

NORTH CAROLINA
NEW HANOVER COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 2156

FIFTH AVENUE UNITED
METHODIST CHURCH OF
WILMINGTON,

Plaintiff,

v.

THE NORTH CAROLINA
CONFERENCE, SOUTHEAST
JURISDICTION, OF THE UNITED
METHODIST CHURCH, INC. *et al.*,

Defendants.

**DEFENDANTS' MOTION TO
DISMISS**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure, Defendants respectfully move the Court for an order dismissing Plaintiff's complaint in its entirety.

More specifically, Plaintiff's complaint should be dismissed in its entirety pursuant to Rule 12(b)(1) as each of Plaintiff's claims require an examination as to whether the alleged conduct by Defendants was proper and justified under canonical law.¹ The First Amendment bars such an examination, and Plaintiff's complaint should be dismissed for lack of subject matter jurisdiction.²

¹ Even more egregiously, Plaintiff's complaint also asks the Court to set aside fundamental provisions of *The Book of Discipline* of The United Methodist Church in the name of "public policy."

² In support of Defendants' motion to dismiss pursuant to Rule 12(b)(1), Defendants attach and rely upon the affidavits of the North Carolina Conference's presiding bishop, Reverend Dr. Connie Mitchell Shelton (**Exhibit 1**), District Superintendent Tara Lain (**Exhibit 2**), and David G. Martin (**Exhibit 3**).

In the alternative, Plaintiff's complaint should be dismissed pursuant to Rule 12(b)(6) where: (1) *The Book of Discipline*, which Plaintiff alleges constitutes a contract between it and Defendants, forecloses Plaintiff's claims for breach of contract, declaratory relief, constructive fraud, and to quiet title; (2) Plaintiff has not alleged its claim for fraud with the particularity required by Rule 9(b); (3) Plaintiff's claims for "promissory estoppel" and "collusion" are not recognized causes of action under North Carolina law; and (4) Plaintiff's claims otherwise fail as a matter of law.

For these reasons, Defendants respectfully request the Court dismiss Plaintiff's complaint.

Respectfully submitted the 13th day of July, 2023.

POYNER SPRUILL LLP



Eric P. Stevens
N.C. State Bar No. 17609
estevens@poynerspruill.com
Colin R. McGrath
N.C. State Bar No. 47936
cmcgrath@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602
Phone: (919) 783-6400
Fax: (919) 783-1075
Counsel for Defendants

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b)(1)(a), I hereby certify that I have this day served a copy of the foregoing document by e-mail to the following:

Gavin B. Parsons
gparsons@coatsandbennett.com
Coats + Bennett, PLLC
1400 Crescent Green, Suite 300
Cary, NC 27518
Counsel for Plaintiff

This the 13th day of July, 2023.



Colin R. McGrath