

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.*)
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IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-1800013

**DEFENDANTS' AMENDED
PETITION FOR EXECUTION
AND FURTHER RELIEF ON
DECLARATORY JUDGMENTS
OF THE SOUTH CAROLINA
SUPREME COURT AND FOR
THE APPOINTMENT OF A
SPECIAL MASTER**

2018 MAY 16 AM 10:19
CLERK OF COURT
DORCHESTER COUNTY

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this amended petition under the authority of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRPC, S.C. Code Ann. §§ 15-39-10, et seq., and any other applicable authorities under South Carolina law, seeking the execution of and further relief required by the Opinion and declaratory judgments rendered by the Supreme Court of South Carolina in this matter on August 2, 2017, and for the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues.

I.

PROCEDURAL BACKGROUND

On August 2, 2017, the South Carolina Supreme Court issued a final judgment in this case. Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 412 S.C. 211, 806 S.E.2d 82 (2017). On November 17, 2017, a petition for a rehearing was denied and the remittitur issued. On February 9, 2018, some of the Plaintiffs filed a petition for

writ of certiorari to the United States Supreme Court, which is pending.¹ The filing of that petition did not stay the decision of the South Carolina Supreme Court, and the final judgment of the South Carolina Supreme Court should not be held in abeyance and should be enforced. A copy of remittitur together with the August 2, 2017 Opinion containing its declaratory judgments is attached hereto as Exhibit A.

There is a related case pending in the United States District Court, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013). The South Carolina Supreme Court expressly deferred, in its August 2, 2017 Opinion, to the federal court to resolve the trademark and related claims between the parties to this case.

For the purpose of attempting to fully and completely resolve all of the issues between the parties in a single action, The Episcopal Church and the Associated Diocese recently asked the federal court to exercise supplemental jurisdiction over trust claims between the parties and provide appropriate relief required by the August 2, 2017 Opinion of the South Carolina Supreme Court. Judge Gergel, in an Order and Opinion dated April 16, 2018, declined to exercise such supplemental jurisdiction for property ownership distribution issues mandated by the South Carolina Supreme Court and opined that The Episcopal Church and the Associated Diocese should return to this Court to initiate a proceeding to enforce the August 2, 2017 declaratory judgments issued by the South Carolina Supreme Court to take “legal possession” of the property. A copy of Judge Gergel’s Order and Opinion is attached hereto as Exhibit B.

¹ Notably, the petition did not raise and therefore did not preserve any issue regarding the non-parish diocesan property that is not related to the parish property issues. The petition raised issues only as to parish property.

There is another action pending in this Court generally referred to as a Betterment Action, which was instituted under the authority of S.C. Code Ann. § 27-27-10. It is not related to or affected by the relief sought in this Petition. A motion to dismiss it is pending.

II.

FACTUAL BACKGROUND

Plaintiffs announced their disaffiliation from The Episcopal Church and the Associated Diocese in late 2012. Since then, the diocesan and parish property has been in Plaintiffs' possession and control. That property includes land and buildings, along with considerable funds and other personal property such as books, silver, and historical archives. It also includes trademarks, names, seals, logos, and other indicia, as personal property.

Plaintiffs continue to possess and control that property in complete disregard of the August 2, 2017 Opinion of the South Carolina Supreme Court, which recognized The Episcopal Church's and the Associated Diocese's interests in the diocesan property and the property of twenty-eight of the parishes.

The Episcopal Church and the Associated Diocese seek the intervention of this Court to effect an orderly transition of possession and control of the property to which they are entitled by the judgment of the South Carolina Supreme Court.

The relief required to effect the judgment of the Supreme Court is therefore requested, as detailed below.

III.

RELIEF REQUESTED

This petition to enforce and provide further relief required by the declaratory judgments of the August 2, 2017 Opinion of the South Carolina Supreme Court is made pursuant to the

Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRCP, S.C. Code Ann. §§ 15-39-10 et seq., and any other applicable authorities under South Carolina law.

The Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-120 provides as follows:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

S.C. Code Ann. §15-53-120; see also S.C. Code Ann. § 15-53-130 (“This chapter . . . is to be liberally construed and administered.”). This Court has jurisdiction to enforce and provide further relief under this statute.

It is clear, however, that this Court does not have jurisdiction to consider Plaintiffs’ pending motion to “clarify” the August 2, 2017 Opinion of the South Carolina Supreme Court. “The judgment of the South Carolina Supreme Court is a final judgment and is the law of the case.” Judge Gergel’s April 16, 2018 Order and Opinion at 6, vonRosenberg, 2:13-cv-00587-RMG. See also Hampton Building Supply, Inc. v. Wilson, 328 S.E.2d 635, 637, 285 S.C. 135, 138 (1985) (“Once jurisdiction vested in the Supreme Court it would not re-vest in the Circuit Court except by order of the Supreme Court, such as for example, by granting a new trial.”); Mueller v. Myrtle Beach Golf and Yacht Club, 438 S.E.2d 248, 250, 313 S.C. 412, 415 (1993) (distinguishing Hampton and holding that the lower court could award statutory attorney’s fees after remittitur under the limited jurisdiction the lower court has to “enforce the judgment and take any action consistent with the Supreme Court ruling”).

1. *The Diocesan Property*

With respect to the real and personal diocesan property, which includes the trademarks, names, seals, and other indicia, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that the members of the Board of Trustees elected by the Associated Diocese be installed as the Board of the Trustees of the Protestant Episcopal Church in the Diocese of South Carolina (the “Trustees”) to hold the diocesan property in trust for Associated Diocese, in accordance with the Trustees’ legislative charter, as further explained below.

All diocesan property is held in trust by the Trustees for the benefit of “the Protestant Episcopal Church for the Diocese of South Carolina,” also referred to as “said Diocese” in “said Church,” according to the legislative charter of the Trustees, the 1880 Act of the General Assembly of South Carolina (the “Act”), as amended by the 1902 Act:

. . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .

. . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

1880 Act.

. . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act.

A copy of that legislative charter, the 1880 Act, as amended by the 1902 Act, is attached as Exhibit C.

The August 2, 2017 Opinion of the South Carolina Supreme Court recognizes that the beneficiary of the Trustees, referred to in the legislative charter as “the Protestant Episcopal Church for the Diocese of South Carolina,” as well as “said Diocese” in “said Church,” is the Associated Diocese; and is not the dissociated diocese led by Bishop Lawrence named in this case as a Plaintiff:

. . . title is in the trustee corporation for the benefit of the associated diocese . . .

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority decision on diocesan property); id. at 251, n.29 (Beatty, J., “In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.”); id. at 231 (Pleicones, J., “...the Associated Diocese as the true Lower Diocese of South Carolina...”); id. at 248 (Hearn, J., “...the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property...”).

The legislative charter of the Trustees, the 1880 Act, as amended by the 1902 Act, gives the beneficiary of the Trustees, the Associated Diocese, the right to elect its Board:

Sec. 2. That a Board of Trustees is hereby incorporated to be known as ‘The Trustees of the Protestant Episcopal Church in South Carolina,’ which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted.

1902 Act.

Therefore, the Court should enforce the declaratory judgment contained in the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that members elected by the Associated Diocese be installed as the Board of the Trustees to hold the diocesan property in trust for the Associated Diocese.

To the extent that any of the real or personal diocesan property is held, owned, titled, or registered in the name of the corporation formed in 1973 and known as “The Protestant Episcopal Church in the Diocese of South Carolina,” the Court should enforce the August 2, 2017 declaratory judgment of the South Carolina Supreme Court by ordering that members selected by the Associated Diocese be installed as Directors of that corporation, or that any such property be transferred to the Trustees, as elected by the Associated Diocese.

We anticipate that this will effectuate a full and complete transfer of possession and control of the diocesan property, consistent with the August 2, 2017 judgment of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that imperative, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

2. *The Parish Property*

With respect to the real and personal property of twenty-eight parishes, which includes the trademarks, names, seals, logos, and other indicia, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by

transferring title to the parish property from the individual parish corporations to The Episcopal Church and the Associated Diocese, by requiring the appropriate Plaintiffs to execute all necessary deeds or instruments of title, or by transferring the title by Court order, as further explained below.

All of the property of the twenty-eight parishes is held in trust by the parish corporations, according to the Dennis Canon, adopted by The Episcopal Church in 1979, which provides as follows:

All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221 (reciting the Dennis Canon).

According to the August 2, 2017 Opinion of the South Carolina Supreme Court, accession to the Dennis Canon by the twenty-eight parish corporations imposed trusts on the parish property under state law, and upon their disaffiliation, “title” to their property belonged to The Episcopal Church and the Associated Diocese:

[W]ith regard to the twenty-eight church organizations which acceded to the Dennis Canon, a majority consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones would hold that a trust in favor of the national church is imposed on the property and therefore, title is in the national church;

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority’s decision on parish property).

Therefore, the Court should enforce the August 2, 2017 Opinion of the South Carolina Supreme Court, by transferring title to the parish property from the parish corporations to The Episcopal Church and the Associated Diocese, by requiring Plaintiffs to execute any necessary deeds or instruments of title, or issuing the same by Court order. See Judge Gergel’s April 16, 2018 Order and Opinion at 8, 9, and 10, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013) (“The South Carolina Supreme Court has held that 28 parishes associated with the Diocese hold their real and personal property in trust for the benefit of TEC . . . Of course, there are other ways for TEC to enforce its property rights. For example, TEC could take legal possession of the parish property held in trust for its benefit, rather than asking a federal court to supervise the local congregation’s use of the property . . . Again, the better solution to the problem might be for TEC to take possession of the properties, rather than asking a federal court to assist the management of the properties. And the better form for enforcement of the South Carolina Supreme Court’s decision concerning TEC’s real property rights is the court that received the remittitur, the Dorchester County Court of Common Pleas, where these issues have been litigated for over five years.”).

Upon receiving the deeds or other instruments of title, The Episcopal Church and the Associated Diocese may form new parish corporations and transfer the deeds or instruments of title to real and personal property to them thereby allowing them hold and use the property operating as Episcopal parishes in accordance with the hierarchical governance of The Episcopal Church and the Associated Diocese contained in the Constitution and Canons of each.

Ordering such relief will enable The Episcopal Church and the Associated Diocese to take legal possession and control of the property without the Court having to supervise or manage Plaintiffs’ vestries. Plaintiffs could be permitted to retain their parish corporations,

without the trust property. Plaintiffs could use those corporations to continue to operate their religious organizations, if they so choose.²

It is anticipated that this will effectuate a full and complete transfer of possession and control of the parish property, consistent with the August 2, 2017 Opinion of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that objective, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

IV.

APPOINTMENT OF A SPECIAL MASTER

The relief requested herein involves the transfer of a substantial amount of real and personal property, involving many parties. Petitioners believe that the orderly transfer of the property and the resolution of any disputes and controversies that might arise in the execution of such matters will be greatly enhanced by the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues. Accordingly, the appointment of a Special Master, with experience in complex property matters and with the capacity to dedicate the necessary time and attention to this matter, is appropriate.

² Plaintiffs will have to amend the names of their parish corporations. Those corporate names, which are also used as trademarks, are part of the personal property held by the parishes subject to the trust interest of The Episcopal Church and the Associated Diocese. Furthermore, Plaintiffs' ongoing use of those names constitutes trademark infringement, dilution, and false advertising, as alleged in the federal case.

We respectfully request that the parties be given the opportunity to propose available, qualified, and impartial candidates for the Court to consider as it selects and appoints a Special Master for these purposes.

(Signature page to follow)

May 15, 2018

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER)

FILED - 2018 MAY 16 10:49 AM

CASE NO.: 2013 -CP- 18 - 00013

The Protestant Episcopal Church
In The Diocese of South Carolina, et al.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

Plaintiff)
DORCHESTER COUNTY)

The Episcopal Church, et al.)

Defendant.)

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Thomas Tisdale & Jason Smith</u> , Bar No <u>5584 & 80700</u> Address: <u>105 Broad St. Third Floor Charleston, SC 29401</u> Phone: <u>843-266-9099</u> Fax <u>843-266-9188</u> E-mail: <u>tst@hellmanyates.com</u> Other: <u>js@hellmanyates.com</u>
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Petition for Execution and Further Relief on SC Supreme Court Judgement</u> Estimated Time Needed: <u>1hr.</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
_____, 20____ Signature of Attorney for <input type="checkbox"/> Plaintiff/ <input type="checkbox"/> Defendant Date submitted	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID – AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____, 20____	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	