bank statements of Rockford A.M.E. Church, dated January 11, 2011 to the present in their possession that have not already been provided; and to produce whatever was in their possession. (R. pp. 11-13).

Appellant-Respondent filed a Motion To Strike on April 10, 2012 asking the trial court to strike portions of Respondents-Appellants' defenses as they required the courts to determine the membership of Rockford A.M.E. Church. Appellant-Respondent alleged that it was immaterial and impertinent as to Respondents-Appellants subjective assertions that they are members of

both the local and national churches and that the national church would be prejudiced by the courts impermissible intrusion into the administration of the church. Appellant-Respondent moved to strike all allegations relating to Respondents-Appellants' membership at Rockford A.M.E. Church and their relationship to the denomination or stating that Respondents-Appellants are members of Rockford A.M.E. Church and the denomination. (R. pp. 251-254).

Appellant-Respondent filed a Motion For A More Definite Statement on July1, 2012 to determine the identity of the third parties referred to in Respondents-Appellants counterclaims wherein it was alleged Appellant-Respondent published to third parties that church property was removed from the premises by Respondents-Appellants. Appellant-Respondent also asserted that Respondents-Appellants' claims were so vague and ambiguous that he could not reasonably respond. (R. pp. 255-257).

Appellant-Respondent filed a Motion to Dismiss Respondents-Appellants counterclaims on July1, 2011. (R. pp. 228-229). An Amended Response To Dismiss Respondents-Appellants' counterclaims pursuant to Rules 12(b)(1) and 12(b)(6) was filed on April 10, 2012. (R. pp. 230-232). A second Amended Response was subsequently filed wherein Appellant-Respondent alleged that the courts do not have subject matter jurisdiction to hear the defamation and intentional infliction of emotional distress counterclaims because both arise out of the same allegations wherein Respondent-Appellant asked the court to determine the membership of and intrude into the administration of the African Methodist Episcopal Church. The free exercise clause prohibits the states from interfering with a religious group's right to select its own. Appellant-Respondent further alleged that Respondents-Appellants counterclaims of defamation and intentional infliction of emotional distress fail to state a claim for which relief can be granted because truth is a bar to recovery in this case for both counterclaims.(R. pp. 233-237).

Respondents-Appellants filed a Response In Opposition To Appellant-Respondent's Motion To Dismiss Counterclaims, Appellant-Respondent's Motion For A More Definite Statement, and Appellant-Respondent's Motion To Strike on July 11 2011. Respondents-Appellants alleged that the courts have subject matter jurisdiction to review their counterclaims. They claimed that as plead, each of the counterclaims arise directly from Appellant-Respondent's personal actions against Respondents-Appellants. Respondents-Appellants alleged that each counterclaim stated a claim upon which relief may be granted. (R. pp. 272-285).

Respondents-Appellants alleged that Appellant-Respondents' Motion To Strike and Motion For A More Definite Statement... should be denied. They claim that because Appellant-Respondent claims subject matter jurisdiction in his complaint, that the courts also by the same token have jurisdiction over their counterclaims. Respondent-Appellants believed that there counterclaims are capable of being resolved by civil law as courts can decide issues arising in a church context that does not involve religious matters. (R. pp. 272-285).

Subsequently, Appellant-Respondent filed a Motion For Summary Judgment on April 28, 2011. (R. pp. 286-288). An Amended Motion For Summary Judgment was filed on August 29, 2012. (R. pp. 289-292). Appellant-Respondents' motion asked the court to grant his request for declaratory judgment. Appellant-Respondent alleged that Rockford A.M.E. Church, as a member of a larger connectional church is subject to the authority, government, and control of the larger national church, and that the constitution of the A.M.E. Church, Inc. mandates that all church property, both real and personal, is the property of the A.M.E. Church, Inc. Appellant-Respondent requested an order stating that all property of Rockford A.M.E. Church is held in trust by the trustees of Rockford A.M.E. church on behalf of the African Methodist Episcopal Church, Inc.; that the African Methodist Episcopal Church, Inc. is the true owner of both the

real and personal property of Rockford A.M.E. Church ; that the Appellant –Respondent, as representative of the African Methodist Episcopal Church, Inc. is entitled to all of the personal property of Rockford A.M.E. Church ; and that Rockford A.M.E. Church is affiliated with the African Methodist Episcopal Church, Inc. (R. pp. 286-288).

Appellant-Respondents' Amended Motion For Summary Judgment also requested that the trial court issue an order dismissing Respondents-Appellants counterclaims of defamation and negligent misrepresentation. Appellant-Respondent claimed that truth is a bar to recovery in this case and that he did not communicate to anyone that Respondents-Appellants were not affiliated with Rockford A.M.E. Church and that any utterance by Appellant-Respondent was a privileged communication contained in his pleadings. Appellant-Respondent also alleged that Respondents-Appellants cannot demonstrate damages. (R. pp. 289-292).

Respondents-Appellants alleged that Appellant-Respondent was not entitled to summary judgment because the court lacked subject matter jurisdiction. Respondents-Appellants alleged that the complaint arises out of a dispute between themselves and the A.M.E. Church, Inc., over membership issues and the relationship between Rockford A.M.E. Church and the national church organization. They further alleged that there are genuine issues that exist and that summary judgment should be denied because the neutral principles approach prevents the courts from awarding the real and personal property to Appellant-Respondent as the bank accounts and one deed is titled in Rockford Church. (R. pp. 305-318).

A hearing was held on May 22, 2013 in McCormick County, South Carolina regarding Appellant-Respondent's Amended Motion For Summary Judgment, Motion To Strike, Motion For A More Definite Statement, and Plaintiffs 2nd Amended Response To Defendants Motion To Dismiss pursuant to Rules 12(b)(1) and 12(b)(5). Respondents-Appellants' Motion To Dismiss

was treated as a Motion for Summary Judgment and was heard also. Pursuant to Order dated June 27, 2013, the trial judge granted a 4.5 acre tract of real property to the Trustees of Rockford Church although according to the trial courts findings that the property was titled in the Trustees of Rockford A.M.E. Church. He awarded the monies to Rockford Church as the bank account was titled in Rockford Church and a 13.10 acre tract to the African Methodist Episcopal Church Inc., as the deed was titled in the African Methodist Episcopal Church Inc. The trial judge ruled that the canons of a denomination have no effect on title under South Carolina law and that there was no indication that Respondents-Appellants consented to the trust clause contained in the Book of Discipline. (R. pp. 14-21).

Appellant-Respondent subsequently filed a Motion To Alter Or Amend The Judgment dated August 2, 2013. (R. pp. 319-322). Appellant-Respondent alleged that the trial court did not have jurisdiction to determine the trustees of Rockford A.M.E. Church and that the court could not award the property to Rockford Church as it does not exist. Appellant-Respondent also alleged that neutral principles required the courts to recognize the creation of a trust recited in the Book Of Discipline of The African Methodist Episcopal Church. Appellant-Respondent asserted that Respondents-Appellants consented to the control and governance of the national church and that they failed to consider their imputed obligations to the national church. Appellant-Respondent further claimed that a denomination may create a trust pursuant to the church's constitution and that the language found in the Book of Discipline of the African Methodist Episcopal Church creates a trust. (R. pp. 323-336).

Respondents-Appellants filed a response titled Defendants' Response In Opposition To Plaintiffs' Motion To Alter Or Amend The Judgment on August 2, 2013. They opposed the motion alleging no new evidence was offered and that the motion was a rehash of prior

arguments. Respondents-Appellants argued that the court did not hold that Respondents-Appellants were trustees of the AME Church and that both the award of the 4.5 acre tract and the monies were supported by the evidence. (R. pp. 337-345).

Appellant-Respondent also filed a Motion to Take Depositions Pending Appeal dated August 30, 2013. Appellant-Respondent alleged that the Respondents-Appellants transferred approximately \$ 117,000.00 from an account titled Rockford A.M.E. Church into an account titled Rockford Church and asked the trial court to allow him to take the depositions of the Respondents-Appellants and representatives First Citizens Bank. (R. pp. 346-348).

Respondents-Appellants filed an objection to Appellant-Respondent's motion for taking depositions pending appeal. The Respondents-Appellants alleged that the court should deny the motion for leave to take deposition because Appellant-Respondent cannot collaterally attack the judgment. Respondents-Appellants also claim that the motion did not show the substance of the testimony which he expects to elicit and that information sought can only be used to support arguments for the first time in his post judgment motions. (R. pp. 349-353).

A hearing was held in Greenwood County, South Carolina on September 5, 2013 to hear Appellant-Respondents' Motion To Alter or Amend and Appellant-Respondents' motion To Take Depositions Pending Appeal. The trial judge issued an order denying Appellant-Respondent's Motion To Alter Or Amend. The trial judge amended his order in one respect. The trial judge clarified that he did not find that Respondents-Appellants were the current trustees of Rockford A.M.E. Church. The trial court did not rule on Appellant-Respondent's Motion To Take Depositions Pending Appeal. (R. pp. 22-23).

By order dated September 6, 2013 the trial court issued its' Order regarding the motion To Take Depositions Pending Appeal wherein the trial court ruled that Appellant-Respondent

had already taken the deposition of Henry Banks and that he appears to understand where the funds were transferred and why. The trial court also ruled that the motion did not detail the substance of the testimony or the reason necessary for the testimony. (R. pp. 24-25).

Appellant-Respondent also filed a Motion To Alter Or Amend the trial court's denial of his Motion To Take Depositions Pending Appeal on October 4, 2013. The Appellant-Respondent alleged that although the Motion to take Depositions Pending Appeal did not specifically state that the deponents will testify as follows, the court could discern the relief requested in the motion. Appellant-Respondent also claimed that monies were transferred from an account titled Rockford A.M.E. church to an account titled Rockford Church. He also alleged that depositions of the Respondents-Appellants will not prejudice their case and is done to prevent an injustice. He also claimed that his motion was specific.

Subsequently, the trial judge issued an order denying Appellant-Respondents motion To Alter Or Amend Order denying Depositions Pending Appeal by order dated October 13, 2013. He also reaffirmed his previous order and ruling. (R. p. 26).

STATEMENT OF THE FACTS

The trustees of Rockford A.M.E. Church transferred one acre more or less to the trustees of Savannah Valley Lodge by deed dated October 29, 1898. (R. pp.417-418). The Savannah Valley Lodge conveyed one acre and five rods to the trustees of Rockford Church on January 26, 1914. (R. p. 419). By deed of Hillard Dunlap dated April 6, 1929, 4.0 acres was transferred to the trustees of Rockford School. (R. p. 420). The trustees of McCormick County School District subsequently transferred the property to Marshall Belcher, W.F. McCombs and A.J. Wheeler as trustees of a Colored Community House. (R. p. 421). Thereafter, Marshall Belcher as trustee of Colored Community House conveyed the property to the Town of Mt. Carmel, South Carolina.

(R. p. 422). Pursuant to an order of a Special Referee a 4.5 acre tract was granted to the Trustees of Rockford A.M.E. Church on October 19, 1999. (R. pp. 27-30, p. 424). The trustees of Rockford A.M.E. Church later transferred the property to Rockford Church dated July 10, 2010. (R. p. 425).

The 13.10 acre tract was originally purchased by the Trustees of Rockford A.M.E. Church in Trust for the African Methodist Episcopal Church, Inc. from Atlantic Coast Properties on December 17, 1998. (R. p. 411). Subsequently, the tract was transferred to the trustees of Rockford A.M.E. Church dated November 11, 1999. (R. p. 414). The trustees of Rockford A.M.E. Church transferred the property to Rockford Church dated July 10, 2010. (R. p. 416).

The Rockford A.M.E. Church maintained financial accounts in the name of Rockford A.M.E. Church. (R. p. 91 lines 2-5). Thereafter the monies were transferred into an account with First Citizens Bank in the name of Rockford Church. (R. p. 76, lines 1-25, p. 77 lines. 1-11). After the issuance of the Order of the Eleventh Judicial Circuit dated, April 26, 2011) wherein the real and personal property of Rockford A.M.E. Church was awarded to Appellant-Respondent, the Respondents-Appellants removed the funds from the account with First Citizens Bank and placed the monies in certificates of deposit. (R. pp. 11-13).

The Respondents-Appellant were removed as members of Rockford A.M.E. Church and the national church. Appellant-Respondent brought this action requesting a declaratory judgment and a temporary and permanent injunction. (R. pp. 31-35).

ARGUMENT

I. THE TRIAL COURT DID NOT RULE IN ERROR THAT THE A.M.E. CHURCH, INC. HOLDS EQUITABLE TITLE TO THE 13.10 ACRE TRACT OF REALTY.

A. The Deed Expressly Creates A Trust.

The deed referred to by Respondents-Appellants expressly states that the property is held by the Trustees of Rockford African Methodist Episcopal Church In Trust For the African Methodist Episcopal Church, Inc. (R. p. 411) The Trust deed herein meets every criteria for an express trust. A trust must have a declaration creating a trust, a trust res, and designated beneficiaries. *Foster v. Foster*, 384 S.C. 380, 384, 682 S.E. 2d 312, 314 (Ct. App. 2009), aff'd, 393 S.C. 95, 711 S.E. 2d 878 (2011). The trust deed herein is the actual declaration. The document indicates that local church property of 13.10 acres is the res and the A.M.E. Church Inc. is the beneficiary.

1. THE DEEDS OF NOVEMBER 11, 1999 AND JULY 10, 2010 SHOULD NOT BE GIVEN CONSIDERATION AS THE PROPERTY WAS TRANSFERRED THEREBY IN CONTRAVENTION OF THE BOOK OF DISCIPLINE OF THE A.M.E. CHURCH, INC.

Although the 13.10 acre tract was eventually transferred to Rockford Church, this court should not consider the subsequent deeds of November 11, 1999 and July 10, 2010 as it would require this court to render a decision based on an improper transfer of church property by the trustees of Rockford A.M.E. Church. Members of a hierarchical or connectional church are bound by their imputed obligations to the denomination. "Where a church controversy involves the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it." *Pearson v. Church of God*, 478 S.E.2d. 849, 852. 325 S.C. 45, 51 (1996). The Book of Discipline provides that trustees "shall guard for the Connection all real estate, churches, parsonages, schools, and any other property obtained by the local church." (R. pp. 362-364). The A.M.E. Constitution i.e. the Book of Discipline gives trustees the power to transfer property with the approval of the denomination as it states "The Board of Trustees, duly

elected by the local church as provided by *The Book of Discipline of the African Methodist Episcopal Church*, may take such steps to purchase, mortgage, sell, transfer and convey real and personal property, PROVIDED, that such transfer has been duly approved by the resolution in Quarterly Conference of the said church, and also by the trustees of the Annual Conference in which the property is located, and of which the presiding bishop is president.” (R. p. 363).

The Respondent-Appellants committed an egregious error by transferring the property from” the trustees of Rockford A.M.E. Church in trust for the African Methodist Episcopal Church Inc.” to “the trustees of Rockford A.M.E. Church “and compounded the matter by transferring the property to “Rockford Church”. As full participants and members of the African Methodist Episcopal Church, Inc and more importantly as the property was purchased by” the trustees of Rockford A.M.E. Church in trust for the A.M.E. Church “the Respondents-Appellants were required to adhere to the Book of Discipline when transferring church property. The Respondents-Appellants in the present case neither sought nor received the approval of any conference in which the bishop presided.

The trustees violated their imputed obligations to the A.M.E. Church, Inc. by failing to protect, hold, and preserve the property in trust for the African Methodist Episcopal Church Inc. by transferring the property without the proper acquiescence and consent of the church. The Respondents-Appellants wish to simply leave the hierarchical connection and take church property with them. They have failed to adhere to their imputed obligations under the Book of Discipline.

C. Respondents-Appellants Allegation That The 13.10 Acre Tract Is Not Subject To A Trust Is Being Employed For The First Time Post Judgment.

Respondents-Appellants attempt to bolster their argument by declaring that the 13.10 acre tract is not subject to the trust provision found in the Book of Discipline of the African Methodist

Episcopal Church, although the deed expressly states that the tract is held in trust for the African Methodist Episcopal Church, Inc. Other than their basic generic denial in their answer, Respondents-Appellants raise this issue for the first time on appeal. Their defenses do not mention or state that a trust does not exist as to either tracts of realty. (R. pgs. 36-48; 212-214). Respondents-Appellants' failure to raise the issue at the trial level prohibits them from doing so on appeal. *Wilder Corp v. Wilkie* 497 S.E.2d 731,735(1998). It is axiomatic that an issue cannot be raised for the first time on appeal, but must be raised to and ruled on by the trial court to properly preserve for appellate review. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 730 S.E.2d 282,285-286 (20012). Respondents-Appellants' failure to take advantage of the opportunity to present their argument and evidence regarding trusts at the summary judgment hearing or otherwise pursuant to motion or otherwise should be treated as a waiver and as such they are barred from claiming that a trust does not exist as to the 13.10 acre tract of realty.

B. State v Jackson Is Not Applicable.

Although Respondents-Appellants begrudgingly admit that the trust deed includes some trust language, they dismiss the creation of an express trust pursuant to the trust deed of 1998 as they claim the A.M.E Church, Inc. did not act for the benefit of Rockford Church. The Respondents-Appellants reliance on *State v. Jackson*, 338 S.C. 565, 527 S.E. 2d 367 (2000) to support their position is misplaced. *Jackson* involves the appeal of *Jackson's* conviction for Breach of Trust with Fraudulent Intent. It appears *Jackson* purchased a vehicle from an automobile dealer whereby he agreed to trade his automobile to the dealer who in return agreed to satisfy the lien on *Jackson's* vehicle. The automobile dealer mistakenly sent the check to *Jackson* instead of the lien holder. *Jackson* endorsed and cashed the check. The automobile dealer brought criminal charges due to *Jackson's* endorsement of the check which mentioned

transfer of title on the back of the check or in the alternative a declaration to the automobile dealer's clerk that he would return the mistakenly sent check.

The court in *Jackson* reasoned a trust is an arrangement whereby property is transferred with the intention that it be administered by a trustee for another's benefit. Id at 570, 370 The Appeals Court's statement that the transferor must intend that the trustee act for the transferor benefit instead of his own behalf was addressed in terms of transference by fraudulent conversion of money paid or money delivered by mistake to the wrong party. Id. at 570, 370. Such a scenario does not exist in this case.

1. Respondents-Appellants Cannot Succeed On The Merits Under State v. Jackson

Even if State v. Jackson were applicable to this case, it would not equate to a successful outcome for Respondents-Appellants. If the court determines that the transferor did not intend that the trustee act for his benefit, Rockford Church still cannot be the recipient of the 13.10 acres. The issue is not whether the African Methodist Episcopal Church, Inc. benefited Rockford Church. The transferor, in the scenario presented by Respondent-Appellants, is Atlantic City Properties who conveyed the 13.10 acres to "Rockford A.M.E. Church In Trust For the African Methodist Church Inc." (R. pp. 411-413). The question pursuant to State v. Jackson is whether Atlantic City Properties intended that Rockford A.M.E. Church, as trustee for the African Methodist Episcopal Church, Inc., would act for the benefit of the African Methodist Episcopal Church instead of for itself. The only answer to that question based upon State v. Jackson is that Rockford A.M.E. Church paid the purchase price or is paying the purchase price, as per their agreement and as such acted for the African Methodist Episcopal Church benefit. Rockford Church is not a part of the transaction. A trust exists in favor of the African Methodist Episcopal Church, Inc.

D. A Constructive Trust Is an Appropriate Remedy

Further, the trial court was correct in dismissing the importance of subsequent deeds to the 13.10 acre tract as it held in dicta that the Appellant-Respondent may have a claim for constructive trust. The Book of Discipline of African Methodist Episcopal Church, Inc. prohibits transfers of local church property without the approval of the various conferences of the African Methodist Episcopal Church, Inc. (R. p. 363). The Respondents-Appellants while officers of Rockford A.M.E. Church transferred church property without the approval of the denomination. Pursuant to deed dated November 11, 1999 the Trustees For Rockford African Methodist Episcopal Church in Trust For the African Methodist Episcopal Church, Inc. transferred the property to Trustees of Rockford African Methodist Church, who pursuant to deed dated July 9, 2010 transferred the property to Rockford Church. (R. pp. 411-416). There is no question that the Respondents-Appellants have demonstrated bad faith by violating not only their fiduciary duty, but also fraud as well.

CONCLUSION

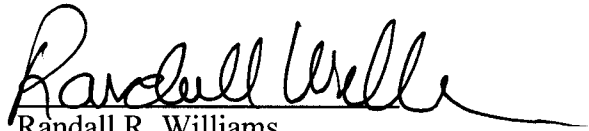
The 13.10 acre tract was properly awarded to the African Methodist Episcopalian Church, Inc. The deed expressly states that the tract is held by the trustees of Rockford A.M.E. Church in trust for the African Methodist Episcopal Church, Inc. The deed satisfies all of the criteria of a trust. Although subsequent deeds pertaining to the same tract ultimately transfer the property to Rockford Church, this court should not give them consideration as they were improperly transferred.

Further the Respondent-Appellants' reliance on State v. Jackson is misplaced. State v. Jackson involves a fraudulent conversion of money paid or delivered by mistake to the wrong party. Even if State v. Jackson were applicable, the Respondent-Appellants cannot succeed on

the merits. Respondent-Appellant's argument is flawed as it is based on Rockford Church which does not exist.

Also, the trial court is correct; a constructive trust should be placed on the property. The Respondent-Appellants clearly demonstrated bad faith by violating their fiduciary duty to the African Methodist Episcopal Church, Inc. to guard and protect the property for the denomination when they transferred the property without the approval of the church.

For these reasons Appellant-Respondent asks that his Request For Declaratory Judgment and permanent injunction be granted.



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August 5, 2014

THE STATE OF SOUTH CAROLINA
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APPEAL FROM MCCORMICK COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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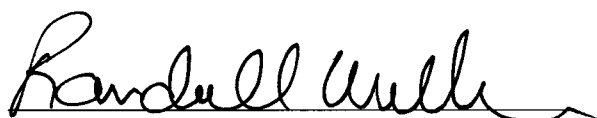
v.

Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank
MattisonRespondents-Appellants

PROOF OF SERVICE

I certify that I have served the **Respondent's Initial Brief of Appellant-Respondent** on
Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison by Hand
Delivery and U.S. Postal Service on August 5, 2014, addressed to their attorney of record, Marvin
Watson at 333 Main Street, P.O. Box 799, Greenwood, South Carolina, 29648.

August 5, 2014



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August 5, 2014

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Samuel L. McPherson, as Presiding Elder of the Abbeville-Greenwood District of the African Methodist Episcopal (A.M.E.) Church, Appellant-Respondent, v. Henry Banks, Mary Robinson, Delois Phillips, Naomi Mattison, and Frank Mattison, Respondents-Appellants. Case No: 2013-002236

Dear Ms. Kitchings:

Enclosed please find enclosed the original **Respondent's Initial Brief of Appellant-Respondent** and the original **Proof of Service** in the above referenced matter. Please file the original and return a clocked copy in the enclosed envelope.

I remain,

Sincerely,

A handwritten signature in black ink that reads "Randall R. Williams".

Randall R. Williams, Esquire
RRW/mre

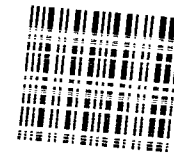
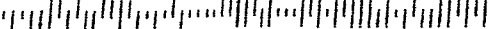
Enclosure(s)

cc: Marvin Watson, Esquire (*Mailed*)

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