

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-CP-46-00246

Morningstar Fellowship
Church,

Appellant,

v.

York County, South Carolina,

Respondent.

AFFIDAVIT OF RICHARD B. FENNELL

Richard B. Fennell
S.C. Bar No.: 10467
James, McElroy & Diehl, P.A.
600 South College Street
Charlotte, NC 28202
Telephone: (704) 372-9870
Facsimile: (704) 333-5508
Counsel for Appellant

RECEIVED

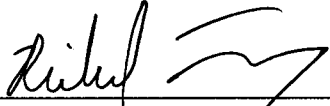
MAR 05 2015

SC Court of Appeals

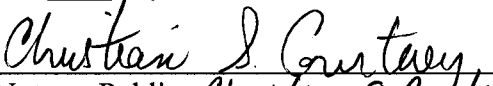
Richard B. Fennell, being duly sworn, deposes and says:

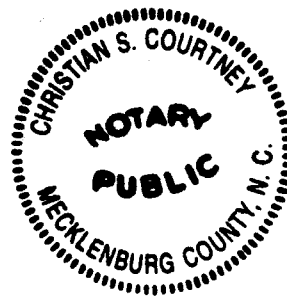
1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. I am the lawyer for Appellant Morningstar Fellowship Church.
3. Attached to this affidavit are copies of the complaint and Respondent's answer.

March 4, 2015


Richard B. Fennell
S.C. Bar No.: 10467
James, McElroy & Diehl, P.A.
600 South College Street
Charlotte, NC 28202
Telephone: (704) 372-9870
Facsimile: (704) 333-5508
Counsel for Appellant

Sworn to and subscribed before me
this 4 day of March, 2015.


Notary, Public, Christian S. Courtney
My Commission expires: 07/01/2016



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

MORNINGSTAR FELLOWSHIP)
CHURCH,)
)
Plaintiff,)

Civil Action No.: 2013 CP 4600 246

vs.)

COMPLAINT FOR DECLARATORY
JUDGMENT AND OTHER RELIEF

YORK COUNTY,)
SOUTH CAROLINA,)
)
Defendant.)

RECEIVED
MAR 05 2015
SC Court of Appeals

2013 JUN 24 PM 4:01
FILED-RECEIVED
56
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Plaintiff Morningstar Fellowship Church ("Morningstar Church"), for its complaint against York County, South Carolina ("York County"), alleges as follows:

FACTUAL ALLEGATIONS

1. Morningstar Church is a nonprofit corporation organized under the laws of the State of Mississippi. Morningstar Church conducts business and owns real property in York County, South Carolina.
2. York County is a political subdivision of the State of South Carolina.
3. York County is subject to jurisdiction in this Court for the claims asserted herein and venue is proper in this County.
4. In September, 2006, Morningstar Church acquired approximately 52 acres of unique property in York County, consisting of a 20-story, partially completed tower, a hotel conference center, and various smaller buildings.
5. At the time the property was acquired by Morningstar Church, it was abandoned and derelict. The property had originally been used for religious purposes as a part of the PTL Club ministry, which abandoned the property approximately twenty (20) years ago. Since then,

several persons and entities unsuccessfully attempted to use the property. When Morningstar Church acquired the property, the property had been abandoned for approximately seven (7) years.

6. Morningstar Church's plan for the property included renovation of the existing tower (the "Tower") for residential use.

7. On January 13, 2008, Morningstar Church and York County entered into a Development Agreement (the "Agreement"). The Agreement recites that one of its purposes was "to assure [Morningstar Church] of the standards, rules and regulations which will apply to the Development, which is a significant, unique capital improvement project..." The Agreement further recites that it was entered into pursuant to S.C. Code Ann. § 6-31-10, *et seq.*

8. The Agreement recites that it is effective for a period of five (5) years and shall thereupon terminate unless extended by mutual agreement. Section X., ¶ C. provides, however, that "[t]he Parties acknowledge that market conditions may, and will likely, affect the pace and character of the development of the Property. Therefore, the Parties agree that they shall take into account . . . any change in market conditions, demographics or similar matters when deliberating disputes or negotiating for future modifications to this Agreement made pursuant to this Paragraph."

9. Morningstar Church began feasibility work and engineering studies immediately after the Agreement was signed. It also began a significant effort at pre-selling units. The interest was real, and Morningstar Church had over 100 prospective purchasers evidenced by financial commitment.

10. Feasibility and engineering expenses eventually approximated \$1.2 million. Morningstar Church submitted a preliminary site plan in the fall of 2008. The parties continued

to discuss the scope and terms of that plan for many months. York County did not deliver a formal approval of the plan which made it difficult to move forward in a meaningful way with construction.

11. Section VII., ¶ A. of the Agreement states that “[p]rior to site plan approval, Developer shall sign the County’s non-reimbursable extension agreement” providing for relocation and extension of water and sewer lines. Section VII., ¶ C. reiterates this requirement. The non-reimbursable extension agreement was not provided to Morningstar Church for its review and was never executed by Morningstar Church. This compounded the problems described in paragraph 10. Morningstar Church did not consider the project to be in jeopardy at that point. It simply believed that the County was in no real rush to get started.

12. However, the lack of formal approval of the site plan delayed the development process. Morningstar Church continued to work on the project, and expended significant funds on architectural work.

13. The parties met in February 2010 to try to move the project issues to resolution. Morningstar Church pointed out that the steps necessary for site approval had not been followed.

14. Rather than continuing to work towards completion of the project, the County began to take steps that made it impossible to move forward. On or about March 5, 2010, York County notified Morningstar Church that it was allegedly in default under the Agreement because Morningstar Church had not provided the County with bid, performance and payment bonds as discussed in Section IV., ¶ C. of the Agreement. Prior to the notice of default, however, the County had never provided Morningstar Church with any notice that the site plan had been approved by the County. The bonding process, therefore, had not been started.

15. Following receipt of the notice of default, Morningstar Church and York County

participated in a mediation process as contemplated by the Agreement. That mediation, however, proceeded for over 18 months, and has not produced any resolution of the dispute.

16. York County continued to persist in its position that Morningstar Church defaulted under the Agreement. The stalled mediation process has served as another hurdle preventing Morningstar Church from developing the property, and delayed and hindered Morningstar Church's ability to move forward with its development plans.

17. The notice of default from the County ground all work on the project to a halt, has caused Morningstar Church to suffer serious financial losses, and has also caused numerous purchasers of units within the Tower to withdraw from their reservation agreements. The cancellation of these agreements has made it considerably more difficult for Morningstar Church to obtain the financing necessary to move forward with the project. The allegation of a default by Morningstar Church has also severely damaged Morningstar Church's ability to proceed with the project upon the terms and within the schedule set out in the Agreement.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

18. The allegations in paragraphs 1 – 17 are incorporated herein by reference.

19. York County contends or has contended that Morningstar Church breached the Agreement.

20. There exists a real and justiciable controversy between the parties regarding whether Morningstar Church or York County breached the Agreement.

21. The Court has the power, pursuant to Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, to construe the Agreement and declare the parties' rights and obligations under it.

22. Morningstar Church is entitled to a declaration from the Court that:

- a. Morningstar Church was not obligated to provide York County with bid, performance and performance bonds before receiving approval of the site plan;
- b. Morningstar Church did not default under the Agreement;
- c. York County materially breached the Agreement;
- d. York County's material breach of the Agreement occurred at a time when Morningstar Church had not defaulted under the Agreement; and
- e. Morningstar Church has been damaged as a result of York County's material breach of the Agreement.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

23. The allegations in paragraphs 1 – 22 are incorporated herein by reference.

24. The Agreement constitutes a contract between Morningstar Church and York County.

25. The Agreement was executed for good and valuable consideration.

26. Morningstar Church fulfilled all of its obligations under the Agreement.

Alternatively, any obligations unfulfilled by Morningstar Church were caused by York County's acts or omissions, as described above.

27. York County materially breached the Agreement in all of, but not limited to, the following ways:

- a. By failing to provide notify Morningstar Church when or if the site plan had been approved, as provided in the Agreement;
- b. By defaulting Morningstar Church without grounds or justification;
- c. By failing to participate in the mediation process in good faith; and

d. By breaching the implied covenant of good faith and fair dealing inherent in the Agreement.

28. York County's breaches of the Agreement are material and have proximately caused substantial damages to Morningstar Church, including but not limited to the loss of the value of its investment in the Tower, the loss of individual sales of units in the Tower, and the loss of the market for near term sales of the remaining units in the Tower.

29. Morningstar Church is entitled to a judgment against York County for all damages proximately caused by York County's breach of the Agreement.

FOR A THIRD CAUSE OF ACTION
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

30. The allegations in paragraphs 1 – 29 are incorporated herein by reference.

31. There existed in the Agreement an implied covenant of good faith and fair dealing.

32. York County's conduct in wrongfully declaring a default and causing work on the Tower to cease, and in failing to participate in the mediation process in good faith are breaches of the Agreement and the covenant of good faith and fair dealing that is inherent within the Agreement.

33. The breach of the covenant of good faith and fair dealing has proximately caused Morningstar Church to suffer damages as alleged above.

34. Morningstar Church is therefore entitled to the relief set out in paragraph 29.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Morningstar Fellowship Church prays that the Court issue the following relief:

- a. A declaration pursuant to S.C. Code Ann. § 15-53-10, *et seq.*, as described in paragraph 22, above;
- b. An award in favor of Plaintiff and against Defendant for all damages proximately caused by Defendant's breach of the Agreement and of the covenant of good faith and fair dealing;
- c. An award of Plaintiff's reasonable attorneys' fees to the fullest extent allowed by law;
- d. That the Court tax the costs of this action against Defendant; and
- e. For such other and further relief as may be just and proper under the circumstances.

JAMES, MCELROY & DIEHL, P.A.



Richard B. Fennell
S.C. Bar No.: 10467
rfennell@jmdlaw.com
600 S. College Street
Charlotte, NC 28202
704-372-9870
704-333-5508 (facsimile)
Attorneys for Morningstar Fellowship Church

Columbia, South Carolina

January 24, 2013

7. York County does not have sufficient information upon which to either admit or deny the allegations of Paragraph 6 of the Complaint and therefore denies them, and demands strict proof thereof.

8. Responding to the allegations of Paragraph 7, York County admits that it entered into that certain Morningstar Development Agreement dated January 13, 2008, with Morningstar ("Development Agreement" or "Agreement"). The Development Agreement speaks for itself, and to the extent that the allegations contained in paragraph 7 contradict or add to the terms of the Development Agreement, they are denied.

9. Responding to the allegations of Paragraph 8 of the Complaint, the Development Agreement speaks for itself, and to the extent that the allegations contained in this paragraph contradict or add to the terms of the Development Agreement, they are denied.

10. York County does not have sufficient information upon which to either admit or deny the allegations of Paragraph 9 of the Complaint and therefore denies them, and demands strict proof thereof.

11. York County does not have sufficient information upon which to either admit or deny the allegations of the first sentence of Paragraph 10 of the Complaint and therefore denies them, and demands strict proof thereof. Further responding, York County admits that Morningstar submitted a site plan in the fall of 2008 and that, after extended discussions between Morningstar's engineers and County staff, York County approved the commercial site plan on August 9, 2009. The remaining allegations contained in Paragraph 10 are denied.

12. Responding to the allegations of Paragraph 11 of the Complaint, the Development Agreement speaks for itself, and to the extent that the allegations contained in this paragraph contradict or add to the terms of the Development Agreement, they are denied. Further

responding, York County admits that Morningstar never executed the non-reimbursable extension agreement. The remaining allegations contained in Paragraph 11 are denied.

13. York County denies the first sentence of Paragraph 12 of the Complaint. Further responding, York County does not have sufficient information upon which to either admit or deny the remaining allegations of Paragraph 12 of the Complaint and therefore denies them, and demands strict proof thereof.

14. Responding to the allegations of Paragraph 13, York County admits that the parties met in February of 2010. York County does not have sufficient information upon which to either admit or deny the allegations of Paragraph 13 of the Complaint and therefore denies them, and demands strict proof thereof.

15. The allegations of Paragraph 14 of the Complaint are denied. Further responding, York County admits that on or about March 5, 2010, it formally notified Morningstar of its default under the Agreement.

16. Responding to the allegations of Paragraph 15, York County admits that the parties have attempted to mediate this dispute, as contemplated by the Agreement, without success. The remaining allegations of Paragraph 15 are denied.

17. Responding to the allegations of Paragraph 16, York County admits that it contends that Morningstar has defaulted under the Development Agreement. York County does not have sufficient information upon which to either admit or deny the allegations of Paragraph 16 of the Complaint and therefore denies them, and demands strict proof thereof.

18. The allegations of Paragraph 17 of the Complaint are denied.

19. No response is required to the allegations of Paragraph 18 of the Complaint. To the extent any response is required, the allegations are denied.

20. Responding to the allegations of Paragraph 19 of the Complaint, York County admits that it contends that Morningstar has breached the Development Agreement.

21. The allegations of Paragraph 20 of the Complaint are denied.

22. The allegations of Paragraph 21 are admitted.

23. The allegations of Paragraph 22 of the Complaint, including all subparts, are denied.

24. No response is required to the allegations of Paragraph 23 of the Complaint. To the extent any response is required, the allegations are denied.

25. The allegations of Paragraph 24 are admitted.

26. The allegations of Paragraph 25 are admitted.

27. The allegations of Paragraph 26 are denied.

28. The allegations of Paragraph 27, including all subparts, are denied.

29. The allegations of Paragraph 28 are denied.

30. The allegations of Paragraph 29 are denied.

31. No response is required to the allegations of Paragraph 30 of the Complaint. To the extent any response is required, the allegations are denied.

32. The allegations of Paragraph 31 are admitted.

33. The allegations of Paragraph 32 are denied.

34. The allegations of Paragraph 33 are denied.

35. The allegations of Paragraph 34 are denied.

FOR A SECOND DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action)

36. The Complaint fails to state facts sufficient to constitute a cause of action and therefore should be dismissed pursuant to S.C.R. Civ. P. 12(b)(6).

FOR A THIRD DEFENSE
(Equitable Defenses)

37. Morningstar's claims are precluded by the equitable doctrines of waiver, unclean hands and equitable estoppel.

FOR A FOURTH DEFENSE
(Prior Material Breach)

38. Morningstar's failure to provide the information required under the Development Agreement, including but not limited to its failure to provide York County with information specified by Section IV.C.2 of the Agreement within 180 days of the date of approval of the commercial site plan, or otherwise, constitutes a material breach of the Agreement, which breach precludes Morningstar's claims for relief herein.

COUNTERCLAIMS

39. York County is a political subdivision of the State of South Carolina.

40. Morningstar is, upon information and belief, either a Mississippi nonprofit corporation or a North Carolina nonprofit corporation with its principal place of business in York County, South Carolina.

41. This action involves Morningstar's attempt to rehabilitate and complete development of certain commercial property located in York County, South Carolina, and described in the Development Agreement (the "Property"), including but not limited to a partially constructed apartment or hotel high rise tower (the "Tower"), and other related buildings constructed in the 1980s as part of a religious-based resort.

42. This court has jurisdiction and venue over the parties and the subject matter of these counterclaims, as the causes of action alleged herein arose in whole or in part in York County, South Carolina.

FOR A FIRST COUNTERCLAIM
(Declaratory Judgment)

43. The allegations set forth in paragraphs 1-42 are hereby incorporated by reference for all purposes as if restated verbatim.

44. The Development Agreement has a stated duration of five (5) years, after which the Agreement automatically terminates according to its terms unless extended by mutual written agreement.

45. The Development Agreement provides that Morningstar is required to provide certain evidence of economic feasibility for the project, including submitting construction contract documents and plans approved by the International Code Congress, submitting a preliminary engineering report of the cost of construction, and submitting bid, performance and payment bonds for review and approval by the County, as well as a demolition bond or financial equivalent in the amount projected as necessary to demolish the Tower based on its then current condition.

46. Under Section IV.C.2 of the Development Agreement, “[w]ithin 180 days of County approval of the commercial site plan for the Property, should Developer or its contractor be unable to obtain bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to the County, then this Development Agreement shall be deemed null and void.”

47. Section IV.C.2 of the Agreement further provides that, upon default under that paragraph, “the Tower shall be demolished, with all costs for its demolition borne by the Developer.”

48. Morningstar’s engineer of record, Power Engineering prepared and submitted a proposed commercial site plan on December 9, 2008. Discussions and revisions to the site plan

occurred between County staff and Power Engineering over the next nine months and the site plan was eventually approved by staff on August 24, 2009.

49. To date, Morningstar has failed to provide the information specified in Section IV.C.2 of the Development Agreement. In February of 2010, approximately 180 days after approval of the commercial site plan, Morningstar was verbally notified by County staff of its default under the Agreement for failure to provide the required financial information. In response, Morningstar stated that it was not aware that the 180 day period had commenced, that it was not prepared to provide the required financial information at that time, and that it could not commit to any particular time frame for providing such information to the County.

50. On March 5, 2010, York County provided written notice of default to Morningstar pursuant to the terms of the Development Agreement.

51. Morningstar has disputed that it is in default, despite continuing to fail to provide any of the information required of it under Section IV.C.2 of the Development Agreement.

52. A real and justiciable controversy exists between the parties regarding Morningstar's default, and York County's entitlement to exercise the remedy set forth in the Agreement to have the Tower demolished, with all costs for its demolition to be borne by Morningstar.

53. Based upon and due to the foregoing, York County seeks a declaration from this Court as follows:

- a. that the Development Agreement has terminated according to its express terms;
- b. that Morningstar is in default under the Agreement;

- c. that as a result of such default, the Development Agreement is null and void, and therefore deemed terminated; and
- d. that York County is entitled to demolish the Tower, with all costs for its demolition to be borne by Morningstar.

FOR A SECOND COUNTERCLAIM
(Breach of Contract)

54. The allegations set forth in paragraphs 1-53 are hereby incorporated by reference for all purposes as if restated verbatim.

55. The Development Agreement constitutes a binding contract, by which the parties agreed to certain duties and obligations relating to the redevelopment of the Property and Tower.

56. Specifically, the Agreement requires that Morningstar present a suitable commercial site plan to the County for approval, and that within 180 days of the County's approval of such site plan, Morningstar must produce specific information including, but not limited to "bid, performance and payment bonds from an A+ Best rated insurer, or letters of credit from a national bank or a substantial equivalent acceptable to the County."

57. The Agreement states that the bid, performance and payment bonds specifically "provide County with financial assurance that the contractor awarded the job of rehabilitation and/or completion of the Tower is insured to finish the job for the amount of the bid, in accordance with the contract documents and with payment to all subcontractors and suppliers."

58. Morningstar's failure to provide the bid, performance and payment bond information required to be produced with 180 days of the commercial site plan approval, and its refusal to otherwise provide such information, constitutes a material breach of the Agreement, entitling York County to exercise any and all remedies provided for under the Agreement,

including but not limited to demolition of the Tower with all costs for such demolition charged to Morningstar.

59. York County has provided Morningstar with numerous opportunities to cure its material breach of the Agreement, or rebut the findings that Morningstar has failed to provide the necessary financial assurance information.

60. York County has participated in two mediations with Morningstar in a good faith attempt to resolve the parties' differences in this matter, to no avail.

61. As a result of Morningstar's breach, York County seeks and is entitled to an order authorizing it to proceed with the demolition of the Tower, and an award of damages in the amount of the costs incurred or to be incurred for its demolition.

FOR A THIRD COUNTERCLAIM
(Nuisance)

62. The allegations set forth in paragraphs 1-61 are hereby incorporated by reference for all purposes as if restated verbatim.

63. Under § 4-9-25, S.C. Code of Laws, 1976, as amended, York County has the authority to enact regulations and ordinances necessary and proper for preserving "the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them."

64. York County Code of Ordinances, Chapter 56, addresses 'Nuisances' existing within the County of York, and provides, *inter alia*, for the demolition and removal of abandoned, uninhabitable commercial structures; for the demolition of unfit dwellings; and, that the maintenance of dangerous structures is unlawful.

65. Morningstar has created or allowed conditions to exist on the Property that substantially and unreasonably interfere with the public health, safety, peace, comfort,

convenience and are of continuing nature producing a long-lasting effect so as to constitute a nuisance for which Morningstar is responsible to the community at large and to York County, and which is subject to removal or abatement at the instance of York County.

66. York County seeks an Order of the Court determining the Tower constitutes a 'nuisance' and requiring the immediate demolition and removal of the Tower, at a cost to be borne by Morningstar.

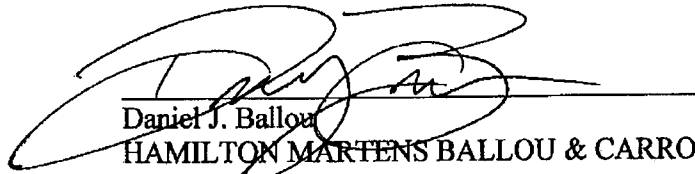
FOR A FOURTH COUNTERCLAIM
(Equitable Accounting)

67. The allegations set forth in paragraphs 1-66 are hereby incorporated by reference for all purposes as if restated verbatim.

68. Under the terms of the Development Agreement, Morningstar assumed the obligation to reimburse York County for the costs associated with demolition of the Tower in the event of breach, and agreed to provide a demolition bond to defray the costs of demolition in the event of its failure to complete the project. Morningstar has repeatedly refused to provide any evidence of financial ability to finance the work contemplated under the Development Agreement, including but not limited to the cost of demolition of the Tower, and has failed and refused to provide the required demolition bond. Under the circumstances of this case and the rights and obligations implicit in the Development Agreement, Morningstar should be required to provide an accounting of its finances available for or committed to the work contemplated under the Development Agreement.

WHEREFORE, York County prays for dismissal of the Complaint, for a jury trial on all issues so triable, for the declaratory relief sought herein, for judgment in its favor in the amount of actual and other damages on the Counterclaims, for reasonable attorney's fees if applicable, and for such other and further relief as the Court deems just and proper.

March 22, 2013

A large, stylized handwritten signature in black ink, appearing to read 'Daniel J. Ballou', is written over a horizontal line.

Daniel J. Ballou
HAMILTON MARTENS BALLOU & CARROLL, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7609

Michael K. Kendree
YORK COUNTY ATTORNEY
P.O. Box 299
York, South Carolina 29745

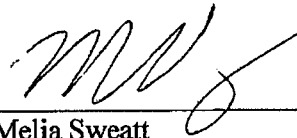
ATTORNEYS FOR THE DEFENDANT

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens Ballou & Carroll, LLC, certifies that the within Answer and Counter Claims were served on the Plaintiff by placing the same in regular United State mail addressed as follows:

Richard B. Fennell
James McElroy & Diehl
600 South College St.
Charlotte NC 28202

This the 27 day of March, 2013.



L. Melia Sweatt

FILED-RECEIVED
2013 MAR 25 AM 9:25
DAVID BALLON
C.C.P. & G.S.
YORK COUNTY, SC

RECEIVED

MAR 05 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2013-CP-46-00246

Morningstar Fellowship
Church,

Appellant,

v.

York County, South Carolina,

Respondent.

RECEIVED

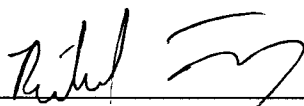
MAR 05 2015

SC Court of Appeal

PROOF OF SERVICE

I certify that this **Affidavit Of Richard B. Fennell** was served this date on Respondent by depositing a copy of same in the United States Mail, postage prepaid, addressed to Respondent's attorney of record, Daniel J. Ballou, Hamilton Martens Ballou & Carrol, LLC, 130 E. Main Street, Rock Hill, SC 29731.

March 4, 2015


Richard B. Fennell
S.C. Bar No.: 10467
James, McElroy & Diehl, P.A.
600 South College Street
Charlotte, NC 28202
Telephone: (704) 372-9870
Facsimile: (704) 333-5508
Counsel for Appellant



**JAMES
McELROY
& DIEHL, P.A.**
ATTORNEYS AT LAW

600 South College Street
Charlotte, North Carolina 28202
704 372-9870 | 800 247-9870
Fax 704 333-5508
www.jmdlaw.com

J. Mitchell Aberman*
H. Heath Alexander*
John S. Arrowood
Catherine A. Barnes
John W. Beddow
Sarah M. Brady
John R. Brickley
John R. Buric
Jon P. Carroll
Casey F. Cogburn
William K. Diehl, Jr.

Lauren E. Ellis
Jonathan D. Feit
Richard B. Fennell*
Kristen E. Finlon
Claire Samuels Geier
Gary S. Hemric
J. Alexander Heroy
Edward T. Hinson, Jr.
Katherine S. Holliday
Beth Tate Hondros
Jennifer M. Houti

David M. Kern
G. Russell Komegay, III
Pender R. McElroy
Fred B. Monroe
Preston O. Odom, III
Adam L. Ross
Bruce M. Simpson
John Paul Tsahakis
M. Neya Warren
Elizabeth A. Williams

Of Counsel
Robert H. Sheppard
Mary Kay Baynard
B. Frederic Williams

*Also admitted in S.C.

March 4, 2015

VIA FEDERAL EXPRESS
7730 4716 8940

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Morningstar Fellowship Church vs. York County, South Carolina
C.A. No.: 2013-CP-46-00246
Appellate Case No.: 2015-000262

Dear Ms. Kitchings:

Enclosed for filing please find:

1. Appellant's Return to Respondent's Motion to Dismiss; and
2. Affidavit of Richard B. Fennell.

I am enclosing an original and seven (7) copies of each. Please return a file stamped copy in the enclosed envelope. I am serving both documents by mail on opposing counsel.

Thank you for your assistance.

Sincerely,

Richard B. Fennell

RBF/csc
Enclosures
cc: Daniel Ballou

RECEIVED

MAR 05 2015

SC Court of Appeals