STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT HAVE SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS?

2. DID DEFENDANTS PRESERVE FOR APPELLATE REVIEW THEIR ARGUMENTS REGARDING THE TRIAL JUDGE'S RULINGS ON DEFENDANTS' DIRECTED VERDICT AND JNOV MOTIONS?

3. WAS THE JURY'S GENERAL VERDICT SUPPORTED BY AT LEAST ONE CAUSE OF ACTION AS TO WHICH DEFENDANTS DID NOT PROPERLY PRESERVE ARGUMENTS FOR APPELLATE REVIEW?

4. DID THE TRIAL COURT PROPERLY DENY DEFENDANTS' DIRECTED VERDICT AND JNOV MOTIONS WITH RESPECT TO THE FRAUD AND NEGLIGENT MISREPRESENTATION CAUSES OF ACTION?

5. DID THE TRIAL COURT PROPERLY DENY DEFENDANTS' DIRECTED VERDICT AND JNOV MOTIONS WITH RESPECT TO THE BREACH OF FIDUCIARY DUTY CAUSE OF ACTION?

6. DID THE TRIAL COURT PROPERLY DENY DEFENDANTS' DIRECTED VERDICT AND JNOV MOTIONS WITH RESPECT TO THE UTPA CAUSE OF ACTION?

STATEMENT OF THE CASE

Respondents Glendon Allaby, Kathryn Allaby, Cora Pfund, Eric Pfund, Greg Lindsey, Larry Hartley, Michael Duval, Kathleen Duval, Pearl Butler, Timothy Butler, and Kevin Nevin (hereinafter collectively referred to as "Plaintiffs") filed seven separate but similar actions against Respondents R.G. Stair and Faith Cathedral Fellowship, Inc. a/k/a Overcomer Ministries (hereinafter collectively referred to as "Defendants").

Plaintiffs' lawsuits alleged that, through misrepresentations as to the nature of Defendants' operations and their use of funds (as well as other statements and actions), Defendants induced Plaintiffs to give money to Defendants. Plaintiffs asserted causes of action for fraud, negligent misrepresentation, breach of fiduciary duty, conversion, violation of the South Carolina Unfair Trade Practices Act ("UTPA"), and revocation, rescission, and/or invalidation of gifts, through which they sought actual damages, punitive damages, and other relief.[1] (R. pp. 9 - 78).

Defendants responded to Plaintiffs' actions with general denials and affirmative defenses under Rule 12(b)(6), SCRCP, for failure to state claims upon which relief can be granted. (R. pp. 79 - 113).[2]

On April 25, 2006, Defendants filed identical Motions to Dismiss for Lack of Subject Matter Jurisdiction in all actions. (R. pp. 121 - 134). Plaintiffs

[1] Plaintiffs also asserted causes of action for conversion and outrage but withdrew these claims before the trial judge submitted the case to the jury. (R. p. 893, lines 5 - 12).

[2] Defendants also asserted counterclaims which were thereafter dismissed by stipulation. (R. pp. 114 - 120).

opposed the motion[3] and filed a Memorandum in Opposition to Motion to Dismiss. (R. pp. 135 - 141). By Form Order dated August 30, 2006, the Honorable Howard P. King denied the motion. (R. p. 3). Defendants did not make a motion pursuant Rule 59(e), SCRCP, seeking reconsideration, alteration, or amendment of Judge King's Order.

The case was scheduled for trial on April 16, 2007 before the Honorable D. Garrison Hill and a jury. On that day, Defendants filed a "Renewed Motion to Dismiss or for Summary Judgment based on Lack of Subject Matter Jurisdiction". (R. pp. 148 - 156). Judge Hill orally denied this motion prior to commencement of trial. (R. p. 162, line 7, to p. 163, line 2).

At the close of the Plaintiffs' case, Defendants renewed their "motion to dismiss due to lack of subject matter jurisdiction". (R. p. 771, lines 2-4). Defendants also moved "for summary judgment". (R. p. 780, lines 7-10). The summary judgment motion was based upon the arguments that: (1) there was insufficient proof Plaintiffs' funds were not used for the purposes given (R. p. 780, line 23, to p. 781, line 22); and (2) the UTPA was not applicable because the IRS had not ruled that Defendants are not a church or that they are involved in trade or commerce (R. p. 781, line 23, to p. 782, line 25).[4] Judge Hill denied each of the motions except the argument as to the UTPA claim, which he kept under

[3] By Order dated April 19, 2006, the Court consolidated the Plaintiffs' actions for all purposes, including trial. (R. p. 1). Thus, the Motions to Dismiss were consolidated into a single motion applicable to all Plaintiffs.

[4] Defendants also argued that Plaintiffs' claims violated the statute of frauds (R. p. 789-C, lines 23-25), but that is not an issue in the present appeal.

advisement. (R. p. 789-A, line 4, to p. 789-C, line 19; p. 791, lines 20-24; p. 792 lines 15-18).

At the close of all evidence, Defendants "renew[ed] all previously-made motions" without further argument except to request a specific ruling on the UTPA cause of action. (R. p. 888, line 24, to p. 889, line 2; p. 889, lines 9-10). Judge Hill denied these motions, including a specific denial of the motion as to the UTPA cause of action. (R. p. 889, line 4; p. 890, lines 1-2).

The judge therefore charged the jury on the law relating to: fraud (R. p. 994, line 11, to p. 998, line 12); negligent misrepresentation (R. p. 998, line 13, to p. 1000, line 14); violation of the UTPA (R. p. 1000, line 15, to p. 1001, line 12); breach of fiduciary duty (R. p. 1001, line 13, to p. 1002, line 23); and gifts (R. p. 1002, line 24, to p. 1004, line 2). At Defendants' insistence – and with Plaintiffs' consent – Judge Hill instructed the jury to return general verdicts separately with respect to each of the eleven Plaintiffs' claims. (R. pp. 4 – 8; p. 1004, line 3, to p. 1006, line 11; p. 1010, lines 6-14).

The jury returned general verdicts for actual and punitive damages in favor of each Plaintiff. (R. p. 4; p. 1035, line 6, to p. 1037, line 18).

Defendants thereafter stated they were "mak[ing] a motion for judgment notwithstanding the verdict" (hereinafter, "JNOV") and "renew[ing] all previously-made motions and objections".[5] (R. p. 1038, lines 7-10). Defendants did not state for the record any specific grounds or arguments in support of their JNOV motion, nor did they submit a written motion or supporting memorandum. Judge

[5] Defendants also moved for new trial (R. p. 1038, lines 8-9) but have not raised on appeal any issue relating to the trial judge's denial of that motion.

Hill orally denied the JNOV motion because, viewed most favorably to Plaintiffs, there was sufficient evidence to support the jury's verdicts on each cause of action.[6] (R. p. 1040, lines 10-23). Defendants did not make a motion pursuant Rule 59(e), SCRCP, seeking reconsideration, alteration, or amendment of Judge Hill's rulings on the post-trial motions.

Defendants then filed this appeal.

[6] Judge Hill separately denied the new trial motion on the grounds that the verdict was not the result of any improper motive or any matter outside of the record. (R. p. 1040, line 24, to p. 1041, line 6).

ARGUMENTS

1. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION.

a. General Rules Of Civil Jurisdiction In Disputes Involving Churches.

The concept of ecclesiastical jurisdiction does not render alleged religious organizations immune from tort claims. *See generally* Annot., *Free Exercise of Religion Clause of First Amendment as Defense to Tort Liability,* 93 A.L.R.Fed. 754, § 2 (1989) ("While the courts have generally recognized the high value placed on religious freedom by the Constitution, they have also been quick to point out that religious status does not in itself confer immunity from tort liability."). Rather, the courts have only applied ecclesiastical jurisdiction in limited circumstances to prevent state action from interfering with constitutionally guaranteed religious liberty. *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002). Thus, while South Carolina courts have found it constitutionally inappropriate to intervene in certain matters of church procedure that involve "extensive inquiry into religious law," *id.*, they have never endorsed a per se ban on exercising jurisdiction over civil disputes involving churches.

In *Williams*, the most recent South Carolina appellate decision on the subject, the Supreme Court concluded that it had subject matter jurisdiction to determine whether a church had established a hierarchical or congregational form of governance and whether the church had validly elected trustees. It did so despite its acknowledgement that "[i]t is not the function of the courts to dictate procedures for a church to follow." *Id., citing Pearson v. Church of God,* 325 S.C. 45, 478 S.E.2d 849 (1996).

Pearson appears to have been the most recent South Carolina case on this topic prior to *Williams*. The Supreme Court in *Pearson* provided an exhaustive examination of the subject – including a review of the most recent United States Supreme Court decisions and previous South Carolina cases – through which it outlined the bases for constitutional restraint in some church disputes and the limits of that restraint:

> The United States 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, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) and *Jones v. Wolf,* 443 U.S.595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (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 polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." *Milivojevich,* 426 U.S. at 709, 96 S.Ct. at 2380, 49 L.Ed.2d at 162. . . .
>
> In a number of places in its *Milivojevich* opinion, the Supreme Court made it clear that courts must accept in litigation the religious determinations of the highest judicatories of a religious organization….
>
> Three years after *Milivojevich,* in *Jones v. Wolf,* the Supreme Court was presented with the question of which faction of a congregation was entitled to certain church property. The Court affirmed that the First Amendment "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones,* 443 U.S. at 602, 99 S.Ct. at 3025, 61 L.Ed.2d at 784. *Jones* reiterated that "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." *Id.* The Court stated that the "neutral principles of law" approach used by the Georgia Supreme Court in attempting to resolve the property dispute was "[a]t least in general outline ... consistent with the foregoing constitutional principles." *Id.* The approach was described in these terms: "The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.* at 603, 99 S.Ct. at 3025, 61 L.Ed.2d at 785. ...

> The decisions of the South Carolina Supreme Court are consistent in letter and in spirit with the United States Supreme Court opinions discussed above. 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). In *Morris Street Baptist Church v. Dart,* 67 S.C. 338, 45 S.E. 753 (1903), this Court set out the following limitations on judicial involvement in church disputes:
>
> > 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. ...
>
> 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, 325 S.C. at 48-53, 478 S.E.2d at 851-53 (footnotes omitted).

A review of the *Milivojevich* opinion, upon which the *Pearson* court relied, provides greater insight as to the bases upon which the United States Supreme Court has historically relied in applying the doctrine of ecclesiastical subject matter jurisdiction. Specifically, the *Milivojevich* Court discussed in detail *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872) – which it recognized as the genesis of "principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights," 426 U.S. at 710, 96 S.Ct. at 2381 – for the proposition that the rule restricting civil courts from exercising jurisdiction in some instances is founded upon a constitutionally necessary respect for the decisions of "tribunals [created by religious organizations] for the

decision of controverted questions of faith".[7] 426 U.S. at 711, 96 S.Ct. at 2381, *quoting Watson*, 13 Wall. at 728. The *Milivojevich* Court explained the need for such a rule in simple and practical terms: ecclesiastical decisions are based on considerations of faith rather than measurable, objective criteria such as those typically addressed in civil courts. 426 U.S. at 714-15, 96 S.Ct. at 2383.

Based on this background, the *Milivojevich* Court concluded:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

426 U.S. at 724-25, 96 S.Ct. at 2387-88.

Importantly, the *Milivojevich* Court acknowledged the ongoing vitality of the "fraud exception" to the general rule, an exception that has been steadfastly recognized by South Carolina courts for the past 65 years. *See, e.g., Fire Baptized Holiness Church of God of the Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 323 S.C. 418, 423-24, 475 S.E.2d 767, 770-71 (Ct. App. 1996); *Hatcher v. S.C. District Council of Assemblies of God, Inc.,* 267 S.C. 107, 114, 226 S.E.2d 253, 256 (1976); *Turbeville v. Morris*, 203 S.C. 287, 306, 26 S.E.2d 821, 827-28 (1943).

This Court discussed the "fraud exception" in the context of State courts' jurisdiction as follows:

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[7] This, of course, presupposes that the party at issue is actually a bona fide religious organization. *See Van Schaick v. Church of Scientology,* 535 F. Supp. 1125, 1144 (D. Mass. 1982) ("[T]he bare assertion of a religious nature has not been sufficient to establish First Amendment protection ….")

> *Absent fraud or collusion,* the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive because the parties in interest made them so by contract or otherwise. While not inquiring into the wisdom or correctness of ecclesiastical decisions, *the court will make sure that the civil right is in fact dependent upon an ecclesiastical matter*; it will determine whether the ecclesiastical body had jurisdiction; it will look to see if the steps required by the religious society have been taken; *and will inquire into any charges of fraud or collusion.* It will go no further.

Fire Baptized Holiness Church, 323 S.C. at 423-24, 475 S.E.2d at 770-71 (citations omitted) (emphasis added).

Consistent with this exception, several courts have permitted fraud claims to proceed against alleged religious organizations despite constitutional objections; generally, these courts' reasoning has been that, while religious belief enjoys absolute constitutional protection, religious conduct may be subject to state regulation by the imposition of civil liability where the court is not required to pass upon the truth or falsity of the defendant's religious beliefs and the defendant's alleged wrongful conduct was actually secular in nature. *See generally* Annot., *Free Exercise of Religion Clause of First Amendment as Defense to Tort Liability,* 93 A.L.R.Fed. 754, §§ 2, 4(b), & 11(b) (1989).

For example, in *Molko v. Holy Spirit Assoc. for the Unification of World Christianity,* 46 Cal.3d 1092, 762 P.2d 46 (1988), *cert. denied*, 109 S.Ct. 2110 (1989), the court addressed an objection to subject matter jurisdiction over, among other things, a cause of action for fraudulent inducement. In doing so, it noted: "[W]hile religious *belief* is absolutely [constitutionally] protected, religiously motivated *conduct* is not. Such conduct 'remains subject to regulation for the protection of society.' … While judicial sanctioning of tort recovery constitutes state action sufficient to invoke the same constitutional protections applicable to

statutes and other legislative actions, religious groups are not immune from all tort liability. It is well settled, for example, that religious groups may be held liable in tort for secular acts. Most relevant here, in appropriate cases courts will recognize tort liability even for acts that are religiously motivated." 46 Cal.3d at 1112-14, 762 P.2d at 132-33 (citations omitted). "[L]iability for fraud in the case at bar would burden no one's right to believe and no one's right to remain part of his religious community." *Id.* at 1116, 762 P.2d at 59.

The court in *Van Schaick v Church of Scientology,* 535 F. Supp. 1125 (D. Mass. 1982), concluded that it had jurisdiction to entertain claims of alleged misrepresentations on matters that were "purely secular" because doing so "would not force this court to consider the truth or falsity of religious doctrine". *Id.* at 1140. Thus, the court established as the relevant inquiry "whether the statements relate to religion or religious belief." *Id*. at 1142.

Noting that "a religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud", the court in *Christofferson v Church of Scientology,* 57 Or. App. 203, 241, 644 P.2d 577, 601 (1982), *petition denied* 293 Or. 456, 650 P.2d 928 (1982), *cert. denied* 459 U.S. 1206, 103 S.Ct. 1196 (1983), held that courts should in the first instance determine whether any alleged misrepresentations were "purely religious" as a matter of law and, if so, decline to consider any such statements as a basis for liability; however, if any statements could not be determined to be "purely religious" as a matter of law, they should be submitted to the jury to determine whether they support a finding of fraud. 57 Or. App. at 237-38, 644 P.2d at 599.

The court ruled that this determination should be made via a three-step analysis: (1) Is the defendant a religious organization entitled to constitutional protection?[8] (2) Did the statements relate to defendant's "religious beliefs and practices"? (3) Were the statements "nonetheless made for a wholly secular purpose"? *Id.* at 239-42, 644 P.2d at 600-02.

Similarly, in *Hester v. Barnett*, 723 S.W.2d 544 (Mo. App. 1987), the court focused upon the likelihood of a secular purpose for a minister's alleged defamatory statements, although made in the context of sermons from the pulpit, in concluding the plaintiffs' claims were not beyond the jurisdiction of the civil courts for redress. The *Hester* court explained:

> The claim and proof of defamation, therefore, may not involve the truth or falsity of statements of religious belief or tenet made by Pastor Barnett. They may show, however, that although delivered in the milieu of religious practice, the beliefs asserted as religious were not held as such in good faith, but were used to cloak a secular purpose: in this case, to injure reputation. The statements alleged … are not of the kind inherently and invariably expressions of religious belief or religious purpose so as to come under the absolute protection of the free exercise clause against governmental regulation. They are not of the kind, therefore, as to which judicial remedy constitutes an undue burden on the free exercise of religion.

Id. at 559.

Addressing the issue of "whether the contested conduct [a minister's adulterous relationship with a parishioner] is in fact religious in character", the Ohio Supreme Court had no doubt concluding, as a matter of law:

> [W]e cannot accept the premise that the sexual activities in which Pressnell [the minister] is alleged to have participated are protected by the

[8] On this issue, the court considered, among other things, defendant's status as a tax-exempt religious organization, the fact that defendant had ordained ministers, and defendant's system of beliefs or creed which was religious in character. 57 Or. App. at 241, 644 P.2d at 601.

> Free Exercise Clause. Indeed, it is clear that the alleged conduct was nonreligious in motivation - a bizarre deviation from normal spiritual counseling practices of ministers in the Lutheran Church.[1] Therefore, since Pressnell's alleged conduct falls outside the scope of First Amendment protections, he may be subject to liability for injuries arising from his tortious conduct.
>
> > [1] Neither Pressnell nor the Shepherd of the Ridge Lutheran Church asserts that the alleged sexual relations were related in any way to the teachings, beliefs, or practices of the Lutheran Church. Indeed, we find it difficult to conceive of pastoral fornication with a parishioner or communicant as a legitimate religious belief or practice in any faith.

Strock v. Pressnell, 38 Ohio St.3d 207, 209, 210, 527 N.E.2d 1235, 1237, 1238 (1988).

In addition to fraud claims, courts have long exercised jurisdiction over claims related to the ownership of property, even where one party contends it is a religious organization. In *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943), the South Carolina Supreme Court summarized the rule thusly:

> The Court said [in *Morris St. Baptist Church v. Dart,* 67 S.C. 338, 45 S.E. 753, 754, 100 Am.St.Rep. 727 (1903)]:
>
> > Before entering upon the consideration of the questions of fact involved in the appeal, it is necessary to determine the extent to which this court, as a civil tribunal, can interfere in this unfortunate church controversy.
> >
> > 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. ... 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.
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> . . .
>
> [M]atters of a purely ecclesiastical nature are to be determined by church

> tribunals alone; and *matters purely of property rights by the civil Courts alone*; and we agree with the Circuit Judge and the Special Referee that in South Carolina the Courts of law in considering a civil right which is dependent upon an ecclesiastical matter will accept as final the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter.

203 S.C. at 303, 306, 26 S.E.2d at 827-28 (emphasis added).

b. Summary of Legal Standards Regarding Ecclesiastical Jurisdiction.

The foregoing authorities require a court to undertake the following inquiry to determine whether it has subject matter jurisdiction over an action involving an alleged religious organization:

- Is the defendant a bona fide religious organization that was acting as a religious organization in regard to the subject matter of the lawsuit?
  - If not, it should not receive constitutional protection under the doctrine requiring deference to ecclesiastical jurisdiction.
  - If so, did the defendant create a tribunal for the resolution of "controverted issues of faith"?
    - If not, the principles of deference that are the foundation for this doctrine are not implicated.
    - If so, did the tribunal reach a decision based on matters of religious law, principle, doctrine, discipline, custom, or administration?
      - If not, the principles of deference that are the foundation for this doctrine are not implicated.
      - If so, is the claim based upon fraud that was perpetrated for a secular purpose?
        - If so, the court still has jurisdiction.
        - If not, is the claim for possession of property or dependent on rights growing out of civil law?
          - If not, the court lacks jurisdiction.
          - If so, the court has jurisdiction to insure that the civil right is in fact dependent upon an ecclesiastical matter, to determine whether the ecclesiastical body had jurisdiction,

and to see if the steps required by the religious society have been taken.

- If the civil right is not dependent upon an ecclesiastical matter, then nothing prohibits the court from exercising its jurisdiction over the civil controversy.

- The court may declare whether the ecclesiastical body lacked jurisdiction or whether the ecclesiastical body acted contrary to its established procedure.

- Otherwise, the court may not inquire into the wisdom or correctness of the ecclesiastical decisions.

c. Application of Legal Standards to the Present Case.[9]

i. Defendants are Not Bona Fide Religious Organizations.

In the present case, there is substantial evidence that Defendants are not bona fide religious organizations[10] entitled to the constitutional protections discussed by the authorities discussed above.[11]

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[9] Given the relationship between Faith Cathedral Fellowship's claimed IR Code Section 501(c)(3) status and the subject matter jurisdiction issue, Plaintiffs address Defendants' arguments as to Section 501(c)(3) in the present argument.

[10] It is not clear how Defendants contend that Mr. Stair, individually, fits within the ecclesiastical jurisdiction debate. Plaintiffs contend the doctrine was not intended to extend to individuals like Mr. Stair, but nevertheless address the entire subject with respect to Defendants, collectively, in the event the Court deems it necessary to consider its application to Mr. Stair.

[11] Defendants will no doubt contend that, constitutionally, the Court should accord deference to their decision that Faith Cathedral Fellowship is a church. However, such a rule would expand the scope of ecclesiastical jurisdiction to any wrongdoer that is a self-proclaimed religious organization. Moreover, this determination is simply one aspect of the court's undisputed jurisdiction. *See Fire Baptized Holiness Church*, 323 S.C. at 423-24, 475 S.E.2d at 770-71 ("the court will make sure that the civil right is in fact dependent upon an ecclesiastical matter."); *see also Founding Church of Scientology v. United States*, 133 U.S.App.D.C. 229, 243, 409 F.2d 1146, 1160 (1969) ("Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status.").

Mr. Stair testified that Faith Cathedral Fellowship, which is also known as Overcomer Ministries (hereinafter, "FCF"), is neither a charitable organization nor a religious organization. (R. p. 796, lines 6-7). Instead, he claimed only that FCF "has been recognized by the IRS as a church". (R. p. 796, lines 7-10). He acknowledged, however, that FCF has no members. (R. p. 810, lines 1-4; p. 822, lines 7-12). Mr. Stair also claimed FCF has no employees. (R. p. 265, lines 12-13).

FCF was formed in 1978 as a South Carolina non-profit corporation. (R. p. 1056; p. 1075). Its bylaws require that it be a non-profit organization, that none of its net income may inure to the benefit of an individual, and that it not participate in any political campaign. (R. p. 285, line 22, to p. 286, line 14; p. 1066). Nevertheless, the undisputed evidence at trial showed that it violated these bylaws. (R. p. 280, lines 10-21; p. 293, line 1, to p. 300, line 21; pp. 1267 - 3021). FCF's articles of incorporation required it to be operated in accordance with IR Code Section 501(c)(3). (R. p. 286, line 21, to p. 287, line 8; p. 1075).

In 1979, Mr. Stair applied to the IRS to obtain Section 501(c)(3) status for FCF. (R. p. 1090). In the application, which he signed as "Rev. Ralph G. Stair," Mr. Stair stated: he was an "ordained minister in good standing of the Full Gospel Fellowship of Ministers and Churches a [sic] accepted organization of the IRS" (R. p. 834, lines 1-21; p. 1090); that he had 28 years in ministry and had been an "ordained minister" for that period of time (R. p. 1090); and, in response to a question of whether FCF was an "outgrowth of" or had "a special relationship … by reason of interlocking directorates or other factors" to another organization,

that FCF was "a member of the Full Gospel Fellows-ip [sic] of Ministry and Churches International, Dallas Texas" (R. p. 1090). Based upon these representations, the IRS granted FCF tax-exempt status under Section 501(c)(3), subject to conditions which were primarily that it continue to operate as represented in its application. (R. p. 289, line 13, to p. 292, line 23; p. 1080).[12] Again, the undisputed evidence at trial demonstrated that FCF failed to operate consistently with these representations and, therefore, operated in violation of Section 501(c)(3) and its own articles of incorporation. (R. p. 280, lines 10-21; p. 293, line 1, to p. 300, line 21; p. 260, lines 11-12; p. 831, line 4, to p. 832, line 4; p. 833, lines 23-25; pp. 1267 - 3021).

FCF actually engages in multiple, secular activities from which it derives substantial income that it does not report for income tax purposes, in violation of IR Code Section 501(c)(3) and related regulations. It has operated businesses that engage in, among other things, plumbing, construction, demolition, electrical work, housekeeping, trucking, produce sales, and computer repairs. (R. p. 301, line 8, to p. 303, line 15; p. 857, line 15, to p. 858, line 15; p. 441, line 10, to p. 449, line 14; pp. 1267 - 3021). It also financially maintains a communal farm with approximately 75 residents. (R. p. 814, lines 3-6).

Time and again, evidence introduced at trial established that FCF is controlled and operated entirely by R.G. Stair. For example, Mr. Stair sets the terms under which people must live on the farm and decides whether people can

[12] The State of South Carolina recognized FCF as a tax-exempt organization subject to similar conditions. (R. p. 1082).

stay or must leave the farm. (R. p. 811, line 15, to p. 812, line 5; p. 814, lines 3-22; p. 819, lines 7-15).

Mr. Stair does not take a salary or other stipend from FCF. (R. p. 815, lines 14-17). However, FCF and R.G. Stair are the names on the account into which FCF's income is deposited. (R. p. 269, lines 10-21; p. 835, line 3, to p. 836, line 15; pp. 1049 - 1050). Mr. Stair's wife is FCF's treasurer and accountant; she has solely handled FCF's financial books since its inception. (R. p. 263, line 25, to p. 264, line 21). Mr. Stair makes all financial decisions for FCF and solely exercises the authority to determine how its money is spent. (R. p. 266, line 20, to p. 267, line 14). Mr. and Mrs. Stair sign all of FCF's checks. (R. p. 270, lines 1-2; p. 836, lines 16-21).

FCF provides for all of the personal needs of Mr. Stair and his family, including such things as his daughter's savings account. (*See, e.g.,* R. pp. 1764 - 1901). Mr. Stair has not filed income tax returns. (R. p. 295, line 24, to p. 296, line 4).

Mr. Stair claims to be the religious leader of FCF; however, he has never been formally ordained. (R. p. 260, lines 11-12; p. 831, line 4, to p. 832, line 4; p. 833, lines 23-25). In fact, FCF does not have a means of ordaining ministers. (R. p. 832, lines 5-10). FCF is not affiliated with any recognized religious group like a national church. It does not have a book of religious doctrine separate from the Bible and has no other written creed, discipline, organizational or operational text, or similar documented system of religious beliefs aside from its corporate bylaws. (R. p. 265, lines 14-24).

Given the foregoing, FCF does not fit the IRS' definition of a church or religious organization. (R. p. 303, line 16, to p. 304, line 16; p. 427, line 1, to p. 439, line 11).

These facts demonstrate that FCF exists solely as a means for R.G. Stair to claim legitimacy in all conduct that he undertakes, whether it be commercial, personal, criminal, or in the name of religion. The claimed religious aspect of FCF is not sufficient for the Court to accept at face value that FCF is a "church" for all purposes and, in particular, for the purpose of invoking ecclesiastical jurisdiction. The truth is that FCF is not a church in any conventional sense and, even if so, was not acting as a church with respect to the monetary issues raised by this action.

ii. Defendants Did Not Establish or Act Through an Ecclesiastical Tribunal.

There is no evidence Defendants established a tribunal to determine disputed issues of faith, that such a tribunal acted, or that Defendants thereby reached a decision on matters of religious law, principle, doctrine, discipline, custom, or administration which is germane to this action.[13] Therefore, the court's exercise of jurisdiction did not disturb or disrespect an ecclesiastical decision protected by this constitutional doctrine.

[13] Arguably, the closest things to such a decision were Mr. Stair's unilateral decisions not to refund the full amounts paid to Defendants by the Plaintiffs, which Mr. Stair admitted were not decisions by the board of directors or any other tribunal established by Faith Cathedral Fellowship, but only in his own discretion. (R. p. 268, lines 12-16; p. 858, line 24, to p. 859, line 10; p. 861, line 20, to p. 862, line 5). Moreover, these decisions were based on purely secular factors without reference to any religious doctrine, creed, or belief. (R. p. 268, line 20, to p. 269, line 8; p. 859, line 11, to p. 860, line 4).

iii. Plaintiffs' Claims Were Based Upon Defendants' Proven Fraud.

Regardless – and significantly – the nature of Plaintiffs' claims is such that the Court should accord no deference to Defendants' pre-suit decisions even if they were considered to be bona fide religious organizations acting through properly created ecclesiastical tribunals.

Specifically, Defendants defrauded Plaintiffs by using funds for purely secular purposes. As the authorities discussed above dictate, the focus should not be on any religious character of Defendants' representations which induced Plaintiffs' payments,[14] but whether Defendants' actual uses of the funds were consistent with those representations and/or whether these uses were secular in nature. By finding that Defendants defrauded Plaintiffs, the jury explicitly found that funds were not used for the purpose represented by Defendants and implicitly found that the funds were used for secular purposes.

Moreover, as a matter of law, many of Defendants' uses of the funds were "purely secular", in the words of the court in *Van Schaick v Church of Scientology,* 535 F.Supp. 1125, 1140 (D. Mass. 1982). For example, Defendants paid bills and living expenses of people living on its farm (R. p. 804, lines 9-17), legal fees for people living on the farm (R. p. 814, line 22, to p. 815, line 3; p. 296, lines 9-21; p. 298, lines 8-9; pp. 1901 - 2046), tax obligations for farm residents (R. p. 297, line 19, to p. 298, line 7; pp. 1901 - 2046), Mr. Stair's legal fees when he was arrested and ultimately pled guilty to charges for assault (R. p.

[14] Notably, Plaintiffs' claims would be the same regardless of any religious aspect to Defendants' representations. Plaintiffs' claims would be identical if Defendants had represented that all funds are used for charitable purposes or that all funds are used for a non-religious radio broadcast.

836, line 22, to p. 838, line 3; p. 850, line 10, to p. 851, line 13; p. 1076),[15] the cost of Mr. Stair's electronic monitoring while out on bond (R. p. 296, lines 22-25; pp. 2433 - 2566), child support obligations of farm residents (R. p. 297, line 9, to p. 298, line 14; pp. 1901 - 2046), traffic tickets for residents of the farm (R. p. 297, lines 17-18; pp. 1901 - 2046), and political contributions (R. p. 299, line 17, to p. 300, line 9; pp. 2047 - 2236).[16] The fact that many of these uses of funds were contrary to the requirements applicable to a Section 501(c)(3) organization (R. p. 280, lines 9-21; p. 298, line 21, to p. 300, line 21) further establishes their secular nature. As stipulated by the parties (R. p. 3090), Defendants' use of donated funds to pay for Mr. Stair's criminal defense arising out of his admittedly adulterous relationships with residents of his compound has nothing to do with religious doctrine or beliefs and is *per se* secular under the logic of the court in *Strock v. Pressnell*, 38 Ohio St.3d 207, 527 N.E.2d 1235 (1988).

The trial judge correctly found that Defendants' actionable representations and conduct were not "purely religious" and therefore were not constitutionally protected. Also, the jury's verdict finding Defendants liable for fraud establishes this case squarely within the "fraud exception" to the rules regarding ecclesiastical jurisdiction.

iv. Plaintiffs' Claims Were for Possession of Property, Were Based Upon Rights Arising From Civil Law, and Were Not Dependent Upon Ecclesiastical Matters.

[15] Importantly, Defendants stipulated that FCF "used its funds to pay legal fees to defend criminal charges against R.G. Stair *that were unrelated to the operation of the church or any religious purpose*." (R. p. 294, lines 3-11; p. 3090) (emphasis added).

[16] *See also, generally*, R. p. 439, line 15, to p. 441, line 3.

Also, Plaintiffs' claims related to their entitlement to possession of property (*i.e.,* money they had given to Defendants) and were dependent on rights growing out of civil law (*e.g.,* common law principles of fraud, negligent misrepresentation, and gifts) for resolution.

Defendants apparently contend Plaintiffs' claims were dependent upon ecclesiastical matters; however, as noted above, this does not prohibit the Court from inquiring whether Defendants' contention is in fact the case. *See Fire Baptized Holiness Church*, 323 S.C. at 423-24, 475 S.E.2d at 770-71 (the court has jurisdiction to "make sure that the civil right is in fact dependent upon an ecclesiastical matter."). Here, the trial judge properly reached the conclusion that Plaintiffs' claims were not dependent on ecclesiastical matters. Moreover, the jury's verdict on the misrepresentation claims established that Defendants' use of the funds was not for ecclesiastical purposes (*see* discussion above regarding fraud claims).

As discussed further below with respect to the misrepresentation claims, Plaintiffs were induced by Defendants to give them money for specific purposes. Defendants used the money for other purposes. Defendants' argument is that, since Defendants claim they are a church and claim their actual uses of the money were religious in nature, the Court must accept those claims and decline jurisdiction over this action. Not only is this argument inconsistent with the Court's proper exercise of its jurisdiction (as outlined above) it overlooks the fact that some of Defendants' actual uses of their funds were purely secular in nature.

Because Plaintiffs' rights related to the property at issue were not dependent upon ecclesiastical matters, the court properly exercised jurisdiction.

2. DEFENDANTS DID NOT PROPERLY PRESERVE FOR APPELLATE REVIEW THEIR ARGUMENTS REGARDING THE TRIAL JUDGE'S RULINGS ON THEIR DIRECTED VERDICT AND JNOV MOTIONS.

"As a general rule, an issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal." *Anonymous v. State Board of Medical Examiners*, 323 S.C. 360, 473 S.E.2d 870, 879 (Ct. App. 1996).

"Issues on which the trial judge never ruled and which were not raised in a post-trial motion are not preserved for appeal." *Dixon v. Besco Engineering,* 320 S.C. 174, 463 S.E.2d 636, 638 (Ct. App. 1995); *see also Bivens v. Watkins*, 313 S.C. 228, 437 S.E.2d 132 (Ct. App.1993).

A party's failure to state any grounds for its motion for directed verdict precludes appellate review of denial of that motion, as well as denial of all post trial motions. *Becker v. Wal-Mart Stores,* 339 S.C. 629, 529 S.E.2d 758 (Ct. App. 2000), *cert. denied* (2000); *see also* Rule 50(a), SCRCP ("A motion for a directed verdict shall state the specific grounds therefore."); *Creech v. S.C. Wildlife & Marine Resources Dept.*, 328 S.C. 24, 491 S.E.2d 571 (1997) (holding the appellant's failure to raise a particular issue in its directed verdict motion precluded appellate review of that issue).

Error preservation requirements are intended to "enable the lower court to rule properly after it has considered all relevant facts, law and arguments. Without an initial ruling by the trial court, a reviewing court simply would not be

able to evaluate whether the trial court committed error." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

A party may not present one ground at trial and then change his theory on appeal. *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995).

a. The Motions for Directed Verdict.

Motions for directed verdict are governed by Rule 50(a), SCRCP. Rule 50(a) requires that the party making a motion for directed verdict state specific grounds for the motion. *See Ellis v. Bynoe*, 316 S.C. 516, 450 S.E.2d 631 (Ct. App. 1994).

A motion for directed verdict is aimed at the sufficiency of the evidence and not the weight of the evidence. If the evidence is capable of more than one reasonable inference, the trial court should submit the case to the jury. *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1995). However, if only one reasonable inference can be drawn from the evidence the trial court must grant a directed verdict motion. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993).

A review of the record regarding the motions made at the close of the Plaintiffs' case reveals that Defendants failed to specifically move for a directed verdict on the grounds now asserted in their brief. (R. p. 780, line 7; p. 783, line 4). The Defendants' attorney made the following statement with regard to the fraud and misrepresentation causes of action:

> Your honor, we have charges of fraud, negligence, breach, conversion. And our argument and our position, your honor is that the standard has

> not been met because we've heard testimony from every Plaintiff. No one can say definitely that the funds were not used for the purposes of broadcasts. In fact, we heard copious times from Plaintiffs that they weren't sure.
>
> They weren't sure how the funds were used. These were donations made to them, by them and they said that they intended it to be used in furthering the broadcasts. However, no one even specified and said, I only want it used for that purpose. They received letters back saying that it would be used for that purpose, but the law says that they didn't restrict that gift when they sent it in.

(R. p. 780, line 23, to p. 781, line 12).

There is no argument by Defendants' counsel, at the close of the Plaintiffs' case, that the three representations discussed in Defendants' brief (*see* Initial Brief of Appellants, p. 28) were not representations of preexisting facts. Similarly, the Defendants did not argue at trial that the Plaintiffs "failed to present clear and convincing evidence that the Defendants' representations about the use of their gifts/donations were false." Thus, this issue, argued as an additional basis for the appeal, was not preserved. (*See* Initial Brief of Appellants, p. 29).

Similarly, the arguments raised by Defendants in their brief as to the fiduciary duty cause of action were not preserved at this stage of the proceedings. The Defendants made no reference to the breach of fiduciary duty cause of action at all. They certainly did not articulate the specific ground of appeal set forth in their brief. (*See* Initial Brief of Appellants, p. 32). Thus, the Court should not address this issue on appeal.

Finally, the Defendants failed to articulate the issue on appeal as it is framed in their brief at the time they made their argument in support of a directed verdict on the UTPA cause of action. A review of the record reveals that the

specific ground on which the Defendants moved for directed verdict as to the UTPA cause of action was due to the that no federal authority has concluded that the Defendants were not a church and that this question is a federal issue which a State Court could not address as part of their jurisdiction over a civil dispute.

> And then, your honor, as far as the Unfair Trade Practices or whatever the case might be, for the purposes of this Court there is – has not been a ruling by the IRS that this is not a church, and that they are involved in the commerce or in a trade or in, or in the provision of goods.
>
> Now, the – that might be something that the IRS needs to look into and maybe there's been evidence that says books night [sic] to be tightened our [sic] pencils sharpened or whatever the case might be, but nobody has ruled that this is not a church, therefore they're not in the trade of commerce, they're not in the stream of commerce, they're not – as far as the IRS is concerned, they're exempt and they're not providing goods to the public.
>
> And until we get a ruling from a federal body that says that they are, I think that question is moot for this Court. That's a federal issue and I don't think that there has been a determination. What you have, Your Honor, is proof that they are exempt and those documents have been submitted into evidence. Therefore, there are no triable issues.

(R. p. 781, line 23, to p. 782, line 18).

In their brief, however, the Defendants appear to argue that the UTPA does not apply to a claim against a church based on the requirement that the unfair deceptive practice involved "trade" or "commerce" as those terms are defined under the Act. (*See* Initial Brief of Appellant, pp. 34 – 35). This is not the specific ground articulated at the time of the directed verdict motion; thus the Defendants should not now be permitted to argue it. *Gurganious, supra*. Moreover, the argument assumes that the Defendants are entitled to the status of a "church". The court was not asked to rule on this specific issue, but was asked to rule on the issue of whether or not the Plaintiffs could pursue a cause of

action under the UTPA if the IRS had previously allowed the Defendants to operate as a church. The court properly denied the Defendants' motion at the time it was made. To the extent the Defendants now attempt to argue a different issue on appeal this issue was not preserved and should not be considered by the Court. *Id*.

The Defendants moved again for a directed verdict at the close of all of the evidence. In making that motion, Defendants' counsel stated the following:

> THE COURT: Any motions, Mr. Chaplin, other than preserving your previously – made motions?
>
> MR. CHAPLIN: Yes. Renewing all previously made motions, Your Honor. No new ones.
>
> THE COURT: We'll incorporate all your arguments and they're respectfully denied as well. Okay.
> …
>
> MR. CHAPLIN: Just a – just as an aside, we never got your ruling on Unfair Trade Practices. I don't mean to force your hand. I mean, if you need more time to make that –
> …
>
> THE COURT: Yeah, the Act, I was looking at one particular part of it about the regulation by government in light of your argument related to the 501(c)(3) status. I think it's, 501(c)(3) status would be evidence that's already come in, but I don't think that the section I'm looking in talks about where there is some regulation by the government that can remove it from the Unfair Trade Practices Act breach would apply in this situation.
>
> That's the only thing I wanted to check out. That's what I was looking up on the computer. So I would deny the directed verdict as to the Unfair Trade Practices Act.

(R. p. 888, line 24, to p. 889, line 4; p. 889, lines 9 - 12; p. 889, line 17, to p. 890, line 2).

The Defendants' attempt to preserve their motions by reference to those that were previously made is insufficient to preserve the issues for appeal. *Mains v. Kmart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (1988).

In *Mains*, the record revealed that there was no formal motion made by Kmart's attorney at the close of all testimony; however, the court did make the following statement "note the usual motions and mark them heard." On appeal, the Court found that the issues were not preserved:

> We hold that if Kmart intended to make a motion for directed verdict at the close of the case, it was incumbent upon its attorneys to either insist on stating grounds for the record or handing motions in writing to opposing counsel and the trial judge for his decision. The trial lawyer must, with all deference to the court, preserve his client's position in order to lay a foundation for appeal; to this extent an attorney is required to be assertive.

Id. at 145, 375 S.E.2d at 313.

In light of the Defendants' failure to state the grounds for the motions at the close of all evidence, the motions were not properly preserved and should not be considered by the Court. *See Becker v. Wal-mart Stores, supra*.

b. <u>JNOV and New Trial Motions.</u>

Similarly, in making a post-trial motion, a party is required to set forth the grounds for its motion. A party making a JNOV motion must also have moved for a directed verdict at the appropriate times during the trial. *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995). A party is limited in its JNOV motion to the grounds asserted in the motions for directed verdict. *Roland v. Palmetto Hills*, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992), *citing Glover v. North Carolina Mut. Life Ins. Co.*, 295 S.C. 252, 368 S.E.2d 68

(Ct. App. 1988). If a party fails to make the directed verdict motion at the appropriate stage of trial, a party waives his right to move for a JNOV. *Henderson v. St. Francis Community Hosp.*, 295 S.C. 441, 369 S.E.2d 652 (Ct. App. 1988).

The appellate review of a denial of a party's JNOV motion is limited to determining whether any evidence exists to support the verdict. And, a jury's verdict will be upheld if any evidence supports the factual findings implicit in the verdict. *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (1994).

Plaintiffs submit that the Defendants failed to preserve the issues raised in this appeal due to their failure to make these arguments in support of their directed verdict motions nor did they raise them at the time of their JNOV motion. The record reveals the following statements by trial counsel regarding the motions for JNOV:

> Your Honor, as to the finding of the actual and punitive damages, we would make a motion for a judgment notwithstanding the verdict and a motion for a new trial and well as renew all previously-made motions and objections.
> …
>
> Your Honor, I would just clarify that the motion, of course, I was not only speaking to the damages portion, but to the causes of action as well.

(R. p. 1038, lines 6-10; p. 1043, lines 10-12).

Based on the above, Plaintiffs submit that the Court should affirm the verdict and dismiss the appeal due to the Defendants' failure to properly and timely preserve the issues now raised in the appeal.

3. <u>THE JURY'S GENERAL VERDICT IS SUPPORTED BY AT LEAST ONE CAUSE OF ACTION THAT IS NOT PROPERLY BEFORE THIS COURT FOR APPELLATE REVIEW; THEREFORE, THE COURT SHOULD</u>

AFFIRM THE TRIAL COURT'S JUDGMENT UNDER THE "TWO ISSUE RULE".

Because an appellate court cannot review an issue that is not properly preserved for review, when a party fails to preserve an issue for appellate review the effect is the same as if the party failed to appeal that issue. Under what is known as the "two issue rule," "when a jury's general verdict is supportable by more than one cause of action submitted to it, the [appellate] court will affirm unless the appellant appeals all causes of action." *Dropkin v. Beachwalk Villas Condominium Assoc.,* 373 S.C. 360, 365, 644 S.E.2d 808, 811 (Ct. App. 2007), *citing Sierra v. Skelton*, 307 S.C. 217, 414 S.E.2d 169 (Ct. App. 1991); *accord Todd v. S.C. Farm Bureau Mut. Ins. Co.,* 287 S.C. 190, 193, 336 S.E.2d 472, 473-74 (1985). Therefore, if a party fails to preserve any error as to a cause of action that supports a general verdict, then the appellate court must affirm. *See Sierra,* 307 S.C. at 226, 414 S.E.2d at 174-75 ("The case was submitted to the jury on the issues of abuse of process and defamation. The jury returned a general verdict. The appellants have not raised the sufficiency of the evidence to support the defamation claim as an issue on appeal. Therefore, the 'two issue rule' applies.").

Accordingly, if the Court concludes that Defendants failed to preserve for appeal their arguments as to either the fraud, negligent misrepresentation, breach of fiduciary duty, or UTPA causes of action – all of which supported the

jury's general verdict – then the Court must affirm without further inquiry into the merits of Defendants' arguments on the other causes of action.[17]

4. THE TRIAL JUDGE PROPERLY DENIED DEFENDANTS' DIRECTED VERDICT AND JNOV MOTIONS.

a. Fraud And Negligent Misrepresentation Claims.

i. *Representations regarding the use of the Plaintiffs' money for the radio ministry and the return of the money if they left the Defendants' communities did constitute representations of preexisting facts because Stair had records which contradicted his representations, he knew they were false, and he made the representations to induce Plaintiffs to act.*

In a cause of action for fraud the Plaintiff must prove that the Defendant made a material misrepresentation; that it was false; that the Defendant knew it was false at the time it was made; that it was made with the intention that it would be acted upon; that the Plaintiff was ignorant of its falsity; that the Plaintiff relied upon the truth of the representation and had a right to do so; and that the Plaintiff suffered injury. *Davis v. Upton*, 250 S.C. 288, 290-91, 157 S.E.2d 567, 568 (1967). The Plaintiffs bear the burden of proving this cause of action by clear and convincing evidence. *Id.*

The common law tort of negligent misrepresentation requires proof of the following: that the Defendant made a false representation to the Plaintiff; the Defendant had a pecuniary interest in making the statements; the Defendant owed a duty of care to see that he communicated truthful information to the

[17] Even if the Court finds Defendants preserved for appeal assignments of error as to all causes of action supporting the general verdict, the same result obtains if the Court finds grounds to affirm the rulings as to any of the causes of action. *See Dropkin,* 373 S.C. at 365, 644 S.E.2d at 811 ("Under a second application of the 'two issue' rule, the appellate court will find it unnecessary to address all the grounds appealed where one requires affirmance.").

Plaintiff; the Defendant breached the duty by failing to exercise due care; the Plaintiff justifiably relied upon the representation; and the Plaintiff suffered an injury as a proximate result of his reliance upon the representation. *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 528 n. 6, 455 S.E.2d 183, 188 n. 6 (Ct. App. 1995). The Plaintiff must prove the cause of action by a preponderance of the evidence. *Id*.

Representations, or promises, of future action generally are not sufficient to establish either case of action. However, representations regarding unfulfilled promises, or future events, can be used to establish these causes of action if the one making the promise has no intention, at the time of making it, to honor his agreement. *Davis v. Upton*, *supra.* at 291, 157 S.E.2d at 568, *citing Thomas & Howard Co. v. Fowler*, 225 S.C. 354, 82 S.E.2d 454 (1954); *Cook v. Metropolitan Life Ins. Co.*, 186 S.C. 77, 194 S.E. 636 (1938).

It has also been noted that an exception to the general rule exists when

> *…[a] future promise was part of a general design or plan existing at the time, made as part of a general scheme to induce the signing of a paper or to make one act, as he otherwise would not have acted, to his injury.*

Bishop Logging Co., *supra*. at 527, 455 S.E.2d at 187 (emphasis added), *citing Coleman v. Stevens*, 124 S.C. 8, 15-16, 117 S.E. 305, 307 (1923); *see also Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990) (the tort of negligent misrepresentation has most often applied in situations where the misrepresented facts induced the Plaintiff to act).

Misrepresentations as to future events or unfulfilled promises inducing one to act have also been held actionable when the party making the representation

has superior knowledge to the one induced to act. *Soren Equipment Co. v. The Firm*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1997) (statements made by Defendant's agent that Defendant would honor Plaintiff's request that Defendant acknowledge his ownership, of design when agent knew Defendant would not however the agreement was accountable because of agent's superior knowledge); *Gilbert v. Midsouth Machinery Co.,* 267 S.C. 211, 227 S.E.2d 189 (1976) (statement about profitability of business was statement of fact given Defendant's superior knowledge based on existence of business records when statement was made).

The evidence taken in the light most favorable to Plaintiffs establishes that the Defendants solicited contributions from listeners through radio broadcasts during which Defendants made representations that all of the money contributed would be used to further Defendants' radio ministry and for general religious purposes. (R. p. 322, lines 21-23; p. 345, line 5; p. 346, line 1; p. 375, lines 9-15; p. 384, lines 12-25; p. 457, lines 5-24; p. 530, lines 12-25; p. 555, lines 13-18; p. 583, lines 16-22; p. 627, lines 18-22; p. 672, lines 2-9; p. 694, lines 17-22; p. 745, lines 14-19; p. 828, line 15, to p. 829, line 6). The business records of the Defendants confirm that these representations were not true. (R. p. 279, line 12, to p. 280, line 21; p. 296, line 5 to p. 302, line 15; p. 852, lines 8-17; p. 855, lines 4-13; pp. 1267 - 3021). These records contained entries for expense items that were not in any way connected to the radio ministry. The records also documented the fact the people who left the community were not repaid all of the funds they previously gave to the Defendants. It was also established that Mr.

Stair had access to, and knowledge of, the Defendants' financial records but the Plaintiffs did not have that access or knowledge. (R. p. 334, lines 11-16; p. 628, lines 15-24; p. 722, lines 9-19; p. 836, lines 16-21). Thus, Defendants clearly had a superior knowledge to Plaintiffs regarding the representations made and their falsity.

With regard to Defendant Stair's representations that money would be returned if the Plaintiffs decided to leave Defendants' communities, Defendant Stair's testimony was that he alone made the decision regarding the amount of funds to be returned to an individual. (R. p. 268, line 9, to p. 269, line 8; p. 858, line 24, to p. 860, line 4). Moreover, he defined the analysis of how much they would receive as only a sum sufficient to insure that the individual would not be a "burden on society upon their return to society." (R. p. 859, lines 11-20). None of the Plaintiffs were given all of their money back when they left. (R. p. 862, lines 1-5). Under these facts, Defendants' representation that all of a person's money would be returned to them if they left the community is an actionable misrepresentation under either the fraud or negligent misrepresentation cause of action.

ii. *The Defendants' representations about the use of the gifts/donations were false and proved by clear and convincing evidence.*

The representation regarding the use of the funds for the radio ministry and general religious purposes was a misrepresentation of fact since it was capable of exact knowledge through a review of the Defendants' records at the time it was made. *Bishop Logging Co., supra*. at 527, 455 S.E.2d at 187; *Gilbert*,

supra. Furthermore, Defendants mischaracterize the representations made by the Defendant Stair which induced the Plaintiffs to act. Defendant Stair's representations were that all funds generated in response to his request for contributions would be used to further the radio ministry and for general religious purposes, not just Plaintiffs' contributions. The letters written to the Plaintiffs after their contributions were received confirmed the representation (as to their funds) and the uses to which they would be put (that they would be used solely to further the radio ministry).

As evidenced by the generation of millions of dollars over the years, these representations were part of a scheme to induce individuals to give money to the Defendants. Defendant Stair knew at all times material to these representations, that he had used these funds for purposes other than radio ministry and could choose to do so any time he wanted. It is also clear from his testimony that he knew he was going to make the decision as to what amount, if any, was to be returned to individuals if they should decide to leave his community and that he was only going to return enough to insure that they were not a burden to society when they left. (R. p. 268, line 24, to p. 269, line 8).

Defendants now wish to have this Court impose an impossible obligation on the Plaintiffs by requiring that they prove that their specific contributions were not used for the radio ministry when Defendants know that, based upon the way Defendants kept their records, no one can determine how specific contributions were used by the ministry. (R. p. 855, lines 4-13). The Plaintiffs have, however, offered a wealth of evidence to establish that the funds generated by the ministry

were used at the discretion of Defendant Stair for whatever purpose he deemed appropriate, many of which had nothing to do with the radio ministry or a general religious purpose. (R. p. 266, line 20, to p. 267, line 14; p. 269, lines 10-25). Defendant Stair admitted that the funds were used to pay for various things such as traffic tickets, child support obligations, corporate filing fees, to support candidates in political races, and to pay for his own legal defense cost for defending certain criminal charges. (R. p. 852, lines 8-17). The testimony of the Plaintiffs' forensic accountant confirmed that this practice had been going on for many years and he offered examples, based upon the records produced by the Defendants, to confirm his testimony. (R. p. 280, lines 9-21).

The elements of a fraud or negligent misrepresentation cause of action can be established by circumstantial evidence. *Cook v. Metropolitan Life Ins. Co.*, 186 S.C. 77, 194 S.E. 636 (1938). Plaintiffs submit they proved by circumstantial evidence that the Defendants made representations that were false and that Defendants never intended to honor when made. It is undeniable that these representations were made to induce the Plaintiffs to make monetary contributions to the ministry which formed the basis of the Plaintiffs' claim for damages and the Defendants clearly had superior knowledge, by access to their own records, when compared to the Plaintiffs.

iii. *The Plaintiffs' monetary contributions were not gifts because the Plaintiffs were promised the return of those funds in the future, thus, they retained a property interest in the alleged "gifts"; and because fraud is a ground upon which a gift may be revoked or rescinded.*

Under South Carolina law, a gift is defined as "….. a contract taken place by mutual consent of the giver, who divests himself of the thing given to transmit title to the donee and the donee who accepts and acquires legal title to it, and such gift operates, if at all, in the donor's lifetime, immediately and irrevocably, and no further action of the parties, or contingency, is necessary to give it effect." (R. p. 1003, line 5, to p. 1004, line 2); *see also Lynch v. Lynch*, 201 S.C. 130, 21 S.E.2d 569 (1942). The burden is on the one who receives the gift to prove by the greater weight of the evidence that the giver not only parted with immediate possession, but relinquished all present and future dominion and control over and beyond any power on the givers part to recall it. (R. p. 1003, lines 16-21). As the trial judge often noted in his charge, "to be legally binding, a gift must have no strings attached. It must be unconditional." (R. p. 1003, lines 13-14).

Taking the evidence in a light most favorable to the Plaintiffs, Plaintiffs did not irrevocably transfer their interest in the monetary contributions. Rather, in reliance on the representations of the Defendants which induced them to make contributions, Plaintiffs reasonably believed they retained an interest in the property because Defendants told them they could obtain the return of their money and other property if they later decided to leave the ministry. The gift thus included the contingency that the Plaintiff remain a member of the Defendants' ministry and continue to reside in the community. In light of this contingency, the contribution does not constitute a "gift" under South Carolina law.

Assuming it was a gift, as Defendants note in their brief, if a donor expressively reserves a property interest in a gift, the donor may maintain an

action for a return of the funds. (Initial Brief of Appellants, p. 31, *citing Hawes v. Emory University*, 374 S.E.2d 328 (Ga. App. 1988)). Based on the fact that the Plaintiffs testified they relied on the Defendants' promise to return their contributions if they later left the ministry, Plaintiffs retained an interest in the property given. Thus the Plaintiffs are entitled to maintain an action for the return of their contributions. *Id*.

b. Breach of Fiduciary Duty Claims.

i. *The evidence, taken in a light most favorable to the Plaintiffs establishes the existence of a fiduciary relationship between Defendant Stair and the Plaintiffs*.

South Carolina courts have defined a fiduciary relationship as follows:

> 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 interest of the one imposing the confidence.

Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477, 484 (Ct. App. 1997), *citing Island Carwash v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987).

Our courts have also noted that, as a general rule, fiduciary relationships cannot be established by the unilateral action of one party; rather the other party must have actually accepted or induced the confidence placed in him. *Brown v. Pearson,* 326 S.C. at 423, 483 S.E.2d at 484, *citing Steel v. Victory Sav. Bank*, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988).

Although no case in South Carolina has specifically held that a minister and his church members have a blanket fiduciary relationship under all circumstances, our courts have recognized that a minister and a member of his

church may have a fiduciary relationship. *Brown, supra,* at 423, 483 S.E.2d at 484, *citing Destafano v. Grabrian*, 763 P.2d 275 (Colo. 1998) (a case involving self-interest or self-dealing by a clergyman who abused his role as a counselor); *Adams v. Moore,* 96 N.C.App. 359, 385 S.E.2d 799 (1989) (clergyman who enhanced his financial position at the expense of a church member found to have been in a fiduciary relationship).

In *Brown, supra*, the court concluded that there was not a fiduciary relationship between a minister and a member of his church because "there is no evidence that Respondents accepted or induced any special, fiduciary bond with any of the Appellants …." *Id.* at 423, 483 S.E.2d at 485. However, the Court also noted that each case had to be decided based on its facts:

> Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring.

Defendants appear to argue on appeal that Defendant Stair did not induce the Plaintiffs to make the contributions and he did not financially benefit from the use of the funds. (Initial Brief of Appellants, p. 33). However, the record is clear that funds received from the Plaintiffs, and others who contributed to the church, were used to pay Defendant Stair's legal bills in defending criminal charges brought against him. (R. p. 850, line 5 to p. 852, line16). According to the Plaintiffs forensic accountant, these funds should have been declared as income by Defendant Stair and the funds did constitute a financial benefit to him. (R. p. 292, line 24 to p. 296, line 4). Additionally, the uncontradicted testimony of the

Plaintiffs was that they made their contributions because of the representations made by Defendant Stair. (R. p. 332, lines 1-3; p. 355, lines 23-25; p. 384, line 24 to p. 385, line 5; p. 461, line 25 to p. 462, line 3; p. 530, lines 20-25; p. 555, line 23 to p. 556, line 4; p. 586 lines 5-16; p. 628, lines 3-10; p. 672, line 10-15; p. 703, lines 4-11; p. 746, lines 4-6; p. 827, line 3 to p. 828, line 3).

Defendants also argue that Defendant Stair did not have a confidential relationship with the Plaintiffs because there was not a "showing a continuous influential contacts, generally, or on a one-to-one basis between an unscrupulous spiritual leader and a trusting or otherwise deferential parishioner." (Initial Brief of Appellants, p. 34).

However, taking the evidence in a light that is favorable to the Plaintiffs, there is evidence that Defendant Stair acted as "an unscrupulous spiritual leader" taking advantage of "trusting or otherwise deferential parishioners." Although the relationships began with the Plaintiffs listening to Defendant Stair on the radio, the Plaintiffs all lived for some period of time at one of the Defendants' communities. During their time at these communities they were subject to the complete dominion and control of Defendant Stair. (R. p. 324, lines 13-21; p. 391, lines 8-9; p. 460, lines 11-14;. p. 547, lines 2-15; p. 676, line 11 to p. 677, line 17; p. 720, line 25 to p. 721, line 3; p. 749, line 3 to p. 753, line 16). He took all of their money and used it for whatever purpose he deemed appropriate, including payment of his own legal fees. Clearly, Plaintiffs believed they had a confidential relationship with their spiritual leader to the point that they had given him all of their financial net worth and had subjected themselves to his complete

dominion and control. The quote on page 34 of Appellants' brief describes the parties' relationship at the time it initially began, but it clearly became a fiduciary, confidential, relationship which was induced by Defendant Stair and accepted by him when he accepted the Plaintiffs' money and they moved into the community.

c. UTPA Claims.

Defendants argue that the UTPA does not apply to the Defendants because the Defendants are a church. (*See* Initial Brief of Appellant, pp. 34-35). However, Plaintiffs disputed throughout the trial that the Defendants' organization constitutes a church. Specifically, Plaintiffs introduced evidence through IRS publications confirming that the factors the IRS considers in determining whether an entity is a church lead to the conclusion that the Defendants' organization does not qualify as a church because many of the characteristics of a church are not present. (R. p.; Tr. p. 259, line 13 to p. 265147, line 25; p. 303, line 21 to p. 304, line 16; p. 427, line 1 to p. 439, line 11).

Plaintiffs throughout the case contended that the Defendants' organization is part of a scheme concocted by Defendant Stair to defraud Plaintiffs by requesting contributions in the name of a religious, charitable, organization and under the guise of conducting church activities when, in fact, Defendant Stair utilized the funds generated for his own personal benefit.

S.C. Code Ann. §39-5-20 provides that "unfair methods of competition or unfair or deceptive acts or practices in the conduct in the trade of commerce are hereby declared unlawful". Trade and commerce are defined to include "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 the State." S.C. Code Ann. §39-5-10(b) (1976, as amended).

Defendants argue that because Defendants' organization calls itself a church, the monies contributed by members of the public do not constitute "a commercial activity". (*See* Initial Brief of Appellants, p. 35).

Taking the evidence in a light most favorable to the Plaintiffs, Plaintiffs submitted a wealth of evidence to establish that the Defendants regularly engaged in conduct that meets the definition of "trade" and "commerce" as defined by the UTPA. The Plaintiffs' theory of this case is that the Defendants engaged in the general scheme to defraud the members of the public including the Plaintiffs by claiming they were a church. By calling itself a church, the Defendants were able to induce Plaintiffs and others to make monetary contributions for what the Defendants termed "the radio ministry and general religious purposes." As established by the Defendants' own records, however, the funds obtained through these false pretenses were used for matters having nothing to do with religious purposes or the radio ministry.

The jury was asked to judge the Defendants' conduct to determine if it conformed with the conduct of a religious entity or church. The jury concluded that the Defendants were engaged in unfair and deceptive acts or practices through their scheme of defrauding members of the public by inducing them to make financial contributions to the Defendants' organization through various

misrepresentations. Under these circumstances, a recovery pursuant to the Plaintiffs' cause of action under the UTPA was appropriate and should be affirmed.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court affirm the rulings of the circuit court.

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