

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SUPREME COURT
OF SOUTH CAROLINA

Appellate Case No. 2020-000986

The Protestant Episcopal Church In The Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ The King, Waccamaw; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church Of The Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church Of St. Luke and St. Paul, Radcliffeboro; The Church Of Our Savior, Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, In Charleston, In The State of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry and Church Wardens Of St. Jude's Church Of Walterboro; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston

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May 05 2022

S.C. SUPREME COURT

County, The Vestries and Churchwardens of The Parish of St. Andrews,

Respondents,

v.

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

Appellants.

PETITION FOR REHEARING

Pursuant to the provisions of Rule 221(a)¹ and (c)², Respondent Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church (hereinafter “Petitioner” or “Christ Church”), by and through the undersigned counsel, respectfully petitions this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

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AND

¹ Rule 221(a), SCACR.
² Rule 221(c), SCACR.

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The Diocese of South Carolina dated July 14, 1980

ARGUMENT

In this Court's Opinion,³ dated April 20, 2022, Justice Few, writing for the majority, maintained that the Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church, Mount Pleasant (hereinafter "Christ Church") expressly acceded to the Dennis Canon through its 1980 By-Laws, and, thus, created a trust in favor of the National Church and its diocese (Associated Diocese). Petitioner respectfully petitions this Court for a rehearing based on an issue overlooked or misapprehended as set forth below.

I. Rehearing Must Be Granted Based on the Entirety of the 1980 Bylaws and the July 14, 1980 Letter from Christ Church's Vestry and Wardens to the Diocese of South Carolina Seeking Admission as a Parish in Union with the Diocese.

a. 1980 Bylaws

This Court found that Article 1 of Christ Church's Bylaws created an express trust when it acceded to the National Church's Constitution and Canons. Intent to create a trust must be gleaned from the entire document and not just a few sentences in one section of the document when express words are not present to show the requisite intent. *Chiles v. Chiles*, 270 S.C. 379, 384 n. 4, 242 S.E.2d 426, 429 n. 4 (1979) ("Although this case involved a contractual agreement and not a trust instrument, the general rules of construction which apply to written instruments generally, apply likewise to trust instruments, 76 Am.Jur.2d Trusts s 17 (1975)"); *McPherson v. J. E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945) ("the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument.").

The 1980 Bylaws includes Section 9 of Article VI which requires "the Vestry shall not alienate or otherwise encumber the Church property without the written consent of the Bishop and

³ *The Protestant Episcopal Church In The Diocese Of South Carolina, et al., v. The Episcopal Church, et al.*, Op. No. 28095 (S.C.Sup.Ct. filed Apr. 20, 2022) (Adv.Sh. No. 14) ("Opinion").

the Standing Committee of the Diocese as provided in Canon VI, Section 3 of the General Church Canons.”⁴ The record is devoid of any evidence to show this request ever occurred. Pursuant to its own Bylaws, if the Vestry intended to encumber its Church property, they would be required to seek written consent from the Diocese.

b. 1980 Letter Language

Christ Church’s 1980 By-Laws are dated July 14, 1980.⁵ On the exact same date, the Vestry and Church Wardens of Christ Church signed a Parish Application Letter addressed directly to the Diocese of South Carolina stating that it was “operating again as a parish organized in accordance with the Canons of the Diocese” and affirming their “willingness to conform to the Constitutions and Canons of the General Convention and the Convention of this Diocese.”⁶ This language is indistinguishable from that of official documents of the eight Parishes in which this Court held did not expressly accede to the Dennis Canon, and therefore did not create a trust.⁷ There is no specific

⁴ R.pp.8315.

⁵ R.pp.8313-8315.

⁶ R.pp.8391-8392.

⁷ “Five Parishes stated in their governing documents they were “organized for the purpose of operating an Episcopal Church pursuant to” or “organized pursuant to” the Canons of the National Church and the Lower Diocese. [...] While the governing documents for these five Parishes do mention the Canons generally, they do not specifically mention the Dennis Canon. Therefore, the following five Parishes did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- Christ St. Paul’s Episcopal Church, Conway
- The Church of the Resurrection, Surfside
- The Church of St. Luke and St. Paul, Radcliffeboro
- The Vestry and Church Wardens of St. Paul’s Church, Summerville
- Trinity Episcopal Church, Edisto Island.”

Opinion at 27-28.

“Three Parishes amended their constitutions or bylaws after the National Church adopted the Dennis Canon in 1979 to include phrases such as we agree “to be bound by” or “to conform to” the Canons of the National Church and the Lower Diocese. [...] The phrase “shall conform to” is an agreement to comply with some future requirement; here, the Canons. Future compliance with the Canons is not present action and does not indicate these Parishes had the present intent necessary to create a trust based on the Dennis Canon. Therefore, the following three Parishes did not expressly accede to the Dennis Canon and did not create a trust under South Carolina trust law:

- All Saints Protestant Episcopal Church, Inc., Florence
- The Church of Our Saviour of the Diocese of South Carolina, John’s Island
- The Church of the Redeemer, Orangeburg.”

Opinion at 29-30.

reference to the Dennis Canon in Christ Church's Letter or its By-Laws. Additionally, the language of the Application Letter solely contemplates how Christ Church is going to act in the future. Finally, it does not show present action coupled with a present intent to create a trust based on the Dennis Canon, as is required by State law since the Letter does not seek written consent to encumber the church property.

As noted above, effective July 14, 1980, Christ Church placed both "accession" language in its By-Laws and language such as "operating," "organized in accordance with," and "willingness to conform" in a Letter sent directly to The Diocese of South Carolina. There is nothing in the record suggesting that The Diocese or National Church ever received a copy of Christ Church's 1980 By-Laws. Contrarily, the July 14, 1980 Application Letter to The Diocese of South Carolina, in which Christ Church applied to be admitted as a Parish with the Diocese, was signed by the Vestry and Wardens of Christ Church themselves. The owner of Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church is literally the Vestry and Church Wardens. Accordingly, the Application Letter is much stronger evidence of the owners of Christ Church's intent regarding present or future promises, as compared to the Church's By-Laws.

This Court has already held that because Christ Church's 1980 By-Laws were seven years before the Lower Diocese adopted the Diocesan Canon, the Court cannot rely on Christ Church Mount Pleasant's recognition of the Lower Diocese's adoption of the Diocesan Canon as evidence of its intent to create a trust. This Court held it can "look to more than one writing in determining whether a trust can be created"⁸ and "the Court must find the documents creating the trust indicate the owner had the present intent for the writings to create a trust for the particular beneficiary."⁹ Importantly, this Court noted that the burden to prove the existence of a trust lies with the National

⁸ Opinion at 13.

⁹ Opinion at 13.

Church.¹⁰ Regarding the manifestation of trust intention, the Restatement states that “[i]n interpreting the words and conduct of property owners, circumstances that shed light upon their intentions are relevant ... Acts or communications prior to and subsequent to, as well as those contemporaneous with, the transfer or other act that is claimed to create a trust may be relevant in determining whether a property owner had the requisite intent to create a trust.”¹¹

Both Wardens and the entire Vestry signed the July 14, 1980 Letter Application (an official document of Christ Church by the governing body seeking to be admitted as a Parish) sent to the Diocese of South Carolina with future promises language (willingness to conform). Applying this Court’s ruling regarding future requirements to these facts would result in Christ Church having no present intent to create a trust. Because the July 14, 1980 Christ Church writings were finalized on the same day they must both be read and considered when determining present intent. On July 14, 1980 there cannot be a present intent to create a trust divesting Christ Church of its property when all of the owners of Christ Church wrote directly to the Diocese of South Carolina making future promises of a willingness to conform.

II. The Lower Diocese Had No Beneficial Interest in Christ Church’s Property because it Quitclaimed Any Interest it Had to Christ Church

Prior to Christ Church leaving the National Church, the Lower Diocese executed a quitclaim deed for Christ Church in exchange for good consideration. As such, the Lower Diocese has no interest in Christ Church’s property. A “quitclaim deed is a lawful mode of conveying land in fee simple.” *Martin v. Ragsdale*, 71 S.C. 67, 50 S.E. 671, 674 (1905). “A quitclaim deed does not guarantee the quality of title, but only conveys that which the grantor may lawfully convey.” *Mulherin-Howell v. Cobb*, 362 S.C. 588, 601, 608 S.E.2d 587, 594 (Ct. App. 2005); *see also Martin*,

¹⁰ Opinion at 23 (stating that “this court must find the party claiming to benefit from the trust has proven several elements ...”).

¹¹ Restatement (Third) of Trusts, § 13 cmt. b (2003).

71 S.C. 67, 50 S.E. at 674 (“[A] quitclaim deed . . . convey[s] the right, title, and interest of the grantor.”).

In October of 2011, the Lower Diocese executed quitclaim deeds to Christ Church.¹² Even if the Court were to find that Christ Church’s 1980 Bylaws were to somehow create a trust, vesting the beneficial interest in the Lower Diocese, the quitclaim deed, executed after the apparent creation of the trust, would dispose of any interest the Lower Diocese had in Christ Church’s property. By executing the quitclaim deed, the Lower Diocese “convey[ed] the right, title, and interest” it had in Christ Church’s property, if any, leaving the Lower Diocese with no “right, title, and interest” in the property. *Martin*, 71 S.C. 67, 50 S.E. at 674. In finding the Lower Diocese possessed a beneficial interest in Christ Church’s property, the Court relied on a section from Christ Church’s 1980 Bylaws stating that “In the event Christ Church, Mount Pleasant, S.C. should ever dissolve . . . , the Standing Committee of the Protestant Episcopal Church in the Diocese of South Carolina shall become the managing body of the corporation, with full power and authority without restriction, to sell or mortgage its property or any part thereof, to convey any or all of its property to the trustees of the Protestant Episcopal Church in South Carolina . . . The terms of these By-laws which may be in conflict with the Canons of the Protestant Episcopal Church in the United States of America . . . are hereby amended to conform to such canons.”¹³ The Court found that in this section “Christ Church made a present amendment to that provision to incorporate the Dennis Canon and to recognize the Lower Diocese’s present beneficial interest.” *Id.* at 32. However, any beneficial interest that this did convey to the Lower Diocese in 1980 was surely abandoned upon the

¹² R.pp.8299-304 – “The Protestant Episcopal Church in the Diocese of South Carolina . . . is desirous of executing the within Quitclaim Deed to provide record notice that they claim no ownership interest in the real property hereinafter described and to further provide record notice that the Grantee herein, The Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church, a South Carolina nonprofit religious corporation is the fee simple owner of said real property.”

¹³ Opinion at 46.

execution of quitclaim deed. The Court overlooked the implications the quitclaim deed had on the Lower Diocese's beneficial interest and therefore erred in its analysis.

III. Rehearing Must Be Granted to Christ Church Based on Vested Rights¹⁴

Eight¹⁵ parish churches were incorporated by the legislature as a result of the 1778 Constitution.¹⁶ Article 38 of the 1778 Constitution of South Carolina in effect substituted the Protestant religion for that of the Church of England as the established church in South Carolina. This Constitution also vested in those former Church of England parishes then in existence the property which they possessed, stating, "the churches, chapels, parsonages, glebes, and all other property now belonging to any societies of the Church of England, ... shall remain and be secured to them forever."¹⁷ Although Article 38 was effectively replaced in the Constitution of 1790 by Article 8 to remove the Protestant religion as the established church, this provision was added: "The rights, privileges, immunities and estates of both civil and religious societies, and of corporate bodies, shall remain as if the constitution of this state had not been altered or amended."¹⁸ This provision was carried through every Constitution until that of 1868.

It is a well-known principle that neither legislative acts nor constitutional amendments can operate retroactively to "divest vested rights." *Vartelas v. Holder*, 132 S. Ct. 1479 (2012); *Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 323, 563 S.E.2d 644, 646 (2002); *Robinson v. Askew*, 129 S.C. 188, 123 S.E.2d 822, 823 (1924). When a "creditor ... has obtained vested rights thereby which no court can divest, except in the exercise of legislative functions,

¹⁴ Petitioners raised the issue of vested rights in their 2017 Petition for Rehearing (*see*, R.pp.1311-1349) but it was never fully heard, as there were only four acting justices resulting in a tie 2-2 vote. This Court has not had the opportunity to hear the vested rights argument.

¹⁵ St. Helena, Prince George Winyah, St. John's Charleston County, St. Michael's, St. Philip's, Christ Church Mount Pleasant, Church of the Holy Cross-Stateburg, and Old St. Andrews.

¹⁶ R. 61-Finding 62 of Trial Order.

¹⁷ S.C. Const. art. 38 (1778).

¹⁸ S.C. Const. art. 8 (1790).

which no court in this state is authorized to do.” *Magovern v. Richard*, 27 S.C. 272, 3 S.E. 340, 342 (1887).

“The validity and effect of rights are usually tested by the state of things existing at the time they become operative. Conflicting claims in the nature of rights of property, general or special, take priority, as among themselves, according to the time when they commenced to act upon the subject property.” *Pender v. Lancaster*, 14 S.C. 25, 26-27 (1880). These vested rights cannot be defeated by subsequent occurrences, even when the holder of vested rights does not take actions to enforce their vested rights. *In re: Worley's Estate*, 49 S.C. 41, 26 S.E. 949 (1897) (court protecting widow’s homestead exemption vested rights even though she never objected to an attempted sale of the property and never asserted her claim to divested rights until after the sale). “[T]he general rule is that no statute ... is to be construed as designed to interfere with ... especially vested rights, unless the intention that it shall so apply is expressly declared, ... unless there is something in the very nature of the case or in the language of the new provision which shows that they were intended to have a retrospective operation.” *Bouknight v. Epting*, 11 S.C. 71, 73 (1878). The question of such intent is one for the fact finder, and once vested, only divested according to law. *Parkins v. Dunham*, 34 S.C.L. 224 (1848); *see also City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 543 S.E.2d 538 (2001) (finding that intent to abandon vested rights under a sign ordinance were not supported by the record).

While these principles relate to governmental action and a parish church with vested property rights could divest itself of those rights, given their vested nature such disinvestment would have to be done with the owner’s complete consent and the owner’s unmistakable intent to accomplish that result. There certainly must be a heightened standard to prove parish intent to give up an interest in real property that the State of South Carolina has constitutionally “secured to them

forever.” None of the parish documents, including those of Christ Church, acknowledge the Dennis Canon specifically, nor show any understanding by the parish of the intent to create a trust. Christ Church’s By-Laws do not rise to the heightened level required to invalidate vested rights granted by the South Carolina Constitution. For a legislatively incorporated Parish to be divested of property, it would have to be done with the owner’s complete consent and the owner’s unmistakable intent to accomplishment that result. This Court used Christ Church’s 1980 By-Laws accession language to hold that Christ Church created a trust under South Carolina trust law in favor of the National Church and its Diocese, but that document read in its entirety does not show an unmistakable intent to create a trust in favor of the National Church.

The July 14, 1980 Application Letter signed by the Wardens and entire Vestry of Christ Church make it impossible to conclude a complete consent and the unmistakable intent to accomplish divesting Christ Church’s constitutionally “secured to them forever” property existed on July 14, 1980.

CONCLUSION

Based upon the foregoing, the Court should grant the Petition for Rehearing, vacate the Opinion of April 20, 2022 as to Christ Church, and schedule the case for re-argument.

Respectfully submitted,

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May 5, 2022

CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby believe this Petition for Rehearing to be meritorious and hereby certify that this Petition is presented in good faith and not for purposes of delay.

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