

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:)	
Multi-Circuit Episcopal Church	)	Civil Case Numbers:
Litigation	)	CL 2007-248724,
	)	CL 2006-15792,
	)	CL 2006-15793,
	)	CL 2007-556,
	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1237,
	)	CL 2007-1238,
	)	CL 2007-1625,
	)	CL 2007-5249,
	)	CL 2007-5250,
	)	CL 2007-5362,
	)	CL 2007-5363,
	)	CL 2007-5364,
	)	CL 2007-5682,
	)	CL 2007-5683,
	)	CL 2007-5684,
	)	CL 2007-5685,
	)	CL 2007-5686,
	)	CL 2007-5902,
	)	CL 2007-5903, and
	)	CL 2007-11514

CHURCH OF THE WORD’S OPPOSITION BRIEF

Church of the Word (“COTW”), by counsel, hereby files this opposition brief to the Diocese/ECUSA brief on whether COTW’s property¹ is covered by §57-9.

SUMMARY OF RESPONSE

The bulk of the Diocese/ECUSA opening brief is devoted to seeking reconsideration of the Court’s June 27, 2008 opinion in this case. The Diocese and ECUSA concede, as they must, that in order to prevail regarding the Property, the Court must change the holding in the opinion

¹ For the purposes of this brief, the “Property” shall have the same meaning as that of the Stipulation at ¶8.

which determined that §57-9(A)'s reference to "whose property is held by trustees" is a reference to the local congregation.

Because COTW is specifically prohibited by this Court's rules to respond to what essentially is a Motion for Reconsideration until directed by the Court, it will not address the merits of the request for reconsideration. Moreover, since such reconsideration could impact not only COTW, but all of the CANA congregations, COTW requests that any direction be to all the parties.

Reexamination of the June 27, 2008, opinion is not necessary, however, for the Court to find that the Property is covered by COTW's §57-9 petition. The Court simply does not need to address here whether and how a diocese in Virginia may *ever* be a beneficiary of a trust interest in church property. Section §57-9 is designed to resolve the competing ownership claims of different potential groups of beneficiaries. Thus, provided there is sufficient evidence to support a factual finding that the congregation was *a* beneficiary of the trust at issue—that is, provided there is a meaningful factual nexus between the property at issue and the congregation—the property is held "in trust for such congregation" and §57-9 provides a neutral means of adjudicating those competing claims.

In its opening brief, COTW identified more than enough evidence for the Court to conclude that the Property at issue is "held in trust for [the] congregation." For example, it is undisputed that:

- The address of the Property at issue has always been the address of the COTW congregation, and never the address of any Diocesan entity or office;
- The address of the Grantee contained in the Deed at issue was the address of the COTW congregation, and never the address of any Diocesan entity or office;
- The COTW congregation raised more than \$200,000 to support the purchase of the Property;

- The COTW congregation has made more than \$750,000 in mortgage payments toward ownership of the property;
- The Diocese has admitted that the Property is COTW's "church home" and its "permanent building."
- At the Diocese's request, the Court replaced the Diocesan trustees with Congregational trustees for the Property in 2005, and the Diocese agreed to replace the Diocesan trustees with the Congregational trustees but never made good on its promise.

In short, even apart from the longstanding prohibition on denominational trusts in Virginia, the record here provides more than sufficient evidence for the Court to conclude that the Diocesan trustees appointed pursuant to Va. Code §§57-8 and 57-15 held the Property at least partly "in trust for [the] congregation"—and thus that the Property is subject to §57-9(A). Accordingly, the Court must conclude that the Church of the Word property is subject to §57-9(A).

ARGUMENT

The Diocese/ECUSA Opening Brief, as well as other briefs related to COTW, ignore COTW's beneficial interest in the Property. It is this beneficial interest of COTW in the Property that rises to a level sufficient for COTW to invoke §57-9. This particular issue is unique to Virginia §57-9 case law. There are no cases directly on point to give the Court and the parties direction as to the level of evidence necessary to show a beneficial trust interest by a church sufficient to invoke §57-9 in the event the other §57-9 criteria of division and branch are met. This is not a §57-15 petition and the Court has succinctly identified in its prior rulings that §57-9 makes no reference to the governing authorities of a church.

The Diocese/ECUSA Opening Brief fails to address this point and simply asserts that COTW has no beneficial interest in the Property sufficient to invoke §57-9. This limited approach ignores the plain language of §57-9 which only requires that the congregation's property at issue be held in trust. The Diocese/ECUSA Opening Brief repeatedly calls certain evidence irrelevant to the issues at hand based on the Court's prior rulings with regard to *Green v. Lewis*,

but then goes on to selectively point out evidence they believe to be in their favor. In this §57-9 case, the Court need not inquire into all of the *Green v. Lewis* factors, a §57-15 case, because §57-9 “contains absolutely no reference to the governing authorities of a church.” April 3, 2008 Letter Opinion at p. 74. The Diocese/ECUSA ignore the applicability of §57-9 to resolve this dispute over COTW’s beneficial interest when the evidence presented by the parties overwhelmingly demonstrates that COTW has a beneficial interest in the Property.

I. The Evidence Presented Establishes That The Trustees Appointed In 1993 Hold The Property In Trust For The Benefit Of Church Of The Word.

The Diocese/ECUSA assert that because COTW was a mission church at the time of the purchase of the Property, the Property is that of the Diocese. By referring to its Constitutions and Canons and arguing that mission churches are different than those churches that have achieved church status, the Diocese/ECUSA take a simplistic approach to the issues surrounding the purchase. The Diocese concludes that in essence COTW is and was the Diocese at the time of the purchase, thus negating any beneficial interest of COTW in the Property. Section §57-9, however, has no reference to the governing authorities of a church; it refers only to "congregations" that are "attached" to the broader "church or religious society." Thus, the distinction between a "mission" or a "church" under the Diocese's canons is irrelevant. The only question is whether the religious body that voted is a "congregation," and that is undisputed. The relevant facts that the Court should consider relate to the Petition, the Deed and the facts surrounding the transaction and the intent of the parties. Upon a review of these fact, it is clear that COTW has a beneficial interest sufficient to invoke §57-9.

In looking at the intent of the parties to the purchase, it is the Diocese’s denial of any beneficial interest by COTW in the Property that does not square with the facts. The Petition involving the transaction for the purchase of the property reveals that COTW was the contract pur-

chaser, that the purchase was for the benefit of COTW, COTW paid the bulk of the purchase price and that the purchase was authorized in the COTW Chancery Proceeding. *Stip Ex. 's 10, 13, 15 and ¶11*. Subsequent to the purchase, the Diocese acknowledged that COTW purchased its “current, permanent building.” *Stip Ex. 16 and 17*.

Second, the Diocese has conceded that the address referenced in the Deed was that of COTW and not the Diocese (*Stip. ¶17*) and has admitted such in responses to requests for admissions. *See Exhibit E to COTW Opening Brief of September 5, 2008*. This should be dispositive of the issue. Moreover, the facts and circumstances surrounding the purchase confirm that COTW was the intended beneficiary of the purchase. At a minimum places the language of the Deed in question allowing the Court to look beyond the Deed for the intent of the parties. This is not an “uncharted excursion to find some nexus between COTW and the Property” as the Diocese asserts. Instead it is a reasoned inquiry into the facts and circumstances surrounding the parties at the time the deed was executed.

Notwithstanding these facts, there are other factors, most predominantly the fact that the trustees named in the deed have been removed by court order and no longer have power to hold title to the Property, which must be taken into consideration. This point is discussed in more detail below.

Interestingly, the Diocese/ECUSA ask the Court to not consider the equitable claims related to the purchase money and subsequent money flow between the Diocese and COTW yet stretch the stipulated facts to their favor.² COTW is not asking the Court to delve into an accounting of the source of each dollar that has gone to the Property either in its purchase or its

² The Diocese position that the contributions from other churches within the Diocese amounts to a credit in favor of the Diocese is not supported by the evidence. The Diocese gave only \$25,000 for the purchase. Nothing more. Moreover, the Diocese ignores the over \$750,000 that COTW has paid in mortgage payments. On the whole, the balance of the money's paid for the Property by the Congregation is close to \$1 million.

maintenance. The purpose of presenting these facts is to show that COTW's interest in the Property was more than that of a mere tenant and that it had a beneficial interest sufficient to invoke §57-9; hence this fact goes to the facts and circumstances surrounding the parties at the time the deed was executed.

These facts, in addition to the other facts provided in the COTW Opening Brief, clearly demonstrate that COTW has a beneficial interest in the Property sufficient to invoke §57-9.

II. The Diocese Admits In Its Brief That It Has Not Complied With Its Processes And The Court Order Replacing The Diocesan Trustees.

The Diocese/ECUSA acknowledge in their Opening Brief that COTW requested and was granted permission to convey title to trustees it selected (the Congregational trustees). Diocese Opening Brief P. 3. In that trustees appointed pursuant to §57-8 have no power to manage or control the property, the Diocesan trustees' failure to adhere to the court order entered on September 12, 2005 removing them and their failure to adhere to the grant of permission by the Executive Committee can only be considered acts beyond the scope of their authority and in violation of the court order within which their authority to hold the Property was removed.³

Moreover, the Diocese/ECUSA Opening Brief embellishes upon the stipulated facts which state that the Diocese became concerned about COTW "Rector's possible intent to leave the Diocese." A "possible intent" by the Rector of the Church does not amount to "COTW intended to leave the Diocese." The Diocese has conceded that COTW went through the proper voting procedure sufficient to invoke §57-9. Had the Diocese wanted to challenge the September 12, 2005 order replacing the Diocesan trustees and ending their power to hold the title to the Property, it had ample opportunity to do so. Nowhere in its pleadings has the Diocese asked the Court to set aside this order, nor would it have a basis to do so. The order was obtained at the

³ The Diocese's brief simply ignores the fact that the September 12, 2005 order was entered and that the Diocesan trustees power to hold the real estate has been removed.

direction of the Diocese, was presented to the Diocese within one day of its entry and was invoked by the Diocese when seeking a change of Trustees.

The Diocese nevertheless implies that the order was obtained *ex parte* and thus somehow suspect. Putting aside the fact that the Diocese was given notice of the order, §57-8 does not require notice to the current trustees. §57-8 states that “without notice to the trustee or trustees change those so appointed whenever it may seem to the court or judge proper to effect and promote the purpose and object of the conveyance, devise, or dedication, and the legal title to such land shall for that purpose and object be vested in the trustees for the time being and their successors.” §57-8 (emphasis added). Accordingly, the court that entered the order had to have made the determination that the replacement of the Diocesan trustees with the Congregational trustees was “proper to effect and promote the object of the conveyance.” Second, it was only after the Diocesan trustees’ power to hold the real estate was removed and the Diocese internally agreed to the appointment of the Congregational trustees that the Diocese back tracked on its promises and the Diocesan trustees abrogated their duties. Third, this Order is no longer subject to reconsideration by this Court because it is a final order under Rule 1:1. No due process violation occurred, both because the Order was obtained at the direction of the Diocese and used by the Diocese to approve the change of trustees and because §57-8 specifically allows such an order to be obtained *ex parte*. Additionally, Va. Code §8.01-428 does not give the Court the power to overturn this Order. There is simply no evidence that the Order was obtained by fraud or error. The Diocese’s change of heart does not allow the Court to alter an order that is three years old.

Accordingly, the removal of the Diocesan trustees negates any argument that COTW does not have a trust interest in the Property.

III. COTW's §57-9 Claim is Not Based on Unpled Equitable Claims

The Diocese argues that COTW should not be entitled to assert "some sort of unpled claim to ownership based on use of the Property." Diocese Opening Brief P. 14. COTW is not asserting such a claim; nor is it asserting an adverse possession claim. COTW is asserting that it has a sufficient beneficial interest in the Property to invoke §57-9. As described above, this interest is evidenced by the explicit language of the Petition stating that the purchase was "for the benefit of Episcopal Church of the Word."

IV. The Court Should Not Re-Examine Its June 27, 2008 Opinions

Over half of the Diocese/ECUSA brief, pages 4 through 11, is a repeat of the Diocese's request to have this Court reconsider its June 27, 2008 opinions on the five questions and constitutionality. The Diocese and ECUSA originally made this request in their opening brief pursuant to the Court's August 22, 2008 order. Both requests, however, are procedurally defective. First, the Diocese and ECUSA did not formally seek reconsideration through a separate motion, as they did when seeking reconsideration of the Court's ruling related to a conveyance from Christ the Redeemer to Truro. Moreover, the Diocese and ECUSA have not given proper notice to all litigants in this case. They should not hide in a brief addressing issues specific to Church of the Word a broader request for the Court to reconsider opinions affecting all of the litigants in the Multi-Circuit Episcopal Church Property Litigation.

As far as the substance of the request for reconsideration, the Rules of the Fairfax Circuit Court do not allow Church of the Word to respond to a Motion for Reconsideration until directed to do so by the Court. *See* Circuit Court Motions Docket Procedures (Revised 2/2007) at ¶17.C. Accordingly, Church of the Word declines to address these points unless and until instructed by

the Court. If the Court determines that it wants a response, Church of the Word respectfully requests that the other CANA congregations be permitted to weigh in as well.


V. Conclusion

The evidence that COTW has a beneficial interest in the Property sufficient to invoke §57-9 is overwhelming. The Court should so conclude and based on the voting consent order and the previous orders of this Court, enter final judgment in favor of COTW and conclusively determine that the Property is that of COTW and not the Diocese or ECUSA.

Dated: November 5, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2008 a copy of the foregoing Church of the Word's Opposition Brief, was sent by electronic mail and first-class mail, postage prepaid, to:

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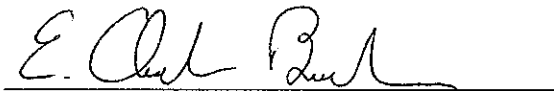
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