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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2013-CP-18-00013

**RECEIVED**

JAN 15 2014

**SC Court of Appeals**

The Protestant Episcopal Church in The Diocese  
of South Carolina, et al., ..... Respondents,

vs.

The Episcopal Church, et al., ..... Appellants.

**MOTION TO DISMISS APPEAL**

The Respondents, The Protestant Episcopal Church in the Diocese of South Carolina and the Trustees of The Protestant Episcopal Church in South Carolina, hereby move to dismiss the Notice of Appeal of the Appellant, The Episcopal Church in South Carolina, ("TECSC") dated January 13, 2014. The grounds for this motion are that the discovery order appealed from is interlocutory, not immediately appealable and not ripe for review.

**PROCEDURAL HISTORY**

On January 13, 2014, Appellants filed a Notice of Appeal from the "Order Denying the Defendant TECSC's Motion To Compel Dated September 19, 2013", and subsequent Form 4 Order denying TECSC's motion for reconsideration (hereinafter

“Discovery Orders”). The Discovery Orders deny TECSC’s motion to compel Respondents’ responses to the following request for production of documents:

11. Produce all correspondence and other communications, including emails, prior to November 17, 2012, between Bishop Mark J. Lawrence and C. Alan Runyan referring to, concerning, or discussing the relationship between the Diocese of South Carolina and the Episcopal Church.

The Honorable Diane Goodstein denied Appellants motion to compel on the grounds of attorney client privilege and attorney-work product, but also provided Appellants a procedural mechanism to inspect and challenge the claim of privilege as to each document identified in a privilege log. The Appellants have not availed themselves to the procedural mechanism to inspect and challenge the Respondents’ claim of privilege as provided for in the Discovery Orders, nor did the Appellants object to the procedure mechanism in their Motion to Reconsider.

## **DISCUSSION**

### **I. The Discovery Orders are interlocutory and not immediately appealable**

The appeal from the Discovery Orders should be dismissed as interlocutory and not immediately appealable. See, e.g., Grosshuesch v. Cramer 377 S.C. 12, 30-31, 659 S.E.2d 112, 122 (2008) (“Though these issues raise interesting questions, the fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”); Ex parte Whetstone, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) (“An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14–3–330 (1976)”); Hamm v. South Carolina Public Service Com'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853

(1994) (“Discovery orders, however, are interlocutory and are not immediately appealable.”); Ferguson v. Charleston Lincoln/Mercury, Inc., 344 S.C. 502, 510, 544 S.E.2d 285, 289-90 (Ct. App. 2001) (“As a general rule, a discovery order is not immediately appealable because it is an interlocutory order.”); Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc., 381 S.C. 332, 333, 673 S.E.2d 417 (2009) (vacating the Court of Appeals' opinion reversing a discovery order “because the order on appeal is not immediately appealable”).

As a result, Appellants' Notice of Appeal should be dismissed.

**II. TECSC has abandoned any challenge to the Order appealed.**

In addition to being interlocutory, the Discovery Orders provided a procedural mechanism to inspect and challenge the claim of privilege as to each document identified in a privilege log. The Appellants failed to avail themselves of this procedural mechanism. Hence, having been provided with this opportunity and choosing not to take advantage of it, Appellants waived any complaint about the trial court's order.

As a result, the appeal should be dismissed.

**CONCLUSION**

For the reasons stated above, this Court should dismiss the Notice of Appeal of the Appellant, The Episcopal Church in South Carolina, dated January 13, 2014.

Respectfully submitted,

*The Protestant Episcopal Church In The  
Diocese of South Carolina; and  
The Trustees of the Protestant Episcopal  
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with permission by  
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The Protestant Episcopal Church in The Diocese  
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PROOF OF SERVICE

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I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for the Plaintiffs, The Protestant Episcopal Church in the Diocese of South Carolina, The Trustees of the Protestant Episcopal Church in South Carolina, do hereby certify that I have served a copy of the document herein below specified via U.S. Mail, postage prepaid, and via Electronic Mail, to counsel of record, on this the 15<sup>th</sup> day of January, 2014, as indicated below:

Documents:

1. Motion to Dismiss Appeal; and
2. Proof of Service.

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The Church of Our Saviour, of the Diocese  
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Carolina

The Protestant Episcopal Church, The  
Parish of Saint Michael in Charleston, in  
the State of South Carolina and St.

Michael's Church Declaration of Trust

The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and the Parish Church of St. Helena Trust

Trinity Episcopal Church, Edisto Island

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The Trustees of The Protestant Episcopal Church in South Carolina, A South Carolina Corporate Body

The Protestant Episcopal Church in the Diocese of South Carolina  
AND  
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The Protestant Episcopal Church in the Diocese of South Carolina AND

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Old Saint Andrews Parish Church

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Michael's church Declaration of Trust

*Carole Koerner with*  

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*Carole Koerner* *permission by [Signature]*