

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

C/A No.: 08-CP-16-0707

Issac Johnson,

Respondent,

v.

E.ve Williams, Davis McFarland,
Charles Douglas, Bernice Wilson,
Wilken Benjamin, Eddie Gwaltney,
Robert Ervin, Kelvin Byrd, Ronald
Mumford, Layton Swinney, Carl
Days, Alton Taylor, Daisey Weaver,
Melvin Warren, Larry Stivers, and
Jerusalem Baptist Church,

of whom

Kelvin Byrd is the

Appellant.

AMENDED RECORD ON APPEAL

John Clark
The Clark Law Firm, LLC
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151-0880
(803) 775 1234

On Behalf of Respondent

Kevin H. Sitnik
The South Carolina Law Firm
515 East Main Street
Lexington, South Carolina 29072
Mailing Address:

Post Office Box 389
Irmo, South Carolina 29063
(803) 520-6573

On Behalf of Appellant

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SC Court of Appeals

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On Behalf of Appellant

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v.

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Days, Alton Taylor, Daisy Weaver,
Melvin Warren, Larry Stivers and
Jerusalem Baptist Church,

of whom

Kelvin Byrd is the Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Trial Transcript p. 386 - 393, 470 - 480

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From: "Cathy Grant" <cgrant@theclarklawfirm.com>
Subject: Johnson, Isaac - Civil Mtr;
Date: January 11, 2012 10:31:44 AM EST
To: <jcox@salleebyandcox.com>, <ksitnik@bellsouth.net>
1 Attachment: 62.5 KB

Good Morning Counselors:

Attached please find the Judgment form in the matter of Isaac Johnson vs. Jerusalem Baptist Church et al. Judge McDonald advised us that this is the Judgment in this case.

If you have any questions regarding this matter, please contact Atty. Clark.

Thanks

Cathy L. Grant
Civil Litigation Legal Assistant
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22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234 • (803) 775-8590 fax
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JAN-09-2012 11:54 From: 81/09/2012 12:01 8433306871

To: 10037750930
CLERK OF COURT

Page: 1/1
PAGE 02

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2008CP1600707

Isaac Johnson vs. David McFarland et al

CHECK ONE:

☒ JURY VERDICT.

This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (CHECK REASON):

SCRCP (Vol. No. 1000000000)

☐ Rule 43(b), SCRCP (Sealed);

☐ Rule 12(b), SCRCP;

☐ Other: _____

☐ ACTION STRICKEN (CHECK REASON):

☐ Binding arbitration, subject to right to agree to arbitrate, vacate or modify arbitration award;

☐ Other: _____

☐ Rule 400, SCRCP;

☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court;

Verdict for plaintiff returned. Post-trial motions under advisement.

Dated at Darlington, South Carolina, this 15th day of July, 2011

Court Reporter: PAMELA CARTEE

Stephanie P. McDaniel
PRESIDING JUDGE - THE HONORABLE ~~STEPHANIE P. MCDANIEL~~
CLERK

This judgment was entered on the JULY, 2011, and a copy mailed first class this, to attorneys of record or to parties (when appearing pro se) as follows:

John Derrick Clark Clark Law Firm, LLC P.O. Drawer
580 Seaside, SC 29151

James C. Coyle, Esq.
William H. Davidson/H Davidson, Lindemann, PA P.O.
Box 8563 Columbia, SC 29202-2563
Charles Douglas, 000000000
Bernice Wilson, 000000000
William Benjamin, 000000000
Eddie Gwaltney, 000000000
Robert Erwin, 000000000
Kelvin Byrd, 000000000
Ronald Munnford, 000000000

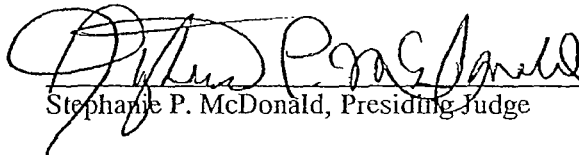
OPTIONAL
SOCA SCRCP Form 4 Revised 06C008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
Isaac Johnson,	)	C/A No. 08-CP-16-0707
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANTS'
v.	)	POST TRIAL MOTIONS
	)	
Jerusalem Baptist Church, et al	)	
	)	
Defendants.	)	

This matter was tried to a jury which resulted in a verdict for the Plaintiff on July 15, 2011. Defendants made several post-trial motions. After consideration and review, Defendants' post-trial motions are denied, and the jury verdict is confirmed.

IT IS SO ORDERED.

August 31, 2011


Stephanie P. McDonald, Presiding Judge

This judgment was entered on the ___ day of August 2011, and a copy mailed first class this day of August, 2011 to attorneys of record or to parties as follows:

Attorney for Plaintiff

John D. Clark, Esquire
Post Office Box 880
Sumter, SC 29151

Attorneys for Defendants

James C. Cox, Jr., Esquire
Post Office Box 519
Hartsville, SC 29551

CLERK OF COURT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Circuit Court

Stephanie P. McDonald
Circuit Court Judge

Case No. 08-CP-16-0707

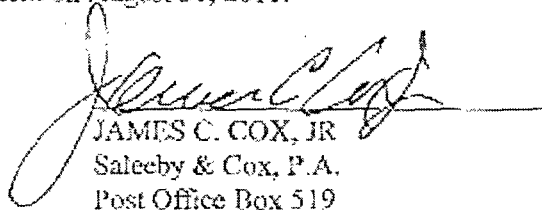
Isaac Johnson..... Respondent

v.

Elve Williams, David McFarland, Charles
Douglas, Bernice Wilson, Wilken Benjamin,
Eddie Gwaltney, Robert Ervin, Kelvin Byrd
Ronald Mumford, Layton Swinney, Carl
Days, Alton Taylor, Daisy Weaver, Melvin
Warren, Larry Stivers (Stivender), and
Jerusalem Baptist Church, of whom,
Jerusalem Baptist Church, Kelvin Byrd and
Charles Douglas are..... Appellants

NOTICE OF APPEAL

Defendants Jerusalem Baptist Church, Kelvin Byrd and Charles Douglas, appeal the jury verdict and judgement of the Honorable Stephanie P. McDonald, dated August 31, 2011. Appellants received written notice of entry of this judgement on August 31, 2011.


JAMES C. COX, JR.
Saleeby & Cox, P.A.
Post Office Box 519
Hartsville, SC 29551
843-332-1531
Attorney for Appellants

Hartsville, SC
September 26, 2011

Other Counsel of Record:
John D. Clark, Esquire
Post Office Box 880
Sumter, SC 29151
803-775-1234
Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	
Isaac Johnson,	)	
Plaintiff,	)	July 11, 2011
	)	
v.	)	
	)	2008-CP-16-0707
	)	
	)	
Elve Williams, David McFarland, Charles	)	
Douglas, Bernice Wilson, Wilken Benjamin,	)	
Eddie Gwaltney, Robert Ervin, Kelvin Byrd	)	
Ronald Mumford, Layton Swinney, Carl	)	
Days, Alton Taylor, Daisy Weaver, Melvin	)	
Warren, individually, and as Deacons and	)	
Trustees of Jerusalem Baptist Church, and	)	
Jerusalem Baptist Church,	)	
	)	
Defendants.	)	

BEFORE

THE HONORABLE STEPHANIE P. MCDONALD

APPEARANCES

James C. Cox, Esquire
Attorney for the Plaintiff

John D. Clark, Esquire
Attorney for the Defendants

Pamela Ozment-Cartee
Circuit Court Reporter

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1 smcdonaldj@sccourts.org, so I can reply back to you, and
2 then I'll have hard copies for y'all in the morning.

3 **MR. CLARK:** Yes, ma'am, Your Honor.

4 **THE COURT:** And then, you know, obviously we will
5 refine that charge throughout the morning as we determine
6 what's going to the jury. It's going to be a little bit of
7 a complicated Verdict Form to put together. So, I think
8 nine would be better. I'm sorry.

9 **MR. CLARK:** Yes, Your Honor, that's fine. Are any of
10 those capitals or case sensitive?

11 **THE COURT:** I don't think it's case sensitive. I
12 usually do it all in lower caps.

13 **MR. CLARK:** Yes, Your Honor.

14 **THE COURT:** Anything from the plaintiff before we
15 recess for the evening?

16 **MR. CLARK:** No, ma'am.

17 **THE COURT:** From the defense?

18 **MR. COX:** No, Your Honor, thank you.

19 **THE COURT:** Thank y'all for staying a little bit
20 later than normal. We're hoping to get the jury out of here
21 for the weekend and y'all. All right, we're at ease.

22 (Whereupon, the Court stands down for day
23 four of trial at 5:55 p.m..)

24 -- END OF DAY FOUR --

1 (Whereupon, court resumes the trial of the
2 case at 9:08 a.m. on Friday, July 15, 2011.)

3 -- DAY FIVE OF TRIAL --

4 **THE COURT:** Good morning, everybody. Mr. Clark,
5 yesterday, before we left for the evening, we were
6 discussing whether the Plaintiff might like to review the
7 complaint. What you might like to leave in, or perhaps
8 voluntarily dismiss. You certainly don't have to
9 voluntarily dismiss anything. But for purposes of trying to
10 clean this up, before we decide what causes of action will
11 go to the jury. Have you and your clients had a chance to
12 discuss that, take a look at that?

13 **MR. CLARK:** Yes, Your Honor.

14 **THE COURT:** All right. If you could just tell us
15 about it, I would appreciate it.

16 **MR. CLARK:** May I have one minute?

17 **THE COURT:** Of course.

18 (PAUSE.)

19 **MR. CLARK:** Your Honor, as to the wrongful discharge
20 and breach of contract, I believe that goes to all of the
21 defendants. The liable charge goes to Mr. Douglas, and Mr.
22 Byrd. The slander charge goes to Mr. Byrd, and Mr. Days.

23 **THE COURT:** And, sir, tell me if you could again on
24 the record what Mr. Days involvement was with respect to the
25 slander charge.

1 **MR. CLARK:** He made a statement --- he testified to
2 it Your Honor, to the locksmith, that Mr. Johnson had been
3 fired and terminated, and was no longer in the capacity.
4 And our position is that that was an untrue statement. It
5 tends to defame, and it goes to his profession.

6 **THE COURT:** Okay.

7 **MR. CLARK:** That is the evidence with regard to Mr.
8 Days.

9 **THE COURT:** Thank you, sir.

10 **MR. CLARK:** Your Honor, I believe the --- We have
11 abandoned the malicious prosecution.

12 **THE COURT:** Yes, sir.

13 **MR. CLARK:** Your Honor, I believe the tortuous
14 interference goes to all of the defendants as well, because
15 they all voted to terminate Reverend Johnson. They knew of
16 his contract. It was intentional. No justification in it.
17 And it resulted in damages to him. And, the abuse of
18 process, Your Honor, we admit.

19 **THE COURT:** Thank you, sir.

20 **MR. CLARK:** And that is really all I have to say.

21 **THE COURT:** I'm sorry?

22 **MR. CLARK:** That is really all I have.

23 **THE COURT:** What about punitive damages. What is
24 your position on punitive damages?

25 **MR. CLARK:** Your Honor, we have not --- the elements

1 for punitive damages have not been established.

2 **THE COURT:** So, do you withdraw those as to all
3 causes of action?

4 **MR. CLARK:** Yes, ma'am.

5 **THE COURT:** Thank you. That will help with our
6 charge preparation, and it is certainly appreciated.

7 Anything further from the Plaintiff before we take up
8 motions from the defendant?

9 **MR. CLARK:** No, Your Honor.

10 **THE COURT:** Thank you, sir. Mr. Cox.

11 **MR. COX:** If it please, the Court. I renew the
12 motions that I made at the end of the plaintiffs case as has
13 been set forth verbatim on the record.

14 As for the civil conspiracy, I do not believe that a
15 conspiracy has been shown. In the defendant's pleadings,
16 they stated that they at no time acted individually. They
17 were acting in their official capacity for the church. And
18 where there is a basis for the belief for the individuals
19 acting, even if that assumption turns out on all factors in
20 hindsight to be wrong, it can't be a conspiracy to harm
21 someone. If we did that, then no one would be able to sit
22 down, weight the facts, reach a conclusion. We all may
23 reach a different conclusion based upon our position.

24 Also, to be a member of a board, you receive
25 information and vote affirmatively for something, in my

1 opinion, you cannot be held legally responsible for that
2 vote, where based upon the facts presented, a reasonable
3 person would have reached the same conclusion. And, I think
4 that exist throughout this whole case.

5 For the slander and the liable, as you know, truth is a
6 complete defense. But, again, acting for the church, not in
7 their individual capacity, a person hearing if at the time,
8 the slander and the liable occurred, if they --- if they
9 knew everything that was said in this courtroom, there is a
10 reasonable basis that the information that he had was true.

11 Tortuous interference with a contract, I don't think
12 you can have tortuous interference of a contract where in
13 this case they had two documents. They had the
14 constitution, and they had the pastor's contract. The
15 pastor's contract says the constitution and by-laws control.
16 And, you know, the layman that wrote that contract, they
17 were pretty darn smart, because they put in the contract
18 something that we normally don't see. Now, it may be in a
19 lot of religious constitutions, not that I have that much
20 experience with them. The people wrote in the constitution
21 that they gave the Deacons the authority to be zealous in
22 their duties, and guarding the peace of the church. And
23 zealous means to go to the extreme. Take extreme measures.
24 The pastor says, I think what they did was extreme. But
25 that was the authority given to them. And so, if you have a

1 reasonable belief for your authority and you react, which I
2 think they did, there can't be an interference with the
3 contract.

4 Wrongful discharge. Again, where you think you have a
5 basis that you can put your finger on and point to, the
6 actions of the pastor, and the conduct of the pastor, and
7 then acting within the parameters of the constitution and
8 the contract; notice ninety days. Write the check. By
9 doing that, there could not be a breach of contract.

10 And, we also remember that the pastor held the check
11 for forty-five days. We think that he accepted that. Now
12 we believe that all of the charges should be dismissed.

13 **THE COURT:** Thank you, sir. Mr. Clark.

14 **MR. CLARK:** Your Honor, according to the check, I
15 believe that it was a meeting of the minds, and that is
16 clearly --

17 **THE COURT:** I agree with you that the meeting of the
18 minds issue is an issue for the jury.

19 **MR. CLARK:** Your Honor, as for the wrongful
20 termination, it is a jury question of whether they acted
21 within the contract or the constitution. That is subject to
22 more than one interpretation, and therefore it is a jury
23 question.

24 And as far as the tortuous interference, Mr. Cox said -
25 -- I believe he said, that they did what they thought was

1 right, or what they believed to be right. But, there is a
2 question about whether they had justification, which is one
3 of the elements of tortious interference of the contract.
4 They had that knowledge of the contract, intentionally
5 procured to breach. And absence of justification is a real
6 question about whether that language that he cites in the
7 constitution gave them justification. And also our
8 contention is that the contract extends the protections
9 under the constitution. It does not conflict with it, it
10 extends the protection.

11 And therefore, the remaining causes of actions are jury
12 questions, Your Honor.

13 **THE COURT:** Thank you, sir. Anything further before
14 I give you the Court's ruling?

15 **MR. COX:** No, ma'am.

16 **THE COURT:** Thank you, counsel. I appreciate both of
17 your arguments. Let me go ahead and put the ruling of the
18 Court on the record.

19 As to civil conspiracy, the Court is going to Directed
20 Verdict in favor of the defendants on that, primarily
21 because, as y'all know as Batson versus Wade, and Todd
22 versus State Farm Mutual Auto Insurance Company, the
23 Plaintiff must plead special damages outside those of the
24 other torts, or the breach of contract. Mr. Clark, I think
25 you have done an excellent job of putting the Plaintiff and

1 your witnesses up to show your damages. But I don't think
2 we're shown any special damages such that would justify a
3 cause of action for civil conspiracy.

4 I also agree that the elements have not quite been met
5 here on the other grounds, because people voting in that
6 capacity on the volunteer board. I just don't see any
7 combination of two or more persons who have joined for the
8 purposes of injuring the Plaintiff, that have caused special
9 damages.

10 So, I am going to grant a Directed Verdict for all
11 defendants on civil conspiracy.

12 I believe we have withdrawn abuse of process.

13 As to tortuous interference, again, I think you have
14 done an excellent job of putting up your damages, the same
15 damages are in effect for tortuous interference cause of
16 action; as for breach of contract. But, more specifically,
17 and particularly in a case such as this one, when we are
18 involved in a non-profit board of directors, I am going to
19 look at that law that says, generally a corporate officer or
20 employee is not liable for tortuously interfering with a
21 corporate contract, because he is a party himself to the
22 contract, as long as he is acting, serving the corporate
23 interest.

24 Whether or not these folks breached the contract, I
25 think is certainly an issue for the jury. But, I do think

1 they thought, and I think the evidence is established that
2 they were acting in the corporate interest of the church.

3 Let me finish putting it on the record, and then I
4 would let you put anything that you would like to disagree
5 with me.

6 I believe that whether they acted outside of the scope
7 of their authority again goes to the breach of contract
8 cause of action, because they are members of the body
9 politic, that is the party to the contract itself.

10 I am going to Directed Verdict as to the tortuous
11 interference with contract, and because the damages, quite
12 frankly, do overlap, and you have done a masterful job of
13 presenting those.

14 As for the breach of contract, and wrongful discharge.
15 I certainly believe that goes to the jury as to the church.
16 I do not however believe that just because a board of non-
17 profit volunteers for seminary volunteers, or church
18 volunteers, voted unanimously to terminate a contract makes
19 them individually liable for such. And, in further support
20 of that, would site y'all to Section 33-56-180, which limits
21 liability for injury caused by an employee of a charitable
22 organization, and that applies to volunteer board of
23 directors, as well as employees. Clearly the intent of the
24 General Assembly is to protect folks when they are acting in
25 that capacity. I believe that it goes to the jury on breach

1 of contract and wrongful discharge as to the church.

2 Now, as for the liable and slander causes of action, I
3 do agree with Plaintiff's counsel, that as to listed
4 individuals, Mr. Douglas and Mr. Byrd for liable, I believe
5 that goes to the jury. As for the slander cause of action
6 as to Mr. Byrd and Mr. Days, I believe that goes to the
7 jury. And I will let both of y'all address both of those,
8 should Mr. Cox need to, and should you need to put that on
9 the record. Let me confer with Judge Baxley and see if we
10 have missed anything. Just a moment, please.

11 (PAUSE.)

12 THE COURT: All right. Anything from the Plaintiff
13 first?

14 MR. CLARK: Your Honor, I just --- the tortuous
15 interference of the contract. I don't believe that the
16 defendants are entitled to a Directed Verdict, because there
17 is a question if they acted outside the scope of their
18 authority, that they contend that they had authority under
19 the constitution. We contend that they did not. The
20 language that they cite in the constitution creates a
21 genuine --- that is a genuine issue of fact that a jury
22 should decide, whether they acted outside of the scope of
23 their authority. And, on that basis, and also I believe
24 there is some evidence that they acted maliciously for the
25 purpose of the jury. Mr. Johnson, and those would be the

1 two bases, that they acted outside of the scope, or acted
2 maliciously, they would not be entitled to protection that
3 the Court cited.

4 **THE COURT:** Thank you, sir. Mr. Cox.

5 **MR. COX:** Your Honor, just one other thing very
6 respectfully. On wrongful discharge, for the Court to find
7 that there has been a wrongful discharge, then the Court has
8 determined that the pastor was an employee of the church,
9 when the church took the position that he was an independent
10 contractor.

11 **THE COURT:** I understand that. The Court is not
12 finding that there is a wrongful discharge. The Court is
13 indicating that I don't have the grounds under the law as
14 set forth for the purposes of granting a Directed Verdict
15 under a miriad of cases to make that ruling. I believe there
16 is a issue of fact on that, and it goes part and parcel to
17 the breach of contract action to the jury as against the
18 church.

19 **MR. COX:** Okay. Thank you, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. CLARK:** Nothing further, Your Honor.

22 **THE COURT:** We will work on cleaning up the jury
23 charges, and give those to y'all, give y'all a few minutes
24 to look at those. I'll print copies for you, and we will
25 also have a verdict form for you as well.

1 Yes, sir. Mr. Cox.

2 **MR. COX:** One other thing that I wanted to call to
3 the attention of the Court, and Mr. Clark. The Court ruled
4 out of the presence of the jury that Gerald Malloy, was not
5 an attorney for the church. I believe Mr. Clark asked Mr.
6 Malloy in the presence of the jury, if he had prepared a
7 will for the pastor. And Mr. Malloy said, he had. Mr.
8 Malloy went back and checked last night, and at the time
9 that will was prepared by his staff. Also, a simple power
10 of attorney was also --- two separate wills. And I ask the
11 Court --- does the Court think that we need to tell the jury
12 that you --

13 **THE COURT:** I think we said that on the record in
14 front of the jury.

15 **MR. COX:** Okay. Thank you, Your Honor.

16 **MR. CLARK:** I don't intend to argue that.

17 **MR. COX:** If he says he is not going to argue that,
18 that's fine.

19 **THE COURT:** Honestly, I do not feel that that
20 impacted either one of y'all's cases one way or the other.
21 But, I appreciate your arguments. We did make that ruling
22 in front of the jury --

23 **MR. COX:** -- Thank you --

24 **THE COURT:** -- as I recall, the Court asked y'all to
25 argue it in front of the jury. So, I think that point was

1 well made.

2 MR. COX: Thank you, Your Honor.

3 THE COURT: Anything further before I take about ten
4 or fifteen minutes to clean up these jury charges and give
5 them to you to look at?

6 MR. CLARK: Not from the Plaintiff.

7 MR. COX: Not from the defendant. Thank you, Your
8 Honor.

9 THE COURT: We will be at ease.

10 MR. COX: Thank you.

11 (Whereupon, a recess was taken from 9:18 a.m.
12 until 9:28a.m..)

13 THE COURT: Gentlemen, Judge Baxley is working on the
14 verdict form. We will have that for you to review shortly.

15 Anything from the Plaintiff with respect to the jury
16 charges?

17 MR. CLARK: No, Your Honor.

18 THE COURT: Thank you, sir. From the defendant?

19 MR. COX: No, Your Honor. Thank you.

20 THE COURT: Thank you. We will be at ease for a
21 minute, until we get the verdict form.

22 (PAUSE.)

23 THE COURT: Thank you, sir.

24 MR. CLARK: Thank you.

25 (PAUSE.)

1 **MR. COX:** To show the Court that there can only be
2 one monetary reward. Having found for the Plaintiff on at
3 least one cause of action, we the jury award actual damages
4 to the Plaintiff in the amount of.

5 **THE COURT:** That is to true, to prevent duplication
6 of damages now. I guess there might be some confusion if
7 they found against two defendants instead of three. I mean,
8 we could have "A" "B" and "C" if y'all think that would
9 elevate confusion on the jury's part.

10 **MR. COX:** Well, I just call that to the Court's
11 attention. Whatever the Court thinks is best.

12 **THE COURT:** Well.

13 **MR. COX:** That just jumped out to me.

14 **THE COURT:** That is why I am asking y'all how y'all
15 want it done. Mr. Clark.

16 **MR. CLARK:** No objection.

17 **THE COURT:** You have no objection?

18 **MR. CLARK:** No, ma'am.

19 **THE COURT:** Thank you.

20 **MR. COX:** No objection, Your Honor.

21 **THE COURT:** Thank you, sir. All right. Finding
22 there to be no objection to the verdict form.

23 Before we bring the jury in, I just want to let both of
24 the parties know how hard your counsel, and what a great job
25 they have done for y'all. For both the Plaintiff's side and

1 Q. Now, are members assigned to the deacons for counseling
2 or for as a representative if they need counseling?

3 A. That is correct.

4 Q. Did any of these deacons ever come to you and say a
5 church member that's assigned to me needs to see you
6 Reverend, can you see them?

7 A. Yes, they have.

8 Q. Who did that?

9 A. Deacon Douglas has come to me. Deacon Wilkins has come
10 to me.

11 Q. What was your response?

12 A. Usually we went to see them, or we went immediately
13 over, yes. We responded constantly. Other individuals
14 have come to me with responses about members within our
15 church having a need for care and support. And we
16 would be on the phone constantly.

17 Q. Thank you, Reverend Johnson, those are all the
18 questions I have.

19 A. Yes, sir, thank you.

20 **MR. CLARK:** Nothing further. Thank you, Your Honor.

21 **THE COURT:** Thank you, sir. You may step down.

22 **MR. CLARK:** Your Honor, the plaintiff rests.

23 **THE COURT:** Ladies and gentlemen, the plaintiff has
24 rested. At this time there are a few matters that the Court
25 will need to take up with the parties and their attorneys.

1 So, I'm going to ask y'all to retire to your jury room for
2 your break a little bit earlier than we normally would.

3 Why don't y'all come back at four o'clock, plan on
4 coming back then. Y'all may go outside, walk around, but it
5 is also time for you to select your foreman or foreperson of
6 the jury. Anyone may serve as the foreperson except the
7 alternate, who may not serve as the foreperson.

8 However, y'all may participate in this election and
9 vote if you like. So I'm going to leave that to you and we
10 will inquire later about your selection of a foreperson. If
11 that individual will sit right here on the end for me when
12 you return, that will be wonderful.

13 So y'all go ahead and take your break and we'll see you
14 around four.

15 (Whereupon the jury exits the courtroom at
16 3:34 p.m.)

17 **THE COURT:** Let's entertain any motions before we
18 take our afternoon break in case there are some issues I
19 need to think about, or take under advisement. Anything for
20 the Plaintiff?

21 **MR. CLARK:** No, ma'am.

22 **THE COURT:** Mr. Cox?

23 **MR. COX:** Yes, ma'am. On behalf of the defendants,
24 Wilkins Benjamin, Eddie Gwaltney, Robert Irvin, Ronald
25 Munford, Layton Swinney, Alton Taylor, Daisy Weaver, and

1 Melvin Warren, I would ask the Court to dismiss this action
2 or enter a verdict for them, because they have not been
3 referred to. There has been no testimony that they did
4 anything wrong, or failed to do anything wrong, or in anyway
5 violated any duties entrusted upon them.

6 THE COURT: MR. CLARK:

7 MR. CLARK: Your Honor, that is not correct. Deacon
8 Douglas testified to terminate Reverend Johnson was a
9 unanimous vote of the Joint Board. That was his testimony,
10 that it was unanimous vote of the Joint Board and that would
11 include all of these individuals that Mr. Cox listed. That
12 would be my response, Your Honor.

13 Mr. Cox: Voting for something though, Your Honor, is
14 not an action that can be wrong.

15 MR. CLARK: Of course it can, Your Honor.

16 MR. COX: Because you vote, you're on the board ---
17 if they did vote or how they voted ---

18 THE COURT: I'm going to deny the motion at this
19 time, but we may revisit it at the end of defendant's case.
20 What's your next?

21 MR. COX: I would then submit with the Court's reason
22 on that, then the suit against Jerusalem Baptist Church
23 should have to be dismissed, because the church, from the
24 plaintiff's case, the actions taken were illegal and
25 improper. And so it cannot be held accountable to the

1 church. The church is run by the congregation.

2 MR. CLARK: Your Honor, these members, these agents
3 of the church, representing the church fired him.

4 THE COURT: I am going to deny that motion at this
5 time. How about the specific causes of action, anything you
6 want to assert regarding the specific causes of action?

7 MR. COX: Your Honor, we submit that the action
8 against all defendants should be dismissed, because the
9 acceptance of the check, the holding of the check,
10 attempting to restrict the endorsement is accord and
11 satisfaction.

12 MR. CLARK: Your Honor, accord and satisfaction
13 requires a meeting of the minds. There was no meeting of
14 the minds here.

15 THE COURT: The Court has reviewed the case law on
16 accord and satisfaction, and general contractual principles.
17 I believe there is a jury issue on the meeting of the minds
18 question. I'm going to deny the motion as to accord and
19 satisfaction.

20 MR. CLARK: With the Court's patience, one more.

21 THE COURT: You may. Talk to me about malicious
22 prosecution.

23 MR. CLARK: Your Honor, could I speak on that point?
24 Your Honor, we dismissed Mr. Stinder and we would abandon
25 that cause of action, Your Honor.

1 **THE COURT:** Thank you.

2 **MR. COX:** When the church body during a called
3 meeting more than one time ratified the actions of the Joint
4 Board, that in itself makes the action of the Joint Board
5 legal from the time it was first enacted. And with that,
6 the cause of action would have to be dismissed.

7 **THE COURT:** Which cause of action?

8 **MR. COX:** Your Honor, I submit all of them.

9 **MR. CLARK:** Your Honor, it's a jury question as to
10 whether they ratified it or not. I move that his motion be
11 denied.

12 **MR. COX:** That would eliminate a civil conspiracy.

13 **THE COURT:** I'm going to deny the motion at this
14 time. I'll chat with y'all in chambers to see what we think
15 needs to remain, perhaps moving forward to clean up the
16 case. But I'm going to deny the motion at this time. What
17 about abuse of process? Are you choosing to leave that one
18 in, Mr. Clark, or are you going to get rid of that one, as
19 well?

20 **MR. CLARK:** Yes, Your Honor, I believe there is
21 evidence to permit that cause of action.

22 **MR. COX:** Your Honor, with the ratification of the
23 actions by the congregation there can't be an abuse of
24 process against all the defendants.

25 **THE COURT:** The Court is inclined to agree with you

1 on that one. We have discussed this cause of action. I
2 think there is enough for it to go to the jury at this time,
3 but I'll hear from Mr. Clark. We will, of course, visit all
4 of this at the end of the defendant's case. Mr. Clark,
5 would you like to go on the record as to abuse of process?

6 **MR. CLARK:** Yes, Your Honor. As I understand abuse
7 of process, it's use of a legal process with an ulterior
8 purpose. The Joint Board issued a letter threatening
9 Reverend Johnson with a criminal charge.

10 I submit to you that the evidence is that they did not
11 have authority to do that. And that the ulterior purpose
12 was to fire him, ruin his reputation, and carry out their
13 agenda of removing him as pastor. And that would be my
14 response.

15 **THE COURT:** At this point we globally discussed the
16 causes of action, except I believe, the contract and the
17 wrongful discharge in light of the testimony that the Joint
18 Board voted unanimously. However, my concern, the Court's
19 concern is which members of the Joint Board might still be
20 in under this specific intentional Tort cause of action. I
21 think we need to look at that whenever we visit that at the
22 end of your case, if you like, or we can revisit that now.

23 **MR. CLARK:** I think the only ones it could be is the
24 ones that Reverend Johnson or someone as having contact of
25 communication with him.

1 **THE COURT:** I'm inclined to agree. And that's why.--
2 - I understand your argument on breach of contract and any
3 action taken unanimously by the Joint Board. I think that
4 stays in for now. We will take it under advisement and look
5 at it again at the end of the case.

6 But with respect to the intentional torts remaining,
7 abuse of process, slander per se, liable per se, tortuous
8 interference, I believe we're going to need to look forward
9 at what action, which, if any, individual defendants had
10 with respect to each of those torts alleged moving forward.
11 Y'all understand?

12 **MR. CLARK:** Yes, Your Honor.

13 **MR. COX:** Yes, ma'am. The plaintiff has a duty in
14 this case to prove that.

15 **THE COURT:** I understand that.

16 **MR. COX:** The plaintiff has not done it.

17 **THE COURT:** Well, I need for it to be specified on
18 the record. You can certainly reserve those motions until
19 the end of your case if you would like. But I do want to
20 talk with y'all briefly before we take our afternoon break.

21 **MR. COX:** I don't want to belabor that point until
22 you rule. But, where--- my name is never mentioned in the
23 Court, my name is never said that I did anything wrong,
24 other than may have voted with a group.

25 **THE COURT:** I've ruled on that, I believe. We're

1 talking about the individuals as relate to the specific,
2 intentional Tort causes of action other than wrongful
3 discharge. I want to know who might be able to be directed
4 out under each specific cause of action. We can do that now
5 or we can do that at the end of your case.

6 MR. COX: Thank you, ma'am.

7 THE COURT: Thank you. Mr. Clark?

8 MR. CLARK: Your Honor, I submit, Your Honor, that by
9 Charles Douglas' testimony that all members of the Joint
10 Board voted to terminate the pastor without authorization.

11 THE COURT: I've already denied his motion for
12 Directed Verdict on that point.

13 MR. CLARK: Oh, I was speaking to the intentional --
14 -

15 THE COURT: You may speak to the intentional --- I'm
16 happy to hear from you.

17 MR. CLARK: I withdraw my comments, Your Honor. I
18 didn't know what we you asking me to do.

19 THE COURT: Let's have a chat for a few minutes since
20 the jury is coming back at four, and then we can take our
21 break. It won't take us long.

22 (Whereupon, a recess was taken from 3:45
23 until 4:02 p.m.)

24 THE COURT: Are y'all ready for the jury?

25 MR. COX: Plaintiff is, Your Honor.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
2006-CP-16-00859

Isaac Johnson,

Plaintiff,

vs.

Jerusalem Baptist Church, Charles Douglas,

Kelvin Byrd, and Carl Days,

Defendants.

VERDICT FORM

VERDICT

1. With regard to the Plaintiff's claim for Breach of Contract against the Defendant Jerusalem Baptist Church, we the jury, by a preponderance of the evidence, unanimously find:

_____ For the Defendant.

☒ For the Plaintiff.

2. With regard to Plaintiff's claim for Wrongful Discharge against Defendant Jerusalem Baptist Church, we the jury, by a preponderance of the evidence, unanimously find:

_____ For the Defendant.

☒ For the Plaintiff.

3. With regard to Plaintiff's claim for libel against Defendant Charles Douglas, we the jury, by a preponderance of the evidence, unanimously find:

_____ For the Defendant.

☒ For the Plaintiff.

4. With regard to Plaintiff's claim for libel against Defendant Kelvin Byrd, we the jury, by a preponderance of the evidence, unanimously find:

_____ For the Defendant.

✓ For the Plaintiff.

5. With regard to Plaintiff's claim for slander against Defendant Kelvin Byrd, we the jury, by a preponderance of the evidence, unanimously find:

_____ For the Defendant.

✓ For the Plaintiff.

6. With regard to Plaintiff's claim for slander against Defendant Carl Days, we the jury, by a preponderance of the evidence, unanimously find:

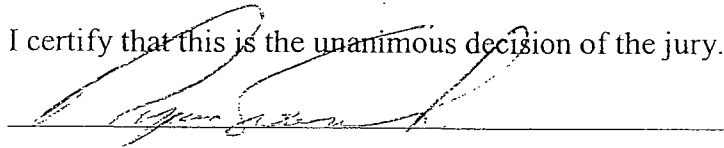
✓ For the Defendant.

_____ For the Plaintiff.

If you have found for the Plaintiff on any cause of action, answer the following question. If you have not found for the Plaintiff on any cause of action, skip the following question, sign the verdict form, and return to the courtroom.

7. Having found for the Plaintiff on at least one cause of action, we the jury unanimously award actual damages to the Plaintiff in the amount of \$100000.00.
- | | |
|--|----------------------|
| a. Breach of Contract/Wrongful Discharge | <u>50</u> % (If any) |
| b. Libel | <u>40</u> % (If any) |
| c. Slander | <u>10</u> % (If any) |

I certify that this is the unanimous decision of the jury.



Ryan Swank July 15, 2011

1 Then, Mr. Suggs, if you could take the verdict form
2 back and the evidence back. They may begin deliberating.
3 Please bring the alternate out.

4 (Whereupon, the jury begins deliberations at
5 12:37 p.m..)

6 **THE COURT:** Mr. Flowers, I just wanted to bring you
7 in and thank you so much for your time, and for sitting and
8 so attentively listening through this case. However, you
9 get to go before everybody else does. Let me come and shake
10 your hand.

11 (PAUSE.)

12 **THE COURT:** All right. We will be at ease until
13 further notice.

14 **MR. COX:** Thank you, Your Honor.

15 **THE COURT:** Anything from the Plaintiff before we go?

16 **MR. CLARK:** No, Your Honor.

17 **THE COURT:** From defendants?

18 **MR. COX:** No, ma'am. Thank you.

19 **THE COURT:** Thank y'all.

20 (Whereupon, the Court stands down while the
21 jury deliberates.)

22 (Whereupon, at 1:48 a note is presented to
23 the Court from the jury.)

24 **THE COURT:** Please let the record reflect that we
25 have received Court's Exhibit 3, a question from the jury

1 regarding question seven of the verdict form, and the
2 allocation of damages for the various causes of action.
3 And I have provided counsel with the Court's proposed
4 language in response to that question. And I would now
5 like to hear from Mr. Clark.

6 **WHEREUPON, COURT'S EXHIBIT**
7 **NUMBER 3 IS MARKED FOR THE**
8 **RECORD.**

9 **MR. CLARK:** Your Honor, I am looking at Court
10 Exhibit Number 3, which I believe is the question from
11 the jury. And they ask simply, how do we apply percentage
12 of damages. Is it from the amount of, and then they put a
13 question mark. And the Court's response is, award damages
14 on more than one cause of action, you must next determine
15 what percentage of damages of the award that you intend
16 to award as each individual cause of action. I understand
17 this, Judge. I really do. But I still think that it may
18 cause them some problems in determining the percentages.
19 I don't think its necessary that we know the percentages.
20 If we just know how much they award each cause of action.
21 That is our position, Your Honor. And we will, of course,
22 accept whatever the Court decides.

23 **THE COURT:** I appreciate your position. Mr. Cox?

24 **MR. COX:** Your Honor, I think the Court's duty is
25 to answer the question as asked. And I think you have

1 answered the question that they asked, whether we like the
2 question or not. And I think this is the only response
3 really we could give to them.

4 **THE COURT:** Anything further?

5 **MR. CLARK:** No, ma'am.

6 **THE COURT:** Mr. Clark, you have preserved your
7 objections for the record. I am going to respond with
8 what we have typed and put in Court's Exhibit 4. It
9 shall be protected as part of the record. And we will
10 see if we get an additional question.

11 **MR. CLARK:** Judge, just one thing. May I suggest
12 we change that --- there is a three on there right now.

13 **THE COURT:** Oh, the question is Court's Exhibit 3.
14 We are going to put a sticker on the response, which will
15 be Court's Exhibit 4.

16 **MR. CLARK:** Yes, ma'am. But looking at this it has
17 Exhibit 3 on the form.

18 **THE COURT:** Right. The response is to the question
19 of Court's Exhibit 3. But there will be a sticker.

20 **MR. CLARK:** I understand. Yes, ma'am. Thank you.

21 **THE COURT:** Thank y'all very much.

22 **WHEREUPON, COURT'S EXHIBIT**
23 **NUMBER 4 IS MARKED FOR THE**
24 **RECORD.**

25 **THE COURT:** All right. We will be at ease, and you

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

C/A No.: 08-CP-16-0707

Issac Johnson,

Respondent,

v.

Eve Williams, Davis McFarland, Charles
Douglas, Bernice Wilson, Wilken Benjamin,
Eddie Gwaltney, Robert Ervin, Kelvin Byrd,
Ronald Mumford, Layton Swinney, Carl Days,
Alton Taylor, Daisey Weaver, Melvin Warren,
Larry Stivers, and Jerusalem Baptist Church,

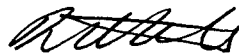
of whom

Kelvin Byrd is the

Appellant.

CERTIFICATE OF COUNSEL

I certify that the AMENDED Record on Appeal contains all material proposed to be included by all of the parties and not any other material, and that a copy of the same was mailed to John Clark, Esq, at Post Office Drawer 880, Sumter, South Carolina 29151-0880.



1/25/2013

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