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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable J. C. Nicholson, Jr., Circuit Court Judge

Appellate Tracking No. 2013-002666

Common Pleas Case No. 2013-CP-10-1877

The RMUE, through its General Officers, Barbara B. Clark, Warren E. Hatcher, Cassie Deeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley and Willie B. Oliver.....Respondents

v.

Herman Boids, Richard Brown, Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jarce R. Stanley, Aubrey Wilder, Derrick Lucas, Willie Parker, Jacqueline R. Miller, and Payne Church.....Appellants

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUE ON APPEAL

Whether the Circuit Court erred in quieting title in Payne's Chapel R. M. U. E. Church when (1) the Grantors lacked authority to execute the deed and (2) Appellants impliedly agreed to the same in the Settlement Agreement and then successfully sought the Circuit Court's enforcement of the Settlement Agreement?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

The factual and procedural facts of this case are interconnected and Respondent feels it would aid the Court in treating them together. At the outset, Respondent nearly completely disagrees with Appellants' statement of the facts. Unless a fact stated by Appellant is supported by the record, Respondents submit it is not supported by the record and is inaccurate. This case involves a church dispute, but the narrow issue before this Court is a simple real estate title dispute.

Statement of Facts

The R. M. U. E. Church is an old African American church with deep roots in South Carolina. The property in question was acquired in 1978. Beulah Grimball Robinson conveyed the property to George Richardson, Henry Robinson, Raymond Murray, Joseph Grant, John W. Prioleau, Alfred Bright, Wesley E. Goudine, Wesley A. Moore, James Fleming, Hezekiah Brown, Jr., & Willie Pinckney, As Trustees for Payne's Chapel R. M. U. E. Church by Deed duly executed and recorded in the Charleston County Register of Deeds. (See ROA _____)

The Deed contained certain covenants and restrictions and they are, verbatim, as follows:

The property is subject to the easements, rights-of-way and zoning regulations of record. The property is also subject to the following Restrictive Covenants running with the land and capable of being amended only by the Grantor, Beulah Grimball Robinson, or if she be deceased, by a majority of her heirs and assigns consisting of an interest of greater than fifty (50%) per cent of the heirs as established under the Statute of Descent and Distribution:

1. That no portion of the premises be used for a cemetery or graveyard until such time as the full purchase price of the subject property with interest is paid to the Seller.

2. That the only entrance to the property will be on the road marked as private road on the plat recorded in Plat Book J, Page 89, and that the said entrance will be at least Three Hundred (300') Feet from Grimbball Road.
3. That the property will be restricted to church (including graveyard) farm or single family use and that no noxious or offensive activity shall be carried on upon any of the said property nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, and without limiting the generality of the foregoing, the following specific prohibitions are imposed upon the said property.
 - a. No paper or trash may be burned except in an incinerator.
 - b. No unsightly accumulation of trash or refuse may be contained thereon.
 - c. No house trailers or trucks having a size greater than a one (1) ton capacity may be kept permanently or temporarily on said property.
 - d. No portion of any building or structure shall be used for a place of business or for other commercial, business or quasi-business purposes.
 - e. No grass, weeds, underbrush or other similar vegetations shall be allowed to grow or be permitted on any portion of the said property which is more than eight (8") inches higher than the ground level of said property.

The habendum clause also contains conditions which are, verbatim, as follows:

To have and to hold, all and singular, the said Premises before mentioned unto the said George Richardson, Henry Robinson, Raymond Murray, Joseph Grant, John W. Prioleau, Alfred Bright, Wesley E. Goodine, Wesley A. Moore, James Fleming, Hezekiah Brown, Jr., & Willie Pinckney, As Trustees for Payne's Chapel, R. M. U. E. Church, their Successors and Assigns forever, for the use and benefit of Payne's Chapel R. M. U. E. Church, to pay taxes, mortgage, hypothecate, to insure and to hold for Church and/or investment purposes, and to make improvements or dispose of the property as directed by a majority of the legal voters of the Church, and to act under the authority and discipline of The Doctrines and Disciplines of the Reformed Methodist Union Episcopal Church, dated May, 1972.

(ROA _____)

In the last few years, the R. M. U. E. Church has been embroiled in controversy involving some of its members. The controversy is described by the record of the trial in this case before Judge Nicholson. The controversy began when former Bishop Fred Henderson Moore led a revolt. Fred Henderson Moore was the Bishop of the R. M. U. E. As the time for election of a new Bishop approached, he purported to cancel the election and make himself Bishop for life. Bitterness and litigation ensued. *See eg. Barbara*

Clark, et al. vs. Moore, Memorandum Opinion No. 2014-MO-034 Moore was removed as Bishop by a Church tribunal. Moore thereafter purported to appoint and license “Reverend” Thomas Junious, who then purported to appoint various Church officers, including Willie J. Parker, Remus Cromwell and Jacqueline R. Miller.

The next event relevant here occurred on March 25, 2013, when a group of dissenters, led by Herman Bolds and Derrick Lucas, notified the R. M. U. E. leadership that they were withdrawing from the church, effective March 25, 2013. The significant members of this group were Willie J. Parker, Jr., Jacqueline R. Miller and Remus Cromwell. (ROA____) One day later, on March 26, 2013, Payne Church was formed with the South Carolina Secretary of State as a nonprofit corporation.

Next, on March 27, 2013, Remus Cromwell, Jacqueline R. Miller and Willie J. Parker, purportedly as Trustees of Payne’s Chapel R. M. U. E., executed a Deed conveying the property to Trustees of Payne Church. The Deed does not identify the trustees of Payne Church. The granting clause does not identify the trustees of Payne Chapel R. M. U. E. Church. The signature section does not state “Payne Chapel R. M. U. E. Church” and there is an Acknowledgment for only one of the three signatures. The Deed was recorded in the Office of the RMC for Charleston County in Book 322 at Page 156. (ROA____)

The Discipline is clear that, in the event of a schism, the church property remains with the remaining congregation. (ROA____) It is undisputed that Payne R. M. U. E. has continued to exist, without interruption, holding its services in a borrowed facility. (ROA____) There is no provision for a new church to take the Church’s property against the will of the remaining members. While there is no provision for a majority vote of the

congregation to take the Church property, such a vote did not even occur. *See eg.*
ROA____

Statement of the Case

Litigation ensued thereafter with the filing of the Plaintiffs' Summons and Complaint on March 29, 2013. (ROA____) The Plaintiffs filed an Amended Summons and Complaint on April 5, 2013. (ROA____) The Defendants filed a Motion to Dismiss on April 22, 2013. (ROA____) The Plaintiffs filed a second action styled Payne R. M. U. E. Church vs. Payne Church, a corporation, on July 1, 2013. The Court consolidated both cases via Order filed October 6, 2013. (ROA____) The Defendants filed an Answer and Counterclaim for both cases on November 8, 2013. (ROA____) The Plaintiff filed a Reply to the Counterclaim on November 21, 2013. (ROA____) The Court found the case was appropriate for Complex Case Designation and assigned the case to the Honorable J. C. Nicholson, Jr., by Order filed December 17, 2013. (ROA____)

The Court next held a lengthy, non-jury trial. At the conclusion of the trial, the Court ordered the parties to mediate the case and mediation took place on August 31, 2015. After mediation, the parties entered into a written Settlement Agreement which was signed by counsel for both parties. Section 1 of the Settlement Agreement states: "Payne Church will re-align with RMUE." (ROA____) The parties subsequently had a disagreement over one contingency in the Settlement Agreement which resulted in the Defendants filing a Motion to Enforce Settlement Agreement on November 19, 2015. (ROA____) The Court held a hearing and issued an Order filed February 10, 2016. The

Order essentially adopted the Settlement Agreement and made it the Order of the Court.

The Order contained the following section that is the issue on this appeal:

While I fervently hope that the issue is moot, I have decided to rule upon the issue of title to real estate. It was indicated that the Church itself may have pre-existed the R. M. U. E. affiliation. However, the real estate was deeded to Payne's Chapel R. M. U. E. Church. Payne R. M. U. E. Church still exists. Nothing has transpired to validly change title. Specifically, the Quitclaim deed was signed by persons who were no longer members of Payne R. M. U. E. Church. The real estate of Payne R. M. U. E. Church is confirmed and quieted in favor of Payne R. M. U. E. Church, a/k/a Payne's Chapel R. M. U. E. Church.

(ROA____)

The Defendants/Appellants filed their Notice of Appeal on _____, 2016. (ROA____) Although the litigation involved numerous issues, the only issue before this Court on appeal is the title to the real estate.

ARGUMENTS

A. ***The Deed in question is invalid, because the Grantors lacked authority and the Deed has several drafting and execution errors.***

The legal issues in this case are so basic, that they almost need no citation of authority. The Deed is invalid for lack of authority. Every deed of real estate executed after December 31, 1993, passes to the grantee the entire interest of the grantor in the property described in the deed, unless provided to the contrary in the deed. S. C. Code Ann. § 27-5-130(A) It is axiomatic and basic that a grantor cannot convey what he or she does not own or does not have authority to convey. The undisputed evidence shows that Willie J. Parker, Jr., Jacqueline R. Miller and Remus Cromwell resigned from the Payne R. M. U. E. Church on March 25, 2013, and executed the Deed purportedly conveying the property from Payne R. M. U. E. Church to the Trustees of Payne Church on March 27, 2013.

There are at least a few more things wrong with the foregoing. The Deed fails, because those purporting to sign did so in an *ultra vires* capacity. This issue requires a tedious analysis of the Trial record as a whole. A corporation may exercise only those powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto. Actions taken inside corporate power are *intra vires* acts, while actions taken outside of corporate power are *ultra vires* acts. *See eg. Fisher vs. Shipyard Village Council of Co-Owners*, 415 S.C. 256, 781 S.E.2d 903 (S.C. 2016) Ultra vires acts are not binding upon a corporation. *See eg. Howard & Foster Co. vs. Citizens Nat. Bank of Union*, 133 S.C. 202, 130 S.E. 758 (S.C. 1925) Since Moore was not a Bishop, Junious was not a pastor. Since Junious was not a pastor, the signatories to the Deed were not officers. The Constitution of the R. M. U. E. is called the Discipline. Some officers are

appointed and others are elected. Junious “removed” some officers and simply ignored others. He then purported to replace some of those he “removed.” (ROA____) Actions taken in violation of the Discipline are *ultra vires* and, therefore, of no force or effect.

The Deed also fails for other reasons. The grantee is shown as “Trustees of Payne Church,” but the trustees are not named. The Deed therefore fails for lack of a grantee. See S. C. Code Ann. § 62-7-401 (“A trust . . . may be created by . . . transfer of property to another *person* as trustee during the settlor's lifetime[.]” [emphasis added]) The grantor is shown in the granting clause as “Trustees of Payne Chapel R. M. U. E. Church,” but does not name the trustees. In the execution section, Willie J. Parker, Jr., Jacqueline R. Miller and Remus Cromwell are just identified as “Trustee.” These inconsistencies should render the deed invalid. That there is an Acknowledgment for only one of the three purported grantors goes to recordability and not validity, but shows further the sloppy nature in which the Deed was prepared and executed. Furthermore, there is no evidence that Willie J. Parker, Jr., Jacqueline R. Miller and Remus Cromwell ever were trustees of Payne Chapel R. M. U. E. Church and, in fact, they were not even members of the church when they executed the Deed. The Deed is invalid for lack of authority by the grantor and Judge Nicholson’s Order should be affirmed.

- B. ***Appellants waived their right to object to Judge Nicholson’s Order, because the Settlement Agreement impliedly invalidates the conveyance and Appellants sought the enforcement of the Settlement Agreement.***

Appellants waived their right to object to the real property being returned to the R. M. U. E. Church by first signing the Settlement Agreement and, second, by asking Judge Nicholson to enforce the Settlement Agreement. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party

claiming waiver must show that the party against whom waiver is asserted possessed at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended. *See eg. Janasik vs. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (S.C. 1991)

In this case, Section 1 of the Settlement Agreement states: “Payne Church will re-align with RMUE.” Implicit in this language and implicit in the Settlement Agreement, is the agreement that the real property be returned to the RMUE. The parties’ agreement broke down on another issue, but Appellants, themselves, filed a motion to enforce the Settlement Agreement. Judge Nicholson granted Appellants’ motion and Appellants now appeal an Order on a motion that they won. If Appellants thought Judge Nicholson overstepped his authority or that his Order did not reflect their motion, Appellants should have filed a Rule 59 motion.

C. ***Appellants are judicially estopped from relief from the Court’s Order, because Appellants sought the Court’s enforcement of the Settlement Agreement.***

Appellants seek relief from an Order on a motion that they won. Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. Judicial estoppel is an equitable concept, depending on the facts and circumstances of each individual case, and the application of the doctrine is discretionary with the Court. Generally, for the doctrine to apply, courts look to the following factors: First, a party’s later position must be clearly inconsistent with its earlier position. Second, whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the

perception that either the first or the second court was misled. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *See eg. Cothran vs. Brown*, 350 S.C. 352, 566 S.E.2d 352 (S.C.App. 2002)

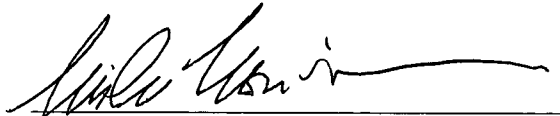
In the present case, Section 1 of the Settlement Agreement states: "Payne Church will re-align with RMUE." Implicit in this language and implicit in the Settlement Agreement, is the agreement that the real property be returned to the R. M. U. E. Both this language and the Settlement Agreement would be of no effect if the parties' churches had realigned under R. M. U. E., but Payne Church, no longer a separate entity now, were somehow allowed to keep the real estate. Appellants' seeking enforcement of the Settlement Agreement is therefore inconsistent with the Settlement Agreement they already signed. Second, Appellants won their motion to enforce the Settlement Agreement. Third, allowing the Appellants to agree to realign with R. M. U. E. and, yet, to keep the real estate that was the crux of the dispute is an absurd result and unfair to Respondents. Finally, if Judge Nicholson's Order was not that sought by Appellants, a Rule 59 motion would have been appropriate.

CONCLUSION

This Court should affirm the Order of the Circuit Court and allow title to the real estate to remain in Payne Church R. M. U. E. First, the grantors lacked authority to convey the property from the R. M. U. E. to Trustees of Payne Church. The Deed had several errors affecting its validity as well, including no named Trustees as grantees and discrepancies in the identity of the grantor. Appellants waived their right to contest title in the R. M. U. E. when they signed the Settlement Agreement impliedly agreeing to the

same and then sought the Court's enforcement of the Settlement Agreement. Appellants are also judicially estopped for much the same reason. If Appellants wanted Judge Nicholson to alter or amend his ruling on their motion, Appellants should have filed a Rule 59 motion. For these reasons, the Order of the Circuit Court should be affirmed.

Respectfully submitted this ^{22nd} day of NOVEMBER, 2016



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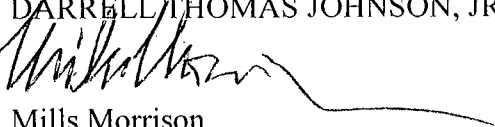
SC Court of Appeals

**RE: The RMUE et. al. vs. Herman Bolds, et. al.
Appellate Tracking No.: 2013-002666**

Dear Mr. Curry:

Enclosed please find the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record On Appeal in the above case.

Thanking you in advance, I am

Sincerely,
LAW OFFICE OF
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Mills Morrison

MM/tc
Enclosures

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**RE: The RMUE et. al. vs. Herman Bolds, et. al.
Appellate Tracking No.: 2013-002666**

Dear Ms. Kitchings:

Enclosed for filing is the Initial Brief of Respondent and Respondents's Designation of Matter to be Included in the Record On Appeal together with Proof of Service on opposing Counsel in the above case.

Thanking you in advance, I am

Sincerely,
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