

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

IN RE:

THE CHURCH OF OUR SAVIOUR
AT OATLANDS

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Civil Action No. 43909

FILED
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CIRCUIT COURT
CLERKS OFFICE
LOUDOUN COUNTY, VA
BY _____ D.C.

**MOTION OF
THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA
FOR LEAVE TO INTERVENE**

The Protestant Episcopal Church in the Diocese of Virginia, also known as the Episcopal Diocese of Virginia (the “Diocese”), by counsel, moves the Court for leave to intervene as a defendant in this action, which is one of a series of disputes over property possessed by local congregations that have withdrawn from the Diocese and seek to obtain exclusive title to and control over such property. The Diocese states the following in support of this Motion:

THE PARTIES AND NATURE OF THE PROCEEDINGS

1. The Diocese is a duly organized and unincorporated religious body or association of Virginia. The Diocese is a constituent part of The Episcopal Church, formerly known as The Protestant Episcopal Church in the United States of America (“The Episcopal Church” or “TEC”).

2. The Episcopal Church is a hierarchical or “supercongregational” church composed of its constituent dioceses, parishes, missions and members, all of which function pursuant to the disciplines and procedures prescribed by the Constitution and Canons of The Episcopal Church, as well as the individual applicable Constitutions and Canons of specific dioceses, including the Diocese. *See, e.g., Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) (concluding after consideration and discussion of church organization and structure that “[t]he Episcopal Church is

hierarchical”); *Diocese of Southwestern Virginia of the Protestant Episcopal Church v. Buhrman*, 5 Va. Cir. 497, 502-03 (Clifton Forge 1977) (holding that the local church, “as a component of The Episcopal Church, has been part of a hierarchical or supercongregational church organization. Because of this it is, and always has been, subject to the ecclesiastical authority and to the Constitutions and Canons of both The Episcopal Church and the Diocese”). (*Buhrman* was a case where doctrinal disputes prompted an Episcopal congregation to withdraw from The Episcopal Church. *Id.* at 499. The trial court held that the congregation had no further right or interest in the church property. *Id.* at 508. The Supreme Court of Virginia refused a petition for appeal, “[f]inding no reversible error in the judgment complained of.” *Buhrman v. Diocese of Southwestern Virginia of the Protestant Episcopal Church*, Record No. 780347 (Supreme Ct. of Va. June 15, 1978). See Exhibit A to this Motion.)

3. “In the case of a supercongregational or hierarchical church ... the will of a majority within the local church or parish does not decide property rights. Such a church is subject to the constituted authorities of the general church.” *Buhrman*, 5 Va. Cir. at 502 (citing *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974)).

4. Under the terms of its duly adopted Constitution and Canons and under Virginia law, the jurisdiction and proprietary authority of the Diocese extends to all of the parishes, churches and missions of The Episcopal Church in a geographical portion of the Commonwealth of Virginia, including the church previously known and designated as the Church of Our Saviour at Oatlands.

5. The real and personal property now possessed by Petitioner Church of Our Saviour at Oatlands was acquired and has been maintained for approximately 130 years by the voluntary

contributions of members of the Episcopal Church who chose to worship at the Church of Our Saviour at Oatlands.

6. Petitioner Church of Our Saviour at Oatlands seeks a ruling that would be “conclusive as to the title to and control of any property held in trust for such Congregation” (Petition for Approval of Report ¶ 1) and would divest the Diocese of its right, title and interest in such property. The Diocese’s proposed Answer to the Petition for Approval is attached as Exhibit B to this Motion.

GROUNDS FOR INTERVENTION BY THE DIOCESE

7. Virginia’s church property statutes, including § 57-9, require trial courts to inquire into the organizational structure of a church before approving actions that affect the title of church property. In a church with a hierarchical or super-congregational structure, such actions require the general church’s approval. *See Norfolk Presbytery*, 214 Va. at 502-03, 201 S.E.2d at 754-55:

We construe Code § 57-15 to require that a church property transfer may be ordered only upon a showing that this is the wish of the duly constituted church authorities having jurisdiction in the premises. Under predecessor statutes only the congregation’s wishes were to be considered in a proceeding to authorize a church property conveyance, but Code § 57-15 now contemplates that **the general church, or a division thereof, or certain ecclesiastical officials may be the proper parties to approve such a property transfer**. In determining the proper party to approve the property transfer, the trial court must look to the organizational structure of the church. *See* Code § 57-9, which recognizes a distinction between an autonomous congregation and one which is part of a super-congregational or hierarchical denomination in providing for the determination of property rights upon a division of a church or congregation. **In the case of a super-congregational church, we hold that Code § 57-15 requires a showing that the property conveyance is the wish of the constituted authorities of the general church.** [Emphases added; citations and footnotes omitted.]

8. Pursuant to *Norfolk Presbytery* and other applicable Virginia law, documents binding upon the parties, and the relevant deeds, the Diocese has proprietary, property and contractual rights in the property possessed by the Petitioner Church of Our Saviour at Oatlands.

9. Pursuant to the Canons of The Episcopal Church and the Diocese, which are binding on the Church of Our Saviour at Oatlands, real and personal property held by and for the benefit of churches such as the Church of Our Saviour at Oatlands must be used for the mission and ministry of the Episcopal Church and the Diocese and may not be diverted to any other mission.

10. Petitioner Church of Our Saviour at Oatlands is seeking to appropriate this property for itself, in association with a different church, contrary to the rules stated in ¶¶ 7-9 of this Motion.

11. Disposition of this action in the Diocese's absence would be prejudicial to the Diocese. Indeed, the Diocese's rights and claims, as described above, are so integral to disposition of this action as to make the Diocese a necessary party, as described in Rule 3:12 of the Rules of the Supreme Court of Virginia, because the Diocese "claims an interest relating to the subject of the action" and disposition of the action in its absence "may (i) as a practical matter impair or impede the [Diocese's] ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of" the Diocese's interest.

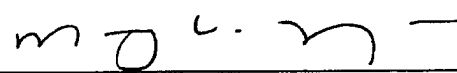
12. The Supreme Court of Virginia's decision in *Norfolk Presbytery* controls resolution of this motion for intervention. The motion for leave to intervene by the general church authorities in *Norfolk Presbytery* made allegations that were substantively identical to those made in this Motion – that the local congregation "was a duly constituted church of and subject

to the jurisdiction, government, and discipline of . . . a super-congregational body,” “that the action of the congregation in undertaking unilaterally to withdraw, with its property, from the parent church was contrary to ecclesiastical law,” and that the general church had proprietary and other interests in the property claimed and possessed by the local congregation. *Norfolk Presbytery*, 214 Va. at 501, 201 S.E.2d at 754. The Supreme Court of Virginia held that the general church “made sufficient allegations to be entitled to file its petition as an intervenor in order to have a determination made whether it had a proprietary interest in the property of [the local church] which could not be eliminated by unilateral action of the congregation.” *Id.* at 507, 201 S.E.2d at 758.

13. In several other cases that are materially identical to this case, the petitioners have agreed to intervention by the Diocese. See *In Re: Truro Church*, No. CL2006 15792, Order (Fairfax County Cir. Ct. Jan. 9, 2007) (Exhibit C) (granting, by consent, the Diocese’s motion for leave to intervene); *In Re: The Church at the Falls - The Falls Church*, No. 06-1751, Order (Arlington County Cir. Ct. Dec. 29, 2006) (Exhibit D) (same). *In Re: St. Stephen’s Church*, No. CL-06-123 (Northumberland County Cir. Ct. Jan 11, 2007) (Exhibit E) (same).

WHEREFORE, the Diocese respectfully requests that the Court enter the accompanying Order granting this Motion, approving the intervention of the Diocese as a defendant, and permitting the Diocese to assert all relevant rights and claims, including those described above.

THE PROTESTANT EPISCOPAL CHURCH IN
THE DIOCESE OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Motion were transmitted by facsimile and first-class mail, postage prepaid, to counsel for petitioner Church of Our Saviour at Oatlands and to counsel for The Episcopal Church, named below, on this 24th day of January, 2007:

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