

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED
APR 18 2022
SC Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

George M. McFaddin, Jr. Circuit Court Judge

Case No. 2020-CP-43-01863, Circuit Court
Appeals Court Docket No.: 2021-001368

New Life Apostolic Church, Inc., and Ricky Finklea Appellants,

v.

Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr.,
Lang Priester, David S. Johnson, Sr., and Paul C. Johnson..... Respondents.

INITIAL BRIEF OF APPELLANTS

Charles J. Boykin (SC Bar No. 65149)
Kenneth A. Davis (SC Bar No. 66416)
Peter E. Keup (SC Bar No. 76986)

BOYKIN & DAVIS, L.L.C.
P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

cjboykin@boykinlawsc.com
kdavis@boykinlawsc.com
pkeup@boykinlawsc.com

Attorneys for Appellants New Life
Apostolic Church, Inc., and Ricky
Finklea

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

STANDARD OF REVIEW 11

ARGUMENT 12

 I. 15

 II. 19

 III. 22

 IV. 26

 V. 31

CONCLUSION 34

TABLE OF AUTHORITIES

Federal Cases

| | |
|---|--------|
| <i>Jones v. Wolf</i> 443 U.S. 595 (1979) | 19, 20 |
|---|--------|

State Cases

| | |
|---|------------|
| <i>Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers,</i> 355 S.C. 104, 584 S.E.2d 375 (2003) | 11 |
| <i>Fleming v. Rose,</i> 350 S.C. 488, 567 S.E.2d 857 (2002) | 11 |
| <i>Regions Bank v. Schmauch,</i> 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) | 11 |
| <i>Redwend Ltd. P'ship v. Edwards,</i> 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003) | 11 |
| <i>Sauner v. Public Serv. Auth.,</i> 354 S.C. 397, 581 S.E.2d 161 (2003) | 11, 28, 29 |
| <i>Hendricks v. Clemson Univ.,</i> 353 S.C. 449, 578 S.E.2d 711 (2003) | 11 |
| <i>McNair v. Rainsford,</i> 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998) | 11 |
| <i>Bayle v. South Carolina Dep't of Transp.,</i> 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001) | 11 |
| <i>Ferguson v. Charleston Lincoln Mercury, Inc.,</i> 349 S.C. 558, 564 S.E.2d 94 (2002) | 11 |
| <i>Baril v. Aiken Reg'l Med. Ctrs.,</i> 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002) | 11 |
| <i>Young v. South Carolina Dep't of Corrections,</i> 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999) | 11 |
| <i>SCRCP." Lanham v. Blue Cross & Blue Shield of S.C., Inc.,</i> 349 S.C. 356, 563 S.E.2d 331 (2002) | 12 |
| <i>Duke Power Co. v. South Carolina Public Service Comm'n,</i> 284 S.C. 81, 326 S.E.2d 395 (1985) | 15 |

| | |
|---|-----------|
| <i>Dockside Ass'n, Inc. v. Detyens Simmons,</i> 285 S.C. 565, 330 S.E.2d 537 (Ct. App. 1985) | 15 |
| <i>Bailey v. Bailey,</i> 312 S.C. 454, 441 S.E.2d 325 (1994) | 15 |
| <i>Town of Sullivan's Island v. Felger,</i> 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995) | 15-16, 16 |
| <i>Brock v. Bennett,</i> 313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994) | 17,18 |
| <i>Protestant Episcopal Church v. Episcopal Church,</i> 421 S.C. 211, 806 S.E.2d 82 (2017) | 19, 20 |
| <i>Pearson v. Church of God,</i> 325 S.C. 45, 478 S.E.2d 849 (1996) | 19 |
| <i>All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina,</i> 385 S.C. 428, 685 S.E.2d 163 (2009) | 20, 21 |
| <i>Jenkins v. Refuge Temple Church of God in Christ, Inc.,</i> 424 S.C. 320, 818 S.E.2d 13 (Ct. App. 2018) (where after reviewing the church's bylaws and governing document, the Court found that the former pastor improperly appointed members to the Board as the manner of appointment did not comply with the bylaws, thus, the Board lacked authority to execute a contract) | 22 |
| <i>Carolina Renewal, Inc. v. S.C. DOT,</i> 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009) | 23 |
| <i>Beall v. Doe,</i> 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984) | 23 |
| <i>Snavelly v. AMISUB of S.C., Inc.,</i> 379 S.C. 386, 665 S.E.2d 222 (Ct. App. 2008) | 23 |
| <i>Pye v. Aycock,</i> 325 S.C. 426, 432 and 436,480 S.E.2d 455, 458 and 460 (Ct. App. 1997) | 25 |
| <i>Lafitte v. Bridgestone Corp.,</i> 381 S.C. 460, 473n.9, 674 S.E.2d 154, 161 (2009) | 25 |
| <i>Crewe v. Blackmon,</i> 289 S.C. 229, 233, 345 S.E.2d 754,756 (Ct. App. 1986)..... | 26 |
| <i>Shaw v. Aetna Cas. & Sur. Ins. Co.</i> 274 S.C. 281, 285, 262 S.E.2d 903, 905 (1980) | 26 |

| | |
|---|--------|
| <i>George v. Empire Fire & Marine Ins. Co.</i> , 336 S.C. 206, 519 S.E. 2d 107 (Ct. App. 1999) | 27 |
| <i>Pitts v. Jackson Nat. Life Ins. Co.</i> 574 S.E.2d 502 (S.C. Ct. App. 2002)..... | 29 |
| <i>Compton v. S.C. Dept. of Corrections</i> , 392 S.C. 361, 709 S.E.2d 639 (2011)..... | 31 |
| <i>Powell v. Immanuel Baptist Church</i> 219, 221; 199 S.E.2d 60, 61 (1973) | 31 |
| <i>Williams v. Jones</i> , 92 S.C. 342, 75 S.E. 705 (1912) | 32 |
| <i>Helsel v. City of North Myrtle Beach</i> , 307 S.C. 29, 413 S.E.2d 824 (1992) | 32 |
| State Statutes | |
| South Carolina Rules of Civil Procedure 17(a) | 15 |
| South Carolina Rules of Civil Procedure 56 | 11, 12 |
| Other | |
| Church Constitution, Article I, Section II | 4 |
| Church Constitution, Article III, Section I..... | 4 |
| Church Constitution, Article IV, Section I | 4 |
| Church Constitution, Article V, Section I | 4, 5 |
| 21 C.J.S. <i>Courts</i> § 274 | 25 |

STATEMENT OF ISSUES ON APPEAL

- I. **Whether the Circuit Court erred in finding that Plaintiffs had no standing to assert their claims regarding the Property they possessed, maintained, and improved for several years.**
- II. **Whether the Circuit Court erred in determining that it lacked subject matter jurisdiction to adjudicate secular matters of legal authority and property rights because the case involved the interpretation of a corporate document of a religious organization.**
- III. **Whether the Circuit Court erred in determining that there were no issues of material fact as to rights to the Property, which resulted in an award of declaratory relief for Defendants and a finding of trespass against the Plaintiffs before any discovery was taken in the case.**
- IV. **Whether the Circuit Court erred in summarily dismissing Plaintiffs' causes of action for reformation of the deeds and quantum meruit/unjust enrichment on grounds that Plaintiffs failed to state a claim even though Plaintiffs demonstrated all required elements for the claims.**
- V. **Whether the Circuit Court erred in denying Plaintiffs' motion for a preliminary injunction to preserve the status quo during the pendency of the proceedings.**

STATEMENT OF THE CASE

This case involves a dispute over church property located in Sumter, South Carolina (“Property”). The Plaintiffs and Appellants in this matter, New Life Apostolic Church (“NLAC”), and NLAC’s pastor, Ricky Finklea (hereinafter referred to collectively as “Plaintiffs”), used, maintained and improved the Property in dispute from the creation of the NLAC in 2014 until they were removed from the Property in April 2022 as a result of the Circuit Court Order that is the subject of this appeal.

Ricky Finklea was the Pastor of the Sumter Congregation of the Progressive Church of Our Lord Jesus Christ, Inc. (“Progressive Church”) from 2003 until July of 2014. In July of 2014, Pastor Finklea and the members of the Sumter Congregation decided to disassociate from the Progressive Church and form a successor church, NLAC. Pastor Finklea notified Progressive Church leadership of the disassociation and the formation of NLAC. The senior leader of the Progressive Church at the time, Presiding Bishop Edward Smith, acknowledged the disassociation and NLAC’s continued use of the Property. NLAC then used, maintained, and improved the property for several years without any interference or objection from the Progressive Church.

After Bishop Smith became ill in 2019, the Individual Defendants in this case (Theodore Jenkins, Sr., Lang Priester, David S. Johnson, Sr., and Paul C. Johnson) began to assert ownership rights over property that had been associated with the Progressive Church, including the Sumter Property. Their actions amplified after Bishop died in November of 2020 and culminated in a letter dated December 11, 2020, sent to Pastor Finklea on behalf of the Progressive Church, which directed Finklea to “vacate the Progressive Church’s property in Sumter, South Carolina and remove all of [his]

belongings.” Finklea SJ Affidavit, ¶ 51 and Exhibit 12. Because of this threat, Plaintiffs initiated this case seeking adjudication of rights relating to the Property and relief from the improper threat of removal.

Before discovery commenced in the lawsuit, Defendants filed a motion for partial summary judgment. Since discovery had not commenced, Defendants based their motion on affidavits and jurisdictional arguments such as a lack of standing and a lack of subject matter jurisdiction due to religious protections. Following a hearing on Defendants’ motion, the Circuit Court entered partial summary judgment in favor of the Defendants and dismissed all of Plaintiffs’ claims.

In this appeal, Plaintiffs/Appellants request reversal of the Circuit Court’s November 17, 2021, Order (“Order”), which granted partial summary judgment in favor of Defendants. This request for reversal is based on grounds that each of the substantive determinations in the Order are erroneous.

STATEMENT OF THE FACTS

On August 18, 1983, the Progressive Church adopted its Church Constitution, which was filed with the South Carolina Secretary of State’s Office. (Affidavit of Ricky Finklea Submitted in Response to Defendants’ Motion for Partial Summary Judgment (“Finklea SJ Affidavit”, Exhibit 1)). The Church Constitution that was filed in 1983 remains the authoritative legal document relating to the governance of the Progressive Church.

The Church Constitution is silent with respect to ownership of property used by local congregations. Further, the Church Constitution does not impose any trust for the benefit of the national church on local congregation property. The Church Constitution

does not declare that the national church is a “hierarchical church” or establish that the national headquarters has dominion and control over the local congregations or their property. Rather, it is clear from the Church Constitution that the Progressive Church was established as an association of local churches with a common annual meeting. Finklea SJ Affidavit, Exhibit 1.

Further, the Church Constitution directs all local congregations in the church association to bear the name: “Progressive Church of Our Lord Jesus Christ, Inc.” but there is no provision in the Church Constitution that provides that the local congregation property is held on behalf of the national church or national headquarters. Church Constitution, Article I, Section II. Thus, property held by local congregations would have the name of Progressive Church on the deed along with the local congregation’s address or location. *See* Finklea SJ Affidavit, Exhibit 10.

With respect to leadership, the Church Constitution provides for a Board of Bishops that is to consist of no less than three Bishops. Church Constitution, Article III, Section I. The Presiding Bishop is the chairman of the Board of Bishops. Church Constitution, Article IV, Section I. When there is a vacancy on the Board of Bishops, the vacancy must be filled by a member of the Progressive Church’s Board of Presbytery. Church Constitution, Article V, Section I. Further, the only means for filling a vacancy identified in the Church Constitution is an election conducted by the Board of Presbytery. *Id.* The Church Constitution does not, in any way, give the Presiding Bishop or the Board of Bishops the authority to appoint Board members. In other words, the Church Constitution does not provide for a self-perpetuating Board. Rather, it provides only for election of Board members by the Board of Presbytery and that to be qualified for appointment to the Board

of Bishops requires current membership in the Board of Presbytery. Church Constitution, Article V, Section I.

At the time of the adoption of the Church Constitution there were three Bishops, Joel G. Washington, who was the Presiding Bishop, Edward Smith, and Henry J. Breakfield. Finklea SJ Affidavit, ¶ 9. In April of 1987, Bishop Washington died, and Bishop Smith became the Presiding Bishop of the Progressive Church. *Id.* at ¶ 10. In 1988, Bishop Breakfield died leaving Bishop Smith as the only living Bishop in the Progressive Church. *Id.*

Rather than electing new Bishops to fill the vacancies as required by the Church Constitution, the Progressive Church's Board of Presbytery adopted a resolution confirming Bishop Smith as the sole Bishop with executive authority to operate the day-to-day operations of the Progressive Church. *Id.* at ¶¶ 10-11. It is undisputed that Bishop Smith was the only Bishop on the Board of Bishops and made decisions on behalf of the Progressive Church as its governing authority from February 1988 until at least June of 2007. Affidavit of Timothy L. Beard ("Beard Affidavit"), ¶¶ 12-13; Finklea SJ Affidavit, ¶ 12.

By 1998, the Progressive Church had established a congregation in Sumter, South Carolina ("Sumter Congregation"). The Sumter Congregation operated on a property at the corner of Crescent Avenue and North Main Street in Sumter that included a twenty-five by fifty-foot building (with a post office address of 219 Crescent Avenue) which the Sumter Congregation used as a church. Affidavit of Ricky Finklea submitted with Plaintiffs' Motion for a Preliminary Injunction ("Finklea Injunction Affidavit"), ¶ 7. In the early part of 2000, Bishop Smith sent Finklea to the Sumter Congregation and three years later

(2003), Bishop Smith appointed Finklea as the Pastor of the Sumter Congregation. Finklea SJ Affidavit, ¶¶ 14-15.

In 2004, Dorothy Neal and Hettie McFadden, granted property (502, 504 and 508 North Main Street) to “Progressive Church of Our Lord Jesus Christ, Inc., whose address is: 219 Crescent Avenue, Sumter, SC 29150.” Finklea Injunction Affidavit, ¶ 9. In putting the address of the Sumter Congregation on the deed, and not the address of the national headquarters, the clear intent of the parties was to convey the property to the Sumter Congregation and its membership. The property was not deeded to, or held in trust for, the national headquarters of the Progressive Church in Columbia.¹

On May 26, 2007, Bishop Smith issued an executive resolution appointing the Individual Defendants, Theodore Jenkins, Lang Priester, David S. Johnson, and Paul C. Johnson, as Bishops. Finklea SJ Affidavit, ¶ 17. However, on June 16, 2010, in the South Carolina Court of Common Pleas, Third Judicial District, Master in Equity S. Bryan Doby issued an Order for Judgment and determined that Bishop Smith’s appointment of the additional bishops did not constitute appointments to the governing board because the appointments were not made in accordance with the Church Constitution. Finklea Injunction Affidavit, Exhibit 3; Finklea SJ Affidavit, Exhibit 10. The Order of Judgment also held that a local congregation of Progressive Church in Bishopville, and not the national headquarters of the Progressive Church, owned the local church property. *Id.* The Progressive Church appealed the Order of Judgment and the Court of Appeals affirmed

¹ In 2019, because the property was not held in trust for the national church, the Individual Defendants unilaterally and improperly filed a deed on the Property that purports to convey the Property to the national headquarters of the Progressive Church. Finklea SJ Affidavit, ¶ 50 and Exhibit 11.

Judge Doby's decision. Finklea Injunction Affidavit, Exhibit 4.

Following the issuance of the Order of Judgment and the Decision of the Court of Appeals, and consistent with his actions in the prior two decades, Bishop Smith continued to serve in the primary executive role for the Progressive Church in all business and transactional matters. Beard Affidavit, ¶ 17. Prior to, and during this time period (2010-2019), the Progressive Church did not assert ownership or control over local congregation church property. Local congregations in Atlanta, Georgia, and in Florence, South Carolina, disassociated from the Progressive Church and formed successor churches and maintained the use and control of their local church property. Beard Affidavit, ¶ 24.

On July 20, 2014, the Sumter Congregation met and decided to dissociate from the Progressive Church. Finklea Injunction Affidavit at 15. Immediately following the disassociation, Pastor Finklea notified Joseph D. Williams, who was Finklea's direct report at the time and in charge of the Progressive Church District that included Sumter. *Id.* at 16. Mr. Williams then notified Bishop Smith. *Id.* at ¶ 17.

Thereafter, Pastor Finklea and the members of the Sumter congregation formed a successor church, NLAC, which was incorporated as a nonprofit, eleemosynary corporation under the laws of South Carolina on December 3, 2014. *Id.* at ¶ 18. From its inception, NLAC operated openly as a separate and distinct church that was not associated with the Progressive Church. *Id.* at ¶ 19; Affidavit of James Robins ("Robins Affidavit"), ¶¶ 10-14; Affidavit of Andrew Little ("Little Affidavit"), ¶¶ 10-12.

²³ Pastor Finklea provided written notice of the disassociation to Bishop Smith and discussed the disassociation with Bishop Smith on several occasions. Finklea SJ Affidavit, ¶¶ 26, 36, 37. Bishop Smith, as the leader and only duly appointed Bishop on the Board of

Bishops of the Progressive Church, acknowledged NLAC's status as a separate church. Finklea Injunction Affidavit, ¶ 21. He even made attempts to convince Pastor Finklea and the members of NLAC to return to the Progressive Church. *Id.* at ¶ 20. However, these attempts were unsuccessful and NLAC continued to operate independently of the Progressive Church. *Id.* at ¶ 21.

NLAC's separation from the Progressive Church was common knowledge among the members of the Progressive Church. Robins Affidavit, ¶ 11; Beard Affidavit, ¶ 8; Finklea SJ Affidavit, ¶ 28; and Little Affidavit, ¶ 13. Church leaders within the Progressive Church have been aware of, and have discussed, the dissociation since it occurred in 2014. In fact, on June 28, 2015, one of the Individual Defendants, Theodore Jenkins, who is now holding the title of Presiding Bishop, preached at NLAC and made a charitable donation to the NLAC. Finklea SJ Affidavit, ¶¶ 29-30; and Little Affidavit, ¶¶ 14-15. He also received a tax document from the NLAC that verifies his contribution. Finklea SJ Affidavit, ¶ 31. In addition, Finklea met with Theodore Jenkins in September of 2015 and discussed the disassociation. *Id.* at ¶ 32. Pastor Finklea remained in fellowship with Progressive Church local congregations and would attend Progressive Church events when he was invited since he was well respected in the Progressive Church community. However, it was common knowledge that he had disassociated from the Progressive Church and was the Pastor of NLAC. Finklea SJ Affidavit, ¶¶ 41-42.

From 2014 to late 2019, NLAC occupied, maintained, and enhanced the Property without any interference or objection from the Progressive Church. *Id.* at ¶ 38. NLAC did not pay any dues or assessments to the Progressive Church and did not file any quarterly or annual reports, all of which are requirements for local congregations of the Progressive

Church. *Id.* at ¶¶ 34-35.

In February of 2019, when Bishop Smith's health began to fail, a power struggle inside the Progressive Church ensued. Normally, significant organizational decisions would be made at the annual convention or at least with the collective church leadership that included pastors. That did not happen in 2019. Instead, four members of the Progressive Church met without informing the collective membership, the pastors, or the then current Board of Presbytery, and claimed to hold a meeting of the "original" Board of Presbytery. Robins Affidavit, ¶ 22-23; Beard Affidavit, ¶ 18. The four members were Theodore Jenkins, Lang Priester, David S. Johnson, Sr., and Robert Mingo. *Id.* However, only one of them, Robert Mingo, was actually a member of the Board of Presbytery at the time of the meeting. *Id.* Nevertheless, during this secret meeting the four purported members of the "original" Board of Presbytery "elected" two of them, Theodore Jenkins and Lang Priester, to the Board of Bishops. *Id.* That same day, the "newly elected" Board of Bishops adopted a resolution appointing an additional two Bishops (David S. Johnson, Sr., and Paul C. Johnson) to serve on the Board of Bishops. *Id.* Neither of these men were members of the Board of Presbytery at that time. None of the appointments were valid because the appointments were not made from, or by an election of, members of the Board of Presbytery that was in place in 2019. Robins Affidavit, ¶¶ 25-27; Beard Affidavit, ¶ 20.

After the invalid appointments, the Individual Defendants began to assert their self-ordained and self-proclaimed power and assert dominion over local congregation property. One instance of this occurred on September 20, 2019, when the Individual Defendants filed a deed on the Property that purports to convey the Property to the national headquarters of the Progressive Church, in trust, for the sum of ten dollars. Finklea SJ Affidavit, ¶ 50 and

Exhibit 11.

On December 6, 2019, the Individual Defendants held an “Ecclesiastical Trial” to consider “allegations” against Finklea even though Finklea was no longer a member of the Progressive Church. During this trial, which Finklea did not attend, the Individual Defendants charged Finklea with committing “improper conduct” by disassociating from the Progressive Church, conducting services separate and distinct from the Progressive church, setting up a NLAC sign on the Property, and failing to submit financial assessments and annual reports to the Progressive Church. Affidavit of Paul C. Johnson, Exhibit 7.

After the death of Bishop Smith on November 10, 2020, the Individual Defendants became emboldened and decided to take further action against the Plaintiffs. In a letter dated December 11, 2020, the Individual Defendants claimed ownership of the Property and directed Plaintiffs to “vacate the Progressive Church’s property in Sumter, South Carolina and remove all of [their] belongings.” Finklea SJ Affidavit, ¶ 51 and Exhibit 12. The letter concluded with the following threat: “Please be aware that if you fail to abide by this final directive from the Board of Bishops, the Progressive Church will take further action to fully enforce the Board’s decision that you vacate the Progressive Church’s property in Sumter, South Carolina by December 31, 2020.” *Id.*

After receiving the threatening letter, Plaintiffs filed the Complaint in this case, and later filed the Amended Complaint, seeking adjudication of rights to the Property, which they had possessed, maintained, and improved since NLAC’s inception in 2014. Plaintiffs also requested a preliminary injunction to preserve the status quo during the pendency of the court proceedings. Defendants responded with a motion for partial summary judgment and requested a judgment in their favor on all of Plaintiffs’ claims. Even though discovery

had not commenced and there were substantial disputes regarding material facts in the case, the Circuit Court granted Defendants' motion for partial summary judgment. Thereafter, Plaintiffs filed a timely Notice of Appeal to initiate these proceedings and to seek reversal of the Circuit Court's Order. Notice of Appeal, dated November 22, 2021.

STANDARD OF REVIEW

Under Rule 56(c), summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). Further, all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

On appeal, the appellate court "reviews a grant of summary judgment under the

same standard applied by the trial court pursuant to Rule 56, SCRCP.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). More specifically, an appellate court will find that summary judgment was properly granted only when it finds no genuine issue of material fact after reviewing all ambiguities, conclusions, and inferences arising from the evidence in the light most favorable to the non-moving party. *Id.*

ARGUMENT

In the Order, the Circuit Court concluded that Plaintiffs lacked standing to assert their claims because Plaintiffs were not members of the Progressive Church. Order, pp. 15-16. This conclusion is not supported by applicable law. Plaintiffs have a clear and undeniable personal, material, and substantial stake in contesting their removal from the Property which was purchased for their benefit and that they used, maintained, and improved for several years. This clear interest in a live controversy gives Plaintiffs standing under South Carolina law to pursue their claims for declaratory relief, injunctive relief, reformation of deeds, and quantum meruit.

The Circuit Court also determined that it lacked subject matter jurisdiction with respect to Plaintiffs’ claim for declaratory relief (First Cause of Action) because of religious protections afforded by the First and Fourteenth Amendment to the United States Constitution. However, the protections do not apply because Plaintiffs are not seeking adjudication of ecclesiastical matters in their claim for declaratory relief. Rather, Plaintiffs are requesting application of neutral principles of law to determine the legal status of real property and to interpret a corporate governance document with respect to legal authority. Under the applicable case law, Defendants cannot shield their improper and unauthorized

actions, and avoid judicial determination of legal matters, by mischaracterizing the issues as ecclesiastical in nature.

The Circuit Court also dismissed Plaintiffs claim for reformation (Third Cause of Action) on grounds that there was no genuine issue of material fact as to ownership of the Property. However, there was substantial evidence that supported the claim of reformation and created genuine issues for trial. The evidence, which must be interpreted in the light most favorable to Plaintiffs, shows that the Property was purchased on behalf of the Sumter Congregation and for the use of the Sumter Congregation. This was the clear intent of the parties. The evidence also shows that NLAC is the successor in interest of the Sumter Congregation and that local congregations, and not the national headquarters of the Progressive Church, own their property and maintain possession following disassociation as a matter of church practice. As such, the deeds, which were inappropriately and secretly modified by Defendants in 2019, should be reformed to carry out the actual intent of the parties and in conformity with church practice.

The Circuit Court also found that Plaintiffs' Fourth Cause of Action for quantum meruit/unjust enrichment failed to state a claim because the Defendants owe no legal duties to Plaintiffs. This finding is contrary to applicable law for quantum meruit. The elements for quantum meruit are: (1) a benefit conferred by a plaintiff to a defendant; (2) realization of the benefit by the defendant; (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. In this case, it is undisputed that Plaintiffs maintained, and made significant improvements to, the Property following their disassociation from the Progressive Church. If the Progressive Church is given exclusive possession of the Property, the Progressive Church would realize a

significant benefit from the time, money, and other resources that Plaintiffs invested in the Property. In such circumstances it would be unjust for the Progressive Church to retain such a benefit without payment to Plaintiffs. Duty is not a required element for a claim of quantum meruit/unjust enrichment. As such, Plaintiffs have stated a claim upon which relief can be granted.

Lastly, the Circuit Court granted summary judgment on Defendants' First and Second Counterclaims (declaratory relief and trespass) on grounds that there were no genuine issues of fact on these claims. However, all of the alleged material facts offered by Defendants in support of these claims were put at issue and contested, and some were conclusively rebutted, by the evidence submitted by Plaintiffs. In considering a summary judgment motion, a trial court is required to view the evidence in the light most favorably to the non-moving party and all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. In making its determinations, the Circuit Court did not apply these standards but instead, considered only the arguments and affidavits offered by the Defendants. Plaintiffs offered evidence, which included affidavits and supporting documents, to demonstrate that NLAC is the successor church for the Sumter Congregation and appropriately maintained exclusive possession of the Property, with the acknowledgement of Progressive Church leadership, for several years. In addition, Plaintiffs showed that the Individual Defendants are not the governing board of the Progressive Church because they were not appointed to the Board of Bishops in accordance with the Church Constitution. As such, the evidence before the Circuit Court showed that Plaintiffs were legally in possession of the Property and that Defendants' counterclaims for declaratory relief and trespass were not appropriate for summary

adjudication.

In sum, the Circuit Court erred in granting Defendants' motion for partial summary judgment. The Circuit Court's Order is based on misapplication of legal doctrines relating to standing and subject matter jurisdiction. In addition, there are genuine issues of material fact to be determined in the case that preclude summary judgment on Plaintiffs claims and on Defendants counterclaims for declaratory relief and trespass. A fair reading of the pleadings, motion papers, and evidence submitted to the Circuit Court, when viewed in the light most favorable to Plaintiffs, demonstrates that Plaintiffs' claims are well supported by law and fact and should not have been summarily dismissed without an opportunity for discovery or trial.

I. The Circuit Court erred in finding that Plaintiffs have no standing to assert their claims in this case when Plaintiffs have a personal, actual, material and substantial interest in the subject matter of the action.

To have standing, a party must have a personal stake in the subject matter of a lawsuit and be the "real party in interest." South Carolina Rule of Civil Procedure 17(a); *Duke Power Co. v. South Carolina Public Service Comm'n*, 284 S.C. 81, 326 S.E.2d 395 (1985); *Dockside Ass'n, Inc. v. Detyens Simmons*, 285 S.C. 565, 330 S.E.2d 537 (Ct. App. 1985). A real party in interest is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action. *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994); *see also Town of Sullivan's Island v. Felger*, 318 S.C. 340, 346, 457 S.E.2d 626, 629 (Ct. App. 1995) (holding that a town had standing in a declaratory action to determine whether the defendant owned fee simple title to the property, even though the town did not have a direct interest in ownership of the property).

In this case, it is undisputed that Plaintiffs had the use, possession, and control over the Property from the time the NLAC was founded in July 2014 until Plaintiffs were removed from the Property according to the Circuit Court's Order in April of 2022. It is also undisputed that Plaintiffs paid for all of the maintenance costs for the Property during this time period and invested significantly in improvements to the Property. Finklea SJ Affidavit, ¶ 38. Under these circumstances, Plaintiffs' interests in the Property are personal and substantial. Plaintiffs have relied on the Property as their place of worship and for events for their church community. These events are essential to NLAC's operations and vital to the religious practice of the NLAC membership. The Property has served as an integral part of the lives of the NLAC members who have gathered there and who have invested both heart and soul into their place of worship.

As in most cases, a plaintiff's standing also derives from the actions of one or more defendants. In this case, the Defendants threatened to forcefully remove Plaintiffs from the Property after years of recognizing local control of church property following disassociation. Finklea SJ Affidavit, ¶ 51. This sharp departure from the position of past leadership and abrupt change in church practice prompted Plaintiffs to file suit to defend against the removal. *Id.* at ¶ 52. The conclusion that there is no standing in this case is akin to finding that a person faced with eviction from their home has no legal standing to object to the eviction. In finding there was no standing, the Order ignored the fact that standing is based on an interest in the disputed matter, which in this case is a personal interest in the Property, and not based on any church membership rights.

The Circuit Court's finding of a lack of standing appears to be based on a false presumption that Plaintiffs are asserting rights derived from their prior membership in the

Progressive Church. The Order states the since Plaintiffs left the Progressive Church they “lost all rights as saints of the Progressive Church and lack standing to pursue this action.” Order, p. 15. However, Plaintiffs are not seeking to enforce any rights of church membership. Rather, they are seeking adjudication of legal claims relating to the Property. Specifically, Plaintiffs allege that they possess rights in the Property as a separate and distinct organization and as the successor in interest to the Sumter Congregation. In other words, Plaintiffs’ rights to the Property and the claims they have asserted in this case arise from their rightful possession, use, and control of the Property as the successor church to the Sumter Congregation as acknowledged by Progressive Church leadership. The rights asserted are not membership rights in the Progressive Church and as such, the disassociation did not divest Plaintiffs of their standing to seek redress from the courts.

In reaching its standing determination, the Circuit Court relied on *Brock v. Bennett*, 313 S.C. 513; 443 S.E.2d 409 (Ct. App. 1994). In that case, Brock, who was a former church trustee and was named on a church property deed, claimed ownership of the church property. *Id.* at 515; 443 S.E.2d at 410. Brock had left the church and the church property and had not attended services at the church for over thirty years. *Id.* In other words, Brock abandoned the church, his position as a trustee in the church, and the church property. Nevertheless, he attempted to come back years later to claim the property as the only living trustee named in the deed. The Court of Appeals found that “the trustees of a church hold the property solely for the congregation” and that Brock was no longer a trustee of the church. *Id.* As a result, Brock did not have standing to claim ownership of the property and the Court of Appeals found in favor of the church congregation and its pastor who had remained in possession of the property. *Id.* at 519; 443 S.E.2d at 412.

In this case, there was no abandonment of the property that would divest Plaintiffs of their standing. To the contrary, Plaintiffs maintained, used, possessed and improved the Property with the acknowledgement of Progressive Church leadership, and without interference, for several years. It is the Defendants who, like Brock, are attempting to assert dominion over church property after a lengthy absence from the property.

Defendants attempt to mitigate their absence from the Property by disingenuously claiming that they were unaware of the NLAC and its use of the Property. Uncontroverted evidence submitted by Plaintiffs show that Pastor Finklea notified his direct supervisor in the Progressive Church of the disassociation and discussed the disassociation and formation of NLAC with Bishop Edward Smith, who was the highest official in the Progressive Church and the only duly appointed bishop at the time of the disassociation. Finklea SJ Affidavit, ¶¶ 22, 23, 24, 26, 36 and 37. Moreover, the current Presiding Bishop, who is also an individual defendant in this case, preached at, and made a donation to, the NLAC in June of 2015. Finklea SJ Affidavit, ¶¶ 29-31; Little Affidavit, ¶ ¶ 14-15. In addition, current members of the Progressive Church verified through affidavits that it was common knowledge in the Progressive Church that the Sumter Congregation disassociated and formed a successor church. Robins Affidavit, ¶ 11; Beard Affidavit, ¶ 8.

In sum, Plaintiffs have a personal, real, material, and substantial interest in the Property. The Property was purchased for the Sumter Congregation and entrusted to them. When the Sumter Congregation disassociated from the Progressive Church, the Property went with the Congregation members, and the newly formed successor church, in accordance with established church practice and with the acknowledgement of church leadership. Plaintiffs' interest in the Property, and their claims in this case, are not

contingent or based upon membership status in the Progressive Church. As such, Plaintiffs are real parties in interest for purposes of SCRCP 17(a) and have standing to pursue their claims.

II. The Circuit Court erred in determining that due to religious protections it lacked subject matter jurisdiction to hear the claims asserted which involved secular matters of legal authority and property ownership.

Civil courts have subject matter jurisdiction to determine the legal authority and rights to the ownership and control of real property based upon an examination of the secular provisions of the church's corporate governing documents.

The Circuit Court, in its Order, mischaracterized Plaintiffs' request for declaratory relief as a request to "declare procedures the Progressive Church must follow to select its Board of Bishops." Order, p. 17, Section B. This is not accurate. Plaintiffs request that the Circuit Court, under neutral principles of law, examine the Church's Constitution-its corporate governance document- and determine who has authority to assert rights to the Property. Specifically, whether the Individual Defendants (Theodore Jenkins, Sr., Lang Priester, David S. Johnson, Sr., and Paul C. Johnson) had the authority to take action regarding the Property in accordance with the Church Constitution.

The South Carolina Supreme Court in *Protestant Episcopal Church v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017) reaffirmed that South Carolina courts, in resolving church disputes, are to follow the "neutral principals of law" approach as outlined by the United States Supreme Court in *Jones v. Wolf*, 443 U.S. 595 (1979) and adopted by this State as expressed in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) and *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009). In outlining the "neutral principles of law"

framework, the United States Supreme Court in *Jones* provided that it is necessary that civil courts look to religious documents such as church constitutions, deeds, corporate charters, or the constitution of the general church in resolving church disputes, though cautioning that “in undertaking an examination of religious documents, such as a church constitution, a civil court must take special care to scrutinize the documents in purely secular terms” *Jones*, 443 U.S. at 604. The *Jones* Court further clarified the “doctrinal matters” to be avoided by Courts in church property disputes which may receive “no consideration” to include “the ritual and liturgy of worship or tenets of faith.” *Jones*, 443 U.S. at 602.

Pursuant to the “neutral principles of law” approach, the South Carolina Supreme Court’s decisions in *Pearson* and *All Saints* provide that “ownership of disputed property is determined by applying generally applicable law and legal principles. That application will usually include considering evidence such as deed to the properties, terms of the local church charter (including articles of incorporation and [bylaws], if any), and relevant provisions of governing documents of the general church.” *Protestant Episcopal Church*, 421 S.C. at 272, 806 S.E.2d at 114 (2017) (Toal, J., dissenting). An examination of the secular provisions of church documents, such as a church constitution, is akin to examining a corporation’s bylaws to determine the legitimacy of a corporate action. *All Saints*, 385 S.C. at 450, 685 S.E.2d at 175. Accordingly, civil courts must take a comprehensive approach in resolving church disputes, to include a neutral examination of the secular and civil provisions of church documents such as the church constitution and bylaws. *Id.* Such examination does not require that courts resolve disputes of religious doctrine, but that courts consider the processes and procedures in which a church transacts business. *Id.*

The relevant processes and procedures regarding the transaction of church business as contained in the secular portions of a church constitution or bylaws or governing document, should be considered when resolving church property disputes. In *All Saints*, the court expressly examined the Constitutions and Canons of the Protestant Episcopal Church in rendering their decision pursuant to the neutral principles of law approach established in the case.

Here, the Circuit Court's reliance on the distinction between the congregational and hierarchical nature of the Progressive Church in a manner that grants deference to the unconstitutionally appointed Board of Bishops is a misapplication of the neutral principles of law approach. It is contrary to the State Supreme Court's ruling in *All Saints* which expressly overturned the congregational/hierarchical approach in resolving church disputes.²

This case involves the ownership of property to which South Carolina property law is applicable. To resolve this dispute, the circumstances regarding the ownership, authority, and control of the property requires the court to examine the Church Constitution and its specific provisions related to the appointment of members to the Board of Bishops to determine the governance authority over secular matters. An examination and application of the Church Constitution is not to interpret ritual, liturgy, ecclesiastical issues, or tenets of the Progressive Church faith. Further, Plaintiffs are not seeking to have the court substitute its interpretation of the Church Constitution or decide ecclesiastical issues, but rather they are seeking a determination of who has authority to assert rights to the

² Plaintiffs also dispute the characterization of the Progressive Church as a hierarchical church as the church documents do not support this characterization.

Property. *See Jenkins v. Refuge Temple Church of God in Christ, Inc.*, 424 S.C. 320, 818 S.E.2d 13 (Ct. App. 2018) (where after reviewing the church's bylaws and governing document, the Court found that the former pastor improperly appointed members to the Board as the manner of appointment did not comply with the bylaws, thus, the Board lacked authority to execute a contract). As evidenced by South Carolina jurisprudence, a court may examine a church's governing document and its secular provisions. Matters regarding the ownership and control over local congregation church property are purely civil matters.

In sum, the Circuit Court has subject matter jurisdiction to apply neutral principles of law to resolve Plaintiffs' claims regarding the ownership and control of the Property, to include whether the Individual Defendants have legal authority to assert rights to the Property pursuant to the Church Constitution.

III. The Circuit Court erred when it determined that there were no genuine issues of material fact regarding rights to the Property and that Plaintiffs were trespassers on the Property.

The Circuit Court granted summary judgment to Defendants on their claims for declaratory relief and trespass after concluding that there were no genuine issues of material fact as to: Defendant's alleged ownership and right to exclusive possession of the Property; their alleged governance authority; and the alleged lack of permission for Plaintiffs to use the Property. Order, pp. 31-32. However, all of these issues were contested and the evidence presented to the Circuit Court, and all inferences which could have been reasonably be drawn from the evidence, demonstrated that there were triable issues.

The Circuit Court found that there was no dispute as to Defendants' ownership of the Property. Order, p. 22. However, Plaintiffs alleged, and provided supporting evidence to show, that NLAC is the successor church to the Sumter Congregation and maintained

exclusive possession of the Property for several years with the acknowledgement of Progressive Church leadership. Finklea SJ Affidavit at ¶¶ 46-49; and Beard Affidavit at ¶¶ 22-24. Also, Plaintiffs submitted evidence that as a matter of practice, upon disassociation, local congregations maintained possession of church property. In addition, Plaintiffs provided evidence that the Individual Defendants do not have the authority to assert legal rights on behalf of the Progressive Church with respect to the Property because they were not appointed in accordance with the Church Constitution. Judge Doby's Order of Judgment, p. 4; Finklea Injunction Affidavit at ¶¶ 10, 12, 13; Beard Affidavit at ¶¶ 13-20; and Robins Affidavit, at ¶¶ 15-27.

The Circuit Court erroneously found that Judge Doby's Order, which involved the Progressive Church and the alleged Board of Bishops as parties and was affirmed on appeal, "has no relevance to this action." Order, pp. 26-27. Judge Doby's Order is not only relevant, it is preclusive on the issue of the unconstitutional appointments that were made in 2007. Issue preclusion prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009). To assert collateral estoppel requires showing that the issue was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189-90 n.1 (Ct. App. 1984). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Snavely*

v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

The issue of the validity of the 2007 appointments was litigated in the Bishopville case. Finklea Injunction Affidavit, Exhibit 3; Finklea SJ Affidavit, Exhibit 10. The issue was directly determined by Judge Doby and he concluded that there was no duly elected Board of Bishops and therefore no one with authority to assert rights to the local congregation property. *Id.* Further, the decision on the issue was necessary for the disposition of the case, which was dismissed in favor of the local congregation. *Id.* In addition, the Progressive Church and the “Board of Bishops” (including the unconstitutionally appointed Individual Defendants in this case), were the plaintiffs in the Bishopville case and had a full and fair opportunity to litigate the issue. Therefore, issue preclusion applies.

Further, while failing to recognize Judge Doby’s Order, the Circuit Court relied on a nonbinding order from the United States District Court (“USDC Order”) in a pending case and asserted that the USDC Order eliminated any “doubts” caused by Judge Doby’s Order. Order, p. 26, f.n. 6. As a preliminary matter, the reliance on a court order that made a ruling on the Progressive Church’s governance contradicts the argument that courts lack subject matter jurisdiction to consider governance issues relating to religious organizations. Regardless, the USDC Order did not “cure” the problems identified by Judge Doby’s Order. Also, there has not been a final disposition of the case as the Plaintiff in that case, the Tallahassee Congregation of the Progressive Church, has filed an appeal with the Fourth Circuit of the United States Court of Appeals. USCA, 4th Cir. Case No. 21-1763. Moreover, the USDC Order is from another trial court and Plaintiffs were not parties to that action.

As a result, the USDC Order is not conclusive, and should be afforded no weight with respect to any issues in this case because Plaintiffs are not parties to the federal litigation and have had no opportunity to litigate the issues in that forum. *See, e.g., Pye v. Aycock*, 325 S.C. 426, 432 and 436, 480 S.E.2d 455, 458 and 460 (Ct. App. 1997) (“To establish collateral estoppel there must be a showing that “the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action.”); *see also Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 (2009) (holding that a federal court decision interpreting state law is not binding on state courts); and 21 C.J.S. Courts § 274 (Supp. 2013) (“Although federal and state courts form one system of jurisprudence, federal courts have no general supervisory power over the state courts, and there is nothing a state court can do to affect federal practice and procedure.”) Thus, the Circuit Court erred in refusing to recognize Judge Doby’s Order and in finding that no genuine issue of material fact existed with respect to the Individual Defendant’s authority.

As for Defendants’ counterclaim of trespass, the Circuit Court found that it was undisputed that Plaintiffs were “deceptive squatters” with no right to occupy the Property. Order, p. 33. In reaching this conclusion, the Circuit Court did not consider the evidence that clearly rebutted the deceptive squatter claims, even though the Circuit Court was required to view the evidence in the light most favorable to the Plaintiffs. Specifically, Plaintiffs provided evidence showing that they notified the Progressive Church, through the proper chain of command, of their disassociation and formation of NLAC as a successor church. Finklea SJ Affidavit at ¶¶ 23-27; Little Affidavit at ¶¶ 5-11. Plaintiffs also submitted evidence to show that Progressive Church leadership acknowledged the

disassociation and NLAC's use of the Property. Finklea SJ Affidavit at ¶¶ 23-27. Further, Plaintiffs demonstrated through affidavits of Progressive Church members that their disassociation from the Progressive Church and continued use of the Property was common knowledge in the Progressive Church. Robins Affidavit, ¶ 11; Beard Affidavit, ¶ 8. In addition, Plaintiffs provided uncontroverted evidence to that one of the Individual Defendants, Theodore Jenkins, who currently holds the title of Presiding Bishop, preached at an NLAC church service and made a charitable contribution to NLAC. Finklea SJ Affidavit at ¶¶ 28-32; Little Affidavit at ¶¶ 12-14; Robins Affidavit at ¶¶ 10-14; and Beard Affidavit at ¶¶ 7-9. As such, Plaintiffs demonstrated genuine issues of fact to rebut Defendants' "deceptive squatter" allegations, which served as the foundation upon which Defendants' trespass claim is based. As such, the Circuit Court erred in granting summary judgment for Defendants on their declaratory relief and trespass counterclaims.

IV. The Circuit Court erred when it dismissed Plaintiffs' causes of action for reformation of the deeds and quantum meruit for failure to state a claim because Plaintiffs properly asserted the required elements for both of these claims.

An action to reform an instrument is an equitable claim. *Crewe v. Blackmon*, 289 S.C. 229, 233, 345 S.E.2d 754, 756 (Ct. App. 1986). It allows courts to conform the instrument to the actual intent of the parties. *Shaw v. Aetna Cas. & Sur. Ins. Co.*, 274 S.C. 281, 285, 262 S.E.2d 903, 905 (1980) ("It has long been the law of this state that where a written contract does not conform to the intention of the parties, equity will reform the contract.")

^{xv} In its Order, the Circuit Court determined that Plaintiffs could not seek reformation of the deeds because Plaintiffs were not a party to the instrument for which reformation was sought. Order, pp. 21-22. To support this position, the Order cites to the case of *George*

v. Empire Fire & Marine Ins. Co., 336 S.C. 206, 519 S.E. 2d 107 (Ct. App. 1999).

As an initial matter, Plaintiffs were a party to the acquisition of the Property. As Defendants admit, the pastor of the Sumter Congregation at the time of the acquisitions (David S. Johnson) identified the Property and executed the documents for the Sumter Congregation. Defendants Partial SJ Memo, pp. 8-10. Further, Defendants admitted that the Property was purchased “as a permanent place of worship for the Sumter Congregation.” *Id.* at 8. As such, the Sumter Congregation, which later became the NLAC, was a party to the instrument for which reformation is sought.

Further, in the *George* case, the Court of Appeals found that a third-party beneficiary can maintain an action for reformation. 336 S.C. at 212, 519 S.E. 2d at 110. It is undisputed that the Sumter Congregation was at a minimum, a beneficiary to the deeds. As such, the Sumter Congregation, and NLAC as its successor, can maintain an action for reformation to conform the instrument to the intent of the parties.

The Circuit Court also found that there was no ambiguity in the deeds and declined to consider any extrinsic evidence. However, the Court’s conclusion is contradicted by Defendants’ own actions. On September 20, 2019, Defendant Paul Johnson, on behalf of the “Board of Bishops”, filed a deed with the Register of Deeds in Sumter County that purportedly conveyed the Property to be held in trust for the national headquarters and included a restriction on the Property which precludes any encumbrance of the Property without the written consent of the “Board of Bishops of the Progressive Church.” Finklea SJ Affidavit, ¶ 50. If the Defendants already owned the Property and had a clear right to exclusive control of the Property as set forth in the Order, why were the Defendants compelled to amend the deeds to put the Property into a trust and impose restrictions?

The answer is clear. It is because the Church Constitution³, prior court orders, and the Progressive Church's past practices, established that local congregations owned their local property and as a result, maintained that ownership after disassociation. *See* Judge Doby's Order of Judgment, pp. 4-5; Finklea SJ Affidavit at ¶¶ 46-49; and Beard Affidavit at ¶¶ 22-24. As such, Plaintiffs have stated a valid, well-supported claim for reformation that should not have been summarily dismissed by the Circuit Court.

Plaintiffs also asserted facts to satisfy the required elements for unjust enrichment under South Carolina law.⁴ In South Carolina, to state a claim for unjust enrichment/quantum meruit, a plaintiff must state (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. *See Sauner v. Public Service Authority*, 354 S.C. 397 (2003).

In the Amended Complaint, Plaintiffs alleged that they exclusively used, improved, and maintained the Property with the acknowledgment of the leader of the Progressive Church. Amended Complaint, pp. 15-16. Plaintiffs also alleged that under Progressive Church practice, when a local congregation disassociates, the property used by the congregation is then used by the successor church without interference from the Progressive Church. *Id.* at p. 16. Plaintiffs further alleged that they made significant contributions to improve and enhance the structures at the Property, including renovations

³ There are no restrictions in the Church Constitution governing the ownership of property by a local congregation and the Church Constitution does not impose any trust for the benefit of the national headquarters on local congregation property.

⁴ Plaintiffs asserted the unjust enrichment claim as an alternative claim in the event that Plaintiffs did not prevail on their claim for declaratory relief that would grant Plaintiff rights to possession of the Property.

to the residential structure on the property that included new heat and air, flooring and plumbing and renovations to the church sanctuary, including, new heat and air, new electrical wiring, new carpet, wall and ceiling repairs, a new sound system, new seating, and new lighting. *Id.* As a result, it would be unjust for the Progressive Church to obtain possession of the Property without paying for the benefit to the Property conferred by Plaintiffs. *Id.* at p. 17.

Despite these allegations and the supporting evidence provided with Plaintiffs' opposition papers, the Circuit Court determined that the Plaintiffs' quantum meruit claim nevertheless failed because Plaintiffs did not assert a fiduciary duty owed by Defendants. However, there is no requirement that a Plaintiff establish the existence of a duty to assert a claim for quantum meruit. Rather, what is required for quantum meruit is inequity. The facts, when viewed in the light most favorable to Plaintiffs, clearly show that it would be inequitable for the Progressive Church to benefit from the substantial improvements to the Property made by Plaintiffs without paying for their value.

The Circuit Court's reliance on *Pitts v. Jackson Nat. Life Ins. Co.* and *Chase Home Fin., LLC v. Risher* was misplaced. These cases do not establish any additional elements for unjust enrichment claims. In *Pitts*, the plaintiff asserted a claim of unjust enrichment and requested that the court impose a constructive trust over funds retained by an insurer. *Pitts* relied on a duty of good faith and fair dealing owed by the insurer to show inequity. As such, *Pitts*' claim was premised on the existence of a duty of the insurer to advise *Pitts* that he was eligible for a superior product. In *Risher*, the Court denied the defendant Chase's claim of unjust enrichment finding that it had not conferred a benefit on *Risher* because she was not a direct recipient of the loan and Chase had the opportunity to establish

a lien on her interest in the property as she was included on the contract of sale. In other words, the Court found that Risher failed to establish an inequity. The Court did not hold that there must be a duty for a claim for unjust enrichment to exist.

Here, Plaintiffs are not relying on a fiduciary duty to establish inequity. Rather, Plaintiffs are asserting that if it is determined that they do not own the Property, they should be able to recover payment for the numerous improvements to the Property that Defendants would be unjustly receiving if they did not compensate Plaintiffs for their value. The inequity results from the Defendants harsh and abrupt departure from established church practice and from their disregard for the words and actions of the Progressive Church's former leader, Bishop Smith. The inequity also results from the years of maintenance and improvements that Plaintiffs made to enhance the Property after they established a successor church for the Sumter Congregation with the acknowledgement of Bishop Smith.

Lastly, the Circuit Court dismissed the unjust enrichment claim after concluding that the Plaintiffs were "trespassers" who "improved the property at their own risk." Order, pp. 38-39. As set forth above, the evidence submitted to the Circuit Court showed that Plaintiffs were not trespassers. Rather, Plaintiffs demonstrated with uncontroverted evidence that they maintained possession and use of the Property for several years in accordance with Progressive Church policy and practice and prior court rulings, and with the acknowledgement of the Progressive Church's leader, Bishop Smith. *See* Judge Doby's Order of Judgment, pp. 4-5; Finklea SJ Affidavit at ¶¶ 46-49; and Beard Affidavit at ¶¶ 22-24.

In sum, Plaintiffs asserted facts to support a cognizable claims for reformation of the deeds and for quantum meruit/unjust enrichment. Accordingly, the Circuit Court erred

in dismissing these claims based on an alleged failure to state a claim.

V. The Circuit Court erred when it denied Plaintiffs' motion for a preliminary injunction.

“The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it.” *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 366; 709 S.E.2d 639, 642 (2011) (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221; 199 S.E.2d 60, 61 (1973)). To obtain a preliminary injunction, the moving party must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Id.* The moving party must establish that (1) it will suffer immediate, irreparable harm without the injunction; (2) it has a likelihood of success on the merits; and (3) it has no adequate remedy at law. *Id.* In evaluating whether Plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the moving party has made a sufficient *prima facie* showing of entitlement to relief. *Id.*

As set forth above, Plaintiffs alleged sufficient facts to support their causes of action and demonstrated that the injunctive relief requested was necessary to preserve the rights of the parties during the litigation. Plaintiffs have suffered immediate and irreparable harm as a result of the Circuit Court's Order, which denied Plaintiffs' request for injunctive relief. Plaintiffs have been forced to leave the Property that they built up, maintained, and used as a place of worship since the NLAC was established in 2014. Further, the NLAC's daily operations have been disrupted. After enduring the uncertainty caused by a pandemic, the congregation was inappropriately expelled from its well-established place of worship due to the Circuit Court's Order.

When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present “a fair question to raise as to the existence of such a right.” *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912). “Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

Plaintiffs’ claims are essentially twofold: (1) the Individual Defendants do not have the authority to act on behalf of the Progressive Church to remove Plaintiffs from the Property; and (2) the NLAC, as the successor in interest of the Sumter congregation, has the rightful possession and control of the Property. The facts set forth in the Amended Complaint and affidavits submitted by Plaintiffs establish a *prima facie* showing for these claims.

The Individual Defendants do not have authority to act on behalf of the Progressive Church because they were not appointed to the Church’s governing board in accordance with the Church Constitution. The legitimacy of their appointments was litigated and the Court determined that the appointments were invalid. Finklea Injunction Affidavit, Exhibit 3. Further, the actions of the Individual Defendants in February 2019 did not cure the procedural flaws or provide any legitimacy to the appointments. The Individual Defendants were not elected by the Board of Presbytery. In addition, the Individual Defendants could not be appointed to the Board of Bishops because they were not members of the Board of Presbytery at the time of the appointments as required by the Church Constitution. As a result, the Individual Defendants do not represent the governing board and cannot invoke

the authority of the Progressive Church to assert rights to the Property.

The issue of ownership of property by a local congregation of the Progressive Church was also litigated in the prior case and the Court found in favor of the local congregation. Specifically, the Court found that the local congregation in Bishopville, and not the Progressive Church, owned the property because, among other things, the local congregation was the source of the funds for the property, there were no restrictions in the Church Constitution regarding local congregation ownership of property, and the Progressive Church had not exercised control over the local congregation with respect to ownership of real estate or locally raised funds.

The facts in this case are even more favorable to the local congregation than those in the Bishopville case. In this matter, the local congregation clearly and unequivocally separated from the Progressive Church and formed a successor in interest, NLAC, which has not paid any dues or assessments to the Progressive Church during its existence. From the time of the establishment of NLAC in 2014 until the end of 2019, no one associated with the Progressive Church objected to, or raised any concerns about or took any action against, NLAC operating and conducting church activities on the Property. Further, NLAC occupied, maintained, and enhanced the Property including significant improvements to the Property, the church, and the houses on the Property. These improvements have been financed and completed by NLAC and its membership without any contribution or assistance from the Progressive Church.

Based on these facts and the matters previously litigated, Plaintiffs have made a clear showing as to the merits of their claims. As such, a preliminary injunction was appropriate.

The harm to Plaintiffs cannot be cured solely by money damages. NLAC is growing and thriving as a local church. The membership has grown from 30 members to over 100. Now that it has been stripped of its church and meeting place, NLAC's operations have been significantly disrupted. NLAC and its members have been unjustifiably denied the benefits of the Property they have used and improved since NLAC's inception. In such a situation, it is clear that the legal remedy of damages alone will not be sufficient. As result, the Circuit Court's denial of Plaintiffs' preliminary injunction motion should be overturned and the status quo that existed at the time of the initiation of the lawsuit should be restored.

CONCLUSION

For the reasons set forth above, we respectfully request that this Court reverse the decision of the lower court to grant partial summary judgment for the Defendants and to deny Plaintiff's motion for a preliminary injunction.

[Signature On Next Page]

Respectfully submitted:

BOYKIN & DAVIS, L.L.C.

By: _____
Charles J. Boykin (SC Bar No. 65149)
Kenneth A. Davis (SC Bar No. 66416)
Peter E. Keup (SC Bar No. 78383)

BOYKIN & DAVIS, L.L.C.
P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

cjboykin@boykinlawsc.com
kdavis@boykinlawsc.com
pkeup@boykinlawsc.com

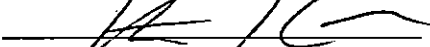
Attorneys for Appellants

April 13, 2022
Columbia, South Carolina

ix

Respectfully submitted:

BOYKIN & DAVIS, L.L.C.

By: 
Charles J. Boykin (SC Bar No. 65149)
Kenneth A. Davis (SC Bar No. 66416)
Peter E. Keup (SC Bar No. 78383)

BOYKIN & DAVIS, L.L.C.
P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

cjboykin@boykinlawsc.com
kdavis@boykinlawsc.com
pkeup@boykinlawsc.com

Attorneys for Appellants

April 13, 2022
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APR 18 2022

SC Court of Appeals

APPEAL FROM CLARENDON COUNTY

Court of Common Pleas

George M. McFaddin, Circuit Court Judge

Case No. 2020-CP-43-01863, Circuit Court

Appeals Court Docket No.: 2021-001368

New Life Apostolic Church, Inc., and Ricky FinkleaAppellants,
v.

Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr.,
Lang Priester, David S. Johnson, Sr., and Paul C. Johnson.....Respondents.


PROOF OF SERVICE

I certify that I have served the Appellants Initial Brief on the counsel of record listed below,
by electronic mail and U.S. Mail a copy of same on April 13, 2022, addressed to:

James Y. Becker, Esq.,
Haynsworth Sinkler Boyd, PA,
1201 Main Street, 22nd Floor,
Columbia, South Carolina 29201

Sarah P. Spruill, Esq.
Haynsworth Sinkler Boyd, PA,
Post Office Box 2048
Greenville, South Carolina 29602

G. Murrell Smith, Jr., Esq.
Smith Robinson Holler Dubose Morgan, LLC
P.O. Box 580
Sumter, South Carolina 29151

By: 
Charles J. Boykin (SC Bar #65149)
Kenneth A. Davis (SC Bar #66416)
Peter E. Keup (SC Bar #78383)

P. O. Box 11844
Columbia, South Carolina 29211
Telephone: 803-254-0707
Facsimile: 803-254-5609

Attorneys for Appellants

BOYKIN & DAVIS, LLC

Attorneys and Counselors at Law

220 STONERIDGE DRIVE, SUITE 100
COLUMBIA, SOUTH CAROLINA 29210

TELEPHONE: 803-254-0707
FACSIMILE: 803-254-5609

POST OFFICE BOX 11844
COLUMBIA, SOUTH CAROLINA 29211

Peter E. Keup
pkeup@boykinlawsc.com

April 13, 2022

VIA ELECTRONIC MAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

APR 18 2022

SC Court of Appeals

Re: New Life Apostolic Church, Inc., and Ricky Finklea v. Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr., Lang Priestler, David S. Johnson, Sr., and Paul C. Johnson
Appeals Court Docket No.: 2021-001368

Dear Ms. Kitchings:

Enclosed for filing please find Appellants Initial Brief and Designation of Matter regarding the above-referenced matter.

By copy of this letter, we are serving all parties of record.

Thank you for your assistance in this matter.

Sincerely,



Peter E. Keup

/aeg

Enclosures

cc: James Y. Becker, Esq (w/encls.)
Costa M. Pleicones, Esq. (w/encls.)
Ronald T. Scott, Esq. (w/encls.)
Sarah P. Spruill, Esq (w/encls.)
G. Murrell Smith, Jr., Esq. (w/encls.)
Charles J. Boykin, Esq. (w/o encls.)
Kenneth A. Davis, Esq. (w/o encls.)



BOYKIN & DAVIS, LLC
Attorneys and Counselors at Law
25 POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
APR 18 2022
SC Court of Appeals

