

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

THE PROTESTANT EPISCOPAL CHURCH)
IN THE DIOCESE OF VIRGINIA,)
)
Plaintiff,)
)
v.) Case No. 2007-5250
)
THE CHURCH AT THE FALLS –)
THE FALLS CHURCH,)
)
Defendant.)
_____)

ANSWER OF THE DIOCESE
TO DEFENDANT THE FALLS CHURCH'S COUNTERCLAIMS

Pursuant to Rule 3:9(c) of the Rules of the Supreme Court of Virginia, the Protestant Episcopal Church in the Diocese of Virginia (the "Diocese") responds as follows to Defendant The Falls Church's Counterclaims.

ANSWER

Unless expressly admitted herein, all allegations in the Counterclaims are denied.

1. The Diocese admits that The Falls Church was a parish, subordinate to and within the Diocese and the Episcopal Church and governed by the Constitutions and Canons of the Diocese and the Episcopal Church and that it continues to be a subordinate unit of the Diocese and the Episcopal Church. The Diocese denies that any parish or mission, including The Falls Church, can unilaterally disaffiliate from the Diocese and the Episcopal Church.
2. Denied. The real property currently occupied and/or used by The Falls Church is

held by trustees for the benefit of the Episcopal Church, the Diocese, and the local Episcopal congregation.

3. Denied. The personal property currently possessed or used by The Falls Church is held by trustees for the benefit of the Episcopal Church, the Diocese, and the local Episcopal congregation.

4. Denied.

5. The Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Counterclaim and therefore denies the same.

6. The Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Counterclaim and therefore denies the same. The Diocese avers that the subject real property was granted for an Episcopal parish or mission.

7. The Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Counterclaim and therefore denies the same. The Diocese avers that the subject personal property was donated to or acquired for an Episcopal parish or mission.

8. Denied. The Falls Church, like all other Episcopal missions and parishes, functioned as a part of the Diocese and was subject to the Constitutions and Canons of the Diocese and the Episcopal Church.

9. The Diocese admits that it does not mandate that Episcopal missions or parishes contribute to the Diocese and that the Diocese therefore relies upon voluntary contributions. In all other respects, the allegations in paragraph 9 are denied.

10. The Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Counterclaim and therefore denies the same.

11. The Diocese lacks knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph 11 of the Counterclaim and therefore denies the same.

Count I (Declaratory Judgment)

12. The Diocese's responses to paragraphs 1-11 of the Counterclaims are incorporated herein by reference.

13. The Diocese admits that its Complaint and the Episcopal Church's Complaint state an adverse interest in the real and personal properties currently occupied and used by The Falls Church. The Diocese admits there is a justiciable controversy.

14. Denied.

Count II (Unjust Enrichment)

15. The Diocese's responses to paragraphs 1-14 of the Counterclaims are incorporated herein by reference.

16. The Diocese has demurred to Count II. To the extent the Diocese's demurrer overruled or a response is otherwise required, paragraph 16 is denied.

Count III (Constructive Trust)

17. The Diocese's responses to paragraphs 1-16 of the Counterclaims are incorporated herein by reference.

18. The Diocese has demurred to Count III. To the extent the Diocese's demurrer is overruled or a response is otherwise required, paragraph 18 is denied.

19. The Diocese has demurred to Count III. To the extent the Diocese's demurrer is overruled or a response is otherwise required, paragraph 19 is denied.

20. The Diocese further denies that The Falls Church is entitled to the relief requested or to any relief whatsoever in this action.

WHEREFORE, the Diocese respectfully asks the Court to enter judgment in its favor, dismiss The Falls Church's counterclaims with prejudice, and award the Diocese the relief

requested in its Complaint.

AFFIRMATIVE DEFENSES TO COUNTERCLAIMS

The Diocese pleads the following affirmative defenses based on information known by the Diocese at the present time. The Diocese reserves the right to plead additional affirmative defenses that it may become aware of as the case develops and hereby states its intent to rely upon such additional defenses.

1. For the reasons stated in the Diocese's Demurrer, Counts II and III fail to state a claim upon which relief can be granted.

2. The property held by the trustees for The Falls Church was acquired and has been maintained through charitable gifts donated to and by members of a parish of the Episcopal Church. Principles of charitable trust law preclude the current membership of The Falls Church from diverting that property to another mission of their own choosing.

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

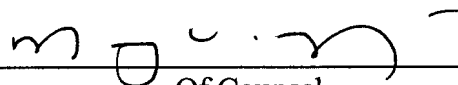
4. The rules of the Episcopal Church and the Diocese of Virginia, by which The Falls Church is bound, do not permit The Falls Church or any other parish to unilaterally "disaffiliate" from the Episcopal Church.

5. Pursuant to the rules of the Episcopal Church and the Diocese of Virginia, the Episcopal Church and the Diocese of Virginia have trust, contract, and/or proprietary rights in the property currently occupied and/or used by defendant The Falls Church, and these rights and interests cannot be extinguished by the unilateral action of the congregation.

6. Imposition of a constructive trust would be inconsistent with the Constitutions of

the United States and Virginia.

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

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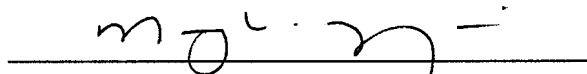
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**DIOCESE OF VIRGINIA’S DEMURRER TO COUNTS II AND III OF THE
FALLS CHURCH’S COUNTERCLAIMS**

Plaintiff The Protestant Episcopal Church in the Diocese of Virginia (“Diocese”), by counsel, pursuant to Va. Code § 8.01-273, demurs to Counts II and III of the Counterclaim asserted by The Church at the Falls - The Falls Church (“The Falls Church”) on the grounds that the claims therein fail to state a cause of action and fail to state facts upon which the relief demanded can be granted. In support of its demurrer, the Diocese states the following:

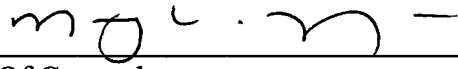
1. Virginia law does not provide for recovery on “prospective” unjust enrichment and constructive trust grounds.
2. The Falls Church has not pleaded that a benefit has been conferred on the Diocese or that the retention of any benefit will be inequitable or unjust.

3. The obligations of the parties are the subject of contract; therefore, no recovery can be had in quasi-contract.
4. A constructive trust is a remedy and not a cause of action.
5. The constructive trust claim fails because there can be no finding of unjust enrichment.
6. In further support of its demurrer, the Diocese relies on its supporting memorandum.

WHEREFORE, for the foregoing reasons, the Diocese respectfully requests that its demurrer be sustained as to Counts II and III of the Counterclaim of The Falls Church and that such counts be dismissed with prejudice.

Respectfully submitted,

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

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