

**STATE OF SOUTH CAROLINA**  
**COUNTY OF SUMTER**

New Life Apostolic Church, Inc., and Ricky Finklea,

Plaintiffs,

v.

Progressive Church of Our Lord Jesus Christ, Inc., Theodore Jenkins, Sr., Lang Priester, David S. Johnson, Sr., and Paul C. Johnson,

Defendants.

**IN THE COURT OF COMMON PLEAS**  
**THIRD JUDICIAL CIRCUIT**

**RECEIVED**

**Nov 22 2021**

**SC Court of Appeals**

**ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court pursuant to the Motion for Partial Summary Judgment of Defendants Progressive Church of Our Lord Jesus Christ, Inc. (“Progressive Church” or “Church”); Bishop Theodore Jenkins, Sr.; Bishop Lang Priester; Bishop David S. Johnson, Sr.; and Bishop Paul C. Johnson (collectively “Defendants”) and Plaintiffs New Life Apostolic Church, Inc. and Ricky Finklea’s (“Plaintiffs”) Motion for Preliminary Injunction. The motions have been fully briefed and a hearing was held on July 1, 2021.

## **I. INTRODUCTION**

Plaintiff Ricky Finklea (“Finklea”) is the pastor of Plaintiff New Life Apostolic Church, Inc. (“New Life” or “NLAC”), a church corporation formed by Finklea in December 2014. Finklea is also a former pastor and elder of the Defendant Progressive Church of our Lord Jesus Christ, Inc.’s local congregation in Sumter, South Carolina (the “Sumter Congregation”). The individual Defendants, Bishop Theodore Jenkins, Sr., Bishop Lang Priester, Bishop David S. Johnson, Sr.,

and Bishop Paul C. Johnson are the current members of the Progressive Church's Board of Bishops, its highest governing body for both ecclesiastical and secular matters.

On December 18, 2020, Finklea and New Life filed this action against the Progressive Church and against the individual members of the Progressive Church's Board of Bishops. At its core, this dispute concerns the ownership of the real property purchased by the Progressive Church and used by the Progressive Church's Sumter Congregation. The property is comprised of four adjoining parcels located in Sumter, South Carolina (collectively the "Sumter Property" or "Property"). The property is located at 219 Crescent Avenue, which was purchased by and conveyed to the Progressive Church by deed in 1998 ("1998 Deed"); and 502, 504, and 508 N. Main Street, which were purchased by and conveyed to the Progressive Church by deed in 2005 ("2005 Deed").

This dispute also involves challenges by Finklea and New Life to the status and governance authority of the individual members of the Progressive Church's Board of Bishops. In the Amended Complaint, Finklea and New Life assert three causes of action for equitable legal relief. In the First Cause of Action for Declaratory Judgment, Finklea and New Life assert numerous allegations regarding the past and present ecclesiastical and secular governance of the Progressive Church. They seek a declaration from this Court that "(1) the Individual Defendants are not the governing board of the Progressive Church and have no authority to take action on behalf of the Progressive Church;" and "(2) the procedures in Article V of the Church Constitution shall be used for filling [alleged] vacancies on the Progressive Church's Board of Bishops or, in the alternative, the Board of Bishops shall be determined by the Progressive Church membership at a Convocation." Am. Compl. ¶ 62.

Finklea and New Life's First Cause of Action also seeks declaratory relief regarding the Sumter Property as follows: "(3) the deed for the Property recorded by the Individual Defendants on September 20, 2019 ("2019 Deed") is invalid; (4) NLAC is the successor in interest of the Sumter congregation of the Progressive Church with respect to the Property; and (5) NLAC has rightful possession of the Property and cannot be evicted or otherwise removed from the Property by the Individual Defendants." Am. Compl. ¶ 62. Finklea and New Life's Third Cause of Action also involves the Sumter Property and is for reformation of the 1998 and 2005 Deeds "so that they reflect that NLAC is the owner of the Property." Am. Compl. ¶ 74.

Finklea and New Life's Fourth Cause of Action is an "alternative" claim for quantum meruit, which, Plaintiffs ask this Court to apply only "if the Progressive Church is deemed to be the owner of the Property," and in which case Finklea and New Life allege "the Progressive Church would receive a significant financial and operational benefit as a result of the Property maintenance and improvements made by Plaintiffs since July of 2014," the retention of which would be unjust. Am. Compl. ¶¶ 83-84.

Finklea and New Life's Second Cause of Action seeks preliminary injunctive relief and is completely derivative of and dependent upon the ultimate success of the First and Third Causes of Action.

On December 29, 2020, Finklea and New Life moved this Court for a preliminary injunction that would preserve the status quo until resolution of the underlying litigation and provide that "[d]uring the pendency of this action, Defendants must cease and desist from taking any actions on behalf of the Progressive Church with respect to NLAC's Pastor, Ricky Finklea, the operations of NLAC, or NLAC's use of the property where NLAC conducts its activities (*i.e.*,

the property located at 219 Crescent Avenue and 502, 504 and 508 North Main Street in Sumter, South Carolina.)” Pl. Mot. for Prelim. Injunction.<sup>1</sup>

On March 31, 2021, Defendants moved for summary judgment on all of Finklea and New Life’s claims based on their Second, Third, and Fourth Affirmative Defenses, respectively, lack of subject matter jurisdiction, failure to state a claim, and lack of standing. Moreover, Defendants moved for summary judgment on Defendants’ Counterclaims for Declaratory Judgment and Trespass.<sup>2</sup>

First, Defendants argue that Finklea and New Life have no standing to pursue their First, Second, and Third Causes of Action, in their entirety. According to Defendants, there is no genuine issue of material fact that Finklea and New Life were not members of the Progressive Church at the time this action was filed, and Finklea and New Life thus lack standing to contest the past and present ecclesiastical and secular governance of the Progressive Church or its ownership of real property.

Second, Defendants argue that this Court lacks subject matter jurisdiction to hear Finklea and New Life’s First Cause of Action for declaratory judgment, but only those allegations regarding the past, present, and future internal governance and administration of the Progressive Church, because as a matter of law, civil courts are prohibited by the First and Fourteenth Amendments to the United States Constitution from reviewing the internal and ecclesiastical affairs and decisions of religious organizations and from substituting a court’s judgment for that of the highest ecclesiastical tribunal in a religious organization.

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<sup>1</sup> The parties agreed to maintain the status quo until the Defendants filed responsive pleadings and the Plaintiffs’ Motion for Preliminary Injunction could be heard along with the Defendants’ motion.

<sup>2</sup> Defendants did not move for summary judgment on their counterclaims for an accounting, quantum meruit, and constructive trust.

Third, Defendants argue that Finklea and New Life fail to state a claim on their Third Cause of Action for reformation of the 1998 and 2005 Deeds to the Sumter Property, because there is no genuine issue of material fact that the Finklea and New Life were not parties to either of the deeds nor in privity with any of the parties to the deeds.

Fourth, Defendants argue that Finklea and New Life also fail to state a claim on their Fourth Cause of Action for quantum meruit, because there is no genuine issue of material fact that the Defendants owe no legal duties of disclosure, or otherwise, to Finklea and New Life, and Finklea and New Life cannot establish any other cause of action that would allow recovery for unjust enrichment.

Finally, Defendants also moved for summary judgment on their First Counterclaim for Declaratory Judgment and Second Counterclaim for Trespass on the grounds there is no genuine issue as to the following material facts:

(1) the Progressive Church is the exclusive and sole holder of record legal title to the Sumter Property, and thus has the sole right to the exclusive, peaceable possession of that Property;

(2) the Church Constitution is the governing document for the Progressive Church and it vests ecclesiastical and secular governance authority for the Progressive Church solely in the Board of Bishops, as the highest ecclesiastical body in the Progressive Church;

(3) Finklea and NLAC are not a part of or members of the Progressive Church and have no permission from the Progressive Church, and no contractual or other legal or equitable rights to use, possess, or occupy the Progressive Church's Sumter Property; and

(4) Finklea and NLAC have, since at least July 2014, interfered with the Progressive Church's right to the exclusive, peaceable possession of the Sumter Property.

For the reasons set forth below, this Court grants the Progressive Church Motion for Partial Summary Judgment and denies the Motion for Preliminary Injunction of Plaintiffs Finklea and New Life.

## **II. FINDINGS OF FACT**

The Progressive Church was founded in 1944 in Columbia, South Carolina, and on October 5, 1953, was incorporated under South Carolina law. The incorporating documents for the Progressive Church confirm that the Progressive Church “holds, or desires to hold, property in common for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose, or any two or more of said purposes.” The Progressive Church is a hierarchical church with its headquarters office in Columbia, South Carolina, from which it provides secular, spiritual, and ecclesiastical governance and oversight for its local church congregations.

The local congregations of the Progressive Church are established by and governed under the hierarchical authority of the Progressive Church and are organized as a body of churches that operate by the same faith, doctrine and administration. The Progressive Church has operated under a governance system of hierarchical polity and has generally observed an annual ruling holy convocation since its founding and under Article IX of the Church Constitution. In some instances, the Progressive Church allows existing local congregations to join the Progressive Church, upon approval by the Board of Bishops. The Progressive Church also establishes financial assessments for the local congregations and rules of order, faith, doctrine, and administration, which each of its local pastors and congregations must follow.

The August 18, 1983, Church Constitution (“Church Constitution”) is the current and official bylaws and governing instrument of the Progressive Church. Article I, Section III, of the Church Constitution states “the purpose of this organization is to teach the doctrines and beliefs of

the Apostolic Faith and to *own, establish and maintain churches*, thereby perpetuating the Progressive Church of our Lord Jesus Christ, Inc.” (Emphasis added.)

Article III, Section II, of the Church Constitution expressly provides that the Board of Bishops “shall govern the church in both spiritual and secular matters” and “shall be responsible for the overall operation of the church and its financial growth and stability.” No other officers, committees, or Boards named in the Church Constitution have any such governance authority or power. The Board of Bishops is the governing board and highest ecclesiastical authority in the Progressive Church.

Article I, Section IV, of the Church Constitution provides that the Progressive Church “shall function on National, District, and Local levels.” Local congregations of the Progressive Church are not self-governed by saints<sup>3</sup> but are governed by the Progressive Church’s Board of Bishops, according to Article III, Section II, of the Church Constitution. Pastors who serve local congregations of the Progressive Church, and who are assigned and credentialed by the Progressive Church’s Board of Bishops, are appointed, removed, and reassigned at the ecclesiastical discretion of the Board of Bishops. The Progressive Church maintains oversight of the business and financial matters of its local congregations and has removed pastors of its local congregations for failure to adhere to the Church’s policies for ecclesiastical, business and financial matters.

The current members of the Progressive Church’s Board of Bishops are Bishop Theodore Jenkins, Sr., Presiding Bishop, Bishop Paul C. Johnson, Board Secretary, Bishop David S.

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<sup>3</sup> The Progressive Church has ecclesiastical or spiritual members that it often refers to as “saints,” “parishioners,” or “members of our church,” but it does not have corporate “member[s]”, as defined in the South Carolina Nonprofit Corporation Act, with any right to vote for directors of the corporation. S.C. Code Ann. § 33-31-140(23)(a).

Johnson, Sr., and Bishop Lang Priester. These members of the Progressive Church's Board of Bishops are duly appointed and authorized to make governance decisions on behalf of the Progressive Church.

Pursuant to the Progressive Church's 1953 Articles of Incorporation, and including before adopting its 1983 Church Constitution, the Progressive Church has, since at least 1958, purchased and titled the real property used by its local congregations as places of worship in its official corporate name: Progressive Church of Our Lord Jesus Christ, Inc. The Progressive Church owns real property in North Carolina, South Carolina, Georgia, and Florida. The Progressive Church's properties are titled and held in the formal corporate name of the Progressive Church of Our Lord Jesus Christ, Inc., with maintenance responsibilities and building upkeep generally attended to by saints of each local congregation of the Progressive Church.

In 1991, upon approval by the Progressive Church and under Article I, Section IV, of the Church Constitution, Bishop David S. Johnson, Sr. established the Sumter Congregation, as a part of the hierarchical Progressive Church. The Progressive Church appointed Bishop David S. Johnson, Sr. as the initial pastor of the Sumter Congregation in 1991. The Progressive Church has maintained oversight of the business and financial affairs of the Sumter Congregation from its beginning.

On August 10, 1998, the Progressive Church purchased the initial portion of the Sumter Property at 219 Crescent Avenue in Sumter, South Carolina for a purchase price of \$59,750. The Progressive Church paid the full purchase price of \$59,750 from banking accounts it owned and controlled and authorized Bishop David S. Johnson, Sr. to execute the closing documents on behalf of the Progressive Church, titling the property in the Progressive Church's corporate name, Progressive Church of Our Lord Jesus Christ, Inc.

Since the purchase in 1998, the property at 219 Crescent Avenue has been continuously owned by the Progressive Church, titled in its corporate name, and authorized for use only by the Sumter Congregation as a place of worship and to further the ministry of the Progressive Church. No other entity or person has been authorized to use the Property at 219 Crescent Avenue in Sumter, South Carolina.

In or about 2002, the Progressive Church assigned Finklea, a minister licensed by the Progressive Church, to provide subordinate ministerial support to Bishop David S. Johnson, Sr. within the Sumter Congregation. In July 2003, the Progressive Church ordained Finklea an “elder,” during an ecclesiastical “laying on of hands” ordination ceremony conducted by Bishop Theodore Jenkins, Sr., Bishop David S. Johnson, Sr. and Bishop Lang Priester, and appointed Finklea to serve as pastor of the Sumter Congregation, remaining under the direct supervision of Bishop David S. Johnson, Sr.

The Bishops expressly instructed Finklea that, in the role of pastor of the Progressive Church’s Sumter Congregation, Finklea served under the authority of the Progressive Church. On July 3, 2003, Finklea was required to sign, and did sign, a Ministerial Reaffirmation Statement confirming his responsibility to honor the leadership of the Progressive Church in “all things” and confirming Finklea’s responsibility to resign if he could not abide by the directives of the Progressive Church leadership. By accepting the position of elder and pastor of a Progressive Church local congregation, Finklea undertook a confidential and fiduciary relationship with the Progressive Church to serve and promote its spiritual and secular mission and to conserve and safeguard its property, both real and personal.

On May 6, 2005, the Progressive Church purchased additional property at 502, 504, and 508 N. Main Street, in Sumter, South Carolina. The Progressive Church paid the full purchase

price of \$48,000 from banking accounts it owned and controlled and authorized Bishop David S. Johnson, Sr. and the late Bishop Edward Smith to execute the closing documents on behalf of the Progressive Church, titling the property in the corporation's name, Progressive Church of Our Lord Jesus Christ, Inc.

Since the purchase in 2005, the properties at 502, 504, and 508 N. Main Street, in Sumter, South Carolina have been continuously owned by the Progressive Church, titled in its corporate name, and authorized for use by the Sumter Congregation to further the ministry of the Progressive Church. No other entity or person has been authorized by the Progressive Church to use this Property.

In 2007, the Progressive Church placed the Sumter Congregation in a district of the Progressive Church's local congregations directly overseen by Bishop David S. Johnson, Sr. and ultimately governed by the Board of Bishops.

On December 3, 2014, Finklea formed the Plaintiff Corporation, New Life Apostolic Church, as a South Carolina Corporation, and filed articles of incorporation with the South Carolina Secretary of State, listing Finklea as the corporation's registered agent for service of process at his home address. Finklea concealed from the Progressive Church's Board of Bishops the corporate formation of New Life, and his personal role within New Life. According to the Amended Complaint, "Finklea is the pastor of NLAC, a position he has held since NLAC was established in 2014." Am. Compl. ¶ 2. New Life is not the successor in interest to the Sumter Congregation of the Progressive Church, nor is any other entity or person the successor in interest to the Sumter Congregation. Finklea has used the Sumter Property, and other personal property of the Progressive Church, for his and New Life's benefit since December 3, 2014 or before, all

while actively and deliberately concealing this information from the Progressive Church's Board of Bishops.

On numerous occasions between December 3, 2014 and late 2020, Finklea attended Progressive Church ecclesiastical meetings, worship services, and other events at various Progressive Church local congregations and elsewhere. When preaching at Progressive Church events, Finklea has been introduced as the pastor of the local congregation of the Progressive Church in Sumter, South Carolina and has never publicly disagreed with, corrected, or restated the public introduction given to him as the pastor of the local congregation of the Progressive Church in Sumter, South Carolina. Finklea has held himself out to be both pastor of the Progressive Church's Sumter Congregation and as pastor of New Life for an undetermined time, but at least as far back as December 3, 2014

On numerous occasions between December 3, 2014 and late 2020, Finklea attended meetings of Progressive Church clergy, both in person and virtually. These meetings were planned and held exclusively for Progressive Church clergy to discuss matters pertaining to the ecclesiastical and secular governance of the Progressive Church. Finklea actively participated in these clergy meetings as a pastor and elder in the Progressive Church and frequently involved himself with ecclesiastical matters pertaining to the Progressive Church.

For over five years, Finklea did not inform the Progressive Church's Board of Bishops of the corporate existence of New Life and New Life's use of the Sumter Property as a ministry separate and distinct from the Progressive Church.

In 2019, Finklea and New Life admit to damaging and defacing, with black paint or other dark material, a sign at the Sumter Property displaying the name "Progressive Church of Our Lord Jesus Christ, Inc." (the "PC Sign"). The PC Sign was originally purchased and erected at the

Progressive Church's Headquarters in Columbia, South Columbia, and later relocated to the Sumter Property, at the expense of the Progressive Church.

On or about March 15, 2019, nearly five years after the formation of New Life, Finklea and New Life admit to installing another sign displaying "New Life Apostolic Church" (the "NLAC Sign") at the Sumter Property. Finklea and New Life did not have permission or authorization from the Progressive Church to remove the PC Sign or to replace it with the NLAC Sign. The Progressive Church's Board of Bishops did not know of the NLAC Sign when it was placed upon the Sumter Property and has never approved the NLAC Sign to be placed upon the Sumter Property. The NLAC Sign expressly violates Article I, Section II, of the Church Constitution, which states that "[a]ll [c]hurches in this [o]rganization [s]hall [b]ear the [n]ame: Progressive Church of Our Lord Jesus Christ, Inc. beginning or ending with any other name as approved by the Board of Bishops."

In early November of 2019, the Progressive Church discovered the NLAC Sign placed at the Sumter Property and on November 8, 2019, sent Finklea a letter expressing concerns after learning of allegations that Finklea was using the Sumter Property to operate New Life without the permission of the Progressive Church. The November 8, 2019, letter from the Progressive Church expressly objected to the NLAC Sign, directed Finklea to remove the NLAC Sign by November 22, 2019, and also informed Finklea that failure to adhere to the ecclesiastical directives of the Board of Bishops would result in an Ecclesiastical Trial under the Church Constitution. Further, the November 8, 2019 letter from the Progressive Church expressed concern that Finklea's actions suggested that Finklea had withdrawn from the Progressive Church and requested that Finklea immediately meet with the Board of Bishops to discuss and resolve Finklea's unauthorized actions. Finklea refused to meet with the Board of Bishops.

Finklea received the November 8, 2019, letter from the Progressive Church, but did not abide by the directives in the letter. On November 22, 2019, the Progressive Church issued to Finklea a written Notice of Ecclesiastical Trial under Article VIII, Section I, of the Church Constitution and included several “Accusations and Charges of Improper Conduct Against Elder Ricky Finklea.” The November 22, 2019, letter notified Finklea that the Ecclesiastical Trial would take place on December 6, 2019, at the Progressive Church’s Headquarters in Columbia, South Carolina and expressly stated that Finklea must attend.

Finklea received the November 22, 2019, letter from the Progressive Church, but he did not attend the Ecclesiastical Trial on December 6, 2019, and did not provide advance notice he would not attend. At the Ecclesiastical Trial, the Progressive Church’s Board of Bishops determined that Finklea was guilty of all ecclesiastical charges against him and affirmed that both Finklea and New Life had no right to use, possess, or occupy the Progressive Church’s Sumter Property.

On December 11, 2020, the Progressive Church issued a letter to Finklea informing him of a final directive and pending ecclesiastical disciplinary action and directing Finklea and New Life to vacate the Sumter Property. The Progressive Church’s letter stated that New Life and Finklea had no permission or legal right to use, possess, or occupy the Sumter Property and that the Progressive Church would remove and replace the unauthorized NLAC Sign placed at the Sumter Property. Finklea and New Life refused to obey the directives of the Progressive Church’s December 11, 2020 letter. Between 2019 and 2020, the Progressive Church’s Board of Bishops made extensive efforts to communicate with Finklea to resolve the outstanding concerns regarding Finklea’s ministry with the Progressive Church and regarding Finklea and New Life’s use of the Sumter Property. Finklea refused to communicate with the Progressive Church’s Board of

Bishops, and Finklea and New Life thereafter filed this action against the Progressive Church and against the individual members of the Board of Bishops.

In January 2021, the Progressive Church's Board of Bishops acknowledged Finklea's previous declaration of personal disassociation from the Progressive Church and revoked all ministerial credentials and licenses issued to Finklea to function as a member of the Progressive Church clergy according to Article VI, Section II of the Church Constitution. By Finklea's admission, and by confirmation of the Progressive Church's Board of Bishops, Finklea is no longer a parishioner or clergyman in the Progressive Church.

It is the interpretation of the Progressive Church's Board of Bishops that, according to its Church Constitution and administrative practices, if clergy and/or saints of a local congregation of the Progressive Church withdraw from the Progressive Church, title to church property used and/or occupied by the local congregation remains in the Progressive Church and does not follow the congregation, unless otherwise expressly approved by the Board of Bishops.

Finklea and New Life remain upon the Sumter Property without permission from the Progressive Church. Finklea and New Life's alleged claims to property rights arise from disputes over ecclesiastical administration, ecclesiastical doctrine and standards, customs, and the ecclesiastical governance authority of the Progressive Church.

### **III. STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party must prevail as a matter of law. S.C. R. Civ. P. 56(c). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). “[S]ummary judgment is completely

appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner,” *Id.* at 250, 626 S.E.2d at 5, and “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ.” *Byerly v. Connor*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992).

#### **IV. LEGAL ANALYSIS AND CONCLUSIONS**

##### **A. Plaintiffs lack standing to prosecute their First, Second, and Third Causes of Action.**

In the Amended Complaint, Plaintiff Finklea has unequivocally stated that he disassociated from the Progressive Church on July 20, 2014, when he informed the members of the Progressive Church’s Sumter Congregation that he was leaving the Progressive Church, after which over 90% of the members voted to leave with him. Am. Compl. ¶¶ 39-40. Finklea then formed a new church organization, New Life Apostolic Church, Inc., which since its inception as a “nonprofit, eleemosynary corporation under the laws of South Carolina on December 3, 2014,” has operated “*as a separate and distinct church that is not associated with the Progressive Church.*” Am. Compl. ¶ 43 (emphasis added). In Finklea and New Life’s March 4, 2021 filing of their Answer to Defendants’ counterclaims, Finklea and New Life unmistakably affirmed that Finklea “*is no longer a member, pastor, or elder in the Progressive Church.*” Pls.’ Answer to Defs.’ Countercl. ¶ 147 (emphasis added). It is thus clear that Finklea and all others who voted to leave the Sumter Congregation abandoned their status as saints in the Progressive Church by uniting with another church. Therefore, Finklea and all individuals who left the Progressive Church also lost all rights as saints of the Progressive Church and lack standing to pursue this action. *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872) (“[W]ithdrawal from a church and uniting with another church or denomination, is a relinquishment of all rights in the church abandoned.”); *Brock v. Bennett*, 313 S.C. 513, 517-18, 443 S.E.2d 409, 411-12 (Ct. App. 1994) (holding that former church members did not have standing to sue regarding the issue of church property because “the record did not

reflect that any of them were members or officers of the church at the time of the commencement of [the] action; thus, they have no standing by reason of membership or office” in the church) (citing *Bramlett v. Young*, 229 S.C. 519, 541, 93 S.E.2d 873, 884 (1956) (quoting with approval the following proposition: “Withdrawal from a church and uniting with another church or denomination is a relinquishment of all rights in the church abandoned.” (citing *Bouldin, supra*))); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975) (affirming holding in *Bramlett, supra*); *Hardin v. Horger*, 252 S.C. 298, 304, 166 S.E.2d 215, 218 (1969) (“The appellants simply have no legal standing to complain. While some members of the seceding congregation are apparently heirs of one or more of the original grantors, they assert no right in such capacity. They appear here simply as the representatives of a seceding congregation which is no longer a part of The Methodist Church.”); *Tubiolo v. Abundant Life Church, Inc.*, 605 S.E.2d 161, 165 (N.C. Ct. App. 2004) (“As to the plaintiffs' remaining claims seeking an order allowing plaintiffs to inspect certain records of defendant [church], and seeking an order directing defendant to conduct an annual meeting, these claims are dependent upon plaintiffs being members of defendant at the time of the filing of this lawsuit.”); *Edgmond v. Brixey*, 450 S.W.2d 166, 167 (Mo. 1970) (“If plaintiffs are not members of the religious association involved which operates the church then they have no standing as plaintiffs to bring this action” to ascertain and determine title to land occupied by the church); *see also State v. Ancker*, 2 Rich. 245 (1846) (resignation from a church may be inferred from the acts of the parties).

Because Plaintiff New Life Apostolic Church, Inc. has never been associated with the Progressive Church, *a fortiori*, it lacks standing to prosecute this action.

*Brock v. Bennett* involved a disagreement over the physical and spiritual control of Emmanuel Baptist Church between John T. Brock, a former trustee and church member, and

Mitchell Bennett, the pastor of the congregation at the time of suit. *Brock v. Bennett*, 313 S.C. 513, 515, 443 S.E.2d 409, 410 (Ct. App. 1994). Brock was a trustee named in the deed to the church property who helped organize the church and build the church building, but he left Emanuel Baptist and joined other churches in ensuing years. *Id.*

The South Carolina Court of Appeals reversed the trial court decision awarding control of the property to Brock and also found the trial court erred by not granting a directed verdict for Bennett. *Id.* at 516, 443 S.E.2d at 411. The Court of Appeals further held that only the members of a church have standing to sue regarding “the issue of church property and the conduct of its services.” *Id.* at 517, 443 S.E.2d at 411. “Standing is a fundamental requirement for instituting an action.” *Id.* at 519, 443 S.E.2d 412–13 (citing *Blandon v. Coleman*, 285 S.C. 472, 475, 330 S.E.2d 298, 299 (1985)). “[O]nce it is determined a plaintiff has no standing to prosecute, the court must dismiss the action.” *Id.* Brock and the other authorities cited above control this case and require dismissal of Finklea and New Life’s Complaint.

**B. This Court lacks subject matter jurisdiction over Plaintiffs’ First Cause of Action for declaratory judgment regarding the past and present internal governance and administration of the Progressive Church.**

Finklea and New Life ask this Court to declare that Bishops Theodore Jenkins, Sr., Bishop Lang Priester, Bishop David S. Johnson, Sr., and Bishop Paul C. Johnson are not the duly authorized members of the Progressive Church’s Board of Bishops and likewise ask this Court to declare procedures the Progressive Church must follow to select its Board of Bishops. This Court has no authority make such declarations and will not entertain Finklea and New Life’s request. With regard to church governance, “[i]t is not the function of [this Court] to dictate procedures for [the Progressive Church] to follow.” *Pearson v. Church of God*, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996). In *Pearson*, the South Carolina Supreme Court clearly explained the extent of a civil court’s subject matter jurisdiction with respect to church controversies:

When a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. But the civil tribunal tries the civil right, and no more; ... The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammelled by state authority. On this principle, the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land; having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.

*Pearson v. Church of God*, 325 S.C. 45, 51–52, 478 S.E.2d 849, 852–53 (1996) (citing *Morris Street Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753 (1903)). United States Supreme Court and South Carolina Supreme Court cases have established the rule that South Carolina civil courts must follow when adjudicating church disputes. This rule dictates that

(1) [c]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, *or administration*; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

*Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 216, 806 S.E.2d 82, 84-85 (2017) (citing *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) (emphasis added)). The South Carolina Supreme Court has further held that, in terms of polity and structural governance, churches “are generally divided into two groups: (1) congregational churches and (2) hierarchical churches.” *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). A hierarchical church is defined as:

“one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head. Under the [hierarchical church], a local church is but a member of a larger and more important religious

organization and is under its government and control, and the voluntary act of joining the general denominational organization subjects the local church to its rules and regulations.”

*Id.*

American Jurisprudence, which the South Carolina Supreme Court cites in *Singletary*, also states that in the “hierarchical type of church polity, local churches are an organic part of the organization but are connected with and subordinate to the laws, procedures, and organs established by the constitution and bylaws of the general church.” 66 Am. Jur. 2d Religious Societies § 3 (2020).

From a review of the whole of the evidence, there can be no serious question that since its beginning the Progressive Church has operated under a system of hierarchical polity, has generally observed an annual ruling holy convocation since its founding, and has functioned as an organized body of churches that operate by the same faith, doctrine and administration. P. Johnson Aff. ¶ 10. The Church Constitution clearly confirms that the ecclesiastical head of the Progressive Church is its Board of Bishops. P. Johnson Aff. ¶ 9, 10, 13; Am. Compl. ¶ 13. Therefore, any interpretations regarding the doctrine, administration, governance, and operating procedures under the Church Constitution are to be determined by the Progressive Church’s Board of Bishops, and not this Court, and such determinations of the Board of Bishops are binding upon this Court. The First and Fourteenth Amendments to the United States Constitution “forbid” this Court from substituting its interpretation of the Church Constitution for that of the Progressive Church’s Board of Bishops. *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709, 721 (1976) (holding that a civil court is forbidden from substituting its interpretations of a church constitution “for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation” and that “where resolution of the disputes cannot be made

without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them”).

Based on the aforementioned binding United States Supreme Court and South Carolina Supreme Court precedent, this Courts lacks subject matter jurisdiction over Plaintiffs’ claims for declaratory judgment pertaining to ecclesiastical appointments, removals, administration, and operation of the Progressive Church. This lack of subject matter jurisdiction extends to the governance of the Sumter Congregation by Defendant Progressive Church and over ecclesiastical governance decisions and appointments made by and pertaining to Individual Defendants Bishop Theodore Jenkins, Sr., Bishop Lang Priester, Bishop David S. Johnson, Sr. and Bishop Paul C. Johnson in their capacity as members of the Progressive Church’s Board of Bishops. Accordingly, this Court will not permit Finklea and New Life to force their interpretation of the Church Constitution and their church governance preferences upon the Progressive Church by means of this lawsuit. For the foregoing reasons, this Court finds that it does not have subject matter jurisdiction over Finklea and New Life’s claims for declaratory judgment regarding the past, present, and future governance and administration of the Progressive Church by the Board of Bishops.

**C. The Plaintiffs fail to state a claim for their Third Cause of Action for reformation of the Deeds for the Sumter Property because they are not parties to the Deeds.**

Reformation of a contract or deed is a remedy by which writings are rectified to conform to the actual agreement of the parties. *Crewe v. Blackmon*, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986). Reformation of a contract or deed is not a repudiation of the instrument; the court cannot create a new agreement for the parties or add terms to the parties' agreement. 76

C.J.S. Reformation of Instruments § 3. A court of equity may, however, conform the agreement to the actual intent of the parties. An action for reformation is similar to, but distinct from, an action for rescission of a contract. An action to reform an instrument sounds in equity. *Crewe v. Blackmon*, 289 S.C. at 233, 345 S.E.2d at 756. See also Randolph R. Lowell, *et al.*, South Carolina Equity: A Practitioner's Guide 122 (2010).

A claim for reformation is subject to proof of the essential elements by clear and convincing evidence. 66 Am. Jur. 2d Reformation of Instruments § 1. "The remedy of reformation is an extraordinary remedy that applies in limited circumstances, as the court must, in the exercise of its power to reform a contract, act with utmost or great caution, hesitating to do so and carefully considering the unique equities of each situation." *Id.*

A party seeking reformation must ordinarily have been a party to the instrument for which reformation is sought. *George v. Empire Fire; Marine Ins. Co.*, 336 S.C. 206, 212, 519 S.E.2d 107, 110 (Ct. App. 1999), *rev'd on other grounds*, 344 S.C. 582, 545 S.E.2d 500 (2001). Regarding a deed, only the grantor, grantee, or the mortgagee may ordinarily sue for reformation. Lowell, *et al.*, *supra*, p. 123.

The reformation of a written instrument to conform it to the parties' mutually intended antecedent agreement, correcting material variances attributable to the parties' mutual mistake of fact or law, or the fraudulent or inequitable conduct of one party, will be allowed as against the original parties and against those claiming under them in privity. *Otherwise, reformation will not lie against a nonparty.*

66 Am. Jur. 2d Reformation of Instruments § 58 (emphasis added).

Finklea and New Life are not parties to any of the three deeds regarding the Sumter Property. There is no genuine issue of material fact that the Progressive Church purchased the Sumter Property with its own funds and took title to the Sumter Property in its corporate name.

The sellers<sup>4</sup> of the Sumter Property are not parties to this action. Finklea and NLAC have no mortgage or other lien rights to the Sumter Property. Thus, Finklea and NLAC are not parties to the deeds nor in privity with any of the parties to the deeds, and they may not reform the deeds.

Even though the Progressive Church holds record, legal title to the Sumter Property, Finklea and New Life falsely claim that New Life is the “successor in interest” of the Sumter Congregation of the Progressive Church and thus has “rightful possession of the Property and cannot be evicted or otherwise removed from the Property.” Am. Compl. ¶ 62. Even if Finklea and New Life were the “successor in interest” they claim to be, that does not establish privity with the parties to the deeds to the Sumter Property. There is no ambiguity as to the grantees named in the deeds, and none of the deeds purports to establish any “trust” regarding the Property, except the “clarifying” deed filed in 2019 by the Progressive Church, long after Finklea had formally disassociated from the Progressive Church. And the 2019 deed unequivocally establishes a trust to the benefit of the Progressive Church, *not Finklea or NLAC*.

Finklea and New Life have no basis whatsoever to claim “NLAC is now the owner of the Property” or that “[i]f a local congregation disassociates, the property used by the congregations goes with the congregation.” Such unfounded claims stand in stark contrast to well settled South Carolina law and the decision of the Progressive Church’s Board of Bishops. Finklea and New Life furthermore have no lease or other written agreement which gives them any rights to occupy the Sumter Property. Essentially, Finklea and New Life have no basis to claim “rightful possession of the Property” or that “they cannot be evicted or otherwise removed from the Property.”

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<sup>4</sup> The Harrelson Land Company, is the grantor in the 1998 Deed, and Dorothy Z. Neal and Hettie M. McFadden, are the grantors in the 2005 Deed.

Finklea and New Life argue that the Progressive Church's deeds to the Sumter Property should be reformed to reflect the "actual intent of the parties." Plaintiffs' Brief at 15. Finklea and New Life also argue that they were "party to the acquisition of the Property." *Id.* However, Finklea and New Life's contentions are without any evidentiary support.

A deed is analyzed like any other contract. Unless there is ambiguity in the document, then the Court does not resort to extrinsic evidence to determine the intent behind the grantor or grantee. *See Williams v. Tamsberg*, 425 S.C. 249, 259, 821 S.E.2d 494, 500 (Ct. App. 2018) ("when interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties' intentions, unless that intention contravenes some well-settled rule of law or public policy." (internal citations omitted)); *see also Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987) ("The intention of the grantor must be found within the four corners of the deed." (internal citation omitted)).

Here, there is nothing whatsoever ambiguous about the deeds. As such, the Court must not consider any extrinsic evidence. The *only* grantee named in the deeds to the Sumter Property is the Progressive Church. The Sumter Property was purchased *by* the Progressive Church *for* the Progressive Church using funds provided exclusively by the Progressive Church. Finklea and New Life were not present during the transactions conveying title to the Progressive Church; they are complete strangers to those transactions. Finklea and New Life have no authority to speak as to the intent of the grantor and grantee in these transactions. Nothing in the deeds state the Plaintiffs New Life Apostolic Church, Inc. or Ricky Finklea may use the Sumter Property or that they somehow own any interest in it.

Even if the deeds were ambiguous, the only extrinsic evidence supports Defendants' claim of sole ownership of the Sumter Property. Bishop David S. Johnson, Sr. participated in the actual

closing for the purchase transactions in 1998 and 2005 and is the only living individual who was present on behalf of the Progressive Church at those transactions. His sworn affidavit testimony confirms the Progressive Church's intent to purchase the Sumter Property "for use by the Sumter Congregation [of the Progressive Church] *for furtherance of the secular and ecclesiastical ministry of the Progressive Church.*" D. Johnson Aff. ¶¶ 9-11, 17-18 (emphasis added).

The Sumter Property was not purchased for New Life but for a congregation *of the Progressive Church to further the secular and ecclesiastical ministry of the Progressive Church.* Plaintiffs' allegation that the Sumter Property was intended for their use as a breakaway congregation is unsupported in fact and law and is patently false.

Finklea and New Life are not record owners of the Sumter Property, and they have now disavowed the secular and ecclesiastical ministry of the Progressive Church. Yet they argue that they have somehow obtained ownership interest in the Sumter Property simply by occupying it. As trespassers, Finklea and New Life have no right to occupy the Sumter Property and may be lawfully evicted by the Progressive Church.

Finklea and New Life are not third-party beneficiaries of the purchase transactions for the Sumter Property. New Life did not exist at the time the deeds were executed, and Finklea was not a representative of the Progressive Church in either of the transactions. Assuming that a third-party beneficiary may maintain an action for reformation of the subject deeds, Finklea and New Life are not third-party beneficiaries of nor mentioned anywhere in the deeds they seek to reform, and they cannot and do not even try to demonstrate how they could be. Finklea and New Life offer no evidence of their third-party beneficiary status and merely suggest a speculative conclusion this Court could reach "if" Plaintiff New Life is a third-party beneficiary. Plaintiffs have the burden of proving their claims of third party beneficiary status and they have failed to do

so. As complete strangers to the transactions in question, there is no way Finklea and New Life could be third-party beneficiaries to those transactions. Finklea and New Life's speculative conclusions and piling of one inference upon another are insufficient to create a genuine issue of material fact. *Harleysville Mut. Ins. Co. v. Packer*, 60 F.3d 1116, 1120.

The record here also reflects that Finklea and New Life are not successors in interest to the Sumter Congregation of the Progressive Church. Finklea and New Life repeatedly attempt to equate themselves with the "Sumter Congregation" to portray themselves as the intended beneficiaries of the deeds. Brief at 16. However, this Court finds it important to distinguish that Finklea and New Life represent the Sumter Congregation of the New Life Apostolic Church, Inc. rather than the Sumter Congregation of the Progressive Church of Our Lord Jesus Christ, Inc. Through this claim for reformation of deeds, Finklea and New Life ask this Court to ignore binding South Carolina case law that "[w]hen [an] entire congregation withdraws from [a] hierarchical church, the title to the church property remains in the church and does not follow the congregation." *Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 323 S.C. 418, 420, 422, 475 S.E.2d 767, 778, 770 (Ct. App. 1996) (emphasis added). As the U.S. Supreme Court held, "withdrawal from a church and uniting with another church or denomination, is a relinquishment of all rights in the church abandoned." *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872). It would create an absurd result if parishioners who withdraw from a church nevertheless maintain the right to own or occupy their former church's property for use by the new church to which they have united. See *Bramlett* 229 S.C. at 540, 93 S.E.2d at 884 ("The principle seems to be firmly established that a congregation belonging to a religious denomination and subject to the constitution, faith, and doctrines thereof cannot use its property for a purpose other than that sanctioned by the denomination.")

Finklea and NLAC also suggest that “[i]n putting the address of the Sumter Congregation on the deed, the clear intent of the parties was to convey the property to the Sumter Congregation.” Brief at 5. Plaintiffs’ argument overlooks the well-known fact that a South Carolina corporation may operate from many different locations, as does the Progressive Church in several states and cities. And individual grantees may use a P.O. Box or move to a different address after they have accepted a deed to real property. The purpose of placing a grantee’s address on a deed is for the benefit of the county tax assessor and collector in providing notice to the owner, not for ascertaining the owner’s identity. The address listed on any deed, and in particular the deeds here, in no way creates any ambiguity as to the intended grantee: “Progressive Church of Our Lord Jesus Christ, Inc.”

In an effort to support their claims of ownership of the Sumter Property, Finklea and New Life make frequent reference to a 2010 order by South Carolina Master in Equity, S. Brian Doby,<sup>5</sup> regarding a property matter in Bishopville, South Carolina. However, Judge Doby’s order involved different litigants, a completely different property, and a completely different deed; and since that time, an April 1, 2021 federal court ruling<sup>6</sup> involving similar allegations against the Progressive Church and its Board of Bishops found that the Progressive Church has taken legal and proper action to resolve any outstanding issues from Judge Doby’s 2010 order, thereby

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<sup>5</sup> *Progressive Church of Our Lord Jesus Christ, Inc. v. Black, et al.*, Case No. 28-CP-31-0022.

<sup>6</sup> Of note, on April 1, 2021, the Honorable Joseph F. Anderson, Jr. issued an order which grants judgment in favor of Defendant Progressive Church of Our Lord Jesus Christ, Inc. in a similar case formerly pending in the United States District Court, District of South Carolina, Columbia Division, C/A No. 3:19-cv-03541-JFA. That order was confirmed on June 14, 2021 when Judge Anderson denied a motion to reconsider the April 1, 2021 order. This Court agrees with Judge Anderson’s 2021 ruling that the Progressive Church is governed in all spiritual and secular matters by the collective governance authority of the Board of Bishops, and that the current Bishops (Individual Defendants here) are duly and properly appointed to the Board of Bishops.

eliminating any doubts caused by the order. This court agrees and further finds that Judge Doby's 2010 order has no relevance to this action.

Based on the facts presented to the Court, it was, and always has been, the Progressive Church's intention to continue a Sumter Congregation of its own at the Sumter Property. The Sumter Property was intended to be used by those who adhere to the Progressive Church's ecclesiastical doctrine and governance. The Sumter Congregation of the Progressive Church will still exist as the Progressive Church has plans to continue ministry at the Sumter Property, albeit with different ministerial leadership in the wake of Finklea's departure from the Progressive Church.<sup>7</sup>

Plaintiffs also argue the Progressive Church's September 2019 (the "2019 Sumter Deed") deed "purportedly conveyed the Property to be held in trust for the Progressive Church in Columbia" and thus demonstrates that the Progressive Church did not own the property prior to that deed. Plaintiffs' Brief at 16. However, Plaintiffs fail to recognize that the deed in question does not change title ownership of the Sumter Property, but the record reflects that it was filed to provide *additional* record notice to any potential and unwary third-party purchasers or mortgagees for value that they must obtain the Progressive Church Board of Bishops' written consent to acquire any title or lien interest in the Sumter Property. The record also reflects that similar deeds were filed for other Progressive Church properties in direct response to the 2019 unlawful attempt by Elder Timothy Beard in the Progressive Church's Tallahassee, Florida Congregation to take the

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<sup>7</sup> "Acting as part of the leadership of the Progressive Church, and as the person who established the Sumter Congregation under the hierarchical authority of the Progressive Church, I unequivocally state that NLAC is not the successor in interest to the Sumter Congregation that I established and for whose use the Progressive Church purchased real property in Sumter, South Carolina. No successor in interest exists to the Sumter Congregation and the Sumter Congregation remains a part of the Progressive Church." D. Johnson Aff. ¶ 25.

Progressive Church's Tallahassee property<sup>8</sup> by an unauthorized deed and the 2014 actions of a former pastor in the Progressive Church's Cheraw, South Carolina Congregation who was indicted and convicted on federal criminal charges relating to a \$300,000 mortgage fraudulently obtained and secured by the Progressive Church's Cheraw property.<sup>9</sup>

The 2019 Sumter Deed regarding the Sumter Property did not state anything new or create any new rights, and the grantor and grantee *are one in the same* – the Progressive Church of Our Lord Jesus Christ, Inc. The 2019 Sumter Deed merely restated existing rights and clearly declared what was already true: that the Progressive Church is record owner of the Sumter Property and the Sumter Property may not be transferred or encumbered without written consent of the Progressive Church's Board of Bishops.<sup>10</sup> The 2019 Sumter Deed is proof of the Progressive Church's ownership of the Sumter Property rather than evidence to the contrary.

Finklea and New Life argue that the Court must apply neutral principles of law to adjudicate the present property dispute. Plaintiffs' Brief at 12. Defendants indicate they agree with Plaintiff's argument here, and the Court agrees as well. As the Supreme Court of South Carolina has stated,

[p]roperly applied, the “neutral principles” approach requires that the civil court's initial inquiry be a “holistic” one. The court must first determine whether the

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<sup>8</sup> This unlawful attempt to transfer ownership of the Progressive Church's property was the underlying act addressed in Judge Anderson's April 1, 2021 ruling referenced in footnote 6.

<sup>9</sup> Judgment in Criminal Case. *United States of America vs. Stephen Tracy Anderson*, Case Number: 4:15cr00727-BHH-1; USM Number: 28715-171.

<sup>10</sup> This type of preemptive tactic is specifically sanctioned under U.S. Supreme Court precedent. “At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. . . . And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” *Jones v. Wolf*, 443 U.S. 595, 606 (1979).

property/corporate dispute will require the court to decide issues of religious law, principle, doctrine, discipline, custom, or administration—in other words, is the property/corporate dispute actually ecclesiastical in nature. If the dispute is “a question of religious law or doctrine masquerading as a dispute over church property or corporate control,” then the Constitution of the United States requires the civil court defer to the decision of the appropriate ecclesiastical authority.

*Protestant Episcopal Church in the Diocese of S.C.*, 421 S.C. at 220, 806 S.E.2d at 87 (internal citations omitted). Applying a holistic “neutral principles” inquiry, the dispute in question is not one of religious law or doctrine but rather is a dispute over church property.

With that in view, there is no dispute that Finklea and New Life do not have record title to the Sumter Property, nor do they have any sort of written agreement, such as a lease, that allows them to occupy property that, as a matter of law, belongs to another entity (the Progressive Church). Unless title is defective or there has been some unknown conveyance of the Sumter Property (neither of which has been argued nor proven), then the Progressive Church has sole record ownership and control over the Sumter Property under neutral principles of law. Accordingly, the Progressive Church has full legal rights to possess the Sumter Property and to exclude others, including Finklea and NLAC.

This conclusion is supported by binding South Carolina precedent adjudicating property rights when a local congregation, or a portion thereof, leaves a church and associates with another church.

“When a division occurs in a church congregation . . . the question as to which faction is entitled to the church property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanctioned by the appropriate governing body of the denomination. It is a question of identity.”

*Adickes v. Adkins*, 264 S.C. 394, 401, 215 S.E.2d 442, 444 (1975).

The essential facts of *Adickes*, and the legal conclusions that must follow those facts, are the same as in this case. Plaintiff Finklea, and the individuals he purports to lead and represent, “voluntarily severed their connection” with the Progressive Church “and when they did they forfeited any right to the use and possession of the property of that church under the long established law of the church and of South Carolina.” *Id.* at 402, 215 S.E.2d at 445. Applying the South Carolina Supreme Court’s analysis in *Adickes* to this case, by joining Plaintiff NLAC, Finklea and his followers “did not acquire such an interest in the [Sumter P]roperty that they are entitled to take with them upon seceding. The [Sumter P]roperty belonged to the [Progressive Church] before the members joined the [Progressive C]hurch, and it belongs to the [Progressive Church] after [Finklea and his followers] have withdrawn. They simply are not now a part of [the Progressive Church].” *Id.*

Alternatively, even if Finklea and NLAC’s causes of action are doctrinal or ecclesiastical issues “masquerading” as a property dispute, this Court reaches the same ultimate conclusion. *Protestant Episcopal Church in the Diocese of S.C.*, 421 S.C. at 226, 806 S.E.2d at 90 (holding that when the “trigger” for local congregations to challenge a hierarchical church over property ownership rested upon matters of doctrine and church disciplinary matters, the local congregations’ challenge to property ownership were truly a masquerade for its doctrinal issues and finding that a court, upon identifying such a “masquerade,” *must* defer to the National Church’s ecclesiastical decisions regarding the church property used by the local congregation) (emphasis added).

Here, Finklea and NLAC admit that the “trigger” for their actions to withdraw from the Progressive Church and to seek to control and possess the Sumter Property against the Progressive Church’s authority stem from ecclesiastical and doctrinal issues related to doctrinal standards of

the Progressive Church and the use and administration of Progressive Church funds, all of which are similar issues the South Carolina Supreme Court described as issues “masquerading” as a property dispute in the *Protestant Episcopal Church*. See Am. Compl. ¶¶ 37-40. Accordingly, even if the above issues are truly ecclesiastical issues, this Court *must* defer to the decision of the Progressive Church’s Board of Bishops regarding the Sumter Property: that Finklea and New Life have no right to use or possess the Sumter Property and therefore must vacate the Property. See D. Johnson Aff. ¶ 25; see also P. Johnson Aff. ¶¶ 46-48.

Defendants’ Motion for Partial Summary Judgment and un-contradicted supporting affidavits are all that is required to fully and finally adjudicate the issue of record title ownership, including the right to possess, control, or exclude others from the Sumter Property, namely Finklea and NLAC. Accordingly, this Court grants Defendants’ Motion for Partial Summary Judgment as to the Plaintiffs claim for reformation of the Deeds for the Sumter Property.

**D. Defendants are entitled to judgment on their First Counterclaim for declaratory relief confirming their rights to the Sumter Property.**

The South Carolina Uniform Declaratory Judgments Act provides that

*[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.*

S.C. Code Ann. § 15-53-30 (emphasis added).

In their response to Defendants’ Motion, Finklea and New Life argue that “all of the material facts asserted by Defendants in their Counterclaims are disputed, triable issues of fact.” Plaintiffs’ Brief at 18. However, Plaintiffs’ claim is inaccurate for two main reasons.

First, Finklea and NLAC’s mere disagreement with Defendants’ conclusions does not create a *genuine* dispute regarding *material* facts. Finklea and New Life have not supported their

assertions with actual evidence but rather rely upon their mere belief that they are in the right in an attempt to persuade this Court to side with their position. However, mere disagreement does not create a genuine dispute of fact under the law. A trespasser's mere occupancy of property does not create a *genuine* dispute as to the identity of the record owner.

Second, Finklea and New Life cannot contest and have not contested the *material* facts recited in Defendants' motion, memoranda, and supporting affidavits regarding the Progressive Church's record legal title to the Sumter Property and the circumstances of those Deeds and transactions. These are the uncontested facts upon which partial summary judgment is granted in favor of Defendants.

Based on the admissions in the pleadings and the undisputed evidence in Defendants' affidavits filed with this Court, there is no genuine issue of material fact that the Defendants are entitled to summary judgment on their First Counterclaim for declaratory relief confirming that the Progressive Church of Our Lord Jesus Christ, Inc. is the sole and exclusive owner of the Sumter Property.

**E. Plaintiffs are trespassers on the Progressive Church's Sumter Property, and Defendants are entitled to the relief sought in their Second Counterclaim.**

"A trespass is any interference with 'one's right to the exclusive, peaceable possession of his property.'" *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013); "[T]respass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property." *Ravan v. Greenville Cty.*, 315 S.C. 447, 464, 434 S.E.2d 296, 306 (Ct. App. 1993).

In their pleadings, the Finklea and New Life admit that they currently occupy the Sumter Property to the exclusion of the Progressive Church, and have sued to confirm their specious claims of ownership of the Sumter Property. Finklea and New Life have presented no evidence of title ownership, much less any legal right to use or occupy the Property. The indisputable conclusion

is that from December 2014 until approximately November 2019, when the Progressive Church discovered the corporate existence of New Life and its sign at the Sumter Property, Finklea and New Life have been deceptive squatters on the Sumter Property. Finklea and New Life did not create or allow any outward indication at the Sumter Property that they were not associated with the Progressive Church until March 2019 when Plaintiffs, by their own admission, installed a sign at the Sumter Property for New Life. Pls.' Answer to Defs.' Countercl. ¶ 126. It was only in November 2019, that the Progressive Church discovered the sign for New Life at the Sumter Property and promptly confronted Finklea regarding the unauthorized sign. The conclusion to be drawn from these indisputable facts, is that for over six (6) years, Finklea and New Life have unlawfully occupied the Progressive Church's Sumter Property.

Finklea and New Life's evidence supporting some right to the Property, whatever it may be, of private conversations with the now deceased Bishop Edward Smith and the now deceased Bishop Joseph D. Williams, Jr., is inadmissible, under South Carolina's Dead Man's statute. S.C. Code Ann. § 19-11-20. And even if such conversations did take place with these now deceased bishops, such conversations mean nothing, because only the Progressive Church's Board of Bishops, acting collectively, has authority under Article III, Section II of the Church Constitution to grant rights to use or occupy the Sumter Property. Finklea and New Life furthermore have no lease or other written agreement which gives them any rights to occupy the Sumter Property, as is required by the South Carolina Statute of Frauds to establish any such rights. S.C. Code Ann. § 32-3-10(4). In short, Finklea and New Life have no basis whatsoever to claim "rightful possession of the Property" or that "they cannot be evicted or otherwise removed from the Property."

There is no genuine issue of material fact that Finklea and New Life have since 2014 and continuing to the present day, intentionally interfered with the Progressive Church's rights to the

exclusive, peaceable possession of the Sumter Property, and have committed trespass. Accordingly, this Court orders the Plaintiffs to immediately vacate the Sumter Property.

**F. Plaintiffs fail to state a claim for quantum meruit in their Fourth Cause of Action because the Defendants owe them no duties of disclosure, or otherwise, and they state no other claim that will allow recovery for unjust enrichment.**

In their Fourth and “alternative” cause of action, Finklea and NLAC claim that “if the Progressive Church is deemed to be the owner of the Property,” then “the Progressive Church would receive a significant financial and operational benefit as a result of the Property maintenance and improvements made by Plaintiffs since July of 2014,” the retention of which would be unjust. Am. Compl. ¶¶ 83-84. Even if Finklea and NLAC improved the Property since July of 2014, Plaintiffs fail to state a claim because quantum meruit is only a measure of recovery, not a separate basis for a recovery, and Defendants owe the Plaintiffs no duties, the breach of which would support any recovery based on equitable principles.

“[O]ur Supreme Court ‘has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment.’” *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct. App. 2002) quoting *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). “Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Pitts*, 352 S.C. at 339, 574 S.E.2d at 512. Our Supreme Court recently emphasized and adopted this Scudder May test as the “sole test for a quantum meruit/quasi-contract/implied by law claim.” *Id.* (quoting *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 9, 532 S.E.2d 868, 872 (2000)).

“In a law action, the measure of damages is determined by the parties' agreement, while in equity, ‘the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.’” *Id.* (quoting *Myrtle Beach Hosp., Inc.*, 341 S.C. at 8, 532 S.E.2d at 872 (quoting *United States Rubber Prods., Inc. v. Town of Batesburg*, 183 S.C. 49, 55, 190 S.E. 120, 126 (1937)). “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *Id.*

In *Pitts*, *supra*, the Court of Appeals reviewed a plaintiff’s tort and other claims, along with a claim for unjust enrichment, alleging that an insurer and its agent had a duty “to inform an applicant of the availability of an allegedly superior product, or to evaluate the applicant’s eligibility for that product, regardless of what product the applicant asked for.” *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 511–12 (Ct. App. 2002). The Court of Appeals held that such a duty does not exist and upheld the trial court’s order holding “the absence of [a] legal duty would be equally fatal to Plaintiffs' fraudulent concealment claim and to the unjust enrichment claim . . . which was also premised on the existence of such a duty.” The *Pitts* court further found that the plaintiff “failed to establish any duty to disclose or other cause of action that would allow recovery for unjust enrichment. There was no benefit conferred upon [the insurer] that would be unjust for [the insurer] to retain. There was no breach of fiduciary duty or fraud involved.” *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 339–40, 574 S.E.2d 502, 512 (Ct. App. 2002) (emphasis added).

As pastor of the Progressive Church’s Sumter Congregation, Finklea unquestionably owed fiduciary duties to the Progressive Church, but the Defendants owed no such duties to Finklea, and he does not and cannot allege the breach of any fiduciary duties owed by the Defendants *to him*.

Finklea is now disassociated from the Progressive Church, and has no contractual or other relationship with any Defendants. NLAC has had no relationship whatsoever with the Progressive Church. Neither Finklea nor NLAC has a lease or rental agreement for the Property, or any other contractual relationship with the Defendants. For this reason, Finklea and NLAC cannot allege the breach of any duties arising out of contract, or otherwise, owed to them by the Defendants.

It cannot be disputed that Finklea knows or should know that neither he nor New Life were parties to the original purchase transactions for the Property, and that neither Plaintiff is named on the deeds to the Property. It cannot be disputed that Finklea knew in 2014, when he led a meeting in which 90% of the congregants of the Sumter Congregation followed him in disassociating from the Progressive Church, that he was ending his relationship with the Progressive Church. As the organizing officer of New Life, Finklea's knowledge is imputed to New Life. Therefore, Finklea and new Life cannot reasonably dispute they have been willing trespassers on the Progressive Church's property since July of 2014, and they thus cannot allege or establish any breach of any contractual relationship or duties of disclosure regarding the status or the particulars of the Property ownership owed to them by the Defendants.

*Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 477 (Ct. App. 2013), involved a mortgagee's attempt to foreclose a delinquent mortgage on property owned by a deceased mortgagor and his widow as tenants in common. The deceased husband signed the note and mortgage, but the widow did not, and thus the mortgagee's lien attached only to the deceased husband's undivided half interest in the property, even though the mortgage "amount greatly exceed[ed] the value of that interest." *Id.* The evidence also showed that "[mortgagee] was or should have been aware that [widow] was named on the contract with husband as a purchaser and did not sign either the note or the mortgage." *Id.* The mortgagee claimed the widow would be

unjustly enriched if it could not assert an equitable lien on the widow's undivided one-half interest in the property.

In upholding the master's dismissal of the mortgagee's claims for equitable lien and unjust enrichment, the Court of Appeals stated:

We hold [mortgagee] has not shown circumstances that would make it inequitable for [widow] to retain any benefits that she received from [mortgagee]. There was no evidence that [widow] failed to disclose any information or discharge any legal obligation that would have prevented [mortgagee] from authorizing a loan to [husband] that was secured only by his undivided one-half interest but was in an amount greatly exceeding the value of that interest. To the contrary, the evidence shows [mortgagee] was or should have been aware that [widow] was named on the contract with [husband] as a purchaser and did not sign either the note or the mortgage. See *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct.App.2002) (stating the plaintiff "failed to establish any duty to disclose or other cause of action that would allow recovery for unjust enrichment").

*Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 477 (Ct. App. 2013)

Like the plaintiff mortgagee in *Risher*, Finklea and New Life here have failed to demonstrate circumstances that would make it inequitable for the Progressive Church to retain any alleged benefits due to Plaintiffs' alleged improvements and maintenance on the Property since July 2014. Plaintiffs knew or should have known they did not in 2014 and never have had any claim to title ownership of the Property. Finklea and New Life knew then and now that they have no lease or other legal right to possess or improve the Property. If Plaintiffs did improve and maintain the property, they did so knowingly and while continuing to enjoy the possession and use of the Progressive Church's Property and paid nothing for the privilege.

It is a cardinal maxim of equity jurisprudence that "Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties." *Archambault v. Sprouse*, 218 S.C. 500, 509, 63 S.E.2d 459, 463 (1951) ("[O]ne who openly defies known rights, in the absence of anything to mislead him or to indicate

assent or abandonment of intent to oppose on the part of others” is not entitled to equitable defense of laches.). The allegation that knowing and willful trespassers are entitled to payment from the owner for allegedly repairing and maintaining the owner’s property has no basis in equity or in law. Finklea and New Life are not entitled to equitable relief of quantum meruit.

Finklea and New Life alternatively argue that they need not prove the existence of a duty owed by Defendants to Plaintiff in order to recover under theories of quantum meruit and unjust enrichment. Plaintiffs essentially argue that they, as trespassers, nevertheless have ownership rights in the property because they squatted on it and improved it. This argument is not supported under South Carolina law.

First, as established by *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct. App. 2002) and *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 212, 746 S.E.2d 471, 477 (Ct. App. 2013), there must be some breach of a duty or other legal obligation owed to another to support claims for quantum meruit and unjust enrichment. *Pitts*, 352 S.C. at 339, 574 S.E.2d at 512 (stating the plaintiff “*failed to establish any duty to disclose or other cause of action that would allow recovery for unjust enrichment*”) (emphasis added); *see also Risher*, 405 S.C. at 212, 746 S.E.2d at 477 (“*There was no evidence that [widow] failed to disclose any information or discharge any legal obligation that would have prevented [mortgagee] from authorizing a loan to [husband] that was secured only by his undivided one-half interest but was in an amount greatly exceeding the value of that interest.*”) (emphasis added). This is a foundational inquiry that Finklea and New Life have failed to satisfy.

Secondly, if a trespasser improves a piece of property, the property owner does not owe the trespasser any duties or compensation. The trespasser improves the property at its own risk, as was the case here. As the Supreme Court has held, “a trespasser . . . is not entitled to

compensation for improvements.” *Cayce Land Co. v. Guignard*, 135 S.C. 446, 134 S.E. 1, 33 (1926); *Shumaker v. Shumaker*, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) (denying claim for contribution from co-tenants for property improvements).

In *Cayce Land Co. v. Guignard*, 135 S.C. at 446, 134 S.E. at 14, defendant Guignard built two lines of railroad that passed under a track of the Southern Railway Company and across its right of way by means of an underpass pursuant to a license with the Southern Railway Company and a contract for purchase of neighboring property with property owner B.B. Cayce. However, Guignard never executed his deed. *Id.* When Guignard started to build houses on the right of way and B.B. Cayce’s land, the Southern Railway Company instituted an action to require him to remove the houses, and the clerk of court conveyed the property to Southern Railway Company. *Id.* On appeal, Guignard argued he was entitled to compensation for his improvements to the land in question, namely the rental value of the houses he built. *Id.*, 135 S.C. 446, 134 S.E. at 33. However, the Court held that because Guignard occupied the right of way of the Southern Railway Company without a legal title and only an equitable right under his contract with B.B. Cayce, which conveyed no part of the land outside of the railroad’s right of way, he was a trespasser. *Id.* Therefore, Guignard was not entitled to the value of his improvements to the Southern Railroad Company’s right of way. *Id.*

Here, Finklea and New Life argue that because they allegedly made improvements to the Sumter Property, then they are entitled to recover for their improvements. Finklea and New Life have no legal right to be on the Sumter Property and are therefore trespassers. Accordingly, as held in *Guignard*, Finklea and New Life are not entitled to restitution for any alleged improvements to the Sumter Property as a reward for their trespass and Finklea and New Life cannot show

circumstances that would make it inequitable for the Progressive Church to retain benefits, if any, arising from “[p]roperty maintenance and improvements made by Plaintiffs since July of 2014.”

**G. Plaintiffs’ claims for preliminary injunctive relief must be denied.**

Because summary judgment is appropriate in favor of Defendants’ on all of Plaintiffs’ claims, Finklea and New Life cannot demonstrate “a[ny] likelihood of success on the merits” of the claims in their motion for preliminary injunction, and Finklea and New Life are not entitled to a preliminary injunction. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010).

**V. CONCLUSION**

In granting Defendants’ Motion for Partial Summary Judgment, this Court dismisses all of Finklea and New Life’s claims against Progressive Church of Our Lord Jesus Christ, Inc., Bishop Theodore Jenkins, Sr., Bishop Lang Priester, Bishop David S. Johnson, Sr., and Bishop Paul C. Johnson and grants the following declaratory relief in favor of Defendants:

(1) The Progressive Church of Our Lord Jesus Christ, Inc. is the exclusive and sole holder of record legal title to the Sumter Property, and thus has the sole right to the exclusive, peaceable possession of that Property.

(2) The 1983 Church Constitution is the governing document for the Progressive Church and it vests ecclesiastical and secular governance authority for the Progressive Church solely in the Board of Bishops, as the highest ecclesiastical body in the Progressive Church.

(3) Plaintiffs are not a part of or members of the Progressive Church and have no permission from the Progressive Church, and no contractual or other legal or equitable rights to use, possess, or occupy the Progressive Church’s Sumter Property.

(4) Finklea and New Life are trespassers on the Sumter Property, and accordingly Finklea and New Life are ordered to vacate the Sumter Property immediately. This order to vacate the Sumter Property applies solely to New Life and Finklea and all his followers who are members of New Life. This Court clearly notes that this order to vacate does not apply to any saints who remain loyal to the Progressive Church's Sumter Congregation and who may continue to use, possess, or occupy the Sumter Property as permitted by and under the direction of the Progressive Church's Board Bishops.

(6) Defendants' pending counterclaims for an accounting, quantum meruit, and constructive trust are not affected by this Order.

For all of the foregoing reasons, Defendants' Motion for Partial Summary Judgment is **GRANTED** and Plaintiffs' Motion for Preliminary Injunction is **DENIED**.

**AND IT IS SO ORDERED.**

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Hon. George M. McFaddin, Jr.  
Circuit Court Judge



Sumter Common Pleas

**Case Caption:** New Life Apostolic Church, Inc. , plaintiff, et al VS Progressive Church Of Our Lord Jesus Christ, Inc. , defendant, et al  
**Case Number:** 2020CP4301863  
**Type:** Order/Temporary Injunction

So Ordered

S/George M. McFaddin, Jr., #2759