

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Diane Schafer Goodstein, Circuit Court Judge

---

Appellate Case No. 2015-000622

---

RECEIVED

SEP 25 2017

S.C. SUPREME COURT

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ the King, Waccamaw; Church of The Cross, Inc. and Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity

Episcopal Church; Trinity Episcopal Church, Pinopolis;  
Vestry and Church Wardens of the Episcopal Church of  
The Parish of Christ Church; Vestry and Church  
Wardens of The Episcopal Church of the Parish of St.  
John's, Charleston County, The Vestries and  
Churchwardens of The Parish of St. Andrews,, .....

Respondents,

v.

The Episcopal Church (a/k/a The Protestant Episcopal  
Church in the United States of America) and The  
Episcopal Church in South Carolina, .....

Appellants.

---

**CHURCH OF GOOD SHEPHERD'S REPLY TO RETURN OF THE NATIONAL  
CHURCH**

---

The National Church's return demonstrates a poor grasp of the doctrine of merger and its application to this case.<sup>1</sup> Merger occurs, if at all, when the legal and equitable interests in property join or "merge" in the same owner. Epworth Children's Home v. Beasley. 365 S.C. 157, 616 S.E. 2d 710 (2005). Good Shepherd and all other similarly situated churches have always held the legal title to their churches, the question is whether they ever re-acquired equitable title, or some portion thereof, subsequent to the creation of the trust. Perhaps Respondent did not read page seven of Good Shepherd's Petition for rehearing which clearly articulates how merger applies in this case: "At a minimum, Bishop Lawrence had express, implied and apparent authority to re-convey the one-half undivided equitable interest of the Diocese to the individual churches, thus merging the legal and equitable titles of an undivided one-half equitable interest....". To re-state the obvious,

---

<sup>1</sup> Assuming, but not conceding, solely for the sake of argument that a trust exists.

Good Shepherd asserts a merger argument. The National Church's interest, if any, has always been equitable in nature, never having acquired legal title.

The application of the doctrine here would leave the National Church exactly and precisely where it found them, with an undivided one-half equitable interest held in trust by the congregation-trustee. This result neither divests nor forfeits the one-half interest of the National Church nor the one-half interest of the Diocese. It accounts for all property placed into the trust, and it upholds the intent of the settlor in creating a trust with two distinct beneficiaries: a local beneficiary and a national beneficiary. Merger would not terminate the trust because the National Church would continue to own a one-half equitable interest, just as it did before the delivery of the quitclaim deeds. Merger only ends a trust when the trustee becomes the sole beneficiary, a circumstance not present in this case. Epworth Children's Home v. Beasley. 365 S.C. 157, 616 S.E. 2d 710 (2005). The doctrine of merger applies pro tanto to a portion of the merged title in order to sustain and perpetuate a trust, and this is a settled, neutral law principle. Foster v. Glover 46 S.C. 522, 24 S.E. 370 (1896). Thus, in Foster, where a trustee held legal title (as the churches always did in this case) and subsequently inherited a fractional equitable beneficial interest (as the churches did by way of the quitclaim deed from the Dioceses as authorized by the National Church's Canons), that portion of the equitable title merged to the pro tanto extent of the fractional share with the legal title (just as it does in this case), and the trustee continued as the trustee for the other remaining beneficiaries (in this case, the National Church). Therefore, the congregations should hold outright legal and equitable title to the one-half interest which the congregations originally placed in trust but subsequently received back by quitclaim deed through the doctrine of merger.


The opinion of the 2-1 majority, and the reason that opinion is clearly erroneous, is because it creates a shifting reversionary interest of the entire trust to the National Church or a springing

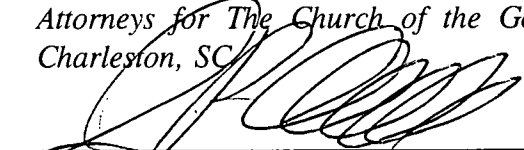
executory one-half interest in favor of an entity which did not yet exist (a newly-created diocese). Yet, the trust contains no reversionary clause, nor does it create any future interest. The 2-1 majority must say that because the quitclaim deeds were ultra vires (and therefore forfeited), the forfeited property interest of the Diocese then either “reverted” or “shifted” to vest entirely in the National Church, or that the interest somehow “sprang” to a nonexistent and yet to be created “loyal” local Diocese. Either way, the 2-1 majority re-writes the terms of the trust, ignores the intention of the settlors, and interjects new terms into the instrument which were considered and implicitly rejected at the Church’s 1979 National Convention.

The clear intention of the settlors would have been to maintain some local control over their churches by designating the local Diocese as a joint beneficiary with a one-half share equal to the National Church. However, the 2-1 majority subordinates this intent, elevating national control over local Diocese control as the singular motive and purpose of the trust. This is contrary to the plain language of the trust. The intent, as indicated by the designation of two beneficiaries, served two purposes: local control and representation, and allegiance to a National Church. All the reported decisions in favor of the National Church can be reconciled this way: when the local Diocese and National Church remain aligned, the two trust beneficiaries remain unified and the local churches cannot depart with the ownership of church property because of the equitable interests created in the trust. On the other hand, when the local Diocese and National Church disagree and disassociate, the cited cases do not address this issue. The trust is likewise silent on this issue, and this case presents that very issue with the additional fact of quitclaim deeds from the Diocese, thus presenting the issue of pro tanto merger. This Court should not re-write and re-fashion the terms of the trust

for the sole benefit of the National Church. This Court should protect the interest of both beneficiaries, and both purposes of the trust.

This is a highly contentious, hard case, with zeal evident from all sides, including, most recently, a passionate plea from two retired members of the bench. There is no apathy here; this is a case of love. Giving effect to both property interests created in the trust is a path forward in equity, avoiding forfeiture. If the property is to be stripped away from the congregation and the Petition for Rehearing is to be denied, the loss of the buildings and lands may be attributed to sharp lawyering, an over-emphasis upon the dicta in Jones, or even the benediction and blessing of Matthew 19:29, but it will not be a decision grounded in equity; the current decision of this court bears no semblance to equity because it condones the absolute forfeiture of the property of persons with clean hands who have done nothing more than exercise their First Amendment protections to freely worship and freely associate. We beg for equity.

  
Henry P. Wall  
BRUNER, POWELL WALL & MULLINS, LLC  
P.O. Box 61110  
Columbia, SC 29260  
(803) 252-7693  
*Attorneys for The Church of the Good Shepherd,  
Charleston, SC*

*For*  
  
John F. Wall, III  
288 Meeting Street, Suite 400  
Charleston, SC 29401  
843-408-3433  
*Attorneys for The Church of the Good Shepherd,  
Charleston, SC*

*2/1/17*

September 25, 2017

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

---

Case No. 2013-CP-18-00013  
Appellate Case No. 2015-000622

---

RECEIVED

SEP 25 2017

S.C. SUPREME COURT

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

v.

The Episcopal Church (a/k/a/ The Protestant  
Episcopal Church in the United States  
Of America) and The Episcopal Church  
in South Carolina ..... Appellants.

---

**PROOF OF SERVICE**

---

I, Bridget S. Steele, an employee of Bruner Powell Wall & Mullins, LLC, attorneys for the Respondents, do hereby certify that I have served a copy of the Church of Good Shepherd's Reply to Return of the National Church and Proof of Service, on this the 25<sup>th</sup> day of September, 2017, by mailing copies of the same to the attorneys identified below:

**Appellants' Attorneys:**

Thomas S. Tisdale, Esq. Jason S. Smith, Esq. Hellman, Yates & Tisdale 105 Broad Street, 3 <sup>rd</sup> Floor Charleston, South Carolina 29401 Attorney for <i>The Episcopal Church and The Episcopal Church in South Carolina</i>	David Booth Beers, Esq. Mary E. Kostel, Esq. Goodwin Procter 901 New York Avenue, NW Washington, DC 20001 Attorney for <i>The Episcopal Church</i>
Allan R. Holmes Timothy Lewis Gibbs & Holmes 171 Church Street, Suite 110 Charleston, SC 29401 Attorney for <i>The Episcopal Church</i>	Blake A. Hewitt John S. Nichols Bluestein, Nichols, Thompson & Delgado P.O. Box 7965 Columbia, SC 29202 Attorney for <i>The Episcopal Church</i>

**Respondents' Attorneys:** By their consent and permission, I served the following persons by electronic mail.

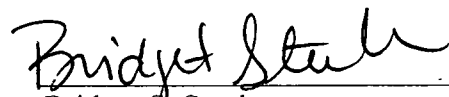
Henrietta U. Golding, Esq. McNAIR LAW FIRM P.O. Box 336 Myrtle Beach, SC 29578 (843) 444-1107 Attorney for <i>The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina, a South Carolina Corporate Body</i>	Charles H. Williams, Esq. WILLIAMS & WILLIAMS P.O. Box 1084 Orangeburg, SC 29116-1084 (803) 534-5218 Attorney for <i>The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina, a South Carolina Corporate Body</i>
David Cox, Esq. BARNWELL WHALEY PATTERSON & HELMS, LLC 288 Meeting Street Charleston, SC 29401 (843) 577-7700 Attorney for <i>The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina, a South Carolina Corporate Body</i>	Thomas C. Davis, Esq. HARVEY & BATTEY, PA 1001 Craven Street Beaufort, SC 29901 (843) 524-3109 Attorney for <i>The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina, a South Carolina Corporate Body</i>

<p>C. Pierce Campbell, Esq.  TURNER, PADGET, GRAHAM &amp; LANEY  319 South Irby Street, P.O. Box 5478  Florence, SC 29501  (843) 662-9008  Attorney for <i>All Saints Protestant Episcopal Church, Inc.</i>  <i>St. Bartholomews Episcopal Church</i>  <i>The Church of the Holy Cross</i></p>	<p>I. Keith McCarty, Esq.  McCARTY LAW FIRM, LLC  P.O. Box 30055  Charleston, SC 29417  (843) 793-1272  Attorney for <i>Christ St. Paul's Episcopal Church</i></p>
<p>Harry A. Oxner, Esq.  OXNER &amp; STACY  235 Church Street  Georgetown, SC 29440  (843) 527-8020  Attorney for <i>Christ the King, Waccamaw The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah</i></p>	<p>Thornwell F. Sowell, Esq.  Bess J. DuRant, Esq.  SOWELL GRAY STEPP &amp; LAFFITTE, LLC.  P.O. Box 11449  Columbia, SC 29211  (803) 929-1400  Attorney for <i>Church Of The Holy Comforter</i></p>
<p>Robert R. Horger, Esq.  HORGER, BARNWELL &amp; REID, LLP  P.O. Drawer 329  1459 Amelia Street  Orangeburg, SC 29115  (803) 531-3000  Attorney for <i>Church Of The Redeemer</i></p>	<p>Bill Scott, Esquire  PEDERSEN &amp; SCOTT, PC  775 St. Andrews Blvd.  Charleston, SC 29407  (843) 556-5656  Attorney for <i>Holy Trinity Episcopal Church</i></p>
<p>John Furman Wall, Esq.  140 Wando Reach Court  Mt. Pleasant, SC 29464  (843) 408-3433  Attorney for <i>The Church Of The Good Shepherd, Charleston, SC</i></p>	<p>Henry P. Wall, Esq.  Bruner Powell Wall &amp; Mullins, LLC  PO Box 61110  Columbia, SC 29260  Attorney for <i>The Church Of The Good Shepherd, Charleston, SC</i></p>
<p>Lawrence B. Orr, Esq.  ORR, ELMORE &amp; ERVIN  504 South Coit Street, P.O. Box 2527  Florence, SC 29503-2527  (843) 667-6613  Attorney for <i>St. Matthews Church</i>  <i>St. John's Episcopal Church of Florence, S.C.</i></p>	<p>Harry Easterling, Jr., Esq.  116 North Liberty Street  Bennettsville, SC 29512  (843) 479-2878  Attorney for <i>St. Davids Church</i>  <i>St. Paul's Episcopal Church of Bennettsville, Inc.</i></p>
<p>Mark Evans, Esquire  147 Wappoo Creek Drive., Ste. 202  Charleston, SC 29412  (843) 762-6640  Attorney for <i>St. James' Church, James Island, S.C.</i></p>	<p>Stephen S. McKenzie, Esquire  Coffey, Chandler &amp; Kent, P.A.  8 South Brooks Street  Manning, SC 29102  (803) 435-8915  Attorney for <i>St. Matthias Episcopal Church, Inc.</i></p>



<p>David L. DeVane, Esq.  110 N. Main Street  Summerville, SC 29483  (843) 285-7100  Attorney for <i>The Church of St. Luke and St. Paul, Radcliffeboro</i></p>	<p>William A. Bryan, Esq.  BRYAN &amp; HAAR  P.O. Box 14860  Surfside Beach, SC 29587  (843) 238-3461  Attorney for <i>The Church Of The Resurrection, Surfside</i></p>
<p>G. Mark Phillips, Esq.  NELSON, MULLINS, RILEY &amp;  SCARBOROUGH, LLP  Liberty Center, Suite 600  151 Meeting Street  Charleston, SC 29401-2239  (843) 720-4383  Attorney for <i>The Protestant Episcopal Church, Of The Parish Of St. Philip, In Charleston, In The State of South Carolina</i></p>	<p>W. Foster Gaillard, Esq.  WOMBLE, CARLYLE, SANDRIDGE &amp;  RICE, LLP.  P.O. Box 999  Charleston, SC 29402  (843) 722-3400  Attorney for <i>The Protestant Episcopal Church, Of The Parish Of St. Philip, In Charleston, In The State of South Carolina</i></p>
<p>Francis M. Mack, Esq.  656 Fort Motte Road  Saint Matthews, SC 29135  (803)-414-4138  Attorney for <i>The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew</i></p>	<p>P. Brandt Shelbourne, Esq.  Hope Lumpkin, Esq.  Shelbourne Law Firm  131 E. Richardson Avenue  Summerville, SC 29483  (843) 871-2210  Attorney for <i>The Vestry and Wardens Of St. Paul's Church, Summerville</i></p>
<p>Susan MacDonald, Esq.  Jim Lehman, Esq.  NELSON, MULLINS, RILEY &amp;  SCARBOROUGH, LLP  BNC Bank Corporate Center, Suite 300  3751 Robert M. Grissom Parkway  Myrtle Beach, SC 29577  (843) 448-3500  Attorney for <i>Trinity Church of Myrtle Beach</i></p>	<p>Allan P. Sloan, III, Esq.  Joseph C. Wilson IV, Esq.  PIERCE, HERNS, SLOAN &amp; WILSON  321 East Bay Street; P.O. Box 22437  Charleston, SC 29413  (843) 722-7733  Attorney for <i>Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church</i></p>
<p>David B. Marvel, Esq.  Marvel, Et Al, LLC  PO Box 22734  Charleston, SC 29413  Attorney for <i>The Church of St. Luke and St. Paul, Radcliffeboro</i></p>	<p>John B. Williams, Esquire  WILLIAMS &amp; HULST, LLC  209 East Main Street  Moncks Corner, SC 29461  (843) 761-8232  Attorney for <i>Trinity Episcopal Church, Pinopolis</i></p>

<p>George J. Kefalos, Esquire          GEORGE J. KEFALOS, P.A.          46A State Street          Charleston, SC 29401          (843) 722-6612          Attorney for <i>St. Andrews Church – Mt. Pleasant and The St. Andrews Church – Mt. Pleasant Land Trust</i></p>	<p>Oana D. Johnson, Esquire          Janik, LLP          215 East Bay Street, Suite 406          Charleston, SC 29401          (843) 203-4195          Attorney for <i>St. Andrews Church – Mt. Pleasant and The St. Andrews Church – Mt. Pleasant Land Trust</i></p>
<p>Stephen Spitz, Esquire          P.O. Box 535          Charleston, SC 29402          Attorney for <i>St. Andrews Church – Mt. Pleasant and The St. Andrews Church – Mt. Pleasant Land Trust</i></p>	<p>Henry Grimball, Esquire          WOMBLE, CARLYLE, SANDRIDGE &amp; RICE, LLP.          P.O. Box 999          Charleston, SC 29402          (843) 722-3400          Attorney <i>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</i></p>
<p>Henrietta U. Golding, Esq.          McNAIR LAW FIRM          P.O. Box 336          Myrtle Beach, SC 29578          (843) 444-1107          Attorney for <i>St. Luke's Church</i></p>	<p>Robert S. Shelton, Esq.          THE BELLAMY LAW FIRM          1000 29<sup>th</sup> Avenue          Myrtle Beach, SC 29577          (843) 448-2400          Attorney for <i>St. Paul's Episcopal Church of Conway</i></p>

  
 Bridget S. Steele

Columbia, South Carolina