

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

The Protestant Episcopal Church In The )  
Diocese Of South Carolina; The Trustees of )  
The Protestant Episcopal Church in South )  
Carolina, a South Carolina Corporate Body; )  
All Saints Protestant Episcopal Church, Inc.; )  
Christ St. Paul's Episcopal Church; Church )  
Of The Cross, Inc. and Church Of The Cross )  
Declaration Of Trust; Church Of The )  
Holy Comforter; Church of the Redeemer; )  
Holy Trinity Episcopal Church; Saint )  
Luke's Church, Hilton Head; St. )  
Bartholomews Episcopal Church; )  
St. Davids Church; St. James' Church, )  
James Island, S.C.; St. Paul's Episcopal )  
Church of Bennettsville, Inc.; The Church )  
Of St. Luke and St Paul, Radcliffeboro; )  
The Church Of Our Saviour Of The Diocese )  
of South Carolina; The Church Of The )  
Epiphany (Episcopal); The Church Of The )  
Good Shepherd, Charleston, SC; The Church )  
Of The Holy Cross; The Church Of The )  
Resurrection, Surfside; The Protestant )  
Episcopal Church, Of The Parish Of Saint )  
Philip, In Charleston, In The State Of )  
South Carolina; The Protestant Episcopal )  
Church, The Parish Of Saint Michael, In )  
Charleston, In The State Of South Carolina )  
and St. Michael's Church Declaration Of )  
Trust; The Vestry and Church Wardens Of )  
St. Jude's Church Of Walterboro; )  
The Vestry And Church Wardens Of The )  
Episcopal Church Of The Parish Of St. )  
Helena and The Parish Church of St. Helena )  
Trust; The Vestry and Church Wardens Of )  
The Episcopal Church Of The Parish Of St. )  
Matthew; The Vestry and Wardens Of St. )  
Paul's Church, Summerville; Trinity Church )  
of Myrtle Beach; Trinity Episcopal Church; )  
Trinity Episcopal Church, Pinopolis; Vestry )  
and Church-Wardens Of The Episcopal )  
Church Of The Parish Of Christ Church; )  
Vestry and Church Wardens Of The )

Case No. 2013-CP-18-00013

**ORDER**

Episcopal Church Of The Parish Of St.	)
John’s, Charleston County, The Vestries	)
And Churchwardens Of The Parish of St.	)
Andrew	)
	)
PLAINTIFFS,	)
	)
v.	)
	)
The Episcopal Church (a/k/a, The	)
Protestant Episcopal Church in the	)
United States of America); The Episcopal	)
Church in South Carolina	)
	)
DEFENDANTS.	)
	)

**BEFORE THE COURT** is a Motion for Clarification of Jurisdiction and For Other Relief filed by Plaintiffs, Defendant’s Petition for an Accounting and Execution and Further Relief on Declaratory Judgments of the South Carolina Supreme Court, and Defendant’s Motion to Appoint a Special Master. This Court finds that no parish acceded to the 1979 Dennis Canon; the deed of Camp St. Christopher titled to the Trustee Corporation is controlling; the Federal Court has exclusive authority to decide all issues relating to the trademarks, service marks, and intellectual property; and the Defendants’ Petition for the Appointment of a Special Master and Petition for an Accounting are denied.

**I. BACKGROUND**

This case arises out of a dispute concerning South Carolina real and personal property, predicated upon The Protestant Episcopal Church in the Diocese of South Carolina’s (“The Diocese”) purported membership, withdrawal, and disaffiliation from The Episcopal Church (“TEC”). The Diocese, along with The Trustees of The Protestant Episcopal Church in South Carolina (“The Trustees”), and thirty-six Plaintiff parishes (collectively “the Plaintiffs”) claim that TEC and The Episcopal Church in South Carolina (“TECSC”) (collectively “the

Defendants”) have no “legal, beneficial, or equitable interest in the disputed property.” All parties contend they are the lawful and rightful owners and possessors of the real and personal property at issue.

## II. PROCEDURAL HISTORY

On January 3, 2013, the Diocese, the Trustees, and the individual church parishes organized as South Carolina non-profit corporations filed this action against TEC and TECSC to determine the ownership of church property due to disagreements on the theological direction of the Episcopal Church.<sup>1</sup>

A bench trial before the Honorable Judge Diane S. Goodstein began on July 8, 2014, and ended on July 25, 2014. After three weeks of testimony and presentation of evidence, by order dated February 3, 2015, the trial judge ruled that the Plaintiffs are the owners of their real, personal, and intellectual property, and further held that the Defendants have no legal, beneficial, or equitable interest in the Plaintiff’s real, personal, and intellectual property. The trial judge further ordered that pursuant to §§ 39-15-1105, §§ 16-17-310, and §§ 16-17-320, TEC and TECSC were permanently enjoined from using, assuming, or adopting in any way the names, styles, emblems, or marks of the Plaintiffs.

Subsequently, the Defendants TEC and TECSC appealed the order arguing against the standard used to determine who has the right to control the Diocese. Further, TEC and TECSC appealed the state registered trademarks claiming they created confusion with TEC’s Federal trademarks.

On August 2, 2017, the Supreme Court of South Carolina issued five separate opinions regarding this matter. *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*,

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<sup>1</sup> This Court’s decision is not an endorsement of the underlying theological position that gave rise to this division.

421 S.C. 211, 806 S.E.2d 82 (2017) (“the Collective Opinions”). The Plaintiff then filed a petition for rehearing, in which two justices voted to grant the petition, two voted to deny the petition, and one recused herself. The petition for rehearing was denied by order on November 17, 2017, and the remittitur was issued on the same date. The case was then assigned to this Court on January 10, 2018, by the Chief Administrative Judge for the First Judicial Circuit.

On February 9, 2018, the Plaintiffs petitioned the United States Supreme Court for a writ of certiorari, which was subsequently denied on June 11, 2018.

On March 23, 2018, the Plaintiffs filed their Motion for Clarification of Jurisdiction and Other Relief. The Defendants filed their Petition for Execution and Further Relief on Declaratory Judgments and for the Appointment of a Special Master on May 8, 2018. The parties each filed responses to these motions, and this Court conducted hearings on November 19, 2018, and November 26, 2019.<sup>2</sup>

On April 11, 2019, Defendants filed a petition with the S.C. Supreme Court seeking a writ of mandamus directing this Court to enforce the mandate in the *Episcopal Church* case, “by effectuating the transfer of possession and control of the diocesan property and property of 29 of the parishes at issue and providing any further relief consistent with that mandate.” The Plaintiffs argued that the writ of mandamus was not appropriate as the circuit court was scheduling hearings to review the Defendant’s petition to enforce the judgement. The Supreme Court agreed with the Plaintiff and denied the writ of mandamus on June 28, 2019.

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<sup>2</sup> On November 19, 2017, the Plaintiffs filed an action pursuant to the Betterments Act. S.C. Code Ann. § 27-27-10. On December 15, 2017, TEC and TECSC filed a motion to dismiss. A hearing was held on July 23, 2019, to determine TEC’s Motion to Dismiss, which this Court denied by order dated August 27, 2019. Defendants then moved this Court to reconsider, arguing the Collective Opinions are dispositive, the Betterments Act does not apply, and the complaint was filed too late. This motion remains outstanding pending a final decision in this case.

On February 12, 2020, the Defendants filed a writ of prohibition with the Supreme Court of South Carolina. Nevertheless, a final hearing was conducted on February 27, 2020, to address any outstanding motions of the Defendant. On March 31, 2020, the Supreme Court (Hearn, J., not participating) denied Defendants writ of prohibition to prevent the circuit court from clarifying the Supreme Court's opinion in this case.

### **III. JURISDICTION AND DUTY ON REMITTITUR**

This Court has the jurisdiction and duty to enforce the Supreme Court's Collective Opinion. The jurisdiction of this Court to hear and determine matters after a case is remitted is well established. "Once the remittitur is sent down from this [Supreme] Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling." *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993) (finding the Circuit Court's holding that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous). "The trial court has a duty to follow the appellate court's directions." *Prince v. Beaufort Memorial Hospital*, 392 S.C. 599, 609-10, 709 S.E.2d 122, 127-28 (2011) (Court of Appeals found upon remand, the trial court exceeded its jurisdiction when remand stated to "set forth the specific portions of the [QAC] file that are subject to discovery as well as the reasons these portions are not confidential under section 40-71-20." As a result, the trial court's jurisdiction extended only to a review of each document contained in the QAC file in light of the statute.). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." *Ackerman v. McMillan*, 324 S.C. 440, 443 S.E.2d 267, 268 (Ct. App. 1996).

"In construing a judgment, it should be examined and considered in its entirety." *City of North Myrtle Beach v. East Cherry Grove Realty Co., Inc.*, 397 S.C. 497, 503, 725 S.E.2d 676,

679 (2012). The judgment of a court is construed like any other written instrument to determine the intent of the court. *Id.* That intent is determined from all its parts, not from an isolated part. *Id.* Further, if the judgment is ambiguous, the intent of the court is still the determinative factor, and the trial court should construe the judgment to determine intent while disregarding superfluous language. *Jenson v. Conrad*, 292 S.C. 169, 171, 355 S.E.2d 291, 293 (Ct. App. 1987) (dicta); *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164 (Ct.App. 1991).

In an action at law tried without a jury, the judge's finding of fact will not be disturbed unless there is no evidence to support the court's finding. *South Carolina Farm Bureau Mut. In. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012). Additionally, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence unless: (1) the findings of fact are wholly unsupported by the evidence; or (2) unless it clearly appears the findings were influenced or controlled by an error of law. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127–28, 631 S.E.2d 252, 255–56 (2006); *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 144, 719 S.E.2d 703, 706 (2011). “The trial court's findings in such a case are equivalent to a jury's findings in a law action.” *Butler Contracting, Inc.*, 369 S.C. at 127, 631 S.E.2d at 256.

There must be an actual decision of the legal issue for it to become the law of the case. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (2015); *See also Howe v. City of Akron*, 801 F.3d 718, 739-40 (6th Cir. 2015). When assessing appeals, at a minimum, issue preservation requires that an issue be “raised to and ruled upon by the trial judge.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “It is axiomatic that an issue cannot be raised for the first time on appeal.” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). “In order for an issue to be preserved for appellate review, it must have

been raised to and ruled upon by the trial judge...A party may not argue one ground at trial and an alternate ground of appeal.” *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (internal citation omitted). The decision of an appellate court on a legal issue is the law of the case to be followed in subsequent proceedings. *Arizona v. California*, 460 U.S. 605, 618-19 (1983); *Flexon*, 413 S.C. at 571-75, 776 S.E.2d at 403-05. Implicitly decided issues fall within the law of the case doctrine, but ambiguous ones do not. *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1241 (10th Cir. 2016); *First Union Nat. Bank v. Pictet Overseas Trust Corp., Ltd.*, 477 F.3d 616, 619-21 (8th Cir. 2007). The law of the case is an “amorphous concept” that “directs a court’s discretion” but does not limit its power to alter the result. *Pepper v. United States*, 562 U.S. 476, 506-07 (2011); *Flexon*, 413 S.C. at 572, n.6, 776 S.E.2d at 403, n.6.

The legal issues decided by an appellate court

must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.

*Flexon*, 413 S.C. at 572, 573, 776 S.E.2d at 404.

The law of the case does not apply to dicta, and appellate court statements about an unpreserved issue are dicta. *White’s Mill Colony, Inc., v. Williams*, 363 S.C. 117, n.1, 609 S.E.2d 811 (Ct. App. 2005). Thus, any statements in the Collective Opinion that rule on unpreserved issues are simply dicta.

In this case, the remittitur from the Supreme Court simply stated: “[t]he above referenced matter is hereby remitted to the lower court and tribunal.” Order, November 17, 2017. The Defendants argue that the Court’s jurisdiction on remittitur is limited to enforcing the mandate of the South Carolina Supreme Court, which they claim is clear and unambiguous. Plaintiffs argue,

and this Court concurs, that the “enforcement of a judgment” or taking “any action consistent with an appellate court’s ruling,” requires this Court to confront and determine the intent of the Supreme Court in the Collective Opinions. Any ambiguity must be resolved by this Court.<sup>3</sup>

Justice Kittredge and Acting Justice Toal stated in the order denying rehearing that the five individual opinions create “great uncertainty” and provide “little to no guidance.” Order, November 17, 2017. Regardless, this Court must articulate an order that is “consistent” with the Collective Opinions.<sup>4</sup>

#### IV. THE LAW OF THE CASE

The United States Supreme Court decided a church property dispute between the Presbyterian Church of the United States (“PCUS”) and two local Georgia churches that had withdrawn from the PCUS. *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969) (*Presbyterian Church I*); rev'g *Presbyterian Church v. Eastern Heights Church*, 224 Ga. 61, 159 S.E.2d 690 (1968). The Georgia Supreme Court initially resolved the controversy by applying a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not “substantially abandoned” the tenets of faith and practice as they

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<sup>3</sup> In *Hamm I*, the Supreme Court reversed a Southern Bell rate increase and remitted the case to the circuit court without instructing the circuit court that it should send the matter back to the Public Service Commission to determine refunds with interest. *Hamm v. S. Bell Tel. & Tel. Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990) (*Hamm I*). The circuit court held it was without jurisdiction to do so because the Supreme Court had not remanded the case with such instructions. *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991) (“*Hamm II*”). Rather, the circuit court held that only the Supreme Court could “clarify its own opinion.” *Id.* at 159. The *Hamm II* court held it was error for the circuit court not to take action that was “implicit as well as our intention.” *Id.* at 160. No remand was necessary because the circuit court was to interpret the Court’s decision “according to law” and the only reasonable interpretation, considering prior case law and what was implicit in the reversed and remitted decision, was that refunds needed to be computed with interest and ordered refunded. *Id.*

<sup>4</sup> The United States Supreme Court has stated in regards to interpreting multiple opinions in a decision, “When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds...’” See *Marks v. United States*, 430 U.S. 188, 193 (1977).

existed at the time of affiliation. *See Presbyterian Church I*, 393 U.S. at 443-44 and n.2. However, the Supreme Court of the United States reversed, holding that Georgia courts would have to find some other way of resolving church property disputes that did not draw the state courts into religious controversies. *Id.* at 451. The United States Supreme Court did not specify what that method should be, although it noted in passing that “there are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.” *Id.* at 449.

On remand, the Georgia Supreme Court concluded that, without the departure-from-doctrine element, the implied trust theory would have to be abandoned in its entirety. *Presbyterian Church v. Eastern Heights Church*, 225 Ga. 259, 167 S.E.2d 658 (1969) (*Presbyterian Church II*). In its place, the Georgia Supreme Court adopted what is now known as the “neutral principles of law” method for resolving church property disputes. *Id.* The Georgia Supreme Court examined the deeds to the properties, the state statutes dealing with implied trusts, Ga. Code §§ 108-106, 108-107 (1978), and the Book of Church Order to determine whether there was any basis for a trust in favor of the general church. *Id.* Finding nothing that would give rise to a trust in any of these documents, the court awarded the property on the basis of legal title, which was in the local church, or in the names of trustees for the local church. *Id.* at 261, 167 S.E.2d at 660. Review was again sought in the U.S. Supreme Court, but was denied. 396 U.S. 1041 (1970).

The United States Supreme Court was asked again to determine a church property dispute between members of a local congregation, which was divided between a majority who sought to withdraw from the PCUS, and a minority who wished to maintain the affiliation. *Jones v. Wolf*,

443 U.S. 595, 607 (1979). In *Jones*, the title on the deeds named the church, and the funds used to acquire the property were contributed entirely by the local church members. *Id.* at 600-01.

The Supreme Court noted that “the State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.” *Id.* at 602 (quoting *Presbyterian Church I*, 393 U.S. at 445). “[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.” *Id.* “[A] civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.” *Id.* at 604. The U.S. Supreme Court determined that the issue in *Jones* contained an ecclesiastical question that could not be answered by a civil court. *Id.* at 607. Furthermore, the U.S. Supreme Court held “that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.”<sup>5</sup> *Id.* at 604.

Following *Jones*, the Supreme Court of South Carolina articulated the rule that South Carolina civil courts must follow when adjudicating church dispute cases. *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996).

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<sup>5</sup> The U.S. Supreme Court stated:

“The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general-flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.”

*Jones*, 443 U.S. at 603-04.

The Court stated in *Pearson*:

- (1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

*Id.* at 52-53.

The S.C. Supreme Court established that where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so.

Nonetheless, where a civil court is presented an issue that is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues.<sup>6</sup> See *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976) (finding that the controversy before the Court “essentially involve[d] not a church property dispute, but a religious dispute the resolution of which...is for ecclesiastical and not civil tribunals.”).<sup>7</sup> The South Carolina Supreme Court addressed neutral principles of law doctrine by stating: “We hereby expressly reaffirm that, when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in *Jones*...and expressed by this Court in *Pearson*...” *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 385, 444, 685 S.E.2d 163, 172 (2009). The *All Saints* Court concluded that it should apply trust, property, and corporate law in resolving church property disputes in South Carolina. *Id.*

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<sup>6</sup> Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976).

<sup>7</sup> “In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property.” *Jones*, 443 U.S. at 604.

This Court must determine the law of the case based on the Collective Opinions. Chief Justice Beatty in his opinion stated, “[g]iven the divergent opinions, I am compelled to write separately because I believe my position is that of a centrist between the members of the Court.” 421 S.C. at 248, 806 S.E.2d at 102. This Court finds that Chief Justice Beatty’s controlling decision determines whether a majority exists as to any issue in these Collective Opinions. As Chief Justice Beatty stated:

In resolving this issue, I am guided by the neutral principles of law approach enunciated in *All Saints* and *Jones* and aptly discussed by former Chief Justice Toal. *See All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 385, 444, 685 S.E.2d 163, 172 (2009) (applying neutral principles of law in disputes arising between a congregation and its denomination over title to church property and between the congregation’s members over corporate control; stating, “the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes”).

421 S.C. at 249, 806 S.E.2d at 102. Justice Kittredge supported the application of “neutral principles of law” as enunciated in *Jones*. *Id.* at 251, 806 S.E.2d at 103. However, he believed *Jones* required “that the burden imposed on a religious organization be “minimal.” *Id.* at 254, 806 S.E.2d at 104.

Acting Justice Toal stated, “[b]ecause this is a dispute over title to property, we should apply neutral principles of South Carolina property and trust law.” *Id.* at 276-77, 806 S.E.2d at 117. Likewise, Chief Justice Beatty stated, “distilled to its simplest form, this case involves a property dispute.” *Id.* at 249, 806 S.E.2d at 102. Justice Kittredge also expressly referred to this matter as a “property dispute.” *Id.* at 252, 806 S.E.2d at 104. Thus, the majority consisting of Chief Justice Beatty, Acting Justice Toal, and Justice Kittredge agreed that *All Saints* remained good law in directing the application of neutral principles of law in secular church disputes.

On remand, this Court will apply the “neutral principles of law” as directed by the

majority. This is the law in South Carolina and the law of this case.

### A. Deeds in South Carolina

“An estate in fee simple is the entire and absolute property of the subject...” *Keels v. Crosswell*, 180 S.C. 63, 65, 185 S.E. 39, 40 (1936). A landowner holding title in fee by a valid deed owns the subject property in fee simple absolute.

### B. Creation of Expressed Trusts in South Carolina

At issue in this case is whether the 1979 Dennis Canon created a valid trust over the Plaintiff parish properties pursuant to South Carolina law. In South Carolina, an expressed trust may be created by a “(i) transfer of property to another person as trustee;” or by a (ii) “written declaration signed by the owner of property that the owner holds identifiable property as trustee.” S.C. Code Ann. § 62-7-401(a)(1)(i) and (ii)(2014). The cornerstone of a trust is to discern the settlor’s or declarant’s intent. *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995). Further, a trust is created only if the settlor properly manifests an intention to create a trust relationship. *See* § 62-7-401(a)(2); Restatement of the Law of Trusts (3<sup>rd</sup>) § 13, 22. “[A] trust is not created until it receives property.” *See* § 62-7-401 Reporter’s Comment.

When the expressed trust is of real estate, a declaration that “manifests the trust intention must be proved by some writing signed by the party creating the trust. § 62-7-401(a)(2). The writing must contain “the object and purpose of such a trust, as well as the beneficiaries thereof, ...expressed with such reasonable clearness and definiteness as to render [it] enforceable, if necessary, by the Court.” *Harter v. Johnson*, 122 S.C. 96, 115 S.E. 217, 222 (1922). The writing is sufficient if it shows with reasonable definiteness the beneficiary, the trust property, and the purposes of the trust.<sup>8</sup> *Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 979 (Ct. App.

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<sup>8</sup> In *Gifford v. Linnell*, the North Carolina Court of Appeals found a deed was void for lack of a grantee. 157 N.C.App. 530, 579 S.E.2d 440, 443 (N.C.Ct.App.2003). The deed in *Gifford* specified the property was conveyed to

1992) (finding evidence did not establish existence of trust where there was no executed trust agreement, court-appointed trustee never controlled trust, and husband retained total control).<sup>9</sup>

However, a trust in land may be proved by more than one writing, so long as each writing is signed by the settlor and the writings indicate they relate to the same transaction. *Ramage v. Ramage*, 283 S.C. 239, 244, 322 S.E.2d 22, 26 (Ct.App.1984) (finding since the will codicil made reference to trust deeds, which were executed simultaneously and the codicil and deeds were each signed by testatrix-settlor, and when read together, they plainly related to each other and showed testatrix's intention to create a trust, both documents could be considered together in determining whether a trust had been created). Thus, if there are two documents, they must logically relate to each other so that the Court can identify intent to create a trust in land.<sup>10</sup>

With respect to parish property, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal followed the precedent of *All Saints*. *All Saints*, 385 S.C. 428, 685 S.E.2d 163. In *All Saints*, a trust can be created in favor of TEC only if, when strictly applying neutral principles of “longstanding trust law,” each parish church, in a signed writing, expressly agreed to the Dennis

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“Beth Linnell, Trustee of Droffig Family Trust.” *Id.* at 442. The court found that because the deed referred to Linnell as a trustee, she was a grantee only in her representative capacity and not in her individual capacity. *Id.* at 443. Furthermore, the court found that because the trust was not in existence on the date of conveyance, the deed failed to identify a valid grantee. *Id.* at 442. Thus, the court ruled that Linnell was not the intended grantee at the time of the deed's execution, but rather was the representative of a non-existing legal entity. *Id.* at 443. Therefore, the court voided the deed for lack of a grantee. *Id.* The South Carolina Court of Appeals adopted this logic in *Foster v. Foster*. 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009).

<sup>9</sup> “A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence,” pursuant to S.C. Code Section 62-7-407. Thus, if the trust of personal property is not written, there must be clear and convincing evidence that a valid trust was created. *Id.*

<sup>10</sup> The South Carolina Supreme Court held in *Foster*, that the deed in question required that a trust which includes real property be proved by a writing. *Foster v. Foster*, 384 S.C. 380, 682 S.E.2d 312 (Ct. App. 2009); *See* S.C. Code Ann. § 62-7-401 (1986). In *Foster*, the parties argued over the fact that the elderly father denied the existence of a trust in land. *Foster* argued his will did not reference a trust and no written trust agreement ever existed. *Id.* at 384, 682 S.E.2d at 314. Moreover, there was no written evidence of the purported trust's terms or its beneficiaries in document(s) signed by the grantor. *Id.* The Court imposed a constructive trust to set aside the deed by which the elderly father conveyed his home to the non-existent trust established by one of his children, and ordered the return of monies which his children had transferred from a joint account. The Supreme Court of South Carolina agreed with the S.C. Court of Appeals that the circuit court correctly found no evidence of a proper trust in land as there are no documents signed by grantor referring to a trust other than the deed. *Id.*

Canon.<sup>11</sup> In the Collective Opinion, Chief Justice Beatty found that the Dennis Canon, standing alone, does not “unequivocally convey an intention to transfer ownership of property to the national church or create an express or constructive trust.” 421 S.C. at 250, 806 S.E.2d at 103. Rather, he relies on the statutory provision on an express trust’s creation: “[t]o be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust.” *Id.* at 250, 806 S.E.2d at 102-103; *See* S.C. Code Ann. § 62-7-402(a)(2)(2015). According to *All Saints* and the three justice majority, a trust of real property in South Carolina must meet these requirements in order to be “legally cognizable.”

### C. Constructive Trusts in South Carolina

An exception to the requirement of a writing to establish a trust in land are trusts arising by operation of law, such as resulting and constructive trusts. *See* § 62-7-401 Reporter’s Comment. Constructive trusts arise in South Carolina not because the parties intended to create a trust, but because the court is enforcing an equitable remedy by imposing a trust on the property. South Carolina law states regarding constructive trusts:

The law may impose a constructive trust when a party obtains a benefit that does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it. A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual fraud.

*McDaniel v. Kendrick*, 386 S.C. 437, 444, 688 S.E.2d 852, 856 (Ct. App. 2009). A constructive trust must be established by clear and convincing evidence. *Id.* (citing *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793–94 (1990)).

The South Carolina Court of Appeals stated in *Briggs*:

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<sup>11</sup> *All Saints* continues to be the controlling law on these issues. *Jenkins v. Refuge Temple of God in Christ, Inc.*, 424 S.C. 320, 328, 818 S.E.2d 13, 17 (Ct. App. 2018).

A constructive trust...is a trust by operation of law which arises against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained *or holds* the right to property which he ought not in equity and good conscience to hold and enjoy.

*Briggs v. Richardson*, 288 S.C. 537, 539, 343 S.E.2d 653, 654 (Ct. App. 1986) (emphasis added).

South Carolina cases indicate that the relevant circumstances for the imposition of a constructive trust are those circumstances in which property was acquired. In *Bank of Williston* the South Carolina Supreme Court stated:

By the well-settled doctrines of equity, a constructive trust arises whenever one party has obtained money, which does not equitably belong to him, and which he cannot in good conscience retain or withhold from another, who is beneficially entitled to it; as, for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like...Whenever one person had wrongfully taken the property of another, and converted it into a new form, or transferred it, the trust arises and follows the property or its proceeds. Constructive trusts do not arise by agreement or from intention, but by operation of law; and fraud, actual or constructive, is their essential element. Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title.

*Bank of Williston v. Alderman*, 106 S.C. 386, 91 S.E. 296, 297-98 (1917) (emphasis added).

## V. DISCUSSION

This Court must distill the five separate opinions, identify the Court's intent, and produce a logical directive. It must harmonize these opinions and find common ground among them.

The issue is whether the 1979 Dennis Canon or any parish's alleged accession to that Canon created a legally cognizable trust under South Carolina law.

Before this Court are competing requests. The Plaintiffs ask this Court to clarify the five separate opinions of the South Carolina Supreme Court. The Defendants ask this Court to enforce the ruling they contend is expressed in the Collective Opinions. Defendants argue no interpretation is allowed or needed of the Collective Opinions. Plaintiffs argue enforcement is

impossible without interpretation and remittal implicitly requires interpretation if this Court is to act “consistent with” the Collective Opinions. This Court notes that:

- “Title to all the real property of the Plaintiff Parishes, Trustees and Diocese is held in the name of those entities. No properties are held in the name of TEC or TECSC.” Final Order at 20. This was uncontested at trial, on appeal, and on remittitur.
- The undisputed evidence is that all the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Parishes. Final Order at 37.
- The Diocese and Parish churches successfully disassociated from TEC by following the procedures required for disassociation under South Carolina neutral principles of corporate law.
- Title to Camp St. Christopher is stated on the deed for the Trustees of the Protestant Episcopal Diocese of South Carolina. The Trustees Corporation has never been a member of the Diocese or TEC, and TEC does not have a voice in the Trustees governance or any right of approval for the Trustees’ governance. Final Order at 16.

The trial court held that the Dennis Canon did not create an express trust relying on *All Saints*. Final Order at 36. Defendants argued in their brief on appeal that “29 of the 36 parishes made express promises in their governing documents to comply with the TEC’s rules” which created express trusts. Brief of Appellants at 38. Defendants argue that the Supreme Court decided that the property of the parishes that acceded to the Dennis Canon is held in trust for Defendants, and the property of the Trustees is held in trust for the benefit of TECSC. They also argue that the real, personal, and intellectual property of the Diocese belongs to the TECSC and the Trustees’ property, Camp St. Christopher, is held in trust for the benefit of TECSC.

At issue is ownership of real property, purchased and managed exclusively by the Plaintiff Parishes including land and buildings, considerable funds, and other personal property such as books, silver, and historical archives. The crux of the disagreement rests upon the Dennis Canon and its legal effect on whether this property was ever held in trust for TEC or TECSC.

The 1979 Dennis Canon states:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remain a part of, and subject to this Church and its Constitution and Canons.

The trial court initially considered who had the *right to control* the Diocese and the parishes and whether the parish property is subject to a trust. The issue of ownership was not litigated because all the deeds are titled in each of the individual Parishes.

Furthermore, it is unclear which portions of the Final Order were appealed. The Defendants contend that the trial court's order was appealed in its entirety because the Supreme Court of South Carolina determined certain issues in the Collective Opinion. Defendants argue the trial court's forty-six page order included findings of fact and conclusions of law that were immaterial to the result, and therefore not specifically addressed in the Brief of Appellants or by the Supreme Court.<sup>12</sup> Additionally, the Defendants argue that the trustee statute<sup>13</sup> references TEC as the beneficiary of the Camp St. Christopher deed.<sup>14</sup>

However, the Plaintiffs argue that the five opinions issued by the Supreme Court did not reverse the original ruling that the beneficiary of the Trustees is the Plaintiff Diocese as ordered

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<sup>12</sup> Under the Appellate Court Rules, an issue is considered "appealed" for appellate review if it is reasonably clear from the appellant's contentions when considering the statement of issues on appeal as required by Rule 208(b)(1)(B), SCACR, along with the arguments in the appellant's brief. *Gibson v. Ameris Bank*, 420 S.C. 536, 542 n.2, 804 S.E.2d 276 (Ct. App. 2017); *see also* Jean Hoefler Toal, et al., *Appellate Practice in South Carolina* 208 (3d ed. 2016).

<sup>13</sup> The 1880 Act of the General Assembly of South Carolina, as amended by the 1902 Act, states that the "Trustees of the Protestant Episcopal Church in South Carolina" hold all diocesan property in trust for "The Protestant Episcopal Church for the Diocese of South Carolina," which it further describes as the "Episcopal Church in the Diocese of South Carolina," "said church in said Diocese," "Diocese of the said Church," and "said Diocese of the said church."

<sup>14</sup> In the 1951 deed, the grantor, Marjorie Nott Morawetz of the City of New York granted to the Trustees of the Protestant Episcopal Church in South Carolina, their successors and assigns, forever, the real estate now called Camp St. Christopher. Their property was given to the Trustees because the grantor desired "to further the welfare of the Protestant Episcopal Diocese of South Carolina, and in consideration of the goods works of the Trustees."

by the trial judge. The Plaintiffs argue that the Collective Opinions do not resolve the issue of which parishes expressly acceded to the Dennis Canon. Finally, Plaintiffs argue that the South Carolina Supreme Court was unable to resolve critical issues relating to the Collective Opinions on rehearing because it did not consider them on the merits, the votes to rehear being evenly divided, two to two.

Finally, Defendants argue that the Plaintiffs have received due process because they have had an opportunity to raise and argue every deficiency complained of with the Collective Opinions in their Petition for Rehearing, and the Plaintiff's arguments were rejected.<sup>15</sup>

If this dispute arose between two secular organizations, or between a religious and a secular organization, the party standing in the Plaintiffs' shoes would have prevailed because their name is on the deed and a valid trust under South Carolina law was never created or acknowledged by the Parishes.

The outcome of a property dispute simply cannot change because this case involves religious rather than secular institutions. This was expressly rejected in *All Saints*. That is the heart of the neutral principles of law approach.<sup>16</sup>

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<sup>15</sup>In opposing the Plaintiffs' Petition for Certiorari with the United States Supreme Court, the Defendants contended that the Collective Opinions were a "poor vehicle for review" because the Collective Opinions: are based on "an incomplete record"; are based on a record which "contains significant ambiguities"; and are "fractured not only in rationale but even on facts." Br. for Resp. in Opp., *The Protestant Episcopal Church in the Diocese of South Carolina, et. al. v. The Episcopal Church, et. al.*, 17-1136, p. 2, 23 (U.S. May 7, 2018). TEC and TECSC stated to the United States Supreme Court that the South Carolina Supreme Court did not resolve the uncertainties or ambiguities in the Collective Opinions because they did not pass upon them. *Id.* at 20. ("[T]he state Supreme Court divided evenly (2-2) on the rehearing petition and as a result held it was denied. The court clearly did not 'pass upon' petitioners' [arguments].")

<sup>16</sup> Nearly 40 years after the Supreme Court of the United States addressed the neutral-principles approach in *Jones*, courts are deeply divided about what "neutral" means. *Jones* states: The neutral-principles approach demands application of ordinary state law and courts may give effect to property deeds or to trusts recited in the constitution of a general church only if the parties' intent "is embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. Courts adopting the hybrid approach ignore *Jones*' unambiguous guidance because they believe that requiring national churches to comply with state trust law would violate the Free Exercise Clause of the First Amendment. E.g., App.42a (Hearn, J.). But *Jones* squarely rejected that argument, holding that "[t]he neutral principles approach

The South Carolina Supreme Court has held that statements of allegiance to the Constitution and Canons of TEC or the Diocese of South Carolina generally are insufficient to support a finding of express accession to the 1979 Dennis Canon. 421 S.C. at 251, 806 S.E.2d at 103; *see also All Saints*, 385 S.C. at 439, 685 S.E.2d 163, n.5.

Chief Justice Beatty unequivocally stated that the Dennis Canon, by itself, does not create a “legally cognizable” trust under South Carolina law. 421 S.C. at 250, 806 S.E.2d at 103. Further, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal agreed that the Dennis Canon alone was not sufficient to transfer title of property or create an express or constructive trust without evidence of accession. *Id.* at 250-51, 261, 806 S.E.2d at 103-04, 108.

Chief Justice Beatty stated that *if* a parish “expressly acceded to the Dennis Canon,” then a trust over the parish’s property was created. *Id.* at 251, 806 S.E.2d at 103. He also found that “the parishes that did not expressly accede to the Dennis Canon cannot be divested of their property” and those parishes “merely promised allegiance” to TEC. *Id.* Chief Justice Beatty further stated that, “TEC argues that the parish’s accession to the Dennis Canon created the trust. Assuming that each parish acceded in writing, I would agree.” *Id.* at 250-51, 806 S.E.2d at 103. Chief Justice Beatty did not identify the parishes that expressly acceded to the Dennis Canon nor did he state a number of parishes that did or did not expressly accede.<sup>17</sup> *Id.* Thus, this Court

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cannot be said to ‘inhibit’ the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods.” *Jones*, 443 U.S. at 606.

<sup>17</sup> Parish accession must be directly and expressly to the Dennis Canon and not simply to rules, constitutions, or canons of TEC. Chief Justice Beatty relies upon *All Saints* and was a member of the Court in that unanimous decision. *All Saints* did not find that the withdrawing parish there created a trust when its Articles of Incorporation stated: “The purpose of the said proposed Corporation is to conduct religious services, and prosecute religious works under the forms and according to the canons and rules of the Protestant Episcopal Church, and as a component part of the Diocese of said church in South Carolina.” *All Saints*, 385 S.C at 439, n.5, 685 S.E.2d at 169, n.5. Similarly, in this case, the Defendants’ claims of accession were denied with respect to St. John’s and St. Matthias because “neither of those churches ever directly acceded to the local or national version of the Dennis Canon.” 421 S.C. at 265, n.49, 806 S.E.2d at 111, n.49.

must determine whether each individual Parish expressly acceded in writing to the 1979 Dennis Canon as distinguished from “mere promises of allegiance.” *Id.*

Chief Justice Beatty stated that since TEC was not the settlor of the trust and had no interest in the property of the trust, “TEC was nothing more than a demanding scrivener.” *Id.* at 250, 806 S.E.2d at 103.

“In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.” *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). This Court agrees with Chief Justice Beatty’s opinion that even though the Dennis Canon uses the term “trust,” the word alone does not unequivocally convey an intention to transfer ownership of property to TEC or create an express or constructive trust. 421 S.C. at 250, 806 S.E.2d at 103.

The Dennis Canon can have no effect until acceded to in writing by the individual parishes under South Carolina law. The Parishes that did not accede to the Dennis Canon cannot be divested of their property. These Parishes merely pledged allegiance and without more, these pledges cannot be used to “deprive them of their ownership rights to property.” *Id.* at 251, 806 S.E.2d at 103. Without clear, definite, and unequivocal evidence, a constructive trust cannot be established in TEC or TECSC’s favor.

This Court finds that the Plaintiffs would be deprived of due process if their property rights to the parish property are revoked without a finding, pursuant to a proper opportunity for argument and based on a proper record that they indeed acceded to the Dennis Canon.<sup>18</sup> *See generally Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930) (stating that one

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<sup>18</sup> “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *South Carolina Department of Social Services v. Witsor*, 352 S.C.445, 452, 574 S.E.2d 730, 734 (2002). “Substantive rights - life, liberty and property – cannot be deprived except pursuant to constitutionally adequate procedures.” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985). This is a “constitutional guarantee.” *Id.* The Due Process Clause’s “root requirement” is that there be “an opportunity for a hearing *before* [an owner] is deprived of any significant property interest.” *Id.* at 542 (emphasis in original).

cannot be deprived of property, “whether acting through its judiciary or through its legislature...unless there is, or was, afforded to him some real opportunity to protect it.”).

The deeds to the real estate are titled in the names of the Plaintiff parishes and have all been entered into evidence. Since the title to the parish property is not in question, the sole issue is whether a trust exists on each parish property.

This Court has reviewed the Record on Appeal to determine whether the South Carolina Supreme Court intended to identify and make a ruling of fact and law regarding which Parishes expressly acceded to the Dennis Canon. Rule 210(h), SCACR (“Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.”).

The only material in the Record on Appeal related to express accession appears in Defendants’ Motion to Reconsider the trial judge’s Final Order.<sup>19</sup> This material is simply argument of counsel. Argument is not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991); *see also McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This [Supreme] court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). In their briefing before the South Carolina Supreme Court, Defendants argued that Plaintiffs expressly acceded to the Dennis Canon. *See* Br. of Appellant at p. 38 (“The Plaintiff parishes’ voluntary accession to the National Church’s rules, *including the Dennis Canon*, supplies the requisite intent to hold their property in trust for the National Church.”). However, the Plaintiffs only did so in the context of being part of a

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<sup>19</sup> The only record in support of expressed accession were five pages from a post-trial submission to the trial court in which Defendant’s counsel summarized documents. The documents summarized by the Defendants’ counsel were not in the record on appeal, and therefore would not have been considered by the Supreme Court. Rule 210(h), SCACR.

larger set of church rules. The Defendants' arguments on appeal were not that each parish agreed to the Dennis Canon itself, but rather that they agreed to a larger set of information in which the Dennis Canon was included.<sup>20</sup> There is no evidence of written accession to the Dennis Canon in the Record. Defendants' representation to the South Carolina Supreme Court that there was an express accession to the Dennis Canon by the parishes is thus unsupported by any evidence in the Record on Appeal. This Court cannot carry out the required determination mandated by looking only to the Record on Appeal.<sup>21</sup> As stated in *Jones*, this Court can review the deeds, the corporate charter, or the provisions of the constitution of the general church as they relate to the ownership of property. *Jones*, 443 U.S. at 604.

## VI. FINDINGS AS TO PARISH PROPERTY

This Court finds that there was no evidence that the Plaintiffs acceded to the Dennis Canon in the Record on Appeal. Therefore, this Court must now determine upon review of the trial record whether Plaintiffs expressly acceded to the 1979 Dennis Canon in writing.<sup>22</sup>

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<sup>20</sup> Defendants stated that the parishes agreed to "the National Church's authority and rules," "to obey National church governance," "written promises to obey National Church rules," the "National Church's rules," "abide by the National Church's rules," "rules of the national governing body," "promises of allegiance" to church rules, "accession to the National Church's rules," the parishes "made express promises in their governing documents to comply with the National Church's rules." Br. of Appellants at 8, 12, 30, 34, and 38, (August 6, 2015).

<sup>21</sup> Generally, this Court notes that an Appellant [the Defendants] have the duty to furnish an adequate Record on Appeal sufficient to achieve reversal. *Harkins v. Greenville Cty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000).

<sup>22</sup> Plaintiffs further noted in their Petition for Rehearing the Supreme Court's power to order portions of the lower court record to supplement the Record on Appeal, and Plaintiffs urged that were the Supreme Court to do so, the Supreme Court would find there was no express accession by any parish to the Dennis Canon. The Supreme Court did not and could not act on these requests due to its 2-2 deadlock on the Petition for Rehearing. See *Laird v. Tatum*, 409 U.S. 824, 837-38 (1972) (stating that an affirmation by an equally divided court leaves unsettled the principle of law presented by the case); *Ohio ex rel. Eaton v. Price*, 364 U.S. 263, 264 (1960) (Brennan, J., concurring) (stating that "nothing is settled" by an equally divided court). This Court notes that Justice Kittredge stated in his opinion regarding the Petition for Rehearing joined in by Acting Justice Toal, that, "[u]nder these circumstances, to disallow a full Court from considering the rehearing petitions is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petitions." (Order Den. Mot. Recuse at p. 3 (Kittredge, J., concurring in separate order).)

The Defendants concede that the eight Parishes that do not hold their property in trust for TEC or TECSC are:

1. Christ the King, Waccamaw
2. St. Matthews Church, Darlington
3. Parish of St. Andrews, Mount Pleasant (and its Land Trust, a separate corporation)
4. The Vestries and Churchwardens of the Parish of St. Paul's Episcopal Church of Conway
5. The Episcopal Church of the Parish of Prince George Winyah, Georgetown
6. St. John's Episcopal Church of Florence
7. St. Matthias Episcopal Church, Summerton
8. The Vestries and Churchwardens of the Parish of St. Andrews (aka Old St. Andrew's)<sup>23</sup>

The trial judge made no finding of express accession in regards to each individual parish—as it was not a basis of her ruling. This material has already been identified by Plaintiffs and presented to this Court. It is located in the trial court record as Court's Exhibit 1, and consists of the Exhibits and Trial Transcript pages noted therein.

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<sup>23</sup> The inadequacy of the record to consider the issue of accession seems obvious given the Defendants' representations to the United States Supreme Court, (an "incomplete record" containing "significant ambiguities"). The five-page argument from defense counsel omitted seven parishes from its list of those that "expressly accepted TEC's governance." The S.C. Supreme Court's finding for the 7 or 8 parish churches was because of this admission. The Supreme Court could not have made a finding based on the records relating to the other parishes because there was no record before the Supreme Court. Those parishes are not part of this proceeding as a result of this concession. The eighth non-acceding parish would be "The Vestries and Churchwardens of the Parish of St. Andrews ("Old St. Andrews")."

The issue presented with respect to Old St. Andrews is whether it was the Supreme Court's intention to include it among those found, based on Defendants' admissions, not to have acceded to the Dennis Canon.

The Supreme Court notes a discrepancy between whether there are seven or eight parishes whom the Defendants admitted did not accede to the Dennis Canon. The Supreme Court vigorously took issue with the Court's ability to consider the issue of whether 7 or 8 parishes agreed ("acceded") to the Dennis Canon because of the "dearth of evidence on [the accession] issue in this voluminous record." 421 S.C. at 243, 806 S.E.2d at 99. Nonetheless Chief Justice Beatty, Justice Kittredge and Acting Justice Toal, found a lack of accession by the 7 or 8 churches based on the Defendants' admission. It is not disputed that Old St. Andrews was omitted by Defendants from their list of acceding parishes. It is equally undisputed that there is no parish called "the Parish of St. Andrew, Mt. Pleasant." There is a parish called "St. Andrews Church – Mt. Pleasant Land Trust." That parish is properly named in footnote 49 of the Collective Opinions. The only other parish appearing in this case with a similar name is "The Vestries and Churchwardens of The Parish of St. Andrews" (located in West Ashley section of Charleston and founded in 1706). Given this fact and the omission of this parish on Defendants list from those that acceded, it is apparent that this is a clerical error that is "not the result of exercise of a judicial function" and "this may be corrected by the Court at any time." Rule 60(b), SCRCP. Additionally, this Court finds that "Old St. Andrews" was not among those Defendants listed in the Record on Appeal as having acceded to the Dennis Canon and accordingly fits the category of parishes listed in footnote 49 of the Collective Opinions. There is no trust as to Old St. Andrews because Defendants admitted in the Record on Appeal that it did not accede to the Dennis Canon.

This Court finds that the Plaintiffs merely promised allegiance to TEC and without more, this promise cannot deprive them of their ownership rights in their property. This Court finds no Parish expressly acceded to the 1979 Dennis Canon. The Dennis Canon was not mentioned by name in any of the evidence, and Defendants admitted that the Dennis Canon is not referenced in any of the deeds of parish property. Tr. of Hearing, July 23, 2019 at 38. As a result, there is no trust created in favor of the Defendants, TEC and TECSC.

Additionally, there is no evidence in the record of any parish discussing the Dennis Canon, voting on it or otherwise considering it.<sup>24</sup> The record before this Court reflects that there are parishes for which there is no signed writing,<sup>25</sup> parishes for which there is no accession to TEC's canons,<sup>26</sup> parishes who do not use the word "accession" or "accede" at all,<sup>27</sup> parishes that

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<sup>24</sup> Parish churches have never been members of TEC and none of the parish churches have ever participated in General Conventions of TEC. Final Or. at 17, ¶ 53; *Id.* at 33; Tr. at 1106; *TEC Response to First Request for Admission No 2 by Church of Our Saviour of the Diocese of SC; Church of the Cross, Inc. and Church of the Cross Declaration of Trust; The Church of the Epiphany; St. Davids Church, The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and the Parish Church of St. Helena Trust; Vestry and Church Wardens of The Episcopal Church of St. John's, Charleston County; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Protestant Episcopal Church, The Parish of Saint Michael, In Charleston, In the State of South Carolina and St. Michael's Church Declaration of Trust; and Trinity Episcopal Church, Edisto Island, October 8, 2013.*

While the parishes were members of the Diocese and as such voted to add the Dennis Canon in 1987 to the Diocesan Canons, they also voted to remove it by greater than 90% in 2010 two years before the Diocese (and the Parishes) withdrew from TEC. Final Order, Finding 27 at 11. This finding was not contested on appeal.

<sup>25</sup> Church of the Holy Comforter; St. Bartholomews Episcopal Church; St. James' Church, James Island, S.C.; Saint Luke's Church, Hilton Head; All Saints Protestant Episcopal Church, Inc.; The Church of the Holy Cross; St. Davids Church; The Vestry and Church Wardens of St. Jude's Church of Walterboro; Trinity Church of Myrtle Beach; Church of the Redeemer; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Episcopal Church; Church Of the Cross, Inc. and Church Of the Cross Declaration of Trust; The Church Of the Epiphany (Episcopal); The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Protestant Episcopal Church, The Parish of Saint Michael, In Charleston, In The State of South Carolina and St. Michael's Church Declaration of Trust; Trinity Episcopal Church, Pinopolis; Christ St. Paul's Episcopal Church; St. Paul's Episcopal Church of Bennettsville, Inc.

<sup>26</sup> Church Of the Cross, Inc. and Church Of The Cross Declaration of Trust; The Church Of The Epiphany (Episcopal); The Protestant Episcopal Church, The Parish of Saint Michael, In Charleston, In The State of South Carolina and St. Michael's Church Declaration of Trust; The Protestant Episcopal Church, Of The Parish Of Saint Philip In Charleston, In The State of South Carolina; The Church Of The Good Shepherd, Charleston, SC; St. Paul's Episcopal Church of Bennettsville, Inc.

<sup>27</sup> All Saints Protestant Episcopal Church, Inc.; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County; The Church Of Our Saviour Of The Diocese Of South Carolina; Church of the Redeemer; The Church Of The Resurrection, Surfside; The Church Of St. Luke and St. Paul, Radcliffesboro; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Episcopal Church; Church Of the Cross, Inc. and

are not subject to the Non-Profit Act and parishes whose property was the result of a legislative grant not subject to divestment without evidence of unmistakable intent to do so. Final Order at 17-18, 19, 36, n.16. Defendants failed to prove the creation of a trust.<sup>28</sup>

This Court finds that even if an agreement to TEC's constitutions and canons is sufficient to satisfy a signed writing pursuant to South Carolina trust law, it is insufficient to establish that each parish intended to create a legally enforceable trust in favor of TEC over all its property. As noted by the Missouri Court of Appeals, in considering a similar property-trust clause in the Presbyterian Church's Book of Order,

[O]ur laws are based on the reasonable assumption that a party would not intend to convey its property (in this case with millions of dollars) in trust without signing the writing purporting to create the trust, identifying the property to be conveyed, and expressing a definite intention to create a trust.

*Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 197 (Mo. Ct. App. 2012).

TEC's argument that their unilaterally drafted Dennis Canon created a trust under South Carolina law is rejected. Additionally, TEC's arguments that the parish pledges of allegiance to

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Church Of the Cross Declaration of Trust; The Church Of The Epiphany (Episcopal); The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; St. Paul's Episcopal Church of Bennettsville, Inc.; The Protestant Episcopal Church, The Parish of Saint Michael, In Charleston, In The State of South Carolina and St. Michael's Church Declaration of Trust; The Protestant Episcopal Church, Of The Parish Of Saint Philip In Charleston, In The State of South Carolina; Trinity Episcopal Church, Pinopolis; Christ St. Paul's Episcopal Church; The Church Of The Good Shepherd, Charleston, SC.

<sup>28</sup> The Court notes that the issues of "minimal burden" and trust revocability advanced by Defendants were not argued to, nor ruled upon, by the trial court. They appear in the Collective Opinions because they were argued in the Appellants' Brief. Raised for the first time in their appellate brief, these would not have been properly before the Supreme Court. *State v. Dunbar*, 356 S.C. 138, 142-43, 587 S.E.2d 691, 693 (2003) (issue not considered by the trial court cannot be considered *sue sponte* by an appellate court as the basis of its decision). However, the Court finds it unnecessary to reach these issues because it finds a failure of proof by Defendants in establishing that each parish church expressly agreed to the Dennis Canon in a signed writing that unequivocally establishes the intent to create a trust. The Court also notes that the issue of "accession" was not included in the statement of issues on appeal as required by Rule 208 (b)(1)(B), SCACR; *State v. Crocker*, 366 S.C. 394, n.1, 621 S.E.2d 890, n.1 (Ct. App. 2005). Justice Hearn joined by Acting Justice Pleicones also noted that the issue of accession (as to those parishes found by Defendants' admission not to have acceded to the Dennis Canon) should not have been determined due to the "dearth of evidence on this issue in this voluminous record." 421 S.C. at 243, 806 S.E.2d at 99.

the constitution and canons of TEC created intent to form a trust is rejected. This Court will go through each parish and identify the evidence of accession presented in the trial record for each parish church.

### **1. St. Philip's Church**

The only evidence with respect to St. Philip's that Defendants argue constitutes accession to the Dennis Canon is in its 1987 Articles of Restatement. The Articles describe the purpose of the parish corporation as "preaching and teaching the Gospel of our Lord and Savior, Jesus Christ, in accord with the Articles of Religion of [TEC]..." Ex. SPH 30. The Articles of Religion, found on pages 867 to 876 of Exhibits D-6 and D-512, were established in 1801. (page 867). They predate the Dennis Canon by 178 years and relate exclusively to religious doctrine. The Articles do not make an express accession to any rules or Canons of TEC, do not use the word "accession" or "accede," do not create an express agreement to the terms of the Dennis Canon, and do not express allegiance to TEC and TECSC. There is nothing in either the five-page argument of Defendants' counsel nor in the record that establishes an express agreement in a signed writing to the Dennis Canon by St. Philips Church.

The referenced Articles of Religion were not part of the record on appeal. There was no evidence that could be considered under the S.C. Appellate Court Rules or by the trial court because it did not conduct a parish-by-parish review. Rule 210(h), SCACR. The Articles of Religion contain no mention of the Dennis Canon or any other Canon of TEC—they represent nothing more than a summary of theological and doctrinal beliefs. There is a complete lack of evidence of an express agreement to the 1979 Dennis Canon by St. Philips Church in a signed writing. Thus, this Court finds that the Parish of Saint Phillip's property title is held in fee simple absolute by the Parish, and its property is not held in trust for the Defendant TEC or TECSC.

## **2. St. Michael's Church**

The 1989 bylaws state St. Michael's Church "acknowledges the authority of...The Diocese of South Carolina...and of [TEC]." According to Defendants, this statement constitutes an expressed accession to the 1979 Dennis Canon. However, these bylaws were not in the record on appeal, and therefore no evidence was presented to the Supreme Court on this issue.

Defendant's five-page argument does not contend there is an express agreement to the Dennis Canon in a signed writing by St. Michael's Church. St. Michael's has never been a member of TEC nor has it ever participated in the General Conventions of TEC. Further, St. Michael's church merely acknowledges the "authority" of TEC in its bylaws and does not use the word "accession" or "accede." Stated promises of allegiance do not create a trust. Accordingly, based on a simple reading of the deed, St. Michael's Church holds title to its property in fee simple absolute and St. Michael's Church is not held in trust for TEC or TECSC.

## **3. The Church of the Good Shepherd, Charleston, SC**

The Church of the Good Shepherd amended its corporate articles in 2001 to "describing the parish corporation as 'organized pursuant to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina.'" These corporate articles were not in the record on appeal, and therefore no evidence was presented before the Supreme Court. Defendants' argument in its five-page summary is that The Church of the Good Shepherd is organized pursuant to the Canons of the Diocese, not TEC. Acting Justice Toal rejected the argument that organization pursuant to the Canons of the Diocese "now in force or as hereafter may be amended" was evidence of an express trust in favor of TEC when she found that St. Matthias did not "directly" accede "to the local or national version of the Dennis Canon." 421 S.C. at 265 n.49, 806 S.E.2d at 111, n.49. The corporate articles do not accede to TEC's Canons, they do not use the word accede or

accession, and the Dennis Canon is not mentioned in its bylaws or on the deed. Accordingly, this Court finds that title to the property is owned in fee simple absolute by the Church of the Good Shepherd, and its property is not held in trust for the Defendant TEC or TECSC.

**4. All Saints Protestant Episcopal Church, Inc.**

In regards to the All Saints Parish, this Court finds that the only evidence regarding accession is found in the 1985 bylaws stating: “we are bound by the Constitution and Canons of [TEC].” D-AS-24. This exhibit and statement does not amount to an expressed, written accession to the 1979 Dennis Canon. The Dennis Canon is not mentioned by name nor does it appear in any part of Parish’s bylaws or on the deed. The bylaws only reference the “Constitution and Canons of [TEC]” and do not use the word accession or accede. Thus, the All Saints Parish did not expressly accede to the Dennis Canon and cannot be divested of its property. The Court finds that All Saints is not held in trust and is the owner of its property in fee simple absolute.

**5. Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church**

Defendants argue that the 1980 bylaws are evidence of a trust in favor of TEC when it states that the Parish of Christ Church “does acknowledge and accede to...the Constitution and Canons of [TEC],” CC-25, and vestry statement “reaffirming our willingness to conform to the Constitutions and Canons of [TEC].” D-CC-6. After careful analysis, this Court finds that a willingness to conform to generalized constitutions and canons of TEC does not amount to expressed accession to the 1979 Dennis Canon. Accordingly, the Parish of Christ Church cannot be divested of its property. The Court finds that the Parish of Christ Church is not held in trust for TEC or TECSC, and the parish owns title to their property in fee simple absolute.

## **6. Christ St. Paul's Episcopal Church**

Christ St. Paul's 1980 bylaws provide that the parish was "organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of [TEC]." Tr. 337 (Attachment 1). This Court finds that this evidence does not constitute an expressed accession to the Dennis Canon. The testimony from trial concerns a general accession to the Constitution and Canons of TEC. This Court finds no mention of the 1979 Dennis Canon in its bylaws or on the deed, nor any accession language, and thus no expressed accession was ever made. This Court finds that the parish merely stated a promise of allegiance to the Defendant TEC. Thus, Christ St. Paul's Episcopal Church is not held in trust for TEC or TECSC and owns its property in fee simple absolute.

## **7. Church of the Cross, Inc. and Church of the Cross Declaration of Trust**

The Defendants maintain that the 2003 bylaws describing the purpose of the parish corporation as "the support and maintenance of a Church...in accordance with the doctrine and practices of [TEC] and of the Diocese of South Carolina" is enough to constitute an agreement to the Dennis Canon. TC-12 (art. II). However, this Court finds it is not sufficient under the precedent of *All Saints* and Chief Justice Beatty's, Acting Justice Toal's, and Justice Kittredge's opinions to divest the parish of its property. Further, this Court notes that the bylaws contain no accession to TEC's canons, they do not use any language of accession, and the parish has never been a member of TEC and has not participated in the General Conventions of TEC. The Dennis Canon is not mentioned in the bylaws or on the deed of the Church of the Cross. Thus, the Church of the Cross owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

### **8. The Church of the Epiphany**

This Court finds that the 2002 bylaws stating: “[t]he object and purpose of the [parish] corporation is for the support and maintenance of a Church...in accordance with the doctrine and practices of [TEC] and the Diocese of South Carolina” is a mere pledge of allegiance to TEC. E-4B (art. II). The bylaws contain no accession to TEC’s canons, they do not use any language of accession, the Church of the Epiphany has never been a member of TEC and has not participated in the General Conventions of TEC. Further, the Dennis Canon is not mentioned in the bylaws or on the deed. Thus, this Court finds that the Church of the Epiphany owns its property in fee simple absolute, and their property is not held in trust for TEC or TECSC.

### **9. The Church of the Holy Comforter**

The 1985 Constitution and bylaws state that the Church of the Holy Comforter “acknowledge[s], accede[s] to and adopt[s]...the Constitution and Canons of [TEC].” This Court finds that acknowledgement of the generalized constitutions and canons of TEC is a mere pledge of allegiance rather than an expressed accession to hold property in trust. There is no mention of the Dennis Canon in the bylaws or on the deed. Accordingly, the Church of the Holy Comforter owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

### **10. The Church of the Holy Cross (Statesburg)**

The 1980 and 1981 bylaws stated that The Church of the Holy Cross “having resolved to accept the rules and regulations of [TEC], in effect, accedes to...the Constitution and Canons of [TEC].” No mention is made of the 1979 Dennis Canon in the bylaws or in the deed. The bylaws contain a general accession to the Constitution and Canons of TEC. Accordingly, The Church of the Holy Cross owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

### **11. Holy Trinity Episcopal Church**

The 1985, 1988, 1993, and 2001 bylaws state that Holy Trinity “does acknowledge and accede to...the Constitution and Canons of [TEC] and the Constitution and Canons of...the Diocese of South Carolina.” This Court finds that these statements do not amount to an expressed, written accession to the 1979 Dennis Canon. There is no evidence that Holy Trinity acknowledged or knew of the 1979 Dennis Canon. Accordingly, this Court finds that the Holy Trinity Episcopal Church owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

### **12. The Church of Our Saviour of the Diocese of South Carolina**

The Church of Our Saviour stated in the 1980 bylaws a “promise to conform to the Constitution [and] Canons...of [TEC]”; in the 1981 bylaws that the parish was “organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of...[TEC]”; in a 1984 letter that: “[w]e agree to conform to the Constitution and Canons of [TEC]”; and lastly, in 1992 and 2003 bylaws that the parish “acknowledges the authority of [TEC] in accordance with the Constitution and Canons thereof and the authority of the [Diocese of South Carolina] in accordance with the Constitution and Canons thereof.” The Court notes that the Church of our Saviour has never been a member of TEC nor has it participated in TEC’s General Convention. Furthermore, the Court finds no language of accession in this parish’s bylaws or in the 1984 letter. The Dennis Canon is not mentioned in the bylaws or on the deed. This Court finds no expressed accession to the 1979 Dennis Canon, and thus the Church of Our Saviour owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

### **13. The Church of the Redeemer**

Defendants argue that the bylaws from 2000 stating that the Church of the Redeemer “shall conform to the Constitution and Canons of [TEC], and the Constitution and Canons of...the Diocese of South Carolina” are enough to constitute an expressed accession to the 1979 Dennis Canon. This Court notes that there is no language of accession, TECSC and TEC are not listed on the deed, and no reference is made to the Dennis Canon in the bylaws. This Court finds that these bylaws merely amount to a pledge of allegiance to TECSC and TEC’s rules and that an expressed accession was never made to the Dennis Canon. The Church of the Redeemer is not held in trust for TEC or TECSC. Further, this Court finds the Church of the Redeemer owns its property in fee simple absolute.

### **14. The Church of the Resurrection, Surfside**

The 1983 bylaws of the Church of the Resurrection state that the “parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of...[TEC].” This Court finds that this does not amount to an expressed accession to the 1979 Dennis Canon. There is no trust listed on the deed, there is no written agreement to the Dennis Canon, and there is no language of accession. Accordingly, this Court finds that the Church of the Resurrection owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

### **15. St. Bartholomew’s Episcopal Church**

The 2005 bylaws of St. Bartholomew’s state that the parish “accedes to and adopts the Constitution and Canons of [TEC] and of the Diocese of South Carolina.” Further, the 1982 and 1992 Constitution and bylaws state that the parish “accedes to and adopts the Constitution and Canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina.” The

Court finds that no mention is made of the 1979 Dennis Canon only a general pledge to comply with the Constitution and Canons of TEC. This boiler plate language is not evidence of an intent to convey property through a trust. Thus, no expressed trust was created. Accordingly, St. Bartholomew's owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

**16. The Vestry and Church Wardens Of the Episcopal Church Of the Parish of St. Helena And the Parish Church Of St. Helena Trust**

The 1987 bylaws state that the Parish of St. Helena “pledges to adhere to the doctrine, discipline, and worship of [TEC],” and that any bylaws provision “which may be in conflict with the canons of the...[TEC] shall be considered null and void.” The Court finds that the Parish of St. Helena has merely pledged allegiance to the doctrine, discipline, and worship of TEC and did not use any express language of accession. The Dennis Canon is not mentioned in their bylaws nor is it mentioned on the deed. The Parish of St. Helena is not a member of TEC, nor has it participated in the General Convention of TEC. Thus, the Parish of St. Helena owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

**17. St. James' Church, James Island, S.C.**

The 1993, 1995, and 2001 Constitution of St. James' Church state that the parish “accedes to and adopts the Constitution and Canons of [TEC] and to the Constitution and Canons of the Diocese of South Carolina,” and that “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Church and the Diocese thereof.”

This Court finds no express accession to the 1979 Dennis Canon. The Dennis Canon is not mentioned nor did the parish expressly agree to hold their property in trust for the benefit of TEC or TECSC. Rather, these statements generally accede to and promise allegiance to the

Constitution and Canons of TEC and TECSC. This Court finds that the St. James' Church did not expressly accede in writing to the 1979 Dennis Canon. Thus, the St. James' Church owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

**18. The Vestry and Church Wardens Of the Episcopal Church Of the Parish Of St. John's, John's Island (Charleston)**

The 1996 amended corporate articles of The Parish of St. John's state that the parish corporation "is subject to the Constitution and Canons of [TEC] and...the Diocese of South Carolina"; and the 2001 Parish Constitution and bylaws state that the parish "accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of [TEC]." This Court finds that merely pledging allegiance to TEC's constitutions and canons does not create an expressed or constructive trust. The Court finds there was no intent to accede nor was there expressed accession to the Dennis Canon to create a trust in favor of TEC or TECSC. Thus, the Church of St. John's owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

**19. The Vestry and Church Wardens Of St. Jude's Church of Walterboro**

The 1975 Constitution of St. Jude's Church states that the parish "accedes to and adopts the Constitution and Canons of [TEC] and also the Constitution and Canons of...the Diocese of South Carolina." St. Jude's Church did not expressly accede to the 1979 Dennis Canon in its Constitution. The parish only generally acceded to the Constitution and Canons of TEC and the Diocese in 1975. The 1990 bylaws, and subsequent revisions remained the same, only generally acceded to the Constitution and Canons of TEC. Furthermore, St. Jude's Church has never been a member of TEC and has never participated in the General Convention of TEC. Thus, St. Jude's Church owns its property in fee simple absolute, and its property not held in trust for TEC or TECSC.

## **20. Saint Luke's Church, Hilton Head**

The bylaws from 2000 of Saint Luke's Church state that the parish "accedes to and adopts the Constitution [and] canons...of the [Diocese of South Carolina], and [TEC]." SL-6 (2000 art. II). This Court finds that Saint Luke's Church did not expressly accede to the 1979 Dennis Canon. Rather, Saint Luke's generally acceded to the Constitution and Canons of TEC. Further, there is no mention of the Dennis Canon, and title is in Saint Luke's. Thus, Saint Luke's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

## **21. The Church of St. Luke and St. Paul, Radcliffeboro**

The 1995 bylaws of St. Luke and St. Paul state that the parish is organized for the purpose of "operating an Episcopal church pursuant to the Constitution and Canons of...the Diocese of South Carolina and of [TEC]." D-SLP-13 (art. I, sec. 1). The Court finds that the Church of St. Luke and St. Paul generally pledged allegiance to the Constitution and Canons of TEC. The Dennis Canon is not mentioned in its bylaws nor is it referenced in the deed. No specific language of accession is used in the 1995 bylaws. Thus, St. Luke and St. Paul own their property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

## **22. St. Paul's Episcopal Church of Bennettsville**

The 2002 corporate articles of St. Paul's Episcopal Church describe the purpose of the parish corporation as "operat[ing] a Parish organized under and subject to the Canons of...the Diocese of South Carolina." SPB-1. The 2004 bylaws authorize the vestry to "acquire and purchase" and to "sell, transfer, mortgage or authorize disposition of" real property "so long as such acts are in accord with the Canons of [TEC]." This Court finds that St. Paul's Church, Bennettsville never expressly acceded to the 1979 Dennis Canon. There is only a generalized statement to comply with TEC's Constitution and Canons and no accession language is used.

The Dennis Canon is not mentioned on the deed nor is a valid trust created under South Carolina law. Thus, St. Paul's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

### **23. The Vestry and Church Wardens Of St. Paul's Church, Summerville**

The 1992 bylaws of St. Paul's Church stated that the parish "is organized pursuant to the Constitution and Canons of [TEC] and of...the Diocese of South Carolina." St. Paul's Church, Summerville did not expressly accede to the 1979 Dennis Canon. In fact, the words accession or accede are not used at all. The bylaws merely state that the parish was organized pursuant to the Constitution and Canons of TEC. This Court finds that the Parish of St. Paul's Church owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

### **24. Trinity Episcopal Church, Edisto Island**

Trinity Episcopal Church stated in its 1980, 1988, 1991, 1992, and 1998 bylaws that the parish "is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Diocese of South Carolina and of [TEC]." D-TED-13 (art. I, sec. I). Trinity Episcopal Church never expressly acceded to the 1979 Dennis Canon. It pledged only to be organized pursuant to the Constitution and Canons of TEC. Trinity Episcopal Church has never been a member of TEC nor has it participated in the General Conventions of TEC. This Court finds that Trinity Episcopal Church owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

### **25. Trinity Church of Myrtle Beach**

The 1993 bylaws of Trinity Church of Myrtle Beach state that the congregants seeking parish status "do hereby acknowledge, accede to and adopt...the Constitution and Canons of [TEC] and the Constitution and Canons of the...Diocese of South Carolina." D-TMB-26

(preamble). However, the parish did not expressly accede to the 1979 Dennis Canon, but only generally pledged allegiance to the Constitution and Canons of TEC. This Court finds that Trinity Church of Myrtle Beach owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

### **26. Trinity Episcopal Church, Pinopolis**

The Defendants' evidence of accession is from the 1985 admission as a parish of the Diocese which required the parish to state its "willingness to conform to the Constitution and Canons of [TEC]." D-TP-31; D-401A at 32-33; Exhibit D-TP-31. This exhibit is an unsigned letter from the Diocese to the rector of Trinity Pinopolis stating the requirements of admission into union with the Diocese. This was a written application stating the parish's "willingness to conform" to the Constitution and Canons of TEC. This application does not use the word accession or accede. This Court finds that this is a mere pledge of allegiance to TEC and not an expressed accession to the Dennis Canon. Trinity Episcopal Church, Pinopolis owns its property in fee simple absolute, did not expressly accede to the 1979 Dennis Canon, and there is no trust in favor of TEC or TECSC.

### **27. St. David's Church**

The April 4, 1982, bylaws of St. David's Church state that it "accedes to and adopts the constitution and canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina." Additionally, the Constitution and Bylaws dated May 24, 1992 state: "St. David's accedes to and adopts the Constitution and Canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina." In 2013, the bylaws state that St. David's "accedes to and adopts the Constitution and Canons of the Episcopal Diocese of South Carolina." D-SD-3 and D-SD-4 (Court Ex. 1, Tab 15).

In these bylaws, St. David's Church did not expressly accede to the 1979 Dennis Canon. These bylaws only state a general accession to the Constitution and Canons of TEC and the Diocese of South Carolina. St. David's Church has never been a member of TEC and has not participated in the General Conventions of TEC. The Dennis Canon is not mentioned. This Court finds that St. David's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

**28. The Vestry and Church Wardens of The Parish of St. Matthew (St. Matthews, Fort Motte)**

The bylaws of the Parish of St. Matthews state that it "accedes to the Constitution and Canons of [TEC], and in the Episcopal Diocese of South Carolina; wherever a conflict exists between the Constitution and Canons of the Church and Diocese the Canons take precedence." The bylaws of the Parish of St. Matthew did not expressly accede to the 1979 Dennis Canon. This Court finds that the Parish only generally acceded to the Constitution and Canons of TEC. No mention is made of the Dennis Canon and an expressed trust was never formed. Accordingly, this church is not held in trust in favor of TEC or TECSC, and the Parish of St. Matthew owns its property in fee simple absolute according to its deed.

**VII. FINDINGS AS TO CAMP ST. CHRISTOPHER**

The issue of determining who the proper statutory beneficiary of the Trustees was both tried and appealed. The trial court found the statutory beneficiary was the Plaintiff Diocese and not TEC or TECSC.

The lead opinion and concurrence of the Collective Opinions found the beneficiary to be TECSC by deferring to TEC's choice of its "true" Diocese under a legal standard of deference. This Court finds that determining the "true diocese" is an ecclesiastical question, which was expressly rejected by *Jones* when the United States Supreme Court refused to determine the "true

faction” of the Vineville Presbyterian Church. This reasoning was subsequently followed by the South Carolina Supreme Court in *Pearson, All Saints*, and the majority in the Collective Opinion. Civil courts are prohibited from determining the issue of who is the true diocese.

Chief Justice Beatty reaffirmed the authority of *All Saints* when he applied neutral principles of law to determine corporate control in church disputes. 421 S.C. at 249, 806 S.E.2d at 102. Chief Justice Beatty in footnote 29 “find[s] ‘The Trustees...should retain title...as my decision in no way alters the clear language of the 1951 deed.’” *Id.* at 251, n.29, 806 S.E.2d at 103. However, he then states, “the disassociated diocese can make no claim to being the successor.” *Id.*

Acting Justice Toal affirmed the trial court’s decision that the Plaintiff Diocese was the beneficiary as stated on the deed. 421 S.C. at 287, 806 S.E.2d at 122-23. Acting Justice Toal stated, “[i]t is undisputed that the trustee corporation holds title in fee simple to Camp St. Christopher” and adds that the Camp was “held for the benefit of the disassociated diocese,” just as the original deed conveyed the property. *Id.* “Because the trustees did not accede to the Dennis Canon, there is no basis in South Carolina trust law for TEC to claim an ownership interest in Camp St. Christopher.” *Id.* at 287, 806 S.E.2d at 123.

Under *All Saints*, a religious non-profit corporation who follows the correct steps to sever its association with another entity does so with all its property interests intact. All Saints Parish Waccamaw withdrew from the Diocese and did not lose its rights to its property simply by disassociation.

There is no dispute that before disassociation that the Plaintiff Diocese was the beneficiary of those Trustees’ assets. This Court finds that the act of disassociation alone cannot cause the loss of beneficiary status because that would be inconsistent with *All Saints* upon

which the majority relied and did not overturn. This is especially true since the Dennis Canon does not apply to the property of the Diocese. There is nothing in the trial courts' order, or in the trial record, or in the record on appeal that suggests the beneficiary of Camp St. Christopher was an issue based on the language of its deed.<sup>29</sup> Before the Plaintiff Diocese could be deprived of its beneficial rights to Camp St. Christopher based on such a finding, due process requires that it have an opportunity to be heard. However, the rehearing petition was never ruled on the merits due to the 2-2 deadlock. Thus, the opportunity to be heard was never meaningfully addressed by the Supreme Court.

This Court finds that since the argument and issue regarding the language of the deed was never presented by TEC to the trial court for a decision nor was it ruled on by the trial court, the language of the deed cannot now be used as a basis for reversal of the trial court's order. The Collective Opinions are ambiguous on whether the Diocese or the Defendant TECSC is the proper beneficiary of the Trustee's assets.

Chief Justice Beatty's footnote must be construed in light of his legal ruling that the *All Saints* decision furnished the guiding principles ("aptly discussed by former Chief Justice Toal"). 421 S.C. at 249, 806 S.E.2d at 102. Justice Hearn's and Acting Justice Pleicones' views that the "true diocese" is determined by TEC was not accepted by Chief Justice Beatty because he reaffirmed *All Saints*. *All Saints* rejected the idea that TEC could determine the "true parish" and looked to neutral principles of corporate law to determine corporate control. Justice Kittredge and Acting Justice Toal confirmed the use of neutral principles of law in determining church property disputes.

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<sup>29</sup> Camp St. Christopher is mentioned in the trial record only when its deed was introduced, and it was noted that the deed makes no reference to TEC being its beneficiary. Tr. Trans. at 59, 60, 62, 273.

Applying neutral principles of law, this Court finds the Diocese and Parishes properly disassociated and control their real and personal property with any improvements thereon. Following the narrowest grounds of the majority in the Collective Opinions, this Court finds that Camp St. Christopher should remain as titled in the Trustees of the Protestant Episcopal Church in South Carolina as stated in the 1951 deed.

### **VIII. FINDINGS AS TO TRADEMARKS, SERVICE MARKS, AND INTELLECTUAL PROPERTY**

Plaintiffs argue that the trial judge found that the state registered marks prevailed over TEC's federally-protected trademarks based on a reading of state law. The trial court ruled that the Diocese's intellectual property is protected by a permanent injunction. Plaintiffs assert that since the Defendants failed to appeal the alternative statutory basis for an injunction, this is now the law of the case.<sup>30</sup> *See Dreher v. S. Carolina Dep't. of Health & Envtl. Control*, 412 S.C. 244, 249-50, 772 S.E.2d. 505, 508 (2015); *See generally Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996).<sup>31</sup>

Regardless, in the Federal lawsuit involving the same parties, United States District Judge Richard Gergel issued his Order on September 19, 2019, granting summary judgment to the Defendants on their Federal Lanham Act claims finding that TEC owns the five federally

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<sup>30</sup> Judge Goodstein issued an injunction under two separate statutes, one involving infringement of service marks, S.C. Code Ann. §§39-15-1105 et. seq., the other involving Improper Use of Names, Styles and Emblems," S.C. Code Ann. §§ 16-17-310 and 320. "Under both statutes, the Plaintiffs have established their entitlement to permanent injunctive relief." Final Order at 43. Defendants appealed the injunction under the first statute, Service Mark Infringement, but not the second statute, Improper use of Names, Styles and Emblems. This was noted in the Brief of Respondents on appeal, when they stated "Appellants fail to address Respondents' cause of action based on S.C. Code Ann. § 16-7-310 "Improper Use of Names." ...The circuit court found that this statute provided additional grounds for injunctive relief. Appellant have simply ignored it." Br. of Resp. at 56. Defendants then argued against its applicability for the first time in its reply brief. Reply Brief at 6. All issues must be argued in the initial briefs. Rule 208 (b)(2), SCACR. A reply brief may not be used by Appellant to raise an issue for the first time. *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d, 475, 477 (Ct. App. 1989).

<sup>31</sup> Defendants' brief to the South Carolina Supreme Court did not take issue with the trial court's finding that the Diocese owned its intellectual property. The Brief referenced "the Diocese's state-registered trademarks", "Plaintiffs' marks", Plaintiffs' state-registered trademarks" and "Plaintiffs' state registrations". Br. of Appellants at 9, 11, 39 and 40, (August 6, 2015).

registered marks, and TECSC owns the marks designated in the state registrations. That Order is currently on appeal.

As to the law of this case, Chief Justice Beatty in footnote 28 believes the “rights to the service marks...determination should remain with the federal court,” while Justice Kittredge did not address the state-registered trademarks. 421 S.C. at 249, n.28, 806 S.E.2d at 103.

Acting Justice Toal defers to the “[F]ederal court to answer any issues...over applicable [F]ederal copyright and trademark law.” 421 S.C. at 261, 806 S.E.2d at 108-09. However, Acting Justice Toal, “narrowly affirm[ed] on the question of whether the Defendants infringed on the Plaintiffs’ service marks.” 421 S.C. at 288, 806 S.E.2d at 123. Acting Justice Pleicones found the trial court erred in holding that the Parishes’ state-registered trademarks prevailed over TEC’s federally-protected trademarks and reversed that portion of the order. 421 S.C. at 216, 806 S.E.2d at 85. Justice Hearn found that TEC is “entitled to all property, including...the emblems, seals, and trademarks associated with the TEC.” 421 S.C. at 248, 806 S.E.2d at 101-02.

Almost uniformly, the Supreme Court determined that TEC and TECSC owned all service marks, trademarks, and intellectual property or deferred to the Federal courts on these issues. As a result, this Court likewise follows and conforms to that decision and the subsequent order of the Honorable Richard Gergel, United States District Court Judge, dated September 19, 2019. This Court finds that the Federal Court has jurisdiction over matters related to the trademarks, intellectual property, and service marks.

#### **IX. FINDINGS AS TO PETITION FOR ACCOUNTING AND SPECIAL MASTER**

As noted in the above findings, the Parish property remains in the names of each parish and Camp St. Christopher remains titled in the Trustees of the Corporation. Thus, there is no need for a Special Master to oversee or manage the transfer of title to the above properties. Also,

since no title to property is transferred, there is no necessity for an accounting. As a result, this Court finds these requests unnecessary and consequently moot. Thus, the Petitions for the Appointment of a Special Master and an Accounting are denied.

## **X. CONCLUSION**

A dispassionate reading of the Collective Opinions reinforces the majorities' affirmation of the neutral principles of law approach. The Court is also cognizant that a failure to apply those principles would negatively affect property and trust law in South Carolina. The neutral principles of property, corporate, and trust law have been consistent for years. Lawyers and judges understand those principles and are competent to decide issued based upon them. Additionally, neutral principles of law avoids all religious discussion, including which party is "true" to their denomination.

This is a property case. A decision on property ownership is usually governed by the title to real estate—the deed. In this case, all the Plaintiff Parishes hold title to their property in fee simple absolute.

Ownership may be effected by trust: a clear, convincing legal statement of a trust—not a promise, not a pledge, not polity. This Court concludes that there is no signed writing by the Plaintiffs expressly acceding to the Dennis Canon. This Court concludes there is no evidence establishing an intent by the Plaintiff Parishes to create a trust in favor of Defendants nor did the Plaintiffs ever vote on or consider acceding specifically to the Dennis Canon. Statements of allegiance are insufficient to establish an expressed trust. TEC unilaterally drafted the Dennis Canon. Since TEC and TECSC are not the owners of the Parish properties, they cannot establish a trust for themselves simply by declaring that they are also the beneficiary of the trust. The

Dennis Canon by itself does not create a “legally cognizable” trust nor does transfer title to property.

Further, this Court concludes there is no evidence to establish a constructive trust as an equitable remedy in favor of the Defendants. The Plaintiffs have not received money or property from the Defendants which did not belong to the Plaintiffs. The Plaintiff did not obtain the property through a breach of trust or violation of a fiduciary duty. Further, there was no evidence of fraud or bad faith in obtaining the property because it was stipulated that the Plaintiffs owned their respective parish properties. Thus, no constructive trust is established by operation of law.

This Court concludes that the burden of preparing a deed or of creating a trust in compliance with state law is extremely minimal.<sup>32</sup> This Court concludes that the neutral principles of law applies in church cases and specifically to this case. This is a property matter, and the title holders are the owners of their property as set forth in their deeds. There is no clear, convincing evidence of an expressed or constructive trust applicable to any parish. For the reasons set forth above,

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<sup>32</sup> This Court is aware that deeds are relatively simple and inexpensive. When entities or individuals sign deeds or trusts, they are fully cognizant of their actions. Preparing deeds and trusts and then having them properly executed has additional benefits of directly apprising the grantor or settlor of what they are actually doing and intend to do in the future. On the issue of minimal burden, this Court notes that had any parish wished to place their parish in a trust to TEC, they could have done so easily and with only a “minimal burden” to the parish and TEC. In comparing the costs of litigation to the costs of deed preparation, the “burden,” is not just minimal, it is microscopic. Likewise, a simple declaration of trust, though the cost is higher than deed preparation, pales in comparison to the costs of litigation. The U.S. Supreme Court in *Jones* stated it best:

This [burden] argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to “inhibit” the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

*Jones*, 443 U.S. at 606.

**IT IS THEREFORE ORDERED** that the thirty-six Plaintiff Parishes be, and hereby are, declared and affirmed as the title owners in fee simple absolute of their respective parish real properties, with improvements thereon and their accompanying personal property.

**IT IS FURTHER ORDERED** that certified true copies of this order shall be filed in the Clerk of Court's Office in the county where each parish is located.

**IT IS FURTHER ORDERED** that the Defendants herein have no interest in the Plaintiff Parishes' properties.

**IT IS FURTHER ORDERED** that ownership to Camp St. Christopher remain as titled to the Trustees of the Corporation as stated in the 1951 deed.

**IT IS FURTHER ORDERED** that the Federal Court has jurisdiction over all matters related to trademarks, service marks, and intellectual property.

**IT IS FURTHER ORDERED** that the request for the Appointment of a Special Master, the Petition for an Accounting are denied.

**AND IT IS SO ORDERED.**

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Edgar W. Dickson  
Circuit Court Judge  
The First Judicial Circuit

\_\_\_\_\_, South Carolina  
\_\_\_\_\_, 2020



Dorchester Common Pleas

**Case Caption:** Protestant Episcopal Church In The Diocese Of South Carolina ,  
plaintiff, et al VS Episcopal Church , defendant, et al  
**Case Number:** 2013CP1800013  
**Type:** Order/Other

So Ordered

s/ Edgar W. Dickson #2153