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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. 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 ON BEHALF OF
ST. LUKE’S CHURCH, HILTON HEAD**

Pursuant to the provision of Rule 221(a), the Respondent St. Luke’s Church, Hilton Head, (St. Luke’s) 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.

This Court’s decision finding that St. Luke’s holds its real property in trust for the benefit of the National Church and the Associated Diocese pursuant to a 1979 provision of the Dennis Canon relies upon a misapplication of the neutral principles of law to the facts.

I. St. Luke’s Never Exhibited a Present Intent to Create a Trust.

This Court held that St. Luke’s 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 2000 Bylaws. *The Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America)*, Op. No. 28095 (S.C. Sup. Ct. filed Apr. 20, 2022) (Howard Adv. Sh. No. 14 at 30 & 43) (hereinafter “Opinion”).

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.” (Opinion at 30.) This finding overlooks the fact that this language, specifically the two words, existed in versions of St. Luke’s Bylaws well before the enactment of the national or diocesan Dennis Canon. Therefore, the presence of this language in St.

Luke's 2000 Bylaws is not evidence of any present intent to create a trust in favor of the National Church or its diocese. Respectfully, St. Luke's asks this Court to reconsider its holding that St. Luke's had any intent, much less the "necessary present intent," to subject its real property to the Dennis Canon, for the use of the words "adopt" and "accede", existed in its Bylaws since at least 1973 (ROA 8493-8496).¹

The 1973 St. Luke's Bylaws were amended as noted on the first page. (ROA 8493-8497). This Court quoted language from Article II in the 2000 Bylaws, in reliance upon its decision that St. Luke's had the "...necessary present intent...". However, the exact language this Court quoted from Article II in the 2000 St. Luke's Bylaws, existed in the 1973 Bylaws, being before the 1979 Dennis Cannon came into being. (ROA 8493-8496). No subsequent amendments of its Bylaws made any change to Article II. Particularly, 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. (Emphasis added). To be clear, St. Luke's did not amend its Bylaws to include phrases such as adopt or accede after 1979 or 1987. St. Luke's Bylaws contained this language in its Bylaws for years before the Dennis Canon came into being. Pre-Dennis Canon language cannot be evidence of intent to create a trust under the Dennis Canon.²

¹ The 1973 Bylaws was an amendment to Bylaws existing prior to 1973, but these previous Bylaws could not be located.

² The law of South Carolina requires present intent to act. St. Luke's ministerial repetition of the accession language from pre-Dennis Canon periods 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

Significantly, this Court addressed this issue in its Opinion with respect to Christ Church, Mount Pleasant. Christ Church amended its Bylaws to include the following: “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.

The same is true for St. Luke’s. Thus no “present intent” could possibly exist to accept and acceded to the Dennis Canon for the Dennis Canon did not exist when Article II first became part of St. Luke’s Bylaws.

II. The Respondents counterclaims are barred by the Statute of Limitations.

The Court did not consider St. Luke’s defense of the Statute of Limitations for such defense, now for the first time, is applicable due to this Court holding, under the neutral principles of law that a trust exists. St. Luke’s amended its corporate documents, including its Bylaws, in December, 2009, which completely removed any references to the National Church and its associated Diocese, and particularly, acceding or adopting canons created by the National Church and its associated Diocese. Upon properly amending its Bylaws, public filings were made with the

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*.”).

South Carolina Secretary of State and with Beaufort County. (ROA 8510-8528). It was not until March 28, 2013, over 3 years later, the National Church, and its associated Diocese, asserted against St. Luke's counterclaims premised upon the alleged existence of a trust. (ROA Vol. I, 455). 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.

III. Under the application of neutral principles of law, St. Luke's properly amended its Bylaws to revoke any Dennis Cannon Trust.

The legal principal, neutral principles of law, has been the law in South Carolina since *Pearson v. Church of God*, 325 S.C. 45, 478 S.E. 2d 849 (1996) and was solidified in South Carolina jurisprudence by *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009). There is no dispute that St. Luke's adhered strictly to the requirements of *All Saints* to structure its relationship under South Carolina law involving corporate control and real property. Even assuming, St. Luke's did accede or adopt the Dennis Canon in its 2000 Bylaws, the corporate right to amend was not obviated. In particular, this Court pointed to a provision in St. Luke's 2000 Bylaws as creating a trust but failed to recognize that St. Luke's has had the corporate right to amend its Bylaws since its formation as a South Carolina corporation in March, 1969 (ROA 8474). The National Church and its diocese chose a nontraditional manner of attempting to create trusts interests in parish real properties. Typically, a specific instrument identified as a trust creates a trust. Very rarely if ever are corporate governing documents, such as Bylaws, utilized to form a trust. Since the Respondents have relied on parishes corporate documents to create trusts, then they must also abide by corporate law since South Carolina adheres to the neutral principles of law. Nothing in the respective Bylaws removes the right of St. Luke's to amend its Bylaws. As a South Carolina corporation, this right to amend

is inherent whether exercised by the governing body, such as the Vestry, or the shareholders, such as the shareholders/members. Thus, since this Court recognized a trust due to language used in the 2000 Bylaws, particularly Article II, it follows that the Bylaws when properly amended, can remove Article II, thus revoking the trust. In 2009, St. Luke's properly removed all references to the National Church and its diocese, in its Bylaws and other corporate documents thereby removing any possible interpretation that its real property is subject to any trust.

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