No. 415-2017

In The

Supreme Court of the United States

April Term, 2017

DAVID R. TURNER,

Plaintiff-Petitioner,

v.

ST. FRANCIS CHURCH OF TOUROVIA CONFERENCE OF CHRISTIAN CHURCHES, AND REVEREND DR. ROBERTA JONES,

Defendants-Respondent,

On Writ of Certiorari to the
State of Tourovia Court of Appeals

BRIEF FOR PETITIONERS

Team 14

Dated: February 27, 2017

Counsel for the Petitioners

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QUESTION(S) PRESENTED

1. Did the lower court err when it held that the ministerial exception of the First Amendment bars wrongful termination claims based upon breach of the employment contract and retaliatory discharge?

2. Did the lower court err by granting defendants' Motion to Dismiss without providing an opportunity for discovery?

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on December 18, 2015. The petition for a writ of certiorari was filed and granted. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

A. Procedural Background

David R. Turner (plaintiff-petitioner) brought suit for wrongful termination based on breach of contract and retaliatory discharge against St. Francis of Tourovia, the Tourovia Conference of Christian Churches, and Reverend Dr. Roberta Jones (hereinafter "Respondents") in the State of Tourovia Supreme Court. Record 5. In the Complaint, Mr. Turner requested relief in the form of monetary damages. R. 5. Respondents filed a motion under Tourovia's and Fed.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted. Record 5. Respondents asserted that the First Amendment's ministerial exception barred the lawsuit. R. 5. Respondent's motion was granted and Mr. Turner's complaint was dismissed with prejudice. R. 2. The Order of the trial court was affirmed by the Appellate Division of the Tourovia Supreme Court and The State of Tourovia Court of Appeals. R 6.

B. Factual Background

Mr. Turner was hired as pastor of St. Francis Church of Tourovia in 2009 and his employment was subject to a yearly employment contract, which was renewed in 2010, 2011, and 2012. R. 4. Each employment contract year began July 1st and ended June 30th. However, Mr. Turner's employment was effectively terminated by Reverend Dr. Roberta Jones on October 31, 2012. R. 5.

On May 16, 2012, approximately five months before Mr. Turner's termination, the congregation of St. Francis chose Mr. Turner—based on his business experience—to administer a bequest from the Thomas Trust (hereinafter "The Trust") in the amount of $1,500,000.00. R. 5. Before becoming a pastor, Mr. Turner worked as a financial manager for IBM Corporation for

nearly twenty-five years and also as Treasurer and Chief Financial Officer of another regional office of the Tourovia Conference of Christian Churches. R. 5.

The Trust conditioned the bequest providing that one half of the bequest was to be used for general operation and management of the Church, and the other half to be used for the upkeep of the Church's cemetery. R. 5. However, Mr. Turner quickly discovered that the Church sold its cemetery in 2009 and no longer had a cemetery fund. R 5. Based on this information, Mr. Turner determined that it would be a breach of trust for St. Francis to accept the portion of the bequest relating to the cemetery. R. 5. Moreover, Mr. Turner was concerned over the possibility of fraud and tax evasion. At this point, Mr. Turner advised the St. Francis' Board of Trustees to inform Wells Fargo (trustee of the Thomas Trust) that the Church no longer owned or maintained the cemetery. R. 5.

Notwithstanding Mr. Turner's advice, the Vice Chairman of the Board of Trustees instructed Mr. Turner to accept the bequest and deposit the amount into the Church's general operating account. R. 5. Mr. Turner refused to proceed with the bequest and, in August of 2012, took his concerns of possible fraud and tax evasion to Dr. Jones. R. 5. By early October of 2012, Mr. Turner had become so concerned for the liability of the Church and himself he contacted both the Wells Fargo Bank and the IRS for guidance and to discuss any possible ramifications; however, he was unable to reach any appropriate party. R. 5. On October 16, 2012—approximately fourteen days after Mr. Turner took his concerns to Dr. Jones—Dr. Jones informed Mr. Turner that his pastor ship at St. Francis was terminated, effective October 31, 2013, citing spiritual reasons as the basis. R. 4.

SUMMARY OF THE ARGUMENT

This case presents for determination whether the ministerial exception, grounded in the First Amendment, bars wrongful termination claims based upon breach of contract and retaliatory discharge.

In 2012, the Sixth Circuit issued an opinion in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C* that redesigned the "ministerial exception" as an affirmative defense; *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C*, 565 U.S. 171 n. 4, which if applicable, would constitutionally exempt religious institutions from actions under discriminatory laws by members of their clergy.

I. However, "the ministerial exception" is not applicable in this case because the court's may adjudicate wrongful termination claims without offending the First Amendment so long as the issues are secular, and can be viewed through the "neutral principle" approach; and does not require the court to inquire into the church's ecclesiastical doctrines. *Skrzypczak v. Roman Cath. Diocese Of Tulsa*, 611 F.3d 1238, 1245 (10th Cir. 2010).

Moreover, an employer's authority over its' employee cannot include the right to mandate an employee to commit an unlawful act to advance its interest, nor may an employer compel compliance of illegal instructions by terminating an employee who refuses to follow such an order. *Tameny v. Atlantic Richfield Co.,* 27 Cal.3d 167, 178 (1980)

Additionally, religious institutions, like any other private entity, have the freedom to contract, thus, making these entities liable for breach of contract. *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354, 1359 (D.C. Cir. 1990).

II. Petitioner's complaint for wrongful termination is not subject to Tourovia's and Fed.R.Civ.P. 12(b)(6) Motions to Dismiss for failure to state a claim, without an opportunity for discovery simply based on Respondents' mere invocation of the ministerial exception to lawsuit.

First, Respondents provided insufficient factual allegations to support and establish all the necessary elements to invoke the affirmative defense of the ministerial exception and therefore is not permissible at the pleading stage. *Hyson USA, Inc. v. Hyson 2U, Ltd.,* 821 F.3d 935, 939.

Secondly, Petitioner's complaint encompassed adequate amounts of factual material in order to state a claim for a relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007). Just because respondent invoked the affirmative defense to bar the claim, it does not automatically apply under the rules of Fed.R.Civ.P. 12(b)(6) and pursuant to the State of Tourovia's civil procedure rules, to dismiss Petitioner's claims without the opportunity to conduct discovery.

III. For the forgoing reasons, we ask that this Court reverse and remand the lower court's judgement of Motion to Dismiss, because the ministerial exception does not bar wrongful termination claims do to breach of contract and retaliatory discharge.

ARGUMENT

I. THE LOWER COURT ERRED WHEN IT GRANTED RESPONDENT'S MOTION TO DISMISS, BECAUSE THE MINISTERIAL EXCEPTION DOES NOT BAR WRONGFUL TERMINATION CLAIMS BASED ON BREACH OF CONTRACT AND RETALIATORY DISCHARGE.

Article I, Section vi of the Constitution of the State of Tourovia replicates the language of the First Amendment of the United States Constitution. The Court then must consider the purpose behind the Establishment and Free Exercise clause of the First Amendment; which is to prevent, as far as possible, the interference of church and state into one another's' affairs. However, expecting total separation is unyieldingly not possible, and the attempt to eliminate religion from all facets of public life, could itself become inconsistent with the Constitution. *Tanford v. Brand*, 932 F.Supp. 1139, 1142 (7th Cir. 1997).

And grounded within the Clause is the ministerial exception, which some courts have recognized as "an affirmative defense to an otherwise cognizable claim, and not a jurisdictional bar", *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012). In Hosanna-Tabor, the Court held that the exception barred an employment discrimination suit brought on behalf of a minister because "it concerned government interference with an internal church decision that affects the faith and mission of the church itself". *Hosanna-Tabor*, 565 U.S. at 190.

The present case, in contrast, does not concern the government from interfering with the church's faith or mission to select its' own ministers; because the ministerial exception does not even apply when the Government action has a secular purpose, which neither advances nor inhibits religion as its primary effect. *Muhammad v. City of New York Dept. of Corrections*,

904 F.Supp. 16, 197 (1995). Instead the Court needs only to review the injury caused by an employer breaching an employment contract when it demanded its' employee to commit the criminal act of tax evasion and fraud to further its own interest. *Tameny v. Atlantic Richfield Co.* 27 Cal.3d 167, 179 (1980).

Additionally, for a church to establish a First Amendment violation, they must make a showing that inquiry into the breach, burdens its member's exercise of religious beliefs. *U.S. v. C.E. Hobbs Found. for Religious Training and Educ., Inc.,* 7 F.3d 169, 173 (9th Cir. 1993).

Although the ministerial exception might imply an absolute exception, it is not always a complete barrier to a suit. *Rweyemamu v. Cote,* 520 F.3d 198, 207 (2d Cir. 2008). That is why in Hosanna-Tabor, the Court "express[ed] 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 U.S. at 710.

Therefore, the ministerial exception does not apply or bar Petitioner's wrongful termination claim because: (1) Court's may adjudicate on matters so long as it does not involve the government looking into the church's spiritual function. *Skrzypczak v. Roman Cath. Diocese Of Tulsa,* 611 F.3d 1238, 1245 (10th Cir. 2010). (2) Employers may not force compliance from an employee with unlawful instructions by discharging an employee who declines to follow the order, *Tameny,* 27 Cal.3d at 178 (1980). And (3) religious institutions have the freedom to contract, thus can be held liable for breach of contract. *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354, 1359 (D.C. Cir. 1990).

A. Courts May Adjudicate Matters So Long as the Decision Does Not Involve the Government Looking to the Church's Spiritual Function.

Generally, the First Amendment prohibits secular courts from interfering in or determining religious disputes because of the considerable threat of becoming entangled in religious controversies, or intervening on behalf of groups advocating for specific doctrines or beliefs. *Drake v. Moulton Memorial Baptist Church of Newburgh,* 93 A.D. 3d 685, 686 (N.Y. App. Div. 2012). However, civil disputes concerning religious parties or institutions may be adjudicated without violating the First Amendment so long as neutral principles of law are applied. Thus, the "neutral principles of law" method requires the court to utilize impartial, well-established principles of secular law to the issues. *Rende and Esposito Consultants, Inc. v. St. Augustine's Roman Cath. Church,* 131 A.D.2d 740, 742 (N.Y. App. Div. 1987).

To determine the applicability of neutral principles, the Courts must consider (1) whether there are wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal assessments (2) neutral facts exists to which can be applied to those rules, and (3) whether those neutral facts consist of evidence from which the court may discern the objective intention of the parties without resorting to matters of the ecclesiastical doctrines. *St. Matthew Church of Christ Disciples of Christ, Inc. v. Creech,* 768 N.Y.S.2d 111, 115 (N.Y. Sup. Ct. 2003).

Under 26 U.S.C.A. § 7609, the IRS can require the production of all records and documents of a religious institution because the government has a substantial interest in determining whether church officials earned unreported income or assisted others in violating laws concerning charitable deductions, which is not overly broad and does not violate the free exercise clause. Thereby making this rule secular and meeting the first prong under the

application of the neutral principle. *St. German of Alaska Eastern Orthodox Cath. Church v. U.S.*, 653 F.Supp. 1342, 1346 (S.D.N.Y 1987).

In *Langford v. Roman Cath. Diocese of Brooklyn*, 677 N.Y.S.2d 436 (1998), the court in that case defined neutral facts as evidence from which the court may discern the objective intention of the parties . . . [such as] the language of . . . contract terms . . .state statutes … [and the like] without resorting to matters of doctrine or dogma. *Id.* at 439. Here in this case, the facts indicate that because of Mr. Turner's twenty-five years of professional finance experience, he was chosen by the congregation to administer the Respondent's bequest. Six months leading up to his termination, he notified both the Board of Trustees and Dr. Jones, superintendent of the CCC, and a party to the case, of the breach of trust and possible fraud and tax evasion violations.

In early October 2012, Petitioner had determined that since the CCC and the Church Board of Trustees had no intentions of informing the trustee of the situation, Petitioner contacted the bank and the IRS for guidance. About two weeks after his contact, Mr. Turner was discharged from his employment. Thus, Respondent's intention to terminate Mr. Turner for refusing to follow unlawful instructions would not be an entanglement under the First Amendment because the Court could objectively determine whether Petitioner's claim can be maintained under Section 740 of the State of Tourovia Labor Laws by way of 26 U.S.C.A. § 7609 of the tax law without inquiring into the ecclesiastical laws.

In some jurisdictions, courts inquire into whether the behavior, plaintiff complains of, is doctrinally motivated. The Ninth Circuit for example, held that the exception did not bar a claim alleging that during her employment a priest had sexually harassed her, on the grounds that no Catholic doctrine instructed a priest to sexually harass women. *Bollard v. California Province*

of the Society of Jesus, 196 F.3d 940, 948 (9th Cir. 1999). Thus, it is highly unlikely that fraud and tax evasion would involve the Court looking into ecclesiastical doctrines of the church.

Therefore, under the application of the neutral principle laws, the Court's may adjudicate this matter because the decision does not require the Court to consider Respondent's spiritual function.

B. An Employer Cannot Demand an Employee to Commit Unlawful Acts to Further its Interest.

Under *Tameny*, the Supreme Court held that "An employer's authority over its employee does not include the right to demand that employee commit [unlawful] acts to further its interests, and an employer may not coerce compliance with such unlawful directions by discharging an employee who refuses to follow such an order; an employee who has suffered damages as a result of such discharge may maintain a tort action for wrongful discharge against employer" *Tameny, 27 Cal.3d at 178.*

Similar to Title VII's wrongful termination for retaliatory discharge statutes, in order for Petitioner to maintain a claim under Section 740 of the State of Tuorovia Labor Laws, he must show (1) that he reported or threatened to report the employer's activity, policy or practice; (2) that a particular law, rule or regulation was violated; and (3) that the violation was the kind that creates a substantial and specific danger to public health or safety.

In *Bolin v. Oklahoma Conference of the United Methodist Church*, 397 F.Supp.2d 1293 (N.D. Okla. 2005). An employee was terminated eleven days after she filed administrative discrimination charges, and the court held that it was sufficient evidence of casualty to establish prima facie case of retaliation under Title VII. Id. at 1306. Therefore, there is sufficient evidence to meet the second prong of Section 740.

Here, Petitioner Turner claims that Respondents encouraged Petitioner to breach his fiduciary duty as the administrator of the bequest of a trust for $1.5 million, when they ignored his direction to alert both the trustee and the IRS of possible fraud and tax evasion violations, for receiving funds on behalf of maintaining a piece of property that the church no longer owned. About two weeks after Petitioner contacted the IRS and the bank for guidance, Petitioner was wrongfully terminated in violation of a public policy, by refusing to perform an act prohibited by law and for reporting that violation. *Diego v. Pilgrim United Church of Christ,* 231 Cal.App.4th 913 (2014).

Wrongful termination in violation of a public policy is defined as the "principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." *Diego,* 231 Cal.App at 922. The government has a compelling interest in the protection of creditors and the public. *Listecki v. Official Committee of Unsecured Creditors,* 780 F.3d 731, 737 (7th Cir. 2015). Just as in this case, the Government has the substantial interest to prevent the Church from fraudulently misappropriating funds of its trustee. In *Listecki,* the court also held that the case for religious exception was weak when the Archdiocese asked the court to expand the exception for purported fraud, where the court rejected the idea that fraudulent or improper actions can be excused in the name of religion. *Listecki,* 780 F.3d at 749.

Furthermore, the First Amendment has not created a blanket tort immunity for religious institutions or their clergy, since it is well settled that a clergy may be sued for the torts they commit. *Strock v. Pressnell,* 38 Ohio St.3d 207, 209 (1996). Thus, Mr. Turner was within his right to seek guidance from the IRS and the bank, which was also the trustee of the trust, as he had a fiduciary duty in the compacity of his role not to commit unlawful acts. Hence ministerial

retaliation is not subject to the ministerial exception. *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951 (9th Cir. 2004).

Therefore, the ministerial exception does not bar Petitioner from bringing an action for wrongful termination due to retaliatory claims because Respondents cannot condition the employment by demanding that Petitioner Turner commit unlawful acts to further their interest. *Tamney*, 27 Cal.3d at 178.

C. Religious Institutions Have the Freedom to Contract and Can Be Held Liable for Breach of Contract.

Historically, the records have shown that adjudicating a minister's contract claim against his employer did not offend the First Amendment. Brief Amicus Curiae of the National Employment Lawyers Association in Support of Respondents, Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C., 565 U.S. 171 (2012) (No. 10 - 553), 2011 WL 3561890 (2011).

Although separation of state from interfering in the appointment of church ministers was of great importance, courts have frequently settled wrongful termination claims arising from breach of contract, dating back all the way to a seminal case in 1799. *Runkel v. Winemiller*, 4 H. & McH. 429 (Md. Gen. 1799).

The general principle behind this theory is that contracts are private agreements which a church submits to its own volition. A religious institution may seek secular courts to enforce obligations under a breach of contract against its minister, the same should certainly hold true for a minister against his employer. Kevin J. Murphy, *Administering the Ministerial Exception Post-Hosanna-Tabor: Why Contract Claims Should not be Barred*, 28 Notre Dame J.L. ETHICS & PUB. POL'Y 383, 402 (2014).

Obligations arising contractually, unlike employment discrimination laws, are self-imposed in which the church bargained for freely. 28 Notre Dame J.L. Ethics & Pub. Pol'y at 402. The Circuit Court in D.C. acknowledged that "a church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." *Minker*, 894 F.3d at 1359. In *Petruska v. Gannon University*, the Third Circuit remanded Appellant's breach of employment contract claim, and held that the ministerial exception grounded within the Establishment Clause did not compel dismissal of the claim on motion to dismiss. *Petruska v. Gannon University*, 462 F.3d 294, 311 (3d Cir. 2006).

Here, in this case, the Congregation of St. Francis freely elected Petitioner Turner as the administer of the bequest after careful consideration due to his twenty-five years as a professional financial manager at a major corporation, and also having served as the Treasurer and CFO for another division of the CCC. However, Respondents breached Mr. Turner's employment contract by wrongfully terminating him, leaving him with at least eight months left on his contract. Respondents had the duty to exercise good faith and fair dealing when they entered an enforceable employment contract with Mr. Turner. *McKelvey v. Pierce*, 173 N.J. 2 6 (2002).

Although religious institutions may freely discharge members of their own clergy whenever it so pleases, it should still remain limited by the terms it imposed on itself. If a Church wants to retain the power to dismiss members of its clergy for any reason, they remain free to say so within the contract terms. *28 Notre Dame at 403.* Thus, allowing contract claims by a minister against his employer to move forward without even citing Hosanna-Tabor. *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812 (D.C. 2012)

Therefore, Petitioner's wrongful termination due to breach of contract is not barred by the ministerial exception because Respondents voluntarily entered into an enforceable binding contract with Petitioner, when it elected him to administer the bequest, and should be held liable for breach of employment contract.

II. PETITIONER'S COMPLAINT FOR WRONGFUL TERMINATION IS NOT SUBJECT TO 12(B)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, WITHOUT AN OPPORTUNITY FOR DISCOVERY, BASED ON RESPONDENTS' MERE INVOCATION OF THE MINISTERIAL EXCEPTION TO LAWSUIT.

Tourovia's courts erred by granting Respondents' motion to dismiss because the elements of the ministerial exception affirmative defense have not been established and Petitioner's complaint states a claim to relief that is plausible on its face. Tourovia's motion to dismiss for failure to state a claim mirrors the Fed.R.Civ.P.12(b)(6) motion to dismiss, effectively converting Respondents' motion to dismiss into a motion for summary judgment: "[s]ummary judgement is appropriate when the pleadings, discovery, disclosures, and affidavits establish that there is no genuine issue of material fact, such that the movant is entitled to judgement as a matter of law. Fed.R.Civ.P. 56(a)." *Herzog v. St. Peter Lutheran Church*, 884 F.Supp.2d 668, 671 (2012). Thus, the parties must be allowed an opportunity for discovery before the courts can make a judgment as a matter of law.

Furthermore, Respondents contend that discovery is inapposite simply because the ministerial exception has been invoked. This analysis would be appropriate if the ministerial exception is a matter of jurisdiction; however, as held in *Hosanna-Tabor,* "[t]he Ministerial Exception does not serve as a jurisdictional bar; rather, it operates as an affirmative defense to an

otherwise cognizable claim." 565 U.S. n.4. Therefore, the lower courts were required to consider all facts that support the claim's conclusions of law, "construing all facts and drawing all legal inferences in favor of the non-moving party," before it could determine that the courts would necessarily become entangled in ecclesiastical matters, as a matter of law. *Herzog*, F.Supp.2d at 672. It was error to dismiss the case under Tourovia's and Fed.R.Civ.P. 12(b)(6) because Petitioner's claim—and the relief sought—are secular and should be treated as such for the foregoing reasons: (1) there is insufficient factual allegations to establish all the elements of the defense and (2) petitioner's claim is plausible on the face of the pleadings.

A. The Factual Allegations in The Complaint Have Not Established All The Elements Of The Affirmative Defense Of The Ministerial Exception.

The Respondents contend that their motion to dismiss was correctly affirmed by the Appellate Division, Second Department of the State of Tourovia because Petitioner has already conceded in the complaint that he is a minister; thus, the ministerial exception bars the suit from proceeding even into discovery. However, "[a]n exception applies when 'the allegations of the complaint . . . set forth everything necessary to satisfy the affirmative defense; *Hyson*, 821 F.3d 935, 939 (2016). Furthermore, because an affirmative defense "turn[s] on facts not before the court at [the pleading] stage;" *Id.* at 939, dismissal on a 12(b)(6) motion "is appropriate *only* when the factual allegations in the complaint unambiguously establish all the elements of the defense." *Id.* at 939.

In *Hyson*, the United States Court of Appeals, Seventh Circuit, determined that the affirmative defense of acquiescence is not susceptible to resolution at the pleadings stage because it is fact-sensitive. 821 F.3d at 941. The defendants moved to dismiss under Fed.R.Civ.P. 12(b)6) immediately after the complaint was filed and the lower court granted the

motion. The Court of Appeals reversed and remanded, holding that the 12(b)(6) motion was erroneously granted because the allegation in the complaint did not unambiguously establish "everything necessary for the affirmative defense."

The Respondent's motion to dismiss must be reversed and the case must be remanded because the factual allegations in the complaint of wrongful termination for breach of contract and retaliatory discharge have not established all the necessary facts for the affirmative defense of the ministerial exception. Respondent contends that simply because Petitioner is a minister, citing *Hosanna-Tabor*, that Petitioner's claim must not proceed through discovery and must be dismissed. However, the fact that Petitioner is a minister is not dispositive as this is not an employment discrimination claim.

The Supreme Court, in *Hosanna-Tabor*, specifically stated: "[w]e 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. There will be time enough to address the applicability of the exception to other circumstances if and when they arise." 565 U.S. at 196. Respondent's motion to dismiss must be reversed and remanded because the allegations of retaliation for reporting alleged fraud and tax evasion leading to breach of contract do not establish the elements necessary for the affirmative defense of the ministerial exception. The fact that the Supreme Court converted the ministerial exception from a jurisdictional bar into an affirmative defense proves that cases involving ministers *must at minimum* proceed through discovery until the defendant can prove up the elements that the ministerial exception applies.

B. Respondent's Motion to Dismiss Pursuant to Tourovia's and Fed.R.Civ.P. 12(b)(6) Was Erroneously Granted, Before an Opportunity for Discovery, Because the Complaint Contained Sufficient Factual Matter to State a Claim to Relief That is Plausible on Its Face.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). The Supreme Court, in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007), added a plausibility standard stating that the complaint must state "enough facts to state a claim to relief that is plausible." Therefore, the approach used requires that dismissal for failure to state a claim is only appropriate when the factual allegations in the complaint, accepted as true, do not state a facially plausible claim for relief. *Hyson*, 821 F.3d. at 939 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In the case of *Cope v. Gateway Area Development Dist., Inc.* 624 Fed.Appx. 398 (6th Circ. 2015), Cope claimed wrongful termination in violation of a whistleblower statute. *Id.* at 400. The court held that, based on the timeline of 1-2 years that Cope set forth in the pleadings, it was plausible that his employment was terminated as a result of Cope's disclosure. *Id.* at 403. Here, Petitioner's complaint factually plead that he was terminated approximately 14 days after he contacted Wells Fargo and the IRS; therefore, it is plausible that Petitioner was terminated in retaliation for reporting alleged fraud and tax evasion.

Respondent's insist that the claim is barred because *any* inquiry into the reasons for termination are a violation of the First Amendment's Free Exercise Clause. However, in July of 2016, The United States District Court, N.D. Illinois, Eastern Division (pertaining to employment discrimination based on sex, sexual orientation, and marital statues against the

Archdiocese of Chicago) reiterated that "the mere presence of a potential affirmative defense does not render the claim for relief invalid." (quoting *Hyson*, 821 F.3d at 939). The rationale for the ministerial exception is based on the fact the Religious Clauses of the First Amendment is to ensure that the church controls who will minister to the faithful. *Hosanna-Tabor*, 565 U.S. at 194. Here, Petitioner does not wish to be reinstated; Petitioner seeks only damages for the remainder of the contract that was breached. Thus, discovery of facts regarding the retaliatory nature of the termination that led to the breach of contract will not deprive Respondents' of their ecclesiastical right to determine who embodies their ideals, as Petitioner only seeks damages. Therefore, the motion to dismiss was erroneously dismissed before a chance for discovery and must be reversed and remanded.

Petitioner's claim for wrongful termination based on breach of contract and retaliatory discharge was erroneously dismissed pursuant to Tourovia's and Fed.R.Civ.P. 12(b)(6) motion to dismiss for failure to state a claim to which relief can be granted because Respondents have only asserted that the mere fact that Petitioner is a minister automatically bars any inquiry into the termination and breach of contract. The argument is misguided and premature at best; The Supreme Court of the United State has already determined that the ministerial exception is not a matter of whether the court can hear the suit. *Hosanna-Tabor*, 565 U.S. 171, n.4. The exception has been converted into an affirmative defense to an *otherwise cognizable claim*. The lower courts have plenary power to dismiss the suit after or during discovery, once the elements of the affirmative defense are established. Therefore, the Respondents' motion to dismiss must be reversed and remanded.

CONCLUSION

Therefore, for the following reasons stated above, we ask this Court to reverse and remand the lower court's decision because the ministerial exception does not apply or bar Petitioner's wrongful termination claims based on breach of contract and retaliatory discharge.

Also, the Respondents' motion to dismiss must be reversed and remanded because dismissal pursuant to Tourovia's and Fed.R.Civ.P. 12(b)(6) was erroneous because the factual allegations contained in the complaint did not established the elements of the affirmative defense of the ministerial exception. Furthermore, the dismissal was erroneous because the factual allegations on the claims were plausible on the face of the complaint.