

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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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

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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.

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FINAL REPLY BRIEF OF APPELLANTS

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# TABLE OF CONTENTS

	<b>Page</b>
Argument in Reply.....	1
I. First Amendment ~ Freedom of Religion	
The civil court lacks 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.....	1
II. Error Preservation – Issues were raised and ruled upon by Trial Court. ....	3
III. Fraud ~ Promise of return of money is not actionable. ....	4
Conclusion .....	5
Certificate of Counsel .....	6

## TABLE OF AUTHORITIES

Cases	Page
Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956) .....	1
Christofferson v. Church of Scientology of Portland, 644 P.2d 577 (Or.App. 1982).....	3
Jones v. Wolf, 443 U.S. 595 (1979).....	1
Mains v. K-Mart Corp., 297 S.C. 142, 375 S.E.2d 311(1988) .....	3
Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996).....	1
Queens Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006).....	4

## Argument in Reply

Without restating the issues or making redundant arguments which have been thoroughly set forth in their opening brief, the Appellants offer the following points of clarification and rebuttal to the arguments raised by Respondents.

### I. First Amendment ~ Freedom of Religion

#### **The civil court lacks 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.**

The First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. Jones v. Wolf, 443, 595 (1979); Pearson v. Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996). The civil courts have no jurisdiction of ecclesiastical questions and controversies and may not engage in resolving disputes as to religious principles, doctrine or administration. Pearson, id.; Bramlett v. Young, 229 S.C. 519, 537-38 (1956). Appellants maintain that these propositions fully support their contention that the civil courts cannot adjudicate the causes of action asserted by the Respondents which hinge on the truth or falsity of whether Faith Cathedral used their donations/gifts for “Christian purposes” or whether Brother Stair is the last day prophet of God or whether Brother Stair’s radio broadcast preachings/prophesies about the Year 2000 “end of times.

As at trial, in their brief, Respondents argue that the funds were used for purely secular purposes – a question that no civil court should be judging – rather, it is for the church to determine what is a “Christian purpose.” Many a church check book will show payments that at face value appear to be secular, but serve the church operations and therefore a “Christian purpose.” And, as to the payment of living expenses, the

Respondents' argument rings false because, most of them lived on the farm and had their own living expenses paid through the Fellowship funds<sup>1</sup>. And, as to the use of the Fellowship funds to pay for Brother Stair's legal expenses, the record shows that those monies were separately raised, and that the Fellowship Board specifically authorized that payment. [ROA 805-06, 823, 836, 1076; Tr. p. 691-92, 709, 722-23; Plaintiff Ex. 11.]

The IRS has determined that the Defendant Faith Cathedral is a bona fide religious organization, and the state courts are not the venue for the Plaintiffs to attack that determination. Any questions of whether they have violated the by-laws or the tax laws does not negate that they have IRS designation as a 501(c)(3), non-profit, church organization. However, without meeting the specifics of all the points on which the Plaintiffs attempt to attack the Faith Cathedral's First Amendment protected status as a church, the Defendants are compelled to note several facts.

While the Faith Cathedral Fellowship may provides for all the personal needs of Brother Stair and his family, in fact, the Fellowship provided for all the personal needs of the Plaintiffs while they were members of the community – that is how their community is operated in adherence to biblical edicts. And, the status of the Faith Cathedral cannot be attacked on the basis that is not affiliated with a recognized national church or the fact that it relies only on the Holy Bible without any other written creed. No doubt, many a local Baptist church could be attacked for lack of a national affiliation or written book of church doctrine.

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<sup>1</sup> Although Plaintiffs assert in their brief that they all lived at "one of the Defendants communities" at some point in time, the record will show that the Pfunds, Allabys never lived at the Fellowship community in Canadys, and Mr. Nevin never lived at any community, he only visited Canadys for one week.

To extent that Plaintiffs contend that First Amendment argument does not apply to Brother Stair, they affirmatively alleged in their complaints that he was at all relevant times an officer, agent, and/or employee, acting within the course and scope of his agency, or in the alternative that Overcomer ratified his actions. [See i.e. ROA 71; Allaby Complaint ¶7-9.] See also Christofferson v. Church of Scientology of Portland, 644 P.2d 577, n. 26 (Or.App. 1982) (First Amendment protection extends to leader of religious organization).

## **II. Error Preservation – Issues were raised and ruled upon by Trial Court.**

Appellants maintains that the issues were raised in the trial court , in pretrial motions and trial motions, and ruled upon by the trial judges, sufficient to preserve challenges to the subject matter jurisdiction, and the failure of the allegations to state claims, and the insufficiency of the evidence as to claims<sup>2</sup>. In this regard, the Appellants very clearly articulated the argument that Plaintiffs/Respondents could not prove that the funds were not used of the “Christian” purpose as promised, i.e. were false. Appellants also clearly include the breach of fiduciary duty claim in the motion, by referring to it in a short-hand as ”breach;” and the trial court also specifically discussed the breach of fiduciary duty claim. [ ROA 780, 782, 897; Tr. 663, line 24; 665, line 20; Tr. 783.]

Finally, to the extent that the Trial Court not only allowed, but invited the Defense counsel to simply renew and incorporate his previously made motions, this does not constitute a failure to preserve as in Mains v. K-Mart Corp., 297 S.C. 142, 375 S.E.2d 311 (1988). “Note the usual motions” where the trial counsel never articulates any

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<sup>2</sup> While trial counsel used the phrase “summary judgment” instead of directed verdict, any lack of precision in the terminology should not negate the preservation of the issues, as the trial court clearly understood the purpose and substance of the Appellants’ arguments.

argument does not equate to the situation, as here, where the trial court allows (and encourages) trial counsel to renew/rely on his earlier motions to avoid repetition and redundancy.

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 628 S.E.2d 902, 919 (Ct.App. 2006). The Trial Court had a fair opportunity to rule on the issues and this Court has a sufficient platform for meaningful appellate review.

### **III. Fraud ~ Promise of return of money is not actionable.**

In their brief, the Plaintiffs attempt to predicate their claims of fraud/misrepresentation on representations supposedly made by Brother Stair that he would return their money if they decided to leave. However, that is not what they pled, nor is it what they argued to the jury. Instead, they have repeatedly contended that their claims were based on that Brother Stair's representations that he would use the money for “Christian purposes” and/or the radio ministry. For example, 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.] [See opening brief for detailed discussion of Plaintiffs' repeated claims.] Beyond the point that such a promise of future return would not constitute a representation of preexisting fact, the claim sounds in contract; yet the Plaintiffs did not choose to pursue such a claim. [See ROA 777, 790; Tr. 660, 676.]

To the extent that the Plaintiffs argue in their brief that they did not make a gift, they pled a cause of action asserting that it was a donation/gift, [see i.e. ROA 71; Allaby Complaint ¶¶9, 12] and at trial Plaintiff's counsel affirmatively asserted that their claims were for invalidation of a GIFT due to undue influence. [ROA 719; Tr. 662.] However, 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. In addition, the Plaintiffs withdrew their claim for conversion. [ROA 893; Tr. 779.]

Finally, to the extent that any of the Plaintiffs might have a claim for return of money based on such a promise, it would be limited to those that lived at the Fellowship's location in Canadys, not any other the so-called affiliated communities. And, any moneys subject to return should be segregated between what they brought with them when they came to live, apart from any donations made for the radio ministry.

## **CONCLUSION**

Based on the foregoing, in addition to the arguments made in the opening brief, the Defendants respectfully submit that the state courts do not have jurisdiction over the Plaintiffs claims that challenge whether their donations to Faith Cathedral Fellowship were used for "Christian purposes." Further, there is no factual or legal basis to support the jury's award of actual and punitive damages to the Plaintiffs on claims for fraud/negligent misrepresentation, breach of fiduciary duty, or violation of the Unfair Trade Practices Act.

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



Respectfully submitted,

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November 3, 2008

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**CERTIFICATE OF COUNSEL**

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

November 3, 2008

s/Deborah H. Sheffield  
Deborah H. Sheffield