

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
The Protestant Episcopal Church In The)
Diocese Of South Carolina, *et al.*)
)
v.)
)
The Episcopal Church, *et al.*)
)
)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Case No. 2017-CP-18-1909

**NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION**

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Defendants The Episcopal Church in South Carolina (“TECSC”) and The Episcopal Church (“TEC”) will move before Judge Edgar W. Dickson on the tenth day after service or as soon thereafter as counsel may be heard for reconsideration of this Court’s Order Denying Defendants’ Motion to Dismiss Second Amended Complaint, dated and entered on September 9, 2019 (the “Order”). This Motion for Reconsideration is made under Rule 59(e), SCRCP, and other authorities under South Carolina law. The grounds for this Motion are set forth herein.

BACKGROUND

This is an action brought by the Plaintiffs under the Betterment Act, S.C. Code Ann. §§27-27-10, *et seq.* It relates to a prior action and final judgment of the South Carolina Supreme 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).

On August 2, 2017, the South Carolina Supreme Court issued its final judgment in the prior action. The South Carolina Supreme Court held that Defendants, The Episcopal Church and its associated diocese, The Episcopal Church in South Carolina, have trust interests in all of the property of the diocese and 29 of the parishes at issue in the case.

On September 1, 2017, Plaintiffs petitioned the South Carolina Supreme Court for rehearing and moved to recuse one of the Justices.

On November 17, 2017, the South Carolina Supreme Court denied the petition for rehearing and the recusal motion and remitted the case to this Court, stating, “*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.*”

On November 19, 2017, Plaintiffs filed this action under the Betterment Act.

On December 15, 2017, Defendants moved to dismiss this action.

On February 9, 2018, in the prior action, Plaintiffs petitioned for a writ of certiorari to the United States Supreme Court.

On June 11, 2018, the United States Supreme Court denied that petition. Accordingly, the final judgment of the South Carolina Supreme Court issued on August 2, 2017 is subject to no further appeals.

ARGUMENT

1. **The South Carolina Supreme Court’s decision is dispositive.**

Plaintiffs’ complaint under the Betterment Act fails to state a cause of action for which relief can be granted because it would effectively reverse or undermine the final judgment of the South Carolina Supreme Court. The South Carolina Supreme Court already decided the property dispute between the parties in that prior action by recognizing the existence of certain trusts and trustee-beneficiary relationships.¹ Plaintiffs’ complaint disregards the trust-based nature of that

¹ More particularly, according to the South Carolina Supreme Court, the diocesan property is held in trust by a trustee corporation for the benefit of The Episcopal Church in South Carolina, pursuant to the 1880 Act of the General Assembly of South Carolina, as amended by the 1902 Act. *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 229, 231, 806 S.E.2d at 91, 93 (Pleicones, C.J.); 421 S.C. at 235-36, 806 S.E.2d at 95 (Hearn, J.); 421 S.C. at 251 n.29, 806 S.E.2d at 103 n.29 (Beatty, J.) (“Additionally, I would find ‘The Trustees of the Protestant Episcopal Church’ in the Diocese of South Carolina should retain title . . . In my view, the

decision and inconsistently alleges rights, under the Betterment Act, to the monetary value of the property that the Supreme Court has determined is held in trust for the Defendants. Accordingly, the doctrines of *res judicata* and collateral estoppel apply to bar Plaintiffs' claim under the Betterment Act. *See Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (“*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”); *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.”).

2. The Betterment Act does not apply.

The allegations in Plaintiffs' complaint, taken together with the decision of the South Carolina Supreme Court, do not support a claim for relief under the Act. The Act applies only against a land owner following an “action to recover lands and tenements.” S.C. Code Ann. §27-27-10. It “permits one, who was in possession of lands under an honest but mistaken belief of ownership, to recover for improvements made by him only where an action at law has been brought by the owner to recover possession.” *Citizens & S. Nat. Bank, Atlanta, Ga. v. Homes Constr. Co.*, 248 S.C. 130, 134, 149 S.E.2d 326, 328 (1966). This is not the case here, where all of the real and personal property at issue (*i.e.*, the land, together with the improvements on the land) is held by

disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.”). Notably, that diocesan trustee corporation was not named as a party to this action. The parish property is held in trust by the parishes for the benefit of The Episcopal Church and The Episcopal Church in South Carolina, pursuant to the parishes' accession to the “Dennis Canon.” *Id.*, 421 S.C. at 93, 806 S.E.2d at 231 (Pleicones, C.J.) (joining Hearn); 421 S.C. at 238-240, 248 n.27, 806 S.E.2d at 96-97, 102 n.27 (Hearn, J.) (“twenty-nine parishes”); 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J.) (“However, I agree with the majority as to the disposition of the remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust.”).

Plaintiffs, as trustees, in trust for Defendants, their beneficiaries, according to the South Carolina Supreme Court.

Enforcing the South Carolina Supreme Court's judgment in the remitted action by removing Plaintiffs as trustees would not give them a claim under the Betterment Act against Defendants, their beneficiaries, to whom they owe the utmost fiduciary duties of care and loyalty with respect to the trust property at issue. *See* South Carolina Trust Code, S.C. Code Ann. §62-7-706 ("Removal of trustee"); S.C. Code Ann. §62-7-802(a) ("A trustee shall administer the trust solely in the interests of the beneficiaries."); S.C. Code Ann. §62-7-811 ("A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust."); *Michie v. People's Bank Of Darlington*, 167 S.C. 1, 165 S.E. 359 (1932) ("It is the universal rule that a trustee cannot deal with the trust estate for his own benefit."). Nor would requiring Plaintiffs as trustees or former trustees to deliver or distribute the trust property to Defendants. *See* South Carolina Trust Code, S.C. Code Ann. §62-7-817 ("Distribution upon termination"); S.C. Code Ann. §62-7-707 ("Delivery of property by former trustee").

3. Plaintiffs' complaint was filed too late.

The Betterment Act requires a complaint to be filed "within forty-eight hours of such judgment," *i.e.*, the judgment in the prior action. S.C. Code Ann. §27-27-30. The judgment in the prior action was issued by the South Carolina Supreme Court on August 2, 2017. Plaintiffs filed their complaint three months later, on November 19, 2017, waiting until their petition for rehearing was denied and the case had been remitted. The Betterment Act does not allow a party to wait and see if it can overturn the judgment; the Act requires a prompt complaint within 48 hours of the judgment so the entire matter can be considered before any further proceedings in the prior action. *See Garrison v. Dougherty*, 18 S.C. 486, 487 (1883); *Godfrey v. Fielding*, 21 S.C. 313, 316-17 (1884).

4. Additional errors in this Court's Order

The Order adopted by the Court was proposed by Plaintiffs and it contains numerous errors, as more particularly set forth below.

Page 2 of the Order ineptly describes the South Carolina Supreme Court's final decision as "consisting of five separate opinions," and defines and refers to it throughout the Order as the "Collective Opinions," perhaps attempting to suggest or imply that there was no agreement by a majority. The final decision and judgment of the South Carolina Supreme Court was made and agreed upon by a majority of three Justices – Justice Pleicones, Justice Hearn, and Chief Justice Beatty. The fact that all five Justices wrote opinions explaining their respective views does not diminish that decision of the majority or affect the finality, authority, and enforceability of that decision.

Pages 2 and 3 of the Order erroneously analyze Plaintiffs' claims under the Betterment Act for purposes of mootness and ripeness based on motions pending in the remitted action after the South Carolina Supreme Court's final decision. On remittitur, this Court has a duty to accept and enforce the South Carolina Supreme Court's final decision without changing it.² The South Carolina Supreme Court's final decision does not give rise to a claim under the Betterment Act because it recognized the trust relationships between Plaintiffs, as trustees, and Defendants, as beneficiaries; and trustees cannot sue their own beneficiaries for the value of trust property. This Court cannot change that final decision on remittitur, regardless of how this Court effectuates the

² "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). 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). "[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.

transfer of possession and control of the trust property, as required by the South Carolina Supreme Court and the South Carolina Trust Code. Therefore, this Court cannot moot the betterment claim by changing the South Carolina Supreme Court's final decision and awarding Plaintiffs the trust property; and this Court cannot ripen a betterment claim by effectuating the transfer of possession and control of the trust property to Defendants. Plaintiffs' claim under the Betterment Act does not now exist and never will exist.

Page 3 of the Order erroneously recognizes the disassociated diocese as being properly identified in the Amended Complaint as the "Protestant Episcopal Church in the Diocese of South Carolina," also known as the "Diocese of South Carolina," and having its history dating back to the eighteenth century, contrary to the final decision of the South Carolina Supreme Court. *See Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at at 231, 806 S.E.2d at 93 (Pleicones, C.J.); 421 S.C. at 235-36, 806 S.E.2d at 95 (Hearn, J.); 421 S.C. at 251 n.29, 806 S.E.2d at 103 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."). This Court cannot accept such allegations in the Amended Complaint as true for purposes of denying the motion to dismiss, when as a matter of law, they are false, given the final decision of the South Carolina Supreme Court. The doctrines of *res judicata* and collateral estoppel apply to bar such allegations.

Page 4 of the Order erroneously suggests that Plaintiffs have adequately alleged a "good faith belief" to support a claim under the Betterment Act. Plaintiffs, as trustees, cannot allege a "good faith belief" that they have rights to trust property that are superior to the rights of their beneficiaries. Again, this Court cannot accept such allegations in the Amended Complaint as true for purposes of denying the motion to dismiss, when as a matter of law, they are false, given the

final decision of the South Carolina Supreme Court. The doctrines of *res judicata* and collateral estoppel apply to bar such allegations.

Page 4 of the Order erroneously states that “issues of ownership depend on this Court’s determination of the South Carolina Supreme Court’s intent in the Collective Opinions and ask that the resolution of the issues in this case await this Court’s decision on motions filed in that remitted case concerning the parish plaintiffs’ ‘accession’ (agreement) to the Dennis Canon and the Plaintiff Diocese’s property interests.” Such issues have already been decided by the South Carolina Supreme Court. Regarding the issue of accession to the Dennis Canon and Defendants’ trust interests in 29 parishes, *see Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 93, 806 S.E.2d at 231 (Pleicones, C.J.) (joining Hearn, J.); 421 S.C. at 238-240, 248 n.27, 806 S.E.2d at 96-97, 102 n.27 (Hearn, J.) (“twenty-nine parishes”); 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J.) (“However, I agree with the majority as to the disposition of the remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust.”). Regarding the issue of TECSC’s trust interest in the diocesan property, *see id.*, 421 S.C. at at 231, 806 S.E.2d at 93 (Pleicones, C.J.); 421 S.C. at 235-36, 806 S.E.2d at 95 (Hearn, J.); 421 S.C. at 251 n.29, 806 S.E.2d at 103 n.29 (Beatty, J.) (“Additionally, I would find ‘The Trustees of the Protestant Episcopal Church’ in the Diocese of South Carolina should retain title . . . 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.”). Again, this Court cannot accept such allegations in the Amended Complaint as true for purposes of denying the motion to dismiss, when as a matter of law, they are false, given the final decision of the South Carolina Supreme Court. The doctrines of *res judicata* and collateral estoppel apply to bar such allegations.

Pages 5 and 6 of the Order erroneously conclude that the action was timely filed, relying on an inapposite case and rule of appellate procedure that do not involve or interpret the Betterment

Act, *Harleyville Mut. Ins. Co. v. State*, 401 S.C. 15, 23, 736 S.E.2d 651, 655, n.2 (2012) and Rule 221, SCACR; and rejecting two applicable cases that do specifically involve and interpret the Betterment Act, *Garrison v. Dougherty*, 18 S.C. 486, 487 (1883) and *Godfrey v. Fielding*, 21 S.C. 313, 316-17 (1884). The general proposition, recited in *Harleyville*, that a decision South Carolina Supreme Court does not become final until the remittitur is sent by the clerk is not controlling. The Betterment Act, S.C. Code Ann. §§27-27-10, *et seq.*, is not concerned with appellate finality or the remittitur sent by the clerk, as specifically held in *Garrison* and *Godfrey*.³ Rather, the Betterment Act is focused on the time of the judgment itself. It does not allow a non-prevailing party to wait and see if it can overturn the judgment. It does not wait for the clerk to send a remittitur. The Betterment Act is concerned with promptness and speedy determination so the entire matter can be considered before any further proceedings relating to the judgment. It therefore requires a complaint to be filed (in the nature of a cross-action, without a summons)

³ *Garrison v. Dougherty*, 18 S.C. 486, 487 (1883) (“The proceedings are under chapter CXXI., sections 1-7, of the General Statutes (1872), which requires the complaint for betterments to be filed in forty-eight hours after the rendering of final judgment, or during the term of the court at which such judgment is rendered. The question presented is whether the final judgment contemplated in the statute is the judgment of the Circuit Court appealed from, or that judgment affirmed by the Supreme Court, as evidenced by the remittitur sent down and filed. A reading of all the sections of the chapter providing this summary and efficacious remedy, and the prompt steps requisite to obtain the relief, satisfies me that the final judgment contemplated is the judgment of the Circuit Court. Within forty-eight hours after the rendering of such judgment, or, at furthest, during the term at which it is rendered, this claim for betterments must be filed. Hence it is that no summons is required to be served, and no notice, except the filing of the complaint, is to be given. A prompt assertion of the claim and its speedy determination are evidently contemplated, and hence the stay of all further proceedings under the judgment for the recovery of the land. It is therefore ordered and adjudged, that the complaint in each of these cases be dismissed with costs.”); *Godfrey v. Fielding*, 21 S. C. 313, 316-17 (1884) (“The nature of the proceeding as a cross-action, as well as the whole tenor of the act, shows that in the assertion of the claim great promptness is required . . . But it is urged that all these provisions, indicating the necessity for prompt action, must yield to those words in the act, ‘after final judgment,’ which it is insisted can only mean the entry of the formal judgment in the clerk’s office, and fixes the time at which the cross-action must be commenced, without regard to the condition of things or of the parties at that time. We cannot accept this view.”).

within 48 hours of the judgment. The filing of a betterment complaint, moreover, stays any further proceedings relating to the judgment. Here, the judgment was issued by the South Carolina Supreme Court on August 2, 2017. Plaintiffs filed their complaint more than three months later, on November 19, 2017, waiting until their petition for rehearing and their petition to recuse Justice Hearn were denied and the case had been remitted.⁴ Plaintiffs' complaint was too late.

Page 6 of the Order erroneously questions whether "Defendants, as they claim, were successful in the Supreme Court." This indisputable fact is manifest from the final decision of the South Carolina Supreme Court. Moreover, Plaintiffs acknowledged this in their petition for a rehearing to the South Carolina Supreme Court and their petition for a writ of certiorari to the United States Supreme Court. Again, this Court cannot accept such allegations in the Amended Complaint as true for purposes of denying the motion to dismiss, when as a matter of law, they are false, given the final decision of the South Carolina Supreme Court. The doctrines of *res judicata* and collateral estoppel apply to bar such allegations.

Pages 6 and 7 of the Order erroneously describe and characterize Defendants arguments, concluding that there is a "conflict" or "contradict[ion]" between Defendants' position in their motion to dismiss the betterment action, on the one hand, and their petition for enforcement in the action on remittitur, on the other. Defendants' trust interests, confirmed by the South Carolina Supreme Court, are controlling and dispositive in both matters. In the betterment action, as beneficiaries, Defendants cannot be sued for a betterment of trust property by those charged with the duty to act as their trustees. In the action on remittitur, Defendants are entitled to possession and control of the trust property because those charged with the duty to act as their trustees have

⁴ Moreover, Plaintiffs' complaint requested a stay of the betterment action (which is opposite to the stay of a judgment prescribed by the Betterment Act) while Plaintiffs made a further attempt to overturn the South Carolina Supreme Court's final decision by filing a petition for writ of certiorari with the United States Supreme Court.

openly and publicly repudiated their roles as trustees. The South Carolina Trust Code imposes duties on trustees and those acting in the capacity of trustees (including former trustees who have repudiated their roles as trustees) to protect and hold trust property in trust for the benefit of the beneficiaries until they deliver or distribute the trust property to successor trustees loyal to the beneficiaries or to the beneficiaries themselves; and the Trust Code empowers a court to compel trustees to perform such duties, remove and replace trustees, effectuate the transfer of possession and control of trust property, and provide other relief, pursuant to S.C. Code Ann. §§62-7-801; 62-7-802(a); 62-7-811; 62-7-817; 62-7-707; 62-7-1001, and other provisions. Accordingly, the transfer of possession and control of the trust property at issue from the Plaintiffs to Defendants, as mandated by the South Carolina Supreme Court and as required by the Trust Code, cannot as a matter of law give Plaintiffs, charged with the duties of trustees, a claim under the Betterment Act against their own beneficiaries, Defendants. The elements required by the Betterment Act are not met under these circumstances and the Act is not applicable. S.C. Code Ann. §27-27-10 (“After final judgment in favor of the plaintiff in an action to recover lands and tenements, if the defendant has purchased or acquired the lands and tenements recovered in such action or taken a lease thereof or those under whom he holds have purchased or acquired a title to such lands and tenements or taken a lease thereof, supposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter.”); S.C. Code Ann. §27-27-100 (“The provisions of this chapter shall not extend to any person who has entered on land by virtue of any contract made with the legal owner of such land...”); *Citizens & S. Nat. Bank, Atlanta, Ga. v. Homes Constr. Co.*, 248 S.C. 130, 134, 149 S.E.2d 326, 328 (1966) (“The statute permits one, who was in possession of lands under an honest

but mistaken belief of ownership, to recover for improvements made by him only where an action at law has been brought by the owner to recover possession.”).

5. Arguments previously presented to the Court

The Court should reconsider the arguments previously presented to the Court by Defendants in this action and the action on remittitur. The Court has generally considered and conducted proceedings in those actions together, and the Order denying Defendants’ motion to dismiss the betterment action includes findings and conclusions about the remitted action supporting its findings and conclusions about the betterment action. Accordingly, the entirety of the record in both actions should be reconsidered and all of Defendants’ arguments therein should be preserved for appeal with respect to the Order. During these proceedings, the Court instructed the parties to submit various briefs and other submissions and correspondence by e-mail to the Court, copying all counsel of record on such e-mails. To ensure Defendants’ briefs and other submissions and correspondence are reconsidered by the Court and made a part of the record filed with the clerk and preserved for appeal, Defendants have compiled an appendix of exhibits, attached hereto, which includes documents Defendants previously e-mailed to the Court, copying all counsel of record, as instructed by the Court, but that Defendants have not yet filed with the clerk in the betterment action (some were previously filed in the remitted action), together with transcripts from the hearings held in both matters.

More particularly and without limitation, the record containing Defendants’ arguments that should be reconsidered and preserved for appeal with respect to the Order includes but is not limited to the following:

Defendants’ Motion to Dismiss dated December 15, 2017 (previously filed with the clerk in the betterment action);

Defendants' Letter dated March 21, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Petition for Execution dated May 8, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Amended Petition for Execution dated May 15, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Petition for an Accounting dated July 10, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Letter dated August 2, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Letter dated August 28, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Memorandum of Law in Support of the Motion to Dismiss Plaintiffs' Complaint Under The Betterment Act dated September 24, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Memorandum of Law in Support of Petition for Accounting dated September 24, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Brief in Opposition to Plaintiffs' Motion for Complex Case Designation dated October 5, 2018 (previously filed with the clerk in the betterment action);

Defendants' Brief in Opposition to Plaintiffs' Motion for Clarification dated October 5, 2018 (previously e-mailed to the Court and filed with the clerk in the remitted action and included as an exhibit attached hereto);

Defendants' Omnibus Reply dated October 15, 2018 (previously filed with the clerk in the betterment action);

Defendants' oral arguments at the hearing on November 19, 2018 (transcript included as an exhibit attached hereto);

Defendants' Letter dated November 27, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Letter dated December 18, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Proposed Order submitted to the Court on December 18, 2018 (previously e-mailed to the Court and included as an exhibit attached hereto);

Court's E-mail dated January 8, 2019 (previously e-mailed by the Court to the parties and included as an exhibit attached hereto);

Court's E-mail dated January 14, 2019 (previously e-mailed by the Court to the parties and included as an exhibit attached hereto);

Defendants' Submission in Response to the Court's Request dated January 22, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Response to the Court's Request for Information Concerning the Dennis Canon dated January 25, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Reply to Plaintiffs' Response to Defendants' Submission Regarding the Dennis Canon dated February 1, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Proposed Order submitted to the Court on July 23, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' poster boards presented to the Court on July 23, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' oral arguments at the hearing held on July 23, 2019 (transcript included as an exhibit attached hereto);

Defendants' Letter dated July 25, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Court's Letter dated July 25, 2019 (previously e-mailed by the Court to the parties and included as an exhibit attached hereto);

Defendants' Letter dated July 29, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Letter dated July 31, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Proposed Order submitted to the Court on August 1, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Defendants' Letter dated August 2, 2019 (previously e-mailed to the Court and included as an exhibit attached hereto);

Court's E-mail dated August 27, 2019 (previously e-mailed by the Court to the parties and included as an exhibit attached hereto);

WHEREFORE, this Court should grant this Motion for Reconsideration and grant Defendants' Motion to Dismiss the Amended Complaint.

Dated: September 19, 2019

Respectfully submitted

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