

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-01320

Refuge Temple Church of God in Christ..... Appellant,

v.

Delories Jenkins..... Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether civil courts have subject matter jurisdiction to adjudicate this matter involving an alleged employment contract between a church and its minister due to the Ministerial Exception based upon the Free Exercise Clause and the Establishment Clause of the First Amendment.
- II. Whether the trial court erred as a matter of law in finding that the alleged contract at issue was executed and approved by church representatives having proper authority.
- III. Whether the trial court erred in finding that Appellant waived its objections by operating pursuant to the alleged contract for several years.

STATEMENT OF THE CASE

This is an appeal from the orders of the Honorable L. Casey Manning, Circuit Judge of the Fifth Judicial Circuit, awarding judgment for Respondent, filed October 25, 2012, and denying Appellant's Motion for Reconsideration, filed January 8, 2016.

This appeal concerns the jurisdiction of the court over and the enforceability of a contract for employment of a pastor which purports to bind the Appellant, Refuge Temple Church Of God In Christ, Inc. (hereinafter "Refuge Temple") to continue paying the salary of Refuge Temple's former pastor, Rev. Edward Jenkins, to his wife, Appellant Delories Jenkins, for the remainder of her life upon his death. The parties that executed the contract, entitled "Pastor's Employment and Retirement Agreement" (hereinafter "the Agreement"), on behalf of Refuge Temple were Pastor Jenkins; his secretary at the time, Connie Bowman; and Daniel Ward, Jr., who had only been attending Refuge Temple for a few months.

Respondent Jenkins sued the church, its current pastor, and several board members individually, asserting causes of action for breach of contract, violation of the Payment of Wages Act, and tortious interference with contract. The Complaint was filed on February 25, 2011. Refuge Temple defended on the ground that the Agreement was not properly authorized by the church and its denomination, Church Of God In Christ, Inc., among other things.

The case proceeded to a bench trial before Judge Manning on June 18, 2012. At trial, Respondent Jenkins dismissed her cause of action for tortious interference with contract. The individual defendants were also dismissed, leaving Refuge Temple as the sole defendant.

By Order filed October 25, 2012, Judge Manning found in favor of Respondent Jenkins and entered judgment against Refuge Temple in the amount of \$365,593.00 on the breach of contract cause of action. Judge Manning held that Respondent Jenkins is not entitled to recover under the Payment of Wages Act because she was not a church employee.

During trial, counsel for Refuge Temple attempted to move for judgment as a matter of law, but Judge Manning required counsel to assert any legal arguments in a proposed order. Accordingly, both parties submitted proposed orders. Judge Manning's Order awarding judgment for Respondent Jenkins was filed on October 25, 2012 and thereafter sent to the parties. Refuge Temple timely filed a Motion for Judgment Notwithstanding the Verdict or to Alter or Amend on November 7, 2012. Appellant Jenkins' Memorandum in Opposition is dated November 19, 2012. On January 8, 2016, Judge Manning filed his Order Denying Defendant's Motion for Reconsideration. Refuge Temple's Notice of Appeal was filed on February 5, 2016.

STATEMENT OF THE FACTS

In her Complaint, Jenkins alleged her husband, Pastor Elder Edward Jenkins, served as the pastor of Refuge Temple from August 14, 1997 until his death on or about April 4, 2004. (R. p. 14, ¶ 4). Rev. Jenkins allegedly entered into the Agreement with the church Board while serving as pastor of Refuge Temple. A copy of the Agreement, dated March 13, 2002, was attached to the Complaint. (R. p. 14, ¶ 9; R. pp. 94-104).

The Agreement provides that Rev. Jenkins would continue as pastor until his death. (R. p. 96, ¶ 1). The Agreement sets forth the compensation for Rev. Jenkins. (R. p. 96, ¶ 2). The Agreement further provides that upon Rev. Jenkins' death, his surviving

spouse, Respondent Jenkins, would be paid “a monthly sum equivalent to the PASTOR’S monthly salary and housing allowance, which will become salary at the time of his death . . . for the remainder of her life, even if she leaves the church.” (R. p. 100, ¶ 4.A. (emphasis omitted)). Upon Rev. Jenkins’ death, the Agreement also purports to become irrevocable. (R. p. 10, ¶ 6.D.).

The Complaint further alleges that Refuge Temple’s Board of Directors voted on and approved the Agreement. It is alleged that the trustees had full authority to enter into the agreement on behalf of Refuge Temple. (R. p. 14, ¶ 6).

As alleged, Refuge Temple paid Rev. Jenkins pursuant to the Agreement until his death. (R. p. 15, ¶ 10). Refuge Temple allegedly continued to pay Rev. Jenkins’ salary and housing allowance to Respondent Jenkins after her husband’s death pursuant to the Agreement through 2009. (R. p. 15, ¶¶ 11–12). However, on or about April 19, 2010, Refuge Temple allegedly reduced the monthly amount to \$500, and made no further payments to Respondent Jenkins. (R. p. 15, ¶¶ 13–14).

In its Answer, Refuge Temple denied the allegations regarding the Agreement and its purported approval by the church. (R. p. 21, ¶ 6). Refuge Temple admitted that it paid Rev. Jenkins a salary until his death, but denied that the salary was paid pursuant to the Agreement. (R. p. 21, ¶ 7). Refuge Temple also admitted it paid Respondent Jenkins a monthly stipend and housing allowance after Rev. Jenkins’ death, but denied that these were paid pursuant to the Agreement. (R. p. 21, ¶ 8). Refuge Temple alleged that these payments were made in its sole discretion to provide for the needs of its former pastor’s widow for a certain period of time. (R. p. 21, ¶ 9). Refuge Temple further admitted that Respondent Jenkins was given a reduced amount of \$500 on approximately April 19,

2010. (R. p. 21, ¶ 10). However, Refuge Temple denied its alleged refusal to make further payments, and alleged that Respondent Jenkins left the church after the April 19, 2010 payment. (R. p. 21, ¶ 10).

At trial, Respondent Jenkins testified in accordance with her allegations in her direct examination. (R. pp. 32–38). On cross-examination, Respondent Jenkins admitted she was not present at the special meeting during which the Agreement was allegedly adopted by Refuge Temple’s board. (R. p. 39). Respondent also admitted that she stopped attending Refuge Temple about six years after her husband’s death. (R. p. 41). She gave as her reason that she “needed to move on.” (R. p. 41–42). She testified that Defendant Wayne Penn, Sr., who she referred to as Elder Penn at the time, told her that Refuge Temple stopped making monthly payments because she was no longer a member of Refuge Temple and had stopped attending church there. (R. p. 42). She also admitted that the amount she was receiving after Rev. Jenkins’ death was not the full amount of his salary. (R. p. 42). After her testimony, Respondent Jenkins rested her case. (R. p. 48).

In its direct examination, Refuge Temple first called its current pastor, Rev. Wayne Penn. (R. p. 52). Rev. Penn became pastor of Refuge Temple in March 2005. (R. p. 53).

Rev. Penn testified regarding the procedure by which Refuge Temple’s board members are elected. (R. p. 53–54). Board members must be nominated, and then elected by the church body. (R. p. 54). The purpose of the trustee board is to represent and protect the church members in church decisions. (R. p. 54).

Rev. Penn also testified regarding Refuge Temple’s relationship to its denomination, the Church Of God In Christ. He testified that Refuge Temple is a local

church in a hierarchical denominational structure. (R. p. 55). Under this denominational structure, local churches may not adopt measures that would contravene the charter, constitution, laws, and doctrine of the Church Of God In Christ. (R. p. 55–56).

Rev. Penn further testified that under the denominational guidelines, trustees must be elected to the board of directors by a majority of the members of the congregation. (R. p. 56). Typically, board members are elected after being nominated by the pastor of the local church. (R. p. 56). The election of board members is conducted in a special meeting after the upcoming meeting has been announced two or three times in the church bulletin. (R. p. 56–57). This mode of election of board members is mandated by the Church Of God In Christ denomination. (R. p. 57; R. p. 154 ¶¶ 5–6; R. p. 166–167). Additionally, candidates do not become eligible to become trustees until they have been local church members in good standing for three years. (R. p. 58). The denomination does not allow board members to be appointed directly by the pastor of the local church. (R. p. 58).

As for the payments Refuge Temple made to support Respondent Jenkins, Rev. Penn testified that they were made gratuitously in honor of the former pastor and in order to meet the needs of his surviving spouse. (R. p. 58–59). Rev. Penn testified that it is the custom of the Church Of God In Christ as a denomination to provide some level of support for widows of former pastors for a period of five years. (R. p. 60). Rev. Penn testified he never saw the Agreement until it was produced during this lawsuit. (R. p. 59). When he took over as pastor, the church records had been removed from the building. (R. p. 59).

Rev. Penn testified that after Refuge Temple reduced Respondent Jenkins' support payments, she met with him and asked that the support payments be reinstated in their original amount. (R. p. 61–62). When her request was denied, she resigned from the church. (R. p. 62). Accordingly, Refuge Temple stopped her monthly support payments. (R. p. 62). Respondent Jenkins filed this lawsuit in response. (R. p. 62).

On cross-examination, Rev. Penn admitted that Refuge Temple knew that support payments were being made to Respondent Jenkins in 2005. (R. p. 64–65). As a result of an audit, Refuge Temple was informed these payments must be reclassified from salary to retirement to comply with IRS guidelines. (R. p. 66–67). However, the cross-examination did not challenge his testimony regarding church and denominational procedures for electing board members or the reasons the support payments were made to Respondent Jenkins.

Refuge Temple next called Connie Bowman. She testified she signed the Agreement in her capacity as a board member. (R. p. 69). She was also Rev. Jenkins' secretary at the time. (R. p. 70). Bowman testified that she was appointed a board member by Rev. Jenkins. (R. p. 70). Her appointment was never presented to the congregation for a vote on her election. (R. p. 70).

Bowman testified she was present at the special meeting during which the board considered the Agreement. (R. p. 71). The other board member at the meeting was "Deacon Ward." (R. p. 71). The church congregation was never notified about the meeting during which the Agreement was approved and adopted. (R. p. 72). The Agreement was never presented to the congregation for ratification after it was executed.

(R. p. 72). The Agreement was stored in a file cabinet, and Bowman did not know what happened to it after Rev. Jenkins' death. (R. p. 72).

On cross examination, Bowman acknowledged she served as a board member for two non-consecutive terms. She was a board member when the church was founded and also when the Agreement was executed. (R. p. 75-77). The cross-examination did not address the procedure through which she became a board member at the time the Agreement was executed or her testimony that the congregation had no notice of the Agreement prior to Pastor Jenkins' death.

Refuge Temple's third witness was Daniel Ward, Jr. (R. p. 77). Ward testified he was a board member for Refuge Temple when the Agreement was executed. (R. p. 78). He became a member of Refuge Temple less than a year before the Agreement was executed. (R. p. 78-79). He was appointed by former pastor Rev. Jenkins. (R. p. 79). However, his appointment was never presented to the congregation for an election. (R. p. 79).

Ward testified that the special meeting at which the Agreement was executed was never noticed to the congregation. (R. p. 79-80). He thought the Agreement would subsequently be presented to the congregation for approval, but that never occurred. (R. p. 81). The congregation never voted to approve it. (R. p. 82).

On cross-examination, Ward testified that fiscal decisions were normally presented to the congregation. (R. p. 83). Ward was asked if all contracts were presented to the full congregation for approval. (R. p. 84). Ward testified that the Agreement was the only contract he was involved with while on the board. (R. p. 84). On re-direct, Ward testified that a contract between the church and its pastor was the type of contract

that the congregation should know about. (R. p. 85). The cross-examination did not address Ward's testimony regarding the manner of his appointment to the board or the procedure by which the Agreement was allegedly approved by the church.

Refuge Temple rested its case after Ward's testimony. (R. p. 85). Counsel for Refuge Temple attempted to move for judgment as a matter of law, but Judge Manning required arguments to be included in a proposed order. (R. p. 85–89).

The trial court issued its Order awarding judgment in favor of Respondent Jenkins on October 25, 2012. Refuge Temple's Motion for Judgment Notwithstanding the Verdict or to Alter or Amend was denied by Order filed January 8, 2016. This appeal followed.

STANDARD OF REVIEW

Under the South Carolina Rules of Civil Procedure, a defendant may move for dismissal after the close of the evidence in cases tried without a jury "on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRPC. "Because a dismissal under these circumstances has the same effect as summary judgment, the standard for summary judgment applies." Ex parte United Servs. Auto. Ass'n, 365 S.C. 50, 53, 614 S.E.2d 652, 653 (Ct. App. 2005).

Appellate courts apply the same standard as the trial court when reviewing rulings on motions for summary judgment. USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). "Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." Ex parte USAA, 365 S.C. at 53, 614 S.E.2d at 653. When material

facts are in dispute, this Court must view all evidence in the light most favorable to the non-moving party. Id.

Summary judgment is appropriate when a properly supported motion sets forth facts that are undisputed or are contested in a deficient manner. Lanier Constr. Co., Inc. v. Bailey & Yobs, Inc., 384 S.C. 275, 278, 681 S.E.2d 909, 911 (Ct. App. 2009). A party opposing summary judgment may not rely on allegations in the pleadings, but must “set forth specific facts showing there is a genuine issue for trial.” SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990). A party may not avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010).

This Court exercises *de novo* review of questions of law. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

ARGUMENT

The effect of the trial court’s ruling is to force Refuge Temple to pay two pastors’ salaries for the remainder of Respondent Jenkins’ life, even though she has left the church and is no longer a member. The stated reason for Refuge Temple’s discontinuance of the support payments is that the church could no longer afford them. (R. p. 171). The Order accelerated these payments based on her future life expectancy, resulting in a judgment in an amount that will force Refuge Temple to cease its operations. (R. pp. 6–7).

The facts of this case are largely undisputed. Taking the facts in the light most favorable to Respondent Jenkins, the Agreement was executed and approved by Connie Bowman and Daniel Ward in addition to Rev. Jenkins himself. After Rev. Jenkins’

death, Refuge Temple made payments to Respondent Jenkins for her support for approximately six years before discontinuing them. However, Refuge Temple produced uncontradicted evidence that Connie Bowman, and in particular Daniel Ward, were not properly elected board members under the procedural rules of either Refuge Temple or the denomination. Refuge Temple also produced uncontradicted evidence that the payments Refuge Temple made to Respondent Jenkins after her husband's death were based upon the customary practice of Refuge Temple and the Church Of God In Christ, and that they had no basis in the purported Agreement¹.

Therefore, the crux of this matter does not involve the interpretation of a contract under general principles of law. The first issue is whether the Establishment and Free Exercise Clauses of the First Amendment bar this action when the Agreement was between the church and a minister and whether the Agreement was executed by representatives of the church having proper authority. The trial court ruled that the Agreement was properly executed and approved because Bowman and Ward constituted a quorum of the board. (R. p. 6). The trial court also ruled that Refuge Temple operated in accordance with the Agreement for eight years, and therefore any *ultra vires* argument was barred by the equitable doctrine of laches. (R. p. 6). Underlying these holdings is the trial court's assumption that a finding that the Agreement at issue in this case is invalid would have the effect of voiding every contract that Refuge Temple has entered into via the improperly constituted board. (R. p. 88).

¹ As discussed later in this Brief, the purported Agreement is an invalid contract due to the facts relating to its execution. Appellant maintains this position throughout this Brief but refers to the disputed Agreement as a contract for ease of reference in this argument that even if the contract is valid, the civil court has no jurisdiction over the terms, formation, termination, or enforcement of the kind of contract this Agreement purports to be. The lack of jurisdiction eliminates the need to determine the validity of the Agreement.

But the Agreement in this case is not an ordinary contract. It is an "Employment and Retirement Agreement" between a church and its pastor. The law governing employment disputes is significantly different from standard contract law. Moreover, transactions between fiduciaries and those they serve are subject to special rules. Furthermore, the law generally refrains from injecting itself into ecclesiastical matters, particularly those involving dealings between a church and its minister.

This is not a case involving the authority of church board members to enter into a contract with a third party to procure, for example, church hymnals. In such a case, the principles of apparent agency would likely apply. At issue in this case is a purported agreement between church insiders—the church and its minister—involving the payment of a substantial amount of church funds to the minister's spouse. The effect of the Agreement was to double the amount payable for the pastor's salary, which greatly impacts Refuge Temple's finances. The judgment in this case must be paid by tithes and offerings voluntarily donated by members of the congregation based upon their religious beliefs and perceived religious duties. The effect of the trial court's order is to use the secular arm of the law to confiscate large amounts of church resources through an agreement among church members into which the congregation that must fund it had no input.

Accordingly, the trial court erred in assuming, without any supporting authority, that the validity of the Agreement at issue in this case is governed by the same principles that govern any other contract entered into by the Board. With respect to the particular alleged contract at issue, the trial court erred in finding a valid and enforceable contract for two reasons. First, courts lack jurisdiction to rule upon the authority of church

representatives to enter into employment agreements with their pastor. Second, even if state law applies, the signatories of the Agreement lacked proper authority as a matter of law. Finally, the trial court's ruling that Refuge Temple waived any objections to it through the doctrine of laches is not supported by any evidence and is instead contradicted by the evidence that the church was not even aware of the Agreement until this litigation.

I. Civil courts lack subject matter jurisdiction to rule on this ecclesiastical matter.

- A. A Ministerial Exception based on the Free Exercise Clause and the Establishment Clause of the First Amendment bars the civil court from adjudicating claims concerning contracts between a church and a minister of that church.

As a preliminary matter, courts lack subject matter jurisdiction to rule on employment decisions between religious institutions and their ministers. Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C., 565 U.S. 171, 187-88, 132 S. Ct. 694, 705-06, 181 L. Ed. 2d 650, 662-63 (2012). The First Amendment to the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Both the Establishment Clause and the Free Exercise Clause bar the government from interfering with the decision of a religious group to terminate a contract made with a minister. Id. at 182, 132 S. Ct. at 702, 181 L. Ed. 2d at 659. This protection has prevented civil courts from challenging a denominational determination as to property rights, church discipline, church government, and contracts made with ministers. Id. at 185-88, 132 S. Ct. at 704-06, 181 L. Ed. 2d at 661-63.

A "ministerial exception" prevents application of civil law to claims concerning contracts for the employment of a minister by a religious institution. Id. at 188, 132 S.

Ct. at 705, 181 L. Ed. 2d at 663. Punishing a church for allegedly terminating a contract made with a minister “interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.” Id. at 188, 132 S. Ct. at 706, 181 L. Ed. 2d at 663. Imposition by a civil court violates the Free Exercise Clause by harming the ability of the church to carry out its mission, both in the selection of people and the use of finances. Id. A civil court’s determining whom a church must pay as a result of the performance of ministerial functions violates the Establishment Clause. Id. at 188-89, 132 S. Ct. at 706, 181 L. Ed. 2d at 663. A monetary award operates as a penalty for terminating a contract for a minister and is equally prohibited by the First Amendment as an order overturning the termination. Id. at 194, 132 S. Ct. at 709, 181 L. Ed. 2d at 667.

The Fourth Circuit has previously discussed this doctrine related to state-law causes of action, including breach of contract. Bell v. Presbyterian Church (U.S.A.), 126 F.3d 328 (4th Cir. 1997). In particular, courts refuse to take jurisdiction over church decisions on how they will expend funds raised by the church for religious purposes, particularly when they relate to church employment decisions regarding their ministers. Id. at 332-33. Lack of subject matter jurisdiction may be raised at any time, even on appeal. McCain v. Brightharp, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012).

The Agreement at hand is between the church and the pastor to provide the terms under which he would serve. There is no separate contract at issue. To rule on this contract is necessarily to apply civil law principles to a contract between church and minister. The circuit court, in its ruling, penalized the church for terminating a contract between the church and a pastor and materially affected the ability of the church to carry

out its mission through the effect on its finances. The United States Constitution prohibits such interference with the internal governance of the church.

- B. Civil courts have no jurisdiction to intrude into matters of church administration or to dispute the determinations of the highest ecclesiastical tribunal within a hierarchical church.

The jurisdiction of civil courts in matters not relating to the ministerial exception is limited to issues that can be resolved upon neutral principles of law without extensive inquiry into religious matters. Williams v. Wilson, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002); Banks v. St. Matthew Bapt. Church, 391 S.C. 475, 480, 706 S.E.2d 30, 32 (Ct. App. 2011). When the parties' rights under the civil law are dependent upon an ecclesiastical matter, courts defer to the determination of the ecclesiastical body. Turbeville v. Morris, 203 S.C. 287, ___, 26 S.E.2d 821, 828 (1943). "[T]he court's function is solely limited to interpreting the final action of the church." Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996).

The determination of the enforceability of the Agreement under civil law in this case is dependent on an ecclesiastical matter—the authority of the signatories to bind Refuge Temple in an "Employment and Retirement Agreement" with its pastor. "It is not the function of the courts to dictate procedures for a church to follow." Williams, 349 S.C. at 340, 563 S.E.2d at 322. In particular, state law causes of action that require judicial investigation into the administrative procedures of a church are off limits. Banks, 391 S.C. at 482, 706 S.E.2d at 33. In Banks, the court dismissed a negligent hiring cause of action because it would require an examination of the church procedures in hiring its pastor. Id. Civil courts may not inquire into whether a church acted consistently with its religious laws and doctrines. Pearson, 325 S.C. at 53, 478 S.E.2d at 853. Additionally,

church decisions regarding how they will expend church resources relative to their employment of ministers are not subject to the jurisdiction of civil courts. Bell, 126 F.3d at 322-33.

The court's function when ecclesiastical matters are involved is to assure that the church itself has spoken. Bowen v. Green, 275 S.C. 431, 435, 272 S.E.2d 433, 435 (1980). Courts accept as conclusive the determination of the highest ecclesiastical body having jurisdiction. Hatcher v. S.C. Dist. Council Assemblies of God, Inc., 267 S.C. 107, 114-15, 226 S.E.2d 253, 257 (1976); Pearson, 325 S.C. at 52-53, 478 S.E.2d at 853.

There are two general types of church organizations, congregational and hierarchical. Seldon v. Singletary, 284 S.C. 148, 149-50, 326 S.E.2d 147, 148 (1985). Congregational churches are independent organizations governed by their members. Id. Hierarchical churches, on the other hand, are under the control of the denomination. Id. at 149-50, 326 S.E.2d at 148-49. In order to determine the final ruling of an hierarchical church, courts look to the determination of the denomination, rather than the local church. Id. at 152, 326 S.E.2d at 150; Turbeville, 203 S.C. at ____, 26 S.E.2d at 827.

Refuge Temple presented evidence that it is part of an hierarchical denomination, the Church Of God In Christ, which is uncontradicted. (R. p. 154). The Affidavit of Dr. Alonzo Johnson was introduced into evidence, and it states that Refuge Temple has been issued a Certificate of Membership and is a local church in good standing and fellowship with the denomination. (R. p. 154, ¶ 6). The Official Manual for the denomination, excerpts of which were attached to the affidavit, supersedes any action or provision in the Church bylaws that is inconsistent with it. (R. p. 154, ¶ 5). The Official Manual indicates that the denomination is headquartered in Memphis, Tennessee. (R. p. 162).

The Official Manual defines "local church" as "the basic unit of the structural organization of the Church Of God In Christ." (R. p. 163).

Since the Church Of God In Christ has an hierarchical structure, civil courts must accept the final decision of the denomination, and not that of Refuge Temple itself. The denomination has never been given the opportunity to rule directly on this matter because Respondent Jenkins bypassed it and filed this action in circuit court, but the denominational procedures prohibit the actions giving rise to the Agreement.

The issue raised by the church is that the individuals who acted as board members in executing and approving the Agreement lacked authority to enter into such a contract on behalf of the church. In particular, Refuge Temple argued that its board members are required to be both nominated by the pastor and elected by the congregation. (R. p. 53–54). This requirement comes from the denomination, the Church Of God In Christ. (R. p. 54–56). This denomination requirement is for the protection of the congregation. (R. p. 54). Additionally, church members do not become eligible to be elected board members until after they have been members in good standing for at least three years. (R. p. 58).

Refuge Temple presented un rebutted testimony that neither Bowman nor Ward were elected or approved by the congregation, as required by the denomination. (R. pp. 70, 79). Moreover, Ward had been a church member for less than a year before he was appointed a board member by Rev. Jenkins. (R. p. 79). Therefore, neither Bowman nor Ward were clothed with proper authority from the Church Of God In Christ to act as board members.

This lack of church authority does not taint every action the board undertook while Bowman and Ward were board members. Contracts with third parties may be enforceable, despite the lack of proper authority of board members, through principles of apparent authority or implied agency. See R & G Constr., Inc. v. Lowcountry Reg. Tranp. Auth., 343 S.C. 424, 432-35, 540 S.E.2d 113, 117-19 (Ct. App. 2000). This was not a contract with an innocent third party, but a contract between Refuge Temple and its pastor. Rev. Jenkins sat on the board, and signed the Agreement on behalf of both parties. (R. p. 104). It was Rev. Jenkins himself, acting as President and Chairman of the Board, who presented the Agreement for approval. (R. pp. 91–92). Since Rev. Jenkins unilaterally appointed both of the other board members that executed and approved the Agreement, he had effective control over both sides of the bargain. The Agreement does not involve the rights of innocent third parties.

Because the parties to the Agreement were a church and its pastor, and the enforceability of the Agreement depend upon a matter of ecclesiastical law—whether the board members had proper authority on behalf of Refuge Temple under the denominational rules of the Church Of God In Christ—this dispute is not a matter for the civil courts. Subject matter jurisdiction does not exist to decide this case. This Court should therefore remand with instructions to dismiss this action.

II. The trial court erred in finding that the Agreement was properly executed and approved.

If this Court finds subject matter jurisdiction exists to decide this case, the Agreement is nevertheless unenforceable because the signatories lacked authority to bind Refuge Temple. As discussed above, the Agreement was executed and approved by three board members: Rev. Jenkins and two individuals whom he appointed without any input from the congregation. Rev. Jenkins' vote was invalid because he had a conflict of interest. The other two board members were not properly elected. Therefore, the trial court erred in finding that the Agreement was executed and approved by a quorum of the church board.

Conflict of interest transactions are invalid unless certain requirements are met. A conflict of interest transaction is one in which a director has a direct or indirect interest. S.C. Code Ann. § 33-31-831 (Rev. 2006). Rev. Jenkins had a direct interest in the Employment and Retirement Agreement because it concerned his future employment and support for his wife after his death. (R. pp. 94–104). Therefore, Respondent Jenkins had the burden of proving the fairness of the transaction to Refuge Temple. In re Southern Textile Knitters, 65 Fed. App'x 426, 433-34 (4th Cir. 2003).

Respondent Jenkins did not present any evidence to demonstrate the fairness of the terms of the Agreement to Refuge Temple. (R. pp. 176–177). Respondent Jenkins did not dispute this argument in her proposed order. (R. p. 185). The trial court did not base its ruling on Rev. Jenkins' vote, instead finding that Bowman and Ward's vote constituted a quorum of the Board. (R. p. 6).

The votes of the other board members are intended to protect the congregation. (R. p. 54). However, in this case, the votes representing the purported quorum of the

board were cast by Bowman and Ward, neither of whom had been validly elected and who were not eligible to vote on the Agreement.

Refuge Temple presented testimony that board members must be elected at a properly noticed meeting by a majority of the members of the congregation. (R. pp. 56–57). This is a denominational requirement. (Id. at 28-29.) Denominational requirements of the Church Of God In Christ supersede any contrary measures adopted by a local church. (R. pp. 55–56). This is consistent with South Carolina law, which recognizes the denomination as the final authority in hierarchical churches. Seldon, 284 S.C. at 149-51, 326 S.E.2d at 148-49; see also S.C. Code Ann. § 33-31-180 (Rev. 2006) (providing that in the event a religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of the South Carolina Nonprofit Corporation Act, the religious doctrine controls). Unrebutted testimony was presented that neither Bowman nor Ward were elected as prescribed by the Church Of God In Christ. (R. pp. 70, 78).

In particular Ward was not qualified to be a Board member because he had been a member less than three years. (R. pp. 58, 78–79). He was nominated by Rev. Jenkins without any input from the congregation. (R. p. 79). In fact, Ward testified that this transaction was the only contract with which he was involved while on the Board. (R. p. 84). The only inferences that can be drawn from this testimony is that either Rev. Jenkins regularly conducted church business without any input from the board, or Ward was appointed to the board for the sole purpose of approving this transaction. Either way, the trial court's finding that Ward's pivotal vote fairly represented Refuge Temple and its congregation for purposes of a quorum in this conflict of interest transaction cannot be sustained.

South Carolina courts have recognized that ministers are not entitled to compensation approved by board members when the minister knows those board members were not properly elected. Vestry of St. Luke's Church v. Mathews, 4 Des. 578, 590 4 S.C. Eq. 578 (1815). In that case, Rev. Mathews contracted with St. Luke's Church for two one-year terms. The court held that the vestry members who contracted with Rev. Mathews were illegally elected. Id. at 586. Nevertheless, the court held that Rev. Mathews was entitled to his compensation for the first one-year term because he was not aware of the defects in the election. Id. at 586-89. However, the court held that Rev. Mathews was not entitled to his compensation for the second one-year term because by that time, he knew that the vestry members lacked proper authority. Id. at 590.

This case is controlled by the holding of Vestry of St. Luke's Church with respect to the second one-year term. Refuge Temple presented evidence that not only was Rev. Jenkins charged with knowledge of the defects in the authorization of Ward and Bowman to act as board members, he was directly responsible for the defects. Rev. Jenkins appointed Bowman, who was his secretary at the time. (R. pp. 69-70). Bowman was never properly elected by the congregation. (R. pp. 69-70). Rev. Jenkins also appointed Ward, who was not qualified to be a board member because he had not been a church member for the requisite time period. (R. pp. 77-79). Ward too was never elected by the congregation. (R. p. 79).

Basic principles of fiduciary duty dictate that in order for the congregation at Refuge Temple to be bound by a contract that would greatly increase its expenditures, it must be properly represented. Ward testified that such transactions were normally presented to the congregation. (R. pp. 81-82). In particular, contracts between the

church and the pastors are of the type the congregation should know about. (R. p. 85). Rev. Jenkins had the opportunity to legitimize the Agreement by either ensuring the other board members were properly elected or by presenting the Agreement to the congregation for approval, but he failed to do so.

Respondent Jenkins, as the dependent spouse of Rev. Jenkins, stands in his shoes with respect to this transaction. Even if she is viewed as a third-party beneficiary, she has no greater rights than the parties to the contract. Chappell v. Int'l Bhd. Elec. Workers Local Union 772, 120 F. Supp. 3d 492, 500 (D.S.C. 2015); 17A Am. Jur. 2d Contracts § 437 (Sept. 2016). She cannot be characterized as an innocent third party.

Rev. Jenkins' vote must be disregarded because he had a conflict of interest. There is no evidence to support a finding that Ward had proper authority to act as a board member. No innocent third party is involved. Consequently, the trial court erred as a matter of law in finding that the Agreement was enforceable.

III. The trial court erred in finding that Refuge Temple waived its objections by operating pursuant to the Agreement from March 2002 through April 2010.

The trial court's finding that Refuge Temple slept on its rights by operating pursuant to the Agreement for eight years, from March 2002 until April 2010, is erroneous as a matter of law. The court cited laches in support of its holding. (R. p. 6).

Laches is an equitable defense to stale claims. Skipper v. Perrone, 382 S.C. 53, 61, 674 S.E.2d 510, 514 (Ct. App. 2009). Laches is not a proper basis for the trial court's holding because it may be used as a shield, but not a sword. 27A Am. Jur. 2d Equity § 108 (Aug. 2016).

Courts have held that the equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is defined as "the voluntary and intentional relinquishment or

abandonment of a known right.” Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465, 85, 470-71 (2007). Laches and waiver both require proof that the party knew of the right and knowingly abandoned it. Id. The burden of proof is on the party claiming laches. Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 478 (Ct. App. 1994). Moreover, the party claiming waiver must demonstrate that the party against whom waiver is asserted “possessed, at the time, actual or constructive knowledge of his rights or all the material facts upon which they depended.” SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla, 415 S.C. 72, 91; 781 S.E.2d 115, 125 (Ct. App. 2015). Respondent Jenkins presented no evidence that Refuge Temple knew about the provision in the agreement upon which she relies or that any objections to it were knowingly abandoned.

There is no evidence that Refuge Temple had any objection to Rev. Jenkins’ continuation as its pastor until his death. Moreover, Rev. Penn testified that it was denominational policy for a church to provide support to a former pastor’s widow for a period of approximately five years. (R. pp. 58–60). Since these things were not at issue, it was error for the trial court to use them as evidence that Refuge Temple was operating pursuant to the written Agreement. (R. p. 6). Furthermore, since Refuge Temple was in agreement with providing support for a time, it cannot be charged with laches for failure to object during this time.

The specific contractual right Respondent Jenkins is claiming in this case is her entitlement to Rev. Jenkins’ salary and housing allowance for the remainder of her life. There is no evidence that Refuge Temple as a church body or the Church Of God In

Christ agreed to grant Respondent Jenkins a contractual right to these things that is enforceable in courts of law.

Refuge Temple presented un rebutted evidence that the only individuals who had knowledge of the provision in the Agreement upon which Respondent Jenkins relies were Rev. Jenkins, Bowman, and Ward. (R. p. 80). As discussed above, Bowman and Ward were appointed by Rev. Jenkins, and they were never properly elected by the congregation. Therefore, their knowledge cannot be imputed to the congregation. Furthermore, Refuge Temple presented testimony that the Agreement and all other church records were removed from the building before Rev. Penn took over as pastor. (R. p. 59). Rev. Penn did not see the Agreement until Refuge Temple was served with the Complaint. (R. p. 59). The First Amendment also permits free termination of any contract made by a church with its pastor.

Since the only evidence Respondent Jenkins provided in support of her laches / waiver claim were actions upon which there was general agreement, she has failed as a matter of law to establish these defenses. Respondent Jenkins did not present any evidence that Refuge Temple knowingly relinquished all objections to the written Agreement she produced, or that any. In particular, Respondent Jenkins did not prove anyone other than Rev. Jenkins' appointees even knew about the Agreement.

Furthermore, Refuge Temple pointed out that other provisions of the written Agreement were not enforced. In particular, the Agreement provides that upon Rev. Jenkins' death she would become a permanent member of the Board of Directors. (R. p. 103, ¶ 6.D.). Had she enforced that provision, Respondent Jenkins would have been on the Board and could have produced the Agreement and contested the decision as a Board

member. (R. p. 171). The Agreement also provided for a life insurance policy in addition to the continuing salary and housing allowance provision. (R. p. 97). Rev. Jenkins, who controlled the church until his death, had it in his power to keep that policy in place. Respondent Jenkins had the Agreement in her possession, since she produced it as an attachment to the Complaint. Therefore, Respondent Jenkins not only failed to overcome her burden of proving laches or waiver, the evidence indicates that she herself is chargeable with laches or waiver. "Laches is a defense in equity, and one who comes to the court seeking equity must come with clean hands." Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004). At a minimum, the trial court's finding that Refuge Temple operated pursuant to the Agreement through 2010 is unsupported by any evidence.

The trial court erred as a matter of law in finding that Refuge Temple waived any objections to the Agreement by operating pursuant to it for a number of years. As a result, the inadequate representation of Refuge Temple in this conflict of interest transaction cannot be cured. Respondent Jenkins is therefore not entitled to recover for breach of contract.

CONCLUSION

The judgment against Refuge Temple should be reversed. Respondent Jenkins' claim arises from an employment agreement between a church and its minister that is not subject to the jurisdiction of civil courts. Even if civil law applies, uncontradicted evidence demonstrates that none of the signatories of this Agreement were properly authorized. Rev. Jenkins had a conflict of interest, and neither Bowman nor Ward were elected. Furthermore, Ward lacked the qualifications to serve as a board member at the time. Therefore, a quorum cannot be established to support the purported approval by Refuge Temple. Since this is not a transaction involving an innocent third party, these defects are fatal to the enforceability of the Agreement. Finally, the trial court erred as a matter of law in finding that any defects were cured by laches because Respondent Jenkins failed to overcome her burden of proof.

Accordingly, the trial court erred as a matter of law in awarding judgment in favor of Respondent Jenkins. Refuge Temple respectfully requests that this Court reverse the trial court's Order and remand with instructions to direct that the trial court dismiss all claims against Refuge Temple.

Respectfully submitted,

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January 5, 2016

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-01320

Refuge Temple Church Of God In Christ, Inc.,..... Appellant,

v.

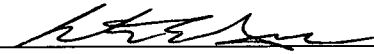
Delories Jenkins,..... Respondent.

CERTIFICATE

I, Peter E. Farr, Esquire, attorney for the Appellant, certify that the Final Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Appellate Court Rules.

January 5, 2017

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