THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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JAN 31 2014
SC Court of Appeals

Diane S. Goodstein, Circuit Court Judge

Case No.: 2013-CP-18-00013

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

vs.

The Episcopal Church in South Carolina,..... Appellants.

REPLY OF THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF SOUTH CAROLINA AND TRUSTEES

The Respondents, The Protestant Episcopal Church in the Diocese of South Carolina and the Trustees of The Protestant Episcopal Church in South Carolina, hereby reply to The Episcopal Church in South Carolina, ("TECSC") Return to Motion to Dismiss dated January 24, 2014.

I. Procedural History[1]

This action was filed on January 4, 2013. The Plaintiffs, thirty-seven South Carolina non-profit charitable corporations, aligned in interest, seek an order declaring

[1] While a procedural history is not necessary for this court to determine Respondents' Motion to Dismiss, the Respondents dispute the facts as presented by Appellant. Moreover, the Appellant's history of delaying the final resolution of this matter controlled by *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of S. Carolina,* 385 S.C. 428, 685 S.E.2d 163 (2009) is demonstrative of the motivation behind this interlocutory appeal.

their right to the real and personal property that they have possessed, some for more than 300 years.[2] The co-Defendants are also aligned in interest – one is a New York unincorporated association known as The Episcopal Church ("TEC"); the other a South Carolina unincorporated association, The Episcopal Church in South Carolina ("TECSC"). TECSC alleges that it is subordinate to the national organization. They seek an order declaring their right to the real and personal property currently possessed by the thirty-seven Plaintiffs.

The present appeal is an outgrowth of many procedural attempts to avoid a resolution on the merits. First, the Defendants sought to avoid the effect of a Consent Temporary Injunction preserving the status quo entered on January 31, 2013. This injunction was (and still is) consented to by TECSC's alleged superior and co-Defendant, TEC. Instead of asking the trial court to reconsider this injunction (an express provision in the order), the Defendants sought to have a federal court override the injunction's terms by seeking a contrary injunction. Simultaneously, the Defendants removed this case to federal court. Calling it "procedural fencing," the federal court dismissed the federal court action, Or. Granting Defs.' Mot. to Dismiss, 2:13-vs-CWH-587, 18 (D.S.C. Aug. 23, 2013), and granted Plaintiffs' motion to remand this action. Or. Granting Defs.' Mot. to Remand, 2:13-CV-893-CWH (D.S.C. June 10, 2013). However, the Defendants' improvident removal caused a six-month delay in the progress of this case.

[2] As in all but two of the 40 briefs filed before this one, TECSC fails to mention *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of S. Carolina,* 385 S.C. 428, 685 S.E.2d 163 (2009), involving two of the same parties to the present dispute and which involved the same core issues of corporate control and interests in property. As stated by the trial court, "this is an action which concerns corporate control and interests in property. These were the same issues present in *All Saints. Id.* at 434, 685 S.E.2d at 166. There the lower Court's deference to the rules of TEC was reversed. *Id.* at 449, 685 S.E.2d at 174."

Once back in state court, the Defendants refused for another three months to produce any discovery associated with TECSC's "creation" (the Plaintiff's term)/"reorganization" (the Defendant's term) asserting that both Defendants were wholly ecclesiastical and thus not subject to discovery in a civil proceeding. Now, TECSC seeks, once again, to delay the progress of this case by appealing an interlocutory discovery order.[3]

In order to avoid the clear rulings of this Court and of the Supreme Court of South Carolina on the appealability of discovery orders, TECSC asserts that this discovery issue is "unique" because the trial court's order both "involves the merits" and "affects substantial rights." S.C. Code Ann. § 14-3-330 (1976). TECSC admits that its assertions as to the attorney client privilege are based solely on the allegations of its pleadings and it faults the trial court for not "accepting the Appellant's allegations as true" in ruling on this discovery motion. It argues that the motion to compel production of documents should be granted because TECSC is the client, that TECSC was a joint client and that TECSC was a beneficiary of the client.

II. The Discovery Orders appealed from do not involve the merits.

An interlocutory order may be immediately appealable if it "involves the merits" pursuant to S.C. Code Ann. §14-3-330(1). To involve the merits, an order must "finally determine some substantial matter forming the whole or part of some cause of action or defense...." *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). In the present case, the Discovery Orders do not finally determine

[3] These orders are interlocutory, as there are further acts "which must be done by the court prior to a determination of the rights of the parties." *Md. State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993).

any matter forming a whole or part of the pending lawsuit. Or. Denying TECSC's Mot. To Compel, p. 5 (Sept. 19, 2013).

In a similar case, the Supreme Court was presented with the question as to whether the Court of Appeals erred in dismissing an interlocutory appeal from a discovery order addressing claims of attorney client privilege. *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406-07 (2003); *cited with approval in Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 673 S.E.2d 417 (2009). In *Tucker*, the Defendant Pee Dee Electric Cooperative, Inc. objected to several questions during the deposition of its former trustee regarding communications between the board of trustees and legal counsel on the grounds of attorney client privilege. *Id.* The trial court issued an order allowing for the deposition to proceed upon certain conditions and permitted *in camera* review of the objectionable testimony. Pee Dee appealed. The Court of Appeal dismissed as interlocutory and the Supreme Court affirmed.

Initially, the *Tucker* court held that an order affecting the attorney client privilege does not automatically touch upon the merits of the case, stating:

> In addressing the Tuckers' first contention, we note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. *See Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a party in contempt. *See Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. *See Ex parte Whetstone, supra.*

> Pee Dee has not refused to comply with the order but appeals the mere issuance of the order. Pee Dee's appeal is interlocutory.

Id. at 577, 582 S.E.2d 406-07.

Second, the court held that issues involving the attorney/client privilege and whether a former corporate trustee could control the attorney/client privilege was not "particularly unique leading this Court to abandon its policy of denying interlocutory appeals:"

> The attorney client privilege belongs to the client and may only be waived by him. *State v. Doster*, 276 S.C. 647, 650-51, 284 S.E.2d 218, 219 (1981). The privilege belongs to the corporation, not a trustee of the corporation. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 105 S.Ct. 1986, 85 L.Ed.2d 372 (1985). The current corporation's management must decide whether to assert the privilege or relinquish it. *See id.* If Pee Dee asserts the privilege, the former trustee may not ignore such assertions. More importantly, Pee Dee's concern is not a particularly unique situation leading this Court to abandon its policy of denying interlocutory appeals.

Id. at 577, 582 S.E.2d 407. Here, the current corporation's management does not include persons formerly associated with the Diocese. Nor were they ever part of that management. They, like the former trustee, are not the client.

Appellants cite *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010), and a few federal cases as authority to support their position that interlocutory discovery orders have been considered on immediate appeal. The authorities cited by Appellants are not controlling and easily distinguishable. In *Tobaccoville USA*, the Supreme Court did not directly address the issue of appealability, but observed in a footnote that S.C.Code Ann. § 1-23-380(A) (Supp. 2007) provided for immediately appeal there. However, Section 1-23-380(A) of the South Carolina Code

addresses judicial review upon exhaustion of administrative remedies from an agency decision and is not applicable to this appeal. *See Id.* at 387 S.C. 287, 292 n. 2, 692 S.E.2d 526, 529 n. 2 ("While normally a discovery order is not immediately appealable, this Court found S.C. Code Ann. § 1-23-380(A) (Supp. 2007) applicable in this case and reinstated the AG's appeal. Section 1-23-380(A) states that '[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.'"). Further, *Tobaccoville USA* is not dispositive because court did not specifically rule on the issue of appealablilty, but rather addressed the issue in a footnote. Where the Court does not rule on issue of appealability, the mere fact that an appellate court has decided an appeal of a particular type of order on the merits is not dispositive of whether the order is immediately appealable. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000).

Lastly, the Appellants reliance on federal case law as persuasive or binding authority regarding the issue of appealability of discovery orders is misplaced. Not one of the federal cases relied upon by Appellants considers the application of South Carolina state law and/or S.C. Code Ann. §14-3-330. Federal appealability case law is simply not relevant.

As a result, the Appellant's Notice of Appeal should be dismissed.

III. The Discovery Orders appealed from do not affect a substantial right.

An order denying a motion is not appealable before final judgment unless the movant has been deprived of a substantial right. *See* S.C. Code Ann. §14-3-330(2)[4];

[4] Section 14-3-330(2) provides that an order affects a substantial right in an action where such an order: (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action; (b) grants or refuses a new trial; or (c) strikes out an answer on any part thereof or any pleading in an action."

Lambright v. State Bd. of Medical Examiners of South Carolina, 276 S.C. 373, 374, 278 S.E.2d 779, 779 (1981). The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000) (holding that order denying motion to change venue did not affect a substantial right).

In *Breland*, the court stated that South Carolina Code section 14-3-330(2) "has only been used when the trial order affected the 'mode of trial' because if those orders are not immediately appealed, no appellate review is available to correct any error. *Id.* at 93, 529 S.E.2d at 13. Orders affecting a substantial right "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006)

Discovery Orders do not determine the action and prevent an appeal, discontinue it, grant or refuse a new trial, or strike out an action or defense, and therefore do not affect a "substantial right." The issue of right of control is still to be determined. Present control is undisputed.

Appellants cite to *Enersys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 728 S.E.2d 478 (2013) and *Hagood v. Somerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) as authority that the attorney client privilege involves a substantial right, which should be subject to immediate appeal. Appellant's reliance on these cases is misplaced as they involve disqualification of counsel orders, not discovery orders involving attorney-client privilege. The latter such orders are controlled by *Tucker* and *Wieters*, supra.

Finally, Appellants claim attorney-client privilege does not work unjustly to deny beneficiaries access to the work of their fiduciaries where such work was completed supposedly on their behalf and paid for by them. They are not and never have been a shareholder of the Diocese. There are no shareholders. Tr. Nov. 25, 2013 at 36. (Mr. Tisdale: "This is not a stock company, so we don't say we have stock in the company....We say we have the right to control it, they are controlling it, and we say that's wrong.") The Appellants are not beneficiaries of the Diocese.

The federal cases, *Glidden* and *Sandberg,* the Appellants cite to support their beneficiary claim are not supported by the facts of this case. The Appellants have never been the parent corporation or owner of the Diocese. *See Glidden Co. v. Jandernoa*, 173 F.R.D. 459, 478 (W.D. Mich. 1997) ("The courts have repeatedly rejected attempts by members of a subsidiary board of directors from asserting attorney-client privilege against the parent corporation, to which they owed fiduciary duties."). The Appellants are not shareholders or stockholders in the Diocese and this action is not a derivative suit. *See Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332, 351 (4th Cir. 1992) *vacated,* 91-1873(L), 1993 WL 524680 (4th Cir. Apr. 7, 1993) (minority shareholder brought a derivative action alleging violations of federal securities law and state law). Appellants are an unincorporated association whose members represent a minority of people who decided to remain with TEC when the Diocese withdrew. There is no evidence in the record or cited case law to support the Appellants claims to be beneficiaries of the Diocese. The Appellants beneficiary claim does not involve a substantial right and section 14-3-330(2) is inapplicable.

As a result, the Appellant's Notice of Appeal should be dismissed.[5]

IV. TECSC's arguments should be raised following a trial and final order on the merits of the pleadings.

In the Return, TECSC argues that the appeal is not interlocutory because Judge Goodstein's Discovery Orders determined who was entitled to control the assets of the Diocese non-profit corporation. However, the Discovery Orders do not make this conclusion; rather, the Discovery Orders decide only who can exercise the attorney client privilege between Alan Runyan and the Diocese in the present litigation. In support of the motion to compel, TECSC argued the following three legal arguments: (1) that it is the client of Alan Runyan, (2) that TECSC was a joint client, and/or (3) that TECSC was a beneficiary of the client.

TECSC's first argument is that it is the client and therefore entitled to the documents. However, this ignores two undisputed facts: "the client" is and was the Diocese non-profit corporation. It is also undisputed that Mr. Runyan is its counsel and

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[5] The Appellants also waived appeal by failing to avail themselves to the procedural "second look", which was built in to the Discovery Order to avoid this unnecessary appeal and to create a final order. Appellants assert that it did not waive appeal because review was "futile", and the appeal is preserved by their filing of a Rule 59(e) Motion.

By failing to timely avail itself to the *in camera* inspection process specifically contemplated in *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986) and *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406-07 (2003), the Appellants waived any right to appeal. The Appellants have done nothing to timely institute this procedure, and rather, appealed the mere issuance of the Discovery Orders. The Appellants cannot now ask the Court of Appeals to speculate as to whether the *in camera* inspection process would be futile.

Further, to the extent that Appellant asserts that its Rule 59(e) motion has preserved the right to assert an appeal from the Discovery Orders, and the *in camera* inspection process therein, simply highlights the interlocutory nature of this appeal. While Appellant's Rule 59(e) motion did not raise any alleged errors regarding the *in camera* inspection process, assuming *arguendo* (the Respondents assert that the seven day deadline to commence the *in camera* inspection process expired and was not stayed as a result of the Rule 59(e) Motion), that the Rule 59(e) motion stayed any deadlines for the Appellant to commence the *in camera* inspection process, no justiciable controversy currently exists and the appeal is not ripe for review. An issue is not ripe for appellate review if it remains contingent, hypothetical, or abstract. *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996). The issue as to whether any documents should be produced subject to the Appellant's Motion to Compel has yet to be finally determined by the trial court, and is entirely contingent upon the inspection by the Special Referee. Or. Denying TECSC's Motion To Compel, p. 5 (Sept. 19, 2013).

has been since 2009. The issue yet to be determined is the right to control "the client:" Mr. Tisdale: "It is a non-profit corporation under South Carolina law, and the question is who has the right to control it." The Court: "Right." *Id.* [6] Present and past control is undisputed. At best, TECSC, alleges that a Diocese cannot withdraw, therefore it is the real Diocese and only the individuals withdrew. However, that is an issue to be determined based on TECSC's and TEC's proof at trial not on a discovery motion.

TECSC's second argument is that Mr. Runyan represented both the Diocese and TECSC, the latter in its "ecclesiastical form" during the period in question. However, there was no other entity for which there is any proof (other than argument of counsel) of joint representation. The argument that there were two separate entities, one represented by the Standing Committee and one by a Board of Directors ignores the reality that the Standing Committee **is** (and was) the Board of Directors as recognized by *All Saints*. 385 S.C. at 450, 685 S.E.2d at 175 ("the majority Vestry acting as its corporation's Board of Directors, approved the Articles of Amendment at issue here"). The right to future control is the core issue before the trial court, not present or past control. In fact, TECSC's own assertions of attorney/client privilege suggest that if there was another entity in existence at that time, attorneys other than Mr. Runyan represented it. Prior to the date TECSC claims the Diocese withdrew, November 17, 2012[7], it claims an attorney/client relationship between it and the present attorneys representing TECSC and

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[6] The locus of control of this non-profit corporation is not in dispute. Mr. Tisdale: "We claim to own the corporation they have, but we have not created any corporate organization at all." Tr. Sept. 27, 2013 at 17. TEC and TECSC came into existence "solely through the exercise of ecclesiastical law." Mr. Tisdale: "That is precisely correct." *Id.* at 22. TECSC does not control the Diocese. ("They control the corporation.") *Id.* at 23. Neither does TECSC have any shareholder interest in the Diocese. Tr. Nov. 25, 2013 at 36.

[7] TECSC has alleged that the date of the Diocese's "purported withdrawal" is November 17, 2012. TECSC Memo. in Support of Mot. to Vacate The Temp. Inj. and its Mot. for a Prelim. Inj. at 7, n. 1; TECSC's Memo. in Support of Mot. to Compel Prod. of Doc. at 4, ¶1; TECSC's Mot. to Reconsider Or. Denying Mot. to Compel at 6, ¶1; TECSC's Ans. and Counterclaims, ¶603.

TEC. It has asserted 78 claims of attorney/client privilege over documents generated prior to November 17, 2012. Attachment A.

Finally, TECSC's factual recitations with respect to the issues surrounding the alleged hierarchical relationship between the Diocese and TEC are drawn exclusively from TECSC's pleading (pages 5-8) and they are contested. They are also not relevant in South Carolina.[8]

CONCLUSION

This discovery order neither determines the merits of this dispute, who has the right to control a South Carolina nonprofit corporation, nor does it affect a substantial right of TECSC. Pursuant to the arguments set forth in Respondents' Motion to Dismiss and in this Reply, this Court should dismiss Appellant's Notice of Appeal as interlocutory.

Respectfully submitted,

The Protestant Episcopal Church In The Diocese of South Carolina; and The Trustees of the Protestant Episcopal Church of South Carolina, a South Carolina Corporate Body:

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[8] The Supreme Court in *All Saints* has expressly rejected the use of the deference to a hierarchy approach. 385 S.C. at 439, 685 S.E.2d at 171. In doing so, the Court stated that:

> church disputes that are resolved under the neutral principles of law approach to not turn on the single question of whether a church is congregational or hierarchical. Rather the neutral principles of law approach permits the application of property, corporate and other forms of law to check disputes.

Id. at 444, 685 S.E.2d 172.

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Myrtle Beach, South Carolina
Dated:_____

Document Number	Date	To	From	cc	Description	Privilege Asserted
			TECSC Privilege Log (D 00001 - D 01186)			
D 00010	10/27/12	Holly Behre	Tom Tisdale		Legal Advice re: Use of Diocesan Seal	AC
D 00010	10/27/12	Tom Tisdale	Holly Behre		Legal Advice re: Use of Diocesan Seal	AC
D 00011	10/27/12	Holly Behre	Tom Tisdale		Legal Advice re: Use of Diocesan Seal	AC
D 00011	10/27/12	Tom Tisdale	Holly Behre		Legal Advice re: Use of Diocesan Seal	AC
D 00028	10/29/12	Holly Behre	Tom Tisdale	Mary Kostel	Contact Information for Washington, D.C. Counsel and The Episcopal Church Staff	AC
D 00028 - D 00029	10/29/12	Tom Tisdale	Mary Kostel	David Beers	Contact Information for Washington, D.C. Counsel and The Episcopal Church Staff	AC
D 00038 - D 00039	10/31/12	Holly Behre	David Beers	Tom Tisdale, Mary Kostel	Diocese of SC Proposed Q&A	AC
D 00061	11/5/12	David Beers, Mary Kostel	Tom Tisdale	Holly Behre	Arrangments for Conference Call with Steering Committee	AC
D 00061	11/5/12	Tom Tisdale	Holly Behre		Arrangments for Conference Call with Steering Committee	AC
D 00072	11/5/12	Tom Tisdale	Holly Behre		Public Communications Correspondence	AC
D 00072	11/5/12	David Beers	Tom Tisdale		Public Communications Correspondence	
D 00072	11/5/12	Tom Tisdale	David Beers	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00072 - D 00073	11/5/12	David Beers	Tom Tisdale	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00073	11/5/12	Tom Tisdale	David Beers		Proposed Agenda for 11/6/12 Meeting	WP
D 00074	11/5/12	Holly Behre	Tom Tisdale		Public Communications Distribution List	AC
D 00074	11/5/12	Tom Tisdale	David Beers	Mary Kostel	Public Communications Distribution List	
D 00074 - D 00075	11/5/12	Tom Tisdale	Holly Behre		Public Communications Distribution List	AC
D 00075	11/5/12	David Beers	Tom Tisdale		Public Communications Correspondence	

ATTACHMENT A

Document Number	Date	To	From	Cc	Description	Privilege Asserted
			TECSC's Privilege Log (D 00001-D 01185)			
D 00075	11/5/12	Tom Tisdale	David Beers	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00075 - D 00076	11/5/12	David Beers	Tom Tisdale	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00081	11/5/12	Holly Behre	Tom Tisdale		Internal Communications Correspondence	AC
D 00081	11/5/12	Tom Tisdale	Holly Behre		Internal Communications Correspondence	AC
D 00081	11/5/12	Tom Tisdale	David Beers	Mary Kostel	Internal Communications Correspondence	AC
D 00082	11/5/12	David Beers	Tom Tisdale	Mary Kostel	Internal Communications Correspondence	AC
D 00082 - D 00083	11/5/12	Tom Tisdale	David Beers	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00083 - D 00084	11/5/12	David Beers	Tom Tisdale	Mary Kostel	Proposed Agenda for 11/6/12 Meeting	WP
D 00158	11/8/12	Charles vonRosenberg, Michael Wright	Tom Tisdale	Holly Behre, Mary Kostel, David Beers	Use of Diocesan Seal and Shield and Holy Communion Practices	AC
D 00158 - D 00159	11/8/12	Michael Wright	Charles vonRosenberg	Tom Tisdale	Use of Diocesan Seal and Shield and Holy Communion Practices	AC
D 00160	11/8/12	Holly Behre	Tom Tisdale		Use of Diocesan Seal and Shield and Holy Communion Practices	AC
D 00160	11/8/12	Tom Tisdale	Charles vonRosenberg		Use of Diocesan Seal and Shield and Holy Communion Practices	AC
D 00160 - D 00161	11/8/12	Michael Wright	Charles vonRosenberg	Tom Tisdale	Use of Diocesan Seal and Shield and Holy Communion Practices	AC
D 00188	11/10/12	Holly Behre	Tom Tisdale		Proposed Website Content	AC
D 00188 - D 00189	11/10/12	Tom Tisdale	Holly Behre	Calhoun Walpole, Michael Wright	Proposed Website Content	AC
D 00190	11/10/12	Holly Behre	Tom Tisdale		Proposed Website Content	AC
D 00190	11/10/12	Tom Tisdale	Holly Behre		Proposed Website Content	AC
D 00190	11/10/12	Holly Behre	Tom Tisdale		Proposed Website Content	AC
D 00190 - D 00191	11/10/12	Tom Tisdale	Holly Behre	Calhoun Walpole, Michael Wright	Proposed Website Content	AC

Document Number	Date	To	From	CC	Description	Privilege Asserted
			TECSGS Privilege Log (D D0001 - D 01136)			
D 00288	1/26/13	Tom Tisdale	Charles vonRosenberg	Lauren Kindard	Election Certificate and Resolution for The Episcopal Diocese of SC	AC
D 00296	2/5/13	Tom Tisdale, Calhoun Walpole	Lauren Kinard		Proposed Website Content	AC
D 00318	2/20/13	Tom Tisdale	Lauren Kinard		Letter to Clergy	AC
D 00356	12/29/12	Charles vonRosenberg	Tom Tisdale		Reorganization Nominations	AC
D 00356 - D 00357	12/29/12	Tom Tisdale	Charles vonRosenberg		Reorganization Nominations	AC
D 00358	12/30/12	Charles vonRosenberg	Tom Tisdale		Friday Reception Planning	AC
D 00358 - D 00359	12/30/12	Tom Tisdale	Charles vonRosenberg		Friday Reception Planning	AC
D 00359	12/30/12	Charles vonRosenberg	Tom Tisdale		Friday Reception Planning	AC
D 00359	12/29/12	Tom Tisdale	Charles vonRosenberg		Friday Reception Planning	AC
D 00359	12/29/12	Charles vonRosenberg	Tom Tisdale		January Convention Planning Matters	AC
D 00359 - D 00360	12/29/12	Tom Tisdale	Charles vonRosenberg		January Convention Planning Matters	AC
D 00360	12/29/12	Charles vonRosenberg	Tom Tisdale		January Convention Planning Matters	AC
D 00360 - D 00361	12/29/12	Charles vonRosenberg	Tom Tisdale		January Convention Planning Matters	AC
D 00362	12/30/12	Charles vonRosenberg	Tom Tisdale		Friday Reception Planning	AC
D 00362 - D 00363	12/30/12	Tom Tisdale	Charles vonRosenberg		Friday Reception Planning	AC
D 00363	12/30/12	Charles vonRosenberg	Tom Tisdale		Friday Reception Planning	AC
D 00363	12/29/12	Tom Tisdale	Charles vonRosenberg		Friday Reception Planning	AC
D 00363	12/29/12	Charles vonRosenberg	Tom Tisdale		January Convention Planning Matters	AC
D 00363	12/29/12	Tom Tisdale	Charles vonRosenberg		January Convention Planning Matters	AC
D 00376	1/15/13	Charles vonRosenberg	Tom Tisdale		Voorhees College Event	AC
D 00376	1/15/13	Tom Tisdale	Charles vonRosenberg		Voorhees College Event	AC
D 00390	4/11/13	Charles vonRosenberg	Holly Behre	Tom Tisdale, Lauren Kinard	News Release re Departing Clergy	AC
D 00395	2/15/13	Tom Tisdale	Charles vonRosenberg		Parish Meeting Address Preparation re Property Rights	AC
D 00398	2/15/13	Charles vonRosenberg	Tom Tisdale		Parish Meeting Address Preparation re Property Rights	AC
D 00407	Not Dated				Client Meeting Notes Prepared by Ann Skipper Ballenger	AC

TECSC's Privilege Log (D 00001 - D 01186)						
Document Number	Date	To	From	Cc	Description	Privilege Asserted
D 00421	Not Dated				Client Meeting Notes Prepared by Ann Skipper Ballenger	AC
D 00428	Not Dated				Client Meeting Notes Prepared by Ann Skipper Ballenger	AC
D 00502	Not Dated				Client Meeting Notes Prepared by Ann Skipper Ballenger	AC
D 00717	8/27/12	Tom Tisdale, Mary Kost	David Beers	Katherine Jefferts Schori, C. Robertson, C. Matthews, Anne Rudig, Neva Fox	Status Update re Activity in the Diocese of SC	AC
D 00717	8/27/12	David Beers	Tom Tisdale		Status Update re Activity in the Diocese of SC	AC
D 00838	10/16/12	Tom Tisdale	David Beers		Restriction Letter to Bishop Mark J. Lawrence	AC
D 00897	10/24/12	Tom Tisdale	Debra Van Kirk	David Beers, Mary Kostel	South Carolina Meeting Agenda	AC
D 00898 - D 00900	10/24/12				South Carolina Meeting Agenda (as word attachment)	AC
D 00901	10/24/12	Tom Tisdale	David Beers		October 21, 2012 Charleston Post and Courier Article	AC
D 00901	10/23/12	C. Robertson, David Be	Katherine Jefferts Schori		October 21, 2012 Charleston Post and Courier Article	AC
D 00902	10/24/12	Tom Tisdale	Debra Van Kirk	David Beers, Mary Kostel	Revised South Carolina Meeting Agenda	AC
D 00903 - D 00905	10/25/12				South Carolina Meeting Agenda (as word attachment)	AC
D 00907	10/24/12	Tom Tisdale	David Beers	Mary Kostel	Old St. Andrew's Parish	AC
D 00908	10/24/12	Tom Tisdale	David Beers	Mary Kostel	Old St. Andrew's Parish	AC
D 00908	10/24/12	David Beers	Tom Tisdale	Mary Kostel	Old St. Andrew's Parish	AC
D 00908 - D 00909	10/24/12	Tom Tisdale	David Beers	Mary Kostel	Old St. Andrew's Parish	AC
D 00925	10/27/12	Holly Behre	Tom Tisdale		Use of Diocesan Shield and Seal	AC
D 00925	10/27/12	Tom Tisdale	Holly Behre		Use of Diocesan Shield and Seal	AC
D 00931	10/29/12	Tom Tisdale	Mary Kostel	David Beers	Contact Information for TEC Communications Office	AC

TECSC's Privilege Log (D 00001 - D 01186)						
Document Number	Date	To	From	cc	Description	Privilege Asserted
D 00947 - D 00948	10/29/12	Tom Tisdale	Mary Kostel	David Beers	Contact Information for TEC Communications Office	AC
D 00951	10/29/12	Holly Behre	Tom Tisdale		Advice Regarding Q&A Memo	AC
D 00951 - D 00952	10/29/12	Tom Tisdale	Mary Kostel	David Beers	Contact Information for TEC Communications Office	AC
D 00978	11/7/12	Tom Tisdale	Charles vonRosenberg		South Carolina Reorganization Matters	AC
D 00978	11/7/12	Charles vonRosenberg	Tom Tisdale		South Carolina Reorganization Matters	AC
D 00978 - D 00979	11/6/12	Tom Tisdale	Charles vonRosenberg		South Carolina Reorganization Matters	AC
D 00992	11/7/12	Tom Tisdale	Charles vonRosenberg		South Carolina Reorganization Matters and Staffing	AC
D 00992	11/7/12	Charles vonRosenberg	Tom Tisdale		South Carolina Reorganization Matters and Staffing	AC
D 00992	11/7/12	Tom Tisdale	Charles vonRosenberg		South Carolina Reorganization Matters and Staffing	AC
D 00992 - D 00993	11/7/12	Charles vonRosenberg	Tom Tisdale		South Carolina Reorganization Matters and Staffing	AC
D 00993	11/6/12	Tom Tisdale	Charles vonRosenberg		South Carolina Reorganization Matters and Staffing	AC
D 01000	11/8/12	Michael Wright, Tom Tisdale	Marshall Sanderson		Use of Diocesan Shield and Holy Communion	AC
D 01003	11/8/12	Michael Wright	Charles vonRosenberg	Tom Tisdale	Use of Diocesan Shield and Holy Communion	AC
D 01003 - D 01004	11/8/12	Michael Wright, Tom Tisdale	Marshall Sanderson		Use of Diocesan Shield and Holy Communion	AC
D 01005	11/8/12	Tom Tisdale	Holly Behre		Use of Diocesan Shield and Holy Communion	AC
D 01005	11/8/12	Charles vonRosenberg	Tom Tisdale		Use of Diocesan Shield and Holy Communion	AC
D 01005	11/8/12	Michael Wright	Charles vonRosenberg	Tom Tisdale	Use of Diocesan Shield and Holy Communion	AC
D 01005 - D 01006	11/8/12	Michael Wright, Tom Tisdale	Marshall Sanderson		Use of Diocesan Shield and Holy Communion	AC

Document Number	Date	To	From	Cc	Description	Privilege Asserted
			TECSC Privilege Log (D 00001 - D 01185)			
D 01007	11/8/12	Tom Tisdale	Charles vonRosenberg		Use of Diocesan Shield and Holy Communion	AC
D 01007	11/8/12	Charles vonRosenberg	Tom Tisdale		Use of Diocesan Shield and Holy Communion	AC
D 01007	11/8/12	Michael Wright	Charles vonRosenberg	Tom Tisdale	Use of Diocesan Shield and Holy Communion	AC
D 01007 - D 01008	11/8/12	Michael Wright, Tom Tisdale	Marshall Sanderson		Use of Diocesan Shield and Holy Communion	AC
D 01012	11/8/12	Tom Tisdale	Charles vonRosenberg		Query from Anglican Ink, the Church of England Newspaper	AC
D 01115 - D 01116	10/30/12	Tom Tisdale	Michael L.M. Jordan	Richard Carroll Lindsey	Email re Memorandum and Legal Analysis of All Saints - Waccamaw Court Decision	AC
D 01117 - D 01126	11/14/12				Memorandum and Legal Analysis of All Saints - Waccamaw Court Decision (Prepared by Michael Jordan)	WP
D 01139	11/21/12	Tom Tisdale	Charles vonRosenberg		Communications with Dr. John McCardell of Sewanee	AC
D 01139	11/21/12	Charles vonRosenberg	Tom Tisdale		Communications with Dr. John McCardell of Sewanee	AC
D 01140	11/21/12	Tom Tisdale	Charles vonRosenberg		Communications with Dr. John McCardell of Sewanee	AC
D 01140	11/21/12	Charles vonRosenberg	Tom Tisdale		Communications with Dr. John McCardell of Sewanee	AC
D 01140	11/21/12	Tom Tisdale	Charles vonRosenberg		Communications with Dr. John McCardell of Sewanee	AC
D 01140	11/21/12	Charles vonRosenberg	Tom Tisdale		Communications with Dr. John McCardell of Sewanee	AC
D 01175	11/28/12	Tom Tisdale	Charles vonRosenberg		Advent 2012 Pastoral Letter	AC
D 01175	11/28/12	Charles vonRosenberg	Tom Tisdale		Advent 2012 Pastoral Letter	AC
D 01181	11/28/12	Tom Tisdale	Charles vonRosenberg		Advent 2012 Pastoral Letter	AC
D 01181	11/28/12	Charles vonRosenberg	Tom Tisdale		Advent 2012 Pastoral Letter	AC
D 01181 - D 01182	11/28/12	Tom Tisdale	Charles vonRosenberg		Advent 2012 Pastoral Letter	AC
D 01182	11/28/12	Charles vonRosenberg	Tom Tisdale		Advent 2012 Pastoral Letter	AC

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER CASE NO. 2013-CP-18-00013

3

4 PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, et al.)

5 vs.) TRANSCRIPT OF RECORD

6 EPISCOPAL CHURCH, et al.)

7

8 SEPTEMBER 27, 2013
ST. GEORGE, SC

9

10 B E F O R E:

11 HONORABLE DIANE SCHAFER GOODSTEIN

12

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20

21 Ruth L. Mott, RPR, CRR
Circuit Court Reporter

22

23

24

25

1 now and represent to the Court that that is not involved.
2 THE COURT: You don't have one of those.
3 MR. TISDALE: It says in our memo, and I will represent
4 to you --
5 THE COURT: I saw that.
6 MR. TISDALE: -- there's no corporate involvement
7 whatsoever.
8 THE COURT: Okay.
9 MR. TISDALE: We claim to own the corporation they have,
10 but we have not created any corporate organization at all.
11 THE COURT: That was my question.
12 MR. TISDALE: Not an issue.
13 THE COURT: In other words, there is no separate
14 corporate entity other than the entity that is claimed by the
15 plaintiffs.
16 MR. TISDALE: That is correct, Your Honor.
17 THE COURT: I understand.
18 MR. TISDALE: I mean, as far as we know. We certainly
19 don't have one.
20 THE COURT: That's all you can represent. I understand
21 that.
22 MR. TISDALE: Right.
23 THE COURT: And that would be true for both of the
24 defendants, yes? Nobody's got a corporate entity.
25 MR. TISDALE: Right, and we cited two cases that say an

1 I, the undersigned Ruth L. Mott, Official Court Reporter
2 for the First Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the Circuit Court for
7 Dorchester County, South Carolina, on the 27th of
8 September, 2013.
9 I further certify that I am neither related to nor
10 counsel for any party to the cause pending or interested in
11 the events thereof.
12 October 2, 2013
13
14
15 _____
16 Court Reporter
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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER CASE NO. 2013-CP-18-00013

3

4 THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, et al.,
5 Plaintiffs,
6 vs. TRANSCRIPT OF RECORD
7 THE EPISCOPAL CHURCH, et al.,
Defendants.
8
9 THE EPISCOPAL CHURCH,
Counterclaim Plaintiff,
10 vs.
11 THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA,
12 et al.,
Counterclaim Defendants,
13
and
14
15 MARK J. LAWRENCE, et al.,
Additional Counterclaim Defendants.
16

17 NOVEMBER 25, 2013
CAMDEN, SC

18

19 B E F O R E:

20 HONORABLE DIANE SCHAFER GOODSTEIN

21

22

23 Ruth L. Mott, RPR, CRR
24 Circuit Court Reporter

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1 MR. TISDALE: This is not a stock company, so we don't
2 say we have stock in the company.
3 THE COURT: That's right.
4 MR. TISDALE: It is a nonprofit corporation under South
5 Carolina law, and the question is who has the right to
6 control it.
7 THE COURT: Right.
8 MR. TISDALE: We say that we have a right to control it,
9 they are controlling it, and we say that's wrong.
10 THE COURT: And the defendants have chosen at this point
11 to exist and not change their corporate -- not change -- not
12 change and create any new corporations, they are -- because
13 they remain in the position of claiming that they control the
14 corporation.
15 MR. TISDALE: That is correct.
16 THE COURT: And to differentiate is why you say we are
17 an unincorporated -- at this moment because of the situation
18 we are an unincorporated association. We don't think we
19 ought to be an unincorporated association. We think we are
20 the plaintiffs. We think we should control the corporation
21 that the plaintiffs are in fact controlling.
22 MR. TISDALE: In a real general way, that's correct, but
23 not specific -- in a real general way that's right, but we've
24 operated as an unincorporated association, until 1973, for a
25 couple hundred years, and this corporation was of course

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER
4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the trial of the captioned case, relative to appeal, in the
10 First Judicial Circuit Court, Dorchester County, South
11 Carolina, on the 25th of November, 2013.
12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.
15 December 8, 2013
16
17
18 _____
19 Official Court Reporter
20
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22
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24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

RECEIVED
JAN 31 2014
SC Court of Appeals

Diane S. Goodstein, Circuit Court Judge

Case No.: 2013-CP-18-00013

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

vs.

The Episcopal Church in the State of South Carolina., ... Appellant.

PROOF OF SERVICE

I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for the Respondents, The Protestant Episcopal Church in the Diocese of South Carolina, and The Trustees of the Protestant Episcopal Church in South Carolina, do hereby certify that I have served a copy of Respondents' Reply of The Protestant Episcopal Church in the Diocese of South Carolina and Trustees to The Episcopal Church in the State of South Carolina (TECSC) Return to Motion to Dismiss to counsel of record, on this the 31st day of January, 2014, via email communication and/or U.S. Mail first class postage prepaid and via email as indicated below:

Addressee(s): Counsel of Record

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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

Carole Koerner with permission by H. Elizabeth Chr

Carole Koerner