

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

**THE EPISCOPAL CHURCH'S AND THE DIOCESE'S
REPLY BRIEF REGARDING
CHRIST THE REDEEMER EPISCOPAL CHURCH PROPERTY**

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This Court should hold as a matter of law, based on the stipulated deeds, that the real property that is the subject of the December 2006 deeds from Christ the Redeemer Episcopal (the “CtR Episcopal Property”) is not subject to Truro’s § 57-9 Petition because the “Deed of Correction” cannot avoid the fact that the property was deeded and held in corporate form. In the alternative, the evidence will compel a conclusion *either* that the CtR Episcopal Property is not subject to Truro’s § 57-9 Petition because both December 2006 deeds are invalid *or* because Truro cannot prove that the first deed was ineffective and failed to reflect the grantor’s intent.¹

Although Truro now denies that it is conflating corporate ownership with ownership by trustees (Truro Reply Brief at 1-2), boldface type cannot change Truro’s initial brief or hide the fact that Truro does precisely the same thing by a new erroneous theory in this brief. Truro asserted initially that the two deeds were to the same legal entity: they “merely clarified the manner in which the *same* Grantee would hold title to the property.” *See* TEC-Diocese Suppl. Brief at 1-2 (quoting Truro Suppl. Brief at 14); *see also id.* at 8-9 & n.6. But the deeds plainly convey the property to different legal title holders: the December 13, 2006, deed to an incorporated church directly, and the December 21, 2006, “Deed of Correction” to trustees for the Truro congregation. So Truro now changes tack. It pays lip service to the idea that property held in “corporate form is plainly not subject to Va. Code § 57-9,” but then argues – for the first time, and entirely without citation or support – that “when Truro incorporated ... the prior unincorporated entity ceased to exist.” Truro Reply Brief at 2. Truro’s latest attempt to avoid the consequences of corporate ownership again flatly contradicts its own Articles of

¹ The issue before the Court is whether the CtR Episcopal Property is part of “[t]he precise property subject to [Truro’s] 57-9 petition.” Order (July 16, 2008) (Ex. 11). If the Court holds it is not, the Court has resolved all it needs to resolve in Truro’s § 57-9 action.

Incorporation. The Articles distinguish between “members of a corporation” and “church members,” stating that Truro’s corporation has *no* corporate members but that “the Corporation as a local church also *has church members ... who have the rights and obligations of members of the local congregation known as Truro Church.*” TEC-Diocese Suppl. Brief Ex. 7 at 1 (Art. 4) (emphasis added). Article 4 would make no sense if nothing but the corporation existed. Truro again ignores its own governing documents in an attempt to distort § 57-9(A).

Truro also repeats the fiction that there is a “requirement that its property be held by trustees.” Truro Reply Brief at 3. Notably, *Truro does not actually quote its own by-laws.* That is for good reason. As shown in our opening brief, Truro’s By-Laws (Truro Suppl. Brief Ex. H) require no such thing, and its Articles of Incorporation empower the corporation, generally and specifically, to own property in corporate form. *See* TEC-Diocese Suppl. Brief at 7-8.

Truro also claims that we are asserting an “untimely challenge to the validity of the *original* Quitclaim deed.” Truro Reply Brief at 3. Truro is either ignoring Virginia law governing the validity of that deed – § 57-15 – and our clear invocation of it; or it is arguing that it may advance new and erroneous arguments, but we may not rebut them. Neither position has any merit. As we stated in the August 7, 2008, letter that it cites, “Code § 57-15 ‘requires a showing that the property conveyance is the wish of the constituted authorities of the general church’” (citations omitted), and that requirement was not satisfied because “[t]he purported conveyance on December 13, 2006, was not the wish of the Episcopal Church and the Diocese.” Truro Suppl. Brief Ex. J at 2-3. Truro was on notice and was not in any way surprised by our position; indeed, it responded in its Supplemental Brief (at 4 n.2, 8), arguing that canon law did not require our consent and thus that the CtR Episcopal congregation was the only authority that had to approve the gift. That is clearly wrong. *See* TEC-Diocese Suppl. Brief at 9-11 & nn.7-9.

Truro now advances the absurd proposition that we cannot rebut its new canonical argument.²

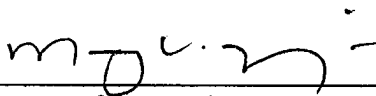
In the end, however, much of the above is a distraction. The Court need not hold a trial to rule that the “Deed of Correction” is invalid, for reasons that Truro’s Reply Brief entirely fails to rebut. The original December 13, 2006, deed is clear, unambiguous, and explicit, and Truro cannot allege a different “intent of the Grantor” based on evidence outside the deed. *See* TEC-Diocese Suppl. Brief at 4 & n.4. Truro claims that any allegation that a deed somehow needs “correcting” is enough to circumvent this fundamental rule. That plainly is not the law. A deed may be corrected only in the limited circumstances where the terms of the deed itself support a claim that it was ineffective, as discussed in our initial brief. This case fails to meet them. *Id.* at 5-7. There was no boundary description error. There is no basis to conclude that the original deed was ineffective. The grantors had divested themselves of title and could not execute a subsequent conveyance. And the “Deed of Correction” is not between the same parties.

As a result, the CtR Episcopal Property was not held by trustees named by Truro when Truro filed its § 57-9 Petition and is not so held now. Truro made a transparent attempt to bring the property under § 57-9(A) by executing another deed purportedly changing how the property was held. The Court should not condone such manipulation of § 57-9(A) and of Virginia land records by sanctioning a “Deed of Correction” that finds no support either in Truro’s own governing documents and exhibits or in the law regarding deeds of correction.

² The 1986 canons were produced *more than a year ago* in response to a request for past canons. Truro apparently failed to read them. Moreover, Truro filed a motion to compel (later withdrawn) on August 8, 2008. Our Opposition noted that Truro *had not requested* information regarding the basis for our contentions about the December 2006 deeds. *See* Opposition (filed Aug. 15, 2008) ¶ 15, at 5. Truro now seeks to preclude evidence on a subject about which it never propounded discovery, and where we provided an explanation of our position regarding both deeds anyway. Truro also had weeks after the August 7 letter to propound further discovery but failed to do so. Truro may not now transform its own lack of diligence into prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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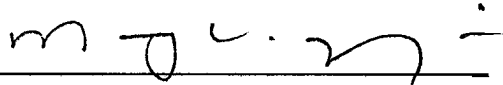
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In re:

**Multi-Circuit Episcopal Church
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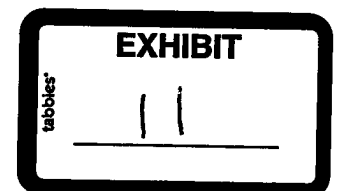
) **Civil Case Numbers:**
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) CL 2007-5686,
) CL 2007-5902,
) CL 2007-5903, and
) CL 2007-11514

ORDER

The Court hereby ORDERS the following:

1. For the reasons stated in a letter opinion issued today, the Commonwealth's Renewed Motion to Intervene for the purpose of defending the constitutionality of Va. Code § 57-9(A) is hereby GRANTED.

2. After careful consideration of the positions of the parties regarding the scope of discovery, the Court has determined that it cannot disturb its previous discovery rulings at this time. To do so when the parties remain in such fundamental disagreement as to the scope of the October trial, and even as to whether certain issues are matters of fact or questions of law, could place at risk the October trial date. This the Court is unwilling to do.



3. There are certain matters that this Court has already determined will be heard in the October trial. They are as follows:

A. The declaratory judgment actions as to any congregation that did not file a 57-9 petition.

B. As to all congregations that filed 57-9 petitions, the Court must determine whether the vote was "fairly taken" in accordance with 57-9, and approve or disapprove the determination of the congregation regarding its majority vote as to its choice of branch.

C. As to all congregations that filed 57-9 petitions, and where the contracts clause issue has not already been resolved prior to trial, the Court must determine whether the statute is unconstitutional on contracts clause grounds as to that particular congregation.

D. The declaratory judgment action as to any congregation that did file a 57-9 petition, where *either* the Court disapproves the determination of the congregation regarding its majority vote as to its choice of branch *or* the Court finds 57-9 to be unconstitutional as to that congregation on contracts clause grounds.

4. There are certain other issues that may affect the scope of the October trial:

A. Whether any of the congregations that did not file 57-9 petitions are covered by or subject to a petition filed by another congregation, a claim that has been asserted by the CANA Congregations.

B. The precise property subject to each 57-9 petition.

C. Whether ECUSA/Diocese may assert at the October trial that the CANA Congregations have contracted away, waived, abandoned or relinquished their right to file a 57-9 petition, a claim that the CANA Congregations argue is untimely and unpled.

D. Whether the Contracts Clause protects only contractual rights that existed prior to the effective date of the 1867 predecessor statute to 57-9, a position asserted by the CANA Congregations.

E. Whether in determining the applicability of the Contracts Clause to particular congregations, the Court should consider only the applicable deeds, a position asserted by the CANA Congregations.

4(A) and 4(B) are matters that may require an evidentiary hearing and it is not the Court's present intention to resolve these questions prior to the October trial. 4(C), 4(D) and 4(E) are pure questions of law and will be resolved prior to trial.

The parties are to address 4(C), 4(D) and 4(E) as follows:

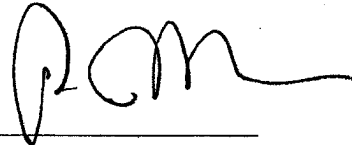
1. Opening briefs of no more than 20 pages to be filed by July 28, 2008.

2. Opposition briefs of no more than 15 pages to be filed by August 4, 2008.

3. Reply briefs of no more than 10 pages to be filed by August 7, 2008.

4. Oral argument on these questions to be held at 10 A.M. on Monday, August 11, 2008.

SO ORDERED, this 16 day of July 2008.

A handwritten signature in black ink, appearing to read 'R. Bellows', written over a horizontal line.

Randy I. Bellows,
Circuit Court Judge