

STATE OF MICHIGAN
IN THE COURT OF APPEALS

REV. CHAD SPELLER,

DOCKET NO. 330739

Plaintiff-Appellant,

LOWER COURT CASE NO.
2015-147183-CZ

VS

ST. STEPHEN LUTHERAN CHURCH
OF DRAYTON PLAINS, A Michigan
Non-Profit Corporation, CLARK BEEBE,
Individually And In His Capacity As
Chairman Of THE BOARD OF DIRECTORS,
ST. STEPHEN LUTHERAN CHURCH OF
DRAYTON PLAINS, DAVID MAIER,
Individually And In His Capacity As
President For Michigan District of
LUTHERAN CHURCH-MISSOURI
SYNOD, MICHIGAN DISTRICT OF
LUTHERAN CHURCH-MISSOURI SYNOD,
A Missouri Non-Profit Corporation
Authorized To Do Business In Michigan,

Defendants-Appellees.

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BRIEF OF PLAINTIFF-APPELLANT

PROOF OF SERVICE

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Exhibit 3, *Revely v Jones*, Unpub Opin of the Michigan Court of Appeals, Docket No 219084, 2001 Mich App Lexis 247, 2001 WL 1585052 (December 11, 2001).

STATEMENT OF JURISDICTION

Under Const 1963, art vi, sec 10; MCL 600.308(a); MCR 7.203(A)(1); and MCR 7.204(A)(1)(b), this Court has subject matter jurisdiction over this appeal. On December 17, 2015, Plaintiff-Appellant Rev. Chad Speller [**PLAINTIFF SPELLER OR REV. SPELLER**] appealed from the Oakland County Circuit Court’s (Judge Shalina Kumar’s) December 7, 2015 Order Granting Defendants Summary Disposition (12/7/15 Opinion and Order) and all orders thereunder. Plaintiff-Appellant has reviewed the above Register of Actions. Based on his review, he has found that the above trial court did not conduct any hearings in this action. Thus, he has no transcripts to order for this appeal. Therefore, the Court has subject matter jurisdiction over this appeal.

QUESTIONS PRESENTED

WHETHER, IN GRANTING DEFENDANTS SUMMARY DISPOSITION UNDER MCRS 2.116(C)(4) & (C)(10) FOR LACK OF SUBJECT MATTER JURISDICTION AND NO GENUINE ISSUES OF MATERIAL FACT, BOTH BASED ON THE ECCLESIASTICAL ABSTENTION DOCTRINE, ON PLAINTIFF'S CLAIMS, THE LOWER COURT COMMITTED REVERSIBLE ERROR.

Plaintiff responds: "Yes."

Defendants respond: "No."

The Lower Court would respond: "No."

STATEMENT OF SUBSTANTIVE FACTS

At all relevant times, Rev. Speller has been an Oakland County, Michigan Lutheran pastor. (5/21/15 Complaint, paras 1, 8) On information and belief, at all relevant times, Defendant St. Stephen Lutheran Church of Drayton Plains **[DEFENDANT ST. STEPHEN OR DEFENDANT ST. STEPHEN CHURCH]** has been a Michigan nonprofit ecclesiastical corporation with its registered business and place of worship locations in Drayton Plains & Waterford, Oakland County, Michigan. (5/21/15 Complaint, para 2) At all relevant times, Defendant Clark Beebe **[DEFENDANT BEEBE]** has been a Defendant St. Stephen's Board of Directors member. (5/21/15 Complaint, para 15) At all relevant times, Defendant Reverend David Maier **[DEFENDANT MAIER OR REVEREND MAIER]** has been Defendant Michigan District of Lutheran Church-Missouri Synod's **[DEFENDANT MICHIGAN DISTRICT LUTHERAN CHURCH-MISSOURI SYNOD'S]** President. (5/21/15 Complaint, para 36; 12/7/15 Opinion and Order, p 1 FN1) On information and belief, at all relevant times, Defendant Michigan District Lutheran Church-Missouri Synod has been the Michigan District of the Lutheran Church-Missouri Synod, a Missouri nonprofit

ecclesiastical corporation authorized to do business in Michigan and doing substantial business in Michigan.

On or about March 27, 2012, Rev. Speller began working as St. Stephen's Senior Pastor. (5/21/15 Complaint, para 8; 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 1; 12/7/15 Opinion and Order, pp 1-2) St. Stephen representatives and Rev. Speller signed a Diploma of Vocation outlining each party's responsibilities and benefits and confirming each party's acceptance of them. (8/14/15 Motion for Summary Disposition Pursuant to MCR 2.116(C)(1) & (C)(4) on Behalf of Defendants, David Maier...and **Michigan District of Lutheran Church-Missouri Synod**[8/14/15 **Defendants Maier and MCR 2.116(C)(1) & (C)(4) Motion for Summary Disposition**], Exhibit 1, 3/27/12 Diploma of Vocation)

St. Stephen Church ran St. Stephen Elementary and Middle School. But St. Stephen could not longer afford to keep them open. "St. Stephen closed the school[,] because the church was losing money." (12/7/15 Opinion and Order, p 2) Afterward, "many church members became upset and 'personally attack[ed]' [Rev. Speller] for the decision[,]" even though St. Stephen's Board of Directors voted on and approved the decision. These personal "attacks were 'extremely aggressive.'" (12/7/15 Opinion and Order, p 2)

On October 9, 2014, the Board "offered [Rev. Speller] a 30 day paid sabbatical." On October 17, 2014, Defendant Beebe emailed Rev. Speller, outlining his sabbatical's parameters. On October 31, 2014, Rev. Speller "fell and injured his right ankle and left quad. On November 3, 2014, immediately following his appointment with his orthopedic surgeon," Rev. Speller "called [Defendant] Beebe and told him about [his] injury." Rev.

Speller also told Defendant Beebe that he “was scheduled for surgery on November 6, 2014.” (12/7/15 Opinion and Order, p 2)

“On November 4, 2014, Connie Mars [**Mars**], St. Stephens’ Business Manager, and Concordia Plan Services [**Concordia**] called [Rev. Speller]” and told him that they had put him on disability. On November 5, 2014, Rev. Speller “emailed the Board and St. Stephens’ Associate Pastor[,]” outlining “what he had done on his sabbatical” and stating “that he was looking forward to returning to work.” (12/7/15 Opinion and Order, p 2)

“On November 6, 2014, [Rev. Speller] had his surgery. The next day, on November 7, 2014, Beebe [texted Rev. Speller] stat[ing] that he wanted to talk to [Rev. Speller].” Rev. Speller, Defendant Beebe, Board Member Doug Haase [**Haase**], and Rev. John Duerr [**Duerr**], Michigan District Lutheran Church-Missouri Synod’s Vice President, arranged a November 9, 2014 meeting. “At the meeting, [Defendant] Beebe immediately asked [Rev. Speller] to resign from his position and offered [him] three months severance pay. However, [Rev. Speller] refused [Defendant] Beebe’s offer and counter-offered with a severance package worth 15 months full pay and benefits.” (12/7/15 Opinion and Order, pp 2-3)

“Throughout November 2014, [Rev. Speller] suffered various health complications.”(12/7/15 Opinion and Order, p 3) **On November 12, 2014, Beaumont Hospital Royal Oak admitted him for a left leg infection. On November 13, 2014, Beaumont released him. On November 14, 2014, Beaumont admitted him for three left leg blood clots. “On November 16, 2014, while still at Beaumont, Rev. Speller suffered a pulmonary embolism.” On November 19, 2014, Beaumont discharged him.** (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, pp 2-3)

Defendant Beebe rejected Rev. Speller's counteroffer and declared his earlier three-month package the Board's final offer. **"Beebe also told [Rev. Speller] that he [Defendant Beebe] had been instructed to inform [Rev. Speller] that if he does not accept this offer that the 'LCMS Michigan District' would begin an investigation of his behavior that would lead to his removal from the synodical roster."** When Rev. Speller **"asked [Defendant] Beebe what he had done wrong[,] [Defendant] Beebe replied that 'there was a long list of [undefined] shortcomings."** But Defendant **"Beebe never once came to [Rev. Speller] with any issues or worked with him regarding any corrective action[.] [I]nstead[,] [Defendant Beebe] immediately tried to force [his] resignation."** (12/7/15 Opinion and Order, p 3, quoting 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 3)

On November 28, 2014, Defendant Maier called Rev. Speller to discuss the situation. **"The conversation was cordial[,] and [Rev.] Speller was told to focus on his health and getting better."** 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 3) Defendant Maier said that they would discuss the situation after the holidays. Rev. Speller agreed to contact Defendant Maier after the holidays. (7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 3)

But on December 8, 2014, Defendant Maier's secretary, Julie Strobl, called Rev. Speller and asked him to meet with Defendant Maier and the St. Stephen leadership on December 10, 2014. **Rev. Speller "called back and said that his doctor [had] advised him not to attend[] meetings of this nature[,] as he was being heavily medicated and not able to make these types of decisions."** 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 3) But according to Defendant Beebe, on December 10, 2014,

Defendant Maier had met with Defendant St. Stephen's Board of Directors and told the Board that "Pastor Chad Speller has agreed to resign as Senior Pastor at St. Stephen Lutheran Church upon completion of his disability." (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 3) **But Pastor Speller had never agreed to resign.** (7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 4)

On December 11, 2014, Beaumont Hospital admitted Rev. Speller "due to severe swelling in his leg." Beaumont treated his "blood clots and a cyst...in the back of [his] knee." On December 16, 2014, Beaumont Hospital released him.

On December 19, 2014, Defendant Maier told Rev. Speller that he [Defendant Maier] would suspend Rev. Speller and begin "proceedings to remove him." (12/7/15 Opinion and Order, p 3. *Accord*, 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 3) **Defendant Maier also accused Rev. Speller of dishonesty and prescription pain reliever dependence:** "You were also not honest with me regarding your stay at the Cleveland Clinic[,] which you informed me had been for neck and back issues, when, it was also to help you overcome your dependence on prescription pain relievers." (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit C, 12/19/14 Letter, p 1. *Accord*, 7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 4) **These accusations were baseless and untrue.** (7/22/15 Plaintiff's Response to Motion for Summary Disposition, p 4, & Exhibit I, 7/22/15 Affidavit of Reverend Chad M. Speller [**Speller Affidavit**], para 6. *See also*, 12/7/15 Opinion and Order, p 3). **Reverend Speller did not go to Cleveland Clinic for any prescription pain relievers dependence. Rather, he went there to recover from his injuries.** (7/22/15

Plaintiff's Response to Motion for Summary Disposition, p 11) **Defendant Maier put Rev. Speller on Restricted Status.** His "restricted status is broadcasted to all district presidents...thus, I cannot obtain employment in my profession." (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit C, 12/19/14 Letter, p 1, & Exhibit I, Speller Affidavit, para 6) **Defendants published their defamatory statements "to a wide array of people, such as the members of my church...."** (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit I, Speller Affidavit, para 4)

On December 20, 2014, Defendant St. Stephen put Defendant Beebe's December 20, 2014 letter in every St. Stephens member's mailbox claiming "that [Rev. Speller] was resigning from his position at the end of his disability." (12/7/15 Opinion and Order, pp 3-4. *Accord*, 7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, pp 2, 5, Exhibit E, 2/14/15 Letter) (our emphasis) **According to Defendant Beebe, on November 30, 2014, Rev. Speller had "agreed to resign when his disability ended."** (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 2) (our emphasis) Earlier, Defendant Beebe mentioned that "we [the Board] needed to ask Pastor [Speller] to resign his call at St. Stephen" for undefined reasons. (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 2) **Further, Defendant Beebe contended that during the November 7, 2014 telephone conference, Rev. Speller had "offered to resign immediately if that was what the church wanted."** (7/22/15 Plaintiff's Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 2) (our emphasis)

This December 20, 2014 “letter was `full of false statements and incorrect dates.’” (12/7/15 Opinion and Order, p 4, quoting 7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 4) **Rev. Speller “did not offer to resign from his position and never intended to quit.”** (12/7/15 Opinion and Order, p 4) (our emphasis)**He never agreed to resign when his disability ended.** (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 4) **He never offered to resign during the November 7, 2014 telephone conference.**

In communicating about other things, Defendant Beebe and Defendant St. Stephen alluded to the above defamatory accusations against Rev. Speller:“It grieves us to communicate this way, but it is necessary to share with you some information about the past few months. Pastor Chad is a charismatic, outgoing man[,] and we do believe that God called him to St. Stephen. However, Pastor Chad has struggled with a number of things during the past two-and-a-half years he has served us here. Some of these things have been very apparent to you[,] and others maybe not as much. Some things we wish to remain confidential[,] because we want to keep the integrity of God’s people in place.” (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, Exhibit B, 12/20/14 Letter, p 4)

The St. Stephen Voter’s Assembly includes all the congregation’s “voting members” over age 18. (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, Exhibit D, The Constitution of St. Stephen Lutheran Church, Bylaws of St. Stephen Lutheran Church, p 6) At a December 22, 2014 St. Stephen Voters’ Assembly Meeting, the participants discussed the above situation. In scheduling the meeting, its conductors did not follow the mandatory protocol. In a February 14, 2015 St. Stephen

letter, Defendant Maier wrote: “**We announced at the last voters meeting that [Rev. Speller] will resign at the end of his disability....[Rev. Speller] is officially on disability at this time[,] and we do not know anything else.**” (12/7/15 Opinion and Order, p 4, quoting 7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 5, & Exhibit E, 2/14/15 St. Stephen Letter) As of July 20, 2015, Rev. Speller was still a Defendant St. Stephen employee. (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 6)

When hiring Rev. Speller as its pastor, Defendant St. Stephen gave him St. Stephen’s Standard Operating Procedures Manual on Dispute Resolution Bylaws (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 6 & Exhibit F, **[Standard Operating Procedures Manual]**) The manual outlines a dispute resolution process available for disputes “enumerated by paragraphs (a) and (b) of Bylaw 1.10.3[,] if both parties agree to the process and honor its outcome. In such cases, both parties must sign written statements to that effect.” (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 6 & Exhibit F, Standard Operating Procedures Manual, p 9)

The 2013 Defendant St. Stephen Handbook provides a dispute resolution process. **But the handbook “does not provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues,....**

“(a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud or embezzlement); and

“(b) Disputes arising under contractual arrangements of all kinds (e.g. **contracts for goods, services, or employment benefits)**

“Even in the case of disputes concerning property rights or disputes arising under contractual arrangements, this dispute resolution process may be used[,] if both parties to the dispute sign written statements agreeing to use and honor the outcome of the process.”

(7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 6 & Exhibit G, 2013 St. Stephen Handbook, Sec 1:10.3, p 41) (our emphasis)

The Voters’ Assembly has the authority to remove a pastor “by a two-thirds ballot of those present and voting, in Christian and lawful order, for one of the following reasons: persistent adherence to false doctrine, scandalous life, inability to carry out responsibilities, or willful neglect of duties. The Voters’ Assembly may request the resignation of any pastor...from his position in the congregation in the case of prolonged incapacity or general incompetence.” (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, Exhibit D, The Constitution of St. Stephen Lutheran Church, Article VII C, p 4)

The St. Stephen Bylaws provide for two kinds of Voters’ Assembly meetings: Annual meeting and Special meeting. The Congregational Chairman “shall” schedule an annual meeting of the Voters’ Assembly. **“Notice of the meeting, place, date, time and the agenda...shall be published in the Church bulletin or newsletter at least two successive weeks prior to the meeting date.”**The Senior Pastor, the Chairman of the Congregation, or the Board of Directors” when “presented with a petition signed by no less than 20 voting members” can call a special Voters’ Assembly meeting. **“The purpose, date, and time, of the meeting shall be announced at least two successive weeks prior to the [meeting] date.”** (7/22/15 Plaintiff’s Response to Motion for

Summary Disposition, Exhibit D, Bylaws of St. Stephen Church, Article I, p 6) (our emphasis)**Defendants did not publicize the December 22, 2015 Voters’ Assembly meeting at least two successive weeks before the meeting date. “Pastor Speller’s situation was not on the [meeting] agenda.”** (7/22/15 Plaintiff’s Response to Motion for Summary Disposition, p 4)(our emphasis) Defendants

RELEVANT PROCEDURAL HISTORY

On May 21, 2015, Plaintiff Rev. Speller sued Defendants St. Stephen, Beebe, Maier, and Michigan District Lutheran Church-Missouri Synod for Count I-Invasion of Privacy-False Light, Count II-Defamation-Libel, Count III-Intentional Infliction of Emotional Distress, Count IV-Breach of Contract, Count V-Fraud and Misrepresentation, Count VI-Breach of Fiduciary Duty, Count VII-Civil Conspiracy, and Count VIII-Concert of Action. (5/21/15 Summonses and Complaint)

2. On June 10, 2015, Defendants Beebe and St. Stephen moved under MCR 2.116(C)10) for summary disposition based on no genuine issues of material fact arising from the ecclesiastical abstention doctrine a/k/a church autonomy doctrine. (6/10/15 Defendant Beebe’s and Defendant St. Stephen’s Motion for Summary Disposition)

3. On July 22, 2015, Plaintiff Speller responded to Defendant Beebe’s and Defendant St. Stephen’s above Motion for Summary Disposition. (7/22/15 Plaintiff’s Response to [Defendant Beebe’s and Defendant St. Stephen’s]Motion for Summary Disposition)

4. On July 29, 2015, Defendants Beebe and St. Stephen replied to Plaintiff Speller’s above response. (7/29/15 [Defendant Beebe’s and Defendant St. Stephen’s Reply Brief in Support of Defendants’ Motion for Summary Disposition)

5. On August 14, 2015, Defendants Maier and Michigan District Lutheran Church-Missouri Synod moved under MCR 2.116(C)(1) & (C)(4) for summary disposition based on lack of subject matter jurisdiction and personal jurisdiction arising from the ecclesiastical abstention doctrine a/k/a church autonomy doctrine. (8/14/15 Motion for Summary Disposition Pursuant to MCR 2.116(C)(1) & (C)(4) on Behalf of Defendants, David Maier...and Michigan District of Lutheran Church-Missouri Synod[8/14/15 Defendants Maier and Michigan District of Lutheran Church-Missouri SynodMCR 2.116(C)(1) & (C)(4) Motion for Summary Disposition])

6. On September 25, 2015, the lower court, Judge Shalina Kumar, granted Defendant Beebe's and Defendant St. Stephen's Motion for Summary Disposition under MCRs 2.116(C)(4) and dismissed Plaintiff Speller's claims against them for lack of subject matter jurisdiction under the ecclesiastical abstention doctrine with prejudice. (9/25/15 Opinion and Order)

7. On October 14, 2015, Plaintiff responded to Defendant Maier's and Defendant Michigan District of Lutheran Church-Missouri Synod's Motion for Summary Disposition. (10/14/15 Plaintiff's Response to 8/14/15 Defendants Maier and Michigan District of Lutheran Church-Missouri Synod MCR 2.116(C)(1) & (C)(4) Motion for Summary Disposition)

8. On October 16, 2016, Defendant Maier and Defendant Michigan District of Lutheran Church-Missouri Synod replied to Plaintiff's above response (10/16/15 Reply to Plaintiff's Response to 8/14/15 Defendants Maier and Michigan District of Lutheran Church-Missouri Synod MCR 2.116(C)(1) & (C)(4) Motion for Summary Disposition)

9. On December 7, 2015, the lower court, Judge Kumar, granted Defendant Maier's Motion for Summary Disposition without specifying whether under MCR 2.116(C)(4) or 2.116(C)(10) and dismissed Plaintiff Speller's claims against him with prejudice. (12/7/15 Opinion and Order) (The December 7, 2015 and September 25, 2015 Orders and Opinions' conclusions and analysis were almost identical).

10. On December 10, 2015, Defendant Maier and Defendant Michigan District of Lutheran Church-Missouri Synod moved for redetermination and clarification on whether the lower court's above December 7, 2015 order extended to the latter defendant. (12/10/15 Defendant Maier's and Michigan District of Lutheran Church-Missouri Synod's Motion for Redetermination and Clarification as to this Court's [December 7, 2015] Opinion and Order...Granting Summary Disposition as to Defendants, David Maier...and Michigan District of Lutheran Church-Missouri Synod, etc.)

11. On December 17, 2015, the lower court, Judge Kumar, treating the above motion as a Motion for Reconsideration, granted Defendant Maier's and Michigan District of Lutheran Church-Missouri Synod's above motion, extended its December 7, 2015 order to the latter defendant, and dismissed Plaintiffs' claims against it with prejudice. (12/17/15 Opinion and Order)

THE LOWER COURT DECISIONS

In granting Defendant Beebe's and Defendant St. Stephen's Motion for Summary Disposition under MCR 2.116(C)(4) for lack of subject matter jurisdiction, the lower court based its decision on the Ecclesiastical Abstention Doctrine. The lower court concluded that notwithstanding Plaintiff's assertions that his claims did not involve interpreting religious law, questioning a religious tribunal's decision, or involving itself

in religious doctrine, the doctrine extended to all his claims. The lower court cited the principle that the plaintiff's "choice of labels for hi[s] action" is not binding, "because this would exalt form over substance." (9/25/15 Opinion and Order, pp 5-6, quoting *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989), and because "the gravamen of [the] plaintiff's action is determined by considering the entire claim," quoting *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999)). Then, the lower court cited the principle that the US Constitution's and the Michigan Constitution's Establishment and Free Exercise Clauses "severely circumscribe" civil court jurisdiction over "disputes between a church and its members." (9/25/15 Opinion and Order, p 6, quoting *Maciejewski v Breitenbeck*, 162 Mich App 410, 413-414; 413 NW2d 65 (1987)). Next, the lower court stated: "Such jurisdiction is limited to property rights[,] which can be resolved by application of civil law. Whenever the trial court must stray into questions of religious doctrine or ecclesiastical polity[,] the court loses jurisdiction." (9/25/15 Opinion and Order, p 6, quoting *Id* at 414).

Moreover, the lower court cited the principle that "under the ecclesiastical abstention doctrine, ... civil courts may not redetermine the correctness of an interpretation of canonical text or some decision relating to government of the religious polity." (9/25/15 Opinion and Order, p 6, quoting *Smith v Calvary Christian Church*, 462 Mich 679, 684; 614 NW2d 590 (2000)). Further, the lower court quoted the following religious doctrine and polity definitions: "Religious doctrine refers to ritual, liturgy of worship, and tenets of the faith." (9/25/15 Opinion and Order, p 6, quoting *Maciejewski*, 162 Mich App 410, 414). "Polity refers to organization and form of government of the church." (9/25/15 Opinion and Order, p 6, quoting *Sikh Society of Michigan, Inc v Singh*,

Unpub Opin of the Michigan Court of Appeals, Docket No 244311, 2004 Mich App Lexis 537, 2004 WL 316949 (February 19, 2004) (Exhibit 1), *2-3.

Lastly, the lower court compared the instant case to *Lynch v Church of Today*, Unpub Opin of the Michigan Court of Appeals, Docket No 215936, 2001 Mich App Lexis 516, 2001 WL 765883 (January 26, 2001) (Exhibit 2), where this Court affirmed the trial court's decision that under the ecclesiastical abstention doctrine, the trial court lacked subject matter jurisdiction over a minister's breach of implied employment contract, wrongful discharge, defamation, intentional infliction of emotional distress, invasion of privacy, and conspiracy claims arising from the church's termination of him. After summarizing *Lynch's* facts, the Court quoted *Lynch's* statement that the Michigan Supreme Court and this Court "have held that a church's decision regarding assignment or employment of clergy is a matter of ecclesiastical polity in which the courts may not interfere....the decision...to terminate [the] plaintiff entailed ecclesiastical polity[,] because it was a determination regarding who would minister to [the] defendants' congregation." (9/25/15 Opinion and Order, p 7, quoting *Lynch*, 2001 Mich App Lexis 515 at *5-6). For the same reasons, the lower court held that it could not "interfere" in Defendant St. Stephens' decisions regarding Reverend Speller's employment. The dispute was an internal church dispute involving church members. The dispute was over whether Reverend Speller actions as minister were appropriate. Whether they were depends on understanding of the church's "internal discipline, faith, and organization." So, "ecclesiastical rule, custom, and law" governed the dispute. (9/25/15 Opinion and Order, pp 7-8, quoting *Revely v Jones*, Unpub Opin of the Michigan Court of Appeals, Docket No 219084, 2001 Mich App Lexis 247, 2001 WL 1585052 (December 11,

2001)(Exhibit 3), *6-7. As a result, the lower court dismissed Reverend Speller's claims against Defendants Beebe and St. Stephen's Church under MCR 2.116(C)(4) for lack of subject matter jurisdiction. For the same reasons, the lower court granted Defendant Maier's and Defendant Lutheran Church-Missouri Synod's Motion for Summary Disposition under MCR 2.116(C)(10) for no genuine issues of material fact based on the ecclesiastical abstention doctrine. (12/7/15 Opinion and Order, pp 5-8)

ARGUMENT

I. APPLICABLE REVIEW STANDARDS.

Under MCR 2.116(C)(4), the Court "must determine whether the pleadings show that the defendant had a right to judgment as a matter of law, or whether the record evidence shows that there was a genuine issue of material fact was absent or present. *Cork v Applebee's*, 239 Mich App 311, 315; 608 NW2d 62 (2000). Whether the trial court had subject matter jurisdiction is a question of law. *Rudolph Steiner School v Ann Arbor Charter Township*, 237 Mich App 721, 730; 605 NW2d 18 (1999). Michigan appellate courts review trial court subject matter jurisdiction decisions de novo. *Gaudreau v Kelly*, 298 Mich App 148, 151; 828 NW2d 164 (2012), *Rudolph Steiner School*, 237 Mich App 721, 730. Michigan appellate courts also review constitutional law questions de novo. *In Re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014), *In Re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). Further, Michigan appellate courts review trial court summary disposition decisions de novo. *Henry v Dow Chemical Co*, 473 Mich 63, 71; 701 NW2d 684 (2009), *Maiden*, 461 Mich 109, 118.

II. THE ESTABLISHMENT CLAUSES, THE FREE EXERCISE CLAUSES, AND THE ECCLESIASTICAL ABSTENTION DOCTRINE.

The US Constitution's First Amendment Free Exercise Clause and the Michigan Constitution's Free Exercise Clause guarantee an individual's right to freedom of religion. US Const, Am 1; Const 1963, art i, sec 4. The US Constitution's First Amendment Establishment Clause and the Michigan Constitution's Establishment Clause guarantee each individual and religious group against government establishment of religion. US Const, Am 1; Const 1963, art i, sec 4. The Establishment and Free Exercise Clauses apply to the states through the Fourteenth Amendment's Due Process Clause. *Cantwell v Connecticut*, 310 US 296, 303; 60 S Ct 900; 84 L Ed 1213 (1940), *Smith*, 462 Mich 679, 684. "[T]he First Amendment applies to judicial power." *Kreshik v St Nicholas Cathedral*, 363 US 190, 191; 80 S Ct 1037; 4 L Ed 2d 1140 (1960).

The Establishment Clause goes beyond prohibiting an established church or an established religion. The clause compels official government neutrality in religious disputes "benevolent neutrality[,] which will permit religious exercise to exist without sponsorship and without interference." *Walz v Tax Commission of New York*, 397 US 664, 669; 90 S Ct 1409; 25 L Ed 2d 697 (1970). The clause seeks to prevent excessive government entanglement with religion. *Lemon v Kurtzman*, 403 US 602, 612-614; 91 S Ct 2105; 29 L Ed 2d 745 (1971). For example, excessive entanglement violating the clause can occur, when, to resolve claims or defenses, civil courts must evaluate and interpret church doctrine. *Purdum v Purdum*, 48 Kan App 2d 938, 948; 301 P3d 718 (2013).

The Free Exercise Clause encompasses "two concepts —freedom to believe and freedom to act. The first is absolute, but, in the nature of things, the second cannot be." *Purdum*, 48 Kan App 2d 938, 945, quoting *Cantwell*, 310 US 296, 303-304. "Thus, the

freedom to act, even when the action is in accord with one's religious convictions, is not totally free from regulation for the protection of society." *Purdum*, 48 Kan App 2d 938, 945. *Accord*, *Sherbert v Verner*, 374 US 398, 402-403; 83 S Ct 1790; 10 L Ed 2d 965 (1962), *Molko v Holy Spirit Association of the Unification of World Christianity*, 46 Cal 3d 1092, 1112; 252 Cal Rptr 122; 762 P2d 46 (1988), *cert den* 490 US 1084; 109 S Ct 2110; 104 L Ed 2d 670 (1989). **Therefore, "the Free Exercise Clause `does not mean...that churches are above the law or that there can never be a civil court review of a church action."** *Family Federation for World Peace v Moon*, 129 A3d 234, 248 (DC App 2015), quoting *Heard v Johnson*, 810 A2d 871, 879 (DC App 2002). "[N]ot every civil court decision...jeopardizes values protected by the First Amendment." *Family Federation for World Peace*, 129 A3d 234, 248 (DC App 2015), quoting *Heard*, 810 A2d 871, 879.

The ecclesiastical abstention doctrine is rooted in the US Constitution, First Amendment's Establishment Clause and Free Exercise Clause. *Hosanna-Tabor Evangelical Lutheran Church & School v EEOC*, 565 US ___, ___; 132 S Ct 694, 703-704; 181 L Ed 2d 650 (2012), *Smith*, 462 Mich 679, 684, 690 FN5. "The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own. By imposing an unwanted minister, the state infringes on 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*, 132 S Ct 694, 703. Under

the ecclesiastical abstention doctrine, religious organizations have autonomy regarding matters of religious doctrine, religious worship, or polity. *Eg, Serbian Orthodox Diocese v Milivojevich*, 426 US 696, 713-715; 96 S Ct 2372; 49 L Ed 2d 151 (1976), *Watson v Jones*, 80 US 679, 728-729; 20 L Ed 666 (1871), *First Protestant Reformed Church v De Wolf*, 344 Mich 624, 632; 75 NW2d 19 (1956), *Berry v Bruce*, 317 Mich 490, 499; 27 NW2d 67 (1947). “Religious doctrine refers to ritual, liturgy of worship, and tenets of the faith.” *Maciejewski*, 162 Mich App 410, 414. “Polity refers to organization and form of government of the church.” *Id.* On polity, the doctrine grants religious organizations autonomy to create religious tribunals and dispute resolution rules, with religious tribunals’ decisions subject to appeal to civil, secular courts only if and so far as the religious organizations’ dispute resolution rules permit or recognize. *Milivojevich*, 426 US 696, 713-715, *Watson*, 80 US 679, 728-729, *Bennison v Sharp*, 121 Mich App 705, 716; 329 NW2d 466 (1982).

Thus, the ecclesiastical abstention doctrine prohibits courts from exercising subject matter jurisdiction over disputes regarding religious doctrine, religious worship, and religious organization government and rules. “[Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the [civil secular] legal tribunals must accept such decisions as final, and as binding on them.”” *Hosanna-Tabor*, 565 US ___, ___; 132 S Ct 694, 705-706, quoting *Watson*, 80 US 679, 727. “Courts...do not have jurisdiction to resolve purely ecclesiastical questions.” *Beulah Missionary Baptist Church v Spann*, 132 Mich App 118, 125; 346 NW2d 911 (1984), *lv den* 419 Mich 921 (1984) (Gage, J, concurring in part and dissenting in part), citing

Berry, 317 Mich 490, 499, *DeWolf*, 344 Mich 624, 632 (further citations omitted).
Accord, *Maciejewski*, 162 Mich App 410, 414 (“Whenever the court must stray into questions of religious doctrine or ecclesiastical polity[,] the court loses jurisdiction.”), *Assemany v Archdiocese of Detroit*, 173 Mich App 752. 760; 434 NW2d 233 (1988) (“The civil courts will not enter into a consideration of church doctrine or church [governance].”) (citations omitted).

Accordingly, “the case law is clear that the ecclesiastical abstention doctrine bars a court from determining whether a church violated its own policies or procedures.” *Lynch*, 2001 Mich App Lexis 516 at *7 (Exhibit 2), citing *Dlaikan v Roodbeen*, 206 Mich App 591, 594; 422 NW2d 719 (1994), *Lewis v Seventh Day Adventists Lake Region Conference*, 978 F2d 940, 942-943 (CA 6, 1992), *Milivojevich*, 426 US 696, 713-714. (Plaintiff cites *Lynch*, because *Lynch* summarizes the rule of law here briefly and clearly, because in its decisions, the lower court relied on *Lynch*, and because *Lynch* bases its summary on three published cases declaring the same rule).

Under the Free Exercise Clause, the Establishment Clause, the Ecclesiastical Abstention Doctrine, or a combination of these, as a rule, civil courts cannot review and override “decisions of religious judicatory bodies relating to the employment of clergy.” *Lewis*, 978 F2d 940, 942 (CA 6, 1992). Accord, *Hosanna-Tabor*, 565 US ___, ___; 132 S Ct 694, 706, 709, *Hutchison v Thomas*, 789 F2d 392, 396 (CA 6, 1986), *cert den* 479 US 885; 107 S Ct 277; 93 L Ed 2d 253 (1986), *Natal v Christian and Missionary Alliance*, 878 F2d 1575, 1578 (CA 1, 1989).

But the ecclesiastical abstention doctrine has limits: “[T]he unreviewable discretion afforded to religious authorities does not encompass all decisions regarding all

activities—secular and religious—undertaken by the religious organization; rather, it insulates only those decisions directly affecting the propagation of religious doctrine.” *Dlaikan*, 206 Mich App 591, 597 (Taylor, J, dissenting), citing *Assemany*, 173 Mich App 752, 762. “[S]ecular laws are generally applicable to religious organizations, except for the narrow ecclesiastical exemption discussed above.[.]” *Dlaikan*, 206 Mich App 591, 602 (Taylor, J, dissenting), citing *Department of Social Services v Emmanuel Baptist Preschool*, 434 Mich 380, 466-467; 455 NW2d 1 (1990) (extending state school licensing requirements to religious schools). *See also*, *Employment Division, Oregon Department of Human Resources v Smith*, 494 US 872, 883-889; 110 S Ct 1595; 108 L Ed 2d 876 (1990) (restricting ecclesiastical abstention doctrine even in religious worship context). The ecclesiastical abstention doctrine does not immunize religious organizations from all breach of contract and tort claims. *Rayburn v General Conference of Seventh Day Adventists*, 772 F2d 1164, 1171 (CA 4, 1984) (“Of course churches are not—and should not be—above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts.”), *Friedlander v Port Jewish Center*, 588 F Supp 2d 428, 431 (ED NY 2008), *aff’d* 347 Fed Appx 654 (CA 2, 2009), *cert den* 559 US 973; 130 S Ct 1714; 176 L Ed 2d 184 (2010) (quoting *Rayburn*), *Dlaikan*, 206 Mich App 591, 598 (Taylor, J, dissenting), *Black v Snyder*, 471 NW2d 715, 720-721 (Minn App 1991) (the Court permitted a former associate pastor to sue church for sexual harassment), *Molko*, 46 Cal 3d 1092, 1114 (“[I]n appropriate cases, courts will recognize tort liability even for acts...religiously motivated.”), *Id* at 1117-1123 (the Court permitted former church member to sue the church for fraud and false imprisonment), *O’Moore v Driscoll*, 135 Cal App 770, 778; 28 P2d 438 (1933) (the Court permitted priest to sue his

superiors for false imprisonment based on their efforts to get him to confess to his sins), *Bear v Reformed Mennonite Church*, 462 Pa 330, 334-335; 341 A2d 105 (1975) (the Court permitted former member to sue the church for interference with his business interests and marriage, after church had ordered congregation to shun former member), *Carrieri v Bush*, 69 Wash 2d 536, 544-545; 419 P2d 132 (1966) (Court permitted wife to sue the church for counseling her to leave her husband, as he was “full of the devil”), *Candy H v Redemption Ranch, Inc*, 563 F Supp 505, 516 (MD Ala 1983) (permitting member to sue religious group for false imprisonment), *Van Schaick v Church of Scientology of California, Inc*, 535 F Supp 1125, 1135 (D Mass 1982) (“even if the alleged wrongdoer acts upon a religious belief or is organized for a religious purpose,” he is not necessarily immune from tort liability).

III. THE MINISTERIAL EXCEPTION TO FEDERAL EMPLOYMENT DISCRIMINATION CLAIMS.

Under the Free Exercise Clause, The US Supreme Court has recognized a ministerial exception to federal and state employment discrimination laws. *Hassana-Tabor*, 132 S Ct 694, 705. *See also, Conlon v Intervarsity Christian Fellowship*, 777 F3d 829, 833 (CA 6, 2015). This exception is “rooted in the First Amendment’s guarantees of religious freedom” and “precludes subject matter jurisdiction over claims involving the employment relationship between a religious institution and its ministerial employees, based on the institution’s constitutional right to be free from judicial interference in the selection of those employees.” *Hollins v Methodist Healthcare, Inc*, 474 F3d 223, 225 (CA 6, 2007). For “the ministerial exception to bar an employment discrimination claim, the employer must be a religious institution[,] and the employee must have been a ministerial employee.” *Conlon*, 777 F3d 829, 833, quoting *Hollins*, 474 F3d 223, 225.

“As a general rule, the ministerial exception will be invoked if the employee’s primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.” *Id* at 223, 225, quoting *Rayburn*, 772 F2d 1164, 1169 (further citation omitted). **But the US Supreme Court has declined to extend the ministerial exception beyond employment discrimination claims. “We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.”** *Hosanna-Tabor*, 565 US ___, ___; 132 S Ct 694, 710 (our emphasis).

IV. THE NEUTRAL PRINCIPLES OF LAW RESTRICTION ON THE FREE EXERCISE CLAUSES, THE ESTABLISHMENT CLAUSES, AND THE ECCLESIASTICAL ABSTENTION DOCTRINE.

Neither the Free Exercise Clause, the Establishment Clause, nor the Ecclesiastical Abstention Doctrine bar enforcement “of a neutral, generally applicable law to religiously motivated action.” *Purdum*, 48 Kan App 2d 938, 966 (Atcheson, J, dissenting), quoting *Smith*, 494 US 872, 881& citing *Watchtower Bible & Tract Society of New York v Village of Stratton*, 536 US 150, 159 FN8; 122 S Ct 2080; 153 L Ed 2d 205 (2002). *See also*, Religious Freedom Restoration Act of 1993, 42 USC Sec 2000bb-1(the government can enforce such a law “in furtherance of a compelling governmental interest[,] if that law “is the least restrictive means of furthering that compelling governmental interest.”). Civil courts have subject matter jurisdiction in cases involving religious organizations, when the court can resolve the dispute using only “neutral principles of law.” *Banks v St. Matthew Baptist Church*, 406 SC 156, 160; 750 SE 2d 605 (2013), citing *Pearson v Church of God*, 325 SC 45, 51-53; 478 SE2d 849 (1996).

“Under the neutral principles of law approach, courts may apply `property, corporate, and other forms of law to church disputes.” *Banks*, 406 SC 156, 160, quoting *All Saints Parish Waccamaw v Protestant Episcopal Church in Diocese of South Carolina*, 385 SC 428, 444; 685 SE2d 163 (2009). *Accord*, *Banks*, 406 SC 156, 165 (Toal & Kittredge, JJ, dissenting). “[S]o long as a court can hear a case without deciding issues of religious law, principle, doctrine, discipline, custom, or administration, the court must entertain jurisdiction.” *Banks*, 406 SC 156, 161, citing *All Saints Parish Waccamaw*, 385 SC 428, 444. “The doctrine frees civil courts completely from entanglement in questions of religious doctrine, polity, and practice, and permits the application of property, corporate, and other forms of law to church disputes.” *Banks*, 406 SC 156, 165 (Toal & Kittredge, JJ, dissenting), citing *Watson*, 443 US 595, 603 & *All Saints Parish Waccamaw*, 385 SC 428, 445. “[A] controversy involving a church is not immune from judicial review[,] unless adjudication of the controversy would require an assessment of the propriety of an action by the church.” *Vincent v Raglin*, 114 Mich App 242, 252; 318 NW2d 629 (1982).

V. THE ESTABLISHMENT CLAUSES, THE FREE EXERCISE CLAUSES, AND THE ECCLESIASTICAL ABSTENTION DOCTRINE DO NOT BAR PLAINTIFF’S DEFAMATION, INVASION OF PRIVACY, AND RELATED CONSPIRACY AND CONCERT OF ACTION CLAIMS, BECAUSE THEY DO NOT INVOLVE RELIGIOUS DOCTRINE, FORMS OF WORSHIP, OR POLICIES, BECAUSE THEY GO BEYOND EVENTS CONFINED TO ANY CHURCH PROCEEDINGS, BECAUSE THE MINISTERIAL EXCEPTION IS INAPPLICABLE, AND BECAUSE THE COURTS CAN USE NEUTRAL PRINCIPLES OF LAW TO RESOLVE THEM.

A. Applicable Legal Principles.

Civil courts are likelier to assume subject matter jurisdiction even over defamation and similar claims related to clergypersons’ employment with religious organizations, when the defendant publishes the defamatory statement beyond the

individual decision-making body with a need to know or beyond the individual congregation or similar organization involved. *See Banks*, 406 SC 156, 161, *Purdum*, 48 Kan App 2d 938, 950, *Id* at 968, 981-982 (Atcheson, J, dissenting), *Steppek v Doe*, 392 Ill App 3d 739, 750; 331 Ill Dec 246; 910 NE2d 655 (2009), *Kliebenstein v Iowa Conference of the United Methodist Church*, 663 NW2d 404, 407 (2003), *Hiles v Episcopal Diocese of Massachusetts*, 437 Mass 505, 513 FN12; 773 NE2d 929 (2002).

Under the Free Exercise Clause, defamation and false light invasion of privacy claims are “neutral and generally applicable. Arguing otherwise would be futile.” *Purdum*, 48 Kan App 2d 938, 968 (Atcheson, J, dissenting). Defamation and false light invasion of privacy law do not treat allegedly actionable statements made as part of a religious practice or church sanctioned activity less favorably than other statements, as by diminishing the plaintiff’s burden of proof or enhancing recoverable damages.” *Id*, (Atcheson, J, dissenting), citing *Black*, 471 NW2d 715, 719 (Minnesota’s common law of defamation is “‘content neutral’” regarding religion). Defamation law does not differentiate between religiously and non-religiously motivated statements. *Purdum*, 48 Kan App 2d 938, 967 (Atcheson, J, dissenting).

“Defamation law serves valid public policy interests in providing a person a socially responsible vehicle to vindicate his or her reputation against a false[]...statement.” *Id* at 968 (Atcheson, J, dissenting), citing *Gertz v Robert Welch, Inc*, 418 US 323, 341-342; 94 S Ct 2997; 41 L Ed 2d 789 (1974) (recognizing the “legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted upon them by defamatory falsehood’ and recognizing that interest must be balanced against ‘the need for a vigorous and uninhibited press’”), *Linn v Plant Guard*

Workers, 383 US 53, 63-64 & FN6; 86 S Ct 657; 15 L Ed 2d 582 (1966) (noting libel law's historical importance and its usefulness in deterring violent self-help remedies).

B. Under The Above Principles, The Lower Court Has Subject Matter Jurisdiction Over Plaintiff's Defamation, Invasion of Privacy-False Light, and Related Conspiracy And Concert Of Action Claims.

Applying the above principles here leads to the inevitable conclusion that the trial court has subject matter jurisdiction over Plaintiff's above claims. These claims do not involve any religious doctrines, forms of worship, or policies. A trial court can hear and resolve these claims without knowing anything about Defendant St. Stephen's or Defendant Michigan District Lutheran Church-Missouri Synod's religious doctrines, forms of worship, or policies. A trial court can do so based on the same kinds of documents, facts, and information used to resolve any other defamation, invasion of privacy-false light, and related conspiracy and concert of action claims. Furthermore, Defendants did not confine publication of their defamatory statements to those with a need to know, the board of trustees, any board committee, or the like with decision-making authority on Rev. Speller's employment. **Rather, Defendants published their defamatory statements to all church members. Furthermore, Defendants published their defamatory statements to non-church members so as to lead to Defendant Michigan District Lutheran Church-Missouri Synod's blacklisting of him in his profession. Therefore, Defendants' defamatory statement publications went far beyond any conceivable Defendant St. Stephen disciplinary requirements.** In addition, in wrongfully stating that Rev. Speller had gone to Cleveland Clinic for prescription drug dependence, Defendant Maier implied that Defendants had investigated Rev. Speller's Cleveland Clinic admission, stay, and treatment, thus invading his privacy.

In resolving these claims, the trial court can use generally applicable neutral principles of defamation, invasion of privacy, conspiracy, and concert of action law. The trial court need not use or even refer to any religious law. For these reasons, Plaintiff's defamation, invasion of privacy, and related claims have nothing to do with any ecclesiastical doctrine, forms of worship, or policies. Accordingly, the lower court had subject matter jurisdiction over these claims.

Defamation law serves the compelling state interests defined above. **Without defamation law, resort to self-help remedies, including violent self-help remedies, to uphold one's "good name" and reputation becomes far more likely.** Suit on a defamation claim is the least restrictive means of vindicating these interests. **Criminal prosecutions would be far more intrusive, restrictive, and vindictive. They would "chill" religious speech within religious organizations far more than civil suits.** For most people, threatened imprisonment is far more disruptive and punitive than a threatened money judgment. Therefore, a defamation civil suit, as in this case, meets the Act's compelling state interest and least restrictive means requirements.

The ministerial exception does not bar Plaintiff's claims. **The US Supreme Court has rightfully refused to extend the exception beyond employment discrimination claims.** Those claims conflict with the Free Exercise Clauses most directly, because those claims contradict a religious organization's right to choose its clergy and leaders. Those claims also conflict with the Establishment Clauses. Unlike employment discrimination claims, this case's defamation, invasion of privacy false light claims, and related conspiracy and concert of action claims do not contradict a religious organization's right to choose its clergy and leaders. Unlike employment discrimination

claims, this case's above claims do not involve or implicate government imposition of leaders on a religious organization. Therefore, the ministerial exception does not apply here.

The lower court's contrary conclusions are reversible error. Though restricting civil courts' subject matter jurisdiction, the federal and state constitutions' Establishment and Free Exercise Clauses and the Ecclesiastical Abstention Doctrine do not restrict such jurisdiction to property disputes. *Eg, Banks*, 406 SC 156, 159-162 (defamation, intentional infliction of emotional distress, and negligence claims), *Second Episcopal District African Methodist Episcopal Church v Prioleau*, 49 A3d 812, 813-817 (DC App 2012) (breach of contract claim), *Kliebenstein*, 663 NW2d 404, 406-407 (defamation and loss of consortium claims), *Molko*, 46 Cal 3d 1092, 1117-1119 (fraud and intentional infliction of emotional distress claims), *Purdum*, 48 Kan App 2d 938, 968 (Atcheson, J, dissenting) (defamation claims), *Vincent*, 114 Mich App 242, 247, 251-252 (contract claims & conspiracy to dismiss a pastor using unlawful means claim).

The lower court's reference to the rules elevating claims' substance over their form for evaluation and decision purposes does not deprive the lower court of subject matter jurisdiction. "[The] [p]laintiff's choice of labels for hi[s] action" does not bind the courts, "because this would exalt form over substance." *Johnston*, 177 Mich App 200, 208. "[T]he gravamen of [the] plaintiff's action is determined by considering the entire claim." *Maiden*, 461 Mich 109, 135. *See also, Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998), *lv den* 459 Mich 948; 616 NW2d 170 (1999) ("In determining jurisdiction, [the courts] will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim."), *Dlaikan*, 206 Mich App 591, 593, quoting *Natal*,

878 F2d 1575, 1577 (“Reference to the form of the claim may oversimplify the issue. We must `look to the substance and effect of [the] complaint, not its emblemata.””),*Dlaikan*, 206 Mich App 591, 598 (Taylor, J, dissenting) (similar formulation)).

The true nature, substance, and effect of Plaintiff’s claims are as stated. Plaintiff did not sue Defendants based on Defendant St. Stephen’s decision or nondecision to discharge him as its pastor. As of the May 21, 2015 suit date, Defendant St. Stephen had not discharged him. (7/22/15 Plaintiff’s Response to [Defendant Beebe’s and Defendant St. Stephen’s] Motion for Summary Disposition, p 9) **Rather, Plaintiff sued Defendants based on their defamatory statements, invasion of his privacy, conspiracy, and concert of action leading to his blacklisting and resulting inability to find employment in his profession.** Thus, Plaintiff’s defamation claim is a defamation claim. Plaintiff’s invasion of privacy claim is an invasion of privacy claim. Plaintiff’s conspiracy and concert of action claims related to those two claims are conspiracy and concert of action claims. Plaintiff has never claimed otherwise. Moreover, the above claims and their factual bases go together. The second leads to the first. Further, Plaintiff has never claimed that the claims’ original context, an internal church dispute, was anything else. But Plaintiff has claimed that Defendants’ publication of the defamatory statements outside the congregation has changed and expanded the original context. Thus, the lower court cannot use the above principles to recharacterize or change the above claims into different claims. Instead, the lower court must treat the claims as they are.

Lastly, as explained below, the lower court’s reliance on *Lynch* and *Revely* is unjustified, since these cases are fundamentally distinguishable and thus inapplicable.

C. Case Comparisons Strongly Support Reversal.

This situation makes the present case similar to *Banks*, 406 SC 156, where the South Carolina Supreme Court reversed a trial court decision holding that it had no subject matter jurisdiction over church trustees' defamation claims against the church's pastor. There, Petitioner Brantley was St. Matthew Baptist Church's pastor. Respondents Banks, Bell, and Holmes were church trustees. "At a congregational meeting, Brantley stated that without his knowledge, the Trustees had placed a mortgage upon the Church's property...to purchase apartment buildings nearby. He further stated [that] the Trustees [had] failed to insure the apartment buildings[,] and that funds were missing because of their mismanagement. Finally, he stated that the Trustees had consistently deceived him. He urged the congregation to subsequently remove the Trustees from their position, and the congregation subsequently did so." *Id* at 158. The Trustees sued Brantley for defamation, negligence, and intentional infliction of emotional distress. They claimed that Brantley's "statements...about the Trustees at the congregational meeting were false and defamatory." *Id* at 159. Brantley and the Church moved to dismiss the case based on the Establishment Clause and the Free Exercise Clause for lack of subject matter jurisdiction. The trial court granted the motions and dismissed the case. On the defamation claim, the South Carolina Court of Appeals reversed. That Court reasoned that it could resolve "the Trustees' defamation claim...using solely legal principles without examining any religious questions....In the present case, the court would not need to look at the Church's beliefs to determine if the statements constitute defamation.'" *Id*, quoting *Banks v St. Matthew Baptist Church*, 391 SC 475, 481-482; 706 SE2d 30 (2011).

Affirming, the Court held that the trial court had subject matter jurisdiction over the Trustees' defamation claim. The Court explained that Brantley's alleged statements "are all simple declarative statements about the [Trustees'] actions." *Banks*, 406 SC 156, 161. The trier of fact can evaluate and determine their truth or falsity "without any consideration of religious issues or doctrines." *Id.* "The pastor admitted in his answer that he made statements concerning the Trustees at a congregational meeting. Thus, the pastor admit[ted] he made statements to a third party—the congregation—and the only issue as to that element is whether the pastor made the particular statements alleged by the Trustees. Determining whether the statements were made would not require consideration of any religious issues....whether the statements harmed the Trustees' reputations would not require delving into any religious issues. Thus, adjudication of the defamation claim would not require any inquiry into or resolution of any religious law, principle, doctrine, discipline, custom, or administration." *Id.*

The Court rejected the Trustees' position that the statements' setting, "a church meeting—a religious setting—in which church governance was discussed" put the defamation claim outside neutral principles of law:

"We cannot allow the setting in which the statements were made to defeat the [trial court's] jurisdiction...where the claim is susceptible to resolution through neutral principles of law. Certainly, a defamation claim based on a man making similar statements from a soapbox on the street corner would be within the court's jurisdiction. Defamation is a tort, and the situs of that tort should not dictate the jurisdiction to adjudicate it. Had Brantley physically struck the Trustees in the meeting, we would not hold that [a civil court] could not decide[] a resulting battery claim[,]...because the tort

occurred in a church meeting. Similarly, if the Trustees had embezzled money from the Church, we would not hold that the Church could not [sue] in civil court against the Trustees[,] because the funds were taken in the context of church governance....[A] tortfeasor is not shielded from liability simply by committing his torts within the walls of a church or under the guise of church governance.” *Id* at 162.

The Court contrasted the above defamation claim to a defamation claim, where the neutral principles of law approach would not apply. “Had the pastor stated that the Trustees were sinners, were not true followers of God, or had violated church law, the resulting defamation claim would not be susceptible to resolution through the neutral principles of law approach[,] because to adjudicate the claim would require a civil court to wade into church doctrine and governance. However, the case before us does not present such a situation. Here, Brantley’s statements, although made in a religious setting, are independent of religious doctrine or governance, and thus, [a civil court can evaluate and decide] whether they constitute defamation[.]” *Id*.

Because of its strong similarities to the instant case, *Banks* applies here. As in *Banks*, Defendants made and published their defamatory statements during a church-pastor dispute. Like the *Banks* statements, the statements here relate to that dispute. Like the *Banks* defendants, Defendants published their statements beyond the individual decision-making body. As in *Banks*, the trial court can use neutral principles of defamation and invasion of privacy-false light law to resolve the claims. As in *Banks*, the trial court would not need to investigate or use any religious doctrine, law, or policy to do so. These similarities outweigh any differences. Accordingly, *Banks* strongly supports this Court in determining that the trial court had subject matter jurisdiction.

The instant case is also similar to *Kliebenstein*, 663 NW2d 404, where the Iowa Supreme Court reversed a trial court decision finding lack of subject matter jurisdiction. There, the Kliebensteins were Shell Rock United Methodist Church (SRUMC) members. “Defendant Jerrold Swinton was the UMC district superintendent. Prompted by reports of strife within the congregation, Swinton (...an ordained minister) visited the Shell Rock church one Sunday morning. He then wrote a letter...” *Id* at 405. Besides Swinton, the Staff Parish Committee members signed the letter. It “was mailed not only to members of the congregation[,] but also to other persons living in the Shell Rock community.” *Id*. In the letter, Swinton accused Jane Kliebenstein of “sowing discord and pain” in the church and implying that she had “the spirit of...Satan[.]” *Id*. “Swinton’s letter [advised] that he and the Staff Parish Committee would call a ‘Church Conference’ in accordance with well-established disciplinary procedures to ‘propose that Jane Kliebenstein be stripped of church offices. It is understood that if she continues to cause dissension, she will next be asked to leave the Shell Rock UMC.’” *Id*.

The Kliebensteins sued Swinton, the Staff Parish Committee members, and others for defamation and loss of consortium. The defendants moved for summary judgment. For motion purposes, “[t]hey conceded...that Swinton’s statement about the ‘spirit of Satan’ referred to Jane Kliebenstein. They argued, however, that the phrase is a ‘purely ecclesiastical term, deriving its meaning from religious dogma[,]’ thereby preventing the court from adjudicating its impact in the context of a civil suit for defamation.” *Id* at 406. The trial court agreed and granted the motion based on lack of subject matter jurisdiction.

Reversing, the Court held that the trial court had subject matter jurisdiction. The Court stated that if the defendants had published their letter only to congregation

members, the plaintiffs' claims would not be viable. *Id.* The Court explained that publication of Swinton's communication and defamatory statements about Jane to people "outside the congregation weakens this ecclesiastical shield." *Id.* at 407. Publication to non-church members supports non-ecclesiastical communication status. The Court explained that the inquiry's proper focus was not on spirit of Satan's meaning in an ecclesiastical context, but 'to determine whether the phrase has a secular meaning....could a factfinder determine whether Kliebenstein was defamed without resort to theological reflection?" *Id.* The dictionary showed both religious and secular meanings. So, the phrase had meaning in religious and secular contexts. As a result, the Court found subject matter jurisdiction.

Due to its key similarities to the present case, *Kliebenstein* applies here. Like the *Kliebenstein* defendants, Defendants published their defamatory communications beyond the individual congregation. Like the *Kliebenstein* defendants, Defendants created an environment, where publication to non-church members was certain. Even more so than the *Kliebenstein* defamatory statements, the instant case defamatory statements have a secular meaning. Even more so than with the *Kliebenstein* defamatory statements, the factfinder can determine whether Defendants defamed Plaintiff without reference to any religious doctrine. These similarities far outweigh any differences. Accordingly, *Kliebenstein* strongly supports this Court in holding that the lower court had subject matter jurisdiction.

D. Case Contrasts Strongly Support Reversal.

In contrast, the present case is fundamentally distinguishable from the lower court's main relied-on case, *Lynch*, 2001 Mich App Lexis 516. There, Defendant Church

of Today terminated its minister, Lynch, ostensibly for his consensual relationship with a church member. Lynch claimed that “the church had no policy or bylaw prohibiting two single adult employees from pursuing a consensual relationship. FN2” *Lynch*, 2001 Mich App Lexis 516 at *2. He further claimed that he had a just cause employment contract. The plaintiff sued the defendants for breach of an implied employment contract, discharge against public policy, defamation, intentional infliction of emotional distress, invasion of privacy, and conspiracy. The Court did not describe the tort claims’ factual bases. The defendants moved under MCR 2.116(C)(4) for summary disposition for lack of subject matter jurisdiction. The trial court granted the motion, finding no subject matter jurisdiction based on the ecclesiastical abstention doctrine.

Affirming, the Court upheld the trial court’s MCR 2.116(C)(4) summary disposition on the tort claims for lack of subject matter jurisdiction based on the ecclesiastical abstention doctrine. The Court based its decision on *Dlaikan*. There, the Court upheld summary disposition for lack of subject matter jurisdiction, because it concluded that it could not resolve these claims “without inquiry into matters of religious doctrine and subjective judgments made by religious officials.” The ecclesiastical abstention doctrine prevents this inquiry. *Lynch*, 2001 Mich App Lexis 516 at *8, citing *Dlaikan*, 206 Mich App 591, 593, *Maciejewski*, 162 Mich App 410, 414. Since the plaintiff failed to assert a separate, actionable claim, his conspiracy claim also failed.

Lynch does not apply to the instant case, because it is fundamentally distinguishable. Unlike *Lynch*, this case does not involve a religious organization’s termination of a clergyperson, and Rev. Speller is not suing for wrongful discharge. As opposed to *Lynch*, this case’s defamation, invasion of privacy false light, and related

claims are resolvable using neutral principles of defamation, invasion of privacy false light, and similar generally applicable tort law. In contrast to *Lynch*, the above claims are resolvable without inquiring into religious doctrine. Unlike *Lynch*, the above claims involve publication of defamatory statements beyond the individual congregation. These differences far outweigh any similarities, including the internal church dispute and religious officials' subjective judgments similarities, because they published their defamatory statements outside their individual congregation, and because their subjective judgments were similar to many other defamation and invasion of privacy false light defendants. For these reasons, *Lynch* is distinguishable and inapplicable. Also, its relied on cases, *Maciejewski* and *Dlaikan*, are also distinguishable and inapplicable, because their claims and context are far different.

The instant case is also fundamentally distinguishable from the lower court's other relied-on case, *Revely*, 2001 Mich App Lexis 247. There, Revely was minister of Messiah Missionary Baptist Church. The defendants were members of a group of church members, Concerned Members of Messiah Missionary Baptist Church, "a [church] faction... attempting to oust Revely as its minister. *Revely*, 2001 Mich App Lexis 247 at *5. The alleged "tortious activities about which [the] plaintiffs complain all involved [the] defendants' attempt to [do so]." *Id.* The plaintiffs claimed that the "defendants used the church facility, without proper authority, for meetings critical of Revely and for the purpose of an unauthorized election to overthrow him as minister." *Id.* at *6. They claimed that the "defendants... announce[d] the election to the congregation without following usual church procedures and rules." *Id.* They claimed that the "defendants made defamatory statements regarding Revely's use of the church facility and its funds."

Id. These statements referred “to the church’s bylaws and constitution, as well as to Revely’s employment agreement with the church.” *Id.* Before suing, the “[p]laintiffs did not first bring this matter for resolution before any ecclesiastical body[,] and the record is not clear whether such a body exists.” *Id.* at *7 FN3.

The plaintiffs sued the defendants for defamation and other torts. When the defendants moved for summary disposition, the trial court granted the motion under an undefined subrule. Affirming, the Court held that summary disposition under MCR 2.116(C)(4) for lack of subject matter jurisdiction based on the ecclesiastical abstention doctrine was proper. The Court based its decision on *Watson, Milivojevich, Hutchison, Lewis, Maciejewski*, and other cases restricting civil courts’ subject matter jurisdiction over internal religious organization disputes. The Court reasoned that *Revely* involved an internal “ecclesiastical dispute between [the] plaintiffs and [the] defendants,” all church members, over “whether Revely acted appropriately as the church’s minister.” *Revely*, 2001 Mich App Lexis 247 at *6. Whether he did so depended “almost entirely on an understanding of the [church’s] `internal church discipline, faith and organization[.]” *Id.* at *7, quoting *Hutchison*, 789 F2d 392, 396.

Revely does not apply to the present case, because it is fundamentally distinguishable. As opposed to *Revely*, this case does not involve a religious organization’s termination of a clergyperson, since Rev. Speller is not suing for wrongful discharge. As opposed to *Revely*, this case’s defamation, invasion of privacy false light, and related claims are resolvable using neutral principles of defamation, invasion of privacy false light, and similar generally applicable tort law. In contrast to *Revely*, the above claims are resolvable without inquiring into religious doctrine or church discipline

and organization. Unlike *Revely*, the above claims involve publication of defamatory statements beyond the individual congregation. These differences far outweigh any similarities, including the internal church dispute and religious officials' subjective judgments similarities, because they published their defamatory statements outside their individual congregation, and because their subjective judgments were similar to many other defamation and invasion of privacy false light defendants. For these reasons, *Revely* is distinguishable and inapplicable. For similar reasons, its reliance on cases, *Milivojevich*, *Hutchison*, *Lewis*, *Maciejewski*, are distinguishable and inapplicable, because their claims and context are different.

Based on the above analysis, the lower court had subject matter jurisdiction over Plaintiff's defamation, invasion of privacy false light, and related claims. Based on the same analysis, genuine issues of material fact on these claims are present. Thus, the lower court's MCR 2.116(C)(4) and MCR 2.116(C)(10) summary dispositions for Defendant on these claims are reversible error.

VI. THE ESTABLISHMENT CLAUSES, THE FREE EXERCISE CLAUSES, AND THE ECCLESIASTICAL ABSTENTION DOCTRINE DO NOT BAR PLAINTIFF'S BREACH OF CONTRACT, BREACH OF FIDUCIARY DUTY, FRAUD, AND RELATED CONSPIRACY AND CONCERT OF ACTION CLAIMS, BECAUSE DEFENDANT ST. STEPHEN HAS RESTRICTED ITS INTERNAL JURISDICTION OVER SUCH CLAIMS, AND BECAUSE THE IMPLIED CONSENT DOCTRINE DOES NOT APPLY.

A. Applicable Legal Principles I.

As a rule, the Establishment Clauses, the Free Exercise Clauses, and the Ecclesiastical Abstention Doctrine prohibit civil courts from exercising subject matter jurisdiction over cases arising from internal religious organization governance disputes.

Eg, Milivojevich, 426 US 696, 713-715, *Watson*, 80 US 679, 728-729, *Lewis*, 978 F2d 940, 942, *Hutchison*, 789 F2d 392, 396, *De Wolf*, 344 Mich 624, 632, *Berry*, 317 Mich 490, 499. Since subject matter jurisdiction “concerns the court’s power to hear a case, it is not subject to waiver.” *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). Nor is subject matter jurisdiction subject to the parties’ consent. *Family Independence Agency v AMB*, 248 Mich App 144, 166; 640 NW2d 262 (2001). In addition, an implied consent rule arises from a clergy person’s or member’s implied consent, on assuming a leadership position or becoming a member. Doing either implies consent to the religious organization’s rules as binding: “[A]ll who unite themselves to such a body [a religious organization] do so with an implied consent to this [church] government, and are bound to submit to it.” *Smith*, 462 Mich 679, 686, quoting *Watson*, 80 US 679, 729. “[A] person [consenting to another’s conduct cannot bring a tort claim for the harm [resulting] from that conduct.” *Smith*, 462 Mich 679, 689, citing 4 *Restatement Torts* (2d), Sec 892A(1).

But the above rules have qualifications and restrictions. When, as here, the religious organization includes a representative form of governance, and a religious organization jurisdictional dispute arises, courts can evaluate and determine whether religious organizations have jurisdiction to act as they did. *Immanuel Evangelical Lutheran Church v Fromm*, 367 Mich 575, 589; 116 NW2d 766 (1962), *Bennison*, 121 Mich App 705, 721.

B. Applicable Legal Principles II.

When the breach of contract claim “involves provision of the very services...for which the organization enjoys First Amendment protection, then any claimed contract for

such services likely involves its ecclesiastical policies, outside the purview of civil law. Civil court resolution of such a breach of contract claim entangles the court “in matters of doctrine or ecclesiastical polity.” *Dlaikan*, 206 Mich App 591, 593 (citation omitted). But “when an ecclesiastical organization enters into a contract to buy or sell property, to fix the church roof, or to interact in some other way with the secular world, its activity is governed by civil law alone.” *Id* at 593-594 (citation omitted). “It has long been established that religious organizations are equally subject to the principles of contract law and property law as all other associations, and disputes over such subject matters are justiciable by civil courts, provided an inquiry into religious doctrine is not required.” *Id* at 598 (Taylor, J, dissenting), citing *Watson*, 80 US 679, 714, 725.

C. The Trial Court Has Subject Matter Jurisdiction Over Plaintiff’s Breach of Contract, Breach of Fiduciary Duty, Fraud, And Related Claims.

The rules here provide for exclusive church jurisdiction only over “[t]heological, doctrinal or ecclesiastical issues. Thus, Defendant St. Stephen has restricted its exclusive dispute resolution to these issues. This case does not involve any such issues. Therefore, except on these issues, Defendant St. Stephen has restricted its internal jurisdiction and has consented to civil court subject matter jurisdiction, if the case meets the other applicable requirements. In doing so, Defendant St. Stephen has not consented to or waived unwaivable subject matter jurisdiction. Rather, Defendant St. Stephen has signaled that if the case meets the other applicable jurisdictional requirements under the Free Exercise Clauses, the Establishment Clauses, and the Ecclesiastical Abstention Doctrine, the courts can assume subject matter jurisdiction. Whether this case does so is the major issue.

Under the church's internal rules, the above qualifications and restrictions apply here. A major issue is whether the church board and church officers had internal "jurisdiction" to act as they did, to conduct secret meetings, where Plaintiff could not appear and defend himself. Another internal jurisdictional issue is scheduling of the meeting with proper notice. **Courts can decide such issues, especially when, as here, the religious organization's rules restrict its internal jurisdiction and do not provide for exclusive jurisdiction. Moreover, resolution of Plaintiff's breach of contract, breach of fiduciary duty, fraud, and related claims do not necessitate any inquiry into religious doctrine or form of worship.** Accordingly, Defendant St. Stephen's rules do not foreclose the civil courts' subject matter jurisdiction.

In cases like the instant case, courts have assumed such jurisdiction. *Vincent*, 114 Mich App 242, illustrates this. There, Plaintiff Vincent Greater St. John Missionary Baptist Church's pastor for over 17 years, from 1958 to 1975. In 1975, a church rift developed. When the board of trustees asked the plaintiff to resign, he refused. The trustees passed "a resolution to terminate [the] plaintiff's duties as pastor. On December 19, 1975, [the] plaintiff received a copy of the resolution, along with a notice of hearing setting a date – December 28, 1975 – for a [church membership] vote on the resolution." *Id* at 244. The board later changed the hearing date to January 11, 1976.

On December 21, 1975, during the service, "a woman...announced that [the] plaintiff had been fired....." *Id*. Two defendants, a trustee and a deacon, escorted him out of the church. "On December 28, 1975, [the] plaintiff returned to the church to conduct services." *Id*. Two defendants, "armed with nightsticks," removed the plaintiff from the church and threw him down the church steps. When Vincent obtained a temporary

restraining order barring the trustees and deacons from interfering with his relationship to the church, the trustees ignored the order, changed the locks, and barred Vincent from the church.

“On January 11, 1976, a group of people met in the church and voted, 80 to 39, to terminate [the] plaintiff’s duties as pastor.” *Id* at 245. But the trial court “found this vote invalid, citing failure to properly notify the church membership.” *Id*. The trial court ordered a new February 2, 1976 election. The trial court ordered the church to notify every church member by certified mail of the election and its date. “Pleading poverty, the trustees refused to do so.” *Id*. They did not try to notify all the church members even by regular mail. The vote never happened. Eventually, Vincent and 35-40 church members seceded and formed their own church.

Vincent sued the old church’s trustees and deacons for conspiracy to deprive him of his pastorate’s economic rewards, “an injunction against further interference, an accounting, and a declaration that Vincent and his followers” were the true church and “thus entitled to possession and control of the church property.” *Id* at 245-246. After Vincent had presented his proofs at trial, the defendants moved for a directed verdict. The trial court granted the motion. In relevant part, the trial court held that the Establishment Clause “‘doctrine of separation of church and state’” barred Vincent’s claims. *Id* at 246.

Reversing, the Court held that the above doctrine “the doctrine of separation of did not bar Vincent’s conspiracy claims. The Court quoted the relevant church articles of association providing that “[the] members of the church * * * shall worship and labor together according to the discipline, rules and usage of the Hiscox manu[a]l * * * as from time to time authorized and declared by the Missionary Baptist Church.” *Id* at 247. Thus,

the Court had to determine “whether, under the Hiscox manual, the board of trustees’ purported dismissal was the `action of the church.” *Id* at 247-248. The Court explained that “the Hiscox manual does not permit the [church] board of trustees to [dismiss]...the church pastor [unilaterally]. Under the Hiscox manual, dismissal of a pastor is the exclusive prerogative of the church membership. FN1 Every [church] member...must be notified of any meeting called for such a purpose[,] and the pastor may not be dismissed except upon a majority vote of those present.” *Id* at 248. As the majority of church members had not voted to dismiss Vincent before January 11, 1976, his dismissal was null and void before then. Thus, when he tried to conduct services on December 28, 1975, he was still pastor.

The Court could not determine whether, on January 11, 1976, a majority of church members had voted to oust him. “The record indicates that nonmembers of the church may have participated in the January 11, 1976 vote, and that certain [church] members...may not have been notified of the vote.” *Id* at 249. On remand, the trial court’s jury will have “to determine whether or not the January 11, 1976 vote was an action of the church.” *Id*. The Court defined two considerations.

Due to its many strong similarities to the instant case, *Vincent* applies here. Like the *Vincent* dispute, resolving this case does not require inquiry into church doctrine, form of worship, or the like. Like the *Vincent* dispute, this case’s dispute began as an internal church dispute. As in *Vincent*, an issue arose on whether certain congregation and non-congregation church leaders’ actions were the church’s actions or not. As in *Vincent*, an issue arose on whether these leaders followed their own rules. Like the *Vincent* church leaders, this case’s church leaders were trying to discharge Plaintiff without following

their rules. As in *Vincent*, these two issues and church leaders' related conduct triggered pastors' claims (conspiracy, breach of contract, interference with contract). These similarities outweigh any differences. As a result, *Vincent* strongly supports this Court in holding that the lower court had subject matter jurisdiction. *I*

The implied consent doctrine does not govern this case. In becoming the church's pastor, Plaintiff consented to the church's rules as binding. He never consented to rule violations as binding. Indeed, Plaintiff has advocated for the rules' application to this dispute as written. He has also advocated for their enforcement as written. In contrast, Defendants have violated the rules and advocated for their rules violations to be binding. For these reasons, the implied consent doctrine does not control here.

In addition, Plaintiff did not sue Defendants based on Defendant St. Stephen's decision or nondecision to discharge him as its pastor. As of the May 21, 2015 suit date, Defendant St. Stephen had not discharged him. (7/22/15 Plaintiff's Response to [Defendant Beebe's and Defendant St. Stephen's] Motion for Summary Disposition, p 9) Instead, Plaintiff sued Defendants based on their breach of contract regarding Defendant St. Stephen's employment contract with him, their breach of fiduciary duties to him, and their related fraud in the inducement, conspiracy, and concert of action. These claims arose from Defendants' refusal to follow the church's rules and the church's substantial restriction of its internal jurisdiction. "Plaintiff does not and [cannot] argue that he litigated issues involving theology in the state court. The dispute in this case has nothing to do with theological disputes." (7/22/15 Plaintiff's Response to [Defendant Beebe's and Defendant St. Stephen's] Motion for Summary Disposition, p 12)

Based on the above analysis, the lower court had jurisdiction over Plaintiff's breach of contract, breach of fiduciary duty, fraud, and related claims arising from Defendants' violations of Defendant St. Stephen's rules. Based on the same analysis, genuine issues of material fact on these claims are present. Thus, the lower court's MCR 2.116(C)(4) and MCR 2.116(C)(10) summary dispositions for Defendants on these claims are reversible error.

CONCLUSION

THEREFORE, PLAINTIFF REV. CHAD SPELLER respectfully requests this Court to reverse the Oakland County Circuit Court's September 25, 2015, December 7, 2015, and December 17, 2015 Summary Disposition Orders and remand this case to that court for further proceedings on the merits.

Dated: April 4, 2016

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