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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr.
Circuit Court Judge

C.A. No.: 2020-CP-43-01863

New Life Apostolic Church, Inc., and Ricky Finklea ..... Appellants

v.

Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr., Lang Priester, David S. Johnson, Sr., and Paul C. Johnson..... Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court correctly grant summary judgment on the issues of ownership, trespass, and quantum meruit in this property dispute based on the plain language of the deeds and the undisputed facts surrounding the purchase of the properties at issue?

2. Did the trial court correctly determine that New Life Apostolic Church, Inc. ("NLAC") and Ricky Finklea ("Finklea") (collectively, "New Life") lacked standing to assert claims for declaratory judgment, injunctive relief, and reformation of deeds based on NLAC's admission that it never was a part of the Progressive Church of Our Lord Jesus Christ, Inc. ("Progressive Church") and Finklea's admission that he was no longer a part of the Progressive Church at the time the complaint was filed and where New Life was not a party to the deeds at issue?

3. Did the trial court correctly determine that it lacked subject matter jurisdiction as to New Life's request for a declaratory judgment as to matters regarding the past and present ecclesiastical governance of the Progressive Church?

4. Did the trial court properly deny New Life's request for a preliminary injunction based on its other rulings?

STATEMENT OF THE CASE

Ricky Finklea is the pastor of NLAC, a church corporation formed by Finklea in December 2014. (R. at 480-97, ¶¶2, 25). Finklea is also a former pastor and elder of the Progressive Church's congregation in Sumter, South Carolina (the "Sumter Congregation"). (R. at 482, ¶¶14-16; R. at 250, ¶14). Bishop Theodore Jenkins, Sr., Bishop Lang Priester, Bishop David S. Johnson, Sr., and Bishop Paul C. Johnson are the members of the Progressive Church's Board of Bishops ("Board of Bishops"), its highest governing body for ecclesiastical and secular matters. (R. at 267, ¶13).

At its core, this dispute concerns the ownership of the real property purchased by the Progressive Church and used by its Sumter Congregation. The property is comprised of four adjoining parcels located in Sumter, South Carolina (collectively the "Sumter Property" or "Property"). The separate parcels are located at 219 Crescent Avenue, which was purchased by and conveyed to the Progressive Church by deed in 1998 ("1998 Deed"), and 502, 504, and 508 North Main Street, which were purchased by and conveyed to the Progressive Church by deed in 2005 ("2005 Deed"). (R. at 255-57, 260-64). In 2019, the Board of Bishops recorded an additional deed relating to the Property ("2019 Deed"). (R. at 298-304).

New Life filed this action on December 18, 2020. (R. at 53-69). The Complaint included three causes of action: (1) a request for an order declaring (a) that the Board of Bishops is not the governing board of the Progressive Church, (b) that the procedures of Article V of the Progressive Church's Constitution govern the filling of vacancies on the Board of Bishops or, in the alternative, that members of the Progressive Church should determine the Board of Bishops at a Progressive Church Convocation, (c) that the 2019 Deed was invalid, (d) that NLAC is the successor in interest to the Sumter Congregation with respect to the Property, and (e) that NLAC

was rightfully in possession of the Property; (2) a request for injunctive relief; and (3) for reformation of the deeds to reflect NLAC as owner of the Property. (*Id.*). New Life moved for a preliminary injunction the following day. (R. at 70-71).

On February 2, 2021, the Progressive Church and the Board of Bishops (collectively, "Respondents") filed an answer asserting, among other defenses, failure to state a claim, lack of subject matter jurisdiction, and lack of standing. (R. at 128-61). The Respondents also asserted counterclaims seeking, among other things, a declaratory judgment that the Progressive Church owns the Property, a claim for trespass demanding that New Life vacate the Property, and an accounting. (*Id.*). New Life responded to the counterclaims on March 4, 2021. (R. at 162-77).

New Life filed an amended complaint on March 19, 2021, adding an alternative cause of action for quantum meruit "if the Progressive Church is deemed to be the owner of the Property" in which case "the Progressive Church would receive a significant financial and operational benefit as a result of the Property maintenance and improvements made by Plaintiffs since July of 2014," the retention of which Plaintiffs assert would be unjust. (R. at 179-96, ¶¶83-84). Respondents answered on March 31, 2021. (R. at 197-231).

At the same time, Respondents filed a motion for summary judgment as to New Life's claims based on lack of subject matter jurisdiction, failure to state a claim, and lack of standing. (R. at 232-33). Respondents further sought summary judgment with respect to their counterclaims for declaratory judgment and trespass. (*Id.*). The motion was supported by the affidavits of Deacon Robert Dwight, Bishop David S. Johnson, Sr., Bishop Theodore Jenkins, Sr., and Bishop Paul C. Johnson. (R. at 234-341). New Life responded to the motion for summary judgment, presenting affidavits from Finklea, NLAC member Andrew Little, and two

other individuals who are neither affiliated with NLAC nor the Sumter Congregation, James Robins and Timothy Beard. (R. at 379-557).

After a hearing on July 1, 2021, the trial court issued an order on November 16, 2021 granting the Progressive Church's motion for summary judgment and denying New Life's motion for a preliminary injunction. (R. at 1-42). The order includes the following rulings: (1) New Life lacked standing to pursue their first three causes of action because they admitted that NLAC was never a part of the Progressive Church and that Finklea disassociated from the Progressive Church in 2014 (R. at 14-17); (2) the trial court lacked jurisdiction to delve into matters relating to the governance of the Progressive Church as requested in portions of New Life's claim for declaratory relief (R. at 17-20); (3) New Life was not a party to any of the deeds in question and, therefore, cannot seek reformation of those deeds (R. at 20-31); (4) the Progressive Church owns the Property and is entitled to declaratory judgment to that effect (R. at 31-32); (5) New Life had no right to occupy the Property and the Progressive Church is entitled to summary judgment on its trespass claim (R. at 32-34); (6) New Life failed to state a claim for quantum meruit (R. at 34-40); and (7) New Life was not entitled to a preliminary injunction because it could not show any likelihood of success on the merits of its claims (R. at 40). Based on these findings, the trial court ordered the following relief:

> (1) The Progressive Church of Our Lord Jesus Christ, Inc. is the exclusive and sole holder of record legal title to the Sumter Property, and thus has the sole right to the exclusive, peaceable possession of that Property.
>
> (2) The 1983 Church Constitution is the governing document for the Progressive Church and it vests ecclesiastical and secular governance authority for the Progressive Church solely in the Board of Bishops, as the highest ecclesiastical body in the Progressive Church.
>
> (3) Plaintiffs are not a part of or members of the Progressive Church and have no permission from the Progressive Church, and no contractual or other legal or equitable rights to use, possess, or occupy the Progressive Church's Sumter Property.

> (4) Finklea and [NLAC] are trespassers on the Sumter Property, and accordingly Finklea and New Life are ordered to vacate the Sumter Property immediately. This order to vacate the Sumter Property applies solely to [NLAC] and Finklea and all his followers who are members of [NLAC]. This Court clearly notes that this order to vacate does not apply to any [parishioners] who remain loyal to the Progressive Church's Sumter Congregation and who may continue to use, possess, or occupy the Sumter Property as permitted by and under the direction of the Progressive Church's Board Bishops.
>
> [Omission in Original]
>
> (6) [Respondents'] pending counterclaims for an accounting, quantum meruit, and constructive trust are not affected by this Order.

(R. at 40-41). This appeal followed by notice dated and served November 22, 2021.

New Life sought to stay the order pending this appeal and to remain in possession of the Property by motion dated November 23, 2021. (R. at 597-98). The Progressive Church opposed the motion and submitted the undisputed Affidavit of Ronald T. Scott, which establishes the following:

> 5. On or about January 23, 2015, and without authorization from the Progressive Church, Plaintiffs apparently requested that the Internal Revenue Service change the name of the taxpayer entity associated with the employer identification number ("EIN") for the Progressive Church's Sumter Congregation to New Life Apostolic Church, Inc[.]
>
> 6. Plaintiffs have continued to use, as recently as September, 2020, a checking account at Synovus Bank that is in the name of and owned by the Progressive Church, for both deposits and expenditures.
>
> 7. On December 30, 2021, I served a subpoena in this action to First Citizens Bank & Trust Company ("First Citizens"), requesting financial records for bank accounts held by New Life, and on January 19, 2022, I received documents from First Citizens in response to the subpoena. These documents reveal that New Life opened First Citizens checking account #XXXXXXXX8170 on or about March 1, 2019 (the "First Citizens Account").
>
> 8. The First Citizens Account records include a copy of two checks dated July 15, 2020, #144737419 in the amount of $9,673.00 and #144737420 in the amount of $3,915.00. Both checks were issued by the State of South Carolina Office of State Treasurer as payor to Progressive Church of Our Lord Jesus Christ, Inc. as payee[.]

> 9. I researched the source and purpose of the two checks issued by the State of South Carolina Office of State Treasurer by contacting the State of South Carolina Office of the Comptroller General. My research revealed the two checks were issued at the request of the South Carolina Department of Transportation as part of a right-of-way acquisition[.]
>
> 10. I also reviewed the public land records for the County of Sumter, South Carolina and discovered that on April 29, 2020, Plaintiff Finklea apparently signed two (2) deeds, representing himself as "Pastor" of "Progressive Church of Our Lord Jesus Christ, Inc." and purporting to convey real property owned by the Progressive Church to the South Carolina Department of Transportation[.]
>
> 11. My review of First Citizens Account records has identified several other donor checks made payable to the Progressive Church which were endorsed by New Life Apostolic Church, Inc. and deposited into the First Citizens Bank Account.

(R. at 599-613).

The trial court denied New Life's motion to stay by order filed March 9, 2022. (R. at 43-49). New Life has since vacated the Property. (R. at 50-52).

FACTS

Although there are factual matters about which the parties disagree, the pertinent facts relating to the ownership of the Property and the underlying governing documents of the Progressive Church are either matters of record, admitted, or not reasonably disputed.

I. The Constitution of the Progressive Church.

The Progressive Church was founded in 1944 in Columbia, South Carolina and was incorporated under South Carolina law on October 5, 1953. (R. at 181, ¶8; R. at 266, ¶¶5-6; R. at 280-83). The incorporating documents for the Progressive Church confirm that the Progressive Church "holds, or desires to hold, property in common for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose, or any two or more of said purposes." (R. at 280).

The August 18, 1983 Church Constitution ("Church Constitution") is the current and official bylaws and governing instrument of the Progressive Church. (R. at 181, ¶¶9-10; R. at 266, ¶8; R. at 284-92). Article I, Section III of the Church Constitution states "the purpose of this organization is to teach the doctrines and beliefs of the Apostolic Faith and to *own, establish and maintain churches*, thereby perpetuating the Progressive Church of our Lord Jesus Christ, Inc." (R. at 284 (emphasis added)).

The Board of Bishops is the governing board and highest ecclesiastical authority in the Progressive Church.[1] (R. at 182, ¶13; R. at 284-92). Article III, Section II of the Church Constitution states that the Board of Bishops "shall govern the church in both spiritual and secular matters" and "shall be responsible for the overall operation of the church and its financial growth and stability." (R. at 285). No other individuals or bodies within the Progressive Church have any such governance authority or power. (*See* R. at 284-92).

II. The Property and the Sumter Congregation.

The Sumter Congregation was established in 1991.[2] (R. at 248, ¶7). The Progressive Church appointed Bishop David S. Johnson, Sr. as the initial pastor of the Sumter Congregation

[1] Article I, Section IV of the Church Constitution provides that the Progressive Church "shall function on National, District, and Local levels." (R. at 284). The Progressive Church has ecclesiastical or spiritual members that it often refers to as "saints," "parishioners," or "members of our church," but it does not have corporate "member[s]" as defined in the South Carolina Nonprofit Corporation Act in S.C. Code Ann. § 33-31-140(23)(a). (*See* R. at 268, ¶16). Local congregations of the Progressive Church are not self-governed by saints but are governed by the Progressive Church's Board of Bishops, according to Article III, Section II of the Church Constitution. (*Id.*; R. at 285).

[2] On the subject of the Sumter Congregation, Finkea's affidavits begin "in the early part of 2000." (R. at 73, ¶7; R. at 482, ¶14). New Life did not submit any affidavit or other evidence as to the formation of the Sumter Congregation or its acquisition of real property. As such, Bishop David S. Johnson, Sr.'s affidavit is not disputed on these points for purposes of the summary judgment record.

where he served until 2003. (R. at 164, ¶108; R. at 248, ¶7). The Progressive Church appointed Finklea as the pastor of the Sumter Congregation in 2003. (R. at 164, ¶108; R. at 482, ¶16).

With respect to the acquisition of the Property, Bishop David S. Johnson, Sr. made a request in 1998 that the Progressive Church purchase real property as a permanent place of worship for the Sumter Congregation. (R. at 249, ¶9). On August 10, 1998, the Progressive Church purchased the initial portion of the Sumter Property for a purchase price of $59,750 as reflected in the recorded 1998 Deed. (R. at 255-57; R. at 249, ¶10). The Progressive Church paid the full purchase price of $59,750 from banking accounts it owned and controlled and authorized Bishop David S. Johnson, Sr. to execute the closing documents on behalf of the Progressive Church, titling the property in the Progressive Church's corporate name, Progressive Church of Our Lord Jesus Christ, Inc. (*Id.*).

On May 6, 2005, the Progressive Church purchased the remaining portion of the Sumter Property for a purchase price of $48,000 as reflected in a recorded 2005 Deed. (R. at 260-64; R. at 251, ¶17; R. at 73, ¶9). The Progressive Church paid the full purchase price of $48,000 from banking accounts it owned and controlled and authorized Bishop David S. Johnson, Sr. and the late Bishop Edward Smith to execute the closing documents on behalf of the Progressive Church, titling the property in the corporation's name, Progressive Church of Our Lord Jesus Christ, Inc. (R. at 251, ¶17).

On September 25, 2019, the Progressive Church recorded the 2019 Deed "to clarify that title to the Real Property described in Exhibit A is to be held in the name of Progressive Church of Our Lord Jesus Christ, Inc. and is also to be held in trust for said Progressive Church of Our Lord Jesus Christ, Inc." (R. at 298-304). The 2019 Deed includes a restriction that the Property

is not to be "transferred, sold, [or] pledged . . . without the prior written authorization of the Board of Bishops of the Progressive Church of Our Lord Jesus Christ, Inc[.]" (*Id.*)

III. Finklea leaves the Progressive Church and forms NLAC.

By December 3, 2014, Finklea had incorporated NLAC as a South Carolina corporation. (R. at 483, ¶25; R. at 549, ¶ 3). Certain parishioners of the Sumter Congregation disassociated from the Progressive Church at or prior to that time. (R. at 483, ¶¶22-25; R. at 549, ¶5; R. at 188, ¶¶40, 43).

In 2019, New Life defaced, with black paint or other dark material, a sign at the Sumter Property displaying the name "Progressive Church of Our Lord Jesus Christ, Inc." (the "PC Sign"). (R. at 168, ¶125). Then, on or about March 15, 2019, officials of NLAC installed another sign displaying "New Life Apostolic Church" (the "NLAC Sign") at the Sumter Property. (*Id.* at ¶126). This action spurred the sequence of events leading to this litigation as set forth below.

In November 2019, the Progressive Church discovered the NLAC Sign, and on November 8, 2019 issued Finklea a written letter expressing its concerns. (R. at 273-74, ¶¶34-35; R. at 305-07). In that letter, the Progressive Church objected to the NLAC Sign, directed Finklea to remove the NLAC Sign by November 22, 2019, and informed Finklea that failure to adhere to the ecclesiastical directives of the Board of Bishops would necessitate an Ecclesiastical Trial under the Church Constitution. (R. at 305-07). The letter also expressed concern that Finklea's actions suggested that Finklea had withdrawn from the Progressive Church and requested that Finklea immediately meet with the Board of Bishops to discuss and resolve Finklea's improper actions. (*Id.*). Finklea failed to do so. (R. at 273-74, ¶35; R. at 168-69 ¶¶129-130).

On November 22, 2019, the Progressive Church issued Finklea a written Notice of Ecclesiastical Trial under Article VIII, Section I of the Church Constitution to be held on December 6, 2019. (R. at 274, ¶36; R. at 308-33). At the Ecclesiastical Trial, the Progressive Church's Board of Bishops determined that Finklea was guilty of all ecclesiastical charges against him and affirmed that both Finklea and NLAC had no right to use, possess, or occupy the Progressive Church's Sumter Property. (R. at 275, ¶38). Despite notice, Finklea chose not to attend. (R. at 274, ¶37; R. at 169, ¶¶131-132). After the situation did not improve, the Progressive Church issued a letter to Finklea on December 11, 2020 informing him of a final directive and pending ecclesiastical disciplinary action and directing Finklea and NLAC to vacate the Sumter Property. (R. at 276-77, ¶43; R. at 337-38).

In January 2021, the Progressive Church's Board of Bishops acknowledged Finklea's previous declaration of personal disassociation from the Progressive Church and revoked all ministerial credentials and licenses issued to Finklea to function as a member of the Progressive Church clergy according to Article VI, Section II of the Church Constitution. (R. at 277, ¶44). By Finklea's admission as confirmed by the Board of Bishops, Finklea is no longer a parishioner or clergyman in the Progressive Church. (R. at 277, ¶¶44-45; R. at 171, ¶147).

STANDARD OF REVIEW

On appeal from a grant of summary judgment, this Court's standard of review is the same as that of the trial court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). A court must view the facts and inferences reasonably drawn from them in the light most favorable to the non-moving party. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Summary judgment is warranted when there is no genuine issue of material fact, and it appears that the moving party is entitled to a judgment as a matter of law.

Rule 56(c), SCRCP; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Material facts are those identified by controlling substantive law as essential elements of claims and defenses. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *David*, 367 S.C. at 247, 626 S.E.2d at 3.

When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by pointing out to the trial court "that there is an absence of evidence to support the nonmoving party's case." *Richardson v. State-Record Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998) (citations omitted). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 181 (Ct. App. 2019). "[A] scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows." *Id.* A nonmoving party cannot evade summary judgment by creating and relying on "an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

If a motion for summary judgment has been properly made and supported, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C.

575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

ARGUMENT

I. The Property was and is owned by the Progressive Church.

The South Carolina Supreme Court has adopted a neutral principles approach in resolving church property disputes. *All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009). "This method 'relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.'" *Id.* at 444, 685 S.E.2d at 172 (quoting *Jones v. Wolf*, 443 U.S. 595, 603 (1979)).

Applying a neutral principles approach to the property questions presented here requires affirmance of the trial court. As reflected on the faces of the deeds at issue, the Progressive Church owns and has owned the Property since its purchase in 1998 and 2005.

A. The Progressive Church is the owner of the Property.

The trial court correctly determined that the Property has been titled in the Progressive Church's corporate name since its acquisition in 1998 and 2005 and that there was no question of material fact as to the Progressive Church's ownership of the Property. (R. at 8-10, 31-32). In addition, the only evidence in the record is that the Property was purchased and paid for by the Progressive Church. (*Id.*; R. at 255-57, 260-64, 298-304; R. at 249-51, ¶¶10, 17). All of this is consistent with the Church Constitution, which provides in Article I, Section III that "the purpose of [the Progressive Church] is to teach the doctrines and beliefs of the Apostolic Faith and to

own, establish and maintain churches, thereby perpetuating the Progressive Church of our Lord Jesus Christ, Inc." (R. at 284 (emphasis added)).

As apparent from the faces of the 1998 Deed, the 2005 Deed, and the 2019 Deed, the Progressive Church is the owner of record of the Property. (R. at 255-57, 260-64, 298-304). The duly recorded deeds each clearly name the Progressive Church of Our Lord Jesus Christ, Inc. as the owner. The Progressive Church, by all accounts, is the incorporated entity by that name and has been since 1953. These facts are not in dispute and are determinative on the issue of ownership as a matter of law. *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987) (affirming grant of summary judgment in case involving unambiguous deed). "The construction of a clear and unambiguous deed is a question of law for the court. The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself." *Id.* (citations omitted). Thus, the trial court correctly determined that the Property belongs to the Progressive Church.

The deed in the name of the Progressive Church's corporate entity distinguishes this case from the master's order in *Progressive Church of Our Lord Jesus Christ, Inc. v. Black, et al.*, Case No. 2008-CP-31-0022, *aff'd* 2012-UP-210 (Ct. App. March 28, 2012) (the "Bishopville Case"). In the Bishopville Case, the property was not titled in the corporate name of the Progressive Church. Instead, the master found that the Property was owned by an unincorporated association. (R. at 523-27). This Court affirmed in an unpublished opinion solely on the following basis:

> Specifically, we find evidence in the record on appeal that the Bishopville Congregation was operating as an unincorporated church at the time of the conveyance of the deeds. *See Jeffery v. Ehrhardt*, 210 S.C. 519, 523, 43 S.E.2d 483, 485 (1947) (finding the conveyance of a deed to an unincorporated church vested clear title to its members).

2012-UP-210 (Ct. App. March 28, 2012). This Court expressly declined to reach any other issues raised by the parties to the Bishopville Case.

Unlike the Bishopville Case, this was not a transfer to an unincorporated church. The deeds unequivocally show that the Progressive Church is the record owner of the Property. Moreover, the only evidence in the record relating to the purchase of that Property shows that it was bought and paid for by the Progressive Church.

The deeds further distinguish the straightforward facts of this case from the much more complicated facts presented in *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017), which stemmed from more than two hundred years of history involving a national hierarchical church, a diocese, and twenty-nine individual churches and required an analysis of whether those parishes had created a trust in favor of the national church. Here, there is no such question of trust law because the Progressive Church owns the Property outright as reflected on the faces of the deeds.

B. New Life is not a party to the deeds, and the trial court correctly dismissed its claim for reformation.

New Life argues that the trial court improperly dismissed their equitable claim for reformation of the deeds to the Property, contending that they were a party to the deeds or that they were a third-party beneficiary. Again, this argument fails as a matter law based on a review of the deeds.

Reformation of a contract or deed is a remedy by which writings are rectified to conform to the actual agreement of the parties. *Crewe v. Blackmon*, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986). "Ordinarily, a party requesting reformation must have been a party to the written document or in privity with a party." *George v. Empire Fire & Marine Ins. Co.*, 336 S.C. 206, 212, 519 S.E.2d 107, 110 (Ct. App. 1999), *rev'd*, 344 S.C. 582, 545 S.E.2d 500 (2001)

(stating general rule as to standing to pursue reformation but finding an exception applies in the case of "a third-party beneficiary to an insurance contract").

A deed is analyzed like any other contract. Unless there is an ambiguity in the document, the Court does not resort to extrinsic evidence to determine the intent behind the grantor or grantee. *See Williams v. Tamsberg*, 425 S.C. 249, 259, 821 S.E.2d 494, 500 (Ct. App. 2018) ("[W]hen interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties' intentions, unless that intention contravenes some well-settled rule of law or public policy." (internal citations omitted)); *see also Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987) ("The intention of the grantor must be found within the four corners of the deed." (citation omitted)).

There is nothing ambiguous about the 1998 Deed and the 2005 Deed.[3] The *only* grantee is the Progressive Church. The Sumter Property was purchased *by* the Progressive Church *for* the Progressive Church using funds provided *by* the Progressive Church. There is no conveyance to any person or entity other than the Progressive Church. Finklea and NLAC were not present for the transactions conveying title to the Progressive Church; they are complete strangers to those transactions.[4] Quite simply, New Life is not a party to the deeds. NLAC did not exist until 2014, and Finklea did not come to the Sumter Congregation until after the first

[3] The 2019 Deed does not change this analysis. That deed was filed to provide *additional* record notice to any potential and unwary third-party purchasers or mortgagees for value that they must obtain the Progressive Church's written consent to acquire any title or lien interest in its property. The 2019 Deed did not state anything new or create any rights, and the grantor and grantee *are one in the same* – the Progressive Church of our Lord Jesus Christ, Inc.

[4] Even if extrinsic evidence could be considered, the only evidence from any party participating in the execution of the 1998 Deed and the 2005 Deed, Bishop David S. Johnson, Sr., confirms the Progressive Church's intent to purchase the Sumter Property "for use by the Sumter Congregation [of the Progressive Church] *for furtherance of the secular and ecclesiastical ministry of the Progressive Church.*" (R. at 250-51 ¶¶9-11, 17-18 (emphasis added)).

property had been purchased in 1998. Thus, the trial court correctly found that New Life could not bring this claim.

Nor is New Life a third-party beneficiary to the deeds. Very generally, "where a contract between two parties is intended to create a direct benefit to a third party, the third party may enforce the contract." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 120, 659 S.E.2d 158, 165 (2008) (citation omitted), *holding modified by Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013). There is no evidence that the deeds were intended to benefit NLAC, which is an entity that long post-dates the transactions at issue and is unrelated to the Progressive Church; nor is there any evidence that the deeds were intended to benefit Finklea; nor is New Life seeking to enforce a contract. They are instead asking the Court to create entirely new deeds in favor of NLAC.

NLAC is not a successor in interest to the Sumter Congregation *of the Progressive Church*. It is a new church, separate and distinct from the Progressive Church, and as such does not have a claim to the Progressive Church's Property. New Life asks this Court to ignore binding South Carolina case law that "[w]hen [an] entire congregation withdraws from [a] hierarchical church, the title to the church property remains in the church and does not follow the congregation." *Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 323 S.C. 418, 422, 475 S.E.2d 767, 770 (Ct. App. 1996) (emphasis added). As the U.S. Supreme Court held, "withdrawal from a church and uniting with another church or denomination, is a relinquishment of all rights in the church abandoned." *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872). It would create an absurd result if parishioners who withdraw from a church nevertheless maintain the right to own or occupy their former church's property for use by the new church they have joined.

In a belt and suspenders approach, the trial court also included the following additional basis for this ruling:

> [E]ven if Finklea and NLAC's causes of action are doctrinal or ecclesiastical issues "masquerading" as a property dispute, this Court reaches the same ultimate conclusion. *Protestant Episcopal Church in the Diocese of S.C.*, 421 S.C. at 226, 806 S.E.2d at 90 (holding that when the "trigger" for local congregations to challenge a hierarchical church over property ownership rested upon matters of doctrine and church disciplinary matters, the local congregations' challenge to property ownership were truly a masquerade for its doctrinal issues and finding that a court, upon identifying such a "masquerade," *must* defer to the National Church's ecclesiastical decisions regarding the church property used by the local congregation) (emphasis added).
>
> Here, Finklea and NLAC admit that the "trigger" for their actions to withdraw from the Progressive Church and to seek to control and possess the Sumter Property against the Progressive Church's authority stem from ecclesiastical and doctrinal issues related to doctrinal standards of the Progressive Church and the use and administration of Progressive Church funds, all of which are similar issues the South Carolina Supreme Court described as issues "masquerading" as a property dispute in the *Protestant Episcopal Church*. *See* Am. Compl. ¶¶ 37-40. Accordingly, even if the above issues are truly ecclesiastical issues, this Court *must* defer to the decision of the Progressive Church's Board of Bishops regarding the Sumter Property: that Finklea and New Life have no right to use or possess the Sumter Property and therefore must vacate the Property. *See* D. Johnson Aff. ¶ 25; *see also* P. Johnson Aff. ¶¶ 46-48.

(R. at 30-31). New Life has not appealed this ruling, nor is it discussed in Section IV of New Life's brief addressing reformation. As such, this ruling is the law of the case and requires affirmance. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

For all of these reasons, this Court should affirm the grant of summary judgment in favor of the Respondents as to New Life's claim for reformation of the deeds.

C. New Life does not have any right to occupy the Property; therefore, the trial court properly found that New Life was trespassing.

"A trespass is any interference with 'one's right to the exclusive, peaceable possession of his property.'" *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013). "[T]respass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property." *Ravan v. Greenville Cty.*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993).

Again, the deeds show the Progressive Church owned the Property, and there was no showing of any contractual or other right on the part of New Life to occupy the Property following the Progressive Church's letter of December 11, 2020 directing New Life to leave. (R. at 276-77, ¶43, R. at 337-38). Nor is there any dispute that New Life continued to occupy the Property after that date. Given these facts, the trial court correctly granted summary judgment on this claim and ordered New Life to vacate the Property.

Although New Life and the Progressive Church have decidedly different perspectives on what occurred between 2014 and the initiation of this action, those differences are irrelevant to the questions presented in the Progressive Church's counterclaim, which rest solely on whether there has been an interference with the owner's right of possession.

D. New Life cannot establish any entitlement to recover in quantum meruit.

New Life claims that "if the Progressive Church is deemed to be the owner of the Property," then "the Progressive Church would receive a significant financial and operational benefit as a result of the Property maintenance and improvements made by Plaintiffs since July of 2014" the retention of which would be unjust. (R. at 195, ¶¶83-84). Even if New Life improved the Property after July 2014, they have not stated a claim on this basis because

quantum meruit is only a measure of recovery, not a separate basis for a recovery, and the Progressive Church did not owe any duty to New Life.

"[O]ur Supreme Court 'has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment.'" *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct. App. 2002) (quoting *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994)). "'Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.'" *Id.* This is the "sole test for a quantum meruit/quasi-contract/implied by law claim." *Id*. (quoting *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 9, 532 S.E.2d 868, 872 (2000)).

In *Pitts*, this Court reviewed a plaintiff's tort and other claims, along with a claim for unjust enrichment, based on allegations that an insurer and its agent had a duty "to inform an applicant of the availability of an allegedly superior product, or to evaluate the applicant's eligibility for that product, regardless of what product the applicant asked for." *Id.* at 338, 574 S.E.2d at 511–12. This Court found that such a duty does not exist and upheld the trial court's order holding "the absence of [a] legal duty would be equally fatal to Plaintiffs' fraudulent concealment claim and to the unjust enrichment claim . . . which was also premised on the existence of such a duty." *Id.* The *Pitts* court further found that the plaintiff "*failed to establish any duty to disclose or other cause of action that would allow recovery for unjust enrichment*. There was no benefit conferred upon [the insurer] that would be unjust for [the insurer] to retain.

There was no breach of fiduciary duty or fraud involved." *Id.* at 340, 574 S.E.2d at 512 (emphasis added).

New Life erroneously argues that duty has no place in this analysis and that all that is required is inequity, but this is simply not the case—the underlying premise behind equitable relief is that there should not be a wrong without a remedy. *Id.; State ex rel. Daniel v. Strong*, 185 S.C. 27, 43, 192 S.E. 671, 678 (1937) ("Just as nature abhors a vacuum, so equity abhors a wrong without a remedy."). It is equally fundamental that equity follows the law. *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007).

Our law does not impose a general obligation to act in any certain way with respect to third parties (or, in other words, does not recognize a wrong) without a duty. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456–57, 578 S.E.2d 711, 714 (2003) ("An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Ordinarily, the common law imposes no duty on a person to act." (citation omitted)). Issues of existence and scope of duty are questions of law for the court. *Id.*; *Staples v. Duell*, 329 S.C. 503, 506-07, 494 S.E.2d 639, 641 (Ct. App. 1997). For this reason, our courts will not step in any time a party cries "inequity." Instead, a plaintiff must articulate some basis for a claim. *See Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 477 (Ct. App. 2013) (finding elements of unjust enrichment not met where "the evidence shows Midland Mortgage was or should have been aware that Cassandra was named on the contract with Sidney as a purchaser and did not sign either the note or the mortgage" and quoting *Pitts*).

Secondly, if a trespasser improves a piece of property, the property owner does not owe the trespasser any duties or compensation. The trespasser improves the property at its own risk. *Cayce Land Co. v. Guignard*, 135 S.C. 446, 549, 134 S.E. 1, 33 (1926) ("[A] trespasser . . . [is]

not entitled to compensation for improvements."); *Shumaker v. Shumaker*, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) (denying claim for contribution from co-tenants for property improvements).

In *Cayce Land Co.*, the defendant built two rail lines that passed under a Southern Railway Company track and across its right of way by means of an underpass pursuant to a license with the Southern Railway Company and a contract for purchase of neighboring property with property owner B.B. Cayce. However, Guignard never executed his deed. When Guignard started to build houses on the right of way and B.B. Cayce's land, the Southern Railway Company instituted an action to require him to remove the houses, and the clerk of court conveyed the property to Southern Railway Company. On appeal, Guignard argued he was entitled to compensation for his improvements to the land in question, namely the rental value of the houses he built. However, the Court held that because Guignard occupied the right of way of the Southern Railway Company without legal title and only an equitable right under his contract with B.B. Cayce, which conveyed no part of the land outside of the railroad's right of way, he was a trespasser. Therefore, Guignard was not entitled to the value of his improvements to the Southern Railroad Company's right of way.

Here, Finklea and NLAC argue that because they allegedly made improvements to the Sumter Property, then they are entitled to recover for their improvements. However, Finklea and New Life had no legal right to do so and were therefore trespassers. Therefore, the trial court correctly determined there was no right to recover in equity for any alleged improvements to the Sumter Property as a reward for their trespass.

II. NLAC and Finklea admit they left the Progressive Church long before they filed this action. Therefore, the trial court correctly determined that New Life lacks standing to assert claims for declaratory judgment, injunctive relief, and reformation of deeds.

"Standing is a fundamental requirement for instituting an action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412–13 (Ct. App. 1994) (citing *Blandon v. Coleman*, 285 S.C. 472, 475, 330 S.E.2d 298, 299 (1985)). "[O]nce it is determined a plaintiff has no standing to prosecute, the court must dismiss the action." *Id.*

As shown above, the Progressive Church is the owner of the Property and NLAC is not a successor in interest to the Progressive Church, but is rather a separate and distinct entity. This is not a case where property was owned by an unincorporated entity or by a congregation. Instead, the Property has always been owned by the Progressive Church in its corporate name.

Finklea has unequivocally stated that he disassociated from the Progressive Church on July 20, 2014, when he informed the members of the Progressive Church's Sumter Congregation that he was leaving the Progressive Church, after which over 90% of the members voted to leave with him. (R. at 483, ¶¶22, 25). Finklea then formed a new church organization, New Life Apostolic Church, Inc., which, since its inception as a "nonprofit, eleemosynary corporation under the laws of South Carolina on December 3, 2014," has operated "as a separate and distinct church that is not associated with the Progressive Church." (R. at 188, ¶43). New Life unmistakably affirmed in their pleadings that Finklea "is no longer a member, pastor, or elder in the Progressive Church." (R. at 171, ¶147). It is thus clear that Finklea and all others who voted to leave the Sumter Congregation abandoned their status as saints in the Progressive Church by uniting with another church.

As a result, Finklea and all individuals who left the Progressive Church also lost all rights as saints of the Progressive Church and lack standing to pursue this action relating to Progressive

Church Property. *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872) ("[W]ithdrawal from a church and uniting with another church or denomination, is a relinquishment of all rights in the church abandoned."); *Brock*, 313 S.C. at 517-18, 443 S.E.2d at 411-12 (holding that former church members did not have standing to sue regarding the issue of church property because "the record did not reflect that any of them were members or officers of the church at the time of the commencement of [the] action; thus, they have no standing by reason of membership or office" in the church) (citing *Bramlett v. Young*, 229 S.C. 519, 541, 93 S.E.2d 873, 884 (1956) (quoting with approval the following proposition: "Withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in the church abandoned."))); *Adickes v. Adkins*, 264 S.C. 394, 400, 215 S.E.2d 442, 444 (1975) (affirming holding in *Bramlett*); *Hardin v. Horger*, 252 S.C. 298, 304, 166 S.E.2d 215, 218 (1969) ("The appellants simply have no legal standing to complain. While some members of the seceding congregation are apparently heirs of one or more of the original grantors, they assert no right in such capacity. They appear here simply as the representatives of a seceding congregation which is no longer a part of The Methodist Church.").

The trial court here took guidance from *Brock*, a case involving a disagreement over the physical and spiritual control of Emmanuel Baptist Church between John Brock, a former trustee and church member, and Mitchell Bennett, the pastor of the congregation at the time of suit. Brock was a trustee named in the deed to the church property who helped organize the church and build the church building, but he left Emanuel Baptist and joined other churches in ensuing years. This Court reversed the trial court's decision awarding control of the property to Brock and also found the trial court erred by not granting a directed verdict for Bennett. *Brock*, 313 S.C. at 516, 443 S.E.2d at 411. In addition, this Court held that only the members of a church

have standing to sue regarding "the issue of church property and the conduct of its services." *Id.* at 517, 443 S.E.2d at 411. Given this clear and long-standing precedent, the trial court correctly determined that New Life lacked standing because the Property was owned by the Progressive Church, and Finklea and NLAC, by their own admissions, are not a part of the Progressive Church.

III. The trial court properly refrained from delving into matters relating to the internal governance of the Progressive Church.

As an initial matter, the deeds to the Sumter Property are clear on their faces, and there is no basis for considering additional evidence. That should end the inquiry as to the parties' rights with respect to the Property.

New Life, however, sought in this action to cloud these clear waters by raising arguments pertaining to the governance of the Progressive Church and the authority of the Board of Bishops. The trial court correctly found that it had no authority to make such ecclesiastical declarations. (R. at 17-20). With regard to church governance, "[i]t is not the function of [this Court] to dictate procedures for [the Progressive Church] to follow." *Pearson v. Church of God*, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996).

> The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority. On this principle, the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land; having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.

Id. at 51–52, 478 S.E.2d at 852–53 (quoting *Morris St. Baptist Church v. Dart*, 67 S.C. 338, 341-42, 45 S.E. 753, 754 (1903)). When adjudicating church disputes,

> (1) [c]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, *or administration*; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church, 421 S.C. 211, 216, 806 S.E.2d 82, 84-85 (2017) (emphasis added). The South Carolina Supreme Court has further held that, in terms of polity and structural governance, churches "are generally divided into two groups: (1) congregational churches and (2) hierarchical churches." *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). "A congregational church is an independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government, while a hierarchical church may be defined as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *Id.* American Jurisprudence, as cited in *Seldon*, also states that in the "hierarchical type of church polity, local churches are an organic part of the organization but are connected with and subordinate to the laws, procedures, and organs established by the constitution and bylaws of the general church." 66 Am. Jur. 2d Religious Societies § 3 (2020).

The Church Constitution clearly confirms that the ecclesiastical head of the Progressive Church is its Board of Bishops and that the Progressive Church operates under a hierarchical system. (R. at 266-67, ¶9, 10, 13; R. at 182, ¶13; R. at 284-92). Therefore, any interpretations regarding the doctrine, administration, governance, and operating procedures under the Church

Constitution are to be determined by the Progressive Church's Board of Bishops, and not this Court, and such determinations of the Board of Bishops are binding upon this Court.

The First and Fourteenth Amendments to the United States Constitution "forbid" this Court from substituting its interpretation of the Church Constitution for that of the Progressive Church's Board of Bishops. *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich,* 426 U.S. 696, 709, 721 (1976) (holding that a civil court is forbidden from substituting its interpretations of a church constitution "for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation" and that "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them").

Therefore, the trial court correctly found that it lacked subject matter jurisdiction over New Life's claims for declaratory judgment pertaining to ecclesiastical appointments, removals, administration, and operation of the Progressive Church. This lack of subject matter jurisdiction extends to the governance of its Sumter Congregation by the Progressive Church and over ecclesiastical governance decisions and appointments made by and pertaining to the Board of Bishops.

New Life makes much of the master's order in the Bishopville Case with respect to the governance of the Progressive Church. The trial court correctly discounted the order as irrelevant. As discussed above, the Bishopville Case did not involve property titled in the corporate name of the Progressive Church. In addition, the master's findings with respect to the governance of the Progressive Church were appealed but were not addressed by this Court. To

the extent those rulings may have had reach beyond the Bishopville Case, the effect would be limited as follows:

> The appropriate remedy, therefore, would not be to impose an ecclesiastical dictate of the civil court but would rather be to restore the status quo prevailing before the unauthorized action. Once determination is made that the proper ecclesiastical authority has acted in its duly constituted manner, no civil review of the substantive ecclesiastical matter may take place as this would be prohibited by Amendments I and XIV of the Federal Constitution and Article I, Section 2 of the State Constitution.

Bowen v. Green, 275 S.C. 431, 434, 272 S.E.2d 433, 435 (1980). Thus, at most, the Progressive Church was sent back to the status quo before the actions challenged in the Bishopville Case and remained free to govern itself consistent with the Church Constitution, including the provisions relating to the membership of the Board of Bishops. Nothing about the Bishopville case has any bearing on the title to the Sumter Property or the current membership of the Board of Bishops.

For all of these reasons, the trial court correctly determined that it lacked jurisdiction to reach the matters raised in New Life's claim for a declaratory judgment pertaining to the governance of the Progressive Church.

IV. The trial court correctly denied New Life's request for a preliminary injunction.

As reflected in the above and the trial court's order, New Life cannot demonstrate "a[ny] likelihood of success on the merits" of the claims in its motion for a preliminary injunction. Thus, this motion necessarily fails. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). As a result, the trial court properly denied the request for temporary injunctive relief.

CONCLUSION

For all of these reasons, the trial court's order granting partial summary judgment and denying a preliminary injunction should be affirmed. There is no genuine issue for trial. The Progressive Church is the owner of the Property, and its system of church governance is not to be decided by civil courts.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2020-CP-43-01863

New Life Apostolic Church, Inc., and Ricky Finklea.....Appellants,

v.

Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr.,
Lang Priester, David S. Johnson, Sr., and Paul C. Johnson.....Respondents.

CERTIFICATE OF COUNSEL

I certify that the Final Brief of Respondents Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr., Lang Priester, David S. Johnson, Sr., and Paul C. Johnson, in this matter complies with Rule 211(b), SCACR.

Respectfully submitted,

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