THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

CASE NO. 2013-CP-10-1686
APPELLATE CASE 2015-001848

Church of God and Church of God of South Carolina, ...Appellants,

v.

Mark Estes, Patricia Estes, Michael Timothy Brooks, Individually and as Trustee for Church of God at North Charleston Trust, Adam Boyer, Individually and as Trustee for Church of God at North Charleston, Rolando River Osorio As Trustee For Church Of God At North Charleston Trust and North Palm Ministries, Inc., North Palm Community Church and Crescom Bank, Successor by Merger to Community First Bank and its Successor Crescom Bank, Defendants.

Of Whom Crescom Bank is the .....Respondent,

v.

Thomas Propes and Marc Campbell, Third Party Defendants.

AMENDED INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This action arises because Respondent, Crescom Bank (successor to Community First Bank), loaned money to one church (North Palm Ministries) and secured it with a mortgage on another church (Church of God) without authority. (Complaint with attachments).

The Church of God is a non for profit, charitable corporation, organized under the laws of Tennessee. The Church of God conducts business in South Carolina through its ecclesiastical association with Church of God in South Carolina, (collectively referred to as the Church hereafter). In 1985, the Church acquired title to properly located at 5505 North Rhett Avenue, North Charleston, South Carolina.[1] The deed contained an important restriction that limited the authority of the Local Board of Trustees to transfer of mortgage the property. Under the express terms of the deed, the Local Board of Trustees could not mortgage the property except as authorized by the "Minutes of the 49th General Assembly of the Church of God held at the Ellis Auditorium Memphis Tennessee August 14-16 1962". (Exhibit 1 to Complaint). The Minutes of the 49th General Assembly of the Church of God (Exhibit 1 to Complaint at page 66), required that any proposal to mortgage or sell the property be approved by a conference presided over by the State Territorial Overseer of the Church in relevant part as follows:

> The said Local Board of Trustees shall have full right, power and authority to buy property for the use or benefit of the local congregation; to sell, hypothecate, exchange, transfer, and convey any of the local property for the repayment of the same; and to execute all necessary deeds, conveyances, and so forth, provided that each of the following conditions is met: (1) the proposition shall first be presented to a regular or called conference of the local church; (2) presided over by the state overseer, or one whom he may appoint; (3) approved by a two thirds majority vote; **and (4) provided further that the board have a certification, in writing, from the state overseer, or one whom he may appoint that the proposition is not adverse to the interest of the Church of God."** (emphasis added).

(Exhibit 1 to Complaint).

[1] See ROA (Exhibit 2 to Complaint), Deed from Lillian Buckner to the Board of Trustees of the Church of God of North Charleston dated October 09, 1985. "The said Local Board of Trustees shall hold title to, manage and control the said real estate for the general use and benefit of the Church of God..."

Between 2005 and 2010, Respondents Mark Estes, Patricia Estes, Michael Timothy Brooks, Rolando River Osorio and Adam Boyer (hereinafter the Rogue Directors) are alleged to have been Officers or Directors of the Church of God at North Charleston. (Second Amended Complaint). Sometime before October 11, 2005, these Rogue Directors became dissatisfied with the philosophy and direction of Appellants' national church and decided to form a new church. (March 12, 2010 letter - Exhibit 13 to Respondent Crescom's Motion for Summary Judgment). On October 11, 2005, Defendant Mark Estes incorporated a new church, North Palm Ministries, Inc., with the Secretary of State for the State of South Carolina. (Exhibit 3 to Respondent Crescom's Motion for Summary Judgment). He took this action without notice or approval from the Church of God as required by its Minutes. (Campbell Deposition pgs 178-181).

On October 15, 2007, the Rogue Directors refinanced the loan on Appellants' church properly located at 5505 North Rhett Avenue and borrowed a total of $700,000, in the name of the new church, North Palm Ministries, Inc. (October 15, 2007 Note from N Palm secured by mortgage of New Covenant Property and October 15, 2016 mortgage from New Covenant for N Palm Loan, Exhibit 6 to Respondent Crescom's Memorandum in Support of its Motion for Summary Judgment). The note for such loan was signed by the Rogue Directors as Trustees for the new church, North Palm Ministries. (Exhibit 6 to Crescom's Summary Judgment memorandum).

Unbeknownst to Appellants, the Rogue Directors took the equity received from the refinance, which amounted to approximately $300,000 (October 15, 2007 HUD Statement at Exhibit 4 to Respondent Crescom's Summary Judgment Memorandum) and used it to

purchase land in the name of the new church on Bryhawk Lane again without Appellants' knowledge or consent. (Campbell Deposition pgs. 139-141).

The result was that Crescom placed a mortgage on the property located at 5505 North Rhett Avenue which was owned by Appellants, without Appellants' knowledge, as security for the loan made to North Palm Ministries. The mortgage was signed by the Rogue Directors, ostensibly as Trustees for the Church of God at North Charleston, but without authority to do so. (Exhibit 6 to Respondent Crescom's Summary Judgment memorandum).

For its part, Crescom knew that the Church of God was giving a mortgage to secure a loan for North Palm Ministries.: "This note is secured with a First Mortgage on 5505 North Rhett Avenue, North Charleston, SC 29406 pledged by Church of God at North Charleston in the amount of $700,000.00." (Exhibit 6 to Respondent Crescom's Summary Judgment memorandum) Respondent's representative Robert Warrick confirmed this fact at deposition:

> Q... So does this mean that the bank at the time it created this document knew that North Charleston Church of God was giving the property to secure the North Palm Ministries loans?
> A. This is what we assumed. And so we sent the closing package and had it verified.

(Warrick deposition page 23).

Crescom had made loans to corporate entities in the past and was aware that an agent purporting to act on behalf of a corporation could not bind that corporation without authority from the corporation, typically in the form of a corporate resolution (Warrick deposition page 14-17). Crescom was aware of specific limitations on the authority of the Rogue Directors, not only because those limitations were on public record (Deed, Exhibit

2 to Complaint), but because Crescom had a copy of the Minutes containing those limitations in its file (Warrick Deposition pgs. 29 - 31 and Exhibit 5 Minutes; (also Exhibit 1 to Complaint)).

Not only was it aware of the need for a corporate resolution, Crescom undertook to obtain the corporate resolution authorizing the Rogue Directors to mortgage property owned by the Church of God (Warrick deposition pgs. 26 – 32; pgs. 40 – 41; and Attorney Closing Instructions Exhibit 2 to Warrick deposition). However, it **never obtained the needed authorization for the mortgage** from the Church of God and blamed this failure on the attorney:

> Q. Okay. How did the bank verify that the trustees have any authority to pledge the property of 5505 North Rhett?
> A. They didn't. It's -- the attorney's job is to verify that. As all those closing packages would go to the attorney. He would verify, and they would make sure and offer title insurance and write detailed instructions to the bank to verify that they have the ability to borrow and decide. It's not the bank's job to do that.

(Warrick deposition page 28; see also pgs. 28 - 32).

The Rogue Defendants failed to make the payments for the refinanced mortgage and the bank called a default. (Crescom's Memorandum in Support of Motion for Summary Judgment at page 5). Appellants were called upon to pay the mortgage default. (Crescom's Memorandum in Support of Motion for Summary Judgment at page 6). As a consequence, on July 15, 2010, Appellants who were not aware that the refinance had been used to purchase a new church not affiliated with its denomination, were required to sell the property at below fair market value and forced to satisfy the full outstanding unauthorized mortgage (Crescom's Memorandum in Support of Motion for Summary Judgment at page 5 and Campbell Deposition pg. 31).

When Appellants discovered the loan money had been used to purchase a new church, they brought suit against Crescom and the Rogue Defendants for slander of title, conversion, breach of fiduciary duty and aiding and abetting the breach of fiduciary duty filing suit on March 20, 2013. Respondent Bank answered asserting various defenses, and later, on January 30, 2015, moved for summary judgment on all causes of action.

After a hearing on April 2, 2015, (Hearing Transcript) the trial court granted Respondent's Motion for Summary Judgment. (May 5, 2015 Order). Appellant received notice of the Order on May 16 and timely filed and served its Rule 59(e) Motion to Alter or Amend Judgment on April 20, 2015 and provided a copy of the Motion to Judge Dennis on the same date. Additionally, Plaintiff filed the Depositions of Marc Campbell and Robert Warrick in opposition to Defendant's Motion for Summary Judgment. Plaintiff renewed its Motion on May 22, 2015, after the written Order was entered Judge Dennis affirmed his grant of summary judgment without a hearing. (July 29, 2015 Order.) This appeal follows.

ARGUMENT
Standard of Review

Appellants are before the Court challenging the trial court's grant of summary Judgment made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. S.C.R.C.P. 56(c); *Platt v. CSX Transportation Inc.*, 665 S.E.2d 631 (Ct. App. 2008). Summary judgment is only appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." In evaluating whether a genuine dispute as to a material factual issue exists, the lower court should have viewed all evidence, including all reasonable inferences flowing from that evidence, in the light most favorable to the non-moving party, in this case, Appellant Church. *Platt*, 665 S.E.2d

at 634. See also *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Medical Univ. of S.C. v. Arnaud,* 360 S.C. 615, 602 S.E.2d 747 (2004); *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct.App.2006); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App.2005).

"In determining whether the trial court erred in granting summary judgment, an appellate court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below."). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). Moreover, summary judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). *Redwend L.P. v. Edwards*, 354 S.C. 459, 468 (Ct. App. 2003).

I. THE TRIAL COURT IMPROPERLY DISMISSED APPELLANTS' CLAIMS UNDER THE VOLUNTARY PAYMENT DOCTRINE DESPITE THE FACT THAT THE CHURCH PAID WITHOUT FULL KNOWLEDGE OF THE FACTS.

The trial court erroneously applied the voluntary payment doctrine to bar the Church's claims where there is substantial evidence the Church made its payment without full knowledge of the true facts and circumstances regarding the use of the loan proceeds. As recently affirmed by our Supreme Court, where a person or entity pays without "full knowledge of all the facts," the voluntary payment doctrine does not apply. *Freeman v. J.L.H. Invs., LP*, 2015 S.C. LEXIS 367, *28-29 (S.C. Nov. 4, 2015) (*citing Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912) ("It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts" and "without any fraud, duress, or extortion" to make such payment.").

In *Freeman*, the Court refused to allow the application of the voluntary payment doctrine where the payor knew about the fee at the time she paid it but lacked full knowledge of what comprised the fee. Moreover, there, the Court found that even if the payor had inquired about the fee, no employee of that defendant could have explained how it had arrived at this amount.

Similarly, here, while the Church was aware of the mortgage debt and that the mortgages may have been obtained without authorization, it had no knowledge of what had been done with the proceeds of the loan (conversion of the funds to purchase property for an entity not related to Church of God.) Moreover, the Church had no reason to question the exact usage of the mortgage proceeds because it was deliberately given the impression that the funds were used to repair Church property.

The simple fact of the matter is that the Church of God did not know the money had been stolen.

Mark Campbell, the District Overseer for the Church of God, testified that the church paid off the mortgage believing the funds had been used to make repairs to the Church's North Rhett Property.

> "Q. Yeah. When you were meeting with them, did they say, we took the money out and bought this property?
> A. No.
> Q. Did you at any time ask them where the 700,000 dollars went or what they used it for?
> A. No, because I was given the impression that it went to repair the building on North Rhett."

(Campbell Deposition at page 141). The Church of God did not know that the money had been stolen and used to purchase property for another church until much later (Exhibit 11 to Campbell Deposition Memo dated 9/3/10 and Plaintiff's Motion to Alter or Amend with Exhibits).

All payments made by the Church were made with the belief that all funds obtained from Crescom were used to improve the Church's property located at North Rhett. The Church relied on the Estes' misrepresentations that the funds obtained from Crescom were used to better the North Rhett property.

> A. In hindsight looking back everything looks better but at the time I thought I was dealing with friends. I didn't know that I was being deceived.
> Q. Okay. And how were you being deceived?
> A. At that meeting?
> Q. Yes, sir.
> A. I asked what are the obligations. They produced a first mortgage, they produced a promissory note to Chang, another one to Mr. Carson, never mentioned that there's a second mortgage on the property, never mentioned to me that they have an obligation to pay those but they don't and

> they try to make me pay, us as the Church of God pay things that we are not obligated to pay.

(Campbell Deposition at page 139). Specifically, the Church did not know that the proceeds of the loan had been misappropriated and used to acquire property for an unrelated Church.

While the Church admits it may have had knowledge that the mortgage was unauthorized, it did not have *full knowledge* of *all the facts.* Indeed, had the Rogue Directors in fact reinvested the proceeds from the refinance into the Church building, the Church would hardly have had a right to bring an action as there would have been no damage. The Church had no knowledge that it suffered any damages until it learned that the funds from the mortgage had been used to purchase property for an entity not related to Church of God.

In light of the uncontradicted testimony of Mr. Campbell that Church lacked full knowledge of all the facts, the trial court should have refused to apply the doctrine just as the trial judge in *Freeman* did. *Accord Moody v. Stem*, 214 S.C. 45, 60-61, 51 S.E.2d 163, 169 (1948) (Oxner, J. concurring) ("If the plaintiff in the case at bar was induced to pay this overcharge by fraud or deception, there can be no doubt of his right to recover . . . .") Instead, the trial court not only applied the doctrine but erroneously used it as a basis for granting summary judgment to Respondents.

Assuming *arguendo* that the voluntary payment doctrine might apply to these facts, the trial court nonetheless erred in granting summary judgment on the basis of the voluntary payment doctrine because the question of whether the Church paid "with full knowledge of the facts" is a question of fact for the jury. As with all cases where the issue is what a party knew when, those questions are all factual and must be resolved by the trier of fact. "At the summary judgment stage of litigation, 'the judge does not weigh conflicting

evidence with respect to a disputed material fact . . . Nor does the judge make credibility determinations with respect to statements made in affidavits, . . . or depositions.'" *L & W Wholesale v. Gore*, 305 S.C. 250, 253, 407 S.E.2d 658, 659 (Ct. App. 1991) (*citing T.W. Elec. Serv. Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Here, the testimony of Mr. Campbell, viewed in the light most favorable to the Church, creates an issue of fact as to whether the Church paid "with full knowledge of the facts." Thus, this Court should reverse the trial's grant of summary judgment on the basis of the voluntary payment doctrine.

II. THE TRIAL COURT IMPROPERLY IMPOSED A TWO YEAR STATUTE OF LIMITATIONS ON APPELLANTS' SLANDER OF TITLE CAUSE OF ACTION AND SHOULD BE REVERSED.

The trial court improperly imposed the statute of limitation for defamation, libel, and slander claims to bar the Church's slander of title cause action. While South Carolina has long recognized a cause of action for slander of title, *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995), no South Carolina case has explicitly ruled on which statute of limitations applies to that cause of action.

The lower court mistakenly applied the two-year statute of limitations for libel, slander, or false imprisonment appearing in Article 5 of Title 15, "ACTIONS OTHER THAN FOR RECOVERY OF REAL PROPERTY" found at S.C. Code § 15-3-550. Instead, the lower court should have applied the statute of limitations found in Article 3, "ACTIONS FOR RECOVERY OF REAL PROPERTY" found at S.C. Code § 15-3-350 and titled "ACTION FOUNDED ON TITLE OR FOR RENTS OR SERVICES," which provides:

> **No cause of action** or defense to an action **founded upon a title to real property** or to rents or services out of the same shall be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question **within ten years** before the committing of the act in respect to which such action is prosecuted or defense made.

(emphasis added). The trial court improperly focused on the word, "slander" rather than the word, "title," and ignored entirely the fact that the nature of claim being asserted against Respondent bank is founded on an issue of title.

While Appellants concede some courts outside of South Carolina have applied the personal libel and slander statute of limitations to slander of title claims, South Carolina should adopt the reasoning of its sister court in North Carolina to hold that slander of title claims are more properly analyzed as "trespass against real property claims" subject to the longer statute of limitations rather than as personal torts like libel and slander which carry a far shorter statute of limitations.

In *Selby v. Taylor*, 57 N.C. App. 119, 120, 290 S.E.2d 767, 768 (1982), *disc. review denied*, 306 N.C. 387, 294 S.E.2d 212 (1982), the North Carolina Supreme Court held:

> [T]he real nature of the action and the better reasoned cases from other jurisdictions lead us to the conclusion that the one-year statute of limitation for personal slander and libel has no application. **The thrust of the tort action of slander of title is the interference with a prospect of sale of real property or interference with a proprietary right.**

(emphasis added). In its lengthy analysis in *Shelby*, North Carolina rejected the law from various jurisdictions as recounted in 53 C.J.S., Libel and Slander § 278 and instead focused on the nature of a slander of title action rather than the mere words contained in the name of the cause of action. It cited numerous cases from around the country which have explained that nature of the harm inflicted in a slander of title cause of action is the invasion

of real property right. The *Shelby* Court then explicitly rejected the statute of limitations argument advanced here by Respondents and adopted by the lower court holding:

> This is a position which we reject. **We are of the opinion that the real nature of the action prohibits the application of the law of personal slander and requires that the applicable statute of limitations** is G.S. 1-52(3) which provides for a limitation of three years **for trespass upon real property**.

Id. at 123-4 (emphasis added).

South Carolina should adopt North Carolina's reasoning to apply S.C. Code § 15-3-350 which pertains actions **founded upon a title to real property** to slander of title actions rather than the limitations period applicable to personal torts found in S.C. Code § 15-3-550. To so hold would be consistent with South Carolina long-standing preference to focus on content over form. *C.f.*, *State v. Burkhart*, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002) ("It is the substance of the law and not the "particular verbiage" of a charge that determine whether the charge is adequate . . . ."); *Burroughs v. Worsham*, 352 S.C. 382, 392, 574 S.E.2d 215, 220 (Ct. App. 2002)("The substance of the law is what must be instructed to the jury, not any particular verbiage."); SCRCP Rule 8 ("Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required. . . . All pleadings shall be so construed as to do substantial justice to all parties."). This Court should reverse the trial court's imposition of a two-year statute of limitations on the slander of title cause of action.

III. THE TRIAL COURT IMPROPERLY DISMISSED APPELLANTS' AIDING AND ABETTING CAUSE OF ACTION WHERE THERE IS SUBSTANTIAL EVIDENCE THAT THE BANK HAD KNOWLEDGE OF AND PARTICIPATED IN THE OTHER DEFENDANTS' BREACHES OF FIDUCIARY DUTIES.

The trial court improperly granted summary judgment to Respondent Bank on the aiding and abetting breach of fiduciary duty cause of action summarily concluding that "[t]here is no evidence that Crescom had actual knowledge of, or participated in, the alleged breaches of fiduciary duty committed by the Estes Defendants and the Trustee." (Order at pg. 5). In so ruling, the lower count ignored the evidence and the interferences that could reasonable drawn therefrom.

Under *Vortex Sports & Entm't, Inc. v. Ware*, 662 S.E.2d 444, 448 (2008), to state a claim for aiding and abetting breach of fiduciary duty, a plaintiff must show "(1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports & Enter., Inc.*, 378 S.C. 197, 203, 662 S.E.2d 444, 448 (Ct. App. 2008) (*citing Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996)). An aiding and abetting breach of fiduciary cause of action will lie when a Defendant has actual knowledge of the breach. *Gordon v. Busbee*, 397 S.C. 119, 133-34, 723 S.E.2d 822, 830 (Ct. App. 2012). Here, Respondent Bank mortgaged real property ignoring the special consent requirements noted ***on the face of*** the deed. Respondent is charged with the knowledge that the property being mortgaged was church property, subject to special fiduciary rules and consent requirements which they promptly ignored.

The Rogue Directors presented the Respondent Bank with a resolution that purported to authorize a mortgage on property owned by The Church of God that was clearly deficient. The resolution lacked the approval of the State Overseer, a requirement disclosed on the face of the deed. Without such approval, Respondent Bank knew the Rogue Directors lacked lawful authority to mortgage the property.

To make matters worse, the Rogue Directors disclosed on the face of their loan application their intent to use the proceeds from the mortgage loan to purchase property for a new church (Warrick Deposition, pgs. 17 - 19 and Exhibit 1). The upshot is that the Respondent Bank allowed the Rogue Directors to mortgage another's property (without authority) and to use the proceeds for their own purposes! Thus, Respondent Bank had actual knowledge of the requirements for consent and cannot rely on their bald denial of knowledge to support their motion for summary judgment.

There is no question but that Estes and Trustees defendants breached their fiduciary duty to Appellants as they never obtained written approval for the mortgage from the State Overseer. Moreover, Appellants have clearly suffered damages. Considering all of the facts in the light most favorable to Appellants, the trial court should have denied Respondent Bank's motion for summary judgment on the aiding and abetting cause of action.

IV. THE TRIAL COURT IMPROPERLY DISMISSED APPELLANTS' CONVERSION CAUSE OF ACTION WHERE THAT CLAIM IS FOUNDED ON RESPONDENT'S WRONGFUL TAKING OF THE CHURCH'S CASH PAYMENT.

The trial court improperly dismissed Appellants' conversion cause of action on the theory that Crescom did not control the use of the loan proceeds and that conversion will not lie for exercising dominion and control over real property. In fact, the Church's conversion cause of action arises from Crescom having demanded and received payment on a note improperly obtained. Crescom wrongfully demanded money not rightfully owed to it from the Church and then took possession of the Church's cash.

> Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Money may be the subject of conversion

> when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.

Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009) (citations omitted) (emphasis added). *See also Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003) ("Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property."); *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964) (defining conversion as a wrongful act which emanates by either a wrongful taking or wrongful detention).

Here, the conversion claim does not arise from Crescom's exercise of control over real property but of its conversion of the Church's cash money which has a determinate amount. Once the Church learned of the true facts concerned the loan and the theft of the loan proceeds, it demanded return of its funds, but, Crescom refused to return the Church's funds thus converting funds properly belonging to the Church to its own use. The trial court ignored the well-settled law that a plaintiff may prevail upon a claim for conversion by showing the unauthorized detention of the property after a demand. *Mackela v. Bentley*, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (Ct. App. 2005). It also ignored the rule that where there is conflicting testimony regarding the ownership of an interest in monies, there is a genuine issue of material fact and summary judgment on a conversion claims for those monies is improper. *Moore*, 383 S.C. at 589, 681 S.E.2d at 878-79. This Court should reverse the trial court's grant of summary judgment and reinstate the conversion cause of action.

V. THE TRIAL COURT IMPROPERLY ATTRIBUTED THE KNOWLEDGE AND ACTS OF ROGUE AGENTS TO APPELLANTS WHERE THOSE AGENTS WERE ACTING FOR THEIR OWN PURPOSES OUTSIDE THE SCOPE OF THEIR AUTHORITY.

The lower court improperly dismissed Appellant-Church's claims on the theory that the Church was bound by the acts of its agents (including the Rogue Directions and the attorney who closed Respondent Bank's loan), and, that all knowledge its purported agents possessed was attributable to it. In so ruling, the trial court recited the general law of agency but failed entirely to consider the well-settled law applicable when agents are operating outside the scope of their authority or are acting "adversely to the principal in a transaction or matter, intending to act solely for the agent's own purposes or those of another person." *Mauldin Furniture Galleries, Inc. v. Branch Banking & Trust Co.*, 2012 U.S. Dist. LEXIS 121140, 2012 WL 3680426 (D.S.C. Aug. 27, 2012) (*citing Crystal Ice Co. v. First Colonial*, 273 S.C. 306, 257 S.E.2d 496 (1979) ("An equally well-recognized exception to this general rule exists in situations where the agent is acting fraudulently against his principal or for any other reason has an interest in concealing his acquired knowledge from his principal."), and, *White v. FDIC*, 122 F.2d 770, 776 (4th Cir. 1941) ("[T]he personal interest of a director adverse to that of the corporation will prevent notice to him being deemed notice to the corporation . . . ."); *Charleston Library Soc. v. Citizens & S. Nat'l Bank*, 201 S.C. 447, 472, 23 S.E.2d 362, 372 (1942) ("The rule established by the cases above cited as applicable to attorneys at law representing other interests, in which case no knowledge is imputed, is further borne out by a long line of cases relating to agents in general, in which a similar exception to the general rule that notice to an agent is notice to

the principal, is well recognized."); *Citizens' Bank v. Heyward*, 135 S.C. 190, 205, 133 S.E. 709, 714 (1925).

As explained by Judge Cain in *Mauldin*, "[f]or purposes of determining a principal's legal relations with a third party, notice of a fact that an agent knows or has reason to know ***is not imputed to the principal if the agent acts adversely to the principal*** in a transaction or matter, intending to act solely for the agent's own purposes or those of another person." *Id.* (*citing* Restatement (Third) of Agency § 5.04 (emphasis added); *see also White v. FDIC*, 122 F.2d 770, 776 (4th Cir. 1941) ("[T]he personal interest of a director adverse to that of the corporation will prevent notice to him being deemed notice to the corporation . . . ."); *Wight v. BankAmerica Corp.*, 219 F.3d 79, 87 (2d Cir. 2000) ("Under the exception, management misconduct will not be imputed to the corporation if the officer acted entirely in his own interests and adversely to the interests of the corporation . . . . The theory is that 'where an agent, though ostensibly acting in the business of the principal, is really committing a fraud for his own benefit, he is acting outside of the scope of his agency, and it would therefore be most unjust to charge the principal with knowledge of it.'") (citations omitted); *First Nat'l Bank of Sikeston v. Transamerica Ins. Co.*, 514 F.2d 981, 986 (8th Cir. 1975) ("When the employer, officer or director's interest is adverse to the corporation, his knowledge is not imputed to it.")).

Here, Appellant Church has made serious allegations of fraudulent activity against the Rogue Directors. As in *Mauldin*, whether they were acting on behalf of Appellants — and by implication, whether their knowledge of the activity should be attributable to Appellants—is ultimately a genuine issue of material fact for the jury and should not have been decided at the summary judgment stage. *Id. citing Rothrock v. Copeland*, 305 S.C.

402, 405, 409 S.E.2d 366, 367-68 (1991) ("In determining whether summary judgment is appropriate, a court must not try issues of fact, but must discern whether genuine issues of fact exist to be tried . . . . Summary judgment is not appropriate where further inquiry into the facts is desirable . . . .") This Court should reverse the grant of summary judgment because it is a question of fact whether the purported agents were acting within the scope of their employment or purely for their own benefit.

VI. THE TRIAL COURT IMPROPERLY RULED AS A MATTER OF LAW THAT APPELLANTS' CLAIMS FOR CONVERSION AND AIDING AND ABETTING ARE BARRED BY THE THREE YEAR STATUTE OF LIMITATIONS.

While the parties and the lower court agreed that Appellants' causes of action for conversion and aiding and abetting are governed by the three-year statute of limitations contained in S.C. Code § 15-3-530, the trial court improperly concluded as a matter of law that Appellants knew or should have known of its potential claims before March of 2010. It is well settled that South Carolina applies the discovery rule to all claims such that the statute of limitations does not begin to run until the party either knew or should have known that some legal right had been invaded. *City of Newberry v. Newberry Elec. Coop., Inc.*, 387 S.C. 254, 692 S.E.2d 510, 2010 S.C. LEXIS 99 (S.C. 2010); *Young v. S.C. Dep't of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). Here, Appellant-Church did not learn of the encumbrances placed on its property by Respondent until March 22, 2010, (Campbell Deposition pgs. 139-141), and it was not until sometime much later that Appellant learned the proceeds of those loans had been diverted to the Estes Defendants. (*Id.*) The simple fact of the matter is that the Church of God did not know the money had been stolen. (*Id.*).

All payments made by the Church were made with the belief that all funds obtained from Crescom were used to improve the Church's property located at North Rhett. The Church relied on the Estes' misrepresentations that the funds obtained from Crescom were used to better the North Rhett property. Specifically, the Church did not know that the proceeds of the loan had been misappropriated and used to acquire property for an unrelated Church. Where, as here, there is conflicting evidence as to when a reasonable person in Appellants' situation would have known some legal right of its had been invaded, the proper discovery date becomes a question of fact for the jury to decide. *Turner v. Milliman*, 381 S.C. 101, 110, 671 S.E.2d 636, 641 (Ct. App. 2009) (citation omitted), *aff'd in part, rev'd in part on other grounds*, 392 S.C. 116, 708 S.E.2d 766 (2011). The trial court improperly ruled on the question of when Appellants' causes of action began to accrue as a matter of law and should be reversed.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Appellants respectfully request that this Court **REVERSE** the trial court's grant of summary judgment and remand this action for trial.

Respectfully submitted:

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