

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

James Verner, Esquire – Special Referee

Appellate Case Number: 2015-000872

St. Paul Independent Church Pomaria, Inc. Appellant,

v.

African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc., Respondents,

v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc., Appellants.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. **THE TRIAL COURT ERRED IN DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS THERE EXISTED NO GENUINE ISSUE OF MATERIAL FACT AND THE ONLY LEGAL CONCLUSION WAS IN FAVOR OF PLAINTIFF.**

2. **IN THE ALTERNATIVE, THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS SUMMARY JUDGMENT AS THERE EXISTED A GENUINE ISSUE OF MATERIAL FACT.**

STATEMENT OF THE CASE

This is an appeal of an appeal of an Order granting the Defendants summary judgment on all causes of action from James S. Verner, Esquire, Special Referee dated March 30, 2015 and filed on April 7, 2015. A copy of this Order was incorrectly mailed to counsel for the Appellant's previous address but Appellant received a copy of this Order on April 13, 2015 and timely filed a Notice of Appeal on April 14, 2015.

FACTS

On March 14, 1885, James C. Hope, conveyed the property located at 1945 Hope Station Road in Pomaria, South Carolina (hereinafter "the property") to the "Trustees of St. Paul African Methodist Episcopal Church" by general warranty deed. (Original Deed). Beginning in November 2013, members of the congregation of St. Paul A.M.E. Church began to hold meetings to discuss and eventually vote on disaffiliating from the A.M.E. Church and starting a new church on the property that is the subject of this litigation. (Deposition of Lisa Houseal, pg. 23, lns. 18-23, pg. 40, lns. 18-20). All known members of St. Paul A.M.E. Church were notified of these meetings and invited to attend and participate. (Depositions of Frederick Houseal, pg. 11, lns. 1-2, pg. 22, lns. 7-8, pg. 75, lns. 2-6, Deposition of Shirley Wise, pg. 33, lns. 1-3, pg. 35, lns. 9-17, Deposition of Lisa Houseal, pg. 38, lns. 2-5). At a later meeting in November 2013,

the congregation of St. Paul A.M.E. voted to disaffiliate from St. Paul A.M.E. and to transfer the property to St. Paul Independent Church. (Deposition of Lisa Houseal, pg. 23, lns. 12-18, pg. 43, lns. 9-23, Deposition of Shirley Wise, pg. 45, lns. 7-25, pg. 46, lns. 1-5, pg. 49, lns. 18 – 23.) As the current trustees of St. Paul A.M.E. at the time of the congregation's vote, Lisa Houseal, Shirley Wise, and Thomas Flemon executed a quitclaim deed for the property to be transferred to the Trustees of St. Paul Independent Church on or about December 6, 2013 (Quitclaim Deed, Id.). To date, no documents have been filed in an attempt to invalidate or rescind this deed, and no further conveyances have occurred by any person or entity. Through at least December 6, 2013, Lisa Houseal, Shirley Wise, and Thomas Flemon continued to operate as trustees of St. Paul A.M.E. Church, and perform their duties prescribed to them. (Deposition of Lisa Houseal, pg. 17, lns 8-9, pg. 32 lns. 2-7, pg. 49, lns. 4-8, Deposition of Shirley Wise, pg. 23, lns. 12 – 25, pg. 24, lns. 1-4, pg. 64, lns. 4-17, Deposition of Thomas Flemon, pg. 53, lns. 7-20, Deposition of Melvin Flemon, pg. 39, lns. 18-24). Following the transfer of the property, the congregation of St. Paul A.M.E. attempted to officially disaffiliate from the A.M.E. Church and to begin services as St. Paul Independent Church, however, as they were blocked from worshipping at the property, it was not until January 2014 with court intervention that the congregation of St. Paul A.M.E. could officially disaffiliate from the A.M.E. Church and worship as St. Paul Independent. (Deposition of Frederick Houseal, pg. 8, lns. 18-25, pg. 9, lns 1-6). Up until the Order Granting Defendants' Motion for Summary Judgment wherein the December 6, 2013 quitclaim deed was ordered to be stricken from the public records¹, legal title rested with the Trustees of St. Paul Independent Church.

¹ Plaintiff has filed a Motion to Enforce the Automatic Stay in this matter but as the date of this initial filing, no order has been issued by this Honorable court and Plaintiff remains unsure if the Register of Deeds has actually struck this deed from the public records.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure, Miller v. Blumenthal Mills, Inc. (S.C.App. 2005) 365 S.C. 204, 616 S.E.2d 722. “In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion.” Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Id. at 545. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). If triable issues exist, those issues must go to the jury. Young v. South Carolina Dep’t of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999).

ARGUMENTS

I. THE TRIAL COURT ERRED IN DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS THERE EXISTED NO GENUINE ISSUE OF MATERIAL FACT AND THE ONLY LEGAL CONCLUSION WAS IN FAVOR OF PLAINTIFF.

The interpretation of the facts and evidence present in a light most favorable to Appellant forms one of the most important portions of Appellant's case for this summary judgment at this stage of the litigation. Unfortunately, upon a cursory reading of the Order Granting Defendants' Motion for Summary Judgment, this portion of Appellant's argument was summarily ignored by the trial court in granting the Respondents summary judgment without examining the facts in a light most favorable to Appellant or even examining the undisputed facts of this matter which present a much different picture than the facts detailed in the Summary Judgment Order. (Order Granting Summary Judgment). In fact, many of the facts present in the Summary Judgment Order and seemingly on which the trial court based their decision find no support or basis in the record, and contradict Respondents' and Appellants' witness testimony.² Although the Appellant presented evidence through a written brief with attachments of deposition transcripts and other supporting documents, much of which contradicted the recitation of the facts in the Summary Judgment Order, none of this appears to have been taken into consideration in the court's decision to grant summary judgment to Respondents. As the South Carolina Supreme Court has held that "summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues,'" it is axiomatic that the trial court

² Appellant would note that no oral arguments occurred on November 5, 2014 as stated in the Summary Judgment Order. Counsel for the Appellant and counsel for the Respondents were present at the office of the Special Referee to discuss scheduling of multiple motions in the case, two of which included Appellant's Motion for Summary Judgment and Respondents's Motion for Summary Judgment. After a discussion regarding the importance of the motions for summary judgment and the issues in the case which led to the summary judgment motions, the special referee opined that he did not believe any live testimony was necessary and that these issues would likely be able to be resolved on briefs alone. Appellant does not know if the Special Referee based his decision in any part on the discussions occurring in his office on November 5, 2014 but there is no record of this conversation to Appellant's knowledge.

should take great caution in examining the facts as presented in a light most favorable to the non-moving party so that the non-moving party is given every opportunity to demonstrate the necessity of a jury hearing the disputed factual testimony. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) *citing* Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C.1975); *see also* Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) (“an extreme remedy to be cautiously invoked”). This holding has great importance in regards to the Appellant as their lawsuit rested on the interpretation of the facts presented; most importantly, the power of the Trustees of St. Paul A.M.E. as title owners of the property in dispute to transfer that property according to South Carolina law and the determination of who was a trustee at St. Paul A.M.E. at the time of the conveyance of the disputed property. A review of the record in this matter reveals that the evidence presented to the trial court overwhelmingly supports the contention that Shirley Wise, Lisa Houseal, and Thomas Flemon remained trustees at St. Paul A.M.E. until after the execution of the quitclaim deed in this matter and, as such, had the power to transfer said property under South Carolina law. Even taking the evidence in a light most favorable to Respondents, the undisputed factual testimony present in this matter supports the grant of summary judgment to Appellant, not to the Respondents. The trial court relies on Brock v. Bennett, 313 S.C. 513, 518, 443 S.E.2d 409, 412 (S.C. App. 1994) as support for the determination that Shirley Wise, Lisa Houseal, and Thomas Flemon held no power to transfer the property at the time the quitclaim deed was executed, however the trial court fails to demonstrate how this case applies to the dispute at hand as the facts of Brock differ significantly from the facts in this matter. In Brock, it is undisputed that the Plaintiff disavowed any connection to Emmanuel Baptist Church over thirty years prior to the institution of the underlying action for possession. Brock v. Bennett, 313 S.C. 513, 515, 443 S.E.2d 409, 410 (Ct. App. 1994). In the

current matter, undisputed evidence of Lisa Houseal, Shirley Wise, and Thomas Flemon continuing to perform their duties as trustees up until after the conveyance of the property was submitted to the trial court both stemming from A.M.E. church witnesses as well as Independent Church witnesses. (Deposition of Shirley Wise, pg. 21, lns. 24-25, pg. 22, lns 1-25, pg. 23, lns. 1-25, pg. 24, lns. 1-7; Deposition of Lisa Houseal, pg. 17, lns. 8-10, Deposition of Tobie Pollack, pg. 52, lns. 16-21, pg. 53, lns. 11-12, Deposition of Melvin Flemon, pg. 13, lns. 11-21, pg. 14, lns. 13-25, pg. 15, lns. 1-5, Deposition of Dorothy Houseal, pg. 43, lns. 22-24, pg. 44, lns. 6-15). In light of this evidence, the trial court had in its possession evidence distinguishing this matter from Brock but chose not to acknowledge it for unknown reasons. The trial court also cites to the Appellant's initial pleadings that detailed the vote taken and petition signed on behalf of the congregation of St. Paul A.M.E. in regards to the disaffiliation from St. Paul A.M.E. purportedly in support of the decision to grant summary judgment to Respondents, but in this analysis the trial court fails to give those pleadings their proper interpretation in light of the evidence before the court. (Order Granting Summary Judgment pg. 5). While the trial court apparently uses the fact that Shirley Wise, Lisa Houseal, and Thomas Flemon participated in the vote to disaffiliate as well as signed the petition to disaffiliate as evidence of their immediate disaffiliation, there exists no evidence in the record to support the contention that upon signing the petition or participating in the vote to disaffiliate on November 14, 2013, Shirley Wise, Lisa Houseal, and Thomas Flemon immediately vacated their duties. In contradiction, witnesses for both the Appellant and Respondents agree that Shirley Wise, Lisa Houseal, and Thomas Flemon continued as trustees at St. Paul A.M.E. well past the November 14, 2013 meeting. (Deposition of Shirley Wise, pg. 21, lns. 24-25, pg. 22, lns 1-25, pg. 23, lns. 1-25, pg. 24, lns. 1-7; Deposition of Lisa Houseal, pg. 17, lns. 8-10, Deposition of Tobie Pollack, pg. 52, lns. 16-21, pg. 53, lns.

11-12, Deposition of Melvin Flemon, pg. 13, lns. 11-21, pg. 14, lns. 13-25, pg. 15, lns. 1-5, Deposition of Dorothy Houseal, pg. 43, lns. 22-24, pg. 44, lns. 6-15). Deposition testimony of persons involved in this matter reveal that Reverend Pollack asked Shirley Wise, Lisa Houseal, and Thomas Flemon in September 2013, before the annual conference, to continue on as trustees at St. Paul A.M.E. as elections would not be possible for several months. (Deposition of Shirley Wise, pg. 21, lns. 24-25, pg. 22, lns 1-25, pg. 23, lns. 1-25, pg. 24, lns. 1-7; Deposition of Lisa Houseal, pg. 17, lns. 8-10). This is supported by not only the testimony of the three trustees, but also the testimony of the A.M.E. Church. In fact Reverend Pollack openly admits in her deposition that in the middle of November 2013, approximately two to three weeks before the conveyance, she discussed an issue she had with Lisa Houseal as a trustee and then unequivocally states that Ms. Houseal continued on as a trustee (Deposition of Tobie Pollack, pg. 52, lns. 16-21, pg. 53, lns. 11-12). Even Melvin Flemon, a current member of St. Paul A.M.E. and an outspoken advocate for the A.M.E. Church, admitted freely that Reverend Pollack nominated Lisa Houseal, Shirley Wise, and Thomas Flemon to continue on as trustees after the annual conference in September 2013 and that this was the proper way to handle a situation where elections did not occur prior to annual conference. (Deposition of Melvin Flemon, pg. 13, lns. 11-21, pg. 14, lns. 13-25, pg. 15, lns. 1-5). Dorothy Houseal, another outspoken advocate for the A.M.E. Church, stated that she did not consider Lisa Houseal, Shirley Wise, and Thomas Flemon disaffiliated from St. Paul A.M.E. Church until they brought the police to the church, which was December 8, 2013. (Deposition of Dorothy Houseal, pg. 43, lns. 22-24). She goes on to admit that even after that date, they were still attending service at St. Paul A.M.E. and participating in services, which further supports the position of St. Paul Independent and the Trustees that they did not disaffiliate from the A.M.E. Church until after December 6, 2013.

(Deposition of Dorothy Houseal, pg. 44, Ins. 6-15). As this information and testimony is undisputed in the record, it is axiomatic that all parties believed and supported that Shirley Wise, Lisa Houseal, and Thomas Flemon continued to be trustees of St. Paul A.M.E. until after the transfer of property. Therefore, as trustees of St. Paul A.M.E., Shirley Wise, Lisa Houseal, and Thomas had the requisite authority to transfer the disputed property and Respondents' Motion for Summary Judgment should have been denied and Appellant's Motion for Summary Judgment granted.

The trial court, in addition to the allegations in the Appellant's initial pleadings regarding the trustees participating in the vote to disaffiliate and signing of the petition to disaffiliate, also calls attention to a letter dated November 15, 2013 referenced in Appellant's request for a Temporary Restraining Order and Memorandum of Law in Support of the Motion for Preliminary Injunction, which details the alleged notification given to the Respondents regarding the congregation's intention to disaffiliate. (Order Granting Summary Judgment). This reliance is also misplaced as discovery revealed that not only was this November 15, 2013 letter not delivered to Respondents, but that Henry Hall, Jr., who had no authority bestowed upon him to make such statements, wrote this letter without any trustee approval and with the trustees disagreeing with the information of this letter. Deposition of Frederick Houseal, pg. 63, Ins. 24-25, pg. 64, ln. 1, Affidavit of Shirley Wise, Affidavit of Lisa Houseal, Affidavit of Thomas Flemon, Affidavit of Henry Hall, Jr.). The Appellant would also note that Reverend Pollock testified that she never received any letter from the congregation of St. Paul A.M.E. regarding disaffiliation, and Elder Postell remembers receiving a petition of signatures but does not know when he received that petition. (Deposition of Tobie Pollock Vol. I, pg. 31, Ins. 13-15, Deposition of Elder Postell, pg. 79, Ins. 6-11). Elder Postell continues on in his deposition to

detail that even after receiving the petition, many of the members of St. Paul A.M.E. continued to attend church including Lisa Houseal and Thomas Flemon who Elder Postell remembers by name. (Deposition of Elder Postell, pg. 79, lns. 12-25, pg. 80, lns. 1- 16). This deposition testimony by the two alleged “leaders” of St. Paul A.M.E. demonstrates that the November 15, 2013 letter, in addition to not being official correspondence from the officers and congregation of St. Paul A.M.E., was likely never received and/or enforced by the A.M.E. Church until this litigation began and this letter became beneficial for them. Appellant supports this conclusion by drawing this Honorable Court’s attention to the fact that worship services and business at St. Paul A.M.E. continued as normal throughout November 2013, with even Elder Postell admitting that he had meetings with the congregation of St. Paul A.M.E., which would include Shirley Wise, Lisa Houseal, and Thomas Flemon, regarding church business. (Deposition of Elder Postell, pg. 39, lns. 11-25). This information, in addition to the above detailed arguments, fully supports the contention that Lisa Houseal, Shirley Wise, and Thomas Flemon continued on as trustees of St. Paul A.M.E. Church until after December 6, 2013, and therefore had the requisite authority to transfer the property. As such, there existed no genuine issue of material fact and summary judgment should have been granted in favor of the Appellant. Therefore the trial court’s grant of summary judgment to Respondents should be reversed and an Order granting summary judgment to Appellant filed in its place.

Along with the arguments demonstrating the power of Shirley Wise, Lisa Houseal, and Thomas Flemon to transfer the property through their positions as trustees at St. Paul A.M.E., there exist several other arguments by Appellant in support of their motion for summary judgment that were not acknowledged by the trial court. Specifically that Shirley Wise, Lisa Houseal, and Thomas Flemon, as trustees of St. Paul A.M.E., entered into the decision to transfer

the property as a result of several meetings wherein the entire congregation of St. Paul A.M.E. was welcome to attend and participate. These meetings in November 2013 were called in the same manner meetings have been called in St. Paul A.M.E. Church for years. (Deposition of Lisa Houseal, pg. 38, Ins. 2-5, Deposition of Shirley Wise, pg. 35, Ins. 7-17, Deposition of Frederick Houseal, pg. 12, Ins. 13-17, pg. 74, Ins. 17-25, pg. 75, Ins. 1-6, Deposition of Patricia Mayers, pg. 21, Ins. 21-25). Clearly the entire congregation was given an opportunity to attend as Ms. Patricia Mayers, Dorothy Houseal, and Melvin Flemon all admitted that they were invited to the November 2013 meetings and, even though they were staunch A.M.E. Church supporters, even attended. (Deposition of Melvin Flemon, pg. 24, Ins. 12-16, Deposition of Dorothy Houseal, pg. 19, Ins. 2-25, Deposition of Patricia Mayers, pg. 18, Ins. 4-7). All three of these witnesses for the A.M.E. Church were also able to detail what the meeting was about, signifying their presence there and their awareness of what was going on. In fact, Melvin Flemon admitted in his deposition that other members of St. Paul A.M.E. aside from himself, Ms. Mayers, and Ms Houseal were contacted regarding the meeting as well. (Deposition of Melvin Flemon, pg. 26, Ins. 20-24). Elder Postell even entered one of these meetings! (Deposition of Lisa Houseal, pg. 39, Ins. 11-14). Through all of this involvement in the multiple meetings by A.M.E. church supporters, including Elder Postell, not one person raised the issue of the trustees not having the power to act on behalf of the congregation. Not one person attempted to stop the transfer of property by the trustees or call it invalid. Not one person voiced an opinion that Shirley Wise, Lisa Houseal, and Thomas Flemon were no longer trustees and had disaffiliated with the vote. The lack of action on behalf of Respondents and their representatives clearly demonstrates that the trustees were acting properly and on behalf of the will of the majority of the congregation. Furthermore it defies the ludicrous position the Respondents have now taken that just because

you make a decision to leave a position or vote to disaffiliate from an organization that you automatically cease to be a part of that organization. To approve of this logic would be paramount to alleging that a person who makes a decision to quit their employment and notifies their co-workers of this decision, automatically loses all power to act in the powers of their employment, even if they remain at their job and continue to fulfill their duties. Just as the aggrieved worker may make the decision to leave their job, until they cease all ties with their employer, they are still employed with full power in their position. Likewise while Shirley Wise, Lisa Houseal, and Thomas Flemon may have made the decision to start the disaffiliation process, they continued to perform their duties as trustees at St. Paul A.M.E. until they ceased all ties with St. Paul A.M.E. following the transfer of property as requested by the St. Paul A.M.E. congregation. As such, there existed no genuine issue of material fact and summary judgment should have been granted in favor of the Appellant. Therefore the trial court's grant of summary judgment to Respondents should be reversed and an Order granting summary judgment to Appellant filed in its place.

Appellant would also note that the Respondents lack standing in this matter as they have produced no evidence whatsoever of a valid claim to the land. Prior to the execution of the quit-claim deed by Shirley Wise, Lisa Houseal, and Thomas Flemon, legal title was held by the Trustees of St. Paul A.M.E. Church. As the current trustees of St. Paul A.M.E. have not been named in this suit, nor have they appeared or requested entry into the action, the trial Court erred in granting Respondents' motion for summary judgment and determining ownership to the disputed property lies with the Trustees of St. Paul A.M.E. Therefore the trial court's grant of summary judgment to Respondents should be reversed for lack of standing, and an Order granting summary judgment to Appellant filed in its place.

Finally, although the trial court did not appear to address the Respondents' causes of action against Shirley Wise, Lisa Houseal, and Thomas Flemon in their individual capacities in his Order, by granting Respondents' Motion for Summary Judgment, the Appellant would contend the trial court erred in granting a blanket summary judgment to the Respondents without addressing these causes of actions as there was a complete lack of evidence to support said causes of action. Based on the following arguments, Appellant would respectfully request that this Court reverse the trial court's grant of summary judgment to Respondents on the individual causes of actions against Shirley Wise, Lisa Houseal, and Thomas Flemon and issue judgment in favor of the Appellant.

The South Carolina Supreme Court case of Future Grp., II v. Nationsbank describes the cause of action of fraudulent conveyance as:

a transfer made without valuable consideration will be set aside as a fraudulent conveyance if the grantor was indebted to the plaintiff at the time of the transfer and the grantor failed to retain sufficient property to pay his debt to plaintiff, not merely at the time of transfer, but at the time plaintiff seeks to collect. *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814 (1937); *Penning v. Reid*, 167 S.C. 263, 166 S.E. 139 (1932); *Dufresne v. Regency Realty, Inc.*, 295 S.C. 1, 366 S.E.2d 256 (Ct.App.1987). If there is valuable consideration, the transfer will be set aside only where the grantor was indebted at the time of the transfer and had an actual intent to defraud creditors imputable to the grantee. *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973); *Gardner, supra*; *Dufresne, supra*.

Future Grp., II v. Nationsbank, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49 (1996).

As the Respondents failed to produce any evidence whatsoever demonstrating that Lisa Houseal, Shirley Wise, and Thomas Flemon were indebted to St. Paul A.M.E., that the conveyance was without valuable consideration, or that there was any actual intent to defraud a creditor, this cause of action fails as a matter of law and summary judgment should have been granted in favor

of the Appellant. The only potential indebtedness revealed throughout this action has been that Reverend Pollack may have not been paid her entire salary by St. Paul A.M.E. prior to her departure from St. Paul A.M.E. and/or the disaffiliation of St. Paul Independent. (Deposition of Tobie Pollock, pg. 72, Ins. 1-3). However, this indebtedness would not be considered a debt for purposes of fraudulent conveyance in this action as Reverend Pollack was not a member of St. Paul A.M.E. nor was she a named party in this action. (Deposition of Elder Postell, pg. 67, Ins. 3-5, Deposition of Tobie Pollock, pg. 46, Ins. 3-4). Furthermore, no evidence has been presented that Lisa Houseal, Shirley Wise, and Thomas Flemon were the persons responsible for any indebtedness that existed which is required to sustain such a cause of action. Finally, even if this Court accepts the argument that the individual Appellants were indebted to the Respondents, it has long been the law of South Carolina that, "it cannot be contended successfully that a voluntary conveyance without consideration, a gift, is necessarily fraudulent, although made by one in debt at the time." Suber v. Chandler, 18 S.C. 526, 528-29 (1883). In addition to proving the debt, which the A.M.E. Church has failed to do, they must also prove that Lisa Houseal, Shirley Wise, and Thomas Flemon, "intended to hinder, delay, and defeat present creditors." *Id.* As they have failed to do so, summary judgment should have been granted in favor of the Appellant in regards to this case of action and the Appellant respectfully requests that the trial court's order be reversed and judgment in favor of the Appellant entered as to this cause of action.

In regards to their second cause of action against Lisa Houseal, Shirley Wise, and Thomas Flemon, breach of fiduciary duty, the Respondents have again failed to come forward with any evidence to support such an allegation. South Carolina courts have held that, "to establish the existence of a fiduciary relationship, the facts and circumstances must indicate the

party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. Moore v. Moore, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004). Although the Respondents allege a fiduciary duty was owed to the A.M.E. Church and St. Paul A.M.E. in their Third-Party Complaint, they have failed both in the complaint as well as throughout this action to bring forth evidence of how this fiduciary duty was created. Even if they are able to prove the existence of a fiduciary duty, as evidenced by the above arguments, Lisa Houseal, Shirley Wise, and Thomas Flemon only acted in accordance with the wishes of the congregation of St. Paul A.M.E. in voting to convey the property. As such, there can be no breach of a duty when the actions are approved and requested by the very person who the duty would have been owed to; St. Paul A.M.E. Church. Any duty that allegedly existed to the A.M.E. Church or even St. Paul A.M.E. could not have been breached by the selling of the property in question regardless of the validity of the transfer as neither the A.M.E. Church nor St. Paul A.M.E. Church has admittedly ever had any ownership in the property. The only persons who have ever owned this property are the Trustees of St. Paul A.M.E. and they are not a party to this action. As such, summary judgment should have been granted in favor of the Appellant in regards to this case of action and the Appellant respectfully requests that the trial court's order be reversed and judgment in favor of the Appellant entered as to this cause of action.

II. IN THE ALTERNATIVE, THE TRIAL COURT ERRED IN GRANTING THE RESPONDENTS SUMMARY JUDGMENT AS THERE EXISTED A GENUINE ISSUE OF MATERIAL FACT.

Assuming *arguendo* that this Court finds a genuine issue of material fact as to Appellant's request for a grant of summary judgment, the Appellant would allege in the alternative that the trial court erred in granting the Respondents' summary judgment based on the existence of a

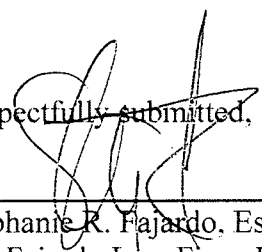
genuine issue of material fact. Although the Appellant firmly believes that all evidence present in the record, taken in a light most favorable to Respondents, would support the grant of summary judgment to the Appellant, should this Court disagree, it would be necessary that this Court reverse the trial court's grant of summary judgment to Respondents and remand this matter for trial. As previously argued, the facts present in the Order Granting Defendants' Summary Judgment are not taken in a light most favorable to the non-moving party (Appellant) as well as these facts do not support a grant of summary judgment for the Respondents as they find no basis in the record. While the Appellant has demonstrated that the deposition testimony of all witnesses present a unified and undisputed set of facts regarding the power of the trustees at St. Paul A.M.E. and the existence of Shirley Wise, Lisa Houseal, and Thomas Flemon as current trustees of St. Paul A.M.E. at the time of the conveyance, any valid dispute or argument regarding these facts on behalf of Respondents would leave this Court no choice but to reverse and remand to trial. As the South Carolina Supreme Court has dictated, "summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues." Cunningham ex rel. Grice v. Helping Hands, Inc., 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003). In the case at hand, although there exists significant undisputed evidence supporting Appellant's position, at a minimum there exists a genuine issue of material fact as the issues in this matter. Appellant anticipates that Respondents will, as they have previously done in their Memorandum in Support of Defendants' Motion for Summary Judgment, attempt to mislead this Court as to the reality of the factual situation regarding the disputed property. Based on the standard required by Rule 56(c), SCRPC as well as the case-law discussing summary judgment, Respondents' arguments would only go to support the Appellant's alternative argument that there exists a genuine issue of material fact which would

have prevented the trial court from granting summary judgment to Respondents and would require this Court to reverse and remand for trial.

CONCLUSION

As the trial judge erred in granting summary judgment to Respondents when the undisputed facts in the matter supported a grant of summary judgment to the Appellant, the trial court's decision should be reversed and a grant of summary judgment issued to Appellant. In the alternative, should this Court find that there exists a genuine issue of material fact and the trial court erred in finding the lack of a genuine issue of material fact, the trial court's decision should be reversed and the matter remanded for trial.

Respectfully submitted,



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Irmo, South Carolina
May 12, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

James Verner, Esquire – Special Referee

Appellate Case Number: 2015-000872

St. Paul Independent Church Pomaria, Inc. Appellant,

v.

African Methodist Episcopal Church, Inc., St. Paul A.M.E. Church, Inc., Elder Joseph Postell (in his capacity as an Elder for the A.M.E. Church, Inc., Respondents,

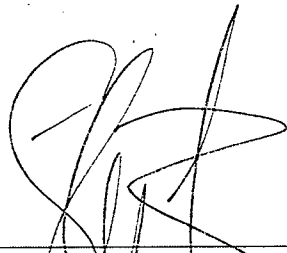
v.

Shirley Wise, Lisa Houseal, and Thomas Flemon, in their capacities as former Trustees of St. Paul A.M.E. Church Pomaria, Inc., Appellants.

PROOF OF SERVICE

I certify that I have served the **Appellant's Initial Brief** in the above matter on opposing counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, on May 12, 2015, addressed as follows:

Kenneth Davis, Esquire
Charles J. Boykin, Esquire
Post Office Box 11844
Columbia, South Carolina 29211



Stephanie R. Fajardo, Bar #80159
The Fajardo Law Firm, LLC
Attorney for Appellants



THE FAJARDO LAW FIRM, LLC

May 12, 2015

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MAY 14 2015

SC Court of Appeals

SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: St. Paul Independent Church Pomaria, Inc. v. AME Church Inc., St Paul AME Elder
Joseph Postell et al.
Docket No.: **2015-000872**

Dear Clerk

Enclosed please find the original and two (2) copies of an **Initial Brief of Appellant** as well as the original and two (2) copies of **Designation of Matter Included in the Record on Appeal** in the above referenced matter. I would appreciate you filing the original and one (1) copy and returning one (1) of the clocked copies of each enclosure in the envelope that I've provided for your convenience.

Should you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am

Sincerely,

Stephanie R. Fajardo
Attorney at Law
SRF/crs

Enclosures: listed in text

cc: Kenneth Davis, Esquire
Charles J Boykin, Esquire