

STATE OF SOUTH CAROLINA)
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 COUNTY OF DORCHESTER)
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)
 THE PROTESTANT EPISCOPAL)
 CHURCH IN THE DIOCESE OF)
 SOUTH CAROLINA, ET AL.,)
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 Plaintiffs,)
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 v.)
)
 THE EPISCOPAL CHURCH, ET AL.,)
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 Defendants.)
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IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2013-CP-18-00013

**DEFENDANTS’ MEMORANDUM
 OF LAW IN SUPPORT OF THEIR
 PETITION FOR AN ACCOUNTING**

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this Memorandum of Law in Support of their Petition For An Accounting.

I.

BACKGROUND

Defendants in this action have been declared beneficiaries of trusts comprising both real and personal property that have been established by law, and have been heretofore unlawfully claimed by the Plaintiffs since about 2012.

The South Carolina Supreme Court made such declarations of ownership in Defendants’ favor in its Opinion of August 2, 2017. A motion for a Rehearing by the Plaintiffs in the matter was subsequently filed and denied by the Court on November 17, 2017. Thereafter, Plaintiffs filed a Petition for a Writ of Certiorari in the United States Supreme Court which was denied on June 11, 2018. Thus, the Opinion and decisions therein, and declarations of the South Carolina

Supreme Court are final in every respect. Defendants have heretofore filed in this Court a Petition for Execution of the final Supreme Court Orders.

II.

LEGAL STANDARD

“An accounting is essentially an equitable remedy.” Rogers v. Salisbury Brick Corp., 299 S.C. 141, 145, 382 S.E.2d 915, 917 (1988) (citing Cox v. Lunsford, 272 S.C. 527, 252 S.E.2d 918 (1979); Evatt v. Campbell, 234 S.C. 1, 106 S.E.2d 447 (1959); Smith v. Union Central Life Ins. Co., 112 S.C. 356, 99 S.E. 830 (1919)).

The equitable remedy of an accounting is one of the remedies provided by the South Carolina Trust Code. Pursuant to S.C. Code Ann. §62-7-1001(b): “To remedy a breach of trust that has occurred or may occur, the court may: . . . (4) order a trustee to account.”

III.

ACCOUNTING REQUESTED BY THIS PETITION

First, this Petition seeks an Accounting to determine the identity and value of assets currently held by the Plaintiffs that must be turned over to the Defendants in accordance with the Supreme Court Order.

Second, this Petition seeks an Accounting to determine the identity and value of all assets held by the Plaintiffs as of October 2008, and what has been their disposition since that time. This is necessary in order to determine what compensation Defendants are entitled to as a result of Plaintiffs’ wrongful possession and control of the assets since October 2012, and any wrongful disposition of the assets leading up to their departure.

This Court clearly has authority based upon equitable principles to order the foregoing Accounting in this matter.

For the foregoing reasons, Defendants respectfully request that this Court appoint a qualified accounting firm to conduct an Accounting for the reasons set forth herein, and based on the criteria described hereinbelow, and to provide a report of its findings to this Court and to the Parties herein to allow this Court to equitably proceed in this matter to restore Defendants' property to them in accordance with the August 2, 2017 ruling of the Supreme Court, and compensate Defendants for any loss in value of the property since October 2012.

In order to ensure a complete and thorough Accounting, Defendants request that the Court order Plaintiffs to provide to the Court-appointed experts the information set out below, as it pertains to the following entities:

1. The Trustees of the Protestant Episcopal Church in South Carolina;
2. The Protestant Episcopal Church in the Diocese of South Carolina (1973 Corporation) aka The Diocese of South Carolina;
3. Camp St. Christopher, which is owned and operated by the above organizations.
4. Each of the 29 parishes that the South Carolina Supreme Court has declared are to be returned to The Episcopal Church and The Episcopal Church in South Carolina (the Diocese associated with The Episcopal Church, sometimes referred to as The Associated Diocese.);
5. Any other entities or institutions heretofore claimed to be owned or controlled by the Plaintiffs herein which the South Carolina Supreme Court has declared is the property of The Episcopal Church and its Associated Diocese as trust beneficiaries.

Information to be supplied:

- a. All audit reports, both formal and informal, resulting from audits of all of the above-named entities and institutions from January 1, 2008 to date. This request includes specifically audits conducted by the firm of M^cCay Kiddy, LLC, Certified Public Accountants and Advisors; audits conducted by any other firm; and any less formal audits conducted or reported by Norman M^cNair of the parishes to be returned to the Defendants;
- b. Copies of all audited financial statements and audited managed investment accounts of all the institutions and entities listed hereinabove (diocesan and parish investment accounts), from January 1, 2008 to date;
- c. Copies of all bank account statements of all the institutions and entities listed hereinabove from January 1, 2008 to date;
- d. Any and all financial reports and data that reveal the amount of legal fees and related expenses incurred by all the Plaintiff parties to this litigation and the related litigation currently pending in the United States District Court;
- e. Copies of all annual operation budgets prepared and adopted by all of the entities defined hereinabove from January 1, 2008 to the present;
- f. Any other financial material available to Plaintiffs that provides information to establish income, expenses and the value of assets of all the institutions and entities described hereinabove;
- g. Any and all reports received from investment advisors to any institution or entity listed hereinabove from January 1, 2008 to present;
- h. Any and all evidence that reveals the transfer of any financial account from one financial institution to another and/or from one institution or individual to another

institution or individual from January 1, 2008 to present by the Protestant Episcopal Church in the Diocese of South Carolina, or by the Trustee corporation, or any other diocese entity, or by any of the 29 parishes that are the subject of this Accounting procedure;

- i. Any and all documents including governing documents (corporate charters, Bylaws, etc.) and other legal documents that establish restrictions on the use of any funds owned or held by the audited institutions or entities described herein.

(Signature page to follow)

Dated: September 24, 2018

Respectfully submitted

/s/Thomas S. Tisdale, Jr.

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