

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 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; )  
 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; St. Luke's )  
 Church, Hilton Head Island; )  
 St. Bartholomews Episcopal Church; )  
 St. Davids Church; St. James' Church, )  
 James Island, S.C.; St. Paul's Episcopal )  
 Church of Bennettsville, Inc.; )  
 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 St. Helena and The Parish )  
 Church of St. Helena Trust; The Vestry and )  
 Church Wardens Of The Episcopal Church )  
 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 )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**PLAINTIFFS' RESPONSE IN  
 OPPOSITION TO DEFENDANTS'  
 MEMORANDUM OF LAW IN  
 SUPPORT OF THE PETITION FOR  
 AN ACCOUNTING**

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.	)
Andrew	)
	)
PLAINTIFFS,	)
	)
v.	)
	)
The Episcopal Church (a/k/a, The	)
Protestant Episcopal Church in the	)
United States of America); The Episcopal	)
Church in South Carolina	)
DEFENDANTS.	)
	)

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The Plaintiffs submit this Response to Defendants’ Memorandum of Law in Support of their Petition for an Accounting.

Defendants allege that they have been declared beneficiaries of trust comprising of both real and personal property that have been established by law according to the August 2, 2017 decisions of the South Carolina Supreme Court. *The Protestant Episcopal Church in South Carolina, et al.*, 421 S.C. 211, 800 S.E.2d 82 (2017) (“Collective Opinions”). As highlighted by the Plaintiffs Memorandum in Support of Motion for Clarification and Other Relief, the Defendants’ interpretation of the Opinion is not supported by the Supreme Court’s rules or the Record on Appeal.

The Defendant TECSC originally counterclaimed for an accounting against the Plaintiff parishes while Defendant TEC counterclaimed against individual counterclaim defendants. *See* TEC Answers and Counterclaims, p. 98 (Mar. 31, 2013); TECSC Answer and Counterclaims, p. 79-80 (Mar. 31, 2013). However, Defendant TEC’s motion to join additional counterclaim defendants for an accounting was denied by the trial court. Or. Denying Defs. Mot. To Join Add’l

Counterclaim Defs. (Oct. 1, 2013). The trial court also denied subsequent motions to reconsider. Or. Denying Mot. To Reconsider (Dec. 31, 2013). Defendant TECSC's counterclaim for an accounting against the Plaintiff Parishes was denied by the court on February 13, 2015, Final Or. (Feb. 3, 2015), and the subsequent motion to reconsider was also denied. Or. Denying Mot. To Reconsider (Feb. 23, 2013); *see* Defs. Notice and Mot. for Reconsideration of Final Or., p. 67, 72 (Feb. 13, 2015).

Neither of these rulings by Judge Goodstein was appealed. Defendants failed to appeal the denial of TEC's motion to join additional counterclaim defendants (against whom accounting claims were to be made) and failed to appeal the denial of TECSC's accounting count in the counterclaims against the Plaintiff Parishes. *See* Brief of Appellant, 2015-000622 (Aug. 6, 2015).

The law of the case doctrine prohibits the reconsideration of issues that were not appealed. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458–59, 674 S.E.2d 151, 153 (2009) (citing *C.J.S. Appeal & Error* § 991 (2008); *see also Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247–48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal)). The Defendants failure to appeal the

accounting counterclaims necessarily defeats this attempt for an accounting under the law of the case doctrine.

Additionally, the Collective Opinions do not find a breach of trust nor did the trial court. Without a declaration of trust by this court and a finding of its breach, the accounting sought under S.C. Code § 62-7-1001(b) should be denied. Further, the purported recipient of this trust interest, TEC, did not counterclaim for an accounting against the parishes. TEC is now seeking from this court something never sought before and is barred by the law of the case. *See* TEC Answers and Counterclaims, (Mar. 31, 2013).

It is respectfully submitted that the Defendants' Notice for an Accounting should be denied.

October 5, 2018

Respectfully submitted,

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