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Mar 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Appellate Case No.: 2017-001996

Consolidated Case Nos.: 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176;
2015-CP-10-5486; 2016-CP-10-1632

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245
Father Doe 245, and John Doe 297..... Appellants,

v.

The Bishop of Charleston, A Corporation Sole,
Robert Guglielmone, The Bishop of Charleston, in his official capacity,
Rev. Monsignor Martin Laughlin, former Administrator of the
Diocese of Charleston, in his official capacity; Robert J. Baker,
former Bishop of Charleston, in his official capacity;
Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC..... Respondents,

**DIocese RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR
REHEARING**

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ATTORNEYS FOR DIOCESE RESPONDENTS

A. Procedural History

The only claims remaining against the Diocese Respondents after the unappealed orders granting summary judgment on Appellants' claims related to sexual abuse were conspiracy and aiding and abetting breach of fiduciary duty by Class Counsel. The appeals brought by John Doe 10 (10-2733); Father Doe 194 (13-4175); John Doe 194 (13-4176); John Doe 245 and Father Doe 245 (15-5486) do not involve the Diocese Respondents, and only involve claims against Class Counsel. All Appellants had the opportunity to conduct discovery of the Diocese, though the Circuit Court stayed discovery of the Lawyer Respondents until resolution of the abuse claims against the Diocese Respondents. The Panel correctly affirmed entry of judgment on the aiding and abetting breach of fiduciary duty claim against the Diocese Respondents and, on that basis, Appellants' Petition should be denied.

ARGUMENT

It is well-settled in this State that a cause of action for aiding and abetting breach of fiduciary duty requires that plaintiff *prove* (1) a breach of fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach."¹ Obviously, were Class Counsel to owe no fiduciary duty to the plaintiffs as a matter of law, then the Diocese Respondents cannot knowingly participate in a breach of that duty.² The Record on Appeal is bereft of any evidence to support the essential elements of their claims, and the Trial Court determined that

¹ *Future Group II v. Nationsbank*, 324 S.C. 89, 98-99, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted).

² *Mason v. Mason*, 412 S.C. 28, 38-40, 770 S.E.2d 405, 422 (S.C. 2015); *see also Zimmer Paper Products, Inc. v. Berger & Montague*, 758 F.2d 86 (3d Cir. 1985) (class counsel not required to do more than what is required by due process and ordered by the court providing notice to the class).

Class Counsel owed no duty to the members of the settlement class who were not afforded due process under the notice plan. Therefore, the Trial Court properly granted summary judgment to the Diocese.

More importantly, nothing Appellants alleged in their complaints constitutes aiding and abetting breach of fiduciary duty. Rather, every action by the Diocese was done to effect settlement of a class action suit. The Record is clear: Each and every action (or inaction) alleged as a basis for the aiding and abetting claim against the Diocese was, in fact, disclosed to the Class Action Court; scrutinized by the Class Action Court; and disclosed in the Court-approved notice to the class. The class settlement went forward pursuant to the deal struck by the representative plaintiffs, class counsel, and the Diocese. The Diocese's *only* obligation after settling the class action was to fulfill its obligations under the settlement agreement and the Class Action Court's Order Approving Settlement. There is no question the Diocese did that. The Diocese had no duty to object, oppose, or otherwise upset the settlement agreement. In complying with the precise terms of the settlement agreement, the Diocese cannot also be held liable for aiding and abetting any alleged breach of fiduciary duty. The Panel correctly affirmed the Circuit Court's summary judgment, and Appellants' Petition should be denied.

Accepting Appellants' argument would render moot the careful and considered analysis that Rule 23 requires. Rule 23 commands a well-ordered procedure for settling class actions, with multiple levels of protection for absent class members' interests. The protections afforded to absent class members by the court's Rule 23(c) approval of the settlement and determination that settlements are fair to the absent class members, would always be open to question and challenge by frustrated class members who fail, for whatever reason, to make a claim in the class action.

Likewise, fee awards to class counsel, though vetted and approved by the court, would always be open to challenge.

If Appellants' position is to be accepted, the specter of unending challenges to any settlement would wreak havoc on any class action practice. Allowing post judgment collateral attacks on class settlements would more likely than not result in:

- Settling defendants never being able to close the door on the claims they settle;
- Class counsel never being certain that cases could be closed and that their former clients (the absent class members) would not be able to sue them;
- Settling defendants facing the prospect of near unlimited future potential liability and legal costs even after the class settlement has been approved and fully paid;
- Class counsel forever facing the prospect that settling defendants will seek indemnification from them for fees, expenses, and damages recovered by members of some long ago class action;
- Parties to a class action settlement and their lawyers having to procure evergreen insurance policies to guard against claims arising from a long-concluded settlement;
- Class claimants facing the perpetual prospect of being called on to refund some or all of their recovery;
- The effectiveness and conclusiveness of class-wide releases coming under question; and
- The Trial Courts' role under Rule 23(c) and Rule 23(d)(2) likely being undermined through subsequent collateral challenges to class proceedings.

This parade of horrors would undermine every class action settlement and would negate the very utility of the class action device. Parties simply could not settle any matter on a class-wide basis for fear of never-ending challenges to court-approved and court-ordered processes and virtually unlimited future exposure. Without any guarantee of finality and a bar on future suits, no reasonable party would agree to settle a class action. Allowing full-on collateral attacks on class

action judgments would impose profound challenges to the courts and to any party faced with class claims.

CONCLUSION

For the reasons set forth above, the Petition for Rehearing should be denied.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

s/Richard S. Dukes, Jr.

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and Richter and Haller, LLC..... Respondents,

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Diocese Respondents, certifies that I
have this **29th day of March, 2021**, served a copy of the **Return to Appellants' Petition for**

Rehearing upon all counsel of record by causing them to be deposited in the United States mail
with sufficient postage attached, addressed to:

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