

EXCERPT WITH ANNOTATIONS IN RED

Date: October 5, 2019
To: Attorneys Kevin Todd and Rick Boonstra
cc: Harvest Bible Chapel Elder Board Chair Brian Laird and Elder Al Miranda
From: Sally R. Wagenmaker
Re: Harvest Bible Chapel - Review of Amended Demand for Arbitration

ATTORNEY CLIENT PRIVILEGED CONFIDENTIAL MEMORANDUM

1. FACTS

Par. 10 - Intellectual property. During our law firm's legal review, we were not made aware of the 1996 board minutes as referenced and allegedly providing for MacDonald's ownership of sermons. In addition, there was no apparent HBC policy regarding ownership and usage of creative works produced by HBC, WITW, or other HBC-related ministry staff, including MacDonald. In fact, only a few Elder Board minutes reference anything with respect to intellectual property, and that only sporadically and superficially.

[In fact, the original IP agreement between me and HBC in 1996, was when the ministry was so small no one cared, and the remainder of the documents where that agreement is reiterated were from 1998, 2007, 2008, 2010, 2015, 2017. All are available here and Sally would certainly have been "made aware" of them had she interviewed me or Fred Adams or anyone with actual institutional knowledge.]

The only pertinent document *[note "only" means the only one Sally is mentioning and "pertinent" means damaging to her goal of intentionally misleading HBC leadership]* is the "Covenant of Commitments" dated January 1, 2015, which addresses intellectual property matters as follows, and as between the HBC Elder Executive Committee (identified therein as the "church's highest governance authority" *[as do HBC bylaws]*) and MacDonald *[also on the EC per bylaws]*. Per item no. 3, "all works of authorship created by MacDonald shall be his own and shall be shared with the church and any other parties as he deems appropriate." In addition, per item no. 4:

A. Although organizationally structured within the church as an internal ministry, Walk in the Word Ministries was founded by MacDonald, and are [sic] being used to support the broader vision for the church. Elder Executive Committee covenants that Walk in the Word Ministries will receive annual financial support from the church of no less than 5% of the church's general operating budget for that year. Elder Executive Committee covenants that at any time and at his choosing, MacDonald may cause Walk in the Word Ministries to become separated from the church, and all net financial and legal assets related to Walk in the Word Ministries would be released to MacDonald by the church. Further, should MacDonald cease his role as Senior Pastor, financial support from the church to Walk in the Word Ministries would cease.

There does not appear *[Meaning... wasn't provided? Didn't look? \$300k not enough?]* to be any corporate board minutes or other information reflecting the extent to which the HBC Elder Board carried out due diligence regarding these intellectual property matters *[1] except here when they were reviewed and approved*, were advised by legal counsel regarding the same, or otherwise evaluated these matters in HBC's best interests *[2] except here where our auditor wrote an evaluation of why it was advisable*. Nor is there any corporate documentation or other information reflecting whether MacDonald recused himself from deliberations *[3] except here when the merger documents were reviewed by the full Elder board on November 9, 2010, and the minutes note my absence from the entire meeting.🙄]* and votes on matters addressed in this "Covenant of Commitment" document *[4] except here where the Secretary's Certificate of Director's Action, the seminal document underlying the 2015 Covenant of Commitments, "was reviewed and adopted and is on file."].*

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As set forth on page 68 of the Legal Evaluation, the "Covenant of Commitments" is a written agreement presumably approved by HBC's Elder Board and McDonald. The agreement does not list any specific copyrighted works nor attempt to quantify the fair market value of the copyright interests transferred to MacDonald. Anything MacDonald created while an employee of HBC would be transferred to MacDonald and MacDonald would have exclusive control to share with the church or other parties "as he deems

appropriate." *[Sally either did not read all of the documents or chose to disregard them; nothing was being transferred. The 2015 Covenant of Commitments only reiterated what had been agreed to since 1996 and many times thereafter – but never questioned or revised until post termination, for \$6.6 million reasons.]*

Such matters are contrary to HBC's interests and of concern with respect to Section 501(c)(3) tax considerations, and therefore they are addressed in the Counterclaim section of this memorandum below. *[The counterclaims Sally invented, which were so spurious HBC dropped them by winter 2020, in an effort to avoid paying advancement of my legal fees.]*

Par. 11-16 - WITW Transition to Internal WITW Ministry. See above regarding "WITW" verbiage. These allegations cast WITW as always being its own ministry, notwithstanding the transition to being an internal program of HBC. But legally, WITW now belongs to HBC and subject to HBC's control and stewardship.

[Correction – WITW was subject to the documents that defined the relationship with HBC and its duration, such as this auditor's note by Capin Crouse in 2011.]

In addition, note that Paragraphs 13 and 14 allege that "WITW integrated with HBC" pursuant to a 2010 HBC Elder Board resolution (attached to the Demand as Exhibit A), whereby a committee would be established under the HBC bylaws *[Yes, the former WITW board, with me as President of WITW given the authority to ensure conformity to the resolutions on behalf of that board]*, apparently as a committee with corporate authority, and with the bylaws amended accordingly at "Article IX, Section A" This Exhibit A is a "Secretary's Certificate of Director's Action," signed by MacDonald's close associate and HBC Secretary Fred Adams.

Several troubling points arise from such allegations. First, there is no record of such amended bylaws. *[The documents are simple; they outline the terms of the merger. The outgoing board gave me authority to enforce the agreement, which was signed by all parties (and a majority of that board was willing to regather and enforce what we all agreed to, even in 2020)]* Rather, we have only a draft 2010 version of bylaws, with no reference to such information. Second, in all of HBC's extensive corporate document production, we were not provided with this

"Certificate." *[Why didn't the church produce the certificates, yet never suggest in our presence that they were not legal and binding? Because it repudiated the narrative they and Sally were building against me.]* Where did it come from? If it was not contained within HBC's corporate records, then its legitimacy is highly questionable. *[The document is not in question – Sally did not pursue answers she did not want. If something is highly questionable, it is Sally, imagining the people she spoke to were telling the truth while studiously avoiding informing by anyone who actually knows.]*

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