

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 23 2015

SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

James Verner, Esquire – Special Referee

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Appellate Case Number: 2015-000872

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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.

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**REPLY BRIEF OF APPELLANT**

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June 19, 2015

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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.**

## 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 records<sup>1</sup>, legal title rested with the Trustees of St. Paul Independent Church.

## ARGUMENTS

### I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND THUS DENYING THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT AS THE ONLY LEGAL CONCLUSION WAS IN FAVOR OF PLAINTIFF.

Respondents are attempting to discredit Appellant's arguments against the trial court's decision by framing Appellant's appeal as an appeal based solely on the trial court failing to grant summary judgment to Appellant. This misplaced and flawed reasoning should not be

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<sup>1</sup> 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.

considered. Appellant's appeal centers on the trial court's erring in granting summary judgment to Respondents based on a consideration of inaccurate facts and thus flawed legal reasoning. In fact, a review of the trial court's order in this matter demonstrates that Appellant's motion for summary judgment was not specifically denied, only that Respondent's motion for summary judgment granted. (Order Granting Summary Judgment). Appellant's position in the appeal continues to mirror Appellant's position through the litigation of this matter; Respondents have no legal claim to the disputed property based on the undisputed facts and circumstances present in the case. As such, the Appellant maintains the position that the trial court's grant of Respondent's motion for summary judgment was an error of law as the trial court improperly granted summary judgment to a party who was not entitled to such a decision based on the only legal conclusion that could have resulted from the evidence presented to the special referee was a grant of summary judgment to Appellant. Therefore, Appellant does not agree and does not believe that the briefs and evidence in this matter demonstrate a specific appeal of the denial of Appellant's summary judgment motion as much as an argument that the denial of Appellant's summary judgment motion through the grant of Respondent's motion for summary judgment demonstrates the erring of the trial court's decision as there existed no basis for such a ruling.

Respondents additionally attempt in their Initial Brief, as they did in their briefs in support of their motion for summary judgment, to mislead this Court with inaccurate facts regarding the trustees disaffiliation from St. Paul A.M.E.. As stated in Appellant's Initial Brief, the trial court failed to examine the facts in a light most favorable to Appellant (the non-moving party in regards to Respondents' motion for summary judgment) as well as the undisputed facts supported by testimony of witnesses for both Appellant and Respondents when granting the Respondents' summary judgment. (Appellant's Initial Brief). The Respondents raised the legal

issue of the trustees lack of power in transferring the property based on their disaffiliation in support of their request for summary judgment but failed to present any evidence whatsoever that supported that position. While admonishing the Appellant's clarification statements regarding the November 15, 2013 letter that they did not authorize and that no one has stated that they did, Respondents completely ignore the deposition testimony of many of their own witnesses which support the Appellant's position that the trustees did **not** disaffiliate until following the transfer of the property and the A.M.E. church treated the trustees as continuing in place until well into December 2013 . (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). 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.

In addition to the above addressed arguments, Respondents, for the first time in this matter, have now begun to argue judicial estoppel as a defense to Appellant's authority to transfer the property. As Respondents failed to raise this issue at the trial court level wherein it could have been considered and ruled upon, Appellant would respectfully request that this Court disregard and strike this argument as unpreserved. Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)("It is well settled that an issue cannot be raised for the first time on appellate review. It must have been raised to and ruled upon by the trial court to be preserved for appellate review."). Assuming *arguendo* that this Court does consider this argument, Appellant would contend that judicial estoppel is inapplicable in this situation as all elements of the test

dictated in Cothran v. Brown, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004), has not been met. In Cothran v. Brown, the Supreme Court laid out the necessary elements for the doctrine of judicial estoppel to apply as:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id.

In the case at hand, Respondents fail to show ultimately that two inconsistent positions were ever taken by the trustees as well as show that the trustees received some benefit or that the inconsistency (if it exists) were part of an intentional effort to mislead the court, thus defeating the applicability of judicial estoppel to this matter. As more specifically detailed in Appellant's Initial Brief, the November 15<sup>th</sup> letter was not only not delivered to Respondents, but also that the author of the letter had no authority to make such a statement and was not in privity with the trustees. Deposition of Frederick Houseal, pg. 63, lns. 24-25, pg. 64, ln. 1, Affidavit of Shirley Wise, Affidavit of Lisa Houseal, Affidavit of Thomas Flemon, Affidavit of Henry Hall, Jr.). Additionally, at the time the letter was submitted to the trial court for use in regards to the Temporary Restraining Order and Temporary Injunction by the Appellant's prior attorney, the trustees had disaffiliated from the A.M.E. Church. This letter was used solely to demonstrate that, as of the date of the request for a Temporary Restraining Order, December 11, 2013, the trustees were not part of St. Paul A.M.E., and therefore owned the property separate and apart from their former positions as trustees of St. Paul A.M.E. through the properly executed quitclaim deed. There has been no evidence whatsoever that these trustees ever took the position that they were officially disaffiliated in November 2013 and while the Respondents may now wish to interpret the November 15<sup>th</sup> letter as such, that convenient decision does not turn

Appellant's consistent position that they were trustees of St. Paul A.M.E. until they had completed all of their job duties and had officially left St. Paul A.M.E., relinquishing their positions in December 2013. As such, the Appellants have, in fact, maintained a consistent approach to this letter. Furthermore and potentially more importantly, even if this Court were to interpret the submission of the November 15<sup>th</sup> letter by prior counsel as being inconsistent with the trustees' deposition testimony and submitted affidavits, Respondents fail to demonstrate how the Appellant benefited from that initial position and how the inconsistency was an intentional effort to mislead the court. The grant of the Temporary Restraining Order appears to have been based on the existence of the quit-claim deed which, in the context of the Temporary Restraining Order, could not be related to the trustees' disaffiliation with the A.M.E. church since if the November 15<sup>th</sup> letter was presented as support for the contention the trustees had indeed disaffiliated in November 2013, the quit-claim deed would have been viewed at that time as invalid. Instead, the letter, along with the other supporting documentation, served the purpose of demonstrating to the Court that as of December 11, 2013, the former congregation of St. Paul A.M.E. had completed their process of disaffiliation and transfer of the property and now held no ties to the A.M.E. Church whatsoever, hence the need for the representatives of the A.M.E. Church to be blocked from disturbing the peaceful possession of the property by Appellant. At no point have the Appellant ever attempted to mislead any Court as to the intentions and circumstances of the disaffiliation and have consistently maintained that the vote on November 14, 2013 served as the potential start of the process for disaffiliation, but certainly did not serve as the disaffiliation date of the congregation or officers as evidenced by all other evidence in this matter, including the deposition testimony of the A.M.E. Church's own 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, Ins. 8-10, Deposition of Tobie Pollack, pg. 52, Ins. 16-21, pg. 53, Ins. 11-12, Deposition of Melvin Flemon, pg. 13, Ins. 11-21, pg. 14, Ins. 13-25, pg. 15, Ins. 1-5, Deposition of Dorothy Houseal, pg. 43, Ins. 22-24, pg. 44, Ins. 6-15). 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.

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

Similar to Respondents' previous misplaced argument regarding Appellant appealing a denial of summary judgment to Appellant, Respondents' argument regarding Appellant being barred from arguing *arguendo* that this Court could find the existence of a genuine issue of material fact as to Respondents' request for a grant of summary judgment also contains no basis in South Carolina case-law or in the record herein. Appellant's Initial Brief contains numerous references throughout the document that the trial court erred in granting Respondents' request for summary judgment as the evidence presented does not support that conclusion. Initial Brief of Appellant. At no point throughout this litigation has Appellant strayed from their primary argument that there exists undisputed facts in the record which support Appellant's position in requesting summary judgment and **not** Respondents' position. Appellant's arguments regarding the potential of the existence of a genuine issue of material fact is done so *arguendo* and as an alternative to their primary argument that the trial court erred in granting summary judgment to Respondents. Furthermore, Appellant's arguments center on the trial court's error in basing legal conclusions on Respondents' facts which were neither undisputed nor were even accurate. Respondents attempt to allege that Appellant now takes a different position on appeal than was taken at the trial court level is frankly ridiculous. In arguing the position that this Court could

potentially view the matter to contain a genuine issue of material fact, Appellant does not change nor abandon their previous position, but only desires to protect any and all objections and errors related to the trial court's order in order to preserve for potential further appellate review. As such, Respondents' attempt to misrepresent Appellant's position should be found to be without merit and the trial court's order reversed.

In furtherance of their meritless argument detailed above, Respondent relies on the case of Clarendon Cnty. ex rel. Clarendon Cnty. Assessor v. TYKAT, Inc., 394 S.C. 21, 714 S.E.2d 305 (2011), and falsely alleges the ruling of this case to be that "a party may not motion the trial court for summary judgment and later argue on appeal that genuine issues of material fact remain in the matter. In fact the Supreme Court found in the Clarendon matter that the losing party could not now argue on appeal that summary judgment was premature and additional discovery needed. Id. As such, the matter at hand is easily distinguishable from Clarendon as the Appellant does not allege that summary judgment was premature, but that summary judgment was improvidently granted to Respondents in that there existed no legal basis for such a ruling. Furthermore, Respondents' argument that Appellant has taken a different theory of the case in their appeal baffles Appellant as Appellant has never waived from their original position; that the undisputed facts of the case as presented by Appellant in their Memorandum in Support of Summary Judgment support a finding that no genuine issue of material fact exists as to the legal conclusions of the case and summary judgment should appropriately be granted in favor of Appellant and denied as to Respondents. Appellant's only contention comes as a result of Respondents' creation of facts without basis in regards to the trustees' disaffiliation, which finds no basis in the record. Should this Court find that the trial court was within his purview to accept this fact as true, it would be a fact taken in a light most favorable to the moving party for

purposes of the grant of Respondents' motion for summary judgment and would therefore demonstrate the inappropriate consideration of facts not in a light most favorable to the non-moving party. This conclusion would thus require this Court to reverse and remand for trial.

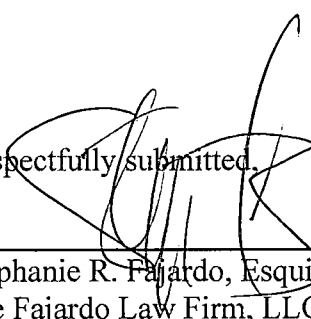
Respondents' final argument in their Initial Brief concentrates on an argument that Appellant's decision to not file a motion under Rule 59(e) now precludes them from raising issues with the trial court's blanket summary judgment order. Respondents' Initial Brief. While Appellant does not understand how Respondents can apply this logic to the case at hand, Appellant would respond by calling the Court's attention to the Respondents' Motion for Summary Judgment wherein they request "dismissal of this matter... and the Defendants/Third Party Plaintiffs are entitled to judgment as a matter of law." Respondents' Motion for Summary Judgment. Respondents continue in their motion to detail their position as to the individual trustees' actions which constituted a fraudulent conveyance and a breach of fiduciary duty. Id. Furthermore they caption all motions and memorandums related to that motion as Defendants/Third Party Plaintiffs seeking relief. As further support for the contention that the issues regarding the individual trustees was brought before the trial court, Appellant's Memorandums in Support of Summary Judgment both present similar arguments as to the insufficiency of Respondents' causes of actions against the individual trustees with a request for a decision by the trial court. Appellant's Memorandum in Support of Summary Judgment, Appellant's Reply Memorandum in Support of Summary Judgment and in Opposition to Respondent's Motion for Summary Judgment. Although these arguments were before the trial court, the trial court either erred in ignoring these causes of action in filing a blanket summary judgment order or erred in considering the arguments but granting summary judgment to Respondents anyways. As the South Carolina Supreme Court has held that a Rule 59(e) motion

is not mandatory and that, “a party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it,” Appellant’s decision to not file a Rule 59(e) motion and instead proceed directly with an appeal cannot serve as a waiver of Appellant’s right to request consideration of this issue on appeal. Elam v. S. Carolina Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). As such, the trial court’s blanket summary judgment as to Respondents’ motion for summary judgment without proper consideration of the undisputed facts related to the individual trustees forms an error of law which must be reversed by this Court and judgment entered in favor of Appellant.

**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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v.

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

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**PROOF OF SERVICE**

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I certify that I have served the **Appellant's Reply 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 June 19, 2015, addressed as follows:

Kenneth Davis, Esquire  
Charles J. Boykin, Esquire  
Tierney Felicia Goodwyn, Esquire  
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# THE FAJARDO LAW FIRM, LLC

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SC Court of Appeals

SC Court of Appeals  
Post Office Box 11629  
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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 a **Reply Brief of Appellant** in the above referenced matter. I would appreciate you filing the original and one (1) copy and returning one (1) of the clocked copies 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  
Tierney Felicia Goodwyn, Esquire

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