

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
The Protestant Episcopal Church In The)
Diocese Of South Carolina, *et al.*)
)
v.)
)
The Episcopal Church, *et al.*)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Case No. 2017-CP-18-1909
**NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT**

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendants, The Episcopal Church and The Episcopal Church in South Carolina, will move before a Presiding Judge of the First Judicial Circuit in Dorchester County, on the tenth (10th) day after service or as soon thereafter as counsel may be heard, to dismiss Plaintiffs' complaint, as amended, for failure to state a claim upon which relief can be granted under Rule 12(b)(6), SCRPC. The grounds for this motion are as follows:

(1) Plaintiffs' complaint, which is premised upon the Betterment Act, S.C. Code Ann. §27-27-10, *et seq.*, was not timely filed within 48 hours of the judgment rendered by the South Carolina Supreme Court on August 2, 2017.

(2) The Betterment Act does not provide for any relief to Plaintiffs and the complaint must be dismissed because Defendants, The Episcopal Church and The Episcopal Church in South Carolina, do not own the land at issue and did not bring an action to recover land. As recognized by the South Carolina Supreme Court, the land and buildings of the parishes are owned by the Plaintiff parishes and held in trust for Defendants, The Episcopal Church and The Episcopal Church in South Carolina, who are the beneficiaries of such trusts, in accord with the Dennis Canon. The diocesan land and buildings are owned by The Trustees of The Protestant

Episcopal Church in the Diocese of South Carolina and held in trust for the diocese associated with The Episcopal Church, which is the Defendant, The Episcopal Church in South Carolina.

The Trustees are not named as a party to this betterment action.

(3) The Plaintiff parishes, which individually serve as trustees by law, cannot seek the value of improvements from their own beneficiaries, the Defendants, The Episcopal Church and The Episcopal Church in South Carolina. The filing of this betterment action is itself a breach of their fiduciary duties. Trustees cannot make claims against their own beneficiaries. Moreover, the Plaintiff parishes are not the real parties in interest because they, as trustees, have no real interests in the property that are separate and apart from the interests of their beneficiaries.

(4) The “disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina,” according to the South Carolina Supreme Court (Opinion of Justice Beatty). Directly contradicting that order, the disassociated diocese filed this action in the name of the Protestant Episcopal Church in the Diocese of South Carolina, claiming to be its successor and demanding the value of improvements made by it since its founding in the eighteenth century.

WHEREFORE, this betterment claim should be dismissed under Rule 12(b)(6), SCRPC.

(Signature page to follow)

December 15, 2017

Thomas S. Tisdale, Jr.

Thomas S. Tisdale, Jr.
Jason S. Smith
HELLMAN YATES & TISDALE
105 Broad Street, Third Floor
Charleston, South Carolina 29401
Telephone: (843) 266-9099
tst@hellmanyates.com
js@hellmanyates.com

*Counsel for The Episcopal Church in South
Carolina*

Allen R. Holmes by TST

Allan R. Holmes
GIBBS & HOLMES
171 Church Street, Suite 110
Charleston, South Carolina 29401
Telephone: (843)722-0033
aholmes@gibbs-holmes.com

with permission -

David Booth Beers
GOODWIN PROCTER, LLP
901 New York Avenue, NW
Washington, DC 20001
Telephone: (202) 346-4000
dbeers@goodwinlaw.com

Mary E. Kostel
Special Counsel
The Episcopal Church
c/o GOODWIN PROCTER, LLP
901 New York Avenue, NW
Washington, DC 20001
Telephone: (202) 346-4000
mkostel@goodwinlaw.com

Counsel for The Episcopal Church

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CERTIFICATE OF SERVICE

I, the undersigned Paralegal of the law office of Hellman Yates & Tisdale, PA, do hereby certify that I have served counsel in this action with a copy of the **Notice of Motion and Motion to Dismiss** by depositing one true copy of the same in the United States Mail, first class, postage pre-paid and addressed to all Counsel listed on the attached pages.


Faren Jennings, Paralegal

December 15, 2017.

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

Henrietta U. Golding, Esq.
McNAIR LAW FIRM
P.O. Box 336
Myrtle Beach, SC 29578
(843) 444-1107

Charles H. Williams, Esq.
WILLIAMS & WILLIAMS
P.O. Box 1084
Orangeburg, SC 29116-1084
(803) 534-5218

David Cox, Esq.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street
Charleston, SC 29401
(843) 577-7700

Thomas C. Davis, Esq.
HARVEY & BATTEY, PA
1001 Craven Street
Beaufort, SC 29901
(843) 524-3109

Christ St. Paul's Episcopal Church
I. Keith McCarty, Esq.
McCARTY LAW FIRM, LLC
P.O. Box 30055
Charleston, SC 29417
(843) 793-1272

Holy Trinity Episcopal Church
Bill Scott, Esq.
PEDERSEN & SCOTT, PC
775 St. Andrews Blvd.
Charleston, SC 29407
(843) 556-5656

St. James' Church, James Island, S.C.
Mark Evans, Esq.
147 Wappoo Creek Drive, Ste. 202
Charleston, SC 29412
(843) 762-6640

The Church of St. Luke and St. Paul, Radcliffeboro
David B. Marvel, Esq.
PRENNER MARVEL, P.A.
636 King Street
Charleston, SC 29403
(843) 722-7250

David L. DeVane, Esq.
110 N. Main Street
Summerville, SC 29483
(843) 285-7100

The Church Of The Good Shepherd, Charleston, SC
John Furman Wall, Esq.
140 Wando Reach Court
Mt. Pleasant, SC 29464
(843) 408-3433

*Vestry and Church-Wardens Of The Episcopal
Church Of The Parish Of Christ Church*
Allan P. Sloan, III, Esq.
Joseph C. Wilson IV, Esq.
PIERCE, HERNS, SLOAN & WILSON
321 East Bay Street; P.O. Box 22437
Charleston, SC 29413
(843) 722-7733

All Saints Protestant Episcopal Church, Inc.
C. Pierce Campbell, Esq.
TURNER, PADGET, GRAHAM & LANEY
319 South Irby Street, P.O. Box 5478
Florence, SC 29501

(843) 662-9008

The Church Of The Holy Cross

C. Pierce Campbell, Esq.
TURNER, PADGET, GRAHAM & LANEY
319 South Irby Street, P.O. Box 5478
Florence, SC 29501
(843) 662-9008

St. Bartholomews Episcopal Church

C. Pierce Campbell, Esq.
TURNER, PADGET, GRAHAM & LANEY
319 S. Irby Street, P.O. Box 5478
Florence, SC 29502
(843) 656-4429

Church Of The Holy Comforter

Thornwell F. Sowell, Esq.
Bess J. DuRant, Esq.
SOWELL GRAY STEPP & LAFFITTE, LLC.
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400

*The Vestry and Church Wardens Of The Episcopal
Church Of The Parish Of St. Matthew*

Francis M. Mack, Esq.
656 Fort Motte Road
Saint Matthews, SC 29135
(803)-414-4138

Church Of The Redeemer

Robert R. Horger, Esq.
HORGER, BARNWELL & REID, LLP
P.O. Drawer 329
1459 Amelia Street
Orangeburg, SC 29115
(803) 531-3000

The Church Of The Resurrection, Surfside

William A. Bryan, Esq.
BRYAN & HAAR
P.O. Box 14860
Surfside Beach, SC 29587
(843) 238-3461

Trinity Church of Myrtle Beach

Susan MacDonald, Esq.

Jim Lehman, Esq.

NELSON, MULLINS, RILEY & SCARBOROUGH, LLP

BNC Bank Corporate Center, Suite 300

3751 Robert M. Grissom Parkway

Myrtle Beach, SC 29577

(843) 448-3500

Saint Luke's Church, Hilton Head

Henrietta U. Golding, Esq.

McNAIR LAW FIRM

P.O. Box 336

Myrtle Beach, SC 29578

(843) 444-1107

The Vestry and Wardens Of St. Paul's Church, Summerville

Brandt Shelbourne, Esq.

Hope Lumpkin, Esq.

SHELBOURNE LAW FIRM

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

Trinity Episcopal Church, Pinopolis

John B. Williams, Esquire

WILLIAMS & HULST, LLC

209 East Main Street

Moncks Corner, SC 29461

(843) 761-8232

St. Paul's Episcopal Church of Bennettsville, Inc.

Harry Easterling, Jr., Esq.

116 North Liberty Street

Bennettsville, SC 29512

(843) 479-2878

*Church Of The Cross, Inc. and Church Of The
Cross Declaration of Trust*

C. Alan Runyan, Esq.

Andrew S. Platte, Esq.

RUNYAN & PLATTE, LLC

2015 Boundary Street, Suite 239

Beaufort, SC 29902

(803) 943-4444

St. Davids Church
C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

Harry Easterling, Jr., Esq.
116 North Liberty Street
Bennettsville, SC 29512
(843) 479-2878

*The Church Of Our Saviour, Of The Diocese
Of South Carolina*
C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

*The Protestant Episcopal Church, Of The Parish Of
St. Philip, In Charleston, In The State of South Carolina*
C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

G. Mark Phillips, Esq.
NELSON, MULLINS, RILEY &
SCARBOROUGH, LLP
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401-2239
(843) 720-4383

W. Foster Gaillard, Esq.
WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP.
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

The Protestant Episcopal Church, The Parish Of St. Michael, In Charleston, In The State of South Carolina and St. Michael's Church Declaration Of Trust

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

Henry Grimball, Esquire
WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP.
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena And The Parish Church Of St. Helena Trust

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

The Vestry and Church Wardens of St. Jude's Church of Walterboro

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

Trinity Episcopal Church, Edisto Island

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County

C. Alan Runyan, Esq.

Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

*The Vestries and Churchwardens of the Parish
of Old St. Andrew*

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444

The Church Of The Epiphany (Episcopal)

C. Alan Runyan, Esq.
Andrew S. Platte, Esq.
RUNYAN & PLATTE, LLC
2015 Boundary Street, Suite 239
Beaufort, SC 29902
(803) 943-4444