

THE STATE OF SOUTH CAROLINA
In the Supreme Court

The Episcopal Church in South Carolina and
The Episcopal Church Petitioners,

v.

Edgar W. Dickson, in his official capacity as
Dorchester County Circuit Court Judge,
In re: Civil Action No. 2013-CP-18-00013,
on remittitur, following the final decision of this Court
in *Protestant Episcopal Church in the Diocese of South
Carolina v. The Episcopal Church*, 421 S.C. 211,
806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017),
cert. denied (June 11, 2018) Respondent.

PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

Petitioners The Episcopal Church in South Carolina (“TECSC”) and The Episcopal Church (“TEC”) (collectively the “Petitioners”) petition this Court for a Writ of Mandamus directing the Dorchester County Circuit Court to enforce this Court’s mandate in its final and dispositive decision in *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018), by effectuating the transfer of possession and control of the diocesan property and the property of 29 of the parishes at issue and providing any further relief consistent with that mandate.

The grounds for this Petition, as set forth in further detail below, are briefly stated as follows. This Court issued a final and dispositive decision and mandate in the underlying case on August 2, 2017. Three Justices concluded that Petitioners are entitled to the diocesan property and the property of 29 of the parishes. The non-prevailing parties filed a Petition for Rehearing with

this Court, acknowledging that this Court's decision was dispositive against them as to the property at issue. This Court denied that Petition for Rehearing on November 17, 2017, expressly stating that "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*." (emphasis added). The non-prevailing parties then filed a Petition for Writ of Certiorari to the United States Supreme Court, which was denied on June 11, 2018.

The Circuit Court, on remittitur, has a duty to follow and enforce the mandate from this Court's final and dispositive decision. That duty is absolute and ministerial. Petitioners have a specific legal right to possession and control of the property awarded to them by this Court, for which it is necessary for the Circuit Court to discharge its duty on remittitur. The Circuit Court has failed to discharge that duty.

Since the underlying action was remitted on November 17, 2017, the Circuit Court has not taken any action to enforce the mandate of this Court. After Petitioners made attempts on their own to accomplish the transfer of the property in cooperation with the non-prevailing parties through mediation and then sought such a transfer as supplemental relief in the ongoing related federal action, Petitioners filed a Petition for Enforcement with the Circuit Court on May 8, 2018. The Circuit Court has unduly delayed, now more than 10 months, in considering that Petition for Enforcement. At a hearing on November 19, 2018, the Circuit Court declined to hear the Petition for Enforcement. Instead, the Circuit Court heard the non-prevailing parties' Motion for Clarification. The Circuit Court expressed a belief that this Court's decision and mandate are not "*clear*" and not "*final*," and in turn, that it is within the Circuit Court's jurisdiction to make its own "*decision*" about the property, which would lead to a further appeal to this Court by "*which ever side loses*." November 19, 2018 Tr. at 24. The Circuit Court subsequently requested that the parties provide certain analysis and evidence, which appear to pertain to its reconsideration of the

merits, exceeding its jurisdiction on remittitur. Petitioners made responsive submissions accordingly, but additionally stressed, as they have done throughout the proceedings on remittitur, that the merits have been finally decided by this Court and that revisiting them is beyond the Circuit Court's jurisdiction on remittitur. Most recently, passing over the Petition for Enforcement once again, the Court scheduled a hearing in a separate action filed by the Non-Prevailing Parties under the Betterment Act. As of the date of this filing, the Circuit Court has still yet to hear the Petition for Enforcement or take any action to enforce this Court's mandate by effectuating the transfer of the property.

This Court considered the underlying case on appeal for more than two years before issuing its dispositive opinion. All five Justices went to great lengths to explain their positions on the merits. Much can be said about the controversial issues involved in this dispute over church property, but the mandate of this Court – the dispositional outcome agreed upon by the majority – cannot reasonably be said to be unclear and not final. Petitioners are entitled to the diocesan property and the property of 29 of the parishes at issue.

Petitioners have no other legal remedy but to file this Petition for a Writ of Mandamus. The Circuit Court has failed to perform its duty consistent with this Court's mandate on remittitur. The property to which Petitioners are entitled includes unique real estate, historic buildings, and artifacts that cannot be replaced and for which monetary compensation would be inadequate. It also includes accounts held in trust. That property is currently being wasted, misused, and depleted by the non-prevailing parties. In open defiance of this Court's decision recognizing Petitioners' trust interests in the property, the non-prevailing parties recently stated in a brief to the Circuit Court that they have "*repudiated their roles as trustees.*" This is a plain admission that they are not holding and protecting the property for Petitioners, but rather are improperly using it for their own purposes. The extraordinary remedy sought – this Court's issuance of a Writ of Mandamus

– is therefore necessary given the long delay and misdirected undertaking of the Circuit Court to attempt to revisit the merits, while the property to which Petitioners are entitled is being wasted, misused, and depleted.

In accordance with Rule 65(f)(1), SCRCF, this Petition for Writ of Mandamus is supported by the Affidavit of Thomas S. Tisdale, Jr., filed herewith.

PROCEDURAL BACKGROUND

The following is a brief timeline of events that are pertinent to this Petition for Writ of Mandamus.

Circuit Court (trial)

January 4, 2013	Complaint by Non-Prevailing Parties
February 3, 2015	Post-trial order
February 23, 2015	Reconsideration denied

This Court (appeal)

March 24, 2015	Notice of appeal by Petitioners
April 15, 2015	Appeal certified
August 2, 2017	Opinion
September 1, 2017	Petition for Rehearing by Non-Prevailing Parties
November 17, 2017	Petition for Rehearing denied
	Remittitur

Circuit Court (separate Betterment Action, Case No. 2017-CP-18-1909)

November 19, 2017	Separate action Summons and Complaint filed by Non-Prevailing Parties under Betterment Act for monetary damages
December 15, 2017	Petitioners' Motion to Dismiss Betterment Action
December 27, 2017	Non-Prevailing Parties' Motion to Establish Complex Case Designation for Betterment Action

Circuit Court (remittitur)

March 23, 2018 Non-Prevailing Parties' Motion for Clarification (supplemented on September 24, 2018)

May 8, 2018 Petitioners' Petition for Enforcement (amended on May 16, 2018)

U.S. Supreme Court (certiorari)

June 11, 2018 Certiorari denied by the U.S. Supreme Court

Circuit Court (remittitur)

July 7, 2018 Petitioners' Petition for an Accounting

July 26, 2018 Status conference

August 2, 2018 Submissions by both sides, at Circuit Court's request, listing issues before the Circuit Court and stating how the Circuit Court should proceed

September 4, 2018 Briefing schedule set by Circuit Court

September 24, 2018 Opening briefs for Petition for Enforcement, Petition for an Accounting, and Motion for Clarification

October 5, 2018 Response briefs for Petition for Enforcement, Petition for an Accounting, and Motion for Clarification

October 12, 2018 Reply briefs for Petition for Enforcement, Petition for an Accounting, and Motion for Clarification

November 19, 2018 Hearing

Circuit Court declined to hear Petitioners' Petition for Enforcement and Petition for Accounting, and instead heard Non-Prevailing Parties' Motion for Clarification

Circuit Court intimated it may believe this Court's decision and mandate are not "*clear*," not "*final*," and in turn, that it is within the Circuit Court's jurisdiction to make its own dispositive "*decision*" about the property, which would lead to a further appeal to this Court by "*which ever side loses*" (Tr. at 24)

	Circuit Court informed the parties that it would be asking “follow up questions by email”
	Circuit Court requested to be provided with a copy of Power Point Presentation by Non-Prevailing Parties
November 27, 2018	Petitioners’ Letter to Circuit Court responding to Power Point Presentation by Non-Prevailing Parties
December 13, 2018	Non-Prevailing Parties’ Letter to Circuit Court providing Proposed Order
December 18, 2018	Petitioners’ Letter to Circuit Court providing Proposed Order
January 8, 2019	E-mail from the Circuit Court to parties requesting an analysis of this Court’s decision regarding various issues: “There was a chart prepared in the PowerPoint presentation that was shown in Court on November 19, 2018. That chart purported to indicate the issues of agreement among the various justices [standard of review for facts, legal rationale, parish property, Trustees’ beneficiary, and service marks]. The Court would appreciate a compilation, with appropriate page citations, quoting from the five opinions, the areas where two or more justices are in agreement and their agreement either supports or does not support your side.”
January 14, 2019	E-mail from the Circuit Court to parties requesting evidence pertaining to the merits of the case on the particular issue of whether and which of the parishes hold their property in trust pursuant to their accession to the Dennis Canon: “The Court would like documents supporting that there was a vote on the Dennis Cannon on or before September 1979. Also, please provide any accompanying documents which indicate what churches voted and what churches did not vote (i.e. messages [specifically numbers 75 and 76], voting sheets, if presented anywhere previously, please provide this information to the Court (transcript and/or otherwise).”
January 16, 2019	Non-Prevailing Parties’ Submission in response to Circuit Court’s E-mail dated January 8, 2019
January 18, 2019	Non-Prevailing Parties’ Submission in response to Circuit Court’s E-mail dated January 14, 2019

January 22, 2019	Petitioners' Submission in response to Circuit Court's E-mail dated January 8, 2019
January 25, 2019	Petitioners' Submission in response to Circuit Court's E-mail dated January 14, 2019
January 30, 2019	Non-Prevailing Parties' Response Petitioners' Submission dated January 25, 2019
February 1, 2019	Petitioners' Reply to Non-Prevailing Parties' Response dated January 30, 2019
February 4, 2019	Non-Prevailing Parties' Sur-reply to Petitioner's Reply dated February 1, 2019

Circuit Court (separate Betterment Action, Case No. 2017-CP-18-1909)

March 18 and 19, 2019	E-mails from the Circuit Court advising that it will hear the pending motions in the separate Betterment Action on March 27, 2019, including Petitioners' Motion to Dismiss and the Non-Prevailing Parties' Motion to Establish Complex Case Designation
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Circuit Court (remittitur)

March 20, 2019 (Date of this filing)	Circuit Court has yet to hear Petition for Enforcement or take any action to enforce this Court's mandate
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STATEMENT OF FACTS

A. This Court's decision is final and dispositive

This Court's decision and mandate was issued on August 2, 2017 and that decision is final and dispositive. Petitioners were defendants in the underlying action. They generally prevailed in this Court's decision except as to the return of the property of certain parishes. The non-prevailing parties included 29 parishes and a schismatic organization that considers itself to be a "disassociated diocese" led by Bishop Lawrence (the "Non-Prevailing Parties").¹ The Non-

¹ The schismatic organization that considers itself to be a "disassociated diocese" led by Bishop Lawrence has unlawfully identified itself, since 2012, as the one and only historic regional diocese of The Episcopal Church, claiming to have removed it from the Church, and misappropriating its historic names, property, corporations, institutions, trust interests, and goodwill. The Petitioner currently operating under the name "The Episcopal Church in South

Prevailing Parties' Petition for Rehearing was denied on November 17, 2017 and the remittitur was issued the same day.² There was no remand. This Court's Order denying the Non-Prevailing Parties' Petition for Rehearing expressly stated: "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*." (emphasis added). The Non-Prevailing Parties sought a Writ of Certiorari from the U.S. Supreme Court and their petition was denied on June 11, 2018.

B. This Court's mandate is that Petitioners are entitled to the diocesan property and the property of 29 parishes

The mandate in this Court's August 2, 2017 decision is that the Petitioners are entitled to the diocesan property and the property of 29 parishes.

As to the parish property, in the controlling concurring opinion, Chief Justice Beatty held that "those parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property," 421 S.C. at 249, 806 S.E.2d at 102, but he "agree[d] with the majority as to the disposition of the remaining parishes." 421 S.C. at 251, 806 S.E.2d at 103. Justice Hearn set out the majority's "disposition of the remaining parishes," *id.*, stating that "I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes." 421 S.C. at 248, n.27, 806 S.E.2d at 102, n.27. She further explained that "Chief Justice

Carolina" is that historic diocese and is entitled to its historic diocesan names, property, corporations, institutions, and trust interests.

² The Non-Prevailing Parties made many of the same arguments in their Petition for Rehearing to this Court that they have been making to the Circuit Court in support of their Motion for Clarification.

Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes.” *Id.*³

With respect to the diocesan property, Chief Justice Beatty held the “disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” 421 S.C. at 251 n.29, 806 S.E.2d at 103 n.29. That holding applies to all diocesan property, including Camp Saint Christopher (the largest property), because all diocesan property is held in trust for that historic diocese under an 1880 Act of the General Assembly of South Carolina, as amended by a 1902 Act.⁴ Justices Pleicones and Hearn, who respectively “join[ed]” and “concur[red] fully” with each other’s opinions, 421 S.C. at 231, 806 S.E.2d at 93, likewise found “the Associated Diocese to be the true Lower Diocese of South Carolina,” 421 S.C. at 231, 806 S.E.2d at 92, “entitled to all property” of that historic diocese, “including Camp Saint Christopher.” 421 S.C. at 248, 806 S.E.2d at 101-2.

The Non-Prevailing Parties repeatedly acknowledged that this Court made a dispositive decision in this property dispute against them in their Petition for Rehearing to this Court and their Petition for Writ of Certiorari to the United States Supreme Court. For example, in their Petition

³ The names of the seven parishes are listed in a footnote in Justice Toal’s opinion. 421 S.C. at 265, n.49, 806 S.E.2d at 111, n.49. One of those parishes, commonly known as St. Andrew’s Mount Pleasant, operates using two entities (a land trust and a separate operating corporation) that were both separately named as plaintiffs in the state case and both included in Justice Toal’s list. *Id.* This led to what Justice Hearn recognized as “a discrepancy” with the dissent’s count of only 28 acceding parishes, which they apparently calculated by subtracting 8, instead of 7, from 36, the total number of parishes in the case. 421 S.C. at 242, n.21, 806 S.E.2d at 98, n. 21. The Non-Prevailing Parties have already had and taken their opportunity to challenge this Court’s holding that 29 trusts exist in their Petition for Rehearing, which was denied.

⁴ 1880 Act No. 222 § 1 (“Be it enacted . . . That the bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina, and their successors in office or a majority of them, 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” (emphasis added)); 1902 Act No. 621 § 3 (transferring obligations of 1880 Act No. 222 to a board of trustees).

for Rehearing to this Court, the Non-Prevailing Parties stated: “*As a result, the majority would transfer the real and personal property of South Carolina religious organizations, many of which preexisted The Episcopal Church and the United States, to a New York religious organization.*” Petition for Rehearing at 36 (emphasis added).

C. The Circuit Court has failed to enforce this Court’s mandate

The remittitur issued by this Court on November 17, 2017 vested the Circuit Court with the jurisdiction and duty to enforce this Court’s mandate – entitling Petitioners to the diocesan property and the property of 29 of the parishes at issue. Again, there was no remand.

The Circuit Court has unduly delayed in enforcing this Court’s mandate. After the Non-Prevailing Parties failed to comply with this Court’s mandate and the parties were otherwise unable to resolve their differences in a mediation, Petitioners initiated enforcement proceedings. They tried this first in United States District Court.⁵ Then, Petitioners filed a Petition for Enforcement with the Circuit Court. That was more than 10 months ago, on May 8, 2018. The Circuit Court has since held one status conference, on July 26, 2018, and one motion hearing, on November 19, 2018. On each occasion, Petitioners asked that their Petition for Enforcement be heard, but the Circuit Court has declined to do so.

Instead, at the November 19, 2018 motion hearing, the Circuit Court heard oral arguments on a Motion for Clarification filed by the Non-Prevailing Parties on March 23, 2018. Tr. at 3 (“THE COURT: The first motion that I have today . . . I think the one I’m most interested in is the

⁵ On March 1, 2018, Petitioners sought the enforcement of this Court’s mandate in the related federal action pending in the United States District Court of South Carolina by asking that court to remove and replace those acting as trustees over the diocesan and parish property at issue. *vonRosenberg v. Lawrence*, 2:13-587-RMG (D.S.C.) (Dkt. 124). In an order dated April 16, 2018, the district court recognized this Court’s mandate but declined to exercise supplemental jurisdiction, recommending instead that Petitioners take possession of the property to which they are entitled by enforcing this Court’s mandate in the Circuit Court that received the remittitur. *Id.* (Dkt. 140).

motion to decide what I'm supposed to decide. The clarification motion, okay."). That motion generally raises the same arguments that the Non-Prevailing Parties raised in their Petition for Rehearing, which this Court denied.

During the same hearing, the Circuit Court indicated that it believes this Court's decision and mandate are not "*clear*" and not "*final*," and in turn, that it is within the Circuit Court's jurisdiction to make its own dispositive "*decision*" about the property, which would lead to a further appeal to this Court by "*which ever side loses.*" Tr. at 24 ("THE COURT: Yes, we wouldn't be here if it was clear."); Tr. at 40-41 ("THE COURT: You know, I know your argument is that it's final and I think that – well, I don't know if it will be their final ruling on it or not. Somehow I don't believe that if anybody has agreed to my decision that they're going to let it stand here . . . I'm just thinking which ever side loses when I decide here they're going to appeal it . . . the issue that that is a two-two split on whether there was going to be a remand. That's why I think they punted it here . . . So I can be wrong. Y'all can all be pleased with my decision.").

At the end of the hearing, the Circuit Court informed the parties that it would be asking "follow up questions by email." Tr. at 47 ("Now, as I mentioned I'm going to ask y'all follow up questions by email. Those emails and your responses are going to be part of the record in this case, because I'm going to need a little bit of clarification about, okay, if you say this – because y'all are much more familiar with the record.").

Not until January 8, 2019 did the Circuit Court ask such a follow up question, requesting that the parties provide it with an analysis of this Court's decision, as follows:

"There was a chart prepared in the PowerPoint presentation that was shown in Court on November 19, 2018. That chart purported to indicate the issues of agreement among the various justices [standard of review for facts, legal rationale, parish property, Trustees' beneficiary, and service marks]. The Court would appreciate a compilation, with appropriate page citations, quoting from the five opinions, the areas where *two or more justices* are in

agreement and their agreement either supports or does not support your side.” E-mail dated January 8, 2019 (emphasis added).⁶

Subsequently, on January 14, 2019, the Circuit Court further requested that the parties provide it with evidence pertaining to the merits of the case on the particular issue of whether and which of the parishes hold their property in trust pursuant to their accession to the Dennis Canon, as follows:

“The Court would like documents supporting that there was a vote on the Dennis Cannon on or before September 1979. Also, please provide any accompanying documents which indicate what churches voted and what churches did not vote (i.e. messages [specifically numbers 75 and 76], voting sheets, if presented anywhere previously, please provide this information to the Court (transcript and/or otherwise).” E-mail dated January 14, 2019.⁷

Petitioners responded in kind to these requests, making submissions to the Circuit Court on January 22, 2019, January 25, 2019, and February 1, 2019. In their submissions, Petitioners additionally stressed, as they have done throughout the proceedings on remittitur, that these issues have been finally decided by this Court and that revisiting them is beyond the Circuit Court’s jurisdiction on remittitur.

There has been no word from the Circuit Court in the underlying action since Petitioners made these submissions. Most recently, passing over the Petition for Enforcement once again, the Court scheduled a hearing in the separate action filed by the Non-Prevailing Parties under the

⁶ This request for an analysis of this Court’s decision, particularly as to the underlying standard of review and legal rationale applied by this Court, has no relevance to enforcing this Court’s mandate. Further, it is notable that the Circuit Court is requesting analysis on various issues where “two or more justices are in agreement,” as opposed to focusing on the three-justice-majority mandate.

⁷ This request for documents likewise has no relevance to enforcing this Court’s mandate. The passage and adoption of the Dennis Canon by The Episcopal Church in 1979 according to its hierarchical governance is not at issue and is beyond dispute. This Court found that trusts were created by the parishes under South Carolina law because of subsequent accession by the parishes.

Betterment Act, which is to take place on March 27, 2019.⁸ As of the date of this filing, the Circuit Court has still yet to hear the Petition for Enforcement or take any action to enforce this Court's mandate by effectuating the transfer of the property.

Since this Court's decision on August 2, 2017, which is now more than 19 months ago, the Non-Prevailing Parties have continued (as they have done since this dispute began in 2012) to unlawfully possess and control the property to which Petitioners are entitled. That property is being wasted, misused, and depleted because the Circuit Court has failed to perform its duty to enforce this Court's mandate.

LEGAL AUTHORITIES AND ANALYSIS

"The Supreme Court has the power to issue writs of mandamus," pursuant to the State's Constitution. *Edwards v. State*, 383 S.C. 82, 678 S.E.2d 412 (2009) (citing S.C. CONST. art. V, § 5 and S.C. Code Ann. § 14-3-310 (1976)). "The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issues in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed, and there is no other specific remedy." *Willimon v. City of Greenville*, 243 S.C. 82, 86-87, 132 S.E.2d 169, 170-71 (1963). "The primary purpose or function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law." *Id.* "It is designed to promote justice, subject to certain well-defined qualifications." *Id.* "Its principal function is to command and execute, and not to inquire and

⁸ The Betterment Action is a separate proceeding, Civil Action No. 2017-CP-18-1909, which was commenced by the Non-Prevailing Parties after this Court denied their Petition for Rehearing in the underlying action. In that separate action, the Non-Prevailing Parties seek to recover damages for all improvements they made to the property this Court awarded to the Petitioners, effectively undoing this Court's decision. Two motions are pending in that separate action, which were filed more than a year ago: Petitioners' Motion to Dismiss and the Non-Prevailing Parties' Motion to Establish Complex Case Designation.

adjudicate; therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established.” *Id.*

“For a writ of mandamus to issue, the following must be shown: (1) a duty of the Respondent to perform the act; (2) the ministerial nature of the act; (3) the Petitioner’s specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” *Edwards*, 383 S.C. at 97, 678 S.E.2d at 420. “[W]hen mandamus is warranted, ‘the judiciary cannot properly shrink from its duty.’” *Id.* (quoting *Blalock v. Johnston*, 180 S.C. 40, 50, 185 S.E. 51, 55 (1936).

(1) “[A] duty of the Respondent to perform the act”

“The great writ of mandamus . . . may be addressed to another Court; it may control the exercise of an assumed power by another Court, and, in that view, may be said to supervise.” *State ex rel. Wallace v. Hayne*, 8 S.C. 367, 374-5 (1876). “The trial court has a duty to follow the appellate court’s directions.” *Prince v. Beaufort Mem’l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011). “Once the remittitur is sent down from this Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.” *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993).

Here, the Circuit Court assumed a power and a duty, ever since the remittitur was issued on November 17, 2017, as more particularly requested in the Petition for Enforcement filed on May 8, 2018, to follow this Court’s directions and enforce the mandate in its final and dispositive decision issued on August 2, 2017. The Circuit Court has failed to perform that duty. As set forth more fully above, the Circuit Court has unduly delayed and appears to be reconsidering the case on the merits, exceeding its jurisdiction on remittitur.

(2) **“[T]he ministerial nature of the act”**

“[M]andamus will lie to compel a judicial officer to perform a plain, ministerial duty...” *State Ex Rel. Mcinvaille v. Rouse*, 86 S.C. 344, 68 S.E. 629, 630 (1910). “[J]udicial enforcement is a ministerial act.” *Dillard v. Industrial Commission of Virginia* 8212 5412, 416 U.S. 783, 787 (1974). “[A] higher court’s mandate imposes a mandatory, *ministerial* duty on the lower court to comply with the higher court’s judgment . . . It is in this respect that the lower court has no ‘jurisdiction’ or ‘discretion’ in regard to ‘reviewing’ or ‘interpreting’ the mandate.” *Tex. Health & Human Servs. Comm’n v. El Paso Cnty. Hosp. Dist.*, 351 S.W.3d 460, 472, 476 (Tex. App. 2011), *aff’d*, 400 S.W.3d 72 (Tex. 2013). As already explained, “[o]nce the remittitur is sent down from this Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.” *Muller*, 438 S.E.2d at 250, 313 S.C. at 414-15. But general adjudicative jurisdiction does not “re-vest in the Circuit Court except by order of the Supreme Court, such as, for example, by granting a new trial.” *Hampton Building Supply, Inc. v. Wilson*, 285 S.C. 135, 138, 328 S.E.2d 635, 637 (1985). “The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court.” *Christy v. Christy*, 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1995). “[M]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.” JEAN HOEFER TOAL, SHAHIN VAFAI, ROBERT A. MUCKENFUSS, APPELLATE PRACTICE IN SOUTH CAROLINA (3d ed. 2016) at 386.

Here, the Circuit Court’s duty is ministerial because it only exercises limited jurisdiction on remittitur to enforce and take actions consistent with this Court’s mandate in its final and dispositive decision issued on August 2, 2017.

The Circuit Court’s own view of this Court’s decision and mandate does “not alter the ministerial nature of the legal duty now before [it].” *See Edwards*, 383 S.C. at 97, 678 S.E.2d at

420 (“While we recognize and respect Governor Sanford’s sincerely held beliefs concerning the ARRA, those convictions do not alter the ministerial nature of the legal duty now before him.”). The Circuit Court is misguided in suggesting that this Court’s decision and mandate are not “*clear*” and not “*final*,” and in turn, that it is within the Circuit Court’s jurisdiction to make its own dispositive “*decision*” about the property, which would lead to a further appeal to this Court by “*which ever side loses.*” November 19, 2018 Tr. at 24. As explained above, the mandate of this Court – the dispositional outcome agreed upon by the majority – cannot reasonably be said to be unclear or not final. Petitioners are entitled to the diocesan property and the property of 29 of the parishes at issue. The Non-Prevailing Parties acknowledged this in their Petition for Rehearing to this Court and their Petition for Writ of Certiorari to the United States Supreme Court. The United States District Court of South Carolina also acknowledged it in the related federal action. The Circuit Court must acknowledge it as well.

Further, to the extent the Circuit Court may be of the view that this Court’s decision and mandate are not supported by the evidence or are otherwise flawed, the Circuit Court may not take any action on that view. On remittitur, the Circuit Court does not have the jurisdiction of an appellate court to review and reverse or alter the decision and mandate of this Court. *See Prince*, 392 S.C. at 605, 709 S.E.2d at 125; *Hampton*, 285 S.C. at 138, 328 S.E.2d at 637; *Muller*, 438 S.E.2d at 250, 313 S.C. at 414-15; TOAL, ET. AL., APPELLATE PRACTICE IN SOUTH CAROLINA (3d ed. 2016) at 386.

The Circuit Court’s jurisdiction on remittitur is of course accompanied by some degree of discretion in determining how best to effectuate this Court’s mandate (*i.e.*, how best to effectuate the transfer of possession and control of the property to Petitioners),⁹ but the Circuit Court has no

⁹ For instance, some of the property could be transferred by deed, or alternatively, through the removal and replacement of trustees.

discretion as to *whether* to enforce this Court's mandate. This Petition for Writ of Mandamus is not being made on the grounds that Petitioners are merely unsatisfied with a method the Circuit Court has chosen, exercising its discretion, to enforce this Court's mandate and effectuate the possession and control of the property. Rather, it is being made on the ground that the Circuit Court has declined to take any action whatsoever to enforce this Court's mandate and effectuate the transfer of possession and control of the property, and instead, it appears to be reconsidering the case on the merits. In doing so, the Circuit Court has failed to perform its fundamental duty of "judicial enforcement," "a ministerial act," beyond its "discretion." See *Dillard*, 416 U.S. at 787 ("[J]udicial enforcement is a ministerial act."); *Tex. Health & Human Servs. Comm'n*, 351 S.W.3d at 476 ("[A] higher court's mandate imposes a mandatory, ministerial duty on the lower court to comply with the higher court's judgment . . . It is in this respect that the lower court has no 'jurisdiction' or 'discretion' in regard to 'reviewing' or 'interpreting' the mandate."); see also *Bradford v. Richardson*, 111 S.C. 205, 97 S.E. 58, 61 (1918) ("While the probate judge is required to exercise judgment and discretion in issuing permits, in that he must be satisfied of the truth of the statements contained in the affidavit before doing so, it by no means follows that, in doing so, he is performing a judicial function. It is rather one of a ministerial nature."); *State Ex Rel. Mcinville v. Rouse*, 86 S.C. 344, 68 S.E. 629, 630 (1910) ("It may be conceded that mandamus will lie to compel a judicial officer to perform a plain, ministerial duty, and that the issuance of a warrant, upon Information on oath that a criminal offense has been committed, is ordinarily a ministerial duty.").

"No control of the discretion" of the Circuit Court "is involved" by this Court issuing a Writ of Mandamus requiring the Circuit Court to enforce this Court's mandate. See *City of D.C. v. Pearman*, 180 S.C. 296, 185 S.E. 747, 751 (1936) ("The city is entitled to the writ. The commission was under a plain ministerial duty to render a decision on the merits. It has expressly

refused to decide. Mandamus is the proper remedy. No control of the discretion of the commission is involved.”). This Court made a final and dispositive decision in the underlying action. Again, it is not within the Circuit Court’s jurisdiction or discretion to change that decision. Therefore, requiring the Circuit Court to carry out its ministerial duty to enforce this Court’s mandate by effectuating the transfer of possession and control of the property in no way controls the discretion of the Circuit Court.

(3) **“[T]he Petitioner’s specific legal right for which discharge of the duty is necessary”**

Petitioners have a specific legal right to the diocesan and parish property awarded to them by this Court, as detailed above. In order for Petitioners to actually obtain possession and control of that property, however, it is necessary that the Circuit Court discharge its duty, on remittitur, to enforce and take actions consistent with this Court’s mandate in its final and dispositive decision. As already explained, the Circuit Court has failed do so.

Petitioners’ specific legal right to that property, pursuant to this Court’s mandate, is not doubtful or uncertain. *See Willimon*, 243 S.C. at 87, 132 S.E.2d at 171 (“If doubt or uncertainty exists in the facts of the case, so that it does not appear clear that such facts entitle plaintiff to relief by mandate, under any valid law, the writ will not issue.”). This Court’s decision is dispositive and final, as this Court already stated in its order denying the Petition for Rehearing on November 17, 2017. The dispositional outcome agreed upon by the majority of this Court is clear. Moreover, if, *arguendo*, there were any doubt about the disposition of the property (which there is not), the construction of this Court’s mandate would be a matter of law for this Court to consider in issuing the Writ of Mandamus. *See Willimon*, 243 S.C. at 87, 132 S.E.2d at 171 (“But where the only doubt that clouds the issue consists in the construction of the [law] which confers the right or imposes the duty, the writ will issue if the Court, after considering the law, concludes that it confers the right claimed or imposes the duty asserted...”).

(4) **“[A] lack of any other legal remedy.**

“[W]hen there is other adequate remedy, a writ of mandamus cannot rightfully issue.” *Willimon*, 243 S.C. at 86, 132 S.E.2d at 170. Here, there is no other adequate remedy. Petitioners have diligently and repeatedly asked the Circuit Court to enforce the decision and mandate of this Court, to no avail. Petitioners cannot be relegated to endure the Circuit Court’s delay and re-litigation of the merits, exceeding its jurisdiction on remittitur, while the Non-Prevailing Parties continue (as they have done since this dispute began in 2012) to unlawfully possess and control the property to which Petitioners are entitled. As mentioned, that property includes unique real estate, historic buildings, and artifacts that cannot be replaced, along with accounts held in trust that are being depleted as this litigation is being improperly prolonged. The Non-Prevailing Parties are not holding and protecting that property for Petitioners, rather they defiantly say they have “*repudiated their roles as trustees.*” Non-Prevailing Parties’ Response to Petitioners’ Motion to Dismiss Betterment Action, Case No. 2017-CP-18-1909, filed October 5, 2018 at 21. To protect that property, Petitioners have no adequate remedy other than to seek a writ from this Court.

REQUEST FOR RELIEF

WHEREFORE, pursuant to the precedential authorities cited herein and Rule 65, SCRPC, and consistent with Rule 1, SCRPC, recognizing that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action,” Petitioners seek a Writ of Mandamus directing the Dorchester County Circuit Court, to which the underlying action has been remitted, to enforce the mandate of this Court by effectuating the transfer of possession and control of the diocesan property and the property of 29 of the parishes at issue and providing any further relief consistent with that mandate.

(Signature page to follow)

Dated: March 20, 2019

Respectfully submitted

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Counsel for The Episcopal Church

THE STATE OF SOUTH CAROLINA
In the Supreme Court

The Episcopal Church in South Carolina and
The Episcopal Church Petitioners,

v.

Edgar W. Dickson, in his official capacity as
Dorchester County Circuit Court Judge,
In re: Civil Action No. 2013-CP-18-00013,
on remittitur, following the final decision of this Court
in *Protestant Episcopal Church in the Diocese of South
Carolina v. The Episcopal Church*, 421 S.C. 211,
806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017),
cert. denied (June 11, 2018) Respondent.

**AFFIDAVIT OF THOMAS S. TISDALE, JR.
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

I, Thomas S. Tisdale, Jr., being duly sworn, hereby state and affirm, as follows:

1. This affidavit is based on my own knowledge and I am competent to testify regarding those things about which I have knowledge.

2. I am an attorney and a member of the South Carolina Bar.

3. I have represented The Episcopal Church in South Carolina at all times in the underlying action to which this Petition for Writ of Mandamus relates, *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018).

4. I have also served as Chancellor of The Episcopal Church in South Carolina during this period.

5. I affirm that the facts asserted in the Petition for Writ of Mandamus filed herewith are true and correct.

Further affiant sayeth not.

Thomas S. Tisdale, Jr.

Thomas S. Tisdale, Jr.

SWORN to before me this
20th day of March, 2019.

Jane Jennings

Notary Public for: South Carolina

My Commission Expires: 1/14/2029

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PROOF OF SERVICE

I certify that the foregoing Petition for Writ of Mandamus and Affidavit Thomas S. Tisdale, Jr. in support thereof are being served on the Respondent Edgar W. Dickson, in his official capacity as Dorchester County Circuit Court Judge, on this day, March 20, 2019, by hand delivery, U.S. mail, and e-mail. All parties in the underlying action, *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018), are also being served by e-mail with an electronic copy of the same.



Thomas S. Tisdale, Jr.