

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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May 27 2022

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2020-000986

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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.

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MOTION FOR PARTIAL REMITTITUR

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Appellants hereby move the Court for an Order instructing the Clerk of the Supreme Court to issue a partial remittitur of this matter to the Circuit Court, as more specifically set forth below.

On April 20, 2022, the Court issued its Opinion in this appeal, expressly noting the finality of its decision. Op. No. 28095, p. 6 (“From our decision today, there will be no remand. The case is over.”). In its Opinion, the Court ruled in favor of Appellants and against the following Respondents: The Protestant Episcopal Church in the Diocese of South Carolina (a/k/a the “Disassociated Diocese”); The Trustees of The Protestant Episcopal Church in South Carolina; Holy Trinity, Charleston; St. Bartholomew’s, Hartsville; St. David’s, Cheraw; St. James, James Island; St. John’s, Johns Island; and St. Matthew, For Motte (hereinafter, collectively, the “Non-Petitioning Respondents”).<sup>1</sup> The Non-Petitioning Respondents did not file Petitions for Rehearing and their deadline for doing so has now expired. *See* Rule 221(a), SCACR.

The Court’s judgment as to the Non-Petitioning Respondents is now final. The Petitions for Rehearing filed by the Petitioning Respondents are wholly unrelated to the Court’s rulings on the Non-Petitioning Respondents and cannot affect that aspect of the Court’s decision, regardless of the Court’s ruling on the petitions. In other words, even if the Court were to grant those petitions (a result Appellants oppose), it will issue a remittitur on its final judgment in favor of Appellants against the Non-Petitioning Respondents.

Presumably, the only reason the Court has not yet issued a remittitur with regard to the Non-Petitioning Respondents is because of the Petitioning Respondents’ Petitions for Rehearing.

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<sup>1</sup> The Court also ruled in favor of Appellants and against Respondents Christ Church, Mt. Pleasant; Good Shepherd, Charleston; Holy Comforter, Sumter; Holy Cross, Stateburg; Old St. Andrew’s, Charleston; St. Jude’s, Walterboro; St. Luke’s, Hilton Head; and Trinity, Myrtle Beach (hereinafter, collectively, the “Petitioning Respondents”). However, because the Petitioning Respondents filed timely Petitions for Rehearing that remain pending, the present motion does not address the Court’s rulings as to them.

While Rule 221(b), SCACR, states “[i]f a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court,” that rule does not appear to contemplate circumstances such as the present case, where multiple parties have separate claims and interests that have been finally decided and which are unaffected by the filing of a petition for rehearing. The rule obviously is intended to preserve the Supreme Court’s jurisdiction to entertain timely filed petitions for rehearing; however, this purpose behind Rule 221(b) is not promoted by delaying a remittitur as to the Non-Petitioning Respondents.

As noted, Rule 221(b) appears predicated on the more typical scenario where there is a single appellant and single respondent, or at least groups of appellants and/or respondents whose interests are aligned such that a petition for rehearing could affect the entire appellate outcome. As such, the rule does not address – favorably or unfavorably – the availability of a partial remittitur in a situation like this one.

Because the rule does not preclude a partial remittitur, it is within the Court’s power to grant one under appropriate circumstances. *See Robinson v. Estate of Harris*, 388 S.C. 630, 642, 698 S.E.2d 222, 228 (2010) (“Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.”), quoting *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009); *cf. State v. Barnes*, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) (the Court has the discretionary power to recall a remittitur upon a proper showing).

While there appear to be no reported South Carolina decisions on partial remittiturs, appellate courts in other jurisdictions have granted such relief when portions of an appeal are finally resolved but others are not. *See, e.g., Cornerstone Realty Advisors v. Summit Healthcare Reit*, 56 Cal. App. 5th 771, 788, 270 Cal. Rptr. 3d 653, 668 (2020); *Burgess v. Salmon River Canal Co.*, 127 Idaho 565, 569, 903 P.2d 730, 734 (1995).

The requested relief is both desirable and needed here. The Court's judgment as to the parish property of the Non-Petitioning Respondents requires transfers of title to Appellants. Because there has been no remittitur as to this part of the case, title has not transferred. Appellants are aware of two pending transactions with third parties related to affected parish property; however, these transactions are in limbo while the parties await a remittitur. Moreover, Appellants are attempting to obtain insurance for their interests in both the parish and diocesan properties affected by the Court's judgment against Non-Petitioning Respondents but are experiencing issues related to establishing their insurable interest because no remittitur has been issued. Obviously, Appellants want to avoid the risk of an uninsured loss with respect to these properties.

Accordingly, Appellants respectfully request that the Court issue an Order instructing the Clerk of the Supreme Court to issue a partial remittitur to the Circuit Court related to the Non-Petitioning Respondents only. Appellants are not asking the Court to issue a remittitur with respect to the Petitioning Respondents prior to its ruling on their Petitions for Rehearing.

Dated: May 27, 2022

Respectfully submitted,

/s/ Bert G. Utsey, III

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