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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF DORCHESTER |) | FOR THE FIRST JUDICIAL CIRCUIT |
| |) | |
| The Protestant Episcopal Church In The Diocese Of South Carolina, <i>et al.</i> |) | Case No. 2013-CP-1800013 |
| |) | |
| |) | DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR AMENDED PETITION FOR EXECUTION AND FURTHER RELIEF ON DECLARATORY JUDGMENTS OF THE SOUTH CAROLINA SUPREME COURT AND FOR THE APPOINTMENT OF A SPECIAL MASTER |
| v. |) | |
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| The Episcopal Church, <i>et al.</i> |) | |
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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 amended petition under the authority of 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, 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.

INTRODUCTION

This petition asks this Court, pursuant to its jurisdiction upon remittitur, to enforce the final judgment of the South Carolina Supreme Court in this matter. The South Carolina Supreme Court held that twenty-nine of the parishes hold their property in trust for the benefit of TEC and its Associated Diocese, TECSC. The South Carolina Supreme Court further held that a trustee

corporation holds the diocesan property in trust for the benefit of the Associated Diocese, TECSC. This Court, respectfully, should enforce these trust interests and effect an orderly transition of possession and control of the property to which TEC and its Associated Diocese, TECSC, are entitled by the final judgment of the South Carolina Supreme Court.

II.

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, 421 S.C. 211, 806 S.E.2d 82 (2017).

On September 1, 2017, the non-prevailing Plaintiffs petitioned for a rehearing and made a motion to recuse Justice Hearn.

On November 17, 2017, the South Carolina Supreme Court denied their petition for rehearing and their motion to recuse Justice Hearn and remitted the case. The South Carolina Supreme Court's order specifically provided as follows: ***"Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur."*** This order was signed by four of the five Justices: J. Beatty, J. Pleicones, J. Kittredge, and J. Toal (with J. Hearn not participating).

On February 9, 2018, the non-prevailing Plaintiffs filed a petition for writ of certiorari to the United States Supreme Court.

On June 11, 2018, the United States Supreme Court denied that petition for writ of certiorari.

Accordingly, the August 2, 2017 opinion of the South Carolina Supreme Court is not subject to any further appeals in any court in this State or this Country.

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 claims between the parties to this case.¹

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.

III.

FACTUAL BACKGROUND

Plaintiffs announced their disaffiliation from TEC 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 names, trademarks, service marks, and seals, 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 TEC's and TECSC's trust interests in the diocesan property and the property of twenty-nine of the parishes.

¹ For the purpose of attempting to resolve all of the issues between the parties in a single action, TEC and its Associated Diocese, TECSC, recently asked the federal court to exercise supplemental jurisdiction over the trusts 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 over the trusts for property ownership distribution issues mandated by the South Carolina Supreme Court and opined that TEC and its Associated Diocese, TECSC, 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. vonRosenberg, 2:13-cv-00587-RMG (Order and Opinion dated April 16, 2018, at 6).

TEC and its Associated Diocese, TECSC, 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.

IV.

RELIEF REQUESTED AND LEGAL AUTHORITIES

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, SCRPC, 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, following the remittitur issued by the South Carolina Supreme Court.

This Court does not have jurisdiction, however, to consider Plaintiffs' pending motion to "clarify" the August 2, 2017 Opinion of the South Carolina Supreme Court. This action was remitted to this Court, not remanded for a new trial. See 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").

The Opinion of the South Carolina Supreme Court is final and cannot be clarified or otherwise revised by this Court. The South Carolina Supreme Court's order denying the non-prevailing Plaintiffs' petition for a rehearing specifically provides as follows: ***"Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur."*** The United States District has likewise recognized the finality of the South Carolina Supreme Court's Opinion, stating as follows: "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.

1. The Diocesan Property

With respect to the diocesan property, 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, TECSC, 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 the Associated Diocese, TECSC, in accordance with the Trustees’ legislative charter, as further explained below.

All real and personal diocesan property (which includes but is not limited to Camp St. Christopher,² the diocesan offices, the Bishop’s residence, diocesan funds and accounts, and diocesan names, trademarks, service marks, and seals³) 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.

² Camp St. Christopher is the most valuable piece of diocesan property and accordingly has been prominently featured in this dispute. Like all of the other diocesan property, Camp St. Christopher is held in trust by the Trustees for the benefit of the Associated Diocese, TECSC. Plaintiffs’ contention that the Trustees could somehow hold Camp St. Christopher in trust for the Associated Diocese, TECSC, while at the same time holding the other diocesan property in trust for the disassociated diocese, defies the South Carolina Supreme Court’s Opinion, the legislative charter of the Trustees, and logic altogether.

³ Although the trademark claims between the parties were deferred to the related federal action, the enforcement of Defendants’ trust interests, including trust interests in any names, trademarks, service marks, and seals, is properly before this Court. To be clear, this Court need not and should not consider any issues of trademark infringement, public confusion, or violations of the Lanham Act, which are before the federal court. This Court need only consider the names, trademarks, service marks, and seals as items of personal property, subject to TEC’s and TECSC’s trust interests, along with all of the other personal property.

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 A.

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, TECSC; and is not the dissociated diocese led by Bishop Lawrence named in this case as a Plaintiff. 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) (“ . . . title is in the trustee corporation for the benefit of the associated diocese . . .”); 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, TECSC, 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, TECSC, be installed as the Board of the Trustees to hold the diocesan property in trust for the Associated Diocese, TECSC.

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, TECSC, be installed as Directors of that corporation, or that any such property be transferred to the Trustees, as elected by the Associated Diocese, TECSC.

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 property of twenty-nine parishes, 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 TEC and its Associated Diocese, TECSC, 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 real and personal property of the twenty-nine parishes (which includes parish land and buildings, parish funds and accounts, and other parish property such as books, silver, historical archives, parish names, trademarks, service marks, and seals⁴) is held in trust by the parish corporations, according to the Dennis Canon, adopted by TEC 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, 806 S.E.2d at 87 (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-nine parish corporations imposed trusts on the parish property under state law, and upon their disaffiliation, title to their property belonged to TEC and its Associated Diocese, TECSC. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 230-31, 806 S.E.2d at 92-3 (Pleicones, A.J.); id. at 248 & n. 27, 806 S.E.2d

⁴ See supra Footnote 3.

at 101-02 & n. 27 (Hearn, J., concurring); *id.* at 250-51, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part); *id.* at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority’s decision on parish property) (“[W]ith regard to the twenty-eight⁵ 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...”).

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 TEC and its Associated Diocese, TECSC, 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 .

⁵ The twenty-ninth parish is Old St. Andrews, which was not identified among the list of seven parishes that retained their property in the South Carolina Supreme Court’s August 2, 2017 Order, which included: Christ the King Waccamaw; St. Matthews Church, Darlington; St. Paul’s Episcopal Church, Conway; The Episcopal Church of Parish of Prince George Winyah, Georgetown; St. John’s, Florence; and St. Matthias Episcopal Church, Summerton. *Id.* at 265 n. 49, 806 S.E.2d at 111 n. 49. The seventh is St. Andrew’s, Mount Pleasant, which operates using two corporate entities that were both named as parties to the action and both identified in the Supreme Court’s order, namely St. Andrews Church-Mt. Pleasant Land Trust and the Parish of St. Andrew, Mt. Pleasant. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 242 & n. 21, 806 S.E.2d 98 & n. 21 (Hearn, J., concurring); *id.* at 421 S.C. at 248 n. 27, 806 S.E.2 102 n. 27 (Hearn, J., concurring) (“To clarify the dissent’s summary of this case’s resolution, I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church, but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes.”). Plaintiffs expressly raised this issue regarding Old St. Andrews in their petition for rehearing, which was denied. Defendants erroneously referred to “twenty-eight” parishes in our Amended Petition for Execution, instead of “twenty-nine,” and hereby correct that misstatement.

. . . 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, TEC and its Associated Diocese, TECSC, 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 TEC and its Associated Diocese, TECSC, contained in the Constitution and Canons of each.

Ordering such relief will enable TEC and its Associated Diocese, TECSC, 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.⁶

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

⁶ Plaintiffs would have to amend the names of their parish corporations to continue operating and providing religious services to the public. Their corporate names, which are also used as trademarks, are part of the personal property held by the parishes subject to the trust interest of TEC and its Associated Diocese, TECSC. Plaintiffs' continued use of those names would constitute trademark infringement, dilution, and false advertising.

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.

V.

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.

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)

Dated: September 24, 2018

Respectfully submitted

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