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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

JUL 03 2014

Diane S. Goodstein, Circuit Court Judge

**SC Court of Appeals**

Case No. 2013-CP-18-00013

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; All Saints Protestant Episcopal Church, Inc.; Christ St. Pauls' Episcopal Church; Christ the King, Waccamaw; Church of the Cross, Inc. and Church of the Cross Declaration of Trust; Church of the Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Matthews Church; St. Andrews Church-Mt. Pleasant and The St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. James' Church, James Island; St. John's Episcopal Church of Florence, S.C.; St. Mathias Episcopal Church, Inc.; St. Paul's Episcopal Church of Conway; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; the Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of the Resurrection, Surfside; The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South 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 St. Jude's Church of Walterboro; The Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyah; The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens the Episcopal Church of the Parish of St. Matthew; the Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church-Wardens of the Episcopal Church of the Parish of Christ Church; Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, Charleston County; and the Vestries and Churchwardens of the Parish of St. Andrew, Plaintiffs,

Of which 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 are the Respondents,

v.

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

Of which The Episcopal Church in South Carolina is the Appellant.

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**PETITION FOR SUPERSEDEAS RELIEF  
WITH REQUEST FOR EXPEDITED DECISION**

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The Episcopal Church in South Carolina (the “Appellant”) submits this Petition for Supersedeas, pursuant to Rule 241 of the South Carolina Appellate Court Rules, requesting an immediate writ of supersedeas to suspend enforcement of the Court of Common Pleas’ oral order entered this morning, July 3, 2014, by which the Appellant and the other parties are required to commence the trial of this case next Monday, July 7, 2014, despite an appeal pending in this Court. The grounds for this Petition are as follows:

1. The Appellant filed a Notice of Appeal of the trial court’s underlying order on June 24, 2014 (the “Order”). A copy of the Order is attached as Exhibit A.

2. On June 25, 2014, the Respondents moved to dismiss the appeal, and on July 3, 2014, the Appellant filed a response opposing dismissal. That motion is pending. A copy of the Appellant’s response addressing the immediate appealability of the Order is attached as Exhibit B and incorporated herein by reference.

3. At a 10 AM hearing this morning, the lower court orally ordered that the trial would begin on July 7, 2014, despite the pending appeal.

4. The service of a notice of appeal automatically stays matters decided in the order on appeal. SCACR, Rule 241. The purpose of the stay is to preserve jurisdiction of the appeal and to prevent a contested issue on appeal from becoming moot by ongoing action in a lower court. See Rule 241(c)(2). The question then arises as to “the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.” Tillman v. Oakes, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012), Rule 205.

5. The Order arose from the Appellant's motion to join four individuals as necessary and indispensable parties to the Appellant's declaratory counterclaim against its own corporate identity (which appears as a Plaintiff/Respondent in the caption of this case). To avoid the mandatory rules of joinder, in its Order, the lower court prematurely ruled on the merits of a proposed pleading against the four individuals, finding the proposed allegations and claims unsupported by the "evidence" and the law. In doing so, the Order also effectively ruled on the merits of the declaratory relief sought in the Plaintiffs/Respondents' complaint and the Appellant's defenses thereto, which relate to the very same purported corporate acts and call for the same determinations to be made as to whether those acts were lawful or *ultra vires*.

6. The Order, obviously, will be enforced by proceeding with trial. Enforcement would deprive the Appellant of the right to prove its allegations that the acts of four individual usurpers of the Appellant's corporate identity were *ultra vires*, as well as the right to sue and seek relief against them personally, in this or any other action, as they would be subject to dismissal under the doctrines of *res judicata* and collateral estoppel. Such rights have been held by the South Carolina Supreme Court to be substantial and must be immediately appealed or forever forfeited. Neeltec Enterprises, Inc. v. Long, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012); Wetzel v. Woodside Dev. Ltd. P'ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005); Murphy v. Owens-Corning Fiberglas Corp., 346 S.C. 37, 550 S.E.2d 589 (Ct. App. 2001), overruled on other grounds by Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003).


7. To ignore the appeal and proceed to trial will cause the precise harm that Rules 205 and 241 are designed to prevent.

**CONCLUSION**

Based on the reasons stated above and the grounds set forth in its response to the Respondents' motion to dismiss, the Appellant respectfully requests that the Court immediately grant a writ of supersedeas, suspending the trial in the lower court until the appeal is resolved.

July 3, 2014

HELLMAN YATES & TISDALE, PA

  
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ATTORNEYS FOR APPELLANT  
THE EPISCOPAL CHURCH IN SOUTH  
CAROLINA

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v.

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Of which The Episcopal Church in South Carolina is the Appellant.

**VERIFICATION OF CALHOUN WALPOLE**

PERSONALLY APPEARED before me, Calhoun Walpole, authorized agent for The Episcopal Church in South Carolina, who being duly sworn does state as follows: I am the authorized agent in this case, I have read the Petition for Supersedeas and can and do verify under oath that to the best of my knowledge, the facts stated therein are true.

FURTHER AFFIANT SAYETH NOT.

Calhoun Walpole

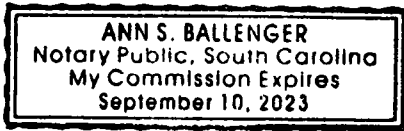
SWORN to before me this

3 day of July, 2014

Ann S. Ballenger

Notary Public for South Carolina

My commission expires: 9.10.23



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Of which The Episcopal Church in South Carolina is the Appellant.

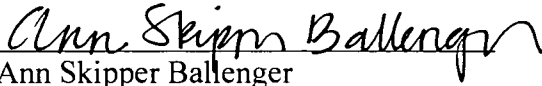
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PROOF OF SERVICE

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I certify that I have served The Episcopal Church in South Carolina's ("TECSC") Petition for Supersedeas Relief with Request for Expedited Decision and the Verification of Calhoun Walpole on all counsel of record for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on July 3, 2014.

July 3, 2014

  
Ann Skipper Ballenger  
Paralegal to Thomas S. Tisdale, Jr., Esq.,  
and Jason S. Smith, Esq.  
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# HELLMAN YATES & TISDALE

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July 3, 2014

## **Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, S.C. 29201

RE: The Protestant Episcopal Church in the Diocese of South Carolina, et al. v. The Episcopal Church, et al., Case No. 2013-CP-18-00013, Appellate Case No. 2014-001377

Dear Ms. Kitchings:

Enclosed for filing is one (1) original and seven (7) copies of Appellant The Episcopal Church in South Carolina's Petition for Supersedeas Relief with Request for Expedited Decision in the above-referenced case. Also enclosed are the following:

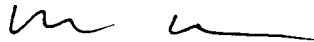
- (1) Verification of Calhoun Walpole;
- (2) Proof of Service; and
- (3) A filing fee of \$25.00.

Please return one, file-stamped copy to our courier.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me at your convenience.

With best wishes, I am

Very truly yours,



Thomas S. Tisdale

TST:asb  
w/Enclosures

cc: All Counsel of Record (via U.S. Mail)

**RECEIVED**

JUL 03 2014

**SC Court of Appeals**