

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

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SC Court of Appeals

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.

**THE EPISCOPAL CHURCH IN SOUTH CAROLINA'S
RETURN TO MOTION TO DISMISS APPEAL AND FOR EXPEDITED HEARING**

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THE EPISCOPAL CHURCH IN SOUTH
CAROLINA

The Episcopal Church in South Carolina (“TECSC” or “Appellant”), pursuant to Rule 240, SCACR, submits this return to the Respondents’ motion to dismiss the appeal and for an expedited hearing regarding the order entered on May 20, 2014 and the order denying reconsideration of the same entered on June 6, 2014 (the “Order”).

I. Introduction

The Order deprives the Appellant of the right to prove at trial 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, pursuant to *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.

The Order arose from a motion to join the 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, 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*.

To preserve the Appellant’s claims against the four individuals and to afford a fair trial in which the Appellant can challenge their purported corporate acts as *ultra vires*, this appeal must be taken immediately.

II. Background

Seven months ago, before any trial date had been set, on November 25, 2013, the Appellant moved to join four individuals to this action pursuant to Rules 13(h), 19 and 20, SCRCF, and submitted a proposed pleading against them asserting claims common to counterclaims already asserted in the action against the plaintiffs as well as additional claims. (Ex. A, Proposed Pleading). The lower court denied that motion orally at a hearing on December 30, 2013, and after requesting and considering a proposed order from the Respondents, entered a written order denying the same on May 20, 2014. The Appellant timely filed a motion for reconsideration on May 27, 2014. The lower court denied that motion for reconsideration by e-mail dated May 30, 2014, and after requesting and considering a proposed order from the Respondents, entered a written order denying the same on June 6, 2014. The Appellant served its notice of appeal on June 23, 2014, which was file stamped by the clerk of the Court of Appeals on June 24, 2014.

III. Legal Standard

“Whether an order issued prior to or during trial is immediately appealable is governed primarily by Section 14-3-330 of the South Carolina Code (1979 & Supp.2012).” EnerSys Delaware, Inc. v. Hopkins, 738 S.E.2d 478, 401 S.C. 615 (S.C. 2013). Section 14-3-330 provides appellate jurisdiction over:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such 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 or any part thereof or any pleading in any action

S.C. Code Ann. § 14-3-330.

In determining whether an order is immediately appealable, the effect of the order must be considered, irrespective of the label on the motion it rules upon or the order itself. Wetzel v. Woodside Dev. Ltd. P'ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) (holding on unique facts that an order granting a motion to set aside default was immediately appealable because it had “the effect of ... granting a motion to dismiss under Rule 12(b)(5), SCRCPP, since it ends the action as to [one party]”); Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 114-15, 682 S.E.2d 871, 874 (Ct. App. 2009) (analyzing a “motion to strike,” which actually challenges a theory of recovery, as a motion to dismiss under 12(b)(6) rather than as a motion to strike). “Further, an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation.” Hite v. Thomas & Howard Co., 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991), overruled on other grounds by Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995). “This Court reviews interlocutory orders when they contain other appealable issues.” Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002).

IV. Argument

A. The Order Affects A Substantial Right

In Neeltec Enterprises, Inc. v. Long, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012), the South Carolina Supreme Court held:

The right of the plaintiff to choose her defendant is a substantial right within the meaning of this subsection. Cf. Chester v. South

Carolina Dep't of Pub. Safety, 388 S.C. 343, 698 S.E.2d 559 (2010) (on appeal from order requiring plaintiff to join parties as defendants, Court recognized common law right of tort plaintiff to choose her defendant); see also Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005) (order disqualifying party's chosen attorney is immediately appealable under § 14-3-330(2)). Moreover, this order effectively discontinues petitioner's suit against Long, thus bringing the order under 2(a).

In a 1933 case, the Court considered an appeal by the defendant from an order substituting an individual plaintiff for a corporate plaintiff. The defendant did not immediately appeal the substitution order, but instead sought to appeal it after judgment. The Court held [F]rom the court's order no appeal was taken by [the defendant]. On the contrary, as stated, she elected to file an answer and go to trial on the issues made by the pleadings. Clearly, in these circumstances, the question here made is *res adjudicata*. [Defendant], by her failure to appeal from the court's order of substitution, is now estopped to deny that [the individual] was the proper party to prosecute the action. Watts v. Copeland, 170 S.C. 449, 456-7, 170 S.E. 780, 783 (1933).

Watts holds that a party who does not immediately appeal an order of substitution may not appeal this interlocutory order after final judgment. This Court has held that an interlocutory order that falls within the purview of § 14-3-330(2)(a) must be immediately appealed if it is to be considered at all, and that there is no review available after final judgment. E.g., Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985). We hold the order of substitution is appealable under § 14-3-330(2)(a), and that the failure to take such an immediate appeal would bar consideration of the order in an appeal from final judgment.

Id.

Along the same lines, South Carolina courts have held that an order that has the effect of dismissing claims against some but not all parties is immediately appealable, irrespective of the label on the motion it rules upon or the order itself. See Wetzel v. Woodside Dev. Ltd. P'ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) ("Here, however, the effect of granting the motion and holding that Steele has not been properly served is equivalent to granting a motion to dismiss under Rule 12(b)(5), SCRCPP, since it ends the action as to Steele. Therefore, it is

immediately appealable.”) (citing Lebovitz v. Mudd, 347 S.E.2d 94, 289 S.C. 476 (1986) (“An order granting a Rule 12(b) motion as to one of multiple claims is directly appealable under § 14-3-330(2) because it affects a substantial right and strikes out part of a pleading.”); 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) (“It is correct that the grant of the Rule 12(b)(1) motion in this case is not a final order as there is a remaining defendant. However, the practical effect of the grant of the motion is that it strikes out the Murphys’ complaint with respect to the respondents. Viewing McLeod in light of Lebovitz and Link, we conclude an order granting a Rule 12 motion as to some, but not all of the defendants in a case, is directly appealable under Section 14-3-330(2) because it affects a substantial right and strikes out part of a pleading.”).

Here, analogously, the Order denies the Appellant the right to sue and effectively dismisses all of its claims against four individual usurpers of its corporate identity.

In an attempt to avoid the mandatory joinder rules, the court ruled at the hearing that irrespective of the identity dispute¹ as to which side truly represents the Diocese’s corporations,

¹ This case involves an “identity dispute” between one group of South Carolinians that disaffiliated from The Episcopal Church in late 2012 (represented here as the Respondents) and another group of South Carolinians that remained a part of The Episcopal Church (represented here as the Appellant). Since the split, both groups of South Carolinians claim to be the one and only *continuing* Episcopal Diocese of South Carolina and the rightful owner and controller of its corporations, as well as its real and personal property, including its trademarks and other intellectual property. By way of declaratory and various other claims and counterclaims, both sides have asked the court to decide which group of South Carolinians is in fact the continuing Episcopal Diocese of South Carolina and is entitled to its rights. Notably, the competing groups are relatively equivalent in size. The Appellant is supported by several thousand South Carolinians from approximately 30 loyal parishes, missions, and worshiping groups. Even within the parishes that purported to disaffiliate and bring this action against the Appellant, a substantial percentage of their own communicants have sided with the Appellant; some of whom have left those churches, while others have reluctantly decided not to uproot their families from those churches, despite their personal allegiances The Episcopal Church. The Respondents often

the so-called “evidence”² fails to show that the four individuals acted outside of their own “group,”³ which the court inconsistently equated with the corporate “plaintiffs” nonetheless:

THE COURT . . . And I cannot find an act that was taken by those individuals that's any different than the actions taken by the group, or by the plaintiffs I should say. And while the individuals are sought to be sued individuals are clearly leaders of that group, I cannot find that any actions that they have taken to be any different than the group as a whole. And while those individuals' actions may be evidence of why the defendants are correct in maintaining that there is no new corporate entity, and if you will that their corporation has been taken from them wrongfully, I don't believe that those individuals have acted outside of the plaintiff.

(Ex. B, Excerpt from Transcript dated December 30, 2013, at p. 90, l. 20 – p. 91, l. 8).

attempt to mischaracterize this dispute as being between South Carolinians and The Episcopal Church, as merely an alien organization. *In truth, it is a very much a dispute among South Carolinians.* Also, it is important to understand at the outset that when the Respondents filed this lawsuit (against The Episcopal Church as the only defendant initially), they named themselves as the Diocese's corporations. Soon thereafter, they obtained an *ex parte* TRO preventing any individual not included on a list that they compiled from using the names and marks of the Diocese, and served it upon the leaders of the Appellant. Solely to avoid being held in contempt of the TRO, the Appellant adopted the pseudo name TECSC and began operating as an unincorporated association, as opposed to operating under the names of the Diocese's corporations, which represent its true identity. The Respondents then served TECSC as a second defendant to the lawsuit. It is only because the Respondents were first to the courthouse that they, instead of the Appellant, appear in this litigation under the name of the Diocese's corporations. The Respondents' fortuitous designation in the caption, however, should not entitle them to any advantage on the merits of this identity dispute; nor should it shield their leaders from joinder and personal liability for their own wrongful acts.

² Exactly what “evidence” the court is referring to is unclear, particularly in light of the fact that, when the court rendered its decision, the case was still in the beginning stages of discovery and no testimony or documentary evidence had been submitted to the court. At that juncture in the litigation, in considering whether to allow the proposed pleading, the trial court should have accepted the allegations therein as true. See Lentz v. Carolina Scenic Coach Lines, 38 S.E.2d 11, 15, 208 S.C. 278, 285 (1946) (“It is elementary law that in passing upon a demurrer all of the allegations of the complaint are accepted as true, and all allegations will be construed favorably to the pleader.”).

³ There is simply no legal basis for immunizing an individual from personal liability because his or her actions involved leading a “group” – indeed it is axiomatic that a conspiracy requires a group of more than one.

Then, in its Order, the court prematurely and errantly dismissed all of the claims in the proposed pleading against the four individuals on the merits for failure to state a cause of action and as being unsupported by the so-called “evidence”⁴:

TECSC’s proposed complaint seeks to allege claims which do not state causes of action . . . The evidence before the court fails to show that the actions taken by the four individuals were taken individually as opposed to being taken in their corporate capacities. These individuals are clearly those in (or who were in) leadership positions within the corporations and their alleged actions are no different from the actions taken by of the corporation. The individual actions may be evidence to support TECSC’s legal defenses or counterclaims against Plaintiff corporations, but there is no evidence presented to show these individuals acted outside the corporation. Therefore, the Defendant TECSC’s Motion to Join Additional Parties is denied.

Order at 5-6.

These rulings bring to an end the Appellant’s claims against the four individuals, triggering *res judicata* and collateral estoppel if the Appellant brought claims against them in another court, and making it impossible for the Appellant to obtain any relief that would be binding outside its own corporate identity against its usurpers in this action.⁵ See Neeltec, 397 S.C. at 566, 725 S.E.2d at 928 (and cases discussed therein); Wetzel, 364 S.C. at 592, 615 S.E.2d at 438; Lebovitz, 347 S.E.2d 94, 289 S.C. 476 (1986); Murphy, 346 S.C. 37, 550 S.E.2d 589.

⁴ Among the many reasons that the cases cited by Respondents are inapposite, a ruling on the merits, like this one, was explicitly absent. Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) (“The Court reached this conclusion because the trial judge did not rule on the substantive contents of the answer...”) (discussing Jefferson v. Gene’s Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456 (1988) (“[T]he judge expressed no opinion on the substantive contents of the answer...”)).

⁵ A judgment for money damages against the plaintiff corporations would be tantamount to a judgment against itself. Likewise, declaratory and injunctive relief must be rendered against the four individuals – personally – as the Appellant contends they are not true agents of the party corporations. Rule 65(d), SCRCP (“[Injunction] binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them...”).

To be sure, the Appellant's claims against the four individuals are supported by South Carolina law and well pled in a detailed 36-page proposed pleading, which should have been accepted as true until evidence is presented at trial. (Ex. A, Proposed Pleading). See Lentz, 38 S.E.2d at 15, 208 S.C. at 285 ("It is elementary law that in passing upon a demurrer all of the allegations of the complaint are accepted as true, and all allegations will be construed favorably to the pleader."). The proposed pleading clearly alleges that the four individuals breached personal promises and fiduciary duties, acted under false corporate titles without being duly elected, made numerous fraudulent representations, and manipulated the Diocese's corporations and property interests outside the bounds of their authority, for example, by improperly amending the Diocese's corporate charter, adopting new self serving bylaws, purporting to quitclaim away the Diocese's property interests, filing false trademark applications, filing this action in the name of the Diocese's corporations, and taking many other *ultra vires* acts. (Ex. A, Proposed Pleading). And based on those allegations, in addition to declaratory claims, the proposed pleading asserts numerous intentional torts and causes of action for which there is clearly no corporate immunity. (Ex. A, Proposed Pleading).

B. The Order Includes Rulings On The Merits

Another independent basis for immediate appellate jurisdiction arising from the lower court's ruling on the merits of the proposed pleading is that the Order simultaneously makes premature and errant rulings on the merits of this action between the *current* parties. That is because the Appellant's proposed pleading and the Plaintiffs/Respondents' complaint involve the same purported corporate acts and call for the same determinations to be made as to whether those acts were lawful or *ultra vires*.

In particular, the Order includes a ruling that Mark Lawrence and his followers in fact represent the corporations at issue. Order at 6 (“These individuals are clearly those in (or who were in) leadership positions within the corporations and their alleged actions are no different from the actions taken by of the corporation.”).

The court also ruled that the so-called “evidence” fails to show that Mark Lawrence and his followers have ever acted outside of their corporate authority. Order at 6 (“The evidence before the court fails to show that the actions taken by the four individuals were taken individually as opposed to being taken in their corporate capacities.”).

Finally, the court ruled that misrepresentations made by Lawrence and his followers in vows they made to obtain authority over the corporations cannot support any defense or counterclaim. Order at 6, n.7 (“Those causes of action fail to state a claim since they invite the Court to make a decision on whether vows were broken...”).

Because of the nature of the corporate identity dispute that lies at the center of this case, these rulings are in effect judgments on many of the thirteen enumerated declaratory requests for relief in the Respondents’ complaint (as well as the Appellant’s defenses thereto), including the following:

WHEREFORE, Plaintiffs pray that this Court declare . . .

- a. That the Plaintiff . . . is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity...
- b. That the Plaintiff . . . is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity...
- c. That the only proper and authorized representatives of the Diocese of South Carolina and the Trustees are the respective members of their Board of Directors, and their duly elected or appointed successors, and employees and that they alone are

authorized to update the signature cards on any account held by the Diocese of South Carolina or the Trustees and to file proper amendments to the articles of incorporation and any other necessary filing with the South Carolina Secretary of State . . .

f. That the Defendants may not assume or hold that any entities under their direction or control are the Diocese of South Carolina, the Trustees or any of the Plaintiff Parishes . . .

g. That the Defendants or anyone under their direction or control does not have legal capacity to act in the name of the Diocese of South Carolina, the Trustees or in the name of any of the Parishes .

..

(Ex. C, Excerpt from Complaint at pp. 88-89).

By effectively ruling on these declaratory requests in its Order, the lower court puts the cart before the horse, presupposing the validity of the purported corporate acts to bar the Appellant from challenging them as *ultra vires* at trial.

C. The Respondents' Arguments For Dismissal Are Misguided

1. The Appellant Has Not Filed This Appeal For Purposes Of Delay

Grasping for reasons to dismiss this appeal and to hold onto the Order that prejudices the Appellant and decides the most of the merits of this case in their favor before trial even begins, in addition to forever immunizing the usurpers from personal liability, the Respondents allege that the appeal is contrived solely to delay the trial. That assertion is not true, as is manifest from the record. The Appellant filed the motion from which this appeal arises *seven* months ago, on November 25, 2013, before any trial date had been set. Ever since then, the Appellant has openly and steadfastly sought a final order from which it could appeal, which was not entered by the lower court until June 6, 2014 (in large part due to the Respondents' own deliberate delays in

submitting proposed orders).⁶ Well within the 30 days provided by Rule 203, SCACR, on June 23, 2014, the Appellant served its notice of appeal, which was stamped by the clerk of the Court of Appeals the next day, June 24, 2014. Although certainly not required to, the Appellant could have filed that notice sooner, if not for the lower court's warning and ruling that witnesses not deposed before the stay resulting from the anticipated appeal might be excluded from testifying at trial. To avoid such prejudice, prior to filing this appeal, the parties used two weeks for the depositions of many witnesses, including several important expert witnesses.

As to the Respondents' one-sided retelling of extraneous procedural history in this case: the Appellant has done nothing but attempt to defend itself in this litigation, which has been a challenge ever since an improper *ex parte* injunction was issued against it before it was served as

⁶ First, the Appellant had to wait for the lower court to hear the motion, which did not occur until December 30, 2013. At that hearing, the lower court denied the motion orally and requested a proposed order from the Respondents within 10 days. *The Respondents delayed in doing so.* At that time and at all times subsequent, the Appellant has been open about its plans to appeal both that order and another order relating to over 1,200 privileged documents involving the lawyer for the unified Diocese prior to the split in 2012. The latter order had been reconsidered and the time was running to take an appeal. If the Respondents had cooperated, both orders could have been appealed at the same time for judicial efficiency. But as the 10-day deadline for the Respondents to submit a proposed order came and went, and given that the order would have to be entered, reconsidered, and affirmed prior to its appeal, it became clear that the Appellant would have to move forward with the first appeal alone. To be sure, the Appellant waited another four days before doing so on January 13, 2014. A few hours later on that same day, the Respondents e-mailed their proposed order, knowing that the case had been stayed by the appeal and that the lower court would not consider it. The stay lasted for four months. On May 7, 2014, immediately upon learning that the first appeal had been dismissed and that a remittitur would be issued (which was filed on May 12, 2014), the Appellant again asked the lower court to enter an order on its joinder motion so that it could take an appeal on the issue prior to trial. The court entered an order on May 20, 2014. The Appellant filed a motion for reconsideration on May 27, 2014. The lower court denied the reconsideration motion in an e-mail dated May 30, 2014 and ordered the Respondents to prepare a proposed order. *Again, the Respondents delayed in submitting a proposed order.* At a hearing on June 5, 2014, and only after the Appellant proactively offered its own proposed order to the court, did the Respondents submit the proposed order that had been requested of them. On June 6, 2014 the lower court signed and entered the Respondents' proposed order. Hence, after over six months, the Appellant was finally able to get an order allowing it to move forward with this appeal.

a party. Given the substantial constitutional religious issues inherent in the complaint, the Appellant certainly had colorable grounds to remove the case to Federal Court. The Appellant likewise had colorable grounds to take an immediate appeal of the lower court's decision involving over 1,200 privileged documents from the lawyer for the Diocese prior to the split in 2012 (who was centrally involved in the purported disaffiliation and is the lead counsel for the Respondents now). Neither the Federal Court nor the South Carolina Court of Appeals nor the South Carolina Supreme Court suggested those actions were taken for purposes of delay. This case is complex, as its complex designation denotes, and those issues were likewise complex.

The Respondents accusations of delay are not only a red herring: they are strategic. All along, it has been a strategy to rush to trial and restrict the Appellant from fully investigating the relevant facts and bringing claims against the responsible individuals. The truth is that this litigation is moving forward expeditiously for a case of this complexity and magnitude. Only 15 months have passed since the 38 plaintiffs served the Appellant with their 100-plus-page complaint in March of 2013.

As discussed above, the immediate appealability and merits of the instant appeal are strongly supported by South Carolina law. The importance of this appeal to the Appellant's right to a fair trial in this case cannot be overstated. And the Respondents' misleading and self-serving assertions of delay should not prevent its full and fair consideration.

2. Rule 14, SCRCF, Is Inapplicable

In their motion to dismiss this appeal, the Respondents attempt to recast the Appellant's joinder motion, which was explicitly and properly made under Rule 13(h), SCRCF, as a third party claim made under Rule 14, arguing in turn that Neeltec is inapposite and Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002) is analogous instead. Quite simply, Rule

14 does not apply: it provides for permissive third party claims against “a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.” The Appellant does not have and has not proposed any such third party indemnity claims against the four individuals.⁷

Rule 13(h), SCRCP, incorporates Rules 19 and 20, SCRCP, to allow a defendant to join additional counterclaim defendants as parties to an action where at least one counterclaim is common to at least one of the plaintiffs and each of the additional counterclaim defendants. The Appellant’s declaratory judgment counterclaim, among others, are commonly asserted against the Respondents and the four individuals sought to be joined.⁸ As to the proposed claims that are uncommon to the Respondents, they arise from the same transactions and occurrences and are therefore compulsory and would be barred by *res judicata* if not asserted therewith.

3. The Appellant Has Not Waived Its Right To This Appeal

The Respondents argue that the Appellant waived its right to appeal the issues raised in the instant joinder motion because the Appellant did not appeal a decision on a prior joinder motion of a different nature. The Respondents fail to mention, however, the explicit limitations and invitation that Judge Goodstein included in that prior decision: “I have, however, and you will see it in the order – and that’s based on the allegations that are contained in the counterclaim

⁷ To illustrate that point, for example, if the Appellant were to be found liable to the Respondents on the complaint’s cause of action for trademark infringement, the Appellant certainly would not have an indemnity claim against the four individuals who allege to be aligned with the Respondents.

⁸ The case cited by the Respondents in which the court denied joinder under Rule 13(h) involved no common claims, easily distinguishing it from the instant situation. Condon v. Best View Cablevision, 355 S.E.2d 7, 10, 292 S.C. 117, 124 (Ct. App. 1987) (“The claims Best View’s motion asserted against Savitz all relate to alleged violations of the stock purchase agreement. The only surviving claims against Condon, on the other hand, relate to his alleged disparagement of Best View’s commercial practices.”).

at this point. I have certainly left the door open that, as discovery progresses, if at that point the defendant counter-claimants believe it is appropriate, I have left the door open at that point for you to move yet again, but under the allegations as they appear at this point I do not believe it is appropriate.” Ex. D, Transcript of Record, September 27, 2013, at p.2, l. 21 – p. 3, l. 3.

TECSC’s pleading at that time did not specifically name any additional parties or make particularized allegations against them – because first, the lower court had not yet approved their joinder, and second, TECSC had not yet received the documents in discovery that revealed many of their unlawful acts. As the lower court anticipated, discovery allowed TECSC to develop the proposed pleading attached to the motion at issue, which is distinguishable from the pleadings considered by the court “at that time.” Within two months of Judge Goodstein’s invitation, the motion at issue was timely filed. It certainly cannot be said to have prejudiced the Respondents, then or now, particularly in light of the fact that the Respondents continue to reap the benefits of their temporary injunction, which remains in place against the Appellant’s motion to vacate it. See Forrester v. Smith & Steele Builders, Inc., 369 S.E.2d 156, 159, 295 S.C. 504, 508 (Ct. App. 1988) (“Delay in seeking leave to amend pleadings, regardless of the length of the delay, will not ordinarily be held to bar an amendment in the absence of a finding of prejudice In addition to Forrester’s delay in making application to amend, the City also claims prejudice because it will be required to file additional pleadings, engage in additional discovery, and incur additional costs. It also argues the amendment will prolong the litigation The fact the City will be ‘obliged to go to some additional time and expense in order to answer the amended complaint does not constitute such prejudice as will preclude the amendment.’”).

D. The Appeal Has Merit And Should Be Fully Briefed And Argued

As indicated above, the lower court erred in avoiding the rules of joinder under Rules 13(h), 19, and 20, SCRCP, compounding that error by dismissing the proposed claims on the merits for failing to state a cause of action and as being unsupported by the so-called “evidence.” The Appellant respectfully requests the opportunity to fully brief and argue these issues on the merits of the appeal in accordance with the appellate rules.

WHEREFORE, the Respondents’ motion to dismiss the appeal should be denied.

(Signature Page To Follow)

Dated: July 2, 2014

Respectfully submitted,



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Exhibit A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	
)	
THE PROTESTANT EPISCOPAL)	Case No.: 2013-CP-18-00013
CHURCH IN THE DIOCESE OF)	
SOUTH CAROLINA, ET AL.,)	
)	
Plaintiffs,)	TECSC'S CLAIMS
)	AGAINST ADDITIONAL
v.)	PARTIES
)	
THE EPISCOPAL CHURCH, ET AL.,)	
)	
Defendants.)	

The Episcopal Church in South Carolina (“TECSC”) hereby alleges claims against additional parties as follows:

PARTIES AND JURISDICTION

Additional Parties

1. Mark Lawrence (“Lawrence”) is a citizen and a resident of Charleston, South Carolina claimed against herein personally and individually for his own *ultra vires* unlawful acts.
2. James Lewis (“Lewis”) is a citizen and a resident of Daniel Island, South Carolina claimed against herein personally and individually for his own *ultra vires* unlawful acts.
3. Jeffrey Miller (“Miller”) is a citizen and a resident of Beaufort, South Carolina claimed against herein personally and individually for his own *ultra vires* unlawful acts.
4. Paul Fuener (“Fuener”) is a citizen and a resident of Georgetown, South Carolina claimed against herein personally and individually for his own *ultra vires* unlawful acts. Collectively, Lawrence, Lewis, Miller, and Fuener are referred to herein as “Additional Parties.”

The Episcopal Church In South Carolina

5. TECSC is an unincorporated religious association with its principal place of business in Charleston, South Carolina. TECSC is the continuing Diocese of South Carolina that is a sub-unit of the hierarchical religious organization of The Episcopal Church. TECSC's members include the individual clergy and laypeople that have remained loyal to The Episcopal Church. TECSC is using the name TECSC to comply with the Court's Temporary Injunction. TECSC is the rightful owner of all of the Diocese's property. TECSC's Convention is the true Convention of the Diocese of South Carolina and therefore has 100% of the voting power and authority to elect the Bishop, members to the Board of Trustees, members to the Standing Committee, as well as to amend the Constitution and Canons of the Diocese in accordance with the Constitution and Canons of The Episcopal Church. TECSC's Bishop is Bishop Charles G. vonRosenberg, who is the rightful Bishop of the Diocese of South Carolina as recognized by the hierarchical organization of The Episcopal Church, the rightful managing authority of the Diocese's corporate entity according to its charter, and the rightful President of The Trustees. TECSC is referred to herein interchangeably as "TECSC," the "Diocese," and the "Diocese of South Carolina."

GENERAL ALLEGATIONS

6. The Episcopal Church is a hierarchical religious organization consisting of 111 dioceses and over 7,000 parishes. For hundreds of years, under the First Amendment of the United States Constitution, The Episcopal Church has governed itself under its own Constitution and Canons, which may be supplemented but not contravened by the constitutions and canons of the individual dioceses. As described in detail in both TECSC's and The Episcopal Church's counterclaims against the Plaintiffs in this lawsuit, which are hereby referenced and incorporated

herein, the Constitution and Canons of The Episcopal Church and of the Diocese of South Carolina set forth the hierarchical structure of various conventions, legislative houses, committees, and leadership positions, as well as the fiduciary duties, obligations, and authority of individuals acting on behalf of the Diocese. Most notably with regard to the instant claims against the Additional Parties, the Constitution and Canons of The Episcopal Church and of the Diocese of South Carolina do not authorize and forbid the Bishop of the Diocese and any other individuals otherwise authorized to act on behalf of the Diocese to withdraw the Diocese or remove its property from The Episcopal Church.

7. In or around 2006, Lawrence made an agreement with members of the Standing and Search Committees of the Diocese to lead a scheme to withdraw the Diocese from The Episcopal Church in return for their votes electing him Bishop of the Diocese.

8. In 2007, as bishop-elect, in order to get the necessary majority confirmation from the standing committees and bishops of the other 110 dioceses as required by the Constitution and Canons of The Episcopal Church, Lawrence made false assurances orally and in writing that he would conform to the doctrine, discipline, and worship of The Episcopal Church and that he did not intend to withdraw the Diocese of South Carolina from The Episcopal Church.

9. On January 26, 2008, at his ordination ceremony performed in accordance with the Constitution and Canons of The Episcopal Church and at its direction by several bishops from other dioceses in front of a congregation, Lawrence falsely took a personal vow and signed a declaration to serve the clergy and people of the Diocese by adhering to the doctrine, discipline, and worship of The Episcopal Church and protecting the property of the Diocese. Pursuant to the Constitution and Canons of The Episcopal Church, as known, understood, and intended by Lawrence, this vow and declaration was continuing for the entire duration of his

tenure as a Bishop. Prior to his disaffiliation and withdrawal, every act he took and every representation he made as a Bishop of The Episcopal Church and of the Diocese constituted a reaffirmance of his vows and declarations.

10. The Episcopal Church and TECSC relied on Lawrence's personal promise in endowing him with authority as a Bishop of The Episcopal Church and of the Diocese.

11. All of the Additional Parties were aware of Lawrence's ordination vow and declaration and have been complicit in his breaches thereof as alleged herein.

12. All of the Additional Parties knew that any and all authority they possessed and any and all acts they took on behalf of the Diocese were governed by the Constitution and Canons of The Episcopal Church and of the Diocese.

13. All of the Additional Parties have been ordained as Priests in The Episcopal Church and made personal vows and declarations to conform to the doctrine, discipline, and worship of The Episcopal Church. Pursuant to the Constitution and Canons of The Episcopal Church, as known, understood, and intended by the Additional Parties, these vows and declarations were continuing for the entire duration of their tenure as a Priests. Prior to their disaffiliation and withdrawal, every act they took and every representation they made as Priests of The Episcopal Church constituted a reaffirmance of their vows and declarations.

14. Beginning in or around 2009, the Additional Parties began executing a conspiracy to take away the Diocese's assets and deprive Episcopalians loyal to The Episcopal Church of their property rights by manipulating the Diocese's corporate entity and The Trustees.

15. Much of the discussion, planning, and execution of this conspiracy occurred during purposefully secret and procedurally improper "Executive Sessions" of the Standing

Committee during which no minutes were taken, or if they were taken, upon information and belief, they have been hidden or destroyed.

16. Contemporaneously, Alan Runyan (“Runyan”) was engaged as counsel of the Standing Committee to advise it on both ecclesiastical and corporate matters. Runyan attended most, if not all, of the Standing Committee meetings from 2009 to the filing of this lawsuit.

17. All Standing Committees of all 111 dioceses, including the Standing Committee of the Diocese of South Carolina, are ecclesiastical bodies governed by the Constitution and Canons of The Episcopal Church.

18. The Diocese’s corporate entity was formed in 1973, upon information and belief, in response to a South Carolina Supreme Court decision that restricted the charitable immunity doctrine: *Jeffcoat v. Caine*, 198 S.E. 2d 258, 261 S.C. 75 (1973).

19. The 1973 charter provides: “The purpose of the said proposed Corporation is to continue the operation of an Episcopal Diocese under the Constitution and Canons of The Protestant Episcopal Church in the United States of America.”

20. Accordingly, the Constitution and Canons of The Protestant Episcopal Church in the United States of America, which by their own terms may be supplemented but not contravened by the Constitutions and Canons of the Diocese, are the bylaws of the corporation, as provided by the 1973 charter.

21. The Constitution and Canons of The Episcopal Church may only be amended by the General Convention of The Episcopal Church. Thus, only the General Convention of The Episcopal Church could amend the Constitution and Canons of The Episcopal Church to eliminate their hierarchical precedence to the Constitution and Canons of the Diocese.

22. For the first 37 years of its existence leading up to the recent *ultra vires* unlawful acts of the Additional Parties, the corporation operated accordingly under its bylaws, the Constitution and Canons of The Episcopal Church, as supplemented but not contravened by the Constitution and Canons of the Diocese. The formation of the corporation, therefore, did not affect the long-standing governance of the Diocese as part of the hierarchical organization of The Episcopal Church. The corporation's only consequential impact on the Diocese was to provide a corporate shield against personal liability for negligence for individuals acting within the scope of their authority on behalf of the Diocese in accordance with the Constitution and Canons of The Episcopal Church, as supplemented but not contravened by the Constitution and Canons of the Diocese.

23. The only distinct corporate act taken on behalf of the Diocese's corporate entity prior to the recent *ultra vires* unlawful acts of the Additional Parties occurred fifteen years after its formation, on February 20, 1987, when the corporation slightly amended its name. The resolution to amend the name was not adopted at a distinct corporate meeting, but rather at the ecclesiastical Diocesan Convention on February 19-21, 1987, which was held in accordance with the Constitution and Canons of The Episcopal Church, as supplemented but not contravened by the Constitution and Canons of the Diocese. The Application for Amendment was executed by "Bishop C.F. Allison" and "Executive Secretary John Q. Beckwith, III" as its "DIRECTORS OR AUTHORIZED MANAGING BOARD."

24. The managerial authority of the Diocese's corporate entity, as provided for in the 1973 charter, is the "Bishop," whose authority is in turn limited by the purpose and bylaws of the corporation adopted in the charter.

25. Since its founding in 1973, any and all corporate authority of the "Bishop" passed ecclesiastically from Bishop Temple to Bishop Allison in 1982, to Bishop Salmon in 1990, to Bishop Lawrence in 2008. Throughout all that time, according to the bylaws, the Constitution and Canons of The Episcopal Church and of the Diocese, as supplemented but not contravened by the Constitution and Canons of the Diocese, each bishop in this succession inherited his corporate authority after he had been ecclesiastically elected by the Diocese, confirmed by a necessary majority of standing committees and bishops in the other dioceses of The Episcopal Church, and ordained as Bishop of the Diocese by The Episcopal Church. There were no corporate elections separate and distinct from this ecclesiastical process.

26. Accordingly, Bishop Lawrence, like the Bishops before him, had no more authority over the corporation than he inherited ecclesiastically under the bylaws, the Constitution and Canons of The Episcopal Church, as supplemented but not contravened by the Constitution and Canons of the Diocese. As such, he had no authority to discontinue the ecclesiastical operation of the corporation and block his transient authority as then-acting bishop from passing to the next ecclesiastical bishop of the Diocese; nor could he amend the purpose or bylaws of the corporation as to conflict with the Constitution and Canons of The Episcopal Church; nor could the Diocesan Convention empower him to take any such action in conflict with the Constitution and Canons of The Episcopal Church; nor could he delegate any such powers, which he did not possess, to the Standing Committee or any other individuals.

27. The above described ecclesiastical operation of the corporation under its bylaws, the Constitution and Canons of The Episcopal Church, as supplemented but not contravened by the Constitution and Canons of the Diocese, is allowed and protected under South Carolina's Nonprofit Corporation Act, S.C. Code Ann. § 33-31-180, which provides as follows: "If

religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both.”

28. S.C. Code Ann. § 33-31-180 was passed by the Legislature in 1994 as more and more churches had incorporated for personal liability reasons. This law recognizes the incongruity between typical corporations, which require a corporate governance framework of uniform corporate formalities to effectively serve their purpose, and religious corporations, which typically already have an ecclesiastical governance framework with their own set of ecclesiastical rules and formalities in place. Further, this law recognizes that First Amendment rights would be compromised if, by incorporating, religious organizations were deemed to abandon their long-standing ecclesiastical governance and be subjected to indiscriminate corporate formalities and procedures susceptible to manipulation resulting in unintended consequences.

29. On March 17, 2010, Lawrence, in breach of his ordination vow and declaration and acting *ultra vires* (meaning outside the scope of his authority) in furtherance of the conspiracy under the title President of The Trustees, amended The Trustees’ bylaws to remove duties and responsibilities to the Constitution and Canons of The Episcopal Church. In effect, this was an attempt to change the beneficiary of the trust to himself and the Additional Parties in anticipation of withdrawing and disaffiliating from The Episcopal Church and the Diocese.

30. On that same day, March 17, 2010, members of the Board of Trustees, in breach of their fiduciary duties as trustees of the Diocese’s property and acting *ultra vires* in furtherance of the conspiracy, gave Lawrence, who exerted undue influence while acting as President of The

Trustees at the time, a 10-year lease for \$1 per year on the diocesan residence, personally and individually, without regard to his continued role as Bishop.

31. On October 15, 2010, the Additional Parties, in breach of their fiduciary duties and acting *ultra vires* in furtherance of the conspiracy, caused the Diocesan Convention to resolve to change the purpose of the Diocese's corporate entity and to amend the Constitution and Canons of the Diocese to remove all duties to The Episcopal Church and the Diocese's accession to the Constitution and Canons of The Episcopal Church. In particular, the Additional Parties conspired to have the Standing Committee propose such actions to the Diocesan Convention, and for Lawrence, as the Presiding Chair of the Diocesan Convention, to support votes on such proposals in contravention of the Constitution and Canons of The Episcopal Church and in breach of his ordination vow and declaration and fiduciary duties as Bishop. Lawrence should have exercised his authority and duty as Presiding Chair to rule such proposals out of order and to refuse to accept them.

32. On or about October 22, 2010, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy under the title "President" of the Diocese's corporate entity, Lawrence purported to amend the Diocese's corporate entity's charter to fundamentally change its purpose and bylaws. He removed the corporation's duty to adhere to the Constitution and Canons of The Episcopal Church and replaced it with self-serving allegiance to the Constitution and Canons of the Diocese. Lawrence backdated the effective date of that corporate amendment by a month to September 9, 2010 to predate amendments to the Constitution and Canons of the Diocese that he and the other Additional Parties had already conspired to have proposed and approved at the Diocesan Convention on October 15, 2010. In effect, this was an attempt to change the beneficiary of the nonprofit religious corporation to

himself and the Additional Parties in anticipation of withdrawing and disaffiliating from The Episcopal Church and the Diocese.

33. On or about October 29, 2010, Lewis, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, on behalf of the Diocese's corporate entity under the title of The Canon to The Ordinary, which is an ecclesiastical position in the Diocese, purported to file South Carolina state trademark applications, which included personal declarations swearing that the applications were true and accurate and that he believed that the corporation owned the rights in the trademarks. In the applications, Lewis represented that the common law rights in the trademarks went back to as far as 1821, which was long before the corporation was formed in 1973. Lewis knew or should have known that the ecclesiastical Diocese had never assigned any common law trademark rights to its corporate entity. He later admitted that the Diocese's corporate entity did not own any intellectual property, as detailed below.

34. TECSC, as the continuing ecclesiastical Diocese, owns the common law rights to the trademarks of the Diocese that have been used in commerce as far back as the Eighteenth Century.

35. On December 16, 2010, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, Miller purported to execute bylaws as "President" of the Diocese's corporate entity that, among other things, self-servingly purported to adopt Bishop Lawrence's *ultra vires* change of the purpose of the corporation, name the members of the Standing Committee as the "present directors" of the corporation, and give the directors the sole authority to determine the identity and authority of the Bishop, in contravention of the 1973 charter.

36. In spite of the new purported bylaws of the Diocese's corporate entity, in furtherance of their conspiracy, the Additional Parties continued to operate the corporation ecclesiastically at meetings of the Standing Committee, mostly in secret Executive Sessions during which no minutes were taken. They did not observe the corporate formalities provided for in their new purported bylaws or the Nonprofit Corporations Act.

37. On March 1, 2011, the minutes from the Standing Committee meeting show that the members of the Standing Committee were told that they were simultaneously members of the Standing Committee as well as the present members of the Board of Directors of the Diocese's corporate entity.

38. During this litigation, Plaintiffs' counsel represented to this Court: "[T]he Standing Committee is not a separate entity. It is nothing more than another name for the Plaintiff Diocese's Board of Directors." In fact, however, the Standing Committee is an ecclesiastical body that came into existence long before the Diocese's corporate entity was formed in 1973. It is a creature of Article IV of the Constitution of The Episcopal Church, which provides that every Diocese shall have a Standing Committee elected by its Convention that shall serve as the Bishop's Council of Advice and shall, if no Bishop is canonically authorized to act, serve as the Ecclesiastical Authority of the Diocese, and that the rights and duties of the Standing Committee may be prescribed in the Canons of the Diocese but may not contravene the Constitution and Canons of The Episcopal Church.

39. On February 1, 2011, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, Miller purported to execute an employment agreement as "President" of the Diocese's corporate entity with Lawrence that attempted to

empower Lawrence with corporate authority over the Diocese even in the event that he were to lose the “authority as is normally associated with the Bishop.”

40. On October 21, 2011, Lewis, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, purported to file a Form 1023, including a sworn declaration, with the IRS on behalf of the Diocese’s corporate entity under the title The Canon to The Ordinary, for the purpose of obtaining a tax exemption independent from The Episcopal Church in anticipation of withdrawing the Diocese from The Episcopal Church. Therein, among other things, he misrepresented the hierarchical ecclesiastical governance of The Episcopal Church and the Diocese as set forth in their Constitutions and Canons. He also admitted that the corporation did not own or have any rights in any trademarks.

41. On November 8, 2012, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, Fuener purported to file federal trademark applications as President of the corporation, which included personal declarations swearing that the applications were true and accurate and that he believed that the corporation owned the rights in the trademarks. In the applications, Fuener represented that the common law rights in the trademarks went back as far as 1821, which was long before the corporation was formed in 1973. Fuener knew or should have known that the ecclesiastical Diocese had never assigned any common law trademark rights to its corporate entity. He later filed express abandonments of those applications one day prior to the filing of this lawsuit, on January 3, 2013.

42. On various dates in 2010 and 2011, unsupported by any corporate election or resolution and acting *ultra vires* in furtherance of the conspiracy, various combinations of one or more of Lawrence, Miller, and Fuener unlawfully purported to execute various quitclaim deeds with various inconsistent combinations of grantors – one or more of the ecclesiastical Diocese,

the Diocese's corporate entity, and the Standing Committee – to the parishes in the Diocese. In total, at least 58 quitclaim deeds were executed. Some of these quitclaim deeds were kept secret for over a year before they were recorded. The earliest of the quitclaim deeds had the ecclesiastical Diocese as the one and only grantor. A second group of quitclaim deeds had both the ecclesiastical Diocese and the Standing Committee as grantors. The Diocese's corporate entity was added as a third grantor to another group of quitclaim deeds. A fourth group of quitclaim deeds named the Diocese's corporate entity as the one and only grantor. Some of the groups overlapped to some extent, such that a few of the parishes received more than one quitclaim deed from various combinations of grantors. This confused progression demonstrates the evolution of the Additional Parties' corporate conspiracy. The corporation went from being a nonparty in the first group of quitclaim deeds to the one and only party in the last group of quitclaim deeds. In any respect, The Trustees hold the Diocese's property interests in trust for the Diocese and would have been the only entity that could hypothetically grant such quitclaim deeds if not for their duties to The Episcopal Church and the Diocese. Accordingly, all of the above quitclaims are unlawful under the Statute of Frauds.

43. In furtherance of the conspiracy, many of the above referenced quitclaim deeds include witness declarations executed by Lewis and Runyan.

44. Many of the quitclaim deeds witnessed by Runyan included the ecclesiastical Diocese and/or the Standing Committee as grantors, but did not include the Diocese's corporate entity as a grantor.

45. In July of 2012, among his fellow bishops at the General Convention of The Episcopal Church in Indianapolis, Indiana, Lawrence publicly contradicted his ordination vow and declaration, stating that the "church has lost its way," and "I believe we crossed a line," and

“I can no longer seek to conform to this doctrine.” Lawrence also led some of the other delegates of the Diocese of South Carolina in walking out of the General Convention of The Episcopal Church.

46. On October 2, 2012, at a meeting of the Standing Committee, in breach of his fiduciary duties and acting *ultra vires* in furtherance of the conspiracy, Lawrence falsely represented to the members of the Standing Committee that the Diocese had the right to withdraw its accession to the Constitution and Canons and disaffiliate with The Episcopal Church and that, they, as the members of the Standing Committee and simultaneously the directors of the Diocese’s corporate entity, had the authority to take such action. Relying on Lawrence’s false representations, members of the Standing Committee, purporting to act on behalf of the Standing Committee and the Diocese’s corporate entity, simultaneously, purported to pass such a resolution that would be effective immediately upon, among other things, the taking of any action of any kind by any representative of The Episcopal Church against the Bishop, the Standing Committee, or any of its members.

47. On or about October 15, 2012, the Presiding Bishop of The Episcopal Church notified Lawrence that The Disciplinary Board for Bishops determined that he had violated his ordination vows to conform to the doctrine, discipline, and worship of The Episcopal Church and to guard the faith, unity, and discipline of the Church, as well as his duty to faithfully perform the duties of his office in accordance with the Constitution and Canons of The Episcopal Church. As a result, the Presiding Bishop restricted Lawrence’s ministry.

48. On October 17, 2012, the Additional Parties publicly announced that the above action against Lawrence triggered their immediate withdrawal and disaffiliation of the Diocese pursuant to the October 2, 2012 resolutions. October 2, 2012, or at the latest, October 17, 2012,

accordingly marks the date of the personal and individual withdrawal of the Additional Parties and their followers from The Episcopal Church, including the members of the Standing Committee who had unanimously voted to withdraw and disaffiliate. Any and all authority that any of those individuals had in the past to act for the Diocese or its corporate entity or The Trustees was extinguished from that date forward.

49. On October 18, 2012 and on numerous occasions thereafter, despite their personal and individual withdrawal from The Episcopal Church, the Additional Parties, acting *ultra vires* in furtherance of the conspiracy, organized meetings that they entitled “Special Meeting of the Standing Committee of the Protestant Episcopal Church in the Diocese of South Carolina” or “Special Meeting of the Board of Directors of the Protestant Episcopal Church in the Diocese of South Carolina,” or other similar titles, during which they purported to take various actions affecting the Diocese, its corporations, and its property. With respect to the continuing Diocese, which as a subunit of the hierarchical organization of The Episcopal Church, could not and did not withdraw or disaffiliate from The Episcopal Church, all of these meetings were null and void, as were all acts purportedly taken thereat.

50. Similarly, on November 17, 2012, despite their personal and individual withdrawal from The Episcopal Church, acting *ultra vires* in furtherance of the conspiracy, the Additional Parties purported to organize a meeting that they entitled “2012 Special Convention,” during which they purported to take various actions affecting the Diocese, its corporations, and its property. With respect to the continuing Diocese, which as a subunit of the hierarchical organization of The Episcopal Church, could not and did not withdraw or disaffiliate from The Episcopal Church, this meeting was null and void, as were all acts purportedly taken thereat.

51. On January 4, 2013, the Additional Parties, acting *ultra vires* in furtherance of the conspiracy, caused the Diocese's corporate entity and The Trustees to be named as Plaintiffs in this lawsuit.

52. Since their purported withdrawal, the Additional Parties have engaged in trademark infringement and false advertising by using the Diocese's marks in a manner that is misdescriptive, falsely suggestive of a connection and affiliation, and confusing to the public. The word "diocese" means a geographical sub-unit of a Christian church. The combination of words "Diocese in South Carolina" means the geographical sub-unit of a Christian church located in South Carolina. The phrase "The Protestant Episcopal Church" directly refers to the Christian denomination of The Episcopal Church. In sum, any combination of these words means the geographical sub-unit of The Episcopal Church located in South Carolina.

53. The Additional Parties' use of the Diocese's trademarks is wholly inconsistent with their withdrawal, personally and individually, from The Episcopal Church. Contrary to the literal meaning of the word "diocese," the Additional Parties assert that their purportedly withdrawn organization is not a geographical sub-unit, but rather a wholly independent and self-governing body. Contrary to the trademarks' direct implication of a connection and affiliation with the Christian denomination of The Episcopal Church, the Additional Parties assert their purportedly withdrawn organization is no longer a part of The Episcopal Church.

54. This public confusion is negatively affecting TECSC's membership, donations, management of clergy, associations with community organizations, and its Episcopalian mission.

55. Lawrence has falsely represented to the public that he is still the Bishop of the Diocese and he continues to act *ultra vires* under that title.

56. Lawrence has continued to live in the residence for the Diocese's Bishop under his personal and individual lease from The Trustees.

57. Lewis has falsely represented to the public that he is still the Canon to The Ordinary of the Diocese and he continues to act *ultra vires* under that title.

58. Together, the Additional Parties continue to act *ultra vires* to cause the named Plaintiffs to spend and waste the assets of TECSC in this litigation and other matters.

59. The Additional Parties are not immune from liability for any of the above alleged *ultra vires* unlawful acts, which were also willful, wanton, intentional, reckless, grossly negligent, and committed in bad faith.

CAUSES OF ACTION

Count I: Breach of Fiduciary Duty

(Against All Additional Parties)

60. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

61. All of the Additional Parties are Episcopal Priests who have taken continuing personal ordination vows and declarations to adhere to the doctrine, discipline, and worship of The Episcopal Church as set forth in its Constitution and Canons.

62. Lawrence additionally took a continuing personal ordination vow and declaration prior to assuming and while performing his duties and responsibilities as Bishop of the Diocese to serve the clergy and people of the Diocese by adhering to the doctrine, discipline, and worship of The Episcopal Church and protecting the property of the Diocese. His duties as Bishop extended to serving as: President of The Trustees, which had bylaws that further imposed fiduciary duties upon him to adhere to the Constitution and Canons of The Episcopal Church and

of the Diocese; “Bishop” of the Diocese’s corporate entity, which had a purpose and bylaws in its 1973 charter that further imposed fiduciary duties upon him to adhere to the Constitution and Canons of The Episcopal Church; and Presiding Officer of the Diocesan Convention, which is governed by the Constitution and Canons of The Episcopal Church and of the Diocese, which imposed fiduciary duties upon him. Lawrence accepted the salary and benefits paid to him as Bishop.

63. Lewis additionally served as: Canon to The Ordinary, which is an ecclesiastical position subordinate to the Bishop having its own fiduciary duties set forth in the Constitution and Canons of The Episcopal Church and of the Diocese – in this role, he was also complicit in breaching Bishop Lawrence’s continuing ordination vow and declaration and fiduciary duties by assisting him; Executive Secretary of the Diocesan Convention, which is governed by the Constitution and Canons of The Episcopal Church and of the Diocese, which imposed fiduciary duties upon him; and purportedly as “Canon to The Ordinary” of the Diocese’s corporate entity, which had a specific corporate purpose in its charter that further imposed fiduciary duties upon him to adhere to the Constitution and Canons of The Episcopal Church. Lewis also accepted the salary and benefits paid to him to perform the responsibilities and duties of Canon to The Ordinary.

64. Miller and Fuener additionally served as: Presidents of the Standing Committee, which is governed by the Constitution and Canons of The Episcopal Church and of the Diocese, which imposed fiduciary duties upon them; and purportedly as Presidents of the Diocese’s corporate entity, which had a purpose and bylaws in its 1973 charter that further imposed fiduciary duties upon them to adhere to the Constitution and Canons of The Episcopal Church.

65. TECSC reposed special confidence in the Additional Parties to exercise their authority in equity and good conscience.

66. All of the Additional Parties induced and accepted their fiduciary roles.

67. The Additional Parties have breached their fiduciary duties as alleged in detail above by manipulating and taking away TECSC's corporations and property.

68. The Additional Parties' breaches of fiduciary duty were willful.

69. TECSC has been damaged by Additional Parties' breaches of their fiduciary duties, which facilitated their manipulation and taking away of TECSC's corporations and property.

Count II: Breach of Contract

(Against Lawrence and Lewis)

70. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

71. The Diocese and The Episcopal Church made an offer to Lawrence to become a Bishop of The Episcopal Church and of the Diocese of South Carolina.

72. The terms of that offer were represented in writing in the Book of Common Prayer under Ordination of a Bishop and in the Constitution and Canons of The Episcopal Church and of the Diocese.

73. The offer was supported by valuable consideration, including ecclesiastical and corporate powers that accompanied the position of Bishop, as well as a salary and benefits.

74. Lawrence accepted the offer orally and in writing by sworn declaration during his ordination, and thereafter by representing himself to be the Bishop, and by accepting a salary for his labor.

75. The Diocese and The Episcopal Church relied on Lawrence's continuing ordination vow and declaration in empowering him with ecclesiastical and corporate authority.

76. Lawrence breached the contract by taking numerous acts alleged above in total contravention of his continuing ordination vow and declaration and failing to perform his duties as Bishop as required by the Constitution and Canons of The Episcopal Church and of the Diocese.

77. TECSC has been damaged by Lawrence's breaches, which facilitated the Additional Parties' manipulation and taking away of TECSC's corporations and property.

78. The Diocese made an offer to Lewis to be employed as Canon to The Ordinary.

79. The offer was supported by valuable consideration, including ecclesiastical authority that accompanied the position of Canon to The Ordinary, as well as a salary and benefits.

80. Lewis's obligations under the contract were represented by the terms of his continuing ordination vow and declaration and in the Constitution and Canons of The Episcopal Church and of the Diocese.

81. Lewis accepted the offer by representing himself to be the Canon to the Ordinary and by accepting a salary for his labor.

82. The Diocese relied on Lewis's continuing ordination vow and declaration in empowering him with ecclesiastical authority.

83. Lewis breached the contract by taking the numerous acts alleged above in total contravention of his continuing ordination vow and declaration and failing to perform his duties as Canon to The Ordinary as required by the Constitution and Canons of The Episcopal Church and of the Diocese.

84. TECSC has been damaged by Lewis's breaches, which facilitated the Additional Parties' manipulation and taking away of TECSC's corporations and property.

Count III: Breach of Contract Accompanied by a Fraudulent Act
(Against Lawrence and Lewis)

85. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

86. Lawrence and Lewis breached their respective contracts with the Diocese with fraudulent intent and their breaches were accompanied by many fraudulent acts as alleged above, including their false continuing ordination vows and declarations, *ultra vires* manipulation of the Diocese's corporations, and their taking away of the Diocese's property.

Count IV: Negligent Misrepresentation
(Against All Additional Parties)

87. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

88. Lawrence's continuing ordination vow and declaration was a false representation to the Diocese and The Episcopal Church.

89. Lawrence had a pecuniary interest in making that false continuing ordination vow and declaration so that he could assume the salary and benefits of a Bishop of The Episcopal Church and of the Diocese.

90. Lawrence owed a duty of care to The Episcopal Church and the Diocese to see that truthful information was communicated during his ordination and while he was acting as Bishop.

91. Lawrence breached his duty of care by failing to exercise due care in making an ordination vow and declaration that he did not intend to keep and by continuing to represent himself to be the Bishop when he was acting contrary to his duties and authority as Bishop.

92. The Diocese and The Episcopal Church justifiably relied on the Lawrence's continuing ordination vow and declaration in empowering him with the authority of Bishop of the Diocese.

93. The Diocese suffered a pecuniary loss as a direct and proximate result of reliance on Lawrences' representations, which facilitated Lawrence's manipulation and taking away of TECSC's corporations and property.

94. Lewis's continuing ordination vow and declaration was a false representation to the Diocese and The Episcopal Church.

95. Lewis had a pecuniary interest in making that false continuing ordination vow and declaration so that he could assume the salary and benefits of Canon to The Ordinary of the Diocese.

96. Lewis owed a duty of care to The Episcopal Church and the Diocese to see that truthful information was communicated during his ordination and while he was acting as Canon to The Ordinary.

97. Lewis breached his duty of care by failing to exercise due care in making an ordination vow and declaration that he did not intend to keep and by continuing to represent himself to be the Canon to The Ordinary when he was acting contrary to his duties and authority as Canon to The Ordinary.

98. The Diocese and The Episcopal Church justifiably relied on Lewis's continuing ordination vow and declaration in empowering him with the authority of Canon to The Ordinary.

99. The Diocese suffered a pecuniary loss as a direct and proximate result of reliance on Lewis's representations, which facilitated Lewis's manipulation and taking away of TECSC's corporations and property.

100. All the Additional Parties made false representations in their ordination vows and declarations as Priests.

101. As alleged in detail above, all of the Additional Parties made numerous false representations as to their own authority in the Diocese, as to the Constitution and Canons of The Episcopal Church and of the Diocese, and as to the Diocese's corporations.

102. All the Additional Parties had a pecuniary interest in making such false representations to take away the assets of the Diocese to fund their own organization conforming to their own personal religious beliefs.

103. All of the Additional Parties owed a duty of care to The Episcopal Church and the Diocese to see that truthful information was communicated when acting pursuant to their positions of authority.

104. All of the Additional Parties breached their duty of care.

105. The Diocese and The Episcopal Church justifiably relied on the Additional Parties in empowering them with their positions of authority.

106. TECSC suffered a pecuniary loss as a direct and proximate result of its reliance on the representations of the Additional Parties, which facilitated their manipulation and taking away of TECSC's corporations and property.

**Count V: Promissory Estoppel
(Against All Additional Parties)**

107. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

108. The continuing ordination vows and declarations of the Additional Parties were promises unambiguous in their terms.

109. The Diocese and The Episcopal Church reasonably relied on those continuing ordination vows and declarations.

110. The Additional Parties expected and foresaw that the Diocese and The Episcopal Church would rely on their continuing ordination vows and declarations.

111. TECSC has been damaged by its reliance on the Additional Parties' continuing ordination vows and declarations, which facilitated their manipulation and taking away of TECSC's corporations and property.

Count VI: Fraud

(Against All Additional Parties)

112. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

113. Lawrence's continuing ordination vow and declaration was a personal representation to the Diocese and The Episcopal Church.

114. Lawrence's continuing ordination vow and declaration was false because, prior to becoming Bishop, he intended to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, and thereafter, he engaged in numerous acts to do so while falsely representing that, as Bishop, he had such authority.

115. Lawrence's continuing ordination vow and declaration was a material and necessary prerequisite to his ordination as a Bishop of The Episcopal Church and of the Diocese and his continuing ecclesiastical authority in that role.

116. Lawrence knew that his continuing ordination vow and declaration was false because prior to becoming Bishop, he intended to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, and thereafter, he engaged in numerous acts to do so while falsely representing that, as Bishop, he had such authority; or in the alternative, Lawrence recklessly disregarded the truth or falsity of his continuing ordination vow and declaration because he was willing to withdraw the Diocese from The Episcopal Church if it did not change its doctrine to his liking, and he recklessly represented that he had the authority to do so.

117. Lawrence intended that his continuing ordination vow and declaration be acted upon by The Episcopal Church and the Diocese by ordaining him as Bishop and giving him authority in that role.

118. The Diocese did not know that Lawrence took his continuing ordination vow and declaration falsely.

119. The Diocese and The Episcopal Church justifiably relied on Lawrence's continuing ordination vow and declaration in empowering him with the authority of Bishop of the Diocese.

120. The Diocese had a right to rely on Lawrence's continuing ordination vow and declaration.

121. TECSC has been damaged by its reliance on Lawrence's fraudulent continuing ordination vow and declaration, which facilitated Lawrence's manipulation and taking away of TECSC's corporations and property.

122. The Additional Parties' continuing ordination vows and declarations as Priests were personal representations to The Episcopal Church and the Diocese.

123. The Additional Parties' continuing ordination vows and declarations were false because they engaged in numerous acts to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, while falsely representing that they had such authority.

124. The Additional Parties' continuing ordination vows and declarations were a material and necessary prerequisite to their ordination as Priests of The Episcopal Church and of the Diocese and their continuing ecclesiastical authority as Priests.

125. The Additional Parties' knew that their continuing ordination vows and declarations were false because they engaged in numerous acts to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, while falsely representing that they had such authority; or in the alternative, they recklessly disregarded the truth or falsity of their continuing ordination vows and declarations in attempting to do so.

126. The Additional Parties intended that their continuing ordination vows and declarations would be acted upon by The Episcopal Church and the Diocese by giving them authority within the Diocese.

127. The Diocese did not know that the Additional Parties took their continuing ordination vows and declarations falsely.

128. The Diocese and The Episcopal Church justifiably relied on the Additional Parties' continuing ordination vows and declarations in empowering them with positions of authority in the Diocese.

129. The Diocese had a right to rely on the Additional Parties' continuing ordination vows and declarations.

130. TECSC has been damaged by its reliance on Additional Parties' fraudulent continuing ordination vows and declarations, which facilitated their manipulation and taking away of TECSC's corporations and property.

Count VII: Constructive Fraud
(Against All Additional Parties)

131. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

132. Lawrence's continuing ordination vow and declaration was a personal representation to the Diocese and The Episcopal Church.

133. Lawrence's continuing ordination vow and declaration was false because, prior to becoming Bishop, he intended to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, and thereafter, he engaged in numerous acts to do so while falsely representing that, as Bishop, he had such authority.

134. Lawrence's continuing ordination vow and declaration was a material and necessary prerequisite to his ordination as a Bishop of The Episcopal Church and of the Diocese and his continuing ecclesiastical authority in that role.

135. Lawrence ought to have known that his continuing ordination vow and declaration was false because he was familiar with the Constitution and Canons of The Episcopal Church and of the Diocese.

136. Lawrence intended that his continuing ordination vow and declaration be acted upon by The Episcopal Church and the Diocese by ordaining him as Bishop and giving him authority in that role.

137. The Diocese did not know that Lawrence took his continuing ordination vow and declaration falsely.

138. The Diocese and The Episcopal Church justifiably relied on Lawrence's continuing ordination vow and declaration in empowering him with the authority of Bishop of the Diocese.

139. The Diocese had a right to rely on Lawrence's continuing ordination vow and declaration.

140. TECSC has been damaged by its reliance on Lawrence's fraudulent continuing ordination vow and declaration, which facilitated Lawrence's manipulation and taking away of TECSC's corporations and property.

141. The Additional Parties' continuing ordination vows and declarations as Priests were personal representations to The Episcopal Church and the Diocese.

142. The Additional Parties' continuing ordination vows and declarations were false because they engaged in numerous acts to attempt to withdraw and disaffiliate the Diocese from the Episcopal Church and take away its property, while falsely representing that they had such authority.

143. The Additional Parties' continuing ordination vows and declarations were a material and necessary prerequisite to their ordination as Priests of The Episcopal Church and of the Diocese and their continuing ecclesiastical authority as Priests.

144. The Additional Parties ought to have known that their ordination vows and declarations were false because they were familiar with the Constitution and Canons of The Episcopal Church and of the Diocese.

145. The Additional Parties intended that their continuing ordination vows and declarations would be acted upon by The Episcopal Church and the Diocese by giving them authority within the Diocese.

146. The Diocese did not know that the Additional Parties took their continuing ordination vows and declarations falsely.

147. The Diocese and The Episcopal Church justifiably relied on the Additional Parties' continuing ordination vows and declarations in empowering them with positions of authority in the Diocese.

148. The Diocese had a right to rely on the Additional Parties' continuing ordination vows and declarations.

149. TECSC has been damaged by its reliance on Additional Parties' fraudulent continuing ordination vows and declarations, which facilitated their manipulation and taking away of TECSC's corporations and property.

Count VIII: Conversion

(Against All Additional Parties)

150. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

151. TECSC has an interest in the Diocese's real and personal property, including all of its intellectual property.

152. Through unlawful *ultra vires* corporate manipulation, the Additional Parties converted the Diocese's property to their own use for a new religious organization conforming to their own personal religious beliefs.

153. TECSC did not give the Additional Parties permission or authority to take away the property of the Diocese.

Count IX: Fraudulent Transfer - Statute of Elizabeth - S.C. Code Ann. § 27-3-10, et seq.

(Against All Additional Parties)

154. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

155. The quitclaim deeds executed by the Additional Parties were fraudulent transfers.

Count X: Judicial Removal of Directors Under S.C. Code Ann. § 33-31-810

(Against All Additional Parties)

156. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

157. TECSC, through its Diocesan Convention, holds 100% of the voting power to elect the Bishop of the Diocese, who is the managing authority of the Diocese's corporate entity and the President of the Trustees, members of the Standing Committee of the Diocese, and members to the Board of Trustees.

158. With respect to the Diocese's corporations, the Additional Parties have engaged in fraudulent and dishonest conduct, and gross abuse of authority and discretion, and they have violated the duties set forth in S.C. Code Ann. §§ 33-31-830 through 33-31-833.

159. The removal of the Additional Parties from control of the Diocese's corporations is in the best interest of the corporations.

Count XI: Judicial Dissolution Under S.C. Code Ann. §§ 33-31-1430 and 1431

(Against All Additional Parties)

160. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

161. TECSC, through its Diocesan Convention, holds 100% of the voting power to elect the Bishop of the Diocese, who is the managing authority of the Diocese's corporate entity and the President of the Trustees, members of the Standing Committee of the Diocese, and members to the Board of Trustees.

162. The Additional Parties, who are the directors or those in control of the Diocese's corporations have acted, are acting, and will act in a manner that is illegal, oppressive, and fraudulent, and unfairly prejudicial to the Diocese's corporations and to TECSC and its loyal members.

163. The Diocese's corporate assets are being misapplied or wasted in this litigation and other matters.

164. The Diocese's corporations are religious corporations that are no longer able to carry out the explicit purposes for which they were formed in their charters because they are being controlled and manipulated *ultra vires* by the Additional Parties, who have no connection or affiliation or allegiance to The Episcopal Church and the Diocese.

165. The Diocese's corporations have abandoned the explicit purposes for which they were formed in their charters and have failed within a reasonable time to dissolve, to liquidate their affairs, and to distribute their remaining property to TECSC.

166. The Diocese's corporations should be dissolved under S.C. Code Ann. §§ 33-31-1430 and 1431 and their property should be distributed to TECSC.

167. Pursuant to S.C. Code Ann. §§ 33-31-1431, in order to preserve the corporate assets of the Diocese's corporations during the pendency of this action, the Court should take all preliminary action necessary, including issuing injunctions, appointing a receiver or custodian *pendente lite* with all powers and duties the court directs, or any other action.

Count XII: Ultra Vires Relief Under S.C. Code Ann. § 33-31-304

(Against All Additional Parties)

168. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

169. TECSC, through its Diocesan Convention, holds 100% of the voting power to elect the Bishop of the Diocese, who is the managing authority of the Diocese's corporate entity and the President of the Trustees, members of the Standing Committee of the Diocese, and members to the Board of Trustees.

170. TECSC challenges the Additional Parties' power to act on behalf of the corporation pursuant to S.C. Code Ann. § 33-31-304.

Count XIII: Piercing The Corporate Veil

(Against All Additional Parties)

171. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

172. The purported corporate acts of the Additional Parties alleged herein are unlawful *ultra vires* acts and the corporate veil should be pierced.

Count XIV: South Carolina State Law Trademark Infringement

Under Common Law And S.C. Code § 39-15-10, et seq.

(Against All Additional Parties)

173. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

174. TECSC owns the trademark registrations as the continuing ecclesiastical body of the Diocese because the registrations were applied for by the Canon to The Ordinary, which is an ecclesiastical office, and because the registrations explicitly state that the services to which they apply are “Religious services, namely ministerial, evangelical, and missionary services” – *i.e.*, non-corporate services.

175. TECSC, as the continuing ecclesiastical body of the Diocese, holds common law rights to the trademarks that go back as far as the Eighteenth Century.

176. The Additional Parties have used those trademarks without TECSC’s permission.

177. The Additional Parties’ use of the trademarks is misdescriptive, falsely suggestive of a connection and affiliation with The Episcopal Church, and publicly confusing.

178. TECSC has been injured by that confusion, which is negatively affecting TECSC’s membership, donations, clergy, associations with community organization, and its Episcopalian mission.

179. An injunction is appropriate because there is no adequate remedy at law.

Count XV: Federal Lanham Act Trademark Infringement And False Advertising

(Against All Additional Parties)

180. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

181. The Additional Parties are using the Diocese's trademarks in interstate commerce in a manner that is causing confusion as to their affiliation with The Episcopal Church.

182. The Additional Parties are engaging in commercial advertising and promotion in interstate commerce in a manner that misrepresents their alleged withdrawal and disaffiliation from The Episcopal Church.

183. The Additional Parties have committed such infringement and false advertising in South Carolina, many other states, and around the world, including but not limited to actions related to the Diocese's various institutions, missions, involvement with various national organizations, and on the internet.

184. An injunction is appropriate because there is no adequate remedy at law.

185. TECSC is entitled to all relief available under Section 43(a) of the Lanham Act.

Count XVI: S.C. Code Ann. § 33-31-180

(Against All Parties)

186. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

187. The Additional Parties have violated § 33-31-180 by purporting to take corporate action pursuant to the Nonprofit Corporation Act that is inconsistent with the religious doctrine governing the affairs of the Diocese's religious corporations.

Count XVII: Civil Conspiracy

(Against All Additional Parties)

188. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

189. The Additional Parties are a combination of two or more persons.

190. The Additional Parties agreed, planned, and acted together to purposefully injure TECSC by encouraging and causing thousands of people to individually and personally leave The Episcopal Church and the Diocese.

191. The Additional Parties visited numerous parishes in the Diocese and encouraged their clergy and parishioners to join them in leaving The Episcopal Church and the Diocese.

192. The loss of thousands of individual Episcopalians, many of whom have regularly made financial contributions to the Diocese, has resulted in a significant decline in the Diocese's annual incoming funds, and is expected to result in a significant decline in the Diocese's annual incoming funds in the future. TECSC demands special damages as compensation for this injury caused by the Additional Parties' conspiracy.

193. Upon information and belief, the Additional Parties were the leaders of the conspiracy, but others also participated in the conspiracy and may be named as parties after further discovery.

Count XVIII: Declaratory Judgment

(Against All Parties)

194. TECSC repeats the allegations set forth in all paragraphs above and below as if set forth verbatim herein.

195. TECSC is entitled to a declaratory judgment that the *ultra vires* acts of the Additional Parties are null and void and that TECSC is entitled to control and elect the directors and officers of the Diocese's corporations and that it is entitled to all of the Diocese's property.

PRAYER FOR RELIEF

WHEREFORE, TECSC respectfully requests that the Court enter judgment:

(a) In favor of TECSC on all claims;

- (b) Awarding TECSC preliminary relief necessary to preserve the property of the Diocese's corporations wrongfully being controlled *ultra vires* by the Additional Parties, and to prevent further infringement by the Additional Parties of TECSC's intellectual property rights;
- (c) Removing the Additional Parties from control of the Diocese's corporations and replacing them with members rightfully elected by TECSC, or alternatively, dissolving the Diocese's corporations and distributing their assets to TECSC;
- (d) Awarding TECSC permanent injunctive relief to prevent the Additional Parties further infringement of TECSC's intellectual property rights;
- (e) Awarding TECSC actual, consequential, special, and punitive damages;
- (f) Awarding TECSC attorneys' fees and costs;
- (g) Awarding TECSC a declaratory judgment that the *ultra vires* acts of the Additional Parties are null and void and that TECSC is entitled to control and elect the directors and officers of the Diocese's corporations and that it is entitled to all of the Diocese's property.
- (h) Awarding TECSC such other and further relief as the Court may determine is just, proper, and equitable.

Dated: November 25, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason S. Smith", written over a horizontal line.

Thomas S. Tisdale (S.C. Bar #: 005584)
Jason S. Smith (S.C. Bar #: 80700)
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*Counsel for Defendants The Episcopal Church
in South Carolina*

Exhibit B

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) COURT OF COMMON PLEAS

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF)
SOUTH CAROLINA, ET AL.,)

PLAINTIFFS,)

v.)

TRANSCRIPT OF RECORD
13-CP-18-00013

THE EPISCOPAL CHURCH,)
ET. AL.)

DEFENDANTS.)

December 30, 2013
Saint George, South Carolina

BEFORE :

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

APPEARANCES:

C. ALAN RUNYAN, ESQ.
ANDREW S. PLATTE, ESQ.
HENRIETTA U. GOLDING, ESQ.
HARRY A. OXNER, ESQ.
WILLIAM A. BRYAN, ESQ.
Attorneys for the Plaintiffs

ALLAN R. HOLMES, ESQ.
THOMAS S. TISDALE, ESQ.
JASON S. SMITH, ESQ.
Attorneys for Defendants

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Melissa Singletary

1 here if anybody wants some coffee. And I'm gonna
2 let y'all know right now so, and then I'll hear your
3 motion to continue your discovery.

4 MR. TISDALE: Your Honor will send out a
5 form order from the clerk for on the motions for
6 reconsideration?

7 THE COURT: Absolutely.

8 MR. TISDALE: Thank you.

9 THE COURT: Absolutely. Okay, all right.
10 I'll be back in 20 minutes. Thank you all so much.

11 (WHEREUPON, a recess was taken from the
12 proceedings.)

13 THE COURT: All right. I've covered the
14 motions to reconsider, and I think we've covered the
15 motions to compel discovery issues, and that leaves
16 the defendant's motion to add additional parties.
17 I've taken the time. I've gone back through your
18 memorandum. I've gone back through the affidavit
19 that was submitted. But the affidavit that was
20 submitted, I went through that as well. And I
21 cannot find an act that was taken by those
22 individuals that's any different than the actions
23 taken by the group, or by the plaintiffs I should
24 say. And while the individuals are sought to be
25 sued individuals are clearly leaders of that group,

1 I cannot find that any actions that they have taken
2 to be any different than the group as a whole. And
3 while those individuals' actions may be evidence of
4 why the defendants are correct in maintaining that
5 there is no new corporate entity, and if you will
6 that their corporation has been taken from them
7 wrongfully, I don't believe that those individuals
8 have acted outside of the plaintiff. And if I was
9 to allow these four individuals individually, all
10 the individuals could be sued individually that have
11 associated themselves with the plaintiff. And for
12 that reason I will deny the motion to join those
13 individuals noting exception thereto.

14 I wanted to point out, though, with
15 regards to the affidavit that I reviewed this
16 morning, the gentleman who filed the affidavit makes
17 reference to conversations that happened in October
18 of 2013 and the conversations say, we want a bishop
19 that would help us leave the Episcopal Church and
20 take the property with us. And what I thought was
21 interesting about that is that that would be the
22 plaintiff because of the day because by October 2013
23 that's because it had already occurred so I thought
24 maybe it is —

25 MR. TISDALE: Your Honor, I think that

Exhibit C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 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. Paul's 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; Saint)
 Matthews Church; St. Andrews Church-Mt.)
 Pleasant and The St. Andrews Church-Mt.)
 Pleasant Land Trust; St. Bartholomews)
 Episcopal Church; St. Davids Church;)
 St. James' Church, James Island, S.C.; St.)
 John's Episcopal Church of Florence, S.C.;)
 St. Matthias Episcopal Church, Inc.; St.)
 Paul's Episcopal Church of Bennettsville,)
 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.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**SECOND AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

CERTIFIED COPY
 2013 MAR -5 AM 10:54
 Clerk of Court
 Dorchester County
[Signature]

Helena and The Parish Church of St. Helena)
 Trust; The Vestry and Church Wardens Of)
 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)

PLAINTIFFS,)

v.)

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

DEFENDANT.)

Plaintiffs, through their respective undersigned counsel, bring this action against the Defendant seeking a declaratory judgment pursuant to §§ 15-53-10 *et. seq.* of the South Carolina Code of Laws (1976) that they are the sole owners of their respective real and personal property in which the Defendant, The Episcopal Church ("TEC") has no legal, beneficial or equitable interest. The Plaintiffs (except for St. Andrew's Church, Mount Pleasant) also seek a declaratory judgment that the Defendants and those under their control have improperly used and may not continue to use any of the names, styles, seals and emblems of any of the Plaintiffs or any imitations or substantially similar names, styles, seals and emblems and that the Court enter injunctions prohibiting the Defendants and those under their control from such uses pursuant to §§ 39-15-1105 *et. seq.* and §§ 16-17-310 and 320 of the South Carolina Code of Laws (1976).

In support of these claims, Plaintiffs allege as follows:

violation of the provisions of §16-17-310 all as provided by § 16-17-320, South Carolina Code of Laws (1976).

WHEREFORE, Plaintiffs pray that this Court declare the rights, status and other legal relations of the parties pursuant to §§ 15-53-10, *et seq* of the South Carolina Code of Laws and enjoin the Defendants and those acting under their direction and control, pursuant to §§ 39-15-1105, *et seq.*, 16-17-10 and 16-17-20 of the South Carolina Code of Laws, all as follows:

- a. That the Plaintiff, The Protestant Episcopal Church in the Diocese of South Carolina (“Diocese of South Carolina”) is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity, its names, emblems, styles and seal, its corporate assets, its real and personal property;
- b. That the Plaintiff, The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body (“Trustees”) is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity, its names, emblems, styles and seal, its corporate assets, its real and personal property;
- c. That the only proper and authorized representatives of the Diocese of South Carolina and of the Trustees are the respective members of their Board of Directors, and their duly elected or appointed successors, and employees and that they alone are authorized to update the signature cards on any account held by the Diocese of South Carolina or the Trustees and to file proper amendments to the articles of incorporation and any other necessary filing with the South Carolina Secretary of State;
- d. That the Diocese of South Carolina has withdrawn from the Defendant, TEC;

- e. That there is only one of each Plaintiff Parishes and that each Parish through its Board of Directors and its duly elected or appointed successors and employees are the only proper authorities of the Parish and are entitled to the exclusive use and control of the Parish corporation, its assets, its real and personal property;
- f. That the Defendants may not assume or hold out that any entities under their direction or control are the Diocese of South Carolina, the Trustees or are any of the Plaintiff Parishes;
- g. That the Defendants or anyone under their direction or control does not have legal capacity to act in the name of the Diocese of South Carolina, the Trustees or in the name of any of the Parishes;
- h. That the Defendant TEC does not have a legal, beneficial or equitable interest in the real and personal property owned by the Diocese of South Carolina, the Trustees or in that of any of the Plaintiff parishes;
- i. That the Defendant TEC has no rights to or authority over any Diocese of South Carolina, Trustees or Parish real and personal property, and that the Defendant TEC has no right or authority to possess, divert, encumber, alienate, transfer, or use any such property;
- j. That the Defendants and any entity or persons under their direction or control may not use in any way the registered service marks of the Diocese of South Carolina or of the Plaintiff parishes and that it be temporarily and permanently enjoined from such uses all as provided by Sections 39-15-1105 *et. seq.* South Carolina Code of Laws (1976);
- k. That the Defendants, their successors and assigns, and any person acting in concert with them, or under their direction or control be temporarily and permanently enjoined

Exhibit D

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

3

PROTESTANT EPISCOPAL CHURCH)
4 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 SCHAFFER GOODSTEIN

12

13

A P P E A R A N C E S:

14

C. ALAN RUNYAN, ESQUIRE

ANDREW PLATTE, ESQUIRE

15

Attorneys for Plaintiffs Protestant Episcopal
Church in the Diocese of South Carolina, et al.

16

THOMAS S. TISDALE, ESQUIRE

17

JASON S. SMITH, ESQUIRE

18

Attorneys for Defendants Episcopal Church,
Episcopal Church in South Carolina

19

ALLAN R. HOLMES, ESQUIRE

Attorney for Defendant Episcopal Church

20

Ruth L. Mott, RPR, CRR

21

Circuit Court Reporter

22

23

24

25

1 THE COURT: I understand that our folks from Washington
2 wish to participate by phone. Good morning. Hopefully you
3 will be able to hear. If you cannot, accept my apologies in
4 advance. When we built the courtroom, it was not built for
5 the purposes of having hearings by phone, but we will do the
6 best that we can, okay?

7 UNIDENTIFIED SPEAKER: Yes. Thank you for letting us
8 listen in this way, Your Honor. We appreciate it.

9 THE COURT: Happy to accommodate, really, and maybe
10 that's something we should have considered a little more
11 fervently, but alas we did not.

12 All right. Now, it is my understanding that there are
13 two, maybe three, motions that we need to deal with. I need
14 to announce I think to begin with, just for your purposes, I
15 think it will be helpful for your arguments, and tell you
16 that later today -- I am in the third final draft of my
17 order, and I am going to deny the request to add additional
18 parties, and the basis for that you will see in the order
19 itself, so I am not going to allow the addition of defendants
20 or individuals to respond to the counterclaims at this point.
21 I have, however, and you will see it in the order -- and
22 that's based on the allegations that are contained in the
23 counterclaim at this point. I have certainly left the door
24 open that, as discovery progresses, if at that point the
25 defendant counter-claimants believe it is appropriate, I have

1 left the door open at that point for you to move yet again,
2 but under the allegations as they appear at this point I do
3 not believe it is appropriate. Again, I think I'm in my
4 third final draft, but I am going to issue that order this
5 afternoon and you will -- I'll file it -- it will be mailed
6 to you, but I'll e-mail it to my guys, to Jason and to
7 Andrew, and then you all can disseminate it. If you'll all
8 do that for me, I'd appreciate it, because I don't know that
9 we can put it in the website this afternoon. But if we can,
10 we will, and I'll let you know. You won't be wondering where
11 it is.

12 And then I understand that there was a motion that was
13 served, and the plaintiffs have agreed to go forward even
14 though the time is potentially short, but it's filed by the
15 defendants. The plaintiffs have responded and are ready to
16 go forward, but the defendants have concern with going
17 forward at this point. Am I understanding that correctly?

18 MR. TISDALE: Your Honor, we're still preparing some
19 memos for you, and we don't think it's ripe to be heard
20 today.

21 THE COURT: In other words, you all aren't ready, you
22 want to finish your memos and proceed on the 11th.

23 MR. TISDALE: That's correct, Your Honor.

24 THE COURT: I understand. And the plaintiff, of course,
25 is ready.

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

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.

The Protestant Episcopal
Church In The Diocese Of
South Carolina, et al.,

Respondents,

v.

The Episcopal Church, et al.

Appellants.

PROOF OF SERVICE

I certify that I have served Appellant The Episcopal Church in South Carolina's Return to Motion to Dismiss Appeal and for Expedited Hearing on all counsel of record for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on July 2, 2014.

3

July 2, 2014

3

Ann Skipper Ballenger

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July 2, 2014

Via FedEx (tracking no.: 770494868498)

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais St.
Columbia, S.C. 29211

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 Mr. Shearouse:

This return is also being filed in the Court of Appeals where an appeal is pending. We are sending the return to you because some filings have been made in the Supreme Court, and this filing is a precautionary measure.

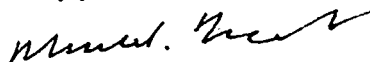
Therefore, enclosed for filing is one (1) original and seven (7) copies of the following: Appellant's Return to the Motion to Dismiss Appeal and for Expedited Hearing and the Proof of Service.

Please return one, file-stamped copy to our office. I have enclosed a stamped, self-addressed envelope for your convenience.

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: Jenny Abbott Kitchings (via FedEx) ✓
Counsel of Record for Respondents (via U.S. Mail)

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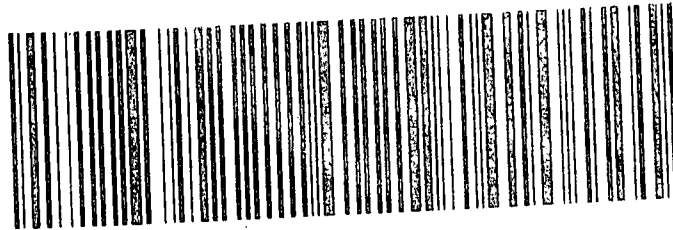
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