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TROUTMAN SANDERS

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February 27, 2012

BY HAND

Honorable John T Frey Fairfax County Circuit Court 4110 Chain Bridge Road Fairfax, Virginia 22030

Re:

In Re: Multi-Circuit Episcopal Church Property Litigation (CL-2007-0248724)

(omnibus case number)

Dear Mr. Frey:

Enclosed please find the following:

- 1. Original and one copy of The Diocese Of Virginia's and The Episcopal Church's Brief in Opposition to the CANA Congregations' Motion for Partial Reconsideration of Personal Property Ruling; and
- 2. Original and seven copies of a cover sheet to The Diocese Of Virginia's and The Episcopal Church's Brief in Opposition to the CANA Congregations' Motion for Partial Reconsideration of Personal Property Ruling.

Additionally, please find an original and seven copies of the cover sheet to the Statement of the Diocese of Virginia and the Episcopal Church Regarding Final Order and Motion for Entry of an Order Compelling Production of Exhibit I in Alternative Forms, which were inadvertently omitted from the filing on Friday, February 24, 2012. Please date-stamp the indicated copies of the Motion and cover sheets and return them to our courier. If you have any questions, please do not hesitate to call me. Thank you for your assistance in this regard.

Sincerely,

Mary C. Zinsner

cc: Gregory Sagstetter, Esq. (via electronic mail, w/enclosure) All Counsel of Record (via electronic mail, w/enclosure)

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church)	Case Nos.:	CL 2007-248724,
Litigation:)		CL 2007-1235,
)		CL 2007-1236,
)		CL 2007-1238,
)		CL 2007-1625,
)		CL 2007-5250,
)		CL 2007-5682,
)		CL 2007-5683, and
)		CL 2007-5902
)		

THE DIOCESE OF VIRGINIA'S AND THE EPISCOPAL CHURCH'S BRIEF IN OPPOSITION TO THE CANA CONGREGATIONS' MOTION FOR PARTIAL RECONSIDERATION OF PERSONAL PROPERTY RULING

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The Protestant Episcopal Church in the Diocese of Virginia ("Diocese") and The Episcopal Church ("TEC"), by counsel, submit the following Brief in opposition to the Motion for Partial Reconsideration of Personal Property Ruling filed by the CANA Congregations ("Motion") and in response to the Memorandum in Support of the Motion filed by the Commonwealth of Virginia.

INTRODUCTION

The CANA Congregations' 28-page Motion, filed more than six weeks after issuance of the Court's Letter Opinion on January 10, 2012, and less than one week before the date selected by the Court for entry of a final order, appears to reflect a deliberate, dilatory effort to distract and delay the Court from entering its Final Order. The Motion should and easily could have been filed weeks ago. The Commonwealth obviously had ample time to read the Motion and prepare its supporting Memorandum (which was submitted mere minutes after the Congregations' Motion and included many of the same authorities cited in the Motion). The Diocese, TEC, and the Court should have been afforded a similar courtesy.

The Motion advances arguments never raised by the CANA Congregations at any stage of this five-year proceeding, including in the 600 pages of post-trial briefing submitted by the CANA Congregations following the seven-week declaratory judgment trial. It is unfair and prejudicial to the Diocese and TEC for these arguments to be presented in the current posture of the case.

The Congregations' concern over the demarcation date selected by the Court is without factual or legal basis. The Court's choice of the date of the filing of the declaratory judgment actions provides the requisite public notice. The CANA Congregations' arguments relating to donative intent and infringement on religious freedom come too late and have no merit.

Donative intent has no place in neutral principles of law analysis, and there is no violation of religious freedom because no donor is being or has been coerced or compelled to contribute to the Diocese or The Episcopal Church. The arguments advanced by the Commonwealth are legally flawed, and there is no legitimate basis for the Commonwealth to weigh in on any of the issues raised by the CANA Congregations.

ARGUMENT

I. The Court's demarcation date is well-reasoned and should stand.

The Court, after considering various possible demarcation dates, concluded reasonably that the operative demarcation date with respect to division of personal property was either January 31, 2007, or February 1, 2007, the dates the Diocese filed seven declaratory judgment actions. The Court reasoned that after those dates,

[n]o contribution made, no donation made, no dues paid by a congregant, could reasonably have been made with the understanding that money was going to *Episcopal* congregations. (While the seven churches, for the reasons stated in this opinion, never lost their character as *Episcopal* churches, the Court's focus here is on the actions taken by — and the Declaratory Judgment actions filed against — the CANA congregations.)

Letter Op. at 112 (emphasis in original). Paragraph 28 of each of the declaratory judgment Complaints filed by the Diocese against the CANA Congregations referenced the actions of the Executive Board of the Diocese declaring that the real and personal property of each of the Episcopal churches had been abandoned. As of the date of filing the declaratory judgment actions, the Congregations were on record notice of the claims of the Diocese to the real and personal property of the seven Episcopal churches by virtue of the public filings. The Court emphasized the "public notice character" of the date of the filing of the declaratory judgment actions, finding that no other demarcation date provided the requisite notice to the world. See also, e.g., Burns v. A. G. Van Metre Constr., Inc., 23 Va. Cir. 489, 489 (Fairfax Co. 1991) ("The

filing of the motion for judgment creates a public record to which anyone has a right of access"); Bear Ridge Developers, L.L.C. v. Cooper, 78 Va. Cir. 50 (Fairfax Co. 2008) (Fairfax County land records put the purchaser on actual and constructive notice of the discrepancy in square footage of condominium).

The Court specifically rejected the 2003 date now advanced by the CANA Congregations, for good reasons, finding that it posed accounting difficulties which the Congregations have not even attempted to overcome in their Motion. See Letter Op. at 111. Moreover, the CANA Congregations did not put on any evidence of donative intent, other than the testimony of a few witnesses who complained about the actions of the General Convention and thereafter designated "St. Paul's only" and other purported restrictions on their checks. But as the Court reasoned, such evidence does not support 2003 as an appropriate demarcation because at that time these churches were Episcopal churches:

Whatever may have been the level of discord and disenchantment with TEC and the Diocese, each of the seven churches in 2003, 2004, 2005, and through most of 2006 remained *Episcopal* churches, constituent members of the Diocese and TEC.

Id. (emphasis in original). The Court found equally troubling the date of the disaffiliation vote, given that the Supreme Court of Virginia found Va. Code § 57-9 inapplicable. The date of the resolution of the Diocese declaring the real and personal property of the seven Episcopal churches abandoned was rejected by the Court, given the lack of public notice of such event.

In sum, the filing of the declaratory judgment actions provides a logical and appropriate date for the division of personal property. The filings in the public record put the Congregations on actual and constructive notice of the Diocese's claims to the real and personal property, and the decision of the Court is well-reasoned and should not change.

¹ In addition, those filings were well publicized at the time and could not have escaped the notice of any member of any CANA Congregation who was paying even the slightest attention.

II. There is no "double counting" or windfall to the Diocese.

The Congregations argue that awarding the Diocese the full amount of money in the liquid deposit and investment accounts as of the demarcation date results in a windfall to the Diocese, given that the Congregations have paid mortgages and expended money on upkeep of the properties. As the Court noted in its Letter Opinion at 112, however, the CANA Congregations received the benefit of use of these properties for over five years. The facilities used by the CANA Congregations were not warehouses. Most of them were beautiful, historic churches, with parish halls, school facilities, rectories, cemeteries, and ample rooms for spiritual worship, Bible study, fellowship, meetings, and mission work. CANA itself housed its corporate offices in the rooms of one of the seven churches.

The Diocese is not seeking and has never sought rent from the CANA Congregations or other payment for such use of the premises and personal property. The Congregations introduced extensive evidence of the replacement costs of such personal property at the 2011 trial; clearly the use of the real and personal property provided tremendous value to the Congregations. The fact that they made mortgage payments and maintained the properties for five years benefitted their use and did not advance the mission of the Diocese or The Episcopal Church. Had they started from scratch, as they should have per this Court's ruling, without the benefit of the beautiful facilities that they occupied and used, they would have had to pay rent and maintenance expenses. It is wrong and misleading to suggest that paying the mortgages and upkeep expenses results in a windfall to the Diocese; the Diocese was unable to use these properties for its mission for over five years. See Letter Op. at 112 n.85 (rejecting the argument that the CANA Congregations should not have to return funds to the Diocese because they were

used to maintain the church facilities, noting "the obvious fact that the CANA Congregations had the use of the property").

It is similarly wrong to suggest that the Diocese conceded or agreed not to seek a return of such monies because it did not seek documents relating to payment of mortgages or other expenses in discovery. The Diocese never made such an agreement or concession; it merely stated that in the conduct of discovery to "trace" assets to determine if monies were improperly spent or utilized for improper purposes, including possible malfeasance by vestry or Rectors, the Diocese did not require production of documents relating to property maintenance expenses. It should be evident that the volume and substance of such documents would not materially advance the malfeasance inquiry.

The CANA Congregations also are not entitled to deduct rent and other maintenance costs from the amounts held on the demarcation date, because they did not plead or prove setoff, and they did not put on evidence of the amounts they contend should be deducted in the event of a ruling in the Diocese's favor. No prior Virginia court in ruling on a church property dispute has ever afforded this type of relief to a congregation determined not to have rights to the real and personal property. Engaging in such fact finding now would be inappropriate, given the Diocese's inability to put on competing evidence or to challenge the CANA Congregations' evidence. Once again, the use of the seven church properties by the CANA Congregations adequately offsets the maintenance, mortgage, and other expenses paid for the use of these beautiful properties for five years.

The Diocese and TEC do not understand the basis for the CANA Congregations' contentions with respect to after-acquired property. The Court's ruling makes sense. The Diocese gets all personal property as of the demarcation date. To the extent that personal

property was acquired at or around the same time as the demarcation date, or after the demarcation date using funds on deposit as of the demarcation date, the Diocese does not seek both the cash value of such personal property and the personal property itself. The cash will suffice.

III. The CANA Congregations' specious new arguments come too late and fail legally.

The CANA Congregations advance several arguments in their Motion that they never previously articulated in writing or orally at any stage of the Va. Code § 57-9 or declaratory judgment proceedings. They argue: (i) Va. Code § 57-10 is inapplicable and/or it is inappropriate outside the context of Va. Code § 57-9; (ii) the Court's personal property ruling improperly failed to consider donative intent; and (iii) the Court's personal property ruling infringes unconstitutionally on the religious freedom of the donors. Those arguments have been waived. See In re: Multi-Circuit Episcopal Church Property Litigation, 76 Va. Cir. 947, 957 (Fairfax Co. 2008) (a party may not litigate a new affirmative defense long after the "statute has been meticulously dissected at trial and in voluminous briefs").

The CANA Congregations did not plead any affirmative defenses supporting their arguments, they did not put on sufficient evidence during the 2011 trial to support their position that donative intent governs disposition of personal property, and they did not brief those arguments in the expansive 600 page post-trial briefing allotted by the Court. Having waited to make these arguments until now in this "zealously prosecuted" case, the defenses have been waived. *Id*.

Even if the Court were to consider the late arguments, however, they are legally flawed. The CANA Congregations suggest that it is "questionable" whether Va. Code § 57-10 applies independent of Va. Code § 57-9. After five years of litigating under the operative assumption

that personal property indeed follows the real property in light of Va. Code § 57-10 and "neutral principles" church property decisions, the Congregations' attempt to exclude the statute from consideration at this juncture is beyond the pale. Clearly, the parties always contemplated and considered the interplay of Va. Code § 57-10 in these proceedings. See In re: Multi-Circuit Episcopal Church Property Litigation, 76 Va. Cir. 975 (Fairfax Co. 2008) (resolution of The Falls Church Endowment Fund issue "actually turns on the application of 57-10, rather than 57-9(A) as both parties recognize and concede"). Va. Code § 57-10 says nothing about church divisions and contains no restriction or mandate that it should apply only in the context of a Va. Code § 57-9 petition, and none should be written into the statute by this Court. Section 57-10 is the personal property counterpart of Va. Code § 57-8, which deals with title to land; and neither statute is tied in any manner to Va. Code § 57-9, which deals exclusively with church divisions. There is no dispute that the real property of these seven Episcopal churches is titled in the name of, and held by, trustees; by statute, so too is the personal property. See Va. Code § 57-10; In re: Multi-Circuit Episcopal Church Property Litigation, 76 Va. Cir. 976, 984 (Fairfax Co. 2008) ("The Court's opinion on this issue can be summarized in two words: form matters").

The argument that no prior Virginia church property cases apply Va. Code § 57-10 is off the mark because § 57-10 only applied to books and furniture until 2005, when it was amended to apply to personal property generally. It therefore should not come as a surprise that the statute may not have been cited in pre-2005 cases, which includes all of the Virginia cases cited by the Court in its January 10, 2012, Letter Opinion. The CANA Congregations most certainly know about the 2005 amendment (indeed, the Commonwealth points it out specifically in its Memorandum at 4 n.2), and it is inappropriate to suggest that the statute is somehow inapplicable

because it was not addressed specifically by the Supreme Court in *Green v. Lewis* and other Virginia authorities relied on by the Court in its Letter Opinion.

The Supreme Court remanded this case with directions to decide the Diocese's and TEC's declaratory judgment actions and the Congregations' counterclaims under principles of real property and contract law. *Protestant Episcopal Church in the Diocese of Virginia v. Truro Church*, 280 Va. 6, 29, 694 S.E.2d 555, 567-68 (2010), citing *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980), and *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974). The trial of the declaratory judgment actions focused on whether the Diocese and TEC have proprietary and contractual interests in the real and personal properties held and used by the churches by application of "neutral principles of law," as described in *Green v. Lewis*, 221 Va. at 555, 272 S.E.2d at 185-86. *Green* requires consideration of any applicable statutes, the language of the deeds conveying the properties, the "constitution of the general church, and ... the dealings between the parties." *Id.* Va. Code § 57-10 is an "applicable statute," and it was entirely appropriate for this Court to consider and apply that statute in its *Green* analysis here.

Moreover, a review of Virginia church property disputes reflects that personal property followed the real property in each of the decisions, as it logically should given that there is no basis for any distinction. See id., 221 Va. at 548-49, 272 S.E. 2d at 181, and trial court Opinion and Order; Diocese of Southwestern Va. v. Wyckoff (Amherst Co. Nov. 16, 1979) (Final Decree references personal property and bank accounts); Diocese of Southwestern Va. of the Protestant Episcopal Church v. Buhrman (letter from Court to parties dated July 28, 1980, addresses disposition of bank accounts) (copies of the Opinion and Order from the trial court in Green, the Wyckoff Final Decree, and the Buhrman letter are attached collectively as Exhibit A).

The Supreme Court's remand instructions did not include consideration of donative intent, nor is donative intent a proper inquiry now. Donative intent similarly is not a consideration under any "neutral principles" analysis and was not discussed by the Supreme Court of Virginia in *Green v. Lewis* or any other church property dispute. If the CANA Congregations had wanted to go down that route, they would have had to put on specific evidence of each donor to each church. That is precisely the kind of "complicated endeavor" to which the Court alluded at the September 19, 2008, hearing, the transcript of which the CANA Congregations cite on page 19 of their Motion. The Congregations' evidence of percentages of congregants who did not want to support the Diocese or TEC prior to the vote to disaffiliate does not establish anything, given the Court's ruling that they were all *Episcopal* churches at the time of the donations. *See* Letter Op. at 112 (emphasis in original) ("the seven churches, for the reasons stated in this opinion, never lost their character as *Episcopal* churches"). The CANA Congregations did not plead or prove this theory, and their newfound donative intent argument should be rejected.

Even if the Congregations' theory were sound, their proof was wanting, for multiple reasons. First, evidence of percentages of congregants is not the same as evidence of percentages of dollars donated. Second, the Commonwealth cites Va. Code § 57-7.1, which confirms that any "conveyance or transfer that fails to state a specific purpose [emphasis added in Commonwealth's Memorandum at 3] shall be used for the religious and benevolent purposes of the church, church diocese, religious congregation or religious society as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof." (Second emphasis added.) This Court's ruling is fully in accord with that statute. At the very most, the Congregations' evidence demonstrated only that some (apparently large) fractions

of their donors did not want their contributions to benefit the Diocese or TEC. That is a far cry from "stat[ing] a specific purpose." A donor who restricts his contribution to the use of a particular orphanage in Uganda, for example, states a specific purpose, and in the hands of a donee church that is known as a restricted fund. It must be disbursed for the specific purpose for which it was donated. But the Congregations have proved, at most, that their donors made unrestricted contributions to Episcopal churches with nothing more than a hope or expectation that their donations would not benefit the Diocese or TEC - hopes or expectations that were not and could not be realized, as the work of every Episcopal church is conducted under the oversight and in furtherance of the mission and ministry of the Diocese and TEC. (And a hope or expectation - or even a "specific purpose" - that a donation "not be used to benefit the Diocese," Commonwealth's Memorandum at 6, manifestly is not a "specific purpose" within the meaning of § 57-7.1.) Having made such unrestricted contributions to Episcopal churches, the donors had no further interest in or power to control their further disposition.² Under § 57-7.1, that was left to the determination of "the authorities which, under [the church's] rules or usages, have charge of the temporalities thereof." The Diocese is that authority.

Finally, the CANA Congregations' corollary "violation of religious freedom" argument manipulates the ruling of the Court to create the fiction and straw man of unconstitutionality.

That is so because no donor is being or ever has been forced to contribute to the Diocese or TEC, the monies merely being the remedy of return of funds. The eloquent quotations from Thomas

Jefferson and James Madison are inapplicable. As this Court noted, when donations were given

² Watson v. Jones, 80 U.S. (13 Wall.) 679, 722-23 (1871), cited in the Congregations' Motion at 15, is to precisely the same effect. As the Congregations acknowledge, Watson dealt with property which "has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief." Id. at 722 (emphasis added).

to these seven churches, they were Episcopal churches. Letter Op. at 111 ("Whatever may have been the level of discord and disenchantment with TEC and the Diocese, each of the seven churches in 2003, 2004, 2005, and through most of 2006 remained Episcopal churches, constituent members of the Diocese and TEC"). The Court's order that the real and personal property be delivered to the Diocese does not compel any donor to contribute financially to the Diocese or TEC; indeed, the money is already in the church coffers, having been donated before the Court's ruling. It is simply being returned to the Episcopal Church through the proper entity to receive it - the Diocese of Virginia. Once they made the donations, which were not "compelled" by any means (see Motion at 3, line 1), the donors relinquished all claim to and control over the funds donated to these churches - and these churches were Episcopal churches. See Letter Op. at 111. The award to the Diocese is simply part of the remedy which is the natural conclusion of the declaratory judgment actions. The ruling does not coerce or compel contributions to the Diocese or TEC by any donor; the Diocese will receive the award of sums previously held by its constituent Episcopal churches as "consequential relief" (Va. Code § 8.01-184) in its declaratory judgment actions, the Court having ruled correctly that the Congregations have no right to retain the funds.

IV. The Commonwealth lacks procedural and substantive standing to file its Memorandum supporting the CANA Congregations' Motion.

The Commonwealth has gone well beyond the limited role granted it by the Court in these declaratory judgment proceedings. This court's January 3, 2011, Order, which the Commonwealth endorsed "SEEN" and did not object to, imposed significant constraints on the Commonwealth with respect to its involvement in the declaratory judgment proceedings:

16. The Commonwealth of Virginia's position in this litigation.

The Commonwealth moved to intervene "for the limited purpose of defending the constitutionality of Va. Code 57-9(A)," and the Court granted the Commonwealth's

motion "solely for its requested purpose." Letter Opinion (July 16, 2008) at 1 & n.l. That purpose has been fulfilled. The Commonwealth wishes to remain a party to this litigation solely for the purpose of defending the constitutionality of any other state statute, if some other statute's constitutionality is challenged. Accordingly, the Commonwealth shall remain a party to this litigation for that limited purpose. The Commonwealth need not file any pleadings, and it is not required to respond to motions or other filings regarding any other issues. The Commonwealth shall not propound or be required to respond to discovery requests, except as all parties may agree or the Court shall further order. This order is without prejudice to TEC's and the Diocese's previously stated position that the Commonwealth should be allowed to participate only as an amicus curiae. [Emphasis added.]

The Commonwealth is not defending the constitutionality of a Virginia statute in its filing; instead, it appears to *attack* the constitutionality of Va. Code § 57-10, by suggesting that the Court's application of the statute violates religious freedom. The Commonwealth's assertion that it is acting on behalf of the "public" with respect to assets held by "charitable entities" is similarly not persuasive. These are not "charities"; they are churches, and the Commonwealth is improperly choosing sides in a fundamentally religious dispute between private parties over church property. The purported "public" interest is an obvious misnomer.

Even if the Court were to consider the Commonwealth's Memorandum, as discussed above, the Commonwealth's and the CANA Congregations' remarks about James Madison and religious freedom are not persuasive or accurate in suggesting that this Court is coercing donations in violation of religious freedom. Madison's *Memorial and Remonstrance*, which led to the passage of the Statute for Religious Freedom, was prompted by a proposal to renew a statewide "tax levy for the support of the established church." *Everson v. Board of Education*, 330 U.S. 1, 11 (1947). That has nothing in common with the context here. All this Court did is set a conclusive date for its determination as to when contributions to these seven Episcopal churches could no longer be considered contributions to Episcopal churches. The Court is not requiring or coercing any person or entity to make donations to the Diocese or The Episcopal

Church or imposing a tax on individuals violative of religious freedom rights; it is merely ordering the return of sums to the Diocese which the Court has concluded rightfully belong to it and cannot be retained by the CANA Congregations. *See* Letter Op. at 111. The "public" has no "interest" in that battle.

The Commonwealth's reliance on "general principles of trust law" is similarly misplaced. See Brief of Commonwealth at 4. This Court has now ruled several times that trust law does not apply, and the Supreme Court did not include consideration of trust law in its remand instructions.

CONCLUSION

This case has been "protractedly litigated" for over five years. The desperate last minute attempt by the CANA Congregations and the Commonwealth to get this Court to reconsider its well-grounded rulings is baseless. The Motion should be denied and the Final Order entered awarding all of the relief to the Diocese and TEC requested in their Complaints and ordered by the Court in its January 10, 2012, Letter Opinion.

Respectfully submitted,

Dated: February 27, 2012

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were sent by electronic mail to all counsel, including those named below, on this 27th day of February, 2012, pursuant to the Stipulated Amended Pretrial Scheduling Order and post-trial briefing/procedures Order:

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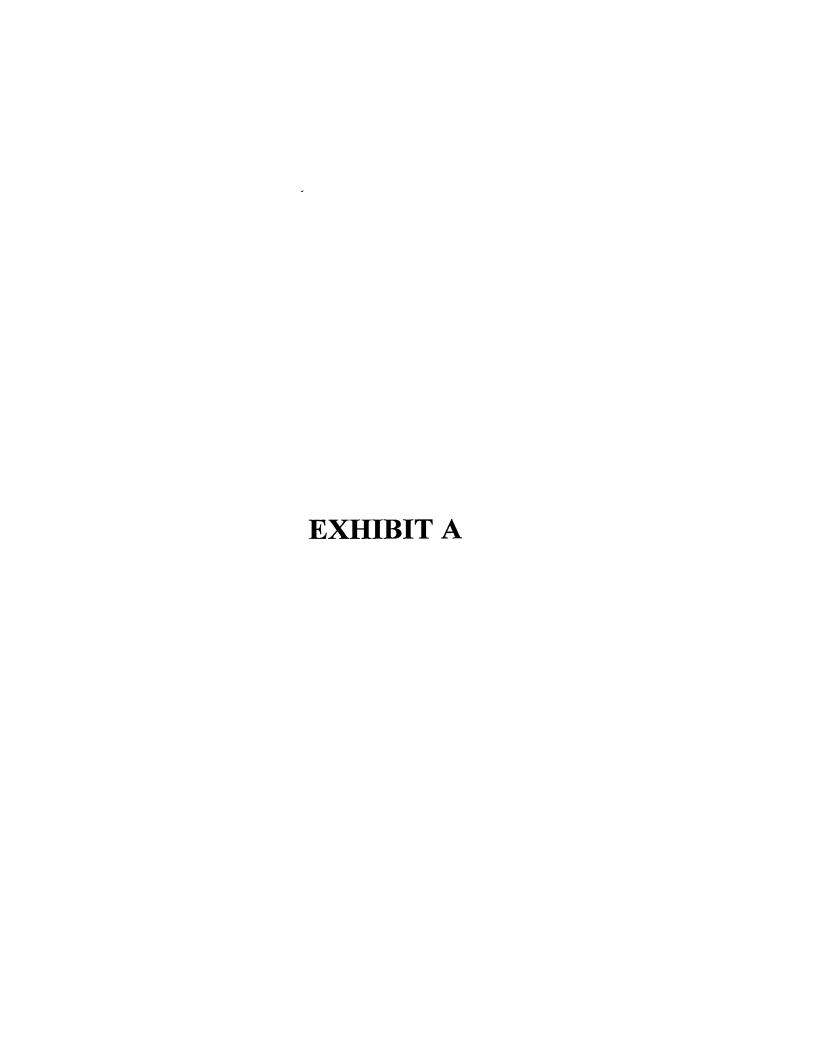
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VIRGINIA:

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IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

WESLEY J. GREEN, Pastor

(

Plaintiff

VS .

Chancery No. 3687-77

TIMOTHY LEWIS, et als

Defendants

OPINION

The Pastor of the African Methodist Episcopal Church (A.M.E. Zion Church) located on River Road in Chesterfield County, filed a petition against members of the Church seeking to enjoin them from entering or using the premises of the Church contrary to the wishes of the proper officials of the African Methodist Episcopal Church. On November 11, 1974, the Court, ex parte, awarded a temporary injunction restraining the Defendants, or any other person having knowledge of the restraining order, from harassing or molesting the Pastor or any member of the Church until the further order of the Court.

Subsequently, (1.) a motion was filed by the Defendant to dissolve the temporary injunction, and (2.) John Lewis, and Timothy Lewis, William Brown, Sr., Gene Holmes, Leroy Harris, Eldridge Harris, Philip Brown, Sr., Elton Webster, and Magnolia Turner as Trustees of Lee's Chapel Methodist Episcopal Church, formerly known as Lee's Chapel African Methodist Episcopal Zion Church, filed a Petition of Intervener pursuant to Rule 2:15 of the Virginia Supreme Court and Section 8:01-7, Virginia Code, 1950, alleging that the local membership and congregation of said Church on March 20, 1977, after due and timely notice of said meeting, adopted by an affirmative vote of sixty-four of the seventy eligible

(1)

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PX-COM-0277-0171

ADMITTED

members of the Church that;

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- a.) Lee's Chapel of African Methodist Episcopal Zion Church became an independent Methodist Episcopal Church free from any affiliation with A.M.E. Zion Church in Virginia and in America; the General, Annual, and District Conferences of said Church and the Bishop, Elder, and Pastor or other officers of said Church.
- b.) That all decisions concerning the Church would be made by the local membership and congregation, and the Church
- c.) will continue to be a House for the Worship of God, serving the religious needs of the people in the community and as a continuing Methodist Episcopal Church.

On February 28, 1978, the Court proceeded to trial and it was agreed that the controversy between the Pastor, Wesley J. Green, and the Defendants was a controversy between the proper officials of the African Methodist Episcopal Zion Church in America and the local congregation to determine the ownership of the real and personal property of Lee's Chapel Church.

It was stipulated:

- 1.) The African Methodist Episcopal Church, now allegedly known as Lee's Chapel Methodist Episcopal Church, located on River Road, Chesterfield County, Virginia was organized in or about 1875.
- 2.) From the time of its organization, this Church has been affiliated with the African Methodist Episcopal Zion Church in America ("A.M.E. Zion Church").

The A.M.E. Zion Church was first organized in 1801 and reorganized in 1819, being Methodist Episcopal in belief, and the Virginia Conference of said Church was organized in 1866.

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PX-COM-0277-0172

ORDER

This cause, which has been regularly docketed, ed, and set for hearing, came on this day to be heard upon Notion for Injunction filed by the Plaintiff; upon the on to Dissolve Temporary Injunction filed by the Defendants; the Petition of Intervener filed by the Trustees of Lee's el Methodist Episcopal Church pursuant to Rule 2:15 of the ginia Supreme Court and \$8.01-7 of the 1950 Code of Virginia, amended; upon the Stipulation of Facts filed by the parties; n the trial of this matter, without a jury, and the oral timony of the parties and their respective witnesses in :son, and the written exhibits filed therein, heard by this irt on February 28, 1978; upon the Defendants' and Interveners' al Motion to Strike the Evidence at the conclusion of said ial; upon the Plaintiff's Memorandum of Law; upon the Defendants' morandum of Law filed on behalf of the Defendants and Interveners; on the Plaintiff's Reply to Defendants' Memorandum of Law; on the previous Orders entered by this Court in the matter; on the written opinion of this Court dated May 30, 1978; and is argued by counsel.

And it appearing to the Court that the National nurch, the A.M.E. Zion Church, has failed to meet its burden to proof to establish a proprietary interest in the church coperty known as Lee's Chapel, Chesterfield County, Virginia, and that the Motion to Strike the Evidence made by the Defendants and Interveners, declaring the church property to be in the mership of the Trustees of the local congregation of Lee's lapel, should be sustained.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the Defendants' and Interveners' Motion to Strike the Evidence is hereby sustained and that the ownership, control, use and beneficial enjoyment of the property of the church known as Lee's Chapel, Chesterfield County, Virginia, both real and personal, and all incidents to ownership thereof, is hereby declared to be vested in the Trustees of the local congregation of Lee's Chapel and that the A.M.E. Zion Church has no proprietary interests or rights of ownership or control in said property.

It is further ORDERED that the Order of Injunction entered by this Court on November 3, 1977, against the Defendants is hereby dismissed and dissolved.

And nothing further remaining to be done herein, it is ORDERED that this cause be stricken from the docket and placed in the ended causes.

ENTER THIS:	
•	1978
Judge	

WE ASK FOR THIS:

SPERO AND DIEHL, p.d. and counsel

for Interveners

by LAWRENCE D. DIEBL, Esquire The Marshall Building

Adams at Marshall Street

Petersburg, Virginia 23803

174

PX-COM-0277-0178

ADMITTED

SEEN AND OBJECTED TO:

Daniel T. Balfour, Esquire, p.q.
Maloney, Yeatts, Balfour, Ayers and Barr
600 Ross Building
Richmond, VA 23219

175

PX-COM-0277-0179

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VIRGINIA:

IN THE CIRCUIT COURT OF AMHERST COUNTY DEC 3 - 1979

THE DIOCESE OF SOUTHWESTERN VIRGINIA OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, ET AL.

CHANCERY NO. 3748

Complainants

FINAL DECREE AND INJUNCTION

•

counsel.

3748

J. B. WYCKOFF, ET AL.

Respondents .

This cause came on this day to be again heard upon the papers formerly read; upon the evidence heard <u>ore tenus</u> on August 7, 8 and 9 and September 25, 1979; upon the several stipulations dictated into the record during the <u>ore tenus</u> hearings; upon the written briefs of counsel; and was argued by

On consideration whereof, for the reasons stated and based upon the findings of fact and the stipulations set out in the written opinion of the court dated November 16, 1979, which is hereby made a part of the record herein, it is the judgment of the court and it is hereby ADJUDGED, ORDERED and DECREED:

- 1. That the Respondent Trustees do now and they and their successors henceforth shall hold the Ascension Episcopal Church (sometimes known as Ascension Church) property in their hands and under their control, including all real property, personal property, tangible and intangible (except as herein otherwise provided with respect to the Rectory Fund), for the sole use and benefit of the Ascension Complainants and other members of the congregation of Ascension Episcopal Church as a unit of the Episcopal Church subject to the canonical authority of the Diocese of Southwestern Virginia and said Trustees be, and they hereby are, enjoined from allowing or permitting any other use of said property.
- 2. That Respondents Pedlar, Perrow and Bain shall forthwith pay over and deliver, or cause to be paid over and delivered, to Complainant Smith, who shall have judgment for and forthwith recover from said Respondents, all Ascension Episcopal Church property and records in their hands, including but not limited to, all church keys, church and parish house furniture, communion plate, alms basins, books, vestments and other equipment and furnishings, the Parish Register, the Service Register, minutes of Vestry meetings and all other records of Ascension Episcopal Church and all church funds in their possession, the identities and balances of which funds have been stipulated as follows:

LAW OFFICES EGGLESTON. SLENN & FELDMANN MGANOKE, VIRDINIA

JJK9"

·a.	Che	cking account	\$	0
b.	Sav	ings accounts:		
	1.	General Fund A/C #80-033-3	1,924.	36
	2.	Endowment Fund A/C #80-574-2	704.	42
	3.	Building Fund A/C #80-671-4	1,060.	04
	. 4.	Organ Fund		278

(1.545.79)

And the Ascension Episcopal Church Women's accounts on deposit in the Fidelity American Bank, to wit, checking account \$10415015 in the amount of \$296.81 and savings account \$104-10688-03 in the amount of \$2,066.76, being in the hands of persons allied with the Complainants and Respondents having asserted no claim thereto, that title to said funds is and shall continue to be in those loyal to the Episcopal Church.

- 3. That the Respondent Trustees do now and shall henceforth hold the Rectory Fund, 75% thereof for the benefit of
 Ascension Complainants and 25% thereof for the benefit of St.
 Mark's Complainants; that said Respondent Trustees shall forthwith pay over and deliver to Ascension Complainants 75% and to
 St. Mark's Complainants 25% of the income from said fund which is
 now in their hands; and that said Respondent Trustees shall
 hereafter at least semiannually pay over and deliver the future
 income from said Rectory Fund in the same proportions to the
 Treasurers of Ascension Episcopal Church and St. Mark's Episcopal
 Church, respectively.
- 4. That Respondents Pedlar, Perrow and Bain and all others who have become members of the Anglican Catholic Church be, and they hereby are, forthwith enjoined from any and all use and occupancy of any and all of the real and personal property of the Ascension Episcopal Church except subject to the canonical authority of the Episcopal Church and the Diocese of Southwestern Virginia.
- 5. That costs in this proceeding be taxed against the Respondents.

And Respondents, by counsel, having indicated their intention to appeal to the Supreme Court of Virginia and requested that execution of the foregoing judgment be suspended so long as Respondents timely prosecute their appeal and thereafter so long as the matter is under consideration by the Supreme Court, and Complainants having opposed such suspension, and the court being of the opinion that the execution of the injunction granted herein ought not to be suspended, it is accordingly ORDERED, pursuant to § 8.01-676 of the Code of Virginia, that the execution

LAW OFFICES
EGGLESTON,
GLENN & FELDMANN
ROANOKE YIROINIA

of such injunction not be suspended. And the court being of the opinion that Respondents should be required to execute an appeal bond, it is further ORDERED that as a condition of an appeal, they, the said Respondents, or someone for them, shall within 30 days from the date hereof file in the clerk's office of this court an appeal bond with corporate surety in the penalty of conditioned as the law directs.

And the transcript of the hearings, including the depositions of J. B. Wyckoff, S. Cabell Burks and Bishop James Mote, shall become parts of the record on appeal as permitted and required by

And this cause is continued for such further or ancillary proceedings as may be proper.

We request entry of

Counsel for Complainants

disected to and

Counsel for Respondents

ENTERED

Chancery Order Book

WM. E. SANDIDGE Clerk Circuit Court Amherst County, Va.

Clerk Circuit Court Amherst County, Va.

ILENN & FELDMANN

TWENTY-FIFTH JUDICIAL CIRCUIT

OF VIRGINIA

WILLIAM S. MOFFETT, JR., JUDGE STAUNTON, VIRGINIA 24401

PAUL A. HOLSTEIN, JUDGE RETIRED LEXINGTON, VIRGINIA 24450

ROSCOE B. STEPHENSON, JR. JUDGE COVINGTON, VIRGINIA 24426

RUDOLPH BUMGARDNER III, JUDGE LE VIRGINIA



July 28, 1080

ALLEGHANY, AUGUSTA, BAY' BOTETOURT, CRAIG, HIGHLA AND ROCKBRIDGE COUNTIE'

BUENA VISTA, CLIFTON FOR-COVINGTON, LEXINGTON AN-STAUNTON CITIES

George J. Kostel, Esquire 316 Commercial Avenue Clifton Forge, Virginia 24422

B. Furnell Eggleston, Esquire P. O. Box 2887 Roanoke, Virginia 24001

Martin P. Burks, Esquire 610 Shenandoah Building Roanoke, Virginia 24001

James W. Jennings, Jr., Esquire P. O. Box 720
Roanoke, Virginia 24004

J. B. Wyckoff, Esquire Law Offices Amherst, Virginia 2/521

Erwin S. Solomon, Esquire Solomon & Associates Hot Springs, Virginia 24445

RE: The Diocese of Southwestern Virginia of the Protestant Episcopal Church in the United States of America, et al. v. Kathryn Buhrman, et al.

Case No. 1748

Gentlemen:

With respect to the bank accounts in issue, the court holds as follows:

1. The funds deposited with First Federal Savings and Loan

George J. Kostel, Esq.
B. Purnell Eggleston, Esq.
Martin P. Burks, Esq.
James W. Jennings, Jr., Esq.
J. B. Wyckoff, Esq.
Erwin S. Solomon, Esq.

7/28/80

Page ?

Association of Clifton Forge (now American Federal Savings and Loan Association) in Account Number 2806, identified as "Memorial Fund # 2 - Robert Hunt, Trustee" is not the property of St. Andrew's Episcopal Church, but was held in trust by the said Robert Hunt for the benefit of one referred to at trial as B_______.

2. The legal title to all other bank accounts in issue is held by the Trustees of St. Andrews Episcopal Church for the benefit of said Church.

Included as a part of Savings Account Number 2(42 in First Federal Savings and Loan Association of Clifton Forge, identified as "St. Andrews Church Discretionary Fund - Robert Hunt, Vicar", is the sum of \$5,000 which was withdrawn on January 10, 1978, and which shall be repaid to said account by the persons who assumed the responsibility for doing so.

The court will enter an appropriate decree when it is presented with the endrosements of counsel.

Very truly yours,

Roscoe B. Sterhenson, Jr.

RBS, jr./bs1

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church)	Case Nos.:	CL 2007-248724,
Litigation:)		CL 2007-1235,
G)		CL 2007-1236,
)		CL 2007-1238,
)		CL 2007-1625,
	j		CL 2007-5250,
)		CL 2007-5682,
	ĺ		CL 2007-5683, and
	Ó		CL 2007-5902

COVER SHEET FOR THE DIOCESE OF VIRGINIA'S AND THE EPISCOPAL CHURCH'S BRIEF IN OPPOSITION TO THE CANA CONGREGATIONS' MOTION FOR PARTIAL RECONSIDERATION OF PERSONAL PROPERTY RULING

This acts as a cover sheet/reference pleading to the complete filing, titled as indicated above, which was sent to be filed in CL-2007-248724 (the omnibus case file), with a courtesy copy sent by e-mail to Mr. Gregory J. Sagstetter, Law Clerk to The Honorable Randy I. Bellows. That filing and this reference pleading apply to the above-listed cases. For the complete filing, please see the omnibus case file, CL 2007-248724.

Respectfully submitted,

Dated: February 27, 2012 THE PROTESTANT EPISCOPAL CHURCH

IN THE DIOCESE OF VIRGINIA

By: Of Counsel

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church)	Case Nos.:	CL 2007-248724,
Litigation:)		CL 2007-1235,
)		CL 2007-1236,
)		CL 2007-1238,
)		CL 2007-1625,
)		CL 2007-5250,
)		CL 2007-5682,
)		CL 2007-5683, and
	j		CL 2007-5902

COVER SHEET FOR STATEMENT OF THE DIOCESE OF VIRGINIA AND THE EPISCOPAL CHURCH REGARDING FINAL ORDER AND MOTION FOR ENTRY OF AN ORDER COMPELLING PRODUCTION OF EXHIBIT I IN ALTERNATIVE FORMS

This acts as a cover sheet/reference pleading to the complete filing, titled as indicated above, which was sent to be filed in CL-2007-248724 (the omnibus case file), with a courtesy copy sent by e-mail to Mr. Gregory J. Sagstetter, Law Clerk to The Honorable Randy I. Bellows. That filing and this reference pleading apply to the above-listed cases. For the complete filing, please see the omnibus case file, CL 2007-248724.

Respectfully submitted,

Dated: February 27, 2012 THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

By: Of Counsel

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