

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:
Multi-Circuit Episcopal Church
Litigation

)
) **Civil Case Numbers:**
) 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 REPLY BRIEF

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

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

SUMMARY OF RESPONSE

The Diocese/ECUSA raised two new matters in their Opposition Brief which necessitate a reply. First, the Diocese/ECUSA for the first time argue that COTW is not permitted to raise the arguments related to its property because COTW allegedly has not pled a beneficial interest in the Property. Second, for the first time, they argue that factually COTW has not proven either a resulting or constructive trust. These newly raised arguments fail and do not change the fact that COTW has a beneficial interest in the Property sufficient to invoke §57-9. COTW's pleadings, including its §57-9 Petition, are replete with sufficient allegations concerning COTW's beneficial interest in the Property. COTW's position has always been that it has a beneficial interest in the Property sufficient to invoke §57-9. The distinction between whether COTW's trust interest is express, resulting or constructive is not incumbent in the §57-9 analysis, but to the extent that it is, COTW has clearly shown an express interest in the Property. Moreover, the facts and circumstances presented by the evidence contained within the stipulation, clearly and convincingly show that if the COTW interest is not express, it has a resulting beneficial interest in the Property.²

Notwithstanding these points, the Diocese/ECUSA again concede that unless the Court changes its opinion related to denominational trusts, the Court must rule in favor of COTW.

ARGUMENT

COTW's pleadings are sufficient to identify its interest in the Property sufficient to invoke §57-9. It is only in the context of this property dispute that the Diocese has now taken the position that the Property is not that of the congregation of COTW. For 15 plus years, the Diocese and COTW treated the Property as that of COTW. The Property was purchased in COTW's

² For the purpose of its §57-9 Petition, COTW has not asserted a constructive trust. COTW expressly reserves the right to assert such a claim in the declaratory judgment actions.

chancery matter and the Purchase Petition (*Stip. Ex. 13.*) explicitly stated that the purchase was for the benefit of COTW. The leaders of the Diocese acknowledged this in letters to the congregation (*Stip. Ex. 's 16 and 17*). To ignore COTW's beneficial interest would be to simply re-write the history of the Property.

There is absolutely no requirement in §57-9 or the associated case law that requires the level of proof that the Diocese/ECUSA now at this late stage assert for the first time. Such a requirement would render §57-9 a nullity in most cases as recognized by this Court in its June 27 2008 letter opinion at P. 12. §57-9's only requirement is that a congregation's property be held by trustees. Notwithstanding this new legal position, through the Stipulation, COTW has sufficiently demonstrated its beneficial interest in the Property for §57-9 under any standard.

I. COTW's Pleadings Expressly State Its Interest in the Property

In Paragraphs 2 and 7 through 10, COTW specifically identified sufficient facts upon which COTW pled its right to invoke §57-9. These facts include its asserted claim that its Trustees held the title to the Property, its payment of the purchase price, and the improvements it made to the Property. Under Virginia pleading standards, COTW is not required to assert every fact that supports its claims. *See* 14B M.J. Pleading §8. Moreover, the points that the Diocese/ECUSA raise are not issues directed at the pleadings, but at the legal issues applied to the facts as they became more narrowed to COTW as the Diocese's position became better known.

Accordingly, COTW has sufficiently pled its right to assert §57-9.

II. COTW's Beneficial Interest in the Property Is Sufficient to Invoke §57-9

The Diocese/ECUSA want the Court to ignore even the most fundamental facts related to the purchase of the Property and ask the Court to make its decision in a vacuum. The Court should not do so. There can be no dispute that the Property was purchased pursuant to §57-8 and

§57-15 in the Chancery matter concerning COTW. This fact alone allows the court to narrow the potential §57-9 claimants and not be “adrift in [uncharted] waters” as the Diocese asserts.

Without having ever raised the issue before, the Diocese/ECSUA now claim that COTW has failed to meet a burden that does not exist in §57-9 case law. It is true that Virginia law recognizes three forms of trust: express, resulting and constructive trusts. The Diocese ignores COTW’s express trust interest. An express trust is based on the declared intention of the trustor. A resulting trust is based on a presumed intent or inference of law from the circumstances. A resulting trust arises when one person pays for property, or assumes payment of all or part of the purchase money, but has title conveyed to another. *Leonard v. Counts*, 272 S.E.2d 190, 194-195 (Va. 1980)(internal citations omitted). COTW is unaware of any §57-9 case that analyzes the trust interest of the claimant to the level the Diocese now demands; nor is there any such case cited by the Diocese.

Notwithstanding this new burden, the Stipulated Facts clearly show that COTW is the beneficiary of an express trust and in the alternative, a resulting trust.

a. COTW is the Beneficiary of An Express Trust

An express trust may be created "without the use of technical words." *Broaddus v. Gresham*, 181 Va. 725, 731 (1943). All that is necessary are words, "which unequivocally show an intention that the legal estate was vested in one person, to be held in some manner or for some purpose on behalf of another. . .," *Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718 (4th Cir. 1998) (citing *Broaddus*, 181 Va. at 731).

Based upon the facts presented, it is clear that an express trust for the benefit of COTW was created through the purchase of the Property. In the Purchase Petition itself, the purchase was identified as being for the benefit of COTW. *Stip. Ex. 13.*(“to purchase the Property for the benefit of [COTW]”). This fact should end the inquiry. However, the additional evidence sur-

rounding the purchase supports COTW's express trust interest in the Property. These facts, which existed at the time of the purchase of the Property, include the fact that COTW was the contract purchaser. *Stip. Ex. 17*; the Deed that was executed referenced the address of COTW, not the Diocese. *Stip. ¶17 and Ex. 14*; the court order approving the purchase approved the purchase pursuant to the terms of the purchase agreement in which only COTW was the contract purchaser. *Stip. Ex. 15*; the bulk of the funds used for the purchase were COTW funds, not Diocesan funds. *Stip. Ex. 10 and ¶11*.

Accordingly, COTW has proven an express trust in its favor sufficient to invoke §57-9.

b. In the Alternative, COTW Has A Resulting Trust Interest

Even if the Court were not to find an express trust contained on the face of the Deed and the supporting papers, the fact that COTW paid the bulk of the purchase money for the Property shows clearly and convincingly that at a minimum, COTW is the beneficiary of a resulting trust. A resulting trust arises when one person pays for property, or assumes payment of all or part of the purchase money, but has title conveyed to another with no mention of a trust in the conveyance. *Leonard v. Counts*, 272 S.E.2d 190, 194-195 (Va. 1980)(internal citations omitted). The Diocese now asserts that COTW is not expressly named in the Deed. This factual position of the Diocese allows the Court to examine COTW's resulting trust interest. The cases cited by the Diocese emphasizing "without any mention of a trust in the conveyance" miss the point. This reference is to the situation "Where the trust does not arise on the face of the deed, but is raised upon the payment of the purchase money, which creates a trust which is to over-ride the deed" *Lee v. Elliott & Co.*, 113 Va. 618 (1912). In COTW's case, the Diocese asserts that the trust interest does not arise on the face of the deed and there is no mention of COTW's trust interest on the Deed. Accordingly, COTW can assert a resulting trust under those facts. COTW clearly paid the largest portion of the purchase money and assumed all mortgage payments. Certainly no one

else made any such payments. If, as the Diocese now asserts, there is no mention in the “trust instrument” of COTW, the facts clearly and convincingly show that COTW is at a minimum the beneficiary of a resulting trust.

Moreover, the facts surrounding the actions of the parties after the purchase are further evidence of the parties’ intent at the time of the purchase. COTW does not invite the Court to commit error as suggested by the Diocese; error would be to base the trust interest solely on facts after the conveyance. The Court may examine facts that occur after the conveyance as they either support or refute the intent of the parties at the time of the conveyance. “The general principles of the case prove, that parole evidence, when there is a deed, is not to be admitted in all cases, nor refused in all, every case must depend on its own circumstances.” *Ross v. Norvell*, 1 Va. 14, 15 (Va. 1791)(admitting parole evidence in determining a resulting trust). The Diocese acknowledged COTW’s interest in letters and the Diocese agreed to replace the Diocesan trustees with the Congregational trustees but never made good on its promise. This agreement to replace the Diocesan trustees with Congregational trustees is an admission of COTW’s beneficial interest at the time of the conveyance.

Accordingly, COTW has clearly and convincingly proven its trust interest in the Property.

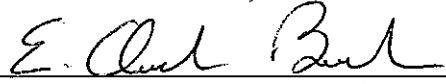
CONCLUSION

The evidence that COTW has a beneficial interest in the Property sufficient to invoke §57-9 is overwhelming. Notwithstanding the new arguments of the Diocese, COTW has proven this interest under any standard. 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 10, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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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