

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CIVIL ACTION NO.: 2018-CP-10-04206

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SEP 03 2019

SC Court of Appeals

Richard Roe,

Plaintiff,

v:

The Diocese of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY

JULIE J. ARMSTRONG
CLERK OF COURT
2019 JUL 24 AM 10:03
FILED

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| DATE OF HEARING: | July 17, 2019 |
| PRESIDING JUDGE: | Bentley D. Price |
| PLAINTIFF'S ATTORNEY: | Lawrence E. Richter, Jr. and Jennifer S. Ivey |
| DEFENDANTS' ATTORNEY: | Richard E. Dukes |
| COURT REPORTER: | Patricia Szoke |

THIS MATTER came before the Court for a hearing on July 17, 2019 on Defendant, the Bishop of Charleston, a Corporation Sole's (hereinafter the "Corporation Sole")¹ Motion for Partial Summary Judgment as to the Bishop of the Diocese of Charleston, in his official capacity (hereinafter "the Bishop" and collectively "the Diocese") and Plaintiff's Motion to Compel Discovery.

Present at the hearing were Lawrence E. Richter, Jr. and Jennifer S. Ivey, Counsel for the Plaintiff, and Richard E. Dukes, Counsel for the Defendants. Also present in the courtroom were non-lawyer staff for both Plaintiff and Defendants' Counsel and Dr. Gregory B. Adams.

¹ In its pleadings, including the Motion for Partial Summary Judgment, the Corporation Sole claims that it is incorrectly identified by the Plaintiff as the "Diocese of Charleston, a Corporation Sole." Accordingly, from this point forward, the caption in this case is to be restyled as the "Bishop of Charleston, a Corporation Sole."

After a full review of the pleadings, the legal memoranda filed by the parties, arguments of counsel, and considering the controlling legal authorities, this Court makes the following findings of fact and conclusions of law:

THE BISHOP, IN HIS OFFICIAL CAPACITY AS A PARTY-DEFENDANT

1. The first matter heard by the Court was the Corporation Sole's Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment sought dismissal of the Bishop as a defendant in this case on the basis that: (i) the Bishop is not a real party in interest, and is not a proper defendant; (ii) the Bishop does not have the capacity to sue; and (iii) the Corporation Sole is the only proper party and the only party with the capacity to be sued.

2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the bishop when sued using the exact same nomenclature. Further it was shown that then general counsel for the Diocese of Charleston brought a suit using the same name as used herein with the

Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

3. The Plaintiff further argued that not only is the Bishop a proper defendant, but that it is necessary for the Bishop to be named as a Defendant for the Plaintiff to obtain the relief he seeks. The Plaintiff presented to the Court S.C. Code § 33-56-180, which provides in pertinent part: "An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant."

4. Based upon the long precedent of the Bishop using South Carolina's courts to sue in the name of the Bishop, the Bishop's history of being sued in South Carolina, and other legal acts taken by the Bishop under this South Carolina's laws, I find that the Bishop has the capacity to be sued and is a proper party-defendant to this suit.

5. I further find that the Bishop is a necessary party for relief. Based upon the existence of statutory rules like S.C. Code § 33-56-180(A) and the facts of this case, the inclusion of the Bishop as a party-defendant may be critical to the viability of the Plaintiff's claims.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

6. The Court also considered the Plaintiff's Motion to Compel Discovery. The Plaintiff seeks to compel responses to: (1) its first set of written discovery, issued to the Bishop on November 27, 2018; and (2) its second set of written discovery, issued to both Diocese

Defendants on May 13, 2019; and (3) his subpoenas *duces tecum* served upon John Barker and Rev. Msgr. Anthony Droze VG on June 6, 2019.

7. The First Set of Written Discovery: The Plaintiff seeks to compel the Bishop's responses to the Plaintiff's First Set of Interrogatories, First Requests for Production, and First Requests for Admissions, served upon the Bishop on November 27, 2018. The Bishop has objected to all these discovery requests to him based upon the Corporation Sole's Motion for Partial Summary Judgment. The Diocese has further sought an order of protection as to the Bishop based upon the pendency of the Motion for Partial Summary Judgment.

8. The Second Set of Written Discovery: The Plaintiff also seeks to compel full and complete responses to the Plaintiff's Second Set of Interrogatories and Requests for Production that were issued to the Corporation Sole and the Bishop on May 13, 2019. The Bishop did not respond to this discovery, based upon the pendency of its Motion for a Protective Order, but the Corporation Sole did. However, the Plaintiff argues that the responses made by the Corporation Sole were packed full of dilatory and delay intentioned objections, and were not valid or sufficient responses. The Diocese maintained its objections and represented to the Court that it is going to be necessary to go line by line through every discovery request and have this Court rule on each.

9. The Deposition Subpoenas: Plaintiff also took the issue with the attempts to obtain documents that were made by way of subpoenas *duces tecum* served upon the Chief Financial Officer of the Diocese John Barker and its Vicar General Rev. Msgr. Anthony Droze VG on June 6, 2019. The Diocese's Counsel stated to the Court that it would treat those requests as Rule 34 Requests for Production and that it had almost finished gathering the documents requested. The

Diocese's Counsel indicated, however, that the Diocese seeks confidentiality protections before it will produce any such documents.

10. The Diocese represented that it cannot produce responses, including responses to the November 27, 2018 discovery issued to the Bishop, the May 13, 2019 discovery issued to both Defendants, and the June 6, 2019 document requests by subpoena *duces tecum* to the Chief Financial Officer of the Diocese, John Barker, and its Vicar General Rev. Msgr. Anthony Droze, until a confidentiality order is entered by the Court. The Diocese has filed a Motion for Entry of a Confidentiality Order. Plaintiff's Counsel has expressed a need for the information the Diocese seeks to shield, and as such, I find it necessary to consider the parties' positions attendant to a line-by-line review of the Plaintiff's discovery requests and the Diocese's objections. Given the Scheduling Order in this case, I will consider both of these matters on August 19, 2019.

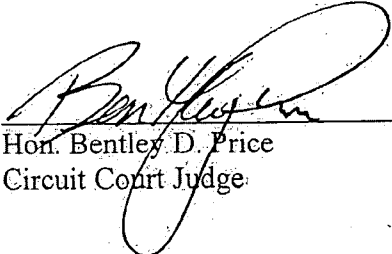
11. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019, and the Diocese is ordered to have available on that date the documents requested from John Barker and Rev. Msgr. Anthony Droze VG on June 6, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. As required by the SCRCP, Defendants are

to compile and send opposing counsel a proper privilege log. If the Court finds the documents or information are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion of the August 19, 2019 hearing, or within 24 hours thereafter.

12. This Court will consider the Plaintiff's request to impose fees, costs, and sanctions on the Diocese under Rule 37, SCRPC at the time of the August 19, 2019 hearing.

NOW, THEREFORE, IT IS HEREBY

ORDERED AND ADJUDGED that Defendants' for Partial Summary Judgment is **DENIED**. Plaintiff's Motion to Compel is **GRANTED** and Defendants' discovery-related motions are rendered moot.



Hon. Bentley D. Price
Circuit Court Judge

29 day of July, 2019
Charleston, South Carolina