

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:

**Multi-Circuit Episcopal Church
Litigation**

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

**TRURO CHURCH'S REPLY BRIEF ON WHETHER THE
CHRIST THE REDEEMER EPISCOPAL CHURCH'S CONVEYANCE OF CHURCH
PROPERTY TO TRURO IS SUBJECT TO TRURO CHURCH'S §57-9 PETITION**

Truro Church, by its counsel, hereby files this Reply Brief on issues concerning the timing of conveyance of certain property gifted by deed to Truro Church by Christ the Redeemer Episcopal Church in December 2006, and its applicability to Truro's §57-9 Petition, as requested by the Court at the September 19, 2008, Hearing, and states as follows:

ECUSA/Diocese grossly mischaracterize Truro Church's position by suggesting that Truro is urging the Court to disregard the distinction between property held by Trustees for the benefit of the congregation and property held in the corporate form. **Truro makes no such**

assertion. Church property held directly by a church in its corporate form is plainly not subject to Va. Code § 57-9. The only assertion made by Truro Church is that the Deed of Correction – which titles the property at issue in the name of trustees as mandated by Truro Church’s By-laws – relates back to the original Quitclaim Deed and corrects an error made by Christ the Redeemer Church in conveying the property – thereby properly bringing the property at issue within the scope of Truro’s Va. Code § 57-9 Petition.

ECUSA/Diocese next assert that the subject property was not pleaded in Truro Church’s Va. Code § 57-9 Petition and therefore not subject to the Petition. This position glosses over the fact that Virginia is a notice pleading state and Truro Church was not required to list all property subject to its Petition.¹

ECUSA/Diocese then seek to confuse the issue by asserting that Truro’s trustees and Truro in its corporate form exist as two separate entities. Under this baseless notion, ECUSA/Diocese assert that the Deed of Correction executed by Christ the Redeemer is invalid because it “changed” the grantee.² But ECUSA/Diocese fail to recognize that when Truro incorporated in February 2006, the prior unincorporated entity ceased to exist, leaving only the one incorporated entity, Truro Church. And it was precisely this entity to whom Christ the

¹ Any claim of undue surprise that this property was subject to Truro Church’s Petition is vacant at best. ECUSA/Diocese attached the original Quitclaim Deed and the Deed of Correction to their July 2, 2008 Opening Brief Pursuant to the Court’s June 27, 2008 Order. The original Quitclaim Deed, attached as Exh. B to that Brief, was Bates-stamped CONG 000321–CONG 000324 and was produced by the CANA Congregations as part of its initial production of documents on July 10, 2007. The Deed of Correction, attached as Exh. C to that Brief, was Bates-stamped EDV 0000833-EDV0000835 and was produced by the Diocese on September 12, 2007. In short, ECUSA/Diocese knew that this property was subject to Truro Church’s Petition over a year ago.

² Compare *Gallups v. Kent*, 953 So.2d 393 (Ala. 2006)(deed of correction rejected where grantor on first deed not the same as grantor on second deed) and *Kirkpatrick v. Ault*, 280 P.2d 637 (Kan. 1955) (where original deed conveyed property to husband and wife, corrective deed removing husband as grantee held invalid to revoke husband’s interest to avoid judgment lien against him).

Redeemer conveyed its church property on December 13, 2006, but without knowledge of Truro's By-Law requirement that its property be held by trustees. Accordingly, the only "change" sought by the second deed here was simply to correct the *form* in which the property would be held by/for the corporate entity – Truro Church, and to confirm the title already conveyed to Truro in a manner consistent with Truro's By-laws. *See Saritan v. Fidelity Financial Services, Inc.*, 116 Idaho 269, 272, 775 P.2d 161, 164 (1989) ("A correction deed does not bestow new title on the grantee; rather, it is the confirmation of a title already possessed.")

ECUSA/Diocese now – for the first time and at the close of discovery – seek to assert an untimely challenge to the validity of the *original* Quitclaim deed based on their self-serving interpretation of the Diocese's Canons. *See* ECUSA/Diocese's Supplemental Brief, pgs. 9-11. Yet at no time during discovery did ECUSA/Diocese raise or otherwise identify the Canons as a basis for challenging the original conveyance to Truro.³ *See* Exh. J. to Truro Church's Supplemental Brief (Letter from J. Heslinga dated August 7, 2008) (not identifying the Canons as a basis for the alleged ineffectiveness of the original Quitclaim Deed). Accordingly, Truro Church did not pursue any further discovery on the matter prior to the September 26 discovery cut-off date. As the issue of whether the Canons preclude the subject conveyance falls well-outside the scope of discovery, ECUSA/Diocese should be precluded from introducing evidence on the topic at trial. Moreover, even if the Court was to consider whether the Original Quitclaim Deed was proper, such a determination is premised on pure factual issues such as whether the meaning of the term "Churches Under Supervision" (which are subject to the Bishop's authority)

³ Nor was this an issue framed for further briefing at the September 19, 2008 hearing. *See* Transcript from hearing, attached as Exh. A. to Truro Church's Supplemental Brief.

carried over from the outdated 1986 version of the Canons to the current version of the Canons and its use of the term “Mission.”⁴

ECUSA/Diocese wrongly assert that Christ the Redeemer “ceased to use” and thus “abandoned” its property. But that, at its very heart, is a factual issue precluding this Court from deciding the issue as a matter of law. As the evidence will show, the property in question was never abandoned.

ECUSA/Diocese next assert that the unambiguous language of the original Quitclaim Deed precludes the Court from considering evidence outside the deed to ascertain the grantor’s intent. None of the cases cited by ECUSA/Diocese involve a deed of correction – but simply a dispute between two parties over the plain language of a single document. Moreover, none of the cases analyzing deeds of correction in Virginia remotely address ambiguity, or lack thereof, of an original deed – all of which were unambiguous on their face.

ECUSA/Diocese also make a passing suggestion that the December 13, 2006 Original Quitclaim Deed was not subject to the Petition because the voting had effectively concluded as of December 10, 2006 when a requisite majority of Truro Church’s members voted to disaffiliate. But voting did not conclude until December 17, 2006 and the Petition was not filed until December 18, 2006 – which at the very least – should be the effective date for determining what property is subject to the Petition.

⁴ See TEC/Diocese’s Supplemental Brief, pg. 10, footnote 8. ECUSA/Diocese’s argument requires this Court to believe that for the past 22 years – since 1986 – the mistaken reference in Canon 15, § 2 to “Missions Under Supervision” (as opposed to just “Mission”) has endured unnoticed and uncorrected until this litigation. Given the Diocese’s careful attention to its Canons, such an inadvertent error seems implausible at best.

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Respectfully submitted,

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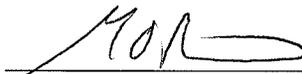
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