

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE:)
)
MULTI-CIRCUIT EPISCOPAL) CL-2007-0248724
CHURCH PROPERTY LITIGATION)

FILED IN DIOCESE AND EPISCOPAL CHURCH DECLARATORY

JUDGMENT ACTIONS: *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (No. CL 2007-1236); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (No. CL 2007-1238); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (No. CL. 2007-1235); *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (No. CL 2007-1237); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (No. CL 2007-5683); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (No. CL 2007-5682); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (No. CL 2007-5684); *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (No. CL 2007-5362); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (No. CL 2007-5364); *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (CL 2007-5250); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (No. CL 2007-5902); and *The Episcopal Church v. Truro Church et al.*, (No. CL 2007-1625).

ORDER

This matter came before the Court on August 10, 2007, for a hearing on the Demurrers of the defendants to the Complaints filed by the Episcopal Church (“TEC”) and the Protestant Episcopal Church in the Diocese of Virginia (the “Diocese”).

UPON CONSIDERATION of the Demurrers, the memoranda submitted by the parties, and the arguments of counsel, and for the reasons set forth at pages 143-47 of the attached portion of the transcript from the August 10, 2007, hearing, which is hereby incorporated into this Order, the Court is of the opinion that the Demurrers should be sustained in part and overruled in part; and it is accordingly ORDERED that the Demurrers are SUSTAINED IN PART and OVERRULED IN PART, as follows:

1. The Demurrers are sustained as to the relief requested in subparagraph (a) of the Wherefore clauses of each of the Complaints filed by the Diocese (*e.g.* paragraph 31 at page 11 of the Complaint involving Truro Church).

2. The Diocese shall have leave to amend its Complaint within twenty-one (21) days from the date of entry of this Order. Nothing in this Order shall affect any right which the Diocese may have to file separate complaints asserting tort liability. The Diocese shall notify the defendants in writing on or before seven (7) days after the date of entry of this Order whether the Diocese will file Amended Complaints. If the Diocese files Amended Complaints, the defendants' responsive pleadings and any Counterclaims shall be due twenty-one (21) days from the date of filing of the Amended Complaints. If the aforesaid written notice indicates that the Diocese does not intend to file Amended Complaints, the defendants' answers and any Counterclaims to the original Complaints shall be due twenty-one (21) days from the date of service of the notice. Answers and any Counterclaims to the Complaint filed by the Episcopal Church shall be due twenty-one (21) days from the date this Order is entered.

3. In all other respects, the Demurrers to the Complaints filed by the Diocese and the Episcopal Church are overruled.

4. The Court specifically finds that the Statute of Frauds, Va. Code § 11-2, does not apply to these cases.

5. The Clerk is directed to send an attested copy of this Order to all counsel of record.

Entered this 28 day of August, 2007.



Circuit Court Judge Randy I. Bellows

THE FOLLOWING DEFENDANTS HAVE SEEN AND HEREBY OBJECT TO THE FOREGOING ORDER AND THE COURT'S AUGUST 10, 2007, DECISION TO OVERRULE THE DEMURRER ON THE GROUNDS THAT THE PLAINTIFFS' COMPLAINTS FAIL TO STATE A CAUSE OF ACTION BECAUSE:

1. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT PLAINTIFFS CANNOT PROPERLY PROCEED ON A TRUST-BASED THEORY BECAUSE THE PLAINTIFFS HAVE ALLEGED NO ELEMENTS OF AN EXPRESS TRUST UNDER VIRGINIA LAW AND VIRGINIA LAW DOES NOT RECOGNIZE IMPLIED DENOMINATIONAL TRUSTS IN CONGREGATIONAL PROPERTY.
2. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT PLAINTIFFS HAVE NOT ALLEGED A CONTRACT OR PROPRIETARY INTEREST IN THE CANA CONGREGATIONS' PROPERTIES.
3. UPON THE POINTS AND AUTHORITIES SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT THAT THE PLAINTIFFS' CLAIMS OF A CONTRACT OR PROPRIETARY INTEREST IN THE CANA CONGREGATIONS' PROPERTIES IS BARRED BY THE STATUTE OF FRAUDS; AND
4. UPON THOSE ADDITIONAL REASONS SET FORTH IN THE DEFENDANTS' DEMURRER, MEMORANDUM, REPLY AND ARGUED UPON THE RECORD IN OPEN COURT.


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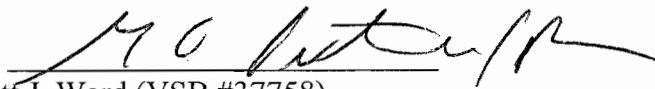
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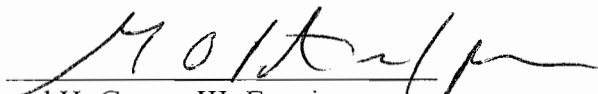
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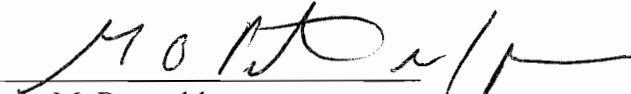
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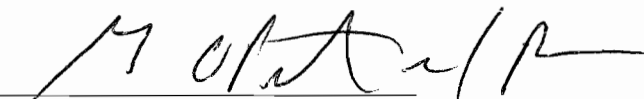
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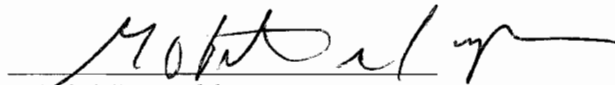
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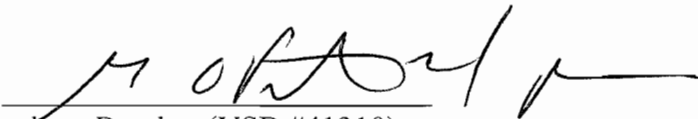
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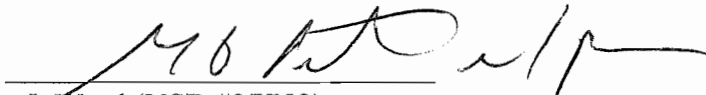
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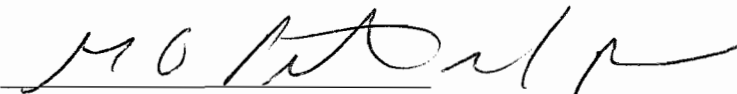
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The following plaintiff has seen and hereby object to the foregoing order as to paragraph 1, sustaining the demurrer in part, for the reasons stated in the plaintiffs' Brief in Opposition and at oral argument:

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

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 IN RE: :
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 MULTI-CIRCUIT EPISCOPAL : OMNIBUS CASE NO.:
 :
 CHURCH PROPERTY LITIGATION : CL2007-0248724
 :
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Fairfax, Virginia

Friday, August 10, 2007

The above-entitled Matter came on for hearing before The Honorable Randy I. Bellows, Judge in and for the Circuit Court of Fairfax County, Virginia, 4110 Chain Bridge Road, Fairfax, Virginia 22030, in Courtroom 4C, beginning at approximately 2:00 p.m. before Lorraine E. Webb, Verbatim Court Reporter, when were present on behalf of the respective parties:

* * * * *

1 independently valid.

2 But to the extent that they're relying on a
3 contract claim, which is what Green and Norfolk Presbytery
4 say you have to have in this state if you are a
5 denomination to establish an interest in a local property,
6 then the Statute of Fraud applies. And the Mayer v.
7 Hendricks case makes clear that it's not simply a sale in
8 the strict sense, it's other types of interest in the
9 land, as well.

10 JUDGE BELLOWS: Okay. Anything else?

11 MR. JOHNSON: No, Your Honor, unless you have
12 any other questions.

13 JUDGE BELLOWS: I don't think so.

14 Is there anybody else who wants to say anything
15 at this point, before I make my ruling on this?

16 Hearing nothing, I will proceed to my ruling.

17 The Matters before the Court on demurrer -- and
18 I start out by saying that, because I want to emphasize
19 how limited my ruling today is -- a demurrer does not --
20 not only doesn't it constitute a decision on the merits,
21 the Court is not allowed to even evaluate and decide the
22 merits of a claim. Rather a demurrer tests the

1 sufficiency of the claims asserted in the complaint to
2 determine whether or not a valid cause of action has been
3 pled.

4 The Virginia Supreme Court has stated:

5 A demurrer will be sustained if the complaint,
6 considered in the light most favorable to the plaintiff,
7 fails to state a valid cause of action. That's McDermott
8 v. Reynolds, 260 Virginia 98, at 100, year 2000. And on
9 demurrer a Court may examine not only substantive
10 allegations of pleading attack, but also any accompanying
11 exhibits mentioned in pleading. Here, of course, we have
12 a motion craving over that was granted, that put
13 additional documents before the Court. So the analysis is
14 very limited that the Court does today.

15 It is not a decision on the merits. The issue
16 is whether the facts alleged in the complaint, together
17 with all reasonable inferences drawn in favor of the
18 plaintiff, are sufficient to stay the cause of action.

19 And my decision is that the demurrer is
20 overruled in part, and sustained in part. Let me put it
21 this way. I'll say how it is sustained, and it's
22 overruled in all other respects.

1 It is sustained in that I agree with Mr.
2 Johnson's statement that a declaratory judgment is a
3 declaration of rights, prospective rights. It's not a
4 tort finding, and as to -- it is specifically sustained
5 with respect to the relief requested in (a) of the
6 Diocese's complaint.

7 Specifically, paragraph 31 at page 11, says,
8 and I'm reading the complaint involving the Truro Church:

9 Plaintiff requests that the Court enter a
10 judgment declaring that there has been an improper
11 trespass, conversion, alienation and use of the real and
12 personal property of Truro Church. And, of course, the
13 same language applies to the other churches.

14 The demurrer is sustained in respect to that
15 paragraph, because I do not believe that is a proper
16 subject for a declaratory judgment action.

17 I actually believe there are other tort issues
18 I could address, such as the validity of an alienation
19 theory, but I do not need to address them because I am
20 sustaining that paragraph in its entirety.

21 Now, it is sustained without prejudice, and I
22 will give the Diocese 21 days to amend their complaint, if

1 they wish, or to file separate complaints that assert tort
2 liability, or not. They can choose not to do it, and just
3 not pursue this.

4 What I'm saying is, this is not, in my opinion,
5 a legitimate basis for a declaratory judgment action,
6 given my understanding that a declaratory judgment action
7 is a declaration of rights, and not a finding of tort
8 liability.

9 There are other problems with it, I should
10 note. The Diocese has not set forth the elements of the
11 torts, and to save everybody time, that would be another
12 grounds upon which I would sustain the demurrer if I
13 wasn't sustaining the demurrer as to that paragraph in its
14 entirety.

15 Now, in all other respects the demurrer is
16 overruled, because I do believe, with all reasonable
17 inferences drawn in favor to the Plaintiff, the complaints
18 of the Diocese and the Episcopal Church are sufficient to
19 state a cause of action.

20 In that respect, I will make a specific ruling
21 that I do not believe a statute of frauds applies to this
22 case. I don't believe that's going to be clarified by

1 other decision?

2 MR. JOHNSON: No, Your Honor.

3 JUDGE BELLOWS: All right. In that case, we
4 are adjourned. Thank you.

5 * * * * *

6 (Whereupon, at 5:55 p.m., the hearing in the
7 above-entitled Matter was adjourned.)

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CERTIFICATE OF REPORTER

I, Lorraine E. Webb, the Verbatim Court Reporter, do hereby certify that the transcript in the foregoing proceedings is true and accurate, to the best of my knowledge and belief; that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Lorraine E. Webb