

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

WILL McRANEY

PLAINTIFF

VS.

CAUSE NO. 1:17cv080-GHD-DAS

THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.

DEFENDANT

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW, the Plaintiff, WILL McRANEY, by and through his attorney of record, BARTON LAW FIRM, PLLC, in the above styled and numbered cause, and files this his Response to Defendant's Motion for Partial Summary Judgment, and in support thereof, the Plaintiff would show unto the Court the following, to wit:

At the heart of this motion is the Separation Agreement which the Plaintiff did execute and admits that the copy attached to the Defendant's motion is a true and correct copy. However, the Affidavits of Mr. Stolle and Mr. Ferrer are strongly in dispute.

But, first we must consider the language of the Separation Agreement itself. That is, was there an intent on the part of the parties to release NAMB with this Agreement? Plaintiff believes the case of *Scott v. Gammons*, 985 So.2d 872 (C.A. Miss. 2008) is relevant. The *Scott* case concerned a release of parties involving a car wreck. Since there is a dispute as to the intent of the release language, the following analysis from *Scott* is defining,

"The releases executed by the Scotts constituted valid contracts, and the Scotts do not allege fraud or misrepresentation in the formation of the contracts. Since the validity of the contracts are not disputed, we must look to the "four corners" of the contracts to determine the intent of the parties. *One South, Inc. v. Hollowell*, 963 So.2d 1156, 1162 (¶) (Miss. 2005) (citation omitted). "The primary purpose of all contract construction principles and methods is to determine and record the intent of the contracting parties." *id.* (Quoting *Facilities, Inc. V. Rogers Usry Chevrolet, Inc.*, 908 So.2d 107, 110 (¶ 6) (Miss. 2005)). "Only if the contract is unclear or ambiguous can a court go beyond the text to determine the parties' true intent." *Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc.*, 857 So.2d 748, 752-53 (¶ 10) (Miss. 2003).

While the Plaintiff in the *Scott* case lost their bid to claim a third party was not released by the instrument, several rules of application emerge.

- (1) Only parties specifically named in releases are absolved from liability.
- (2) In a release contract, a party releases only those parties whom he intends to release.
- (3) A third party who is a stranger to the release contract paid no consideration for the release, nor was consideration paid for its benefit.

The *Scott* case cited to two (2) cases, *Smith v. Falke*, 474 SO.2D 1044 (Miss. 1988) and *Country Club of Jackson, Inc. v. Saucier*, 498 So.2d 337 (Miss. 1986), both of which “involved releases wherein a third party was attempting to benefit from the release of another tortfeasor.” *Scott* at 876.

Therefore, what becomes manifestly important as to whether NAMB was intended to be released is the intent of one of the parties to the Agreement. The Affidavits of Mr. Stolle and Mr. Ferrer were prepared as a dissertation after the fact. They are offering their opinions to justify the encompassing language of a Separation Agreement over which NAMB knew nothing about until after they tried to serve a Subpoena Duces Tecum. By comparison, the Plaintiff offers an Affidavit of his consulting attorney who offered his opinion contemporaneous with the signing of the agreements. Attached hereto as Exhibit “A” is an Affidavit of R. David De Armas, Esquire. Based on the assertions of Attorney De Armas, who investigated the allegations of whether NAMB was a supporting organization of BCMD, Attorney De Armas concluded and so advised the Plaintiff that NAMB would not be released from liability. The facts will show that at the time of the signing of the Separation Agreement, the Plaintiff did not know the full extent of NAMB’s malicious interference with his job with BCMD, but he chose not to pursue litigation with NAMB regardless. Had the Defendant left well enough alone, the parties would not be embroiled in this litigation today. But NAMB, not content with the Plaintiff’s departure, wanted to pursue him to “crush him like a gnat.”

CONCLUSION

For the above and foregoing reasons, the Defendant's Motion for Partial Summary Judgment should be denied.

This the 11th day of December, 2018.

Respectfully submitted,

WILL McRANEY, Plaintiff

BY: s/W. HARVEY BARTON, MSB #2104

CERTIFICATE OF SERVICE

I, W. HARVEY BARTON, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF System which sent notification of such filing to:

**Joshua J. Wiener, Esquire
Kathleen Ingram Carrington, Esquire
Butler Snow, LLP
P. O. Box 6010
Ridgeland, MS 39158-6010**

SO CERTIFIED, this the 11th day of December, 2018.

s/W. HARVEY BARTON, MSB #2104

BARTON LAW FIRM, PLLC

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AFFIDAVIT OF R. DAVID DE ARMAS, ESQ.

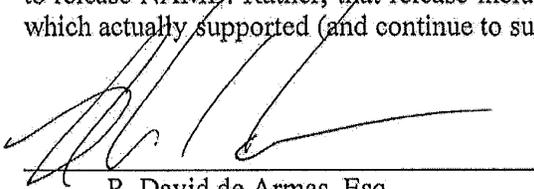
STATE OF FLORIDA
COUNTY OF ORANGE

I, R. David de Armas, do hereby affirm under penalty of perjury, that the matters set forth below are true:

1. I am over the age of eighteen (18) and am competent to execute this affidavit, the substance of which is based on my personal knowledge as former counsel for Will McRaney.
2. I am an attorney licensed to practice in Florida as a member of The Florida Bar, and have been so licensed since 1985. I represented Dr. McRaney during the process of his leaving the employ of the Baptist Convention of Maryland/Delaware, Inc. ("BCMD") in 2015.
3. I personally reviewed and approved the Separation Agreement and Release signed by Dr. McRaney as part of the settlement with BCMD.
4. As part of the process of advising Dr. McRaney, I confirmed that BCMD annually sent substantially more money to the North American Mission Board ("NAMB") than the NAMB sent to BCMD.
5. Thus, it was obvious that the NAMB was not a supporting organization of the BCMD. Indeed, it is BCMD which supported (and likely continues to support) the NAMB, not the other way around. Assertions to the contrary are misleading, at best.
6. Before executing the Separation Agreement and Release in favor the BCMD, Dr. McRaney specifically asked me whether the Separation Agreement and Release would preclude claims against the NAMB. Based on the records provided to me showing that NAMB was clearly not a supporting organization of the BCMD, I advised Dr. McRaney that he could execute the Separation Agreement and Release and maintain his claims against the NAMB.



7. At no time did Dr. McRaney intend that his settlement with BCMD would release the NAMB for the harm caused by the NAMB, nor did the release executed by Dr. McRaney serve to release NAMB. Rather, that release included only those churches in Maryland and Delaware which actually supported (and continue to support) the BCMD.



R. David de Armas, Esq.

SWORN TO AND SUBSCRIBED BEFORE ME, this 21st day of November, 2018.



NOTARY PUBLIC

My Commission Expires:

(SEAL)

