

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP1800013

Protestant Episcopal Church In The Diocese Of South Carolina
 Church Of The Cross, Inc and Church Of The Cross Declaration
 Church Of The Redeemer
 St. John's Episcopal Church Of Florence, S. C.
 Church Of St. Luke and St. Paul, Radcliffeboro

Christ St. Paul's Episcopal Church
 Church Of The Holy Comforter
 Saint Luke's Church, Hilton Head
 St. Matthias Episcopal Church, Inc

Episcopal Church
 Protestant Epis.Ch. in the US of America
 Episcopal Church in South Carolina

2013 NOV 18 PM 4:07
 CERTIFIED
 CLERK OF COURT
 DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

11/18/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on 11/18/13, and a copy mailed first class or placed in the appropriate attorney's box on 11/18/13, to attorneys of record or to parties (when appearing pro se) as follows:

SEE ATTACHED MAILING LIST

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Case No: 2013-CP-18-00013

CERTIFIED COPY
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Christy Williams
CLERK OF COURT
DORCHESTER COUNTY

The Protestant Episcopal Church In The)
Diocese Of South Carolina; The Trustees of)
The Protestant Episcopal Church in South)
Carolina, a South Carolina Corporate Body;)
et al.,)

Plaintiffs,)

vs.)

The Episcopal Church (a/k/a, The)
Protestant Episcopal Church in the)
United States of America); and The)
Episcopal Church in South Carolina,)

Defendants.)

**ORDER DENYING THE
DEFENDANT TECSC'S
MOTION TO COMPEL DATED
SEPTEMBER 19, 2013**

By Motion dated September 19, 2013, the Defendant TECSC (hereinafter Defendant) sought production of documents from the Plaintiffs, The Protestant Episcopal Church in the Diocese of South Carolina and the Trustees of The Protestant Episcopal Church in South Carolina, (collectively hereinafter referenced as "the Plaintiffs"). The documents requested are the following:

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

The Plaintiffs objected on the basis of attorney-client and work product privileges. A log identifying the requested information was attached to the objection.

Prior to the motion hearing, the Plaintiffs filed with this Court an Affidavit of C. Alan Runyan. According to Mr. Runyan's Affidavit, he is a South Carolina lawyer and is legal

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counsel for the Plaintiffs. He was first contacted by the Plaintiffs in October 2009 and then retained as counsel in November 2009 "...to render legal counsel and advice with respect to potential litigation with the Defendant, The Episcopal Church." He then states that since October 2009 to the present, he has functioned in his capacity as legal counsel in his communications with his clients, the Plaintiffs. Mr. Runyan then identifies, in his Affidavit, the directors/officers of the Plaintiffs with whom he has communicated. Attached to his Affidavit is a Privilege Log which Mr. Runyan states contains the documents which are protected by the attorney-client privilege and/or the work product privilege.

The Defendant TECSC's contention is that it is the client and that, as the client, it is entitled to the attorney-client information that existed before the disaffiliation between the Plaintiffs and the Defendant TEC. Counsel for the Defendant stated in oral arguments that "...we are entitled to Mr. Runyan's work for we were his clients...". At the hearing it was represented to the Court that the Defendant came into existence in the later part of January, 2013 as an unincorporated association. Defendant's counsel sent a letter to this Court dated September 27, 2013 which letter specifically stated that the Defendant is a South Carolina unincorporated association and as such has a right to sue and be sued.

The attorney-client privilege and the attorney-work product privilege have long been recognized in this State. "The privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained. The privilege belongs to the client and, unless waived by him, survives even his death." The State vs. Doster, 276 S.C. 647, 248 S.E.2d 218, 219 (1981). The attorney-client privilege belongs to the client and not the attorney, and may be waived only by

the client. Tucker vs. Honda of South Carolina, Mfg., Inc., 354 S.C. 574, 582 S.C.2d 405 (2003).

As to corporations, it is well established that the attorney-client privilege attaches to corporations as well as to individuals. Commodity Futures Trading Comm'n vs. Weintraub, et al., 471 U.S. 343, 348, 105 S.Ct. 1986 (1985). As the U.S. Supreme Court noted in Commodities Futures Trading Commission, supra, a corporation, as an inanimate entity, must act through its agents and normally the corporation's management is vested with the authority of exercising the privilege in a manner consistent with the fiduciary duty to act in the best interest on the corporation and not of themselves as individuals. *Supra* at 349. The U.S. Supreme Court went on to state

“...that when control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well. New managers installed as a result of take over, merger, loss of confidence by shareholders, or simply normal succession, may waive the attorney-client privilege with respect to communications made by former officers and directors. Displaced managers may not assert the privileges over the wishes of current managers...”. *Supra*.

In this action, the Defendant states that it is the client and as the client it has the right to documents subject to the privileges. However, the Plaintiffs are South Carolina Non-Profit Corporations and contend that the Defendant does not have standing to seek its documents subject to the privileges. In essence, the Defendant contends that even though it is now disaffiliated from the Plaintiffs, it still has a right, as having been a part of the Plaintiffs, to review the privileged documents. But the privilege belongs to the non-profit corporations, the Plaintiffs, and not to the persons who were formally associated with the Plaintiffs. In Wilson vs. Preston, 378 S.C. 348, 662 S.E.2d 580 (S.C. 2008), the South Carolina Supreme Court held that an individual council member cannot independently review attorney-client privileged documents

because the privilege belongs to the Council as a whole, only the Council as a whole is authorized to release the information. The same is true in this action for the former members associated with the Plaintiffs did not have the privileges, they were only a part, not a whole.

Another argument asserted by the Defendant was that the Defendant was the client since it was the Plaintiff and therefore it and the Plaintiffs share the privileges. The Defendant relied upon the analysis applicable to multi-party representation. I find this not to be applicable. Mr. Runyan's Affidavit identifies his clients and his two clients are the Plaintiffs. He does not, in his Affidavit, state at any time that he represented the Defendant.

It is the obligation of this Court to first determine the question of privilege and such must be done without first requiring disclosure of the substance of the communication. State vs. Doster, supra at 220. The essential elements given rise to the privilege are the following:

“(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such (3) the communications relating to that purpose (4) made in confidence (5) by the client (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser (8) except the protection may be waived.” State vs. Doster, supra at 219-220.

After analysis of the above elements along with the information presented to this Court, I find that the documentation sought by the Defendant is subject to the attorney-client privilege and attorney-work product privilege, therefore, the Defendant's Motion is denied.

If the Defendant requests an in-camera inspection of the documents identified in the Plaintiffs' privilege log to confirm that the documents are indeed subject to the privileges, then the Defendant, with the consent of the Plaintiffs, must contract with a neutral South Carolina lawyer to act as a Special Referee. The scope of the Special Referee's duties shall be to review all the documents identified in the Plaintiffs' privilege log for the purpose of determining whether each document consists of information subject to attorney-client privilege or attorney-

work product including attorney's mental impressions and thoughts, as well as communications from management to the attorney. The Defendant shall bear the costs of the Special Referee unless the Special Referee discovers that at least ten (10%) percent of the documents in the privileged log may not be subject to any privilege and, in such event, the Special Referee's costs and charges shall be borne fifty (50%) percent by the Defendant and fifty (50%) percent by the Plaintiffs. In the event the Special Referee discovers that some documents may not be subject to any privilege, then the Special Referee shall present these documents, in a sealed envelope, to this Court for the Court to make a final determination as to the production of the documents.

To commence this process of an independent inspection, the Defendant, within seven (7) days from the date of this Order, shall contact Plaintiffs' counsel and then within five (5) days thereafter the attorneys must agree upon a Special Referee. The documents identified in the privileged log must be made available to the Special Referee as soon as possible, but in no event later than ten (10) days following the selection of the Special Referee. The Special Referee shall then have twenty (20) days to review the documents and report to this Court, if necessary, any documents that may not be subject to any privileges.

IT IS SO ORDERED.



Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

Dated: Nov 7, 2013