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November 8, 2022

**VIA EMAIL**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**

**Nov 08 2022**

**SC Court of Appeals**

Re: *New Life Apostolic Church, Inc., and Ricky Finklea v. Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr., Lang Priestler, David S. Johnson, Sr., and Paul C. Johnson*  
C. A. No. 2020-CP-43-01863  
Appellate Case No. 2021-001368

Dear Ms. Kitchings:

This firm represents the Respondent Progressive Church of Our Lord Jesus Christ, Inc. in the above matter. Respondent submits this letter in accordance with Rule 208(b)(7), SCACR. Since the initial briefs in this case were filed, the Fourth Circuit Court of Appeals has affirmed the grant of summary judgment in *Progressive Church of Our Lord Jesus Christ, Inc. v. Progressive Church of Our Lord Jesus Christ-Tallahassee, Inc.* Respondent attaches the decisions of both the Fourth Circuit and the District Court for ease of reference. These cases provide additional authority in support of Respondent's Arguments I and III.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac  
Enclosures

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**UNPUBLISHED**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-1763**

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PROGRESSIVE CHURCH OF OUR LORD JESUS CHRIST, INC.,

Plaintiff - Appellee,

v.

PROGRESSIVE CHURCH OF OUR LORD JESUS CHRIST-TALLAHASSEE, INC.,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Columbia. Joseph F. Anderson, Jr., Senior District Judge. (3:19-cv-03541-JFA)

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Submitted: September 30, 2022

Decided: October 12, 2022

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Before THACKER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Megan A. Rosenberg, Jennifer C. Rey, THE HOGAN LAW FIRM, LLC, Brooksville, Florida; Louis D. Nettles, NETTLES LAW FIRM, Florence, South Carolina, for Appellant. James Y. Becker, Costa M. Pleicones, Columbia, South Carolina, Sarah P. Spruill, HAYNSWORTH SINKLER BOYD, P.A., Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

The Progressive Church of Our Lord Jesus Christ, Inc. (the “Church”) filed suit against the Progressive Church of Our Lord Jesus Christ-Tallahassee, Inc. (the “Tallahassee Congregation”) to determine the validity of a deed signed by the Presiding Bishop of the Church purporting to transfer a parcel of real property where the Tallahassee Congregation worshipped (the “Tallahassee property”) to the Tallahassee Congregation without the permission of the Church’s Board of Bishops. The district court determined that the deed was invalid and granted summary judgment in favor of the Church. The Tallahassee Congregation appeals, arguing that the Board of Bishops was illegitimate, the Church’s Constitution should be given no weight because the Church did not adhere to it, and the Tallahassee Congregation paid for the purchase of the Tallahassee property. We affirm.

We review de novo a district court’s order granting summary judgment. *Calloway v. Lokey*, 948 F.3d 194, 201 (4th Cir. 2020). “A district court ‘shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 568 (4th Cir. 2015) (quoting Fed. R. Civ. P. 56(a)). A genuine dispute exists “if a reasonable jury could return a verdict for the nonmoving party.” *Id.* (internal quotation marks omitted). In determining whether a genuine issue of material fact exists, this court “view[s] the facts and all justifiable inferences arising therefrom in the light most favorable to . . . the nonmoving party.” *Id.* at 565 n.1 (internal quotation marks omitted).

“[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976) (internal quotation marks omitted). “[R]eligious freedom encompasses the power of religious bodies to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Id.* at 721-22 (cleaned up). “In assessing whether to exercise jurisdiction in a civil proceeding involving a church, it is important to determine whether the church is of a ‘hierarchical’ nature. If the church is hierarchical, a civil court should defer to the final authority within its hierarchy, declining even to determine . . . whether it has complied with church laws and regulations.” *Dixon v. Edwards*, 290 F.3d 699, 715 (4th Cir. 2002). In determining whether a church is hierarchical, a court considers whether:

- 1) The corporations in question are organized under the state religious corporations act governing the incorporation of religious societies that are subordinate parts of larger church organizations.
- 2) Resolutions of the subordinate entity acknowledge the superiority of the superior entity.
- 3) By-laws of the lower authority have been submitted to the higher for approval.
- 4) The priest takes an oath to be obedient to the higher authority.
- 5) Provisions in the constitutions and by-laws of both the superior and subordinate levels suggest a hierarchical relationship.

*Id.*

Our review of the record supports the district court’s conclusion that the Church operated as a hierarchical organization and that deference is owed to the Church’s highest

authority. *See id.* The Church is incorporated under South Carolina's act governing the incorporation of religious organizations; the Church Constitution provides that the organization operates on national, district, and local levels, provides for the collection of fees from districts to be rendered to the national organization, and requires that member churches adhere to the rules and bylaws of the Church; and upon their appointment, pastors of local congregations agree to operate under the Board's authority and pursuant to the Church Constitution. We therefore conclude that the district court did not err in determining that the Church was a hierarchical organization.

The Board of Bishops is the highest authority within the Church, according to its Constitution. *See id.* at 717 (looking to church's governing documents to determine its highest authority). At the time the deed purporting to transfer the Tallahassee property was signed, the Board of Bishops had been properly appointed in compliance with the Church Constitution; any alleged history of noncompliance with the Constitution by the Church is irrelevant. And, while the Tallahassee Congregation claims that the 2019 election and appointment of the Board of Bishops occurring before the deed was executed was illegitimate, a civil court defers to the hierarchical authority in matters of internal church government and will not scrutinize the Church's appointments to the Board of Bishops. *See id.* at 715. Although the Tallahassee Congregation argues that there is a question of fact as to who supplied the funds for the original purchase of the property, this question is immaterial because the record makes clear that the property was purchased by the Church, the mortgage and property were titled in the Church's name, and the Church Constitution provided for the ownership of churches by the national Church organization.

Because the Church is incorporated in South Carolina, South Carolina's statute governing nonprofit corporations applies to the Church's operations. *See Phoenix Sav. & Loan, Inc. v. Aetna Cas. & Sur. Co.*, 427 F.2d 862, 868 (4th Cir. 1970) (citing *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938)) (stating that substantive issues in a diversity suit are resolved according to state law). Turning to the validity of the transfer, South Carolina law requires that every corporation have a board of directors, and that all corporate powers be exercised and affairs of the corporation be managed by the board, unless the articles of incorporation authorize another person to exercise particular powers. S.C. Code Ann. § 33-31-801 (2006). "If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of [South Carolina law governing nonprofit corporations], the religious doctrine controls." S.C. Code Ann. § 33-31-180 (2006). Because the Tallahassee property is located in Florida, Florida law governs the transfer of property. Florida law requires either that the party transferring the property or "the party's lawfully authorized agent" sign the deed before two witnesses, Fla. Stat. § 689.01 (2021), or that an instrument be "sealed with the common or corporate seal and signed in its name by its president or any vice president or chief executive officer," Fla. Stat. § 692.01 (2021).

Although the deed in this case was signed by the Presiding Bishop, the deed did not contain a corporate seal, and therefore did not comply with the requirements of Fla. Stat. § 692.01. As such, to be effective, the deed must have been signed by the Church's lawfully authorized agent. *See DGG Dev. Corp. v. Estate of Capponi*, 983 So. 2d 1232, 1233-34 (Fla. Dist. Ct. App. 2008) (stating that a deed is ineffective on its face to convey title if not properly executed in accordance with the conveyancing statutes). Neither the

articles of incorporation nor the Church Constitution authorize the Presiding Bishop to transfer property on behalf of the Church. Thus, the Board of Bishops has the sole power to authorize such a transaction. Since the Presiding Bishop was not authorized by the Board of Bishops to sign the deed, the transaction was not valid under Florida law. We conclude that the district court did not err in granting the Church's motion for summary judgment.

Finally, the Tallahassee Congregation filed a motion for an injunction pending this appeal seeking to stop the Church from barring the Tallahassee Congregation members from the Tallahassee property. A motion requesting such relief ordinarily must first be made in the district court unless the moving party shows that the court has already denied the requested relief or that moving first in the district court would be impracticable. Fed. R. App. P. 8(a)(1)(A), (2)(A). Additionally, "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion" needed for issuance of the stay. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

The Tallahassee Congregation did not first request injunctive relief in the district court and has not met its burden of showing that the circumstances justify an exercise of this court's discretion. Moreover, our decision renders the request for relief moot.

We affirm the district court's order granting summary judgment and deny the Tallahassee Congregation's motion for an injunction pending appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Progressive Church of Our Lord Jesus  
Christ, Inc.,

Plaintiff,

v.

Progressive Church of Our Lord Jesus  
Christ-Tallahassee, Inc.,

Defendant.

C/A No.: 3:19-cv-03541

**MEMORANDUM OPINION AND  
ORDER**

This matter is currently before the Court on Plaintiff Progressive Church of Our Lord Jesus Christ, Inc.’s (“Plaintiff,” “Progressive Church,” or “Church”) motion for summary judgment with respect to its claim for declaratory judgment against Defendant Progressive Church of Our Lord Jesus Christ – Tallahassee, Inc. (“Defendant” or “Tallahassee Association”). (ECF No. 22). This motion has been fully briefed and is therefore ripe for review.

**I. FACTUAL BACKGROUND**

This case arises out of a dispute between the Progressive Church and the Tallahassee Association regarding the ownership of real property in Tallahassee, Florida, and the necessary corporate authority to convey the property and conduct other secular business. The Progressive Church was founded in 1944 as an unnamed, unincorporated association in Columbia, South Carolina, and on October 5, 1953, was incorporated under South

Carolina law. Upon its incorporation, the Church was corporately governed by its Board of Trustees, which is now known as the Board of Bishops (the “Board of Bishops” or “Governing Board”). The Church has ecclesiastical members, often referred 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. S.C. Code Ann. § 33-31-140(23)(a) (the “Act” or the “Code”). The Progressive Church owns deeded real property consisting of its churches and related facilities serving congregations in eighteen cities in North Carolina, South Carolina, Georgia, and Florida, with maintenance responsibilities and building upkeep generally provided by members of each Progressive Church local congregation. (ECF No. 1). The Articles of Incorporation (the “Articles”) 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.”

In 1971, the Governing Board adopted limited written bylaws regarding the governance of the Progressive Church (the “1971 Bylaws”). The 1971 Bylaws, along with the Articles and other unwritten ecclesiastical rules of order and conduct, served as the governing documents for the Progressive Church. The 1971 Bylaws addressed matters of church governance, finance, administration, discipline, ecclesiastical practices, and general rules of order for clergy and local congregations of the Progressive Church.

In 1983, the Progressive Church’s Board of Bishops authorized the creation of a written Church Constitution. It is undisputed that the August 18, 1983 Church Constitution

remains the official bylaws and governing instrument of the Progressive Church. (ECF No. 1, p.3, ¶¶ 10-11 and 1-2; ECF No. 7, p. 2, ¶¶ 9-10). 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.”

In 2008, the Board of Bishops learned, through notice from concerned saints of the Progressive Church Congregation in Bishopville, South Carolina, of an undisclosed transfer of real property located in Bishopville (the “Bishopville Property”) by Roscoe Black (“Black”), the pastor of the Progressive Church’s Bishopville Congregation, and others, to a new and different corporate entity named, Progressive Church of Bishopville, Inc. The Bishopville Property, which was not the location of the then existing Progressive Church sanctuary and facilities, had been acquired in 1996 for future construction of a new church sanctuary and was originally titled in the name of Progressive Church of Our Lord Jesus Christ, but without the “Inc.” designation. The Progressive Church filed an action in state court to set aside the 2008 conveyance (“2010 State Court Order”). *Progressive Church of Our Lord Jesus Christ, Inc. v. Black, et al.*, Case No. 28-CP-31-0022. South Carolina Master in Equity, S. Bryan Doby, found that the Bishopville Property was never properly titled in the corporate name of the Progressive Church and was therefore owned by an unincorporated association of local congregants, which may own property under South Carolina law. Judge Doby further found that the 2008 transfer of the Bishopville

Property was a duly authorized transfer by that unincorporated association to a new corporate grantee.

In February of 2019, the Progressive Church, attempting to correct the procedural deficiencies noted by Judge Doby,<sup>1</sup> called upon the originally constituted Board of Presbytery, empowered to fill vacancies on the Board of Bishops when such vacancies occurred, to fill the two vacancies created on the Board of Bishops by the incapacitation and subsequent deaths of two former bishops. These actions confirmed the appointment of the same individuals in the Progressive Church leadership who functioned as the Advisory Council and Interim Board of Bishops beginning in 1988, who were later named as lifetime members of the Board of Bishops in 2007, and who have continued serving as the Board of Bishops to the present day.

Article I, Section IV of the Church Constitution provides that the Progressive Church “shall function on National, District, and Local levels.” In 1976, upon approval by the Board of Bishops, Bishop Smith and Bishop David S. Johnson, Sr. began a local Progressive Church congregation in Tallahassee, Florida (the “Tallahassee Congregation”), as a part of the hierarchical Progressive Church. Pursuant to the Church Constitution, the Board of Bishops appointed Wender Gavin (“Elder Gavin”) to the ecclesiastical office of Minister during a Progressive Church Convocation in Columbia,

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<sup>1</sup> In his 2010 order identifying the procedural deficiencies, Judge S. Bryan Doby held that Bishop Smith’s appointment of the bishops did not constitute valid appointments to the Board of Bishops because the appointments were not made pursuant to procedures set forth in the Church Constitution. *Progressive Church of our Lord Jesus Christ, Inc. v. Black, et al.*, Case No. 28-CP-31-0022.

South Carolina in the late 1970s and appointed Elder Gavin to serve as pastor of its Tallahassee Congregation. In early 1983, Bishop Smith made a request to the Board of Bishops to purchase real property owned by the Trustees of the Community Baptist Church of Tallahassee, Florida for a price of \$100,000, as a permanent place of worship for the Tallahassee Congregation. The Board of Bishops approved Bishop Smith's request and authorized Bishop Smith to execute closing documents on behalf of the Progressive Church, titling the property in the corporation's name, Progressive Church of Our Lord Jesus Christ, Inc. Four months after the Progressive Church purchased the Tallahassee Property, the Progressive Church adopted its Church Constitution in August of 1983. The provision in Article I, Section III of the Church Constitution codified the Progressive Church's long-standing practice of purchasing and titling properties in its corporate name: Progressive Church of Our Lord Jesus Christ, Inc.

On January 14, 2019, Elder Timothy Beard ("Elder Beard"), lay clergy in the Progressive Church and son-in-law of Elder Gavin, drafted a memorandum solely to Bishop Smith, in Columbia, South Carolina. This memorandum requested that the Tallahassee Property be deeded over, for no consideration, to the newly created Tallahassee Association, on whose board of directors Elder Beard served. The new Tallahassee Association coincidentally had been formed on the same date as the transfer request to Bishop Smith. On May 19, 2019, Elder Beard met with Bishop Smith and others to have Bishop Smith execute the May 19, 2019 deed purporting to transfer title ownership of the Tallahassee Property for ten dollars (\$10.00) to Elder Beard's Tallahassee Association. No

resolution of the Board of Bishops approving the transfer of the Tallahassee Property was ever created or presented to Elder Beard or to the Florida attorney acting on Elder Beard's behalf. On May 23, 2019, the May 19, 2019 deed purporting to convey the Tallahassee Property from the Progressive Church to Elder Beard's Tallahassee Association was filed in the Leon County, Florida Clerk of Court's Office.

## II. PROCEDURAL BACKGROUND

The Progressive Church filed its Complaint in this Court on December 19, 2019 (ECF No. 1), alleging that Bishop Smith's transfer of the Tallahassee Property to the Tallahassee Association was performed without corporate authority given in the Church Constitution or by the Board of Bishops, and seeking a declaration that, *inter alia*, the May 19, 2019 deed to the Tallahassee Association is void *ab initio*. The Tallahassee Association filed its Answer on February 7, 2020, and asserted a Counterclaim seeking a declaration, *inter alia*, that the Tallahassee Association is the owner of the Tallahassee Property. (ECF No. 7 at ¶ 60). On December 4, 2020 Plaintiff filed its motion for summary judgment. (ECF No. 22). Defendant filed a response opposing the motion on December 18, 2020. (ECF No. 23). Plaintiff filed its reply on December 29, 2020. (ECF No. 24). After a hearing before this Court on January 26, 2021, the Court took the matter under advisement. Following a hearing and a thorough review of the parties' briefs and analysis of the relevant caselaw, the Court grants Plaintiff's motion for summary judgment (ECF No. 22) for the reasons detailed below.

### III. LEGAL STANDARD

#### a. Summary Judgment

Summary judgment should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant has the burden of proving that summary judgment is appropriate. Once the movant makes the showing, however, the opposing party must respond to the motion with “specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56).

When no genuine issue of any material fact exists, summary judgment is appropriate. *See Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir. 1991). In deciding a motion for summary judgment, the facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* However, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.”<sup>2</sup> *Anderson*, 477 U.S. at 247–48.

“[O]nce the moving party has met [its] burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial.” *Baber v. Hospital Corp. of Am.*, 977 F.2d 872,

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<sup>2</sup> Most of the facts recited in the Memorandum Opinion and Order are undisputed. To the extent any facts are disputed, the Court has construed these facts, and all inferences to be drawn therefrom, in the light most favorable to the nonmoving party—here, Defendant.

874–75 (4th Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *See id.* Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

### **b. First Amendment Limitations**

The First Amendment, which is applicable to the states through the Fourteenth Amendment, provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]” U.S. Const. amend. I. Similarly, civil courts are restricted when they consider issues pertaining to religious organizations or doctrines. “[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes[ ]” and “prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.” *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (citations omitted).

The Supreme Court of South Carolina has adopted the neutral principles approach to resolve 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). Under that approach, a court “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges,” thereby keeping it free “from entanglement in questions of religious doctrine, polity, and practice.” *Jones*, 443 U.S. at 603, 99 S.Ct.

3020. As long as its analysis avoids judicial entanglement with religious doctrine, a court under the neutral principles approach can appropriately assess various documents, including deeds, corporate charters, and church constitutions. *See Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 367–68, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (holding that a court’s resolution of a church property dispute did not involve an inquiry into religious doctrine when the court had assessed the language in deeds, the terms of corporate charters, and the terms of a church’s constitution). Accordingly, the Court is mindful of the limited role the civil courts of our country are obliged to play in resolving church disputes.

#### **IV. DISCUSSION**

The Progressive Church, as a non-profit religious and charitable organization organized under the laws of South Carolina, is subject to the South Carolina Nonprofit Corporation Act, S.C. Code § 33-31-101, *et seq.* The South Carolina Uniform Declaratory Judgments Act provides that “[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30.

In assessing whether to exercise jurisdiction in a civil proceeding involving a church, it is important to determine whether the church is of a “hierarchical” nature. If the

church is hierarchical, a civil court should defer to the final authority within its hierarchy, declining even to determine whether an ecclesiastical decision is arbitrary, i.e., whether it has complied with church laws and regulations. *Dixon v. Edwards*, 290 F.3d 699, 715 (4th Cir. 2002). In fact, it is clear that “a civil court must accept the ecclesiastical decisions of church tribunals as it finds them,” “on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law.” *Id.*

A congregational church is an independent organization, self-governing in its religious functions. *Seldon v. Singletary*, 284 S.C. 148, 326 S.E.2d 147 (1985). A hierarchical church, on the other hand, “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.* at 149–150, 326 S.E.2d at 148 (citing 66 Am.Jur.2d Religious Societies § 3 (1973)). Defendant’s argument primarily relies on the assertion that Plaintiff corporation is a “mere shell without governing bylaws or authorized officers.” (ECF No. 7). Defendant contends that there is no hierarchical governance structure to the Progressive Church, but rather that it is an association of “congregations holding themselves out as Progressive Church of Our Lord Jesus [Christ].” (ECF No. 23, p. 1). The Court disagrees.

Following careful review of the extensive evidence proffered by the parties, the Court finds that the Tallahassee Congregation was a part of the Progressive Church’s organizational structure. Clearly, the Progressive Church is a hierarchical church, composed of bishops, ruling elders, and other officers, as well as trustees. Moreover, the Tallahassee Congregation has always operated as a part of the Progressive Church. The

Church Constitution was accepted, acknowledged, and signed on August 18, 1983 by *all* of the pastors of the Progressive Church’s Local Congregations, including Elder Wender Gavin, who was then and is now the pastor of the Tallahassee Congregation and the President of the Defendant corporation. (ECF No. 24, p. 3; ECF No. 22-2, pp. 129, 292-293; T. Smith Dep. 126:19-127:25). Following the 2010 State Court Order, the Progressive Church made pervasive efforts to show the courts that it was operating as a hierarchical organization.

The facts presented by this case demonstrate that in February 2019 the Progressive Church, in compliance with relevant statutory provisions and applicable bylaws, conducted legal and proper meetings of the inaugural Board of Presbytery to fill vacancies on the Board of Bishops, which then appointed additional Bishops, thereby eliminating any doubts caused by the aforementioned 2010 State Court Order. Therefore, through the application of neutral principles of law, it is clear the Progressive Church is governed in all spiritual and secular matters by the collective governance authority of the Board of Bishops. Having resolved this issue, the Court proceeds to the disputed ownership of the Tallahassee Property.

**a. Validity of the Conveyance**

Plaintiff argues that the conveyance of the Tallahassee Property contravenes both South Carolina and Florida law and is, therefore, void. (ECF No. 24 p. 8). Plaintiff has conceded in earlier filings that “[t]he only issue in this case is a narrow question relating to ownership of the Tallahassee Property.” (ECF No. 15 at 4). However, Plaintiff’s motion

for summary judgment appears to request the Court make broad findings of fact regarding the administration and governance of the Progressive Church that transcend those of the original Complaint. Plaintiff filed “a limited complaint relating solely to the title to the Tallahassee Property, an issue that can be addressed by this Court without becoming involved in matters of church doctrine.” (ECF No. 15). Accordingly, the Court limits its inquiry to the resolution of the claims at issue and refrains from delving into matters of church polity.

By way of background, during the weekend of May 17-19, 2019, Bishop Paul Johnson and Bishop Smith traveled separately to Tallahassee to attend an ecclesiastical event sponsored by the Tallahassee Congregation. Upon Bishop Smith’s arrival in Tallahassee, Elder Beard submitted a memorandum solely to Bishop Smith. The memorandum requested that the Tallahassee Property be deeded over to a newly created Florida corporation, the Tallahassee Association, whose board of directors Elder Beard chaired. The new Tallahassee Association had been formed by Elder Beard on the same date months earlier listed on the memorandum to Bishop Smith requesting the property transfer. As a pastor himself of Progressive Church’s St. Petersburg, Florida Congregation, Elder Beard would have been aware that the Progressive Church is governed by the Board of Bishops. Elder Beard’s 2013 Pastoral Agreement confirmed his knowledge of the governance authority of the Board of Bishops prior to 2019 and confirmed that Elder Beard was required to “adhere to the Church Constitution.”

There is evidence that at the time, Bishop Smith, who was then eighty-six (86) years of age and experiencing health challenges,<sup>3</sup> possibly did not fully understand the legal consequences of the document he was asked to sign. Bishop Smith's son, Elder William Edward Smith, who served as a witness to the deed signing, testified during his deposition that neither he nor his father knew that the document they were asked to sign was a deed to convey title ownership to the Tallahassee Property. W. Smith Dep. 30:2-32:20.

i. South Carolina Law

Plaintiff argues that the May 19, 2019 Deed is void because it was not authorized by the Progressive Church's Board of Bishops and was fraudulently procured by corporate officers of the Tallahassee Association. In support, Plaintiff contends that Bishop Smith's execution of the May 19, 2019 Deed was not an act *by* or *under* the authority of the Board of Bishops as required in S.C. Code Ann. § 33-31-801 and the Church Constitution to authorize a legally binding corporate act.

The powers of Bishop Smith as Presiding Bishop were limited powers expressly enumerated in the Church Constitution. It is undisputed that the Church Constitution did not grant to Bishop Smith, nor anyone else, authority as a "Senior Bishop" or as Presiding Bishop to take unilateral corporate actions and specifically did not grant Bishop Smith authority to unilaterally execute the May 19, 2019 deed to transfer the Tallahassee Property

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<sup>3</sup> Bishop Smith's daughter, Joyce Grimes, testified during her deposition that Bishop Smith was hospitalized with serious health conditions during October of 2019. Grimes Dep. 58:16-59:10. Joyce Grimes also strenuously resisted Bishop Smith's deposition in this case due to his health and physical condition. *See generally*, Plaintiff's response to Bishop Smith's Motion to Quash and for a Protective Order, ECF No. 18.

or any of the Progressive Church's other vested properties. (ECF No. 1, pp.15-16, ¶¶ 78-80 and 1-2; ECF No. 7, p. 6, ¶ 43). It is undisputed that unilateral actions by Bishop Smith as a "Senior Bishop" had no basis in the Church Constitution, as there is no such position of a "Senior Bishop" in the Church Constitution. (ECF No. 1, pp.15-16, ¶¶ 78-80 and 1-2; ECF No. 7, p. 6, ¶ 43). It is also undisputed that there is no legal basis under the Church Constitution or South Carolina law for any assertion that other individuals or bodies have any such authority for unilateral corporate actions without approval of the Board of Bishops. (ECF No. 1, pp.15-16, ¶¶ 78-80 and 1-2; ECF No. 7, p. 6, ¶ 43). Based on these admitted facts, there is no dispute that Bishop Smith was not acting as the Progressive Church's "lawfully authorized agent" when he signed the May 19, 2019 Deed.

ii. Florida Law

Under Florida law, conveyances of interests in land for more than one year by corporations are governed by statute and may be made only by "instrument in writing, signed . . . by the [conveying] party's lawfully authorized agent . . . Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02<sup>4</sup>." Fla. Stat. Ann. § 689.01(1). Fla. Stat. Ann. § 692.01 provides as follows:

Any corporation may execute instruments conveying, mortgaging, or affecting any interest in lands by instruments sealed with the common or corporate seal and signed in its name by its president or any vice president or chief executive officer. . . . No corporate resolution need be recorded to evidence the authority of the person executing the deed,

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<sup>4</sup> Fla. Stat. Ann. § 692.02 is not applicable here.

mortgage, or other instrument for the corporation, and an instrument so executed is valid whether or not the officer signing for the corporation was authorized to do so by the board of directors, *in the absence of fraud in the transaction by the person receiving it*. In cases of fraud, subsequent transactions with *good faith purchasers for value and without notice of the fraud* shall be valid and binding on the corporation.

Fla. Stat. Ann. § 692.01 (emphasis added).

Here, Bishop Smith was not the conveying party’s “lawfully authorized agent,” and the deed purportedly conveying the Tallahassee Property was neither “sealed with the common or corporate seal” of the Progressive Church nor “signed in its name by its president or any vice president or chief executive officer.” The Progressive Church has no such corporate officers. It is undisputed that a majority of the Board of Bishops did not authorize this conveyance. Jenkins Aff. ¶¶ 56-58; Priester Aff. ¶¶ 27-29; D. Johnson Aff. ¶ 28-30; P. Johnson 2d. Aff. ¶ 47; Beard Dep. 64:19-65:5. No other members of the Board of Bishops were informed of the request to convey the property until after the deed was signed and recorded. (ECF No. 22-1, p. 39). For these additional reasons, the 2019 Deed is ineffective to convey title. *DGG Dev. Corp. v. Estate of Capponi*, 983 So. 2d 1232, 1233 (Fla. Dist. Ct. App. 2008) (holding deed executed by the secretary/treasurer of a corporation in the presence of two witnesses, but without the corporate seal or an authorizing resolution from the board of directors, is not effective to convey title to real property). Furthermore, the Tallahassee Corporation likely does not qualify as a “good faith purchaser for value without notice of the fraud” as Elder Beard has admitted under oath

there was no consideration and the Tallahassee Corporation provided nothing of value to the Progressive Church in exchange for the deed.

Based on the foregoing, the transfer is invalid under both South Carolina and Florida law. Accordingly, the Court finds no legal basis under the Church Constitution or state law for such a unilateral corporate action without approval of the Board of Bishops and the May 19, 2019 deed regarding the Tallahassee Property is, therefore, void *ab initio*.

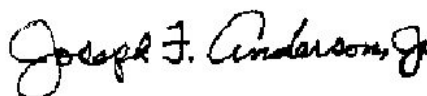
## V. CONCLUSION

Upon consideration of the Plaintiff's Motion for Summary Judgment, the applicable law, the record herein, and the arguments of the parties at the hearing of January 26, 2021, the Court concludes that Plaintiff is entitled to summary judgment against the Defendants. Defendant's counterclaim is dismissed with prejudice.

Plaintiff's request for declaratory judgment is granted. The Court declares the May 19, 2019 deed regarding the Tallahassee Property to be void *ab initio* and authorizes this Order to be recorded in the appropriate office in Florida to reflect this fact in the public record.

IT IS SO ORDERED.

April 1, 2021  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge