

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

**In re:
Multi-Circuit Episcopal Church
Litigation**

)
) **Civil Case Numbers:**
) CL 2007-248724,
) CL 2007-1625,
) CL 2007-1235,
) CL 2007-1236,
) CL 2007-1238,
) CL 2007-5250,
) CL 2007-5364,
) CL 2007-5683,
) CL 2007-5682,
) CL 2007-5684, and
) CL 2007-5902.

ST. STEPHEN'S CHURCH POST-TRIAL BRIEF RE ITS 1874 DEED

St. Stephen's Church ("St. Stephen's"), by its undersigned counsel, respectfully submits this post-trial brief relating to its 1874 Deed.

SUMMARY

The St. Stephen's 1874 Deed contains no enforceable covenant restricting the use of that parcel.¹ The pleadings, the Court's prior rulings in the case, the language of the deed itself, and Virginia law governing restrictive covenants compel the conclusions that: (1) there is no claim before the court by any party to enforce the language said to constitute a restrictive covenant; and (2) even assuming *arguendo* such a claim were before the court, the 1874 Deed contains no such enforceable restriction.

¹ The parties previously stipulated as to the 1874 Deed: "There is no factual title dispute with respect to the Deed. The issue presented to the Court is whether the Deed creates an enforceable restriction as to who may use the property conveyed thereby" (DSTS Ex. 15-00099-00100, ¶8). The parties further stipulated (*id.* ¶6): "There is no factual dispute about how title has been held since the date of the Deed. Since the date of the Deed, legal title has been vested in the trustees of St. Stephen's Church."

STATEMENT OF FACTS²

As this Court previously held,³ churches (both local and general) in pre-1867 Virginia were prohibited by the state constitution from incorporating and, thus, from holding property in corporate form. As of 1867, the only statutorily authorized means of conveying property to churches in Virginia was a *deed*, and only a *local congregation* could receive such a conveyance.⁴ Chapter 76 of the 1873 Virginia Code constituted the required statutory authority permitting a conveyance of real property to a local congregation.⁵

On or about October 2, 1874, acting expressly pursuant to Chapter 76, Section 9, of the 1873 Virginia Code, the vestry of a yet-named congregation petitioned the Northumberland County, Virginia, Circuit Court to appoint trustees empowered to receive a conveyance of prop-

² This Statement of Facts is based upon the Court's Letter Opinions of August 19 and December 19, 2008, and trial exhibits and testimony, including stipulations of fact previously reached by the parties (DSTS Exs. 15, 16).

³ Voluntary associations such as churches (both local and general) were considered "indefinite" beneficiaries, and conveyances to such entities "could not be enforced" unless authorized by statute. Letter Opinion of August 19, 2008, at 4, 6 (footnote omitted).

⁴ *Brooke v. Shacklett*, 54 Va. 301, 303 (1856). See *Gallego's Ex'rs v. Attorney General*, 30 Va. 450 (1832); *Seaburn's Ex'r v. Seaburn*, 56 Va. 423 (1859) (invalidating, as beyond the 1849 church property statute, an attempt to convey property by devise).

⁵ Section 8 of Chapter 76 provided that "[e]very conveyance shall be valid which hereafter shall be made of land for the use or benefit of any religious congregation, as a place for public worship" Section 9 of Chapter 76 provided that "[t]he circuit court of the county . . . wherein there may be any parcel of such land . . . may, on application of the proper authorities of such congregation, from time to time, appoint trustees . . . to effect or promote the purpose of the conveyance . . . and the legal title to such land shall, for that purpose, be vested in the said trustees . . . and their successors." As this Court recognized, the 1874 Deed is deemed to incorporate the law in effect as of the date of its execution (Letter Opinion of December 19, 2008, at 8). It is thus settled that, as a matter of fact and law, the 1874 deed incorporates the provisions of Virginia law pertaining to conveyances to religious congregations in effect at the time.

erty (DSTS Ex. 15-00097, ¶¶1-2; Ex. 1). On October 2, 1874, that Circuit Court granted the foregoing petition (*id.* ¶2, Ex. 1), ordering:

On the motion of James F. Ball, S.A.M. Leland, William Brown, Slater Cowart, William A. Hudnall, Octavius H. Cox and James S. Gilliam, the vestry of the Protestant Episcopal Church in the County of Northumberland and the proper authorities of said Church, It is ordered that the said James F. Ball, William Brown, Slater Cowart, William A. Hudnall, Octavius H. Cox, Sam'l A.M. Leland, Charles Carter, & Jas. S. Gilliam and John S. Davenport and their successors be, and they are hereby appointed Trustees of the said Protestant Episcopal Church, pursuant to the 9th section of Chapter 76 of the Code of Virginia 1873 (Page 663)

Just over a month later, by deed dated November 20, 1874 ("1874 Deed"), certain named grantors conveyed legal title to three-quarters of an acre of certain property to the trustees identified in the foregoing October 2, 1874 Order (DSTS Ex. 15-00098, Initial Stip. ¶3). The 1874 Deed (DSTS Exs. 5, 15-00098-00099) provided in pertinent part (emphasis supplied):

This deed made this the Twentieth day of November in the year of Our Lord one thousand Eight hundred and Seventy four between Peter C. Cox and Sophia Thibodeaus D. Cox his wife of the first part, and James F. Ball, Sam'l A.M. Lealand, William A. Hudnall, William Brown, Slater Cowart, Octavius H. Cox, Charles Carter, James S. Gilliam and John S. Davenport, of the second part, all of the County of Northumberland, State of Virginia, Witnesseth, that the ***said parties of the first part*** for and in consideration of the sum of Fifty dollars (\$50) to them in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ***have bargained and sold*** and by these presents do bargain, sell ***and convey to the said parties of the second part as trustees duly legalized and appointed by the Circuit Court of said County in pursuance of section 9, chapter LXXVI of the code of Va. 1873 all of that certain lot, parcel or piece of land situate in Heathsville in said County*** and included in & bounded by the following courses & distances, beginning at a corner post on the road side leading from Springfield Gate to John D. Betts' house, thence South 33 1/4° East 14,32 poles to a post in front of Mrs. Deshields old kitchen, thence North 61 1/4° East 2,08 poles to a locust tree, thence, North 73 3/4° East 3,32 poles to a corner post of the enclosure around Mrs. Deshields kitchen yard, thence North 66 1/2° East 2,00 poles in said Cox's lot corner to this & side to said Cox, thence North 8 1/2° West 10,80 poles to a post on road leading to John D. Betts' house, corner to this & said Cox, thence South 85° West 13,10 poles to the point of beginning, Containing an area of one hundred and twenty poles or ***three quarters of an acre***. ***To have and to hold the said lot, parcel or piece of land with all and singular the privileges & appurtenances thereto belonging unto the said parties of second part their assigns and successors who may be legally appoint-***

ed from time to time, In trust nevertheless and for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church for the purpose of erecting a house for divine worship and such other houses as said congregation may need, And said church or house for divine worship when so built shall be used and enjoyed by said religious society or congregation according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia

As noted above, at the time the above vestry petition seeking appointment of trustees was filed, the local congregation envisioned by the statute in question had no name (DSTS Ex. 15-00097-00099, ¶¶3-5). Between 1874 and 1881, the “house of divine worship” was “erect[ed]” (see DSTS Ex. 148-02195-02197; Tr. 3674:18-3675:3). The church thus built was first named “Emmanuel Church” (DSTS Ex. 15-00107). Thereafter, on April 30, 1881, this same church was consecrated as St. Stephen’s Church (DSTS Ex. 15-00117). The church building “has been continuously used as a church” by St. Stephen’s “from the completion of construction to the present” (DSTS Ex. 15-00099, ¶5).

In 2004, St. Stephen’s enlarged the historic church in order to expand its seating capacity (DSTS Ex. 92-01432; Tr. 3695:14-3696:20), and, in 1999, built a new parish hall on this same parcel directly adjacent, and physically connected, to the historic church (PX-SSH-0108; Tr. 3684:2-9). Both the historic church and the new parish hall can be seen in a recent photograph of the two buildings (DSTS Ex. 152).

As noted above, there is no factual dispute about how title has been held since the date of the 1874 Deed: since the date of the Deed, legal title has been vested in the trustees of St. Stephen’s Church for the benefit of the congregation (DSTS Ex. 15-00099-00100, ¶¶6, 8). And, as the Court held in its Letter Opinion of December 19, 2008 (at 8 n.5), the 1874 Deed parcel constitutes “property held in trust for such congregation.”

ARGUMENT

For at least three independently sufficient reasons, the 1874 deed language contains no enforceable covenant restricting the use of the parcel since: (1) there is no claim before the Court to enforce the foregoing language as a restrictive covenant; (2) the language does not in fact constitute a restrictive covenant; (3) assuming *arguendo* that the language constitutes a restrictive covenant, the covenant has no continuing force because the purposes of the covenant have been substantially met and the covenant has been nullified by inconsistent uses in the form of six conveyances out of the 1874 deed parcel.

I. There Is No Claim before the Court to Enforce the Foregoing Deed Language as a Restrictive Covenant

The Virginia Supreme Court reiterated the established general rule in *Virginian R. Co. v. Avis*, 124 Va. 711, 718-719 (1919) that “language in a deed . . . must be construed most strongly against the grantor, and upon the further general rule that restrictive covenants, like all other impediments to the free alienation of real estate, are not favored.” The Court there further explained “that all doubts [as to the grantor’s intention] are to be resolved in favor of the free alienation of real estate.” *Accord Schwarzschild v. Welborne*, 186 Va. 1052, 1058 (1947); *Whitehurst v. Burgess*, 130 Va. 572 (1921)(substantial doubt or ambiguity is to be resolved against the restrictions and in favor of the free use of property).

Moreover, valid covenants restricting the free use of land, although widely used, are not favored and must be strictly construed, and the burden is on the party seeking to enforce them to demonstrate that they are applicable to the acts of which he complains. *Riordan v. Hale*, 215 Va. 638, 641 (1975); *Traylor v. Holloway*, 206 Va. 257, 259-260 (1965). Finally, Virginia law requires a party desiring to enforce a restrictive covenant to plead and prove the following elements:

- (1) privity between the original parties to the covenant (horizontal privity);
- (2) privity between the original parties and their successors in interest (vertical privity);
- (3) an intent by the original covenanting parties that the benefits and burdens of the covenant will run with the land;
- (4) that the covenant "touches and concerns" the land; and
- (5) the covenant must be in writing.

Sloan v. Johnson, 254 Va. 271, 276 (1997); *Sonoma Development, Inc. v. Miller*, 258 Va. 163, 167 (1999). A party seeking to enforce a restrictive covenant also bears the burden of proving the elements set out above and that the covenant is applicable to the acts of which he complains. *Friedberg v. Riverpoint Bldg. Comm.*, 218 Va. 659, 665, 239 S.E.2d 106 (1977).

Neither the complaint brought by TEC nor that brought by the DVA and individual plaintiffs (members of St Stephen's who voted against disaffiliation) stated the above elements of a claim to enforce specifically the 1874 deed language as a restrictive covenant. *See* Complaint, filed January 31, 2007, in *Protestant Episcopal Church in the Diocese of Virginia, et al. v. St. Stephen's Church, et al., passim*; Complaint, filed February 9, 2007, in *The Episcopal Church v. Truro Church, et al., passim*. In particular, neither complaint alleged the requisite vertical privity or that the deed language was intended by the grantor to constitute a restrictive covenant. Nor was there any evidence presented at trial to prove the required foregoing elements of such a claim. Plaintiffs' failure to either plead or prove that the 1874 deed language should be enforced as a restrictive covenant means that there is no such claim before the Court.

II. The Foregoing Deed Language Does Not Constitute a Restrictive Covenant

Virginia law recognizes two types of restrictive covenants: "the common law doctrine of covenants running with the land and restrictive covenants in equity known as equitable ease-

ments and equitable servitudes." *Sloan v. Johnson, supra*, 254 Va. at 274-275; *Mid-State Equip. Co., Inc. v. Bell*, 217 Va. 133, 140 (1976). Because the language in question is contained within the deed, it is by definition not an equitable easement or servitude. *Id.* As noted above, in examining restrictive covenants, any doubt or ambiguity is to be resolved against the restriction and in favor of the free use of the property, since such covenants "are not favored and must be strictly construed." *Barris v. Keswick Homes, L.L.C.*, 268 Va. 67, 71 (2004).

A reading of the 1874 Deed language in question shows that the reference to the still unnamed "Protestant Episcopal Church" congregation is found but once in the deed and is plainly a merely descriptive reference to the owner of the property. As such, the language in the 1874 Deed referring to the Protestant Episcopal Church is manifestly language of identification only and, as such, cannot fairly be read to restrict the use of the property solely by those affiliated with a particular denomination. *Arkansas Annual Conf. of AME Church, Inc. v. New Direction Praise and Worship Cntr., Inc.*, 291 S.W.3d 562 (Ark. 2009); *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 489 A.2d 1317, 1324-25 (Pa. 1985)(conveyance to Middlesex Presbyterian Church gave title to local congregation); *Foss v. Dykstra*, 342 N.W. 2d 220, 223 (S.D. 1983)(conveyance to Ebenezer Presbyterian Church reflected no proprietary interest on part of denomination).

Also as noted above, the conveyance effected by the 1874 Deed could only have been a conveyance to the local congregation, not to the denomination. *Brooke, supra*; *Hoskinson, supra*. Hence, the reference in the deed to the "religious society and congregation" can properly be read to refer only to St. Stephen's Church.

The language said to restrict the use of the parcel has two clauses. The first clause refers to the construction by the local congregation of a "house of divine worship." The second clause

specifies the “use[] and enjoy[ment]” by the “said church.” The “said church” language likewise can only be a reference back to the local congregation of St. Stephen’s.

The second clause goes on to state that the local congregation’s “use[] and enjoy[ment]” is to be “according to the laws and canons of *said church* not inconsistent with the laws and constitution of Virginia” Again, properly construed, the reference in the second clause to “said church” must also mean that the use and enjoyment of the property by the local congregation must conform with the *congregation’s* own governing rules.

Given the strict rules of construction applicable to restrictive covenants – rules that mandate construction strongly against the grantor and resolution of *all* doubts in favor of free alienation, *Virginian R. Co. v. Avis, supra*, 124 Va. at 718-719 – it follows that the language of the 1874 Deed cannot fairly be read to mean that the property must be used by a congregation attached to The Episcopal Church.⁶ The limitation on use must “plainly [be] within the restrictive

⁶Set forth in Appendix A attached to this brief are quotations from or paraphrases of the deeds at issue in *Brooke v. Shacklett, supra*; *Hoskinson v. Pusey, supra*; *Finley v. Brent*, 87 Va. 103 (1890), and *Green v. Lewis*, 221 Va. 547 (1980). The *Brooke* deed is quoted in full in the opinion (54 Va. at 302). While the *Hoskinson* deeds are paraphrased in some detail in the court’s opinion, the *Hoskinson* court stated (73 Va. at 431) that the deeds there are the “same in substance” as the *Brooke* deed.

The *Brooke* and *Hoskinson* deeds contrast sharply with the St. Stephen’s 1874 Deed. The *Brooke* and *Hoskinson* deeds are lengthy, highly detailed, and plainly employ specific restrictive language showing the grantor’s intention to limit the use of the property to a congregation attached to a particular identified denomination. Included in such detail is an elaborate description of the participation by the congregation in the governance and practices of the denomination and the procedures to be followed to replace the trustees.

A similar comparison of the *Finley* and *Green* deeds is impossible. The *Green* record here (COM-277) does not include the deed, and the *Finley* and *Green* deeds are not quoted in full in the court opinions. Nevertheless, the quoted excerpt from the *Finley* deed reveals the grantor’s very specific intent to limit the use of the property to a congregation attached to the Methodist Protestant Church: “to have and to hold the same in trust for the sole and exclusive use and bene-

(Footnote continued)

covenant” and where, as here, such a limitation is doubtful, “to doubt is to deny.” *Whitehurst v. Burgess, supra*.

III. Assuming Arguendo the 1874 Deed Language Constitutes a Restrictive Covenant, Its Restrictive Force Ended Because the Purpose of the Language Has Been Substantially Met and There Have Been Repeated Inconsistent Uses

The stated purposes in the 1874 Deed are “*for the purpose of erecting a house for divine worship*” and thereafter for the congregation’s “*use[] and enjoy[ment] . . . according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia.*” The uncontradicted trial proof is that the first purpose was substantially satisfied by approximately 1881, when the multi-year construction of the church was completed. Uncontradicted trial evidence also showed that St. Stephen’s constructed a new parish house and offices on the 1874 deed parcel, reinforcing the conclusion that the first purpose of the language in the deed has been substantially fulfilled. It is also undisputed that St. Stephen’s has used and enjoyed and continues to use and enjoy the property substantially in accordance with its own governing documents.

“[A] covenant of the nature of a covenant running with land, when broken ceases to pass with the land and becomes a mere personal covenant or chose in action.” *Chesapeake & O. R. Co. v. Willis*, 200 Va. 299, 304 (1958) (discussing a covenant to build a fence around a railroad). *See also Gibbons v. Tenneco, Inc.*, 710 F. Supp. 643, 648 (E.D. Ky. 1988) (citing, *inter alia*, Wil-

(Footnote continued)

fit of religious congregations of regular orthodox Methodist Protestants which may thereafter assemble there to worship, when the said house is completed, or any church which may hereafter be built at or near the present site or situation, for the purpose of religious worship of the Methodist Protestants, and for no other use or purpose whatever.” This specific, unambiguous directive stands in sharp contrast to the language in the St. Stephen’s 1874 Deed with its single, generalized, purely descriptive reference to the local congregation and with no direction that the property be used for the worship of members of a particular denomination. And the description of the *Green* deed in the court’s opinion shows that the court there read the deed to reflect an intention by the grantor to convey title to a congregation affiliated with a particular denomination.

lis, supra, and 20 Am.Jur.2d Covenants, Conditions, and Restrictions Section 21). *Accord Lee Rd. LP v. Markley Bus. Ctr. VI Bd.*, 23 Va. Cir. 386 (Va. Cir. Ct. 1991)(an affirmative covenant running with the land became a personal covenant only effective against the party who breached when one party failed to honor an affirmative covenant to build a common entrance).

The undisputed evidence at trial showed that, since 1874, there have been two conveyances out of the original 1874 deed parcel and four easements granted thereon, none of which incorporated the use restriction language contained in the 1874 Deed or were executed by privies of plaintiffs (see, *e.g.*, DSTS Ex. 41-00335-00336, -00360, -00375-00377, -00378-00380, -00422-00424, -00517-00521, -00526-00530). The effect of the foregoing conveyances and easements in derogation of language that allegedly limits the use of the property to only a congregation affiliated with The Episcopal Church means that any such alleged restriction has been nullified and that whatever restrictive force such language may have once had has been lost.


Dated: October 14, 2011

Respectfully submitted,

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APPENDIX A

DEEDS

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Brooke v. Shacklett, 54 Va. 301 (1856):

By deed date June 3, 1842, John C. Davis and wife, conveyed to Benjamin Brooke and four others, a lot in Salem, Virginia, "In trust that they shall erect and build, or cause to be erected and built thereon, a house or place of worship for the use of the members of the Methodist Episcopal church in the United States of America, according to the rules and discipline which from time to time may be agreed upon and adopted by the ministers and preachers of the said church at their general conferences in the United States of America; and in further trust and confidence, that they shall at all times forever hereafter, permit such ministers and preachers belonging to said church as shall from time to time be duly authorized by the general conferences of the ministers and preachers of the said Methodist Episcopal church, or by the annual conference authorized by the said general conference, to preach and expound God's holy word therein. And in further trust and confidence, that as often as any one or more of the trustees herein before mentioned shall die or cease to be a member or members of the said church, according to the rules and discipline as aforesaid, then and in such case it shall be the duty of the stationed preacher or minister (authorized as aforesaid) who shall have the pastoral charge of the members of the said church, to call a meeting of the remaining trustees as soon as conveniently may be; and when so met, the said minister or preacher shall proceed to nominate one or more persons to fill the place or places of him or them whose office or offices has or have been vacated as aforesaid; provided, the person or persons so nominated shall have been one year a member or members of the said church immediately preceding such nomination, and be at least twenty-one years of age. And the said trustees, so assembled, shall proceed to elect, and by a majority of votes appoint the person or persons so nominated to fill such vacancy or vacancies, in order to keep up the number of five trustees forever. And in case of an equal number of votes for and against the said nomination, the stationed minister or preacher shall have the casting vote: provided, nevertheless, that if the said trustees, or any of them, or their successors, have advanced, or shall advance, any sum or sums of money, or are or shall be responsible for any sum or sums of money on account of the said premises, and they, the said trustees or their successors, be obliged to pay the said sum or sums of money, they, or a majority of them, shall be authorized to raise the said sum or sums of money by a mortgage on said premises, or by selling the said premises, after notice given to the pastor, or preacher, who has the oversight of the congregation attending divine service on the said premises. If the money due be not paid to the said trustees or their successors within one year after such notice given, and if such sale take place, the said trustees, or their successors, after paying the debt, and other expenses which are due, from the money arising from such sale, shall deposit the remainder of the money produced by the said sale in the hands of the steward or stewards of the society belonging to or attending divine service on the said premises, which surplus of the produce of such sale, so deposited in the hands of said steward or stewards, shall be at the disposal of the next yearly conference, authorized as aforesaid; which said yearly conference shall dispose of said money according to the best of their judgment for the use of said society. And the said John C. Davis and Susanna his wife do by these presents warrant and forever defend all and singular the before mentioned and described lot or piece of land with the appurtenances thereto belonging, unto them, the said Benjamin Brooke, W. H. Rector, George W. Shacklett, James F. Milton and Richard H. Carter, and their successors, chosen and appointed as aforesaid, from the claim or claims of them, the said John C. Davis and Susanna his wife, their heirs and assigns, and from the claim or claims of all persons claiming by or under them."

***Hoskinson v. Pusey*, 73 Va. 428 (1879):**

“The deed is the same in substance as the deed in *Brooke & others v. Shacklett*, 13 Gratt. 301 and the construction must be the same.” *Hoskinson*, 73 Va. at 431.

“By deed bearing date the 30th December, 1833, Richard Tavener and wife conveyed to James Tippitt and seven other persons one and a half acres of ground in the county of Loudoun, upon trust that they shall erect and build, or cause to be erected and built there-on, a house or place of worship for the use of the Methodist Episcopal Church in the United States of America, according to the rules and discipline which, from time to time, may be adopted by the ministers and preachers of said church, at their general conference in the United States of America; and in further trust and confidence that they shall, at all times forever hereafter, permit such ministers belonging to the said church as shall, from time to time, be duly authorized by the general conference of the Methodist Episcopal Church, or by the annual conference, to preach and expound God's holy word therein.

And the deed then provided for supplying a vacancy in the board of trustees, and their qualifications; and further, that if the trustees, or their successors, were obliged to pay any money on account of said premises, they should be authorized to raise the same by mortgage or sale of the premises; So the trustees are authorized to sell the property for advances made by them, ‘after due notice to the preacher in charge,’ and, after paying the debt or debts, to ‘place the remainder of the proceeds of sale, if any, in the hands of the stewards of the church,’ &c.; the stewards being officers in the local societies.

And by deed bearing date the -- day of _____, 1847, William W. Butts and wife conveyed to J. B. White and five others, and their successors, a parcel of ground in trust that they shall, at all times, permit such ministers belonging to the Methodist Episcopal Church as may be appointed by the annual conference, within the bounds of which the said lot of ground may be included, to enter and occupy, during the time of such appointment, the house situated thereon as a parsonage, with the use of the out-buildings attached. And the deed then provided for the mode of filling a vacancy in the board of trustees.”

***Finley v. Brent*, 87 Va. 103 (1890):**

By deed dated October 1, 1860, William Harding and his wife conveyed a parcel “on which the new Methodist Protestant Church in Heathsville was erected, in the said county of Northumberland, for the use and benefit of the religious congregation of the Methodist Protestant Church at Heathsville, which will assemble there for the purpose of worship; to have and to hold the same in trust for the sole and exclusive use and benefit of religious congregations of regular orthodox Methodist Protestants which may thereafter assemble there to worship, when the said house is completed, or any church which may hereafter be built at or near the present site or situation, for the purpose of religious worship of the Methodist Protestants, and for no other use or purpose whatever.”

Green v. Lewis, 221 Va. 547 (1980):

By deed dated February 2, 1875, Hector F.J. Dahl and Lucie H. Dahl conveyed to the "Trustees of the A.M.E. Church of Zion" for the purpose of erecting an A.M.E. Church of Zion to be known as Lee Chapel, "not a church of some other denomination, or an independent church." *Id.* at 553.

St. Stephen's Church 1874 Deed (DSTS Exs. 5, 15-00098-99):

"This deed made this the Twentieth day of November in the year of Our Lord one thousand Eight hundred and Seventy four between Peter C. Cox and Sophia Thibodeaus D. Cox his wife of the first part, and James F. Ball, Sam'l A.M. Lealand, William A. Hudnall, William Brown, Slater Cowart, Octavius H. Cox, Charles Carter, James S. Gilliam and John S. Davenport, of the second part, all of the County of Northumberland, State of Virginia, Witnesseth, that the said parties of the first part for and in consideration of the sum of Fifty dollars (\$50) to them in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do bargain, sell and convey to the said parties of the second part as trustees duly legalized and appointed by the Circuit Court of said County in pursuance of section 9, chapter LXXVI of the code of Va. 1873 all of that certain lot, parcel or piece of land situate in Heathsville in said County and included in & bounded by the following courses & distances, beginning at a corner post on the road side leading from Springfield Gate to John D. Betts' house, thence South 33 1/4° East 14,32 poles to a post in front of Mrs. Deshields old kitchen, thence North 61 1/4° East 2,08 poles to a locust tree, thence, North 73 3/4° East 3,32 poles to a corner post of the enclosure around Mrs. Deshields kitchen yard, thence North 66 1/2° East 2,00 poles in said Cox's lot corner to this & side to said Cox, thence North 8 1/2° West 10,80 poles to a post on road leading to John D. Betts' house, corner to this & said Cox, thence South 85° West 13,10 poles to the point of beginning, Containing an area of one hundred and twenty poles or three quarters of an acre. To have and to hold the said lot, parcel or piece of land with all and singular the privileges & appurtenances thereto belonging unto the said parties of second part their assigns and successors who may be legally appointed from time to time, In trust nevertheless and for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church for the purpose of erecting a house for di-vine worship and such other houses as said congregation may need, And said church or house for divine worship when so built shall be used and enjoyed by said religious society or congregation according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2011, a copy of the foregoing St. Stephen's Church Post-Trial Brief re Its 1874 Deed was sent by electronic mail to:

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