
No. 17-3086

In the United States Court of Appeals
for the Third Circuit

REV. DR. WILLIAM LEE

V.

SIXTH MOUNT ZION BAPTIST CHURCH OF PITTSBURGH,
TIMOTHY RALSTON,
NATHANIEL YOUNG,
GEOFFREY KEVIN JOHNSON,
ROCHELLE JOHNSON,
ALEXANDER HALL,
RAYMOND JACKSON,
JAMES GROVER,
ARTHUR HARRIS,
JEROME TAYLOR,
TOMMIE NELL TAYLOR, and
ROY ELDER

—————
**On Appeal from the U.S. District Court
for the Western District of Pennsylvania (Fischer, J.)
Civil Action No. 2:15-cv-01599-NBF**

—————
APPELLANT'S OPENING BRIEF

—————
Zeff Law Firm, LLC
Gregg L. Zeff, Esquire
100 Century Parkway, Ste 305
Mount Laurel, NJ 08054
856-778-9700
Counsel for Appellant

February 14, 2018

Table of Contents

Table of Authorities ii

I. Statement of Jurisdiction1

II. Statement of the Issues1

III. Summary of Argument1

IV. Standard of Review 2

V. Statement of Facts and Procedural History 3

VI. Argument 13

 A. The District Court Erred in its Application of the Ministerial Exception of the
 Matter at Bar 13

 1. The Ministerial Exception 13

 2. The District Court erred in applying the Ministerial Exception to Appellant’s
 contract claim because Appellant’s claim does not involve religious
 doctrine..... 15

 a. The contract itself prohibits religion from entangling this matter. 15

 b. This case can and was always intended to be tried on secular matters only
 17

VII. Conclusion..... 27

Certifications29

TABLE OF AUTHORITIES

Cases:

Alaka v. Att’y Gen. of U.S., 456 F.3d 88 (3d Cir. 2006)..... 2

Connor v. Archdiocese of Philadelphia, 975 A.2d 1084, 1096 (Pa. 2009) 26

Friedlander v. Port Jewish Ctr., 588 F. Supp. 2d 428 (E.D.N.Y. 2008) 20

Heffernan v. City of Paterson, 777 F.3d 147, 151 (3d Cir. 2015)..... 12

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694 (2012)....2, 13, 14, 15, 16

Kamara v. Att’y Gen., 420 F.3d 202, 210-11 (3d Cir.2005) 2

Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979)20

Minker v. Baltimore Annual Conference of United Methodist Church, 894 F .2d 1354, 1358 (D.C.Cir.1990) 20

Mundie v. Christ United Church of Christ, 987 A.2d 794 (Pa. Super.2009) 27

Petruska v. Gannon Univ., 462 F.3d 294, 299 (3rd Cir. 2006)..... 14, 15, 23, 24, 25

Presbyterian Church in the United States v. Blue Hull Memorial Church, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) 26

Presbytery of Beaver-Butler OF United Presbyterian Church in U.S. v. Middlesex Presbyterian Church, 489 A.2d 1317 (Pa. 1985) 25, 26

Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164, 1171 (4th Cir.1985), cert. denied, 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739 (1986) 21

Waters v. Churchill, 511 U.S. 661 (1994) 25

Watson v. Jones, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1871) 20

Yocca v. Pittsburgh Steelers Sports, Inc., 854 A. 2d 425, 436 (Pa. 2004) 7

Yusupov v. Att’y Gen., 650 F.3d 968, 977 (3d Cir.2011)..... 2

Rules:

Federal Rule of Civil Procedure 12(b)(1) 24

Federal Rule of Civil Procedure 12(b)(6) 24
 Federal Rule of Civil Procedure 56(a) 1

Statues:

28 U.S.C. § 1291 1
 28 U.S.C. § 1331 1
 28 U.S.C. § 1332 1

I. STATEMENT OF JURISDICTION

The United States District Court for the Western District of Pennsylvania had jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1332. This Court has jurisdiction under 28 U.S.C. § 1291. The District Court entered judgment on August 22, 2017 dismissing all the claims in the action below. (A366). Plaintiff filed a timely notice of appeal on September 21, 2017. (A368). Accordingly, this appeal is from a final judgment disposing of all claims.

II. STATEMENT OF THE ISSUES

- 1) Whether the District Court erred in applying the Ministerial Exception and Entanglement Clause of the First Amendment where the Plaintiff/Minister has brought an employment breach of contract claim that involves secular issues and limits enforcement of the contract to matters “by law?”

III. SUMMARY OF ARGUMENT

This matter involves interpretation of a contract regarding payment of severance to a minister who was terminated by his employer/church. When Plaintiff/Minister brought a motion for summary judgment, the District Court, *sua sponte*, raised the issue of Religious Entanglement under the Ministerial

Exception pursuant to *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012) and ultimately dismissed the case based on the Ministerial Exception.

This appeal seeks a reversal and remand for trial because the District Court has improperly entangled religion into this matter when the parties had properly litigated a secular case involving a breach of contract. In the following pages it will be shown that this matter may be tried without a court or jury infringing into any protected religious doctrine, because the contract itself limits itself to justiciable, secular issues and the issues of fact in dispute are no different than any other employee/employer relationship and no fact or dispute about religion required to be presented for disposition.

IV. STANDARD OF REVIEW

It is well settled that constitutional claims or questions of law and the application of law to facts are reviewed de novo. *Yusupov v. Att'y Gen.*, 650 F.3d 968, 977 (3d Cir.2011). *Kamara v. Att'y Gen.*, 420 F.3d 202, 210–11 (3d Cir.2005). *Alaka v. Atty. Gen. of U.S.*, 456 F.3d 88 (3d Cir. 2006), as amended (Aug. 23, 2006). The matter presently before the Court presents the

Court with constitutional assertions, constitutional questions of law and the application of law to facts. Appellant submits that the constitutional assertions and the constitutional questions of law in the present matter were raised, *sua sponte*, by the court below. Accordingly, de novo review is the appropriate standard.

V. STATEMENT OF FACTS & PROCEDURAL HISTORY

In December, 2012, Appellant, Rev. Dr. William Lee (“Rev. Lee”), was hired as Pastor by Appellee, Sixth Mount Zion Baptist Church of Pittsburgh, (“the Church”). (A-22). Before beginning his tenure as the permanent pastor, Rev. Lee requested that an employment contract be put “in place because the church had a reputation for getting rid of their pastors.” (A-191).

In February of 2013, the Church retained Attorney Candace Ragin (“Attorney Ragin”) of the Law Firm of Candace Ragin, LLC, to draft an employment contract between the Church and Rev. Lee. (A116-19). On March 20, 2013, the contract Attorney Ragin drafted was executed by Rev. Lee, Timothy Ralston, then Chairman of the Church’s Deacon Board, and Jimmy Barley, then Trustee of the Church. (A121-29).

The Employment Contract contained the following pertinent provisions:

12. Termination

12.1 Automatic Termination: This AGREEMENT will automatically terminate, and any further obligations of the parties excused, upon the filing of . . . bankruptcy by or against either party, an assignment for the benefit of creditors by either party, or the appointment of a receiver over the business affairs of either party. . . [and] upon the death of the pastor.

12.2 Termination without Cause: At any time after March 9, 2013 either party may terminate this Agreement upon ninety (90) days written notice without cause.

If this AGREEMENT is terminated by the CHURCH without cause, the pastor shall be entitled to receive the salary and benefits . . . he would otherwise be entitled to receive for the unexpired term of this AGREEMENT . . . , but reduced after five (5) years from the date of Termination by the amount of the Pastor's salary from any other employment for that period. The payments shall be in full settlement of any claims the pastor may have against the CHURCH.

12.3 Termination for Cause: This AGREEMENT may be terminated at the option of either party upon thirty (30) days prior written notice by either party of the material breach of the terms of this AGREEMENT by the other party, which breach is not cured within such thirty (30) days. The rights of termination set forth in this contract are in addition to any other rights of termination allowed to either party by law. Without limiting other rights or grounds for termination which the CHURCH may have under this Agreement or by law, it is agreed that the CHURCH may terminate this Agreement for cause upon the occurrence of any of the following events:

- i. The pastor commits any serious moral or criminal offense (“serious offense”)—including but not limited to adultery, embezzlement, or fraud—is convicted of a felony, or commits any

other act which is a violation of applicable law (except for misdemeanors or traffic offenses); or
ii. The pastor becomes incapacitated by reason of illness, injury or other disability . . .

12.4 Procedural Requirements: If this AGREEMENT is proposed to be terminated by the CHURCH for cause as a result of the Pastor committing any serious offense, the matter must be brought before the CHURCH Deacon Board. If the Board recommends a termination of this Agreement for cause based on any serious offense, the recommendation must be presented to the congregation of the CHURCH and put to a vote during a special meeting called for that purpose. In such event, this AGREEMENT may be terminated only upon the approval of the congregation.

The associate pastor or such other person as may be designated by the Deacon Board will chair the congregational meeting, and the order of business at such meeting will be as follows: 1) roll call; 2) presentation of evidence by the personnel Committee chair or its designee; 3) presentation of case by the pastor or his designee; 4) rebuttal evidence presented by the Deacon Board; 5) testimony from members of the congregation; and 6) the matter shall be put to a vote.

16. Entire Agreement

This AGREEMENT contains the entire agreement between Dr. Lee and the Church, and supersedes any and all other agreements, written or oral, express or implied, pertaining to the subject matter hereof. No supplements, modifications or amendments of this AGREEMENT shall be binding unless executed in writing by the parties.

18. General Provisions

The waiver of either of the PARTIES of a breach or violation of any provision of this AGREEMENT shall

not operate as or be construed to be a waiver of any subsequent breach hereof. This AGREEMENT constitutes the product of negotiations of the parties hereto and any enforcement hereof will be interpreted in a neutral manner and not more strongly for [sic] against any party based upon the source of the draftsmanship hereof. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

19. GOVERNING LAW

This AGREEMENT shall be construed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

(Emphasis added) A34-4216

On April 7, 2013 the Employment Contract was presented to the Church's congregation during a meeting. (A151¶ 1). During the April 7, 2013, meeting, members of the Congregation inquired about the terms of Appellant's contract. (A-151). Appellant was questioned by the congregation about the parties' rights of termination under the contract, *inter alia*. (A151).

At a Church Meeting on April 28, 2013 the Plaintiff stated: "If I am not doing my job and the church is suffering, the church has every right to make sure it protects the church, because you don't want the church to die. Now if you want to do it in spite of church doing what church is doing and we are doing well, no you can't do it, that's where the employment clause came in without

cause." (A153).¹

Subsequently, the Church became dissatisfied with Rev. Lee as Pastor. On or about December 21, 2014, the Church organized a meeting of the Congregation at which it was recommended that the Congregation vote to have Rev. Lee vacate the pulpit immediately. (A132). The following reasons were presented in support of the recommendation: failures in financial stewardship, failures in spiritual stewardship, and failures to respond to church leaders. (A132).

The District Court summarized the specifics of these reasons as follows:

The "DIMINISHED CAPACITY TO FULFILL THE GREAT MISSION,"
Matt. 28:19-20:

- To attract new soles to Christ,
- To cultivate new ambassadors for Christ, and
- To transform family, neighborhoods and the city for Christ.

(A309).

The written recommendations also profile "new MEMBERS JOINING AND RECEIVING THE RIGHT HAND OF FELLOWSHIP." The written

¹ Although the District Court uses these comments in part to deny Plaintiff's Motion for Summary Judgement, Appellant is not contesting the denial of summary judgement here. However, it would be error to consider Plaintiff's comments about the contract in this proceeding or at trial pursuant to the parol evidence rule. "Once a writing is determined to be the party's entire contract, the Parol Evidence Rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract" *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A. 2d 425, 436 (Pa. 2004), except for example where its terms are ambiguous or the product of fraud. 854 A. 2d at 437.

recommendations further contain: REFLECTIONS ON OUR CAPACITY TO FULFILL THE GREAT MISSION, Matt. 28:19-20

- **To attract new soles to Christ: . . . We would characterize this as a dramatic climb in attracting new soles for Christ.**
- **To cultivate new ambassadors for Christ: . . . Our overall judgment is that our capacity to cultivate new ambassadors for Christ has grown progressively more negative than positive over the two years of Pastor Lee's leadership.**
- **To transform families, neighborhoods and the city for Christ . . . We conclude Pastor Lee has failed during both years to launch and sustain ministries that help to transform local and public places where our children and families live.**

(A309).

Three weeks later, a second meeting of the Congregation was convened at which time it was recommended that the Congregation vote to have Rev. Lee vacate the pulpit immediately and approve suggested severance terms. (A-101; A131-146). The same reasons again were presented in support of the recommendation: failures in financial stewardship, failures in spiritual stewardship, and failures to respond to church leaders. (A131-46).

Rev. Lee contends that the reasons given for the termination of his employment as Pastor of the Church are false and that his termination was without cause as cause is defined in the Contract. (A27 at ¶ 37; A121-29).

Accordingly, Rev. Lee filed a single count action for breach of contract,

seeking payment under the terms of the contract. (A27). The Church defended the breach of contract claim by asserting that Lee was terminated for cause. (A66-75). Specifically, the Church asserted the following as affirmative defenses in their Amended Answer:

- (1) Statute of Limitations;
- (2) Failure to Exhaust Administrative and/or Internal Remedies;
- (3) Failure To Mitigate Damages;
- (4) After Acquired Evidence;
- (5) Legitimate Business Reasons;
- (6) No Misconduct;
- (7) No Malice;
- (8) No Unlawful Treatment;
- (9) Failure To State Claim;
- (10) Unclean Hands;
- (11) Non-Material Breach of Contract;
- (12) Unconscionability;
- (13) Contract of Adhesion;
- (14) Lack of Consideration;
- (15) Lack of Authority;
- (16) Fraud in The Inducement;
- (17) Fraud in The Execution;
- (18) Duress;
- (19) Misrepresentation;
- (20) Failure of Performance; and
- (21) Subsequent Agreement.

(A66-75).

While, the Church asserted twenty-one, archetypal breach of contract claim, affirmative defenses, the Church did not assert in its Answer; Amended Answer; or while defending this case through discovery that the

Ministerial Exception or any other religious doctrine barred the adjudication of Appellant's claim. (A66-75).

During discovery Appellees failed to present any concrete "spiritual" reason why Rev. Lee's contract was terminated. Appellees referenced three reasons why they terminated Rev. Lee's employment contract: (1) Failures in Financial Stewardship (2) Failures in Spiritual Stewardship and (3) Failures to Respond to Church leaders. (A258). Appellees' made it clear that their determination that Rev. Lee "Fail[ed] in Spiritual Stewardship" was based upon a decrease in the number of registered members, a drop in Sunday morning worshipers and a decline in the amount of tithes and offerings the Church obtained from members and Sunday morning worshipers. (A264). When asked why Rev. Lee's contract was terminated by Appellees, Dr. Jerome Taylor ("Dr. Taylor") (a Church Trustee), stated that the "spiritual welfare...and financial well-being of the church... [were] interconnected." (A238). When asked to expound upon on why Rev. Lee was specifically fired, Dr. Taylor never alleged Rev. Lee caused any damage to the "spiritual welfare" of the Church. There is no testimony that Rev. Lee's preaching or religious teachings or other ecumenical activity was faulty in any manner. Instead, Dr. Taylor testified that the spiritual

stewardship failure was that the “level of gifts” the Church received had declined while Rev. Lee was pastor. (A239).

After discovery was fully completed, Rev. Lee filed an affirmative motion for summary judgment on his breach of contract claim. (A76). The Church opposed Rev. Lee’s motion for summary judgment arguing that it had “conclusively established the existence of a genuine issue of material fact as to whether [Rev. Lee] materially breached the Agreement which require[ed] that the issue be submitted to a jury.” (A156). The Church did not assert that the Ministerial Exception applied because Rev. Lee was fired for spiritual reasons; or that the First Amendment prohibited the adjudication of Rev. Lee’s claim. Instead, the Church argued that, “[t]he Materiality of a Breach of Contract is a Fact Question for the Jury.” (A156 ¶ 3).

After reviewing the parties’ filings the District Court, *sua sponte*, requested that the parties provide the court with supplemental briefs on whether and to what extent the Ministerial Exception affected further adjudication of the matter. (A274; A284; A314 at ¶ 2). Again, the Church argued, in its supplemental brief regarding whether and to what extent the Ministerial Exception affected further adjudication of the matter, that “The Materiality of a Breach of Contract is a Fact Question for the Jury.” (A-293 at ¶ 1).

Subsequently, the District Court issued an opinion dismissing Appellant's claim. The District Court first applied the legal standard for a summary judgment motion.² The District Court "[d]etermined that failures in spiritual and financial stewardship as well as failures to cooperate with Church leaders would constitute cause under the Agreement and Pennsylvania law;" and that "Rev. Lee [could not] show that this case [could] be resolved without interference with free exercise and without excessive entanglement" holding that the Ministerial Exception prevented the court from allowing the case to proceed any further and dismissing Rev. Lee's breach of contract claim. (A359; A363).³ Rev. Lee appealed, bringing the matter before this Court. (A368).

² Pursuant to Federal Rule of Civil Procedure 56(a), a grant of summary judgment under Federal Rule of Civil Procedure 56(a) is appropriate when the moving party establishes "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Heffernan v. City of Paterson*, 777 F.3d 147, 151 (3d Cir. 2015) (quoting Fed. R. Civ. P. 56(a)).

³ It is Appellant's position that the District Court's holding is that this matter be dismissed on the basis of the Ministerial Exception. It is also Appellant's position that all other discussion about contract "cause" or "not for cause", is dicta, since the issue at the time before the District Court was whether Plaintiff, Rev. Lee was entitled to summary judgment and not whether the ultimate factual issues about "cause" allow the case to be dismissed. There was never any motion or briefing on whether Defendant should be granted judgment of any kind based on any secular contract issue. To the extent that this court may find otherwise, Appellant would seek a remand to be permitted to fully brief the issue before the District Court.

VI. ARGUMENT

A. The District Court Erred in its Application of The Ministerial Exception to the Matter at Bar

1. The Ministerial Exception

In 2012, the Supreme Court formally recognized the Ministerial Exception in the landmark case, *Hosanna-Tabor*. In a unanimous opinion, the Court wrote:

We agree that there is such a Ministerial Exception. The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694 (2012).

As it pertains to the matter at bar, the most significant part of the Court's holding came in the penultimate paragraph of the opinion. While addressing the scope of the ruling the Court stated that its decision applied to

the facts before it: an employee challenging her termination for an *employment discrimination* suit. The Justices “express[ed] no view on whether the [ministerial] exception barred other types of suits, including actions by employees alleging breach of contract . . . by their religious employers.” *Hosanna-Tabor*, 132 S. Ct. at 710. Therefore, while the Court’s decision recognized the existence of the Ministerial Exception, it left open questions of its application.

In *Petruska*, this court held that there are significant distinctions between employment claims based on antidiscrimination statutes and claims based on common law breach of contract, which suggests they should interact differently with the Ministerial Exception. *See, Petruska v. Gannon Univ.*, 462 F.3d 294, 299 (3rd Cir. 2006).

Here, the District Court failed to recognize Appellees autonomy in choosing to burden its own activities by entering into a fully enforceable Employment Contract with Appellant. In the following pages Appellant will show that the Ministerial Exception should not have been applied to the matter at bar because Appellant’s claim was grounded in contract law and does not involve significant religious matters.

2. The District Court erred in applying the Ministerial Exception to Appellant's contract claim because Appellant's claim does not involve religious doctrine.

While the Supreme Court's decision in *Hosanna-Tabor* recognized the existence of the Ministerial Exception, it left open questions of its application. *Hosanna-Tabor*, 132 S. Ct. at 710. This Court's holding in *Petruska*, fills part of the gap the Supreme Court left in *Hosanna-Tabor*. *Petruska* holds that the Ministerial Exception does not automatically apply to contract claims; and that the Religious Clauses of the First Amendment do not compel dismissal of contract claims. *Petruska v. Gannon U.*, at 302. Appellant submits that, under *Petruska* courts should analyze the applicability of the Ministerial Exception on a case by case, fact specific basis. In this matter, the District Court, while delving deeply into contract and First Amendment law, failed to properly analyze the contract and underlying facts needed to prove this case. And, in so doing, failed to recognize that this matter can be presented and proven to a jury without invading the providence of religion.

a. The contract itself prohibits religion from entangling this matter.

This case involves whether Appellant, Rev. Lee, should be paid pursuant to a contract that describes severance terms. It is not about whether Rev. Lee should have been fired or whether he should be reinstated.

In their contract, the parties specifically excluded any religious entanglement from this secular employment agreement.

The parties contracted that:

12.3The rights of termination set forth in this contract are in addition to any other rights of termination allowed to either party by *law*. Without limiting other rights or grounds for termination which the CHURCH may have under this Agreement or by *law*.

(A121-29).

The plain meaning of this phrase is to bestow upon the Church and Rev. Lee all means for termination under law allowable under the circumstance. Thus, the contract is self-limiting to those causes for termination recognized “by law.” It follows that those means of termination that are not recognized “by law,” would be improper under the contract. A termination because of religious differences would not be subject to this contract “by law” because the First Amendment as defined by *Hosanna-Tabor* and the Ministerial Exception would bar its enforceability. As a result, the best interpretation of the phrase “by law” is that the parties intended to exclude religion from the definition of termination. Because of this phrase, this case must be decided based on issues that “by law” may be decided. This issues presented in this case that can be decided by law are all secular. Therefore, the Ministerial Exception cannot apply to the issues presented in this case and the District Court erred in applying the exception.

b. This case can and was always intended to be tried on secular matters only.

This court should consider whether the case can be tried without the court or jury interpreting any religious dogma. It is submitted that it easily can be. This matter is about whether the termination of Rev. Lee was “for cause” or “for no cause” pursuant to an employment contract. Defendants allege that the termination was because the Church was losing money, losing attendance and Rev. Lee’s failure to hold meetings.⁴ Contrary to the assertion by the District Court, the case is not about “spiritual leadership.” The District Court erred by viewing form over substance with the term “spiritual” throughout the District Court Opinion. While the word “spiritual ” is sprinkled throughout the case, this word in this case can be substituted by “Minister” or “Pastor, “ or the secular “manager,” “CFO, “ “finance director,” “director of events.” The term “spiritual” in this case does not include any religious doctrine, interpretation or other ecclesiastical matter. Nothing in the record suggests that Rev. Lee was terminated for poor ecumenical skills or any differences in religious interpretation.

A close reading of the language the District Court found too entangling shows that no religious interpretation or entanglement is necessary for a jury to

⁴ Rev. Lee contests these allegations.

determine the facts of this case. The District Court cited this language as damning Plaintiff's case under the First Amendment:

The "DIMINISHED CAPACITY TO FULFILL THE GREAT MISSION," Matt. 28:19-20:

- To attract new soles to Christ,
- To cultivate new ambassadors for Christ, and
- To transform family, neighborhoods and the city for Christ.

(A309).

The written recommendations also profile "new MEMBERS JOINING AND RECEIVING THE RIGHT HAND OF FELLOWSHIP." The written recommendations further contain: REFLECTIONS ON OUR CAPACITY TO FULFILL THE GREAT MISSION, Matt. 28:19-20

- **To attract new soles to Christ: . . . We would characterize this as a dramatic climb in attracting new soles for Christ.**
- **To cultivate new ambassadors for Christ: . . . Our overall judgment is that our capacity to cultivate new ambassadors for Christ has grown progressively more negative than positive over the two years of Pastor Lee's leadership.**
- **To transform families, neighborhoods and the city for Christ . . . We conclude Pastor Lee has failed during both years to launch and sustain ministries that help to transform local and public places where our children and families live.**

(A309) (emphasis original).

The above does not involve religion directly or significantly. These matters are all secular. They are about attendance, finances and recruitment. It is

submitted, without trying to offend any religion, that the matters complained of by the Defendant are identical to those of a sales manager, college president or sports/entertainment manager. The Church alleges Rev. Lee, failed to attract new soles to Christ, to cultivate new ambassadors for Christ, and to transform family, neighborhoods and the city for Christ. A reasonable interpretation of the reasons for termination are that the Church did not find Rev. Lee to be a good salesman or manager. Similarly, a sports or entertainment general manager might fail to attract new fans to the game, fail to cultivate new ambassadors for the team and fail to transform family, neighborhoods and the city into fans of the team. And, it would be the same as a college president that failed to bring in and cultivate new students. The analogies are so compelling that if this Court or the District Court so chose, this case could be tried without mentioning religion, a church or a minister in any way. Plaintiff could be “employee” and Defendant “employer.”

Appellees’ made it clear that their determination that Rev. Lee “Fail[ed] in Spiritual Stewardship” was based upon secular matters - a decrease in the number of registered members, a drop in Sunday morning worshipers and decline in the amount of tithes and offerings the Church obtained from members and Sunday morning worshipers. (A264). When asked why Rev. Lee’s contract was terminated by Appellees, Dr. Jerome Taylor (“Dr. Taylor”) (a Church Trustee), stated that the “spiritual welfare...and financial well-being of the church... [were]

interconnected.” (A238). When asked to expound upon on why Rev. Lee was specifically fired, Dr. Taylor never alleged Rev. Lee caused any damage to the “spiritual welfare” of the Church. There is no testimony that Rev. Lee’s preaching or religious teaching or other ecumenical activity was faulty in any manner. Instead, Dr. Taylor testified that the spiritual stewardship failure was that the “level of gifts” the Church received had declined while Rev. Lee was pastor. (A239).

There are cases where a breach of contract does entangle religion. For example, in *Friedlander v. Port Jewish Ctr.*, 588 F. Supp. 2d 428 (E.D.N.Y. 2008), aff’d 347 F. App’x 654 (2d Cir. 2009), the court determined that a rabbi’s breach of contract claim would require scrutiny of performance of religious services in preparation of students for religious services along with certain other pastoral services which were not performed including funeral service policies, in order to determine whether a contract was breached. None of these issues are present here.

“A church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court.” *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1358 (D.C.Cir.1990) (citing *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1871)); See also; *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (holding courts may always resolve contracts governing “the manner in

which churches own property, hire employees, or purchase goods).” Even cases that have rejected ministers’ discrimination claims have noted that churches nonetheless “may be held liable upon their valid contracts.” *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir.1985), *cert. denied*, 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739 (1986).

In the instant matter the District Court found that:

“... [T]he Court and jury would need to prove how the Church evaluated spiritual success and leadership under its doctrine, which both the Agreement and By-laws reference in doctrinal terms. The financial stewardship issue, for example, also would require considering whether members and Church attendees decreased their giving in order to thwart Rev. Lee’s continued ministry, as suggested by Rev. Lee in his deposition (A191-A192), or for spiritual reasons and whether and to what extent they were led by the Spirit in the great commission to bring souls to Christ, (A309), also a prohibited ecclesiastical inquiry. Prohibited considerations of ecclesiastical hierarchy are directly implicated in the assessment that Rev. Lee did not adequately respond to Church leadership.” (A359-60).

The District Court dismissed Appellant’s breach of contract claim “[d]etermin[ing] that failures in spiritual and financial stewardship as well as failure to cooperate with Church leaders would constitute cause under the Agreement and Pennsylvania law;” and that “Rev. Lee [could not] show that this case [could] be resolved without interference with free exercise and without excessive entanglement” holding that the Ministerial Exception prevented the court from allowing the case to proceed any further and dismissing Rev. Lee’s breach of contract claim. (A359; A363).

The analysis of the religious aspect of this case by the District Court is flawed. It is a view taken in Defendant's best light with an eye toward any potential entanglement, without consideration of potential neutral evidence and testimony. For example, the District Court finds that issues of "financial stewardship" and "bring[ing] souls to Christ" entangles religion because a Church member may state that they stopped giving or left the Church for "spiritual" reasons. (A359-60).

This analysis is wrong for two reasons. First, it is speculating about an issue and defense not in record.⁵ It is impossible to rule on every possible comment made by a witness in advance. Here, no witness has proffered the potential testimony relied on by the District Court. Second, the District Court never attempts to analyze or seek a cure for the speculative defense testimony. The case should not be dismissed if, hypothetically, ten witnesses appeared at trial and testified that they were coerced into giving less to the Church to thwart Rev. Lee's ministry and avoid paying his contract. Then, one witness testified to the contrary, that she gave less because it was simply a "spiritual reason."⁶ Stating that one had "spiritual reasons" cannot be enough to destroy a contract claim. Religious words and symbols alone are not taboo in a secular court. A court and jury would not be

⁵ Indeed, the parties did not conduct discovery on any possible religious entanglement issue, as neither party had raised said issue prior to the District Court's *sua sponte* determination that it should be briefed.

⁶ Although also not in this record, but as illustration of the speculative nature of the District Court's example, Plaintiff in this matter would present testimony of former congregation members that they left the congregation because of the efforts of someone to reduce finances in an effort to thwart Rev. Lee.

deciding whether the “spiritual reasons” are valid or appropriate religious doctrine. Rather, the court and jury’s role would be to weigh the credibility of the testimony and whether revenue was down due to an effort to thwart Rev. Lee or whether it was any other reason, including a “spiritual one.”⁷ Thus, the court is capable of limiting or even eliminating references to religion in this matter without stifling the secular breach of contract defenses here.

“Enforcement of a promise, willingly made and supported by consideration, in no way constitutes a state-imposed limit upon a church’s free exercise rights [in selecting or terminating its ministers].” *Petruska v. Gannon University*, 462 F.3d 294, 310 (3rd Cir.2006). Here, both parties made promises willingly, which were supported by consideration, and memorialized in the parties’ written contract. For that reason, enforcing the parties’ contract, in this matter, in no way constitutes a state-imposed limit upon Appellee’s free exercise rights. Thus, the District Court could should have allowed the matter to proceed.

This court showed in *Petruska*, that an employment contract between a minister and a religious institution does not necessarily implicate the Entangle Clause or Ministerial Exception. In *Petruska* a private Catholic diocesan college (“Gannon”) entered into an employment contract with Lynette Petruska

⁷ If this Court, or the District Court are truly concerned about even the word “spiritual” infecting a jury, alternative words, through motion in limine can be used. For example, in response to being asked whether they stopped financially supporting the Church a witness could be instructed to say that they had “other valid reasons” for not providing financial support, if they were otherwise going to say “spiritual reasons.”

(“Petruska”). The contract named Petruska the University Chaplain from 2000 until June 30, 2003. In the fall of 2002 faculty, staff, and students were informed of Petruska 's “demotion” from the head of the Chaplain's Division. In October 2002, believing that she was about to be fired, Petruska tendered her resignation with two-weeks’ notice. The following day, she was informed, by University Officials, that her resignation was effective immediately. *Petruska v. Gannon U.* at 301. Subsequently, Petruska filed a complaint alleging, *inter alia*, breach of contract. Gannon moved to dismiss Petruska’s claims pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of jurisdiction, or in the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

The *Petruska* District Court granted the motion, concluding that the Ministerial Exception barred adjudication of appellant's claims. On appeal this Court held, that facially, the application of state contract law did not involve government-imposed limits upon appellee’s right to select its ministers because “[u]nlike the duties under Title VII and state tort law, contractual obligations are entirely voluntary. *Petruska v. Gannon U.*, at 310. Accordingly, Petruska ’s breach of contract claim was remanded back to the lower court for further proceedings.

Similarly, here Appellant signed an employment contract which guaranteed him employment for twenty-years. (A227). Like *Petruska*, Appellant was

terminated from his position prior to the end of his contract. As a result, Appellant brought a breach of contract claim against Appellees. (A17-A28).

The similarities with *Petruska* continue. Here, exercising their right to select their minister, Appellees sought after Appellant and asked Appellant to pastor the Church. (A-197). Subsequently, Appellant requested that an employment contract be put “in place because the church had a reputation for getting rid of their pastors.” (A-191). Appellees had no obligation to draft and enter into a written contract. It is well settled that an at-will employee can generally be fired with no legal recourse. *Waters v. Churchill*, 511 U.S. 661 (1994). (A116-A119; A121-A129).

The Pennsylvania Supreme Court and Pennsylvania law is in accord with *Petruska*, and support reversal in this matter. In *Presbytery of Beaver-Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985) a central denomination brought an action against a local church and its leadership seeking delivery of all church property, an accounting of all church assets, and an injunction against the seceding members from in any way using or dissipating the assets of the church. The national church made a determination of ownership based on religious doctrine, and urged the Court to defer to this determination. *See id.* The Court declined to defer to the church findings, writing that “neither party here is arguing that they are the true church in

an ecclesiastical sense ... consequently, our decision should in no way be considered as a resolution of any competing doctrinal issues. What is involved here is a pristine question of property control, without... religious entanglements.”

Id. at 266. Here, as in *Presbytery of Beaver-Butler*, Plaintiff is not seeking to make a doctrinal or similar argument; instead, he is merely seeking to present the facts of the case, so that the factfinder may judge said facts through the lens of contract principles. The factfinder in the present case need not make any sort of religious determinations that would implicate the First Amendment in any way. And, there is thus no religious entanglement issue is implicated.

In 2009, Pennsylvania Supreme Court recognized the wisdom of *Presbytery of Beaver-Butler of United Presbyterian Church in U.S* and reiterated:

“All disputes among members of a congregation . . . are not doctrinal disputes. Some are simply disputes as to the meaning of agreements on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine. While it is true that parties may agree to settle their disputes according to their own agreed fashion, the question of what they agreed to, or whether they agreed at all, are not doctrinal and can be solved without intruding into the sacred precincts. From this consideration has evolved what is called the “neutral principles approach” delineated in *Presbyterian Church in the United States v. Blue Hull Memorial Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), where the rule was carefully announced.”

Connor v. Archdiocese of Philadelphia, 975 A.2d 1084, 1096 (Pa. 2009)(holding the deference rule, according to which civil courts decline to exercise jurisdiction over cases that would require them to decide ecclesiastical questions, did not apply

at the pleading stage to Plaintiff's tort claims against the Archdiocese).

More recently, in *Mundie v. Christ United Church of Christ*, a very similar matter to the matter presently before this Court was presented to a Pennsylvania Superior Court. In *Mundie* a Pastor brought a breach of contract and bad faith action against a church arising from his termination. The church filed preliminary objection claiming that the trial court lacked subject matter jurisdiction under Free Exercise Clause of First Amendment. On appeal the Superior Court, held that the pastor was not given opportunity to prove that excessive entanglement into church matters need not occur to prove his breach of contract claim. *Mundie v. Christ United Church of Christ*, 987 A.2d 794 (Pa. Super. 2009). Here, like in *Mundie* excessive entanglement into church matters need not occur to prove Appellant's breach of contract claim. However, unlike in *Mundie*, Appellees here *did* not file any motions claiming that the trial court lacked subject matter jurisdiction under Free Exercise Clause of First Amendment. In fact, here Appellees argued multiple times that the matter could be adjudicated. (A66-75; A293 at ¶ 1).

VII. Conclusion

The First Amendment right to freely practice religion is a fundamental core value of our nation. In this matter, the District Court erred by fixating on the buzzwords associated with religion such as "spiritual" and failed to recognize the secular nature of this breach of contract claim. It is submitted

that if this court were to affirm this matter, it would weaken religious protections under law. This court would be affirming a needless entanglement in religion where none should exist which would then open a floodgate for all religious institutions to invoke the term “spiritual” to avoid secular contracts of all types. If such a result were to occur, religious institutions everywhere would find it difficult to make secular agreements with nonreligious entities because a “spiritual” defense would leave nonreligious entities without remedy.

Because this case can be tried without undue religious entanglement, this Honorable Court should REVERSE and REMAND this matter for trial.

Respectfully submitted,

/s/ Gregg L. Zeff

Gregg L. Zeff
Attorney of Appellant, Rev. Dr. Lee
100 Century Parkway Suite 305
Mount Laurel, New Jersey 08054
gzeff@glzeflaw.com
856-778-9700

CERTIFICATE OF SERVICE

I, Gregg L. Zeff, hereby certify that on this 14th day of February, 2018, I caused a true and correct copy of Plaintiffs-Appellants' Brief to be served upon all counsel of record, via the e-filing system.

/s/ Gregg L. Zeff

Gregg L. Zeff, Esq.

ZEFF LAW FIRM, LLC

100 Century Parkway, Suite 305

Mt. Laurel, NJ 08054

(856) 778-9700

Attorney for Plaintiffs-Appellants

CERTIFICATION OF BAR MEMBERSHIP

I certify that I am a member of the bar of this Court, having been admitted on May 9, 1990.

/s/ Gregg L. Zeff

Gregg L. Zeff, Esq.

ZEFF LAW FIRM, LLC

100 Century Parkway, Suite 305

Mt. Laurel, NJ 08054

(856) 778-9700

Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 32(a)

This brief complies with the word limit requirements of F.R.A.P. 32 (a)

because:

- a. The brief is approximately 6,517 words as calculated by Word processing software, and prepared in Times New Roman, 14 point font.

/s/ Gregg L. Zeff

Gregg L. Zeff, Esq.

ZEFF LAW FIRM, LLC

100 Century Parkway, Suite 305

Mt. Laurel, NJ 08054

(856) 778-9700

Attorney for Plaintiffs-Appellants

HARD COPY AND ELECTRONIC COPY CERTIFICATION

The PDF of Plaintiffs-Appellants' Brief filed through the electronic filing system, is identical to the hard copy mailed to the Court, and to Appellees.

/s/ Gregg L. Zeff

Gregg L. Zeff, Esq.

ZEFF LAW FIRM, LLC

100 Century Parkway, Suite 305

Mt. Laurel, NJ 08054

(856) 778-9700

Attorney for Plaintiffs-Appellants

VIRUS CHECK COMPLIANCE

This document has been scanned for viruses, and is reported by AVG Antivirus, to be free of viruses as of February 14, 2018. All reasonable measures have been taken to protect all of Zeff Law Firm LLC's documents, but we cannot guarantee against viruses that have not yet been discovered.

/s/ Gregg L. Zeff

Gregg L. Zeff, Esq.

ZEFF LAW FIRM, LLC

100 Century Parkway, Suite 305

Mt. Laurel, NJ 08054

(856) 778-9700

Attorney for Plaintiffs-Appellants