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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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; 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. Bartholomew's Episcopal Church; St. David's Church; St. James; Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church Of St. Luke and St Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry And Church Wardens Of 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 County, The Vestries And Churchwardens Of The Parish Of St. Andrew,

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 ON BEHALF OF
TRINITY CHURCH OF MYRTLE BEACH**

Pursuant to the provision of Rule 221(a), SCACR, the Respondent Trinity Church of Myrtle Beach, through its undersigned counsel, respectfully petitions this Honorable Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

I. Trinity never exhibited a present intent to accede to the Dennis Cannon.

This Court concluded that Trinity created an express trust in favor of The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America (“National Church”) and its diocese because it “took sufficient actions indicating the necessary present intent” through its use of “adopt” and “accede to” the Canons of the National Church and Diocese in its 1993 amendments to its Bylaws and Constitution and through its recognition of the Lower Diocese’s beneficial interest in the property. *Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church* (“*Protestant Episcopal Church II*”), No. 2020-000986, 2022 WL 1161382, at *10, 17 (2022). This Court concluded an express trust in favor of the National Church and its diocese arose out of the appearance of the following language in its Bylaws and Constitution when Trinity amended the Bylaws in 1993:

We . . . accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina.

The Vestry . . . shall hold, manage, and administer all Church property including real property which they shall have power to sell, alienate, mortgage, lease or otherwise deal with and dispose of by deed or other documents executed by the Wardens or one of them; provided that the Vestry shall not sell, alienate mortgage or otherwise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese as provided in Diocesan or National Church Canons.

Id. at *17.

In its opinion, this Court found that “Nine Parishes amended their constitution or bylaws after the National Church adopted the Dennis Canon in 1979 and after the Lower Diocese adopted the Diocesan Canon in 1987 to include phrases such as we “adopt” or “accede to” the Canons of the National Church and the Lower Diocese.” *Id.* at *9. The Court additionally found that four other parishes included identical phrases of “adopt” or “accede” but also “went further to recognize the Lower Diocese’s beneficial interest in their property.” *Id.* This finding overlooks that this specific language was in Trinity’s Bylaws and Constitution well before the enactment of the national or diocesan Dennis Canon, and therefore, the presence of this language in the 1993 Bylaws and Constitution is not evidence of any present intent to create a trust in favor of the National Church or its diocese. New language was not added by the 1993 amendment to address accession but rather pre-existed 1972 when the first amendment to the Bylaws was adopted. Respectfully, Trinity asks this Court to reconsider its holding that Trinity had any intent, much less the “necessary present intent,” to subject its parish to the Dennis Canon, which did not exist when its constitution and bylaws were created to include accession language.

A. South Carolina’s requirements to create a trust.

As noted by this Court, South Carolina law requires the National Church to show two necessary elements: (1) that “the party creating the trust took present actions—in writing—documenting both the creation of a trust and the placing of specified property in it[.]” and (2) that “the documents creating the trust indicate the owner had the present intent for the writing to create a trust for the particular beneficiary.” *Id.* at *5 (citing S.C. Code Ann. §§ 62-7-401(a)(1)(ii) & 62-7-402(a)). Stated differently by this Court, “we must evaluate the Parishes’ actions under South Carolina trust law, including the requirements that the owner take present action coupled with the present intent to create a trust for the beneficiary.” *Id.* at *6. Importantly, this Court noted that the

burden to prove the existence of a trust lies with the National Church. *Id.* at *5 (stating that “the court must find the party claiming to benefit from the trust has proven several elements . . .”).

“To create a valid trust, the settlor must indicate an intention to create a trust.” S.C. Code Ann. § 62-7-402 cmt (citing Restatement (Third) of Trusts § 13). The drafters of the South Carolina Trust Code rely heavily on the Restatement (Third) of Trusts in its reporter’s comments throughout the Trust Code. 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.” Restatement (Third) of Trusts § 13 cmt b (2003). Importantly, the Restatement states “the manifestation of intent to create a trust *inter vivos* ordinarily requires that the intention be to create the trust at that time. Thus, an intention to create a trust at some time in the future ordinarily does not create an express trust.” *Id.* cmt a. Stated differently, there must be a confluence of (1) a declaration of trust and (2) present intent to create the trust.

B. There was no confluence of a declaration of trust and present intent to create a trust in any of Trinity’s Bylaws or Constitution, including the 1993 amendment.

This Court concluded that Trinity created an express trust through language appearing in its 1993 amendments to its Bylaws and Constitution. *Protestant Episcopal Church II*, 2022 WL 1161382 at *10, 17. But the language the Court points to in its opinion is not from a 1993 amendment to Trinity’s Bylaws and Constitution. Rather, this is language in the Bylaws that predates 1972. While the face of the document is undated, it contains amendments starting from 1972. The language the Court relied on in finding a trust was created was not contained in the 1993 amendment, but rather the language clearly predated 1972. The only action taken by Trinity in

1993 dealt only with term limits for lay delegates attending the Diocesan Convention and term limits for the Senior Warden and Junior Warden. ROA 8187-8188. Neither the language in the pre-1972 Bylaws and Constitution nor the 1993 amendments to the Bylaws and Constitution constitute a “present action couple[d] with the present intent to create a trust” for the National Church or its diocese. *Protestant Episcopal Church II*, 2022 WL 1161382 at *6. **The Bylaws were not “amended and restated” in 1993.** Neither the pre-1972 document nor the 1993 amendment came into being to create a trust or to acknowledge any adoptions of or accessions to the Dennis Canon. Rather, they served to amend language regarding term limits for delegates and wardens. This is evident in the language of the amendments on the final pages of the 1993 amendment. ROA 8187-8188. Trinity’s sole intent in executing these amendments was to address the roles of the wardens and delegates.

This Court noted that “[n]ine Parishes *amended their constitutions* or bylaws *after the National Church adopted the Dennis Canon in 1979 and after the Lower Diocese adopted the Diocesan Canon in 1987* to include phrases such as we ‘adopt’ or ‘accede to’ the Canons of the National Church and the Lower Diocese” and that four other parishes, in addition, went “further to recognize the Lower Diocese’s beneficial interest in their property.” *Protestant Episcopal Church II*, 2022 WL 1161382 at *9. To be clear, Trinity did not amend its Bylaws or Constitution to include phrases such as adopt or accede after 1979 or 1987. Trinity had this language in its Bylaws and Constitution for years before the Dennis Canon was ever passed. Pre-Dennis Canon language cannot be evidence of intent to create a trust under the Dennis Canon.

For decades before the passage of the diocesan Dennis Canon and many years before the passage of the national Dennis Canon, Trinity included the language at issue in its Constitution. This language was contained in Bylaws that, although not dated, are pre-1972. . ROA 8179, 8184.

Furthermore, Trinity's original Certificate of Incorporation (originally named Church of the Messiah) filed in 1939 and a subsequent Certificate of Incorporation in 1949 state it is "operating under the constitution and canons of the Protestant Episcopal Church..." ROA 8052, 8054. Testimony indicated there had been no substantial change to Trinity's original By-Laws since 1949 other than some amendments (none dealing with accession or the Dennis Canon) until 2009. ROA 8043. Language contained in a pre-1972 document cannot amount to the present intent South Carolina mandates for the creation of a trust.

Trinity carried over the same language from previous decades in amending its 1993 Bylaws and Constitution to address the limited delegate and warden issues. There is no document in the record (or elsewhere) that exhibits both (1) a present action to create a trust and (2) a present intent to create a trust. There was no positive action taken by Trinity regarding the creation of a trust in its 1993 Bylaws and Constitution.¹ In fact, there has never been a positive act by Trinity regarding either the national Dennis Canon in 1979 or the diocesan Dennis Canon in 1987. Rather, Trinity was maintaining the status quo with continued use of the accession language. Trinity actually took steps in 2009 by amending its bylaws and articles of incorporation to "further protect [its] property." ROA 8044; ROA 8114 (amending the Articles of Incorporation by changing Trinity's purpose such that it no longer includes "to operate this Church under the constitution and canons of the Protestant

¹ The law of South Carolina requires present intent to act. Trinity's ministerial repetition of the accession language from pre-Dennis Canon periods in its 1993 Bylaws and Constitution does not constitute the present intention to create a trust. It is not a positive act, as required by this Court's Opinion. *See Protestant Episcopal Church II*, 2022 WL 1161382 at *5; *see also Cartee v. Lesley*, 290 S.C. 333, 336, 350 S.E.2d 388, 389 (1986) (drawing distinction between "positive act" as a power that is mandatory for a trustee versus a discretionary power "when the trustee may refrain from exercising it."); *cf. Black's Law Dictionary* 22 (8th ed. 2005) (defining "act" as "1. Something done or performed, esp. voluntarily. 2. The process of doing or performing; an occurrence that results from a person's will being exerted on the external world – Also termed *positive act*; *act of commission*.").

Episcopal Church and of the Diocese of South Carolina”). Trinity has no coupled present action with a present intent to create a trust. The 1993 Bylaws and Constitution do not “indicate [Trinity] had the present intent for the writing to create a trust for [the National Church and its diocese].” *Protestant Episcopal Church II*, 2022 WL 1161382 at *5.

Moreover, this Court discussed this issue in its opinion with respect to Christ Church, Mount Pleasant.² *Id.* at *10. In 1980, Christ Church, Mount Pleasant amended its Bylaws to include: “In the event Christ Church, Mount Pleasant, S.C. should ever dissolve . . . , the Standing Committee of the [Lower Diocese] 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].” *Id.* at *17. This Court recognized this language created a beneficial interest in the Lower Diocese. *Id.* But importantly, this Court concluded that “[b]ecause this amendment was made seven years before the Lower Diocese adopted the Diocesan Canon, we cannot rely on Christ Church, Mount Pleasant’s participation in the Lower’s Diocese’s adoption of the Diocesan Canon as evidence of its intent to create a trust.” *Id.* at *10.

² This Court also discussed this issue with respect to St. Helena’s 1987 Bylaws. *Protestant Episcopal Church II*, 2022 WL 1161382 at *7. With respect to St. Helena’s, this Court noted that the parish’s use of the word “pledges” indicates a future action, not a present action, and therefore no express trust could arise. *Id.* There was no confluence of a declaration of trust and a present intent. *Id.* The same is true for the parishes that “operated” or were “organized” pursuant to the canons of the National Church and its diocese. *Id.* at *8. These parishes’ uses of “operating” a church contemplated a “future action” and “not the present action necessary to satisfy the first element” according to this Court. *Id.*

Throughout this Opinion, the Court repeats the need for a present action to accompany a present intent for an express trust to arise. *See also id.* at *8-9 (discussing parishes that “agreed to be bound by” or “agreed to conform to” the Canons of the National Church and its diocese). There was no such marriage of a present action and a present intent regarding Trinity. Trinity had been using the language that purportedly represents a declaration of trust for years before the enactment of the national Dennis Canon and the diocesan Dennis Canon. There was no confluence of a declaration of trust and present intent for Trinity.

The same is true for Trinity. For years before the enactment of both the national Dennis Canon and the diocesan Dennis Canon, Trinity had accession language. The pre-1972 Bylaws and Constitution and their use of accession language is not evidence of a present intent to create a trust, like this Court found regarding Christ Church, Mount Pleasant. Trinity never had a present intent to create a trust in favor of the National Church or its diocese. And its use of accession language cannot be evidence of any intent as announced by this Court in its analysis of Christ Church, Mount Pleasant.

II. The Lower Diocese had no beneficial interest in Trinity’s property because it quitclaimed any interest it had to Trinity.

Before Trinity left the National Church, the Lower Diocese executed two quitclaim deeds of all real property to Trinity in exchange for good consideration. As such, the Lower Diocese has no interest in Trinity’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*, 71 S.C. 67, 50 S.E. at 674 (“[A] quitclaim deed . . . convey[s] the right, title, and interest of the grantor.”).

In February of 2010 and November of 2011, the Lower Diocese executed quitclaim deeds to Trinity. ROA 8158-8164 (“The Protestant Episcopal Church in the Diocese of South Carolina . . . is desirous of executing the within Quitclaim Deed to provide record notice the Grantor claim no ownership interest in the real property herein . . . and to further provide record notice that the Grantee herein, Trinity Church of Myrtle Beach . . . is the fee simple owner of said real property.”); ROA 8165-8172 (“The Episcopal Diocese of South Carolina . . . for and in consideration of the sum of Five and No/100 Dollars to the Grantors in hand paid at and before the sealing of these presents

by Trinity Church . . . the receipt whereof is hereby acknowledged, have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the Grantee, its successor and assigns forever, any interests that the said Diocese and Standing Committee may have in the” property.”); ROA 8042-8043.

Even if the Court found that Trinity’s pre-1972 document or 1993 amendments to the Bylaws and Constitution were to somehow create a trust, vesting the beneficial interest in the Lower Diocese, the two quitclaim deeds, both executed after the apparent creation of the trust, would dispose of any interest the Lower Diocese had in Trinity’s property. By executing two quitclaim deeds, the Lower Diocese “convey[ed] the right, title, and interest” it had in Trinity’s property 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 Trinity’s property, the Court also relied on a section from Trinity’s 1993 Bylaws and Constitution stating that the “Vestry shall not sell, alienate, mortgage, or otherwise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese.” *Protestant Episcopal Church II*, 2022 WL 1161382 at *17. The Court found this section “recognized the Lower Diocese’s beneficial interest in [Trinity’s] properties.” *Id.* at *10. However, any beneficial interest that this did convey to the Lower Diocese in 1993 was abandoned upon the execution of two quitclaim deeds. The Court overlooked the implications the quitclaim deeds had on the Lower Diocese’s beneficial interest and therefore erred in its analysis.

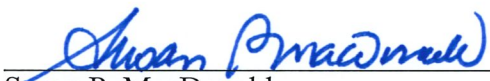
III. The Respondents counterclaims are barred by the statute of limitations.

The Court did not consider the defense of the Statute of Limitations for the defense, now for the first time, is relevant due to this Court’s holding, under the neutral principles of law, that a

trust exists.³ Trinity amended its corporate documents in November 2009, completely removing any references to acceding or adopting canons created by the National Church and its associated Diocese. ROA 8141-8146. It was not until March 28, 2013, over 3 years later, the National Church, and its associated Diocese, asserted any trust claims against Trinity. Neither the National Church nor the associated Diocese took any action within the 3-year statute of limitation therefore, as a matter of law, they relinquished their claims as to the existence of a trust.

Respectfully submitted,

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³ Trinity pled the Statute of Limitations as an affirmative defense to the counterclaims of the Respondents; but the Replies were not part of the Record on Appeal since there was no issue on appeal relating to the affirmative defenses.