

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
THE PROTESTANT EPISCOPAL	)	Case No.: 2013-CP-18-00013
CHURCH IN THE DIOCESE OF	)	
SOUTH CAROLINA, ET AL.,	)	
	)	
Plaintiffs,	)	DEFENDANTS' MOTION
v.	)	TO CONFIRM STAY OR, IN THE
	)	ALTERNATIVE, FOR SUPERSEDEAS
	)	
THE EPISCOPAL CHURCH, ET AL.,	)	<i>PRIORITY MATTER</i>
	)	
Defendants.	)	
	)	

INTRODUCTION

Pursuant to Rule 241, SCACR, Defendants move the Court<sup>1</sup> for an Order confirming that its rulings in this action are automatically stayed by Defendants' appeal of those rulings or, in the event the Court concludes its rulings fall within an exception to the general rule effecting an automatic stay, granting a supersedeas of matters decided by the Court pending resolution of Defendants' appeal.

This motion is in the nature of a priority matter as contemplated by Rule 40(a)(2) & (h), SCRCR. *See* Rule 241(d)(1) (lower court shall rule without "unnecessary delay").

BACKGROUND

The Court issued an Order dated June 19, 2020 in which it granted Plaintiffs' Motion for Clarification of Jurisdiction and For Other Relief and denied Defendants' motions for alternative relief. Defendants filed a timely Motion for Reconsideration and to Alter or Amend that Order, which the Court denied in an Order dated July 13, 2020.

---

<sup>1</sup> Despite the pendency of an appeal, this motion should be filed initially with the Circuit Court. Rule 241(d)(1), SCACR.

Immediately upon receiving notice of the filing of the Court's Order denying the Motion for Reconsideration, Defendants filed a Notice of Appeal with the South Carolina Court of Appeals (see copy attached hereto).

### ARGUMENT

Rule 241(a), SCACR, states:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.

This general rule applies except with regard to orders that fall within specific statutory provisions set forth in Rule 241(b). JEAN HOEFER TOAL, AMELIA WARING WALKER & MARGARET E. BAKER, APPELLATE PRACTICE IN SOUTH CAROLINA 341 (3d ed. 2016), *citing* S.C. CODE ANN. § 18-9-220 (1976, as amended).

None of the enumerated exceptions apply to this case. Exceptions 1, 5, 6, 7, 8, 9, 10, and 11 are clearly inapplicable to this action. While the Court's rulings relate to the ownership of real and personal property (the "subject property"), all such property is presently in the possession of Plaintiffs. Therefore, the Court's judgment does not direct the assignment, delivery, conveyance, or sale of the subject property and exceptions 2, 3, and 4 do not apply.

If the Court agrees Rule 241(a) applies, then it need do no more than issue an Order that states its rulings are stayed by Defendants' appeal.

However, if the Court believes this case falls within one of the exceptions in Rule 241(b), such that the appeal does not automatically stay its judgment, Defendants respectfully request a supersedeas pursuant to Rule 241(c)(1), which provides:

In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal ....

The Court should grant a supersedeas when it is necessary to prevent a contested issue from becoming moot. Rule 241(c)(2), SCACR. Moreover, if the supersedeas is insufficient to provide complete protection to the appealing party, the Court is authorized to order appropriate additional affirmative relief. Rule 241(c)(3), SCACR.

In the absence of a stay or a supersedeas suspending or staying the Court's previous Orders, Plaintiffs could potentially attempt to transfer or otherwise alienate the subject property. If so, this could make the issue of property ownership moot as between the parties. In other words, even if Defendants were to prevail on appeal, they would not be able to enforce their rights to the subject property against Plaintiffs but would possibly have to initiate another action against transferees to enjoy the benefits of a successful appeal. A stay or supersedeas would avoid this potential outcome but would not prejudice Plaintiffs, who remain in possession and have use of the subject property.

Additionally, in order to protect the subject matter of the appeal, the Court should order affirmative relief in the nature of an injunction prohibiting Plaintiffs from transferring, alienating, encumbering, or committing waste with respect to the subject property. This relief is also necessary to ensure Defendants' rights will be protected in the event of a successful appeal. Again, imposing these conditions on Plaintiffs should not create any prejudice or undue burden on them.

Defendants are prepared to file a bond or undertaking, if deemed appropriate by the Court under Rule 241(c)(3). Defendants submit, however, that the Court should dispense with or limit any required security pursuant to S.C. CODE ANN. § 18-9-190 (1976, as amended). *See also United Dominion Realty Trust v. Wal-Mart Stores*, 307 S.C. 102, 108, 413 S.E.2d 866, 869 (Ct. App. 1992) (amount of appeal bond is discretionary). This would be appropriate because a supersedeas would simply maintain the status quo during appeal and would not damage Plaintiffs during their continued possession and use of the subject property. *Compare* S.C. CODE ANN. § 18-9-130(A)(2)

(1976, as amended) (undertaking or bond typically based on the prevailing party's damages from the *inability* to possess or use the property during appeal).

CONCLUSION

For the above reasons, Defendants respectfully request that the Court issue, without delay, an Order confirming its previous Orders are automatically stayed pending Defendants' appeal or, alternatively, granting a supersedeas that has the effect of staying those Orders during the appeal.

Dated: July 13, 2020

Respectfully submitted,

/s/ Bert G. Utsey, III  
Bert G. Utsey, III  
PETERS, MURDAUGH, PARKER,  
ELTZROTH & DETRICK, P.A.  
P.O. Box 30968  
Charleston, SC 29417  
(843) 818-4399  
[butsey@pmped.com](mailto:butsey@pmped.com)

Thomas S. Tisdale, Jr.  
Jason S. Smith  
HELLMAN YATES & TISDALE  
105 Broad Street, Third Floor  
Charleston, South Carolina 29401  
Telephone: (843) 266-9099  
[tst@hellmanyates.com](mailto:tst@hellmanyates.com)  
[js@hellmanyates.com](mailto:js@hellmanyates.com)

Kathleen F. Monoc  
MONOC LAW, LLC  
77 Grove Street  
Charleston, South Carolina 29403  
(843) 790-8910  
[katie@monoclaw.com](mailto:katie@monoclaw.com)

*Counsel for The Episcopal Church in South  
Carolina*

/s/ Allan R. Holmes

Allan R. Holmes  
GIBBS & HOLMES  
171 Church Street, Suite 110  
Charleston, South Carolina 29401  
Telephone: (843)722-0033  
[aholmes@gibbs-holmes.com](mailto:aholmes@gibbs-holmes.com)

David Booth Beers  
GOODWIN PROCTER, LLP  
901 New York Avenue, NW  
Washington, DC 20001  
Telephone: (202) 346-4000  
[dbeers@goodwinlaw.com](mailto:dbeers@goodwinlaw.com)

Mary E. Kostel  
Chancellor to the Presiding Bishop  
The Episcopal Church  
3737 Seminary Road  
PMB 200  
Alexandria, VA 22304  
Telephone: (703) 898-8413  
[mkostel@episcopalchurch.org](mailto:mkostel@episcopalchurch.org)

*Counsel for The Episcopal Church*