

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. THOMAS COOPER, JR, Circuit Court Judge

RECEIVED
SEP 18 2014
SC Court of Appeals

Case No. 2014-001416

Reverend Dr. Reginald Byrden, Appellant
Pastor of Gill Creek Baptist Church

v.

Gill Creek Baptist Church, Respondents
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) and Donald Worthy (Acting
In his Official Capacity as Assistant
Treasurer and in his Individual Capacity)
And Charles Greene (Acting in his
Official Capacity as Assistant
Treasurer and in his Individual
Capacity), Defendants,
Of Whom Kenneth Worthy,
Dorothy Fulwood, Willie Grier, Jr,
Ceasar Leysath, III, David Jacobs
Julia Harrell, Roscoe Bush,
Evelyn Moore, Gloria Pryor,
Barbara Brown, Laverne Sanders, Chris
Moore, Sandra Hines, Donald Worthy,
Inez Bush, Ron Tillman, Oretha Young,
Bobbie Martin, Charles Berry,

Sharon Grier, and Charles Greene
(Acting in their Individual Capacities) are
the Respondents.

INITIAL BRIEF OF APPELLANT

Donald Gist, Esquire
Aaron Wallace, Esquire
Gist Law Firm, PA
Columbia, SC 29203
(803) 771-8007
Attorneys for Appellant

Reginald W. Belcher, Esquire
Jessica Gooding, Esquire
Turner Padgett Graham and Laney, P.A.
Bank of America Plaza, 17th Floor
1901 Main Street (29201)
PO Box 1473
Columbia, SC 29202

TABLE OF CONTENTS

Table of Authorities.....	4
Statement of Issues on Appeal	5
Statement of the Case	5
Arguments	
1. The lower court erred by dismissing Appellant’s Civil Conspiracy Cause of Action with prejudice without giving Appellant an opportunity to amend his Complaint because Respondent has failed to show that they would be prejudiced by such amendment.	
2. Appellant alleged that Respondents engaged in separate acts, apart from actions alleged in Appellant’s other causes of action, in furtherance of the Civil Conspiracy Cause of Action in his Complaint.	
3. Appellant alleged Special Damages in his Complaint in support of his Civil Conspiracy Cause of Action.	
Conclusion.....	17

TABLE OF AUTHORITIES

CASES

Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296, Supreme Court of South Carolina, January 12, 2004..... (Page 8).

Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). (Page 10).

Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 708 A.2d 283, 286-87 (Me.1998)(*Deborah W. Spence vs. Deborah W. Spence and Floyd D. Spence, Jr., as the Personal Representatives of the Estate of Floyd D. Spence, et. al.*, 368 S.C. 106, 628 S.E. 2d 869 (2006)). (Page 10).

Pye v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006) (Page 13).

Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (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). (Page 13).

Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989). (Page 13).

Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 682 S.E.2d 871, Court of Appeals of South Carolina, August 12, 2009. (Page 13).

Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) (Page 10).

Clearwater Trust v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006) (Page 11).

Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). (Page 12).

Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). (Page 12).

Watts v. Metro Security Agency, 346 S.C. 235, 239, 550 S.E.2d 869, 871 (Ct. App. 2001). (Page 12).

Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328 (1987) (Page 12).

Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993) (Page 12).

Carolina Care Plan, Inc. v. United HealthCare Services, Inc., 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004) (Page 13).

OTHER AUTHORITIES

South Carolina Rule of Civil Procedure 15(a)..... 7

South Carolina Rule of Civil Procedure 12(b)(6)11

South Carolina Rule of Civil Procedure 812

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE LOWER COURT ERRED BY DISMISSING APPELLANT’S CIVIL CONSPIRACY CAUSE OF ACTION WITH PREJUDICE WITHOUT GIVING APPELLANT AN OPPORTUNITY TO AMEND HIS COMPLAINT.

2. WHETHER THE LOWER COURT ERRED IN DISMISSING APPELLANT’S CIVIL CONSPIRACY CAUSE OF ACTION BY FINDING THAT APPELLANT FAILED TO ALLEGE THAT RESPONDENTS ENGAGED IN SEPARATE ACTS, APART FROM ACTIONS ALLEGED IN APPELLANT’S OTHER CAUSES OF ACTION, IN FURTHERANCE OF THE CIVIL CONSPIRACY CAUSE OF ACTION IN HIS COMPLAINT.

3. WHETHER THE LOWER COURT ERRED IN DISMISSING APPELLANT’S CIVIL CONSPIRACY CAUSE OF ACTION BY FINDING THAT APPELLANT FAILED TO ALLEGE SPECIAL DAMAGES IN SUPPORT OF HIS CIVIL CONSPIRACY CAUSE OF ACTION.

STATEMENT OF THE CASE

On October 25, 2013, Reverend Dr. Reginald Byrden (Appellant) filed his Summons and Complaint against Defendants in this case asserting the following Causes of Action against the Defendant employer and the above named Respondents: Breach of Contract, Breach of Contract with Fraudulent Intent (All Defendants), Civil Conspiracy (Respondents), Defamation (Respondents), Intentional Infliction of Emotional Distress (Respondents), and Negligent Infliction of Emotional Distress (Respondents). (Pl. Comp.)

On November 19, 2013 Defendants filed an Answer to Appellant’s Complaint and contemporaneously filed a Motion to Substitute Counsel and to Dismiss Plaintiff’s Causes of Action for Defamation, Intentional Infliction of Emotional Distress, Civil Conspiracy, and

Negligent Infliction of Emotional Distress. The Defendant's filed an Amended Answer on December 19, 2013. (Pl. Comp.) (Defendant's November 19, 2013 Motion to Dismiss)

On April 21, 2014, Oral Arguments on Defendant's Motion to Dismiss were heard before the Honorable G. Thomas Cooper Jr. At the Motion hearing, Appellant, acting through his counsel, stipulated to the dismissal of their Negligent Infliction of Emotional Distress Cause of Action, and the substitution of the law firm of Turner, Padgett, Graham and Laney, P.A. for H. Ronald Stanley, Esquire. Defendants withdrew their Motion to Dismiss with regard to Plaintiff's Defamation Cause of Action. (April 21, 2014 Hearing Transcript at pg. 3).

On May 19, 2014, Judge Cooper entered an Order granting in part Defendant's Motion to Dismiss, and dismissing Appellant's Cause of Action for Civil Conspiracy and Negligent Infliction of Emotional Distress against all Defendants. (May 19, 2014 Order)

In response to Judge Cooper's May 19, 2014 Order dismissing Appellant's Cause of Action for Civil Conspiracy against the Respondents, Appellant timely filed a Motion for Reconsideration pursuant to South Carolina Rule of Civil Procedure 59 on May 28, 2014. The lower court was served with Appellant's Motion for Reconsideration on May 28, 2014. The lower court denied Appellant's Motion for Reconsideration on June 6, 2014. (May 28, 2014 Motion for Reconsideration). (June 6, 2014 Order).

Appellant timely served Respondents' counsel with the Notice of Appeal on June 19, 2014.

ARGUMENTS

- 1. The lower court erred by dismissing Appellant's Civil Conspiracy Cause of Action with prejudice without giving Appellant an opportunity to amend his Complaint because Respondents have failed to show that they would be prejudiced by such amendment.**

In his April 21, 2014 Memorandum in Opposition to Defendant's Motion to Dismiss, which was filed prior to the Motion to Dismiss Hearing, Appellant's counsel requested that Plaintiff be given an opportunity to amend his Complaint in the event that the Trial Court granted Defendant's Motion to Dismiss whether in whole or in part. (Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss).

In his Motion for Reconsideration pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Appellant's counsel motioned the trial court to reconsider its decision to dismiss Appellant's Civil Conspiracy cause of action with prejudice and allow Appellant an opportunity to amend his Complaint stating:

"Plaintiff contends that the Court also erred by dismissing Plaintiff's Civil Conspiracy Claim with prejudice pursuant to South Carolina Rule of Civil Procedure 15, which allows for the liberal amendment of pleadings. Defendant will suffer no prejudice from Plaintiff being allowed to amend his Civil Conspiracy Cause of Action, and as a result Plaintiff respectfully moves and requests that the Court reconsider its dismissal with prejudice of Plaintiff's Civil Conspiracy Claims and allow Plaintiff to Amend his Civil Conspiracy Cause of Action. "

On June 6, 2014 the trial court, denied Appellant's Motion for Reconsideration pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

The South Carolina Rules of Civil Procedure states in Rule 15(a):

(a) Amendments. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. **Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.** A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

As is argued in Plaintiff's Memorandum in Response to Defendant's Motion to Dismiss, the Court dealt very specifically with this Rule governing the Amendment of Pleadings in

Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296, Supreme Court of South Carolina, January 12, 2004.

In *Kirkpatrick*, the Court, having granted certiorari, dealt with the trial court's denial of Plaintiff's Motion to Amend her 42 U.S.C. Sec. 1983 complaint which was dismissed on Summary Judgment.

The plaintiff in *Kirkpatrick* was a breeder of Shar-Pei dogs at her home in Columbia, South Carolina. She was ticketed on several occasions and fined by the City of Columbia through Officer Kevin Kirkpatrick for operating an unlawful kennel and for keeping unlicensed pets. According to Kirkpatrick, during the course of 1995, Kirkpatrick captured five puppies who were at-large in plaintiff's neighborhood. The following day, Kirkpatrick served a warrant on the plaintiff regarding the at-large dogs. Plaintiff asserted that Kirkpatrick did not find the dogs at large and that he in fact, entered her property and abducted the dogs. Ultimately the dogs were euthanized by the shelter in which Kirkpatrick placed them.

Following the euthanization of her dogs, the plaintiff in *Kirkpatrick* subsequently filed her Section 1983 claim against the City asserting that the City of Columbia had a policy or custom of attempting to oppress and financially hobble her. Plaintiff filed her original complaint asserting her Section 1983 claim in February 1997. The City of Columbia filed a Motion for Summary Judgment in July 1998. Plaintiff filed a Motion to Amend her Complaint to add state tort claims over two years following the original incident and after the expiration of the Statute of Limitations. The trial court denied the plaintiff's Motion to Amend based on prejudice to the defendants and the absence of good cause shown. The Court of Appeals reversed the trial court. The South Carolina Supreme Court agreed with the Court of Appeals that plaintiff should have been given an opportunity to amend her complaint.

In *Kirkpatrick*, the Plaintiff sought to amend her Complaint to add additional claims after **two years** had expired and the depositions had already been taken. The Supreme Court, giving a

broad interpretation to the rule, found that the trial Court erred in denying Plaintiff's Motion to Amend holding that the City **was not prejudiced because no new depositions would have to be taken** and the City was essentially on notice of the Plaintiff's claims, since they arose out of the same facts. *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296, Supreme Court of South Carolina, January 12, 2004.

In the instant case, Appellant requested leave to Amend his Complaint in its Memorandum in Response to Defendant's Motion to Dismiss. In addition, Appellant asked the lower court to reconsider its dismissal with prejudice of Plaintiff's Civil Conspiracy cause of action and for leave to amend his Complaint in its Motion for Reconsideration which was denied by the lower court. (Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss).

The lower court erred by dismissing Appellant's Civil Conspiracy causes of action against the individual named Defendants in this case, effectively barring Appellant from having an opportunity to Amend his Complaint without any showing of prejudice on the part of Respondents. Like the plaintiff in *Kirkpatrick*, the trial court dismissed Appellant's Complaint with prejudice. Unlike the plaintiff in *Kirkpatrick*, Appellant has had no opportunity to engage in discovery, which weighs even more heavily in favor of Appellant and against Respondent with respect to any argument of prejudice which Respondents may make. The Supreme Court found that the defendant in *Kirkpatrick* was not prejudiced by plaintiff amending her Complaint after the case had been pending for two years and substantial discovery had taken place. Appellant should not have been deprived of the opportunity to Amend his Complaint or even the ability to move to Amend his Complaint when no discovery has taken place, he is well within the Statute of Limitations, and the record is devoid of any showing that Defendant would be prejudiced by Appellant being given an opportunity to Amend his Complaint.

In the instant case, the Respondent will suffer no prejudice with regard to allowing Appellant to Amend his Complaint. "It is well established that a motion to amend is addressed

to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice.” *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999).

In addition, justice requires that Plaintiff be granted leave to amend his Complaint to avoid the complete dismissal of his Civil Conspiracy Causes of Action.

“When a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice. When the statute of limitations has expired, the appellate court may in its discretion impose a reasonable period of time in which to amend the complaint. An appellate court should follow this procedure when the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted.” *Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 708 A.2d 283, 286-87 (Me.1998)(*Deborah W. Spence vs. Deborah W. Spence and Floyd D. Spence, Jr., as the Personal Representatives of the Estate of Floyd D. Spence, et. al.*, 368 S.C. 106, 628 S.E. 2d 869 (2006)).

2. Appellant alleged that Respondents engaged in separate acts, apart from actions alleged in Appellant's other causes of action, in furtherance of the Civil Conspiracy Cause of Action in his Complaint.

Appellant, Rev. Dr. Reginald Byrden became the Pastor of Gill Creek Baptist Church on or about May 30, 2004 and performed his job admirably throughout the course of his employment which was terminated on or about October 28, 2013. (Pl. Comp. 5).

On Wednesday, June 26, 2013, Dr. Byrden was called into a meeting by the Respondents, at which time he was accused of an illicit extramarital sexual relationship and physical assault of a member of the community. In addition, Dr. Byrden alleged that he was harassed by the Respondents during the course of this meeting. During the course of the meeting the

Respondents also attempted to force Dr. Byrden to resign from his job. At all times, Dr. Byrden maintained that the allegations promulgated by the Respondents are false and malicious allegations. (Pl. Comp. 7).

During the course of June and July the Respondents spent time conspiring to terminate Reverend Dr. Byrden's employment and on July 29, 2013, they orchestrated a specially called church meeting specifically for the purpose of terminating Dr. Byrden's employment, at which time the general membership of the Church sided with Dr. Byrden even after consideration of the vicious and false rumors being spread by the Respondents. (Pl. Comp. 12-13).

On August 2, 2013, at a semi-annual Church Conference, the Respondents caused Dr. Byrden to be suspended from his employment for ninety days without pay based upon the same rumors that the Church had previously considered in voting to keep Dr. Byrden. (Pl. Comp. 15).

On August 6, 2013, Dr. Byrden was locked out of his Office and his suspension was confirmed to remain in place with Dr. Byrden purportedly being allowed to return to work upon the conclusion of his suspension on November 1, 2013. (Pl. Comp. 17).

On October 28, 2013, based upon the false and pretextual rumors promulgated by the Respondents, Defendant Gill Creek Baptist Church terminated Dr. Byrden's employment as a result of a Conspiracy by the Individual Defendants acting in concert with fifty-seven petitioners at a specially called meeting. Dr. Byrden was not allowed to attend this meeting which resulted in his termination from employment with Defendant Gill Creek Baptist Church. (Pl. Comp. 18).

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. *Id.*; *Clearwater Trust v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). In

deciding to grant the motion to dismiss, the court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Spence*, at 116, 628 S.E.2d at 874 (2006). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.*; *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005). Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Spence*, at 116-17, 628 S.E.2d at 874. Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Rule 8, SCRPC, mandates that a pleading contain “ultimate facts” rather than “evidentiary facts” to state a cause of action. “Ultimate facts fall somewhere between the verbosity of ‘evidentiary facts’ and the sparseness of ‘legal conclusions.’” *Watts v. Metro Security Agency*, 346 S.C. 235, 239, 550 S.E.2d 869, 871 (Ct. App. 2001). Further, a complaint must contain a ‘short and plain statement of the facts showing the pleader is entitled to relief.’ Rule 8(a)(2), SCRPC. This requires a litigant to plead the ultimate facts which will be proven at trial, not evidence which will be used to prove those facts. *Clark v. Clark*, 293 S.C. 415, 416, 361 S.E.2d 328 (1987) (emphasis added).

Where allegations of the complaint give rise to competing inferences on a question of material fact, dismissal under Rule 12(b)(6) is not appropriate. *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993). The Ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Moreover, a 12(b)(6) motion should not be granted if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the

complaint states any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail. *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (Ct. App. 2004) (emphasis added).

The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989). The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. *Id.*; see also *Pye v. Estate of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006) (“The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.”). A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (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). Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught*, 300 S.C. at 209, 387 S.E.2d at 95. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871, Court of Appeals of South Carolina, August 12, 2009.

In the instant case, the lower court dismissed with prejudice Appellant's Civil Conspiracy cause of action stating:

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.” (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).

May 19, 2014 Order at Pg.6). The lower court’s assertions that “Plaintiff fails to make a single specific allegation of an overt action done in furtherance of the conspiracy that caused him injury or damage” is clearly erroneous and contrary to the very clear and specific allegations as stated in Plaintiff’s Complaint.

In fact, very clearly in ¶7 of Appellant’s Complaint it states, “On or about Wednesday, June 26, 2013, Plaintiff was called into a ‘romp’ meeting at W.G. Sanders Middle School, in the County of Richland, by Defendants Deacons Kenneth Worthy, Ceasar J. Leysath, III, Willie Grier, Jr., Evelyn Moore, and David Jacobs where said Defendants falsely and maliciously accused Plaintiff of an alleged extramarital sexual relationship and physical assault of a member of the community.” This is a specific action taken by Respondents in furtherance of Respondent’s conspiracy to deprive Appellant of his employment and to defame him. This meeting was a meeting of co-conspirators performed outside of the course of Respondent’s role as Deacons and Trustees in the Church. This meeting was purely an act of intimidation designed to injure Appellant emotionally. The Respondent’s conspiracy continues and is referenced throughout the Complaint as Appellant asserts in paragraph 14 that the Conspiracy continued and ultimately contributed to Appellant being suspended from his position as Pastor of Gill Creek Baptist Church. (Pl. Comp. at Pg. 3 & 6).

In paragraph 33 of the Complaint, Appellant references the fact that Respondent’s actions outside the scope of their Official authority constituted part of the civil conspiracy stating, “Defendants Deacons Kenneth Worthy, Dorothy Fulwood, Willie Grier, Jr., Ceasar Leysath III, David Jacobs, Julia Harrell, Roscoe Bush, Evelyn Moore, and Gloria Pryor and Trustees Barbara

Brown, Laverne Sanders, Chris Moore, Sandra Hines, Donald Worth, Inez Bush, Ron Tillman, Oretha Young, Bobbie Martin, Charles Berry, and Sharon Grier and Donald Worthy, Church Treasurer, and Charles Greene, Assistant Church Treasurer (acting in their Individual Capacity) furthered the conspiracy by cooperation with each other and provided aid and encouragement to each other or ratified and adopted the acts of each other, in that they agreed to suspend and to terminate Plaintiff's employment, while acting outside the scope of their Official authority, in violation of his common law rights under Civil Conspiracy and in violation of his rights pursuant to a contractual arrangement with Defendant Gill Creek Baptist Church." (Pl. Comp. at pg. 12).

It is clear from the face of the Complaint that Appellant, in fact, alleged that the "romp" meeting, which was not an Official Meeting was an overt act and an attempt by the co-conspirators which was done in furtherance of their conspiracy to destroy not only the Appellant's career as Pastor of Gill Creek Baptist Church, but to also destroy his reputation and to destroy him emotionally. This is an entirely different cause of action and sequence of events from Appellant's breach of contract claim which is against a different defendant (Gill Creek Baptist Church) and which deals, at least in part, with the actions of Respondents while acting in their Official Capacity instead of in their Individual Capacity, as is alleged in Appellant's Civil Conspiracy Cause of Action, despite the same actors' involvement.

During the course of the April 21, 2014 Hearing, Appellant's counsel specifically addressed the pervasiveness of Respondent's actions in furtherance of their Civil Conspiracy against Appellant as pled in the Complaint, stating:

The Court: You don't have to read the whole thing.

Mr. Wallace: Yes, Your Honor. Well, it's throughout the course of the complaint, we make allegations specific to the civil conspiracy. So our claims that we're somehow - - we just jumbled this civil conspiracy in with the other cause of action is not so. It's clearly a separate cause of action as alleged in our complaint, and we should be allowed to go forward on it.

(April 21, 2014 Hearing Transcript at pg. 18). The lower court erred in its ruling that Plaintiff failed to allege acts in furtherance of the Conspiracy and by dismissing Appellant's Civil

Conspiracy Cause of Action with Prejudice. As is stated above, Appellant should also have the opportunity to amend his Complaint.

3. Appellant alleged Special Damages in his Complaint in support of his Civil Conspiracy Cause of Action.

In its Order erroneously dismissing Appellant's Civil Conspiracy Cause of Action with Prejudice, the lower court states, "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." (May 19, 2014 Order at pg. 6). **The lower court cuts Appellant's statement of damages in half in coming to this determination.** The entire sentence referred to by the lower court in its Order is presumably paragraph 35 of Appellant's Complaint which reads, "Defendant's civil conspiracy herein alleged has caused, continues to cause, and will cause Plaintiff to suffer special damages and substantial damages for pecuniary losses, embarrassment, humiliation, pain and suffering, mental anguish, loss of enjoyment of life, and other non-pecuniary losses." This paragraph is preceded by paragraph 34 which states, "As a proximate result of the wrongful acts of Defendants herein alleged, Plaintiff has suffered lost pay and benefits, humiliation, and the loss of standing in the community." Paragraph 36 of Appellant's Complaint states that, "Plaintiff is entitled to injunctive relief and/or civil damages from Defendants named herein as a result of the civil conspiracy as alleged above." Paragraph 37 of Appellant's Complaint further alleges that, "Due to the acts of the Defendants, their agents and employees, Plaintiff is entitled to injunctive relief and/or civil damages, payment for lost benefits, and reinstatement of benefits and front pay." (Pl. Comp. at pg.13).

It is apparent from a full reading of the Complaint that the Appellant's statement of damages stemming from the Civil Conspiracy of the individual Respondents in this case

specifically contemplates injuries flowing from the “romp” meeting and continued acts in furtherance of Respondent’s Civil Conspiracy which was orchestrated for the purpose of harming Appellant and from injuries and damages flowing as a result of Respondents’ civil conspiracy.

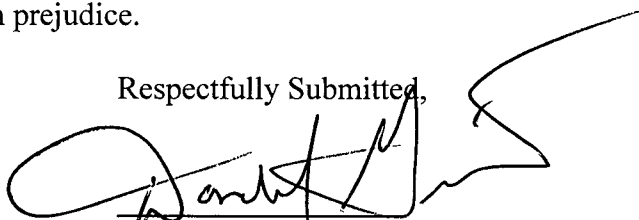
The damages flowing against Defendant Gill Creek Baptist Church for breaching Appellant’s employment contract are separate and apart from the damages which Appellant incurred as a result of Respondent’s Civil Conspiracy as they involve different Defendants. Appellant’s Civil Conspiracy Causes of Action is purely against the Respondents in this case as opposed to Defendant Gill Creek Baptist Church. In addition, they are differentiated from the damages which arise from the other causes of action against the individual Respondents as Appellant’s damages from the Civil Conspiracy directly resulted in the loss of appellant’s job. Appellant has therefore specifically alleged Special Damages with respect to his Civil Conspiracy claim.

The lower court characterizes Appellant’s statement of damages as a result of his Civil Conspiracy claim is conclusory, but yet erroneously dismissed Appellant’s claims with prejudice failing to give Appellant an opportunity to amend his Complaint to address the wording of the Complaint.

CONCLUSION

For the reasons stated, this Court should reverse the Order of the lower court dismissing Appellant’s Civil Conspiracy Cause of Action with prejudice.

Respectfully Submitted,



Donald Gist, Esquire
Aaron Wallace, Esquire
Gist Law Firm, PA
4400 North Main Street
Columbia, SC 29203
(803) 771-8007
Attorneys for Appellant

September 18, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. THOMAS COOPER, JR, Circuit Court Judge

RECEIVED

SEP 18 2014

SC Court of Appeals

Case No. 2014-001416

Reverend Dr. Reginald Byrden, Appellant
Pastor of Gill Creek Baptist Church

v.

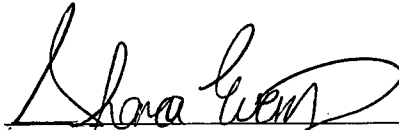
Gill Creek Baptist Church, Respondents
Kenneth Worthy, Dorothy
Fulwood, Willie Grier, Jr.,
Ceasar Leysath, III, David
Jacobs, Julia Harrell, Roscoe
Bush, Evelyn Moore, and
Gloria Pryor (Acting in their
Official Capacities as Deacons
And in their Individual
Capacities). Barbara Brown,
Laverne Sanders, 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) and Donald Worthy (Acting
In his Official Capacity as Assistant
Treasurer and in his Individual Capacity)
And Charles Greene (Acting in his
Official Capacity as Assistant
Treasurer and in his Individual
Capacity), Defendants,
Of Whom Kenneth Worthy,
Dorothy Fulwood, Willie Grier, Jr,
Ceasar Leysath, III, David Jacobs
Julia Harrell, Roscoe Bush,
Evelyn Moore, Gloria Pryor,
Barbara Brown, Laverne Sanders, Chris

Moore, Sandra Hines, Donald Worthy,
Inez Bush, Ron Tillman, Oretha Young,
Bobbie Martin, Charles Berry,
Sharon Grier, and Charles Greene
(Acting in their Individual Capacities) are
the Respondents.

CERTIFICATE OF SERVICE

I, Shana Evans, certify that I am an employee of the Gist Law Firm in Columbia, South Carolina. I certify that on September 18, 2014, I hand delivered on behalf of the Appellant, Reverend Dr. Reginald Byrden, the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal to the attorney's for the Respondents at the address below:

Reginald W. Belcher, Esquire
Jessica Gooding, Esquire
Turner Padgett Graham and Laney, P.A.
Bank of America Plaza, 17th Floor
1901 Main Street (29201)
PO Box 1473
Columbia, SC 29202



Shana Evans
Paralegal
GIST LAW FIRM
Post Office Box 30007
Columbia, South Carolina 29230
(803) 771-8007