

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**

OCT 28 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.

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REPLY BRIEF OF APPELLANT

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### CASES

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### ARGUMENTS IN REPLY

#### **1. The Trial Court's Dismissal of Appellant's Civil Conspiracy Claim with Prejudice was in error as Appellant has shown Allegations Sufficient to Support his Civil Conspiracy Cause of Action Separate from his other Causes of Action.**

In her Reply Memorandum, Respondent's counsel erroneously indicates that it would be futile for Appellant to have an opportunity to amend his Complaint stating that Appellant has "failed to set forth additional facts that would give rise to a colorable claim for civil conspiracy." (Respondent's Brief p. 12). Respondent states, "the Complaint does not allege that Respondents engaged in some acts in their official capacities and other acts outside the scope of their authority for the purpose of injuring Appellant." (Respondent's Brief p. 10). Respondents, in their own Reply Brief, emphasize Appellant's justification for having an opportunity to amend his Complaint. Appellant should have an opportunity to replead his allegations in order to further distinguish the acts performed by Respondents while acting in their Official Capacity from the actions taken by Respondents while acting in their individual capacities. The Respondents are on notice of this fact early on in the discovery process and therefore will suffer no prejudice from such an amendment of the Complaint.

In the instant case, Respondent in its Reply Brief relies on *Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006), stating that "the plaintiff fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice." In Appellant's Complaint, Appellant makes reference to the numerous

“cloaked” meetings engaged in by Respondents to include the meeting referenced in paragraph 7 of the Complaint which alleges that the Respondents called a “romp” meeting for the purposes of “falsely and maliciously” accusing Appellant of an extramarital sexual relationship and for assault. These meetings were not taken in the Respondent’s Official Capacity as Deacons, but rather were an orchestrated effort by Respondents engaged in a civil conspiracy to harm Appellant for the specific purpose of injuring him. The purpose of the meetings was to further Respondent’s goals of defaming Plaintiff, but it was the hostile meetings themselves which also caused harm to Appellant as such meetings took place outside the scope of Respondent’s Official Capacities as Deacons and Trustees of the Church therefore causing Appellant to suffer a great deal of emotional and mental distress separate and apart from the other tort and contract based claims. As Appellant stated in his initial brief, “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.” (Appellant’s Brief, p. 16-17). This satisfies Appellant’s burden to present a theory of recovery giving rise to a claim upon which relief can be granted as contemplated by *Spence*.

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)). Appellant should, therefore, have an opportunity to amend his Complaint to explore the degree and extent of the damages which originate from the Respondent’s actions taken against him while acting in their Individual Capacities.

**2. The Trial Court’s Decision to Dismiss Appellant’s Civil Conspiracy Cause of Action was erroneous as Appellant has pled Special Damages.**

In their Reply Brief, Respondents allege that Appellant’s Civil Conspiracy Cause of Action cannot be distinguished from Appellant’s Contract based and Defamation Causes of Action. Respondents erroneously allege that the Trial Court was correct in holding that Appellant failed to point to any action where the Respondent’s injured Appellant causing him Special Damages. As is fully stated above, it was Respondent’s numerous meetings acting outside the scope of their authority, which are alluded to in Appellant’s Complaint (see Paragraphs 7 & 11), which constitute the basis of Appellant’s Civil Conspiracy Cause of Action.

As for the issue of Special Damages, Respondent states that Appellant’s prayer for relief, which includes a request for injunctory relief, is not a valid claim for relief because 1.) it does not constitute pleading special damages, 2.) individual defendants acting outside the scope of their authority could not grant an injunction, and 3.) to grant such an injunction would violate the Establishment Clause of the U.S. Constitution. (Reply Brief p. 12).

With regard to Respondent’s assertions that Appellant’s request for injunctory relief violates the U.S. Constitution, a fair reading of the Complaint will show that Appellant’s request for injunctory relief does not violate the US Constitution. Appellant is asking for injunctive relief against Respondents acting in their individual capacity as opposed to their Official Capacity. Appellant is not asking for the Court to Order that Appellant be reappointed to his

position as Pastor, as to do such would require Respondents to take action in their Official Capacity. Specifically, Appellant seeks to enjoin Respondent's from continuing to conspire to carry out a continuance of their unlawful activities to include attempts to damage Appellant's reputation in the community. Such an injunction does not offend the US Constitution.

With regard to Respondent's assertion that "individual defendants acting outside the scope of their authority [can] not grant an injunction", Appellant is not asking for Respondents to grant an injunction, but rather Appellant has requested that the Court enjoin them from engaging in any further acts in furtherance of their conspiracy to injure Appellant.

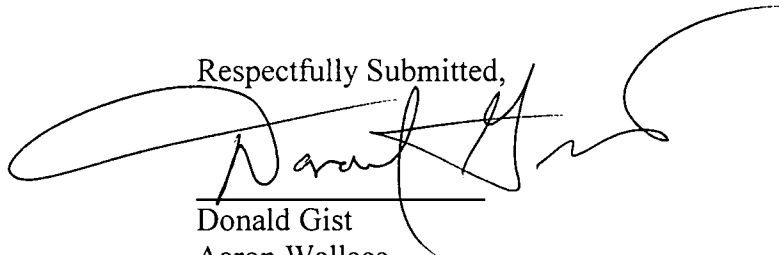
As it relates to Appellant's assertion that Appellant has not plead special damages, this assertion is also in error. All of Appellant's injuries as a result of Respondent's civil conspiracy are derived from and arise out of the Respondent's civil conspiracy and are separate and apart from the damages which Appellant sustained as a result of his Contract Based Causes of Action, and his Tort Based Causes of Action. Such damages include the emotional damages and mental damages resulting from Respondent's illicit meetings which took place as a result of Respondent's activities outside the scope of their Official Duties. Appellant's damages as a result of the conspiracy include a need for injunctory relief, but also include the non-pecuniary losses such as Appellant's emotional distress resulting from the specific instances giving rise to Appellant's Civil Conspiracy Claims. To the extent that the Lower Court found that Appellant's statement of Special Damages was insufficient, the Lower Court should have given Appellant an opportunity to amend his Complaint, rather than erroneously dismissing Appellant's Complaint with Prejudice.

### **CONCLUSION**

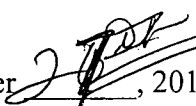
For the reasons stated, this Court should reverse the Order of the lower court dismissing Appellant's Civil Conspiracy Cause of Action with prejudice.

[Signature on Following Page]

Respectfully Submitted,



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October , 2014

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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 OCT 28<sup>th</sup>, 2014, I served the Respondent's attorney in the above case with a copy of the Reply Brief of Appellant via US Mail addressed to the attorney's for the Respondents at the address below:

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