

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Colleton County
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Howard P. King, Circuit Court Judge
Ernest J. Kinard, Circuit Court Judge

Case No. 2004-CP-15-382

Glendon Allaby, Kathryn Allaby,
Cora Pfund, Eric Pfund,
Greg Lindsey, Larry Hartley,
Michael Duval, Kathleen Duval,
Pearl Butler, Timothy Butler, and Kevin Nevin,

RESPONDENTS,

v.

R.G. Stair and Faith Cathedral Fellowship
Inc. a/k/a Overcomer Ministries,

APPELLANTS.

FINAL BRIEF OF APPELLANTS

Deborah H. Sheffield
Law Office of Deborah Harrison Sheffield, PA
117 Brook Valley Rd.
Columbia, SC 29223
803-419-7837
803-419-3519 FAX

Mathias G. Chaplin
Law Offices of Mathias G. Chaplin, PA
4511 North Main Street
Columbia, SC 29203
803-786-7102
803-691-0009 FAX

ATTORNEYS FOR THE APPELLANTS

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STATEMENT OF THE ISSUES PRESENTED

- I. Did the Trial Court err in denying the Defendants' motion to dismiss for lack of subject matter jurisdiction over claims against the Defendant Church and its leader by former followers based on disputes over religious matters/ecclesiastical questions and controversies because:
 - A. The court lacks subject matter jurisdiction to judge whether the Defendant Church used the Plaintiffs' gifts/donations for "Christian purposes"?
 - B. The court lacks subject matter jurisdiction to judge the truth or falsity of the representation by Defendant Stair that he is a last day prophet of God?
 - C. The court lacks subject matter jurisdiction to judge the truth or falsity of the Defendant Stair's radio broadcast preachings/prophesies about the Year 2000 "end of times"?
- II. Did the Trial Court err in allowing the Plaintiffs to challenge the Defendants Fellowship's 501(c)(3) non-profit, tax-exempt status as a church because a state court does not have subject matter jurisdiction to judge challenges to the validity of the Defendants' initial application for tax-exempt status or its subsequent compliance with IRS rules/regulations?
- III. Did the Trial Court err in denying the Defendants' motion for directed verdict/JNOV on the fraud and the negligent misrepresentation causes of action because:
 - A. A representation that a gift/donation will be used in the future for radio broadcasts to spread the Gospel (or, more generally, for Christian purposes) does not constitute a representation of preexisting fact?
 - B. A representation that a gift/donation will be returned to the donors if/when they choose to leave the Fellowship does not constitute a representation of preexisting fact?
 - C. A prediction/prophesy as to future events associated with the Year 2000 does not constitute a representation of preexisting fact?
 - D. The Plaintiffs did not present clear and convincing evidence that the Defendants' representations about the use of their gifts/donations were false?
 - E. The Plaintiffs do not have a cognizable claim to return of their gifts/donations as damages if they were not used for the intended purposes allegedly represented by Defendant Stair?

- IV. Did the Trial Court err in denying the Defendants' motion for directed verdict/JNOV on the breach of fiduciary duty cause of action because no fiduciary relationship arose between Brother Stair and the Plaintiffs which was breached?
- V. Did the Trial Court err in denying the Defendants' motions to dismiss and for directed verdict/JNOV on the cause of action for violation of the Unfair Trade Practices Act because the Act does not apply to churches?

STATEMENT OF THE CASE

These actions were brought by former donors and church members of the Faith Cathedral Fellowship, a/k/a as the Overcomer Ministries seeking to recover donations/gifts they made to the Fellowship which was founded and is led by Brother R.G. Stair. The Plaintiffs Pearl and Timothy Butler, Plaintiffs Glendon and Kathryn Allaby, Plaintiffs Eric and Cora Pfund, Plaintiffs Michael and Kathleen Duval, Plaintiff Greg Lindsey, Plaintiff Kevin Nevin, and Plaintiff Larry Hartley all filed complaints in April 2004, asserting legal causes of action for fraud, negligent misrepresentation, breach of fiduciary duty, conversion, violation of the Unfair Trade Practices Act, outrage, and an equitable cause of action for revocation, rescission, and /or invalidation of gift. [ROA 1-69; Complaints 04-CP-15-376, 04-CP-15-378, 04-CP-15 379, 04-CP-15-380, 04-CP-15-381, 04-432.] Plaintiffs Allaby filed an amended complaint on April 2, 2004. [ROA 70; Amended Complaint 04-CP-15-382.]

As alleged in the complaints (which are virtually identical/duplicates), Faith Cathedral Fellowship, Inc. is organized and exists as a South Carolina not-profit corporation which owns and has its principal place of business in Colleton County.

Plaintiffs allege that Brother Stair “enticed” them to donate money to Overcomer Ministries based on “representations and assurances that the money was for a Christian-based ministry and/or for purposes consistent therewith.” [ROA 10; Complaints ¶ 9. Plaintiffs further allege that Defendants “persuaded” them to liquidate all their personal assets and to donate the proceeds with “coercive persuasion and undue influence upon promises of divine benevolence if Plaintiffs were to comply and threats of divine retribution if Plaintiffs were to fail to comply.” [ROA 10; Complaints ¶ 11.] Plaintiffs

allege that the Defendant have not used their donations for purposes consistent with Christian-based ministry, ¶ 14, and have used the money for purposes totally inconsistent with such purposes, ¶15.

Defendants filed answers denying the allegations of wrongdoing and affirmatively asserting that the donations were gifts to a church.¹ [ROA 79-113; Answers filed 9/1/04.] With consent of the parties, the actions were later consolidated for pretrial discovery and trial. [ROA 1; Consent Order, filed 5/12/06.]

Defendants asserted failure to state a cause of action in their Answers and later filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) on the grounds that the court lacks subject matter jurisdiction over the religious/ecclesiastical issue of whether the Plaintiffs' donations to the Fellowship were used in "Christian way." Defendants also moved for dismissal pursuant to Rule 12(b)(6) for failure to state cognizable claims. [ROA 121-133; Motions, filed April 25, 2006.] Defendants' Motion to Dismiss was heard and denied by Judge Howard P. King in a Form 4 order filed August 30, 2006. [ROA 3; Order.]

After discovery was conducted, the Defendants renewed their motion to dismiss or for summary judgment on grounds of lack of subject matter jurisdiction based on the deposition testimony of the Plaintiffs. [ROA 148; Motion.] That motion was heard immediately prior to trial and denied by the Trial Judge, on the grounds that he could not overrule Judge King's prior order, but indicated that the motion could be renewed at the directed verdict stage. [ROA 162; Tr. 44.]

¹ Defendants also asserted certain counterclaims, to which Plaintiffs replied; however those counterclaims were withdrawn and do not present any issue on appeal.

At the close of the Plaintiffs' case, the Defendants renewed their motion to dismiss for lack of subject matter jurisdiction and moved for a directed verdict which was denied except as to the UTPA cause of action which was held in abeyance. [ROA 771-88; Tr. 654-74.] At the close of the Defendants' case, the Defendants again moved for a directed verdict which was again denied. [ROA 889-90; Tr. 775-776.] However, the Plaintiffs' withdrew their claims for conversion and outrage, [ROA 893; Tr. 779], and the case was submitted to the jury on the claims of fraud, negligent misrepresentation, breach of fiduciary duty, and violation of the UTPA.²

The jury returned verdicts for each the Plaintiffs awarding them varied amounts of actual and punitive damages:

Glendon Allaby - \$17,300 actual/ \$65,000 punitive
Kathryn Allaby - \$17,300 actual/\$65,000 punitive
Cora Pfund - \$7,000 actual/ \$7,605 punitive
Eric Pfund - \$7,000 actual/\$7605 punitive
Greg Lindsey - \$9,469.10 actual/ \$9,100 punitive
Larry Hartley - \$84,998.45 actual/\$52,000
Michael Duval - \$35,551.50 actual/\$97,500 punitive
Kathleen Duval - \$35,551.50 actual/\$97,500 punitive
Pearl Butler - \$18,866.19 actual/\$26,000 punitive
Timothy Butler - \$18,866.19 actual/\$26,000 punitive
Kevin Nevin - \$22,264.12 actual/\$4,206.64 punitive

However, the jury found that the Defendants did not commit a willful violation of the South Carolina Unfair Trade Practices Act. [ROA 4; Verdict Form.]

Posttrial motions were made and denied immediately after the verdict was rendered. The Trial Judge also conducted its constitutionally-mandated review of the punitive damages award and entered judgment on the jury's verdict.

² The claim for rescission/invalidation of a gift is an equitable claim that was not submitted to the jury; by submitting their legal claims to the jury, the Plaintiffs elected their remedy.

Defendants timely served and filed their notice of appeal.

STATEMENT OF THE FACTS

Faith Cathedral Fellowship, Inc. is church which was duly organized in 1979 under South Carolina law as a non-profit corporation/religious/eleemosynary organization . [ROA 1056, 1066, 1075; Plaintiff Ex. 8, 9, 10.] It is a free-will Christian church organized to foster its religious ideals and to spread its evangelical principles. Although based in Walterboro, South Carolina, it sponsors world-wide radio broadcasts 24-hours a day and conducts evangelistic revivals across the country and internationally. [See ROA 1083; Plaintiff No. 16.]

In 1979, the Fellowship was granted tax-exempt status by both the Internal Revenue Service of the U.S. Department of the Treasury and the South Carolina Tax Commission. More specifically, on May 16, 1979, the South Carolina Tax Commission issued a letter declaring that the Fellowship is exempt from state income tax and exempt from filing tax returns or annual corporate reports/licenses fees. [ROA 1082; Plaintiff Ex. 15.] Similarly, on November 15, 1979, the IRS issued the Fellowship a “Letter 947” granting the Fellowship’s application for tax exemption under Section 501(c)(3) of the Internal Revenue Code. [ROA 1080; Plaintiff Ex. 14.] In that letter the IRS also documented that it had determined that the Fellowship was a church – “an organization described in section 170(b)(1)(A)(i).” [See 18 U.S.C.A. §170(b)(1)(A)(i) -- “(i) a church or a convention or association of churches”.] Neither the IRS nor the South Carolina Tax Commission have ever withdrawn or revoked the Fellowships’ tax-exempt status as a 501(c)(3) religious charity. [See ROA 263; Tr. 145/22-23.]

The Fellowship was organized and is still led by Brother Ralph Stair. Although he never went to seminary, he started preaching when he was just 16 and he has preached under the auspices of a number of churches during this lifetime as a licensed preacher and traveling evangelist. Then he and his wife settled in Walterboro, South Carolina and organized the Faith Cathedral Fellowship. [ROA 258; Tr. 140.]

In addition to operating its world-wide radio ministry, the Fellowship also maintains a community of believers in Canadys on a farm outside of Walterboro. In accordance with the account of Ananias and Sapphira found in Acts 5:1-11, the Fellowship requires that those who seek to join the community must be debt-free and donate all their assets to the Fellowship to live in communion with like-minded believers. [ROA 1092; Plaintiffs Ex. 18.] While some work on the farm, others offer their trades/services to those outside the community who in turn make donations to the Fellowship.

In his daily radio broadcasts, Brother Stair encourages believers to donate money to support their radio ministry and spread the gospel around the world. The generous support of believers provides the Fellowship with over \$1 million a year. However, while the total donations may seem large, the Fellowship spends over \$100,000 per month on radio broadcasts. In addition to the funds donated by radio listeners, the Fellowship funds are augmented with the contributions by those who come to live on the farm community in Canadys and the donations from the community in gratitude for the works of the community members, which monies are utilized to maintain the community and meet the needs of those who gave all they had to live there with their fellow believers.

Each and all of the Plaintiffs heard Brother Stair on shortwave radio and sent in donations. Some of the Plaintiffs eventually moved to the Fellowship farm community in Canadys and others moved to similar communities which enjoy fellowship with Faith Cathedral and follow the teachings of Brother Stair.

Plaintiff Michael Duval, a 62-year-old who once served in the Coast Guard, and his wife Kathleen moved to the Canadys farm in December 1995 and lived there for five years. Mr. Duval testified that Brother Stair professed to be the last day prophet of God and said that the money would be used for radio broadcasts, [ROA 457, 460; Tr. 339, 342] and that he also said the he would give back their money if they left the community. [ROA 462; Tr. 344.] Mrs. Duval testified more generally that Brother Stair represented that their money would be used for religious purposes. They gave \$62,305.90 in cash donations. In addition, Mr. Duval sought to recover the purchase price and costs of improvements to a piece of property which he bought/improved at the direction of Brother Stair and had it deeded to the Fellowship. [ROA 468-69, 1188-98; Tr. 350-51, Plaintiff Ex. 28.] The Duvals were eventually directed to leave the community at which time the Fellowship gave them \$65,000. [ROA 489, 516; Tr. 371, 398.]

Plaintiff Larry Hartley, is a 65-year-old retired automotive worker, who made donations after hearing Brother Stair on the radio and eventually moved to the farm in Canadys in November 1997 because Brother Stair preached that it was a safe haven and that it was the will of the Lord to live with people of like precious faith. [ROA 346; Tr.. 228.] Mr. Hartley testified that Brother Stair represented that “primarily he said it [the funds contributed] would be used for radio time to spread the gospel throughout the world.” [ROA 347; Tr. 229/10-11.] He claims that his total donations amounted to

\$166,000. [ROA 354, 1151-59; Tr. 236, Plaintiff Ex. 22.] Mr. Hartley left the community in the fall of 2001 after Brother Stair confessed that he committed adultery because – “I expected him to be a holy man.” [ROA 368; Tr. 250/1-2.] When he left, the Fellowship gave him \$71,000. [ROA 357; Tr. 239.]

Plaintiff Gregory Lindsey, a 37-year-old Army veteran, heard Brother Stair on the radio and sent donations for the purpose of radio to preach the gospel. [ROA 384; Tr. 266.] He moved the farm community in Canadys in the Spring of 1993 and lived there for over 7 years until he left in August 2001 because he was disillusioned by Brother Stair’s confession of sin. [ROA 406; Tr. 288.] He had given \$7300 in cash and \$3000 in personal items, and he received approximately \$700 when he left. [ROA 393, 1051-53; Tr. 275, Plaintiff Ex. 5.]

Plaintiff Timothy Butler, a 42-year-old truck driver heard Brother Stair on the radio while driving cross country and he sent offerings to help Brother Stair stay on the radio “to spread the gospel of the kingdom into all the earth.” [ROA 694; Tr. 576/21-22.] He and his wife Pearl came to live in Canadys because they thought Brother Stair was a last day prophet of God and they believed Brother Stair’s preachings about the need for the saints to get together in communities to have all things in common and serve the Lord so that the Lord would take them through the coming tribulation; he also testified that they found it appealing that they could live each and every day of their lives in Christian unity with fellow believers. [ROA 704-05; Tr. 586-87.] They joined the community in April 1998 and left in August 2001 because of Brother Stair’s confession. [ROA 721, 754; Tr. 603, 637.] They gave a total of \$81,230 in donations before they arrived, what they brought with them, and “income” they supposedly generated from his trucking

business while living there. [ROA 724; Tr. 606.] They were given \$30,000 when they left. [ROA 723; Tr. 605.] Mr. Butler testified that he gave to the Fellowship “relying on the fact that all the money would be used of godly purposes,” [ROA 726; Tr. 608/14-20], however, he admitted knowing that his money went into a general fund and was being used to pay expenses for his trucking business and to support the community. [ROA 726-27; Tr. 608-09.] He even testified that he made “donations” to the Fellowship that were used to pay his preexisting tax debts³ so that he could fulfill the condition of being “debt-free.” [ROA 716; Tr. 598.]

Plaintiff Eric Pfund, a 33-year-old with a degree in Criminal Justice, heard Stair on the radio and made donations to the Fellowship. He and his wife never came to live on the farm in Canadys, but in October 1999, they did move to an affiliated Straightway community in Tennessee for four months – heeding Brother Stair’s preaching that everyone who was not in the ark would suffer in the coming end-of-times tribulation and ignoring the warnings of family and friends that they were making a mistake for joining a doomsday group. [ROA 567, 572, 587; Tr. 449, 454, 469.] The Pfund left the Straightway community in January 2000 – (before Brother Stair’s confession). Mr. Pfund complained that he was treated terrible and the work was too hard: “They weren’t a church. All it was was a work compound.” [ROA 567; Tr. 449/15-16.] While Mrs. Pfund says they left because of unspecified rumors and because Brother Stair’s predictions about the Year 2000 did not come true. [ROA 601; Tr. 483.] The Pfund

³ Mr. Butler had accrued the tax debt during a time when he got involved with the Militia Movement and stopped paying his taxes because he believed that the IRS was illegal. [ROA 732; Tr. 615.]

gave \$12,000, which they thought would be used for radio time and “Christian purpose.” [ROA 555; Tr. 437/17-18.] When they left, \$2000 was returned. [ROA 560; Tr. 442.]

Just as with all the other Plaintiffs, the Plaintiffs Glendon and Kathryn Allaby heard Brother Stair’s radio broadcasts from their home in Canada and sent in contributions. Like the Pfunds, they moved to an affiliated community – “Unity” – in Canada for 15 months from July 1997 to October 1998, [ROA 625, 631, 636; Tr. 507, 513, 518]; however, they did visit the farm in Canadys for four months during the cold winter months. [ROA 637; Tr. 519.] Mr. Allaby testified that Brother Stair held himself out as a last day prophet of God and represented that the Fellowship was a charitable church organization and their donations would be used for “religious purposes.” [ROA 627; Tr. 509/18-25.] Mrs. Allaby testified that Brother Stair represented on his radio broadcasts that the money would keep the broadcasts going and further the ministry. [ROA 672; Tr. 554/4-9.] They gave the Fellowship approximately \$3000 in donations prior to moving to Unity and they gave the local Unity community approximately \$30,000 in personal affects when they arrived and \$400 a month for the 15 months they were there. [ROA 633-34; Tr. 515-16.] When they were asked to leave after an volatile incident involving supposed verbal “mistreatment” of their children, they were given \$400. [ROA 636, 679; Tr. 518, 561.]

Plaintiff Kevin Nevin, a 50-year-old Air Force veteran, heard Brother Stair on the radio and sent donations over a five year period (totaling \$19,324), and he even visited the farm in Canadys for one week, but he never joined the community. He testified that when he was making his contributions it was his “understanding” that the Fellowship’s purpose “furthering the Word of God and the new revelations he got from God” and that

various “thank you” letters from Brother Stair represented that the money would be used for radio costs. [ROA 327, 328; Tr. 209/19-20, 210.] However, Mr. Nevin more generally testified that the intended to give the money “to further the religious purposes behind the organization” and “to fulfill the gospel.” [ROA 331,333; Tr. 213/14-17, Tr. 215/11.]

Prior to trial, Plaintiffs’ attorney retained a forensic accounting and tax expert to review the Fellowship’s books. Although their expert had never – in his entire career – reviewed a church’s books, [ROA 307; Tr. 189], he opined that Brother Stair has taken an income for his personal benefit, that funds were spent to benefit members of the community, political contributions were made, all of which was inconsistent with the requirements of 501(c)(3) status and presented “potential” grounds for the loss of its tax-exempt status. [ROA 280, 295, 298-99; Tr. 162, 177, 180-81.] More specifically, he opined that \$129,982 paid in legal fees to defend criminal charges against Brother Stair that were unrelated to the operation of the church or any religious purpose constituted income upon which Brother Stair should have paid taxes.⁴ [ROA 293-95; Tr. 175-77.] The expert also opined that the Fellowship was engaging in work, trade or business without paying applicable federal and state income taxes or social security taxes or making required filings. [ROA 280, 301; Tr. 162, 183.]

The Plaintiffs’ expert also testified about the 14 criteria that the IRS considers important to deciding whether an organization qualifies as a church or religious organization:

⁴ He also pointed to a number of miscellaneous payments for child support and traffic tickets and legal fees for other members of the community.

- 1) A distinct legal existence;
- 2) A recognized creed or form of worship;
- 3) A definite and distinct ecclesiastical government
- 4) A formal code of doctrine and discipline
- 5) A distinct religious history
- 6) A membership not associated with any other church or denomination
- 7) An organization of ordained ministers
- 8) Ordained ministers selected after completing prescribed studies
- 9) A literature of its own
- 10) Established places of worship
- 11) Regular congregations
- 12) Regular worship services
- 13) Schools for religious instructions of the young
- 14) Schools for the preparation of ministers.

[ROA 304; Tr. 186.] Despite the IRS recognition of the Fellowship as a church, Plaintiffs attempted to prove that the Fellowship is not a church through the testimony of Brother Stair's wife based on the facts that the Fellowship does not have a recognized creed or written form of worship or formal code of doctrine or literature *other than the Word of God found in the Holy Bible* and because they ordain ministers who have not attended seminary or completed any prescribed studies. [ROA 427-37; Tr. 309-319.]

INTRODUCTION TO ARGUMENT

The Plaintiffs' Allegations and Production of Evidence to Support their Claims

In opposition to the Defendants' motion to dismiss, the Plaintiffs relied upon the allegations of their complaint and insisted that the basis of their misrepresentation claims was that the Defendants had solicited their donations for church purposes and instead used the money for secular purposes. [ROA 138; Plaintiffs' Memorandum in Opposition to Motion to Dismiss, filed 8/21/06, p. 4.]

Plaintiffs maintained that same position in January 2007 in opposing the Defendants' motion for a protective order, arguing that:

- [T]hey “seek to recover from Defendants moneys they contributed to Defendants' ministry on the basis that the funds would be used for purposes consistent with a Christian ministry on the basis that the funds would be used of purposes consistent with a Christian ministry but in fact were not.” And
- “Questions regarding Defendant Stair's criminal charges and the circumstances that led to them are clearly likely to lead to the discovery of admissible evidence as to whether donors' funds were used for purposes consistent with a Christian ministry as represented by Defendants to Plaintiffs.”

[ROA 142, 145; Plaintiffs' Memorandum in Opposition to Motion for Protective Order, filed 1/1/9/07, p. 1, 4.]

During depositions, the Plaintiffs broadened their allegations to include “representations” by Brother Stair that he was a last day prophet of God. Based on this new evidence, the Defendants renewed their motion to dismiss or for summary judgment on the grounds that such a the First Amendment prohibited the courts from exercising

subject matter jurisdiction to judge the truth or falsity of whether Brother Stair is a prophet of God.⁵

At trial, the Plaintiffs were all over the board with accusations of “representations” made by Brother Stair. In opening statement, Plaintiffs’ counsel told the jury that:

- “[T]he case is simple. My clients understood they were giving money to a charity and to a church for good purpose.” [ROA 248; Tr.130/18-20.]
- “This money has not been all used for Christian ministry, for spreading the gospel.” [ROA 246; Tr. 128/19-20.]
- The Plaintiff heard Brother Stair on the radio and he represented “if you send him money, that his church uses the money to help spread the gospel of Christ and to do Christian things, primarily to keep him on the radio and keep him preaching to get the Word out.” [ROA 242; Tr. 124/17-20.]
- His clients were disillusioned because they “gave [Defendants] money to be used for a Christian purpose. And [Defendants’] told us this community would be run in a Christian way. We don’t like what we heard (about adultery) and we don’t like what we’ve seen and we want our money back and we want to leave.” [ROA 245-46; Tr.127/23 – 128/2.]

⁵ The Defendants submit that the Trial Judge did have the authority to rule on that renewed motion which would not have contravened the prohibition against overruling another judge’s prior ruling. To the extent that the motion was based on new evidence produced in discovery, the case law holds that a summary judgment may be renewed after denial if new evidence is presented. Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 605 S.E.2d 12, 18 (2004) (“That a different trial judge previously denied the motion did not preclude APAC from renewing its motion once new evidence came to light.) However, at this stage, post-verdict, the questions on appeal rest on the Trial Judge’s denial of the Defendants’ DV/JNOV motions in view of the evidence presented at trial.

As recounted above, in their testimony the Plaintiffs identified a number of variations on these “representations”:

- Brother Stair professed to be a last day prophet of God;
- Brother Stair made predictions/prophesies about the Year 2000 end-of-times tribulation and proclaimed that the community would be a safe haven;
- Brother Stair represented that their money would be returned if/when they left the community;
- Brother Stair represented that his organization is a charitable church organization; and
- Brother Stair represented that their donations would be used for radio time and/or “Christian purposes”.

In opposition to the Defendants’ motion for directed verdict, the Plaintiffs’ counsel maintained that their cases “boiled down” to the fact that Brother Stair “represented that if my clients gave him the money, their money would then be used to spread the gospel through a radio broadcast ministry and other resources. And he lied. It wasn’t used entirely for that purpose.” [ROA 775; Tr. 658/7-10.] Plaintiffs’ counsel also maintained that the money was used “in manners inconsistent with his filings with the IRS, his filings with the State of South Carolina, and the requirements of law with respect to the operation of a church.” [ROA 775; Tr. 658/13-17.]

In closing argument, Plaintiffs described Brother Stair as a “con artist” and argued that he was not a nonprofit tax exempt religious corporation. They argued that Brother Stair told them that their money would be used for radio and it was used for other non-Christian purposes:

They could have given this money to a legitimate charity and to put it to good use. But they were duped by this man. And money that they hoped and wanted to be going for a Christian charity, for Christian purposes went for things like paying legal fees for people who pled guilty to crimes. [ROA 921; Tr. 807/18-23.]

They argued that Brother Stair told them he would give them their money back if/when they left. They analogized the situation to one where a used car salesman lies about a car not having been wrecked. However, in virtually the same breath, they castigate Brother Stair for his biblical beliefs and teachings and accuse him of intimidation and breaking up families. Then Plaintiffs attempt to end-run the IRS's jurisdiction and accuse the Defendants of violating their tax-exemption and "defrauding taxpayers" and even go so far as to argue that the Fellowship is not a church. In the end, however, they acknowledged that Brother Stair "should not be punished for what he goes on the air and says are his beliefs" and that the Plaintiffs "don't deserve a dime" because he fell from grace. [ROA 977; Tr. 863/20-25.] Instead, they declared to the court and the jury that their case simply boils down to the representations that "the money they sent to him is used for Christian purposes of spreading the gospel." [ROA 979-80; Tr. 865/23 – 866/1.]

The Defendants maintain that pursuant to the limitations of the First Amendment, the courts lack subject matter jurisdiction over claims against the Defendants which present disputes over religious matters/ecclesiastical questions and controversies. In particular, the court lacks subject matter jurisdiction to judge whether the Defendant Church used the Plaintiffs' gifts/donations for "Christian purposes" OR to judge the truth or falsity of the representation by Defendant Stair that he is a last day prophet of God or his radio broadcast preachings/prophesies about the Year 2000 "end of times."

The Defendants also maintain that Trial Court erred in allowing the Plaintiffs to challenge the Defendants Fellowship's 501(c)(3) non-profit, tax-exempt status because a state court does not have subject matter jurisdiction to judge challenges to the validity of the Defendants' initial application for tax-exempt status or its subsequent compliance with IRS rules/regulations.

Beyond the lack of subject matter jurisdiction, the Plaintiffs' claims fail as a matter of law and Defendants are entitled to judgment notwithstanding the jury's verdict on the fraud and negligent misrepresentation causes of action because any representations Brother Stair may have made that their donations would be used *in the future* for radio broadcasts to spread the Gospel (or, more generally, for Christian purposes) or that their donations would be returned if/when they left the Fellowship do not constitute a representation of preexisting fact.⁶ Likewise, Brother Stair's predictions/prophecy as to future events associated with the Year 2000 do not constitute a representation of preexisting fact to support any claim for fraud or negligent misrepresentation.

Ultimately, however, the Plaintiffs did not present clear and convincing evidence that the Defendants' representations about the use of their gifts/donations was false. To the extent that there were representations about the money being used for radio broadcasts, even in though all the monies went into a general fund, the evidence shows that \$100,000 per month (\$10-14 million over ten years) was spent on radio time – far

⁶ To the extent that the "promise" that the money would be returned sounds like a contract claim, the Defendants posed that issue at trial because no breach of contract claim was pled. [ROA 777; Tr. 660.] In reply to which Plaintiffs disavowed a contract claim and maintained that the nature of what there were seeking was to invalidate the gift and they declined to amend to assert any breach of contract claim. [ROA 779, 790; Tr. 662, 676.]

more than these Plaintiffs ever donated. And, to the extent that there were representations that the funds would be used for “Christian purposes” (and if a court/jury can judge what is a “Christian purpose”), the evidence shows that the payments complained of were to support the needs of those that came to the communities and gave everything as they believed it was their Christian duty to do.

Finally, if there were any evidence that the Plaintiffs donations were not used for the intended purposes allegedly represented by Defendant Stair, their remedy does not lie in an action to recover their gifts. Rather, the gift was completed and the only remedy for “misuse” of the donation would be by the church – not the donors who have since left the church or in an enforcement action to compel that the monies be used as designated.

The Plaintiffs’ causes of action for breach of fiduciary duty also fail for lack of evidence on such a confidential relationship necessary to support the creation of a fiduciary duty. And, the Plaintiffs’ causes of action for violation of the Unfair Trade Practices fail as a matter of law because the UTPA does not apply to a church.

ARGUMENT

- I. **The Trial Court erred in denying the Defendants' motion to dismiss for lack of subject matter jurisdiction over claims against the Defendant Church and its leader by former followers based on disputes over religious matters/ecclesiastical questions and controversies.**
 - A. **The court lacks subject matter jurisdiction to judge whether the Defendant Church used the Plaintiffs' gifts/donations for "Christian purposes."**
 - B. **The court lacks subject matter jurisdiction to judge the truth or falsity of the representation by Defendant Stair that he is a last day prophet of God.**
 - C. **The court lacks subject matter jurisdiction to judge the truth or falsity of the Defendant Stair's radio broadcast preachings/prophesies about the Year 2000 "end of times."**

The Limits of Court Jurisdiction over Church Matters

The limits of the courts' jurisdiction in religious disputes arises from the First Amendment. As the U.S. Supreme Court has stated, "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1968). The U.S. Supreme Court's most recent pronouncements on the subject of judicial review of religious disputes are Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) and Jones v. Wolf, 443 U.S. 595 (1979).

In Milivojevich, the Court declared that "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity⁷, but must accept

⁷ In religious organizations of a hierarchical nature, courts would interpret the final actions of the highest ecclesiastical tribunal or body. In religious organizations of a

such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." 426 U.S. at 709. In that case, the Court found that the civil courts had no jurisdiction to resolve the religious dispute over the defrocking of a bishop, declaring that: "this case essentially involves not a church property dispute, but a religious dispute the resolution of which ... is for ecclesiastical and not civil tribunals." *Id.*

However, as addressed in *Jones v. Wolf*, the civil courts do have jurisdiction to resolve church property disputes on points of law separate from issues of religious doctrine:

Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith."

443 U.S. at 602 (citations omitted).

Consistent with the U.S. Supreme Court's dictates, the South Carolina Supreme Court has taken the approach that our courts have limited jurisdiction over church matters which can be resolved without extensive inquiry into religious law. Our case law has recognized that civil courts "do have jurisdiction as to civil, contract and property rights which are involved in a church controversy," even though they have no jurisdiction of "ecclesiastical questions and controversies." *Bramlett v. Young*, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956).

congregational nature, courts would interpret the final actions of the majority of the congregation. *See Milivojevich*, 426 U.S. at 709.

When a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right, and no more; ... The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammelled by state authority. On this principle, the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land; having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.

Morris Street Baptist Church v. Dart, 67 S.C. 338, 45 S.E. 753 (1903),

It is important to note our limited jurisdiction over church matters. Church disputes may be resolved by the courts only if resolution can be made without extensive inquiry into religious law. It is not the function of the courts to dictate procedures for a church to follow. *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996); *Knotts v. Williams*, 319 S.C. 473, 462 S.E.2d 288 (1995). To preserve "complete religious liberty, untrammelled by state authority," we limit our inquiry into church affairs and respect the boundaries of church self-governance. *Pearson*, 325 S.C. at 52, 478 S.E.2d at 852-53.

Williams v. Wilson, 349 S.C. 336, 563 S.E.2d 320, 322 (2002).

“The following are among the general principles that emerge from analysis of the above United States and South Carolina Supreme Court cases: (1) courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.” *Pearson v. Church of God*, 478 S.E.2d at 852-53.

The complaints should have been dismissed in these cases because “Christian way” is an ecclesiastical and religious term and the Court cannot interpret it or evaluate the use of the funds without delving too far into religious doctrine and thereby breaching the First Amendment limits as defined by the above mentioned precedent. To the extent that the Plaintiffs’ trial testimony and evidence support their general allegations that their donations would be used for “Christian purposes,” such claims are not subject to judgment in a state trial court.

In addition to the First Amendment authorities discussed above, it has long been settled that our courts lack authority to interfere with the discretion of the governing body of a church in the management of its funds, in the absence of a violation of the corporate charter:

The Court has no authority to interfere with or control the discretion of the Vestry and Wardens of a church, in their management of its funds, unless they transgress the limits of their charter. However unwisely they may exercise their power, they are responsible only to their constituents, in whose hands a complete remedy exists through the quiet operation of the ballot box.

Vestry & Wardens of the Episcopal Church of Christ Church Parish v. Barksdale, 20 S.C.Eq. 197, 1 Strob.Eq. 197, 1847 WL 2195 (S.C.App.Eq. 1847).

Opinions from other jurisdictions also illustrate the limit on the court’s jurisdiction/authority to involve itself in disputes about use of church/religious donations. In Rizutto v. Rematt, 273 Ill.App.3d 447, 653 N.E.2d 34, 38 (1995), members of a religious organization brought an action seeking to have the court examine the way the church was managing its financial affairs. However, the court dismissed the complaint because such matters were “beyond the realm of judicial jurisdiction. The issues raised by plaintiffs are matters of ecclesiastical polity and as such must be addressed and

answered by the Church itself rather than by the courts.” *See also* Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of Washington, D.C. v. Beards, 680 A.2d 419, 431 (DC App. 1996) (“Absent effective church tribunal or adoption by church of standards civil court can apply without crossing ecclesiastical line which is prohibited by First Amendment, church member's only remedy for perceived financial irregularity in conduct of church is cutting one's losses by leaving membership.”); Wilson v. Hinkle, 67 Cal.App.3d 506, 136 Cal.Rptr. 731 (1977) (Court dismissed complaint where a former minister and certain church members brought an action against the new minister and the church corporation complaining that about the use of donations for the “new” charismatic activities of the new church).

Perhaps most illuminating is the decision in Board of Managers of the Diocesan Missionary v. Church of the Holy Comforter, 164 Misc.2d 661, 628 N.Y.S.2d 471 (1993), where a national church brought suit against one of its former dioceses to resolve a dispute regarding ownership of property formerly deeded to the diocese "in communion with" the national church. The court dismissed the complaint, finding that there was no justiciable controversy because it concluded that the phrase "in communion with" is an ecclesiastical and religious term and has no legal or secular meaning and cannot be so interpreted by application of the "neutral principles of law" rationale.

For the same reasoning, a state trial court simply cannot judge what is a “Christian purpose” or the truth or falsity of the alleged representations that Brother Stair in a last day prophet of God or his preachings about the biblical implications of the Year

2000.⁸ Such representations cannot be interpreted by application of the neutral principles of law but go to the very heart of their religious beliefs.

II. The Trial Court erred in allowing the Plaintiffs to challenge the Defendants Fellowship's 501(c)(3) non-profit, tax-exempt status because a state court does not have subject matter jurisdiction to judge challenges to the validity of the Defendants' initial application for tax-exempt status or its subsequent compliance with IRS rules/regulations.

Having consistently asserted/alleged their claims as based on representations that their donations would be used for "Christian purposes", the Plaintiffs' theory of their case changed on the eve of trial and throughout the trial. At the beginning of trial, the Plaintiffs told the Trial Judge that:

"Our case is, in a nutshell, my folks gave money to what was represented to be a charitable organization. When they learned it was not a charitable organization, they asked for their money back. They weren't given all of their money back. We're here today to get their money back because they were induced by misrepresentation to give money to this organization which is not a charitable organization. The reason all of this becomes relevant is because Defendant holds itself out as a charitable organization as sanctioned by Section 501(c)(3) of the IRS Code." [ROA 197; Tr. 79/7-17.]

"What's been alleged here are state court causes of action. The state court causes of action simply say they represented themselves as a religious charity and based on their representations my clients gave them money. Those were misrepresentations because they're not a charity. They're not a religious charity." [ROA 201; Tr. 83/19-25.]

"But our case is simply this: They represented to us; we are a religious charity, give us money and it will be used for religious charitable purposes. And we gave them money. ... What we're going to prove here is that it's neither religious nor a charity." [ROA 205-06; Tr. 87/21 – Tr. 88/2.]

⁸ Notably, Eric Pfund acknowledged that Brother Stair's preaching about the time of tribulation were statements protected by the First Amendment. [ROA 572; Tr. 454/16-18.]

Although the Plaintiffs acknowledged and presented the letter from the IRS granting Fellowship tax-exempt status in 1979, [ROA 198, 1080; Tr. 80, 1.6-9; Plaintiffs' Ex. 14], Plaintiffs presented extensive testimony from their forensic accounting expert on the subject of whether Faith Cathedral Fellowship qualifies for non-profit tax exempt status as a church under IRC 501(c)(3). Although the expert is of the opinion that the Fellowship is not a church and it does not follow the rules/regulations applicable to religious charitable organizations, the indisputable fact is that the IRS granted the Fellowship non-profit tax exempt status which has not be withdraw/revoked by the IRS.

At the beginning of trial, Defendants had raised a question of subject matter jurisdiction over the Fellowship's tax-exempt status and objected to that line of evidence. [ROA 195-96, 199, 200, 207-08; Tr. 77-78, 81-82, 89-90.] However, the Trial Judge denied the motion and allowed that line of testimony. [ROA 202, 212; Tr. 84, 11.15-19, Tr. 94, 11. 8-11.] These Defendants maintain that only the IRS/federal courts can judge the veracity of the representations made in the initial application or the Fellowship's compliance with applicable rules/regulations.

Once the IRS has recognized an entity to be a charitable organization within the meaning of § 501(c)(3) (and a church within the meaning of 170(b)(1)(A)(i)), that decision generally cannot be challenged or reversed except by an adverse IRS determination with the attendant rights to administrative appeals and tax court proceedings:

The complaint also fails to state a violation of s 501(c)(3) by the church defendants. They have received a determination letter from the IRS that confirms their tax-exempt status. Even if, as plaintiffs contend, that letter was erroneously or illegally issued, the church is entitled to rely upon it and withhold payment of taxes. The Code imposes no duty upon the church to gain pre-clearance from the IRS before embarking on activities

that might trench upon the s 501(c)(3) prohibitions against political activity. If the church does engage in these proscribed endeavors, then it is liable to revocation of its exemption, but as long as it holds that exemption, it cannot be said to have violated the Code.

Abortion Rights Mobilization, Inc. v. Regan, 544 F.Supp. 471, 487 S.D.N.Y. (1982); see also McLennan v. U.S., 23 Cl.Ct. 99 (1991), aff'd, 994 F.2d 839 (Fed. Cir. 1993); Bob Jones University v. Simon, 416 U.S. 725 (1974).

The impact and prejudice of this evidence and line of argument is clearly demonstrated by the jury's question to the Court: "Can we get a document showing what a church is legally?" [ROA 1024, 3091; Tr. 910, Court Ex. 14.] Although the Trial Judge instructed the jury that whether the Fellowship is a church was not material, [ROA 1027; Tr. 913], clearly the Plaintiffs made it a big issue in their case and the jury was dwelling on that point. The state trial court does not have jurisdiction to determine if the Fellowship is a church and this line of evidence never should have been admitted or been pursued.

In the final analysis, as the Plaintiffs conceded to the Trial Judge, "if the jury believes they're a church or a religious organization, my folks' aren't going to get their money back." [ROA 209; Tr. 91, ll. 8-10.] The IRS granted the Fellowship non-profit as a church (and it is also recognized by the S.C. Department of Revenue as an eleemosynary organization); thus, the Plaintiffs are not entitled to recover their money back.

III. The Trial Court erred in denying the Defendants' motion for directed verdict/JNOV on the fraud and deceit and the negligent misrepresentation causes of action.

A. A representation that a gift/donation will be used in the future for radio broadcasts to spread the Gospel (or, more generally, for Christian purposes) does not constitute a representation of preexisting fact.

B. A representation that a gift/donation will be returned to the donor if/when they choose to leave the Fellowship does not constitute a representation of preexisting fact.

C. A prediction/prophecy as to future events associated with the Year 2000 does not constitute a representation of preexisting fact.

A cause of action for fraud requires proof by clear, cogent and convincing evidence that the defendant made a material representation; that it was false; that when it was made the agent knew it was false; that it was made with the intention that it should be acted upon by the appellant; that the plaintiff was ignorant of its falsity; that he relied on its truth; that he had a right to rely thereon; and that he thereby suffered injury. Davis v. Upton, 250 S.C. 288, 157 S.E.2d 567, 568 (1967).

“In South Carolina, the common law tort of negligent misrepresentation is based upon the following elements: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached the duty by failing to exercise due care; (5) the plaintiff justifiably relied upon the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.” Bishop Logging Co. v. John Deere Indus. Equipment Co., 317 S.C. 520, 455 S.E.2d 183, 188 (Ct. App. 1995).

“[A] key difference between fraud and negligent misrepresentation is that fraud

requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001) (citation omitted). However, as to both causes of action, representations or promises of future action cannot be the basis for a cause of action for fraud. In order to be actionable, the representations must be a statement concerning an existing fact. Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997) (citing *Whitman v. Seaboard Air Line Ry.*, 107 S.C. 200, 92 S.E. 861 (1917); Hubbard & Felix, *supra*, at 275. To be actionable, the representation must relate to a present or pre-existing fact and must be false when made. The representation cannot ordinarily be based on unfulfilled promises or statements as to future events.” Bishop Logging Co., id..

Any representation Brother Stair may have made that that the Plaintiffs’ donations would be used *in the future* for radio broadcasts to spread the Gospel does not constitute a representation of preexisting fact. Similarly, any representation he may have made that their donations would be returned contingent on *if and when* they decided to leave at sometime in the future does not constitute a representation of preexisting fact. Most assuredly, fraud cannot be predicated on Brother Stair’s prophecy about the tribulations God would send in the Year 2000.

D. The Plaintiffs did not present clear and convincing evidence that the Defendants’ representations about the use of their gifts/donations were false.

The evidence at trial establishes that the Defendants deposited all monies donated in a general fund and they did not maintain any separate account or fund for donations “for radio time.” However, the general ledgers produced by the Defendants and

introduced by the Plaintiffs evidence that the Fellowship maintained computerized bookkeeping which shows deposits and expenses in considerable detail. Most particularly, those records show that the Fellowship spend considerably more on radio of time that these Plaintiffs ever gave:

Exhibit No.	General Ledger Year	Total Radio Expenses (Acct. 805)
40	1993	\$428,915 ROA 1434
41	1994	\$604,276 ROA 1520
42	1995	> \$344,000 ⁹ ROA 1566-67
43	1996	\$1,247,586 ROA 1662
44	1997	\$1,238,721 ROA 1758
45	1998	\$1,787,442 ROA 1890
46	1999	\$1,677,683 ROA 2036
47	2000	\$1,499,304 ROA 2216
48	2001	\$1,219,740 ROA 2418

To the extent that the bookkeeping does not trace the Plaintiffs' individual donations to payment of any specific radio expense(s), this is no evidence or legal basis to impose liability on the Defendants. While the Plaintiffs' forensic accounting expert was certainly critical of the Defendants' financial expenditures, he did not offer any opinion that the Defendants had any duty to track the donations to payment of specific expenses. By the Plaintiffs' account they made donations of approximately \$369,000

⁹ Page 80 of the ledger with the total for the #805 radio account is missing from the trial exhibit, however, the total entries through November 24, 1995, is more than \$344,000.

over a period of years spanning from 1993 through 2001 which Brother Stair represented would be used for radio broadcast time. [ROA 950; Tr. 836/20-21.] During that same period of time, the Defendants spent over \$10 million on radio time. On that evidence, there is no basis to support any action for fraud or misrepresentation (or any other tort based action) to recover their donations.

E. The Plaintiffs do not have a cognizable claim to return of their gifts/donations as damages if they were not used for the intended purposes allegedly represented by Defendant Stair.

The general common law rule provides that a donor has no standing to enforce the terms of a completed charitable gift unless the donor expressly reserved a property interest in the gift. See Hawes v. Emory University, 374 S.E.2d 328 (Ga. App. 1988)(“Although endowment donor and private university had discussed way scholarship fund was to be used, and donor wished fund to be disbursed as she had indicated to university, lack of indication that fund was donated in order to secure university's promise to use fund in particular way precluded donor's attempt to have endowment returned; contribution was a valid gift, given, accepted and delivered.”)

To the extent that the donor makes a gift with an intended purpose, the remedy is in an enforcement action by the attorney general or other appropriate government official. Carl J. Herzog Foundation, Inc. v. University of Bridgeport, 699 A.2d 995 (Conn. 1997) (citing 2 Restatement (Second), Trusts § 348, comment (f), p. 212 (1959)).

While there may be evidence in this case -- confusing and conflicting though it may be -- about supposed representations by Brother Stair and the Plaintiffs' donative intentions, there is no evidence that these Plaintiffs expressly reserved any property interest in their gifts which would be remediable in an action to recover the gifts as

damages. Rather, any possible viable action would be to enforce the “promise” and make the Fellowship use their money for radio broadcast expenses. As the accounting records show, as discussed above, the Defendants have already spent \$10 million on radio time (during the pertinent time period) and continue to spend over \$100,000 per month on radio time. Upon these facts, however, the law does not support a claim by these Plaintiffs to personally recover the monies (or any punitive damages.)

IV. The Trial Court erred in denying the Defendants’ motion for directed verdict/JNOV on the breach of fiduciary duty cause of action because no fiduciary relationship arose between Brother Stair and the Plaintiffs which was breached.

Defendants maintain, as a above, that any claim for breach of a fiduciary duty must be dismissed because “any inquiry into whether [Defendants] breached any fiduciary obligations would necessarily involve the truthfulness or falsity of the representations” as to religious matters which is beyond the jurisdiction of a state trial court. Smith v. Tilton, 3 S.W.3d 77 (Tex.App.-Dallas Aug 25, 1999).

In addition, as the Trial Judge correctly acknowledged, there is a question whether South Carolina law imposes a fiduciary duty on a pastor/religious leader. [ROA 897; Tr. 783.] However, the Trial Judge erred in submitting a claim of breach of fiduciary duty on these facts.

In Hendricks v. Clemson University, 353 S.C. 449, 578 S.E.2d 711 (2003), the Court declined to recognize a fiduciary duty between student and college advisor, stating:

Whether there is a fiduciary relationship between two people is an equitable issue. *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987). Generally, legal issues are for the determination of the jury and equitable issues are for the determination of the court. *Id.* “A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one

imposing the confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992) (citing *Island Car Wash*, 292 S.C. at 599, 358 S.E.2d at 152).

Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court.

Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.

In *Brown v. Pearson*, *supra*, the Court of Appeals stated:

... “[t]he clergy-parishioner relationship is not necessarily a fiduciary relationship.” The cases in other states in which this relationship has been found to exist involve, for example, self-dealing or self-interest on the part of the clergyman involved, such as abuse by a clergyman of his role as a counselor, *e.g.*, *Destefano v. Grabrian*, 763 P.2d 275 (Colo.1988), or a clergyman enhancing his own financial position at the expense of a parishioner, *e.g.*, *Adams v. Moore*, 96 N.C.App. 359, 385 S.E.2d 799 (1989). No such situation is present in the case at bar.

This is not a case of abuse by a clergyman of his role as a counselor. Nor is this a case of a clergyman enhancing his own financial position at the expense of a parishioner as contemplated under the North Carolina case cited. While the Plaintiffs complain about the fact that the Fellowship expended funds to pay for Brother Stair’s legal fees, the evidence shows that the Board of the Fellowship made that decision and more over, that donations came in that covered those legal expenses. Moreover, all the monies donated by the Plaintiffs had been spent before this incident arose in the fall of 2001. Further, unlike the *Adams* case, there is no evidence that the Plaintiffs were vulnerable and susceptible or that Brother Stair personally preyed upon or directly brainwashed the Plaintiffs.

General, public requests for donations – from a pulpit or on the radio – do not give rise to fiduciary duty. See *Roberts-Douglas v. Meares*, 624 A.2d 405 (D.C. 1992) (“If the

only connection between donor and donee is that the former sits in a church pew, listens to the latter's sermon, and conscientiously makes a contribution, the occasion for special scrutiny does not arise.”) To the extent that a confidential relationship might arise between a spiritual leader and follower, there would need to be a showing of continuous influential contacts, generally on a one-to-one basis, between an unscrupulous spiritual leader and a trusting or otherwise deferential parishioner. The evidence does not support any imposition of such a heightened duty of care, for as acknowledged by the Plaintiffs’ own counsel:

[T]he relationships here that we’re alleging began beyond or far before there’s actually that formal pastor-parishioner relationship because there people were hearing broadcasts over the radio and making contributions and they were relying on statements made by someone who did occupy that position of minister within that particular organization, but they weren’t necessarily parishioners of that ministry at that time. They were simply contributors making contributions based on representations made to them about the use of those funds for that ministry.

[ROA 898; Tr. 784/4-14.]

V. The Trial Court erred in denying the Defendants’ motions to dismiss and for directed verdict/JNOV on the cause of action for violation of the Unfair Trade Practices Act because the Act does not apply to churches.

The Plaintiffs attempted to state a cause of action for violation of the Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20, which provides that: “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” However, Section 39-5-10 defines “*Trade*” and “*commerce*” as including “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.”

The claim for violation of the UTPA fails as a matter of law because the Fellowship -- as recognized by the IRS -- is a church/religious organization that operates a radio ministry which the Plaintiffs heard and made donations. See Stitt v. Holland Abundant Life Fellowship, 614 N.W.2d 88 (Mich. 2000)(held in premises liability case - “The solicitation of entirely voluntary donations by a nonprofit organization is plainly not a commercial activity.”); see, also Reynolds v. Zizka, 1998 WL 123047 (Conn. Super. 1998). To the extent that the members of the Fellowship ply their trades or conduct business out in the world to support the community, the Plaintiffs’ claims do not arise out of those interactions.

CONCLUSION

Based on the foregoing, the Defendants respectfully submit that the state courts do not have jurisdiction over the Plaintiffs’ claims that challenge whether their donations were used for “Christian purposes” or whether Brother Stair is a last day prophet of God or the authenticity of his prophecy about the tribulations coming in the Year 2000. Nor do the state courts have jurisdiction over any challenge to the IRS’s recognition of the Fellowship as a 501(c)(3) nonprofit tax-exempt church.

Further, there is no factual or legal basis to support the Plaintiffs fraud/negligent misrepresentation claims about future events/promises. To the extent that the Defendants may have made some representations that the donations would be used for their radio ministry, the Plaintiffs did not present any clear and convincing evidence to prove the falsity of the “representation.” To the contrary, while the Plaintiffs donated approximately \$369,000 between 1993 and 2001, the general ledgers show that the Defendants did, in fact, spend over \$10 million on radio time during that same time

period. Even if there was any evidence that the Defendants used their donations for purposes other than as represented or intended, the remedy is not to return the donations to the Plaintiffs, but to enforce the gifts and make the Defendants spend that amount of money on radio time.

As discussed above, Defendants also maintain that there is no evidence to support a claim for breach of fiduciary duty by contributors for alleged misrepresentations about the use of their donations. And, finally, there is no legal basis to state a cause of action for violation of the Unfair Trade Practices Act arising from donations to a church/charity.

Wherefore, based on the foregoing, these Defendants respectfully request that the judgments be reversed and vacated.

Respectfully submitted,

s/ Deborah H. Sheffield
Deborah H. Sheffield
Law Office of Deborah Harrison Sheffield
117 Brook Valley Rd.
Columbia, SC 29223
803-419-7837
803-419-3519 FAX
dhsheffieldatty@aol.com

Mathias G. Chaplin
Law Offices of Mathias G. Chaplin
4511 North Main Street
Columbia, SC 29203
803-786-7102
803-691-0009 FAX

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ATTORNEYS FOR THE APPELLANTS

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

November 3, 2008

s/ Deborah H. Sheffield

Deborah H. Sheffield