



State of South Carolina
The Circuit Court of the Third Judicial Circuit

THOMAS W. COOPER, JR.
JUDGE

16 SOUTH BROOKS STREET
POST OFFICE DRAWER 699
MANNING, SOUTH CAROLINA 29102-0699
TELEPHONE: (803) 435-2450
FAX: (803) 435-2461
E-MAIL: tcooperj@scjd.state.sc.us

April 27, 2007

Wanda Cribb
Deputy Clerk of Georgetown County
Post Office Drawer 421270
Georgetown, South Carolina 29442

Re: All Saints Parish, Waccamaw, et al vs. The Protestant Episcopal Church In The
Diocese of South Carolina, et al
Case Numbers: 2000-CP-22-0720 and 2005-CP-22-0068

Dear Wanda:

I am enclosing herewith final Orders in the above cases to be filed in the following order.

1. Modified Bench Order
2. Order on Reconsideration

After the Orders have been filed, please send certified copies to all counsel of record.

We have notified counsel of our rulings on these matters today, but the time for appeal will be triggered by receipt of the certified copies from your office.

It was a pleasure working with you in this case and I invite your questions or comments in this regard.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink that reads "Tommy Cooper".

Thomas W. Cooper, Jr.
gb
Enclosures

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McNAIR LAW FIRM, P.A.

Wanda Cribb
April 27, 2007
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cc: ✓ Henrietta U. Golding, Esq.
Ben Moore, Jr., Esq.
Julius Hines, Esq.
Fred Newby, Esq.
Ross Lindsay, Esq.
C. Jones Havird, Esq.
David Beers, Esq.
Coming Gibbs, Jr., Esq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
OF THE
FIFTEENTH JUDICIAL CIRCUIT

ALL SAINTS PARISH, WACCAMAW, a)
South Carolina Non-profit Corporation; D.)
CLINCH HEYWARD, Warden for All Saints)
Parish, Waccamaw; W. RUSSELL)
CAMPBELL, Warden for All Saints Parish,)
Waccamaw; MARTHA M. LACHICOTTE,)
ANN USHER MERCER, VANDELL)
ARRINGTON, and RIVES KELLY,)
Individually and as Representatives of the)
Inhabitants of the Waccamaw Neck Region of)
Georgetown County; and EVELYN)
LABRUCE, Individually and as a)
Descendant of George Pawley;)

C/A No. 2000-CP-22-0720

Of whom W. RUSSELL CAMPBELL, in his)
capacity as Senior Warden of All Saints)
Church, is also a Defendant by way of)
Counterclaim,)

Plaintiffs,)

vs.)

MODIFIED BENCH ORDER *

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF SOUTH)
CAROLINA; THE EPISCOPAL CHURCH,)
a/k/a The Protestant Episcopal Church in the)
United States of America; MARK)
SANFORD, in his official capacity as The)
Governor of the State of South Carolina; and)
JOHN and JANE DOE, as descendants to)
George Pawley and William Poole,)

Defendants; and)

GUERRY GREEN, on behalf of All Saints)
Parish, Waccamaw, and in his capacity as)
Senior Warden of the same; CARL SHORT,)
on behalf of All Saints Parish, Waccamaw,)
and in his capacity as Junior Warden of the)
same; and GEORGE TOWNSEND, JAMES)
CHAPMAN, and EDWARD MILLS, on)
behalf of All Saints Parish, Waccamaw, and)
in their capacities as Members of the Vestry)

C/A No. 2005-CP-22-0068

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of the same; THE PROTESTANT)
EPISCOPAL CHURCH IN THE DIOCESE)
OF SOUTH CAROLINA and THE RIGHT)
REVEREND EDWARD L. SALMON, JR.,)
in his capacity as Bishop of the Protestant)
Episcopal Church in the Diocese of South)
Carolina,)

Plaintiffs by way of Counterclaim,)

vs.)

W. RUSSELL CAMPBELL, in his capacity)
as Senior Warden of All Saints Church; D.)
CLINCH HEYWARD, in his capacity as)
Junior Warden of All Saints Church;)
DONALD ALFORD, BUTLER F.)
DARGAN, DIANE DEBLOCK, ROBERT L.)
JONES, A.H. (DOC) LACHICOTTE,)
DAVID LANE, LOU L. PAQUETTE,)
HUGH PATRICK, and DANIEL W.)
STACY, in their capacity as Vestry Members)
of All Saints Church; DAVID E.)
GRABEMAN, in his capacity as Treasurer of)
All Saints Church; ALL SAINTS CHURCH,)
an unincorporated association; ALL SAINTS)
CHURCH , WACCAMAW, INC., a South)
Carolina Non-profit Corporation; THE)
HONORABLE HENRY MCMASTER, in his)
capacity as Attorney General for the State of)
South Carolina; THE HONORABLE MARK)
HAMMOND, in his capacity as Secretary of)
State for the State of South Carolina; and)
JOHN and JANE DOE, as Unknown)
Descendants of George Pawley,)

Defendants by way of Counterclaim; and)

In Re: All Saints Parish, Waccamaw, a South)
Carolina Non-profit Religious Corporation.)

THE COURT: Ladies and gentlemen, this Court recognizes fully that the origin of this legal dispute arose out of theological differences. Those differences have spilled over into the courts, and we have been called upon now to decide certain issues.



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This Court does not, and it cannot, decide theological disputes. We cannot under our Constitution address those ecclesiastical differences. They will continue to exist, unfortunately, long after the Courts in this case have had their final say. And so this ruling does not address those matters of theology that divide you. This ruling is not based on religious principles or theology. It is based on the law as my finite mind understands it. And so this decision must not be interpreted as an endorsement or a criticism of the matters of faith that divide you.

Moreover, this case involves a complex intertwining of secular law which this Court has the authority to decide, ecclesiastical law into which I may not intrude, as well as a complex mixture of factual and legal disputes. And I have resolved to decide these issues as matters of law, applying the principles of Rule 50 of the South Carolina Rules of Civil Procedure and taking the factual evidence on each case in the light most favorable to the non-moving party. Having done that, I find that the evidence yields only one inference as a matter of law.

I

1. As to case number 2000-CP-22-720, I find the Trust Deed of 1745 created a charitable trust, which, under our law, is entitled to peculiar favor in the law, and Courts are therefore instructed to construe them, if possible, to carry out the general intention of the Settlor.

2. I further find that the trust did not execute under the Statute of Uses for the following reasons. In the first place, there is no beneficiary capable of taking title. "The inhabitants of the Waccamaw Neck," the named primary beneficiaries of the deed, are an amorphous, constantly changing group—precisely the kind of group that most charitable trusts are designed to benefit. Secondly, other jurisdictions have held that charitable trusts should not be executed by the Statute of Uses because they are often designed to

benefit certain classes of people in perpetuity, as in this case “forever in trust.” Next, the trust continues to have an active purpose according to its terms, “for the use of a chapel or church for divine worship of the Church of England established by law.” The purposes are not satisfied by the completion of the initial building. An examination of the property today would reveal that the building has been on-going since this time, and the property must be maintained and protected in accordance with the trust, “forever in trust.”

3. I further find that the disestablishment of the Church of England as a state religion in the United States does not act to defeat the trust. And here the Doctrine of Equitable Deviation should be applied by the Probate Court to carry out the intention of the Settlor in accordance with our law. The Attorney General of the State of South Carolina has also made this request, asking this Court to apply equitable principles to see that the charitable trust does not fail. And so the Probate Court below will determine the issues of Equitable Deviation in that regard. At this juncture I acknowledge that the jurisdictional limitation of this Court regarding trusts and the Probate Court’s jurisdictional limitations regarding trusts are different. This Court has concurrent jurisdiction only to determine the existence or the nonexistence of a trust. S. C. Code Ann. § 62-7-210(c). The Probate Court, on the other hand, has the exclusive jurisdiction to appoint the trustees to take the place of those original trustees and to determine the primary and incidental beneficiaries of the trust, and to deal with other matters regarding the trust itself.

4. I further find that the Parish has not been dormant and, therefore, that the 1820 and 1879 Acts which, in effect, provided for the escheatment of dormant, inactive parish property to the Diocese or an organization created by it, do not come into play. The evidence is that the parish was active from its inception. At the very least, there’s no

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evidence that it was not. Therefore, the 1903 deed from the Diocese to the Parish does not act to divest the trustees of the title to the property. There is no deed into the Diocese in the first place, and, as I've just stated, no operation of law created title in the Diocese.

5. I further find that there has been no repudiation of the trust by the Parish. The evidence to the contrary, that the property has always been used for the inhabitants of the Waccamaw Neck for religious purposes, for some arm of the Episcopal Church, is in accord with the terms of the trust. The single isolated lease of a parcel of the property located within the parish property does not act to repudiate the trust. Neither does the mortgaging of the property over a period of years act to repudiate the trust, since the evidence is that the funds obtained from the mortgages went back into the improvements of the property being used for religious purposes. Having determined that there has been no repudiation of the trust, no adverse possession lies because there has been no hostile use of the property. Indeed, the use of the property has been consistent with the terms of the trust.

6. I have distinguished the *Pawlet*¹ cited from the Statute of Uses portion of the Diocese's brief. There the question was whether or not the Church of England was a corporation capable of taking title to a glebe. In this particular case the Church of England was at best incidental beneficiary. It was not deeded title to the property that was in the Trust Deed.

7. I have considered Mr. Hines' arguments about the custom of the day and the treatment of trust property by others associated with these various trustees and settlers. However, in order to make the assumptions that I would have to make in order to reach the conclusion sought by the Diocese in that regard, I would have to disregard the

¹ Town of Pawlet v. Clark, 13 U.S. 292 (1815).

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peculiar favor in which these Courts are instructed to handle trusts, especially charitable trusts.

8. I've addressed the adverse possession claim of the Diocese a moment ago. The same rationale applies to the other "lapse" theories of the Diocese and the National Church. The parish's use of the property has been in accord with the terms of the trust. It has not been adverse or hostile to it. The indebtedness secured by the trust property might, perhaps, be prejudicial to the trust, unless, as here, the monies obtained from those mortgages were used to improve the trust property. In fact, what that mortgage money did was enhance its value and usefulness for the trust purposes. The *Pendarvis* case,² cited as a basis for the stale claims argument, is factually distinguishable. There the property involved in the Pendarvis trust was obviously used for purposes which were antithetical to the trust purposes themselves. That trust property was subdivided and sold for profit without regard to the provisions of the Trust Deed.

9. I therefore find that trust created by the deed of 1745 is viable and that John Doe, as the legal heir of George Pawley, is the owner of the property and fee simple, subject to the terms of the trust and for the use and benefit for the principal and incidental beneficiaries of the trust as determined by the Probate Court, the only Court of competent jurisdiction to do so. I note here that the rights of no one in this room have been impinged upon necessarily by this ruling. The rights of the Diocese, the National Church, or either parish are yet to be determined by a Court of competent jurisdiction.

II

10. As to case 2005-CP-22-0068, this case involves a decision which treads even more gingerly against the boundaries of ecclesiastical law. The Episcopal Church in the United States of America is an hierarchical church. And All Saints Waccamaw Parish

² *Presbyterian Church of James Island v. Pendarvis*, 227 S.C. 50, 86 S.E.2d 740 (1955).

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was a part of that union undeniably before January 8th of 2004. Ms. Golding asserts in her argument that prior to that date All Saints was a secular church for property purposes and a hierarchical church for matters of worship and other ecclesiastical matters. Our Supreme Court has been confronted with a similar request to recognize such a dichotomy in the past and has declined to do so. The case of *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975), is instructive and the facts in that case are, in many ways, parallel to the case before us today. That case involved the division of a church, the First Presbyterian Church of Rock Hill. I read certain parts of the facts today because you will be able to see certain similarities and I will note certain distinctions between that case and the case at hand.

11. “Prior to July 1, 1973, the entire membership of the First Presbyterian Church of Rock Hill (an eleemosynary corporation),” just as All Saints is, “was an integral part of” the national Presbyterian church—the Presbyterian Church in the United States—just as All Saints was with the Diocese of South Carolina and the National Church. *Adickes*, 264 S.C. at 398, 215 S.E.2d at 442.

“On July 1, 1973 certain members of the congregation of the First Presbyterian Church of Rock Hill, being dissatisfied with the Presbyterian Church in the United States, proposed a resolution which was adopted by a vote of 295 in favor and 87 against. That resolution recited that the congregation wished to free itself of its present denominational affiliation and concluded by resolving that ‘it do withdraw from the Presbytery of Bethel and the Presbyterian Church in the United States and by doing so does sever itself and its properties from all relationship with said bodies.’” *Id.* at 398, 215 S.E.2d at 442-43.

12. And on that same date the members sent a note to the stated clerk of the Presbytery, advising the Presbytery that the First Presbyterian Church had severed its relationship with the Presbytery and the National Church. And also on that same day, the



same members addressed another communication to the stated clerk notifying that the church had united with another Presbytery, a part of another denomination. "On July 7 [six days later] a committee of members who remained loyal to church (the 87) communicated with the Bethel Presbytery, expressing their loyalty to the denomination and to the Presbytery. Subsequently, the Bethel Presbytery recognized the loyal group as the First Presbyterian Church of Rock Hill [much like the Bishop's appointing a vestry in this particular case for All Saints]. Thereafter, Bethel Presbytery notified the majority group (the 295) that they no longer possessed any right or authority pertaining to First Presbyterian Church of Rock Hill. The majority group was further directed to turn over to the Judicial Commission of the Bethel Presbytery all evidence of ownership of church property, real and personal, along with church files and records." *Id.* at 398-99, 215 S.E.2d at 443. (I note for purposes of clarity in this particular case I am talking only about personal property. I've already dealt with the real property of the church in Part I of this order.)

13. The plaintiffs in *Adickes* alleged that they were members and officers of the First Presbyterian Church of Rock Hill and they represented those who were loyal and remained subject to jurisdiction the Presbytery of Bethel and the Presbyterian Church. They spoke for the minority. The defendants were representatives of a class of elders and deacons and members purporting to be the First Presbyterian Church of Rock Hill and they were the majority. Those who approved the resolution referred to above had "seceded" in the eyes of the Court. *Id.* at 399, 215 S.E.2d at 443 (paraphrasing).

"That church as it existed prior to July 1, 1973, owned real estate and personal property consisting, among other things, of funds in various banking institutions. Since its inception First Presbyterian Church of Rock Hill had been a member church of the

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Presbyterian Church in the United States (a parent organization), and of the Bethel Presbytery (an organization of several local Presbyterian Churches).” *Id.*

14. Clearly an analogy exists in this case in the relationship between the National Church and the Diocese and the local Parish, to the relationship of the Presbyterian Church in the United States, Bethel Presbytery and The First Presbyterian Church of Rock Hill.

15. The plaintiffs (the “loyal” minority) were asking the Court in that case to “hold (1) that they and the class they represent, are, and do compromise, the First Presbyterian Church of Rock Hill, and (2) that they are entitled to full and exclusive possession of the real and personal property and investments accounts of such church, and (3) that the defendants, who have renounced all allegiance to the Bethel Presbytery and the Presbyterian Church in the United States, be required to vacate such property” and not be allowed to come back on the property. *Id.* at 399-400, 215 S.E.2d at 443.

“The defendants admit that the purpose of their resolution of July 1, 1973 was to sever their connection with Bethel Presbytery and the Presbyterian Church in the United States. It is their contention that they, being the majority, are entitled to take over and control the properties.” *Id.* at 400, 215 S.E.2d at 443. (I note that these defendants do not claim that, because they are the majority, they’re entitled to take over the property. They draw another distinction based on a legal matter which I will address in a moment.)

16. And, so, the basic question before the *Adickes* Court was which of these two competing groups comprised the First Presbyterian Church of Rock Hill, the exact same question, in a different context, that confronts this Court today.

17. The Supreme Court in *Adickes* quoted the case of *Bramlett vs. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956), which had established the law up until that point. As a matter of fact the majority group in *Adickes* was given permission to argue against precedent.



Examining its decision in *Bramlett*, the *Adickes* Court acknowledged that the same basic issue was before it.

Therein we stated the questions could be as follows: ‘When a congregation of the Presbyterian Church decides in a congregational meeting, duly called and held in the manner prescribed by the form of government of the Presbyterian Church, to withdraw from the Presbytery of which it is a member, and from the Presbyterian Church in the United States, are they entitled to keep the property of the church as against the claim of a minority group who did not vote to withdraw but remained loyal to such Presbyterian Church?’ *Adickes*, 264 S.C. at 400-01, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 536-37, 93 S.E.2d at 882).

The *Bramlett* case involved a Presbyterian Church in the upper part of our state (McCarter Presbyterian Church). In that case the vote to withdraw was 38 to 2. There were actually 11 people who remained loyal. And the *Bramlett* Court said that

‘When a division occurs in a church congregation, which is always unfortunate, the question as to which faction is entitled to the church property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanctioned by the appropriate governing body of the denomination. It is a question of identity.’ *Id.* at 401, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 538, 93 S.E.2d at 883).

Quoting further from *Bramlett*, the *Adickes* Court went on to say that “appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any kind of connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church.” *Id.*

18. Now, Ms. Golding is asking me to distinguish between the holdings in *Bramlett* and *Adickes* and the case at bar on two bases: first, by stating that neither of those cases involves the amendment of a corporate charter prior to the action taken to leave the church, and secondly, that the Episcopal Church is a hierarchical church for ecclesiastical and worship purposes, but not for property purposes. I quote again from the *Adickes*

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case. "Counsel for appellants," that is the majority who wanted to be put back, who had pulled out from the church,

in the first attack on the order of the lower court, has striven vigorously to distinguish this case from *Bramlett* by arguing that the Presbyterian Church in the United States is congregational and not connectional insofar as matters of property are involved. It is conceded that the Book of Church Order, which is the controlling authority of the Presbyterian Church in the United States [similar to the Canons of the Episcopal Church] and, in turn, the Bethel Presbytery and the First Presbyterian Church of Rock Hill, has remained unchanged insofar as any issue in this case is concerned. We think that counsel has failed to point out any distinction between this case and *Bramlett* which would warrant a different result. *Id.*

19. That disposes, in my view, of the dichotomy sought to be imposed in this case, that the Episcopal Church was one church for matters of property and another church for matters of worship. Our Supreme Court addressed that very issue in the cases above, and I can find no real distinction.

20. Now that raises the issue of the amendment of the corporate charter prior to the vote taken to secede or to leave the denomination. On that case *Bramlett* is somewhat instructive. The *Bramlett* case involved the McCarter Presbyterian Church. That was actually a case in which the trustees of the McCarter Church, prior to pulling out of the Church, had deeded the property to another entity, and they had a right to do it under the law. In those days the Presbyterian Church, U.S., the Southern Presbyterian Church, in its Book of Order, did not have trust provisions which imposed a trust against the alienation of the property by a congregation, should they choose to do so. So, as the McCarter Church, had a right to do under corporate law, under state law, they conveyed their property to another entity, another corporation, and then withdrew from the Presbyterian Church in the United States.

21. The *Bramlett* Court determined, applying the principles that I just mentioned a few moments ago, that the minority who remained loyal to the church were entitled to

have the realty impressed with a trust for the benefit of the church and its members, and to have the deed reformed to show that the McCarter Presbyterian Church is the true owner and to obtain an injunction. While that particular case does not deal with a factual situation as ours, in which the articles of incorporation were amended, at a duly called meeting, as a corporation had a right to do, it dealt with the transfer of property owned by the church, as the church had a right to do. The court set that transfer aside for the reasons cited above.

22. The *Adickes* case, citing further the rationale applied in that particular case, went on to say (and in this the *Adickes* case applied neutral principles of law) that the

appellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection, and when they did they forfeited any right to the use and possession of the property of that church under the long established law of that church and of South Carolina. Due process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take it with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church,³ and it belongs to the same after they have withdrawn. They are simply now not a part of the church. *Id.* at 402, 215 S.E.2d at 445.

23. There's nothing in my ruling today that establishes or sponsors or advances or supports either the religious belief of the majority or minority in this case. The Courts have traditionally avoided any intrusion into religious matters and have confined their rulings in such cases to identifying the faction which represents the church after a schism had occurred. I therefore find that as to the 2005-CP-22-0068 case, the rationales of the *Adickes* and *Bramlett* cases apply and control. This Court likewise does not intrude into religious matters. This ruling is confined to identifying that faction which represents the

³ In this case it belonged to the trustees as I have claimed. And the real property belongs to the trustees—here we're talking about personal property. The personal property—to make it want more analogous—belonged to the First Presbyterian Church of Rock Hill before they joined the church.

church after the schism. And applying the clear principles and precedent of our Supreme Court, I find that the representative and successor to the church as it existed before the division is the Vestry composed of Guerry Green, Senior Warden, Carl Short, Junior Warden and the Vestry of James Chapman, Steve Chapman, Francis Cromwell, Connie Dickerson, Edward Mills, Robert Myers, Alberto Quattlebaum, Rhett Roman, and George Roe Townsend.

24. I decline to grant the ejectment of the defendants from the real property because its ownership has not yet been determined. As to the personal property I do grant the plaintiffs' request of an accounting of funds and deposits as of January 8, 2004, before the division, and an accounting of expenditures only since that date. They would have no right to any income of the church after that date. However, they would have an interest in expenditures that had been made from monies which they have contributed prior to that date. So the accounting would apply only for funds and deposits as of January 8, 2004, and to expenditures only since that date.

25. The holding of this Court, in other words, has been designed, in my view, to try to follow the hierarchical principles that our Court has adopted, and to acknowledge what I feel to be the law as it is clearly suggested it to me. I will be glad to accept from either side or both sides in this case proposed written orders if you wish for me to expand upon what I have written in this oral order, which, of course, is being taken down even as I give it. I caution you, of course, not to put anything in those orders, and I'm sure you will not, that is counter or contrary to what I have held in this particular oral order. If you feel, for the purposes of appellate review, that you need some further edification, further legal argument, on behalf of your respective positions from which I have drawn, I will be glad to do that, if you wish for me to do that. I'll ask each of you to please let me know


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immediately as to whether you wish to submit written orders in that regard. Failing a request to submit written orders, the ten days to file post-trial motions will begin today.

Ms. Golding, any questions from your perspective?

MS. GOLDING: Just procedural questions, Your Honor, with respect to Rule 50. The way I read the rule, I should also seek a judgment in accordance with my motion for directed verdict which is different than post-trial motions.

THE COURT: Right.

MS. GOLDING: And just as a matter of course, Your Honor, I would like to make that motion, however, I don't want to—I want to make sure that the Court won't believe I'm out of place.

THE COURT: I understand that.

MS. GOLDING: I'm sorry?

THE COURT: I understand that. I won't be offended by it.

MS. GOLDING: Thank you, Your Honor. With respect—obviously I'll make note on the directed verdict motion with respect to the charitable trust where the Court found in the position that we had advocated. With respect to the corporation, I believe that to be State statute, State non-profit corporate act is specifically sets forth the criteria this Court must follow. Because I believe it specifically sets forth what a church can and cannot do under that act. And therefore, I think that this Court by its ruling has not ruled upon the question as to the existence of the corporation and the amendment of the charter and the election of the corporate officers.

THE COURT: Right.

MS. GOLDING: And under that I would respectfully request the Court to reconsider as with respect to the directed verdict. Additionally, Your Honor, as we

alleged in our pleadings, I think the Court's failure to—and I use the word failure only simply because it's not with regard to my position.

THE COURT: I accept that.

MS. GOLDING: Thank you, know Your Honor. The Court's failure to rule upon the non-profit corporate act, I believe also violates our first amendment rights in that this Court has co-mingled and put together Church and State. Thank you, Your Honor.

THE COURT: All right, thank you, ma'am. Mr. Newby.

MR. NEWBY: Your Honor, certainly I have no motions with regard to the 2000 case. I would like just to clarify and make sure I understand that all issues have been handled as a matter of law and at this point there are no issues remaining for the finders of the fact due to the Court's Order.

THE COURT: Yes, sir.

MR. NEWBY: And because you made it clear, I think that your decision in the 2005 case related only to personal property and the accounting and I have no motions in that case.

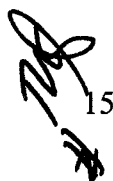
THE COURT: Thank you. Mr. Hines.

MR. HINES: Your Honor, in the 2005 case I just want to make sure that all of the causes of action we have in there have been addressed by your ruling. And based on what you have said, it appears that the claims for declaratory and injunctive relief as to who constitutes the church, those—your ruling in favor of the parties I represent on both of those causes of action.

26. THE COURT: That's right. In so far as the injunctive relief sought identification and did not pertain to real property.

MR. HINES: I understand.

THE COURT: All right.

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MR. HINES: And there's also an injunctive claim relating to use of the church name. And I'm not sure that I heard that addressed in your ruling.

27. THE COURT: You did not. The church name in my view follows according to what hierarchical law says. It's in accord with the state law as I understand it. And I was reluctant to intrude too far into some of those matters because I didn't want to step on either Bishop Murphy's toes or Bishop Salmon's toes in that regard. It is, as I read the case and as I cited from the case, I think it gives us the instruction that we need into the identity. And I think quite frankly that the *Adickes*—and especially the *Adickes*—case clearly addresses the issue of the name. As a matter of fact, *Adickes*, citing *Bramlett*, said the appellants—that's the group that pulled away—cannot now comprise the former Presbyterian Church because they have seceded and disassociated themselves by a voluntary action and vote.⁴ I cited that specifically for that particular point and am willing to go no further in that regard.

MR. HINES: All right.

28. THE COURT: I was—I am very mindful of the narrow line that separates church and State. And, therefore, I have consciously attempted to analogize this case to that particular case in which our Supreme Court has spoken to what I believe on points which are very analogous to what I have here today to decide. Beyond that I'm willing to go no further.

MR. HINES: And on the claim and delivery cause of action which relates to the personal property, am I to understand that you're entering judgment in favor of the Episcopal Church vestry on that cause of action?

29. THE COURT: That's exactly right. I assume, however, taking what I've heard before, that an appeal bond would be or will be posted to avoid any undue intrusion about

⁴ *Adickes*, 264 S.C. at 401, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 538, 93 S.E.2d at 883).

that while the appeal is pending, but I'll leave that for matters of another day. But that clearly is the import as I read the other cases.

MR. HINES: Thank you, Your Honor.

MS. GOLDING: May I inquire of the Court that claim and delivery as of the January 8, 2004, property that existed at that time?

THE COURT: Yes, ma'am. Yes, ma'am.

MS. GOLDING: Thank you, Your Honor.

THE COURT: All right. Ms. Anderson.

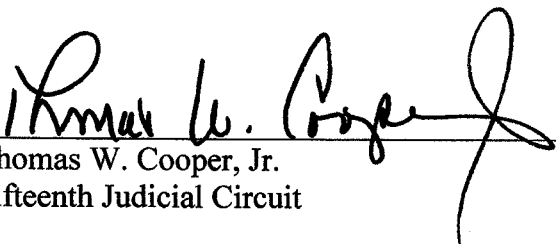
MS. ANDERSON: Your Honor, I have nothing to add at this time, Your Honor.

THE COURT: All right. Folks, I wish—I wish I had the wisdom to bring about a decision that would satisfy everybody in the room and to finalize it. But I am aware, as you're aware, that this is simply round one. I only wish you all Godspeed as you continue to travel down this road. Thank you.

AND IT IS SO ORDERED.

At Chambers
Manning, South Carolina

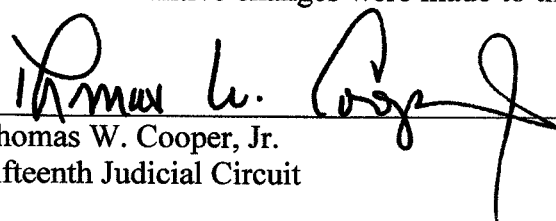
April 20, 2007


Thomas W. Cooper, Jr.
Fifteenth Judicial Circuit

* The above Order was dictated from the bench on March 13, 2006, following a one week trial. The lawyers were invited to submit proposed written Orders if they wished to, but none were submitted. Following receipt of the transcript, it was necessary to make certain corrections and modifications, almost exclusively of a structural or grammatical nature. No substantive changes were made to the Order issued from the bench.

At Chambers
Manning, South Carolina

April 20, 2007


Thomas W. Cooper, Jr.
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
OF THE
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2000-CP-22-0720

ALL SAINTS PARISH, WACCAMAW, a)
South Carolina Non-profit Corporation; D.)
CLINCH HEYWARD, Warden for All Saints)
Parish, Waccamaw; W. RUSSELL)
CAMPBELL, Warden for All Saints Parish,)
Waccamaw; MARTHA M. LACHICOTTE,)
ANN USHER MERCER, VANDELL)
ARRINGTON, and RIVES KELLY,)
Individually and as Representatives of the)
Inhabitants of the Waccamaw Neck Region of)
Georgetown County; and EVELYN)
LABRUCE, Individually and as a)
Descendant of George Pawley;)

Of whom W. RUSSELL CAMPBELL, in his)
capacity as Senior Warden of All Saints)
Church, is also a Defendant by way of)
Counterclaim,)

Plaintiffs,)

vs.)

ORDER ON RECONSIDERATION

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF SOUTH)
CAROLINA; THE EPISCOPAL CHURCH,)
a/k/a The Protestant Episcopal Church in the)
United States of America; MARK)
SANFORD, in his official capacity as The)
Governor of the State of South Carolina; and)
JOHN and JANE DOE, as descendants to)
George Pawley and William Poole,)

Defendants; and)

GUERRY GREEN, on behalf of All Saints)
Parish, Waccamaw, and in his capacity as)
Senior Warden of the same; CARL SHORT,)
on behalf of All Saints Parish, Waccamaw,)
and in his capacity as Junior Warden of the)
same; and GEORGE TOWNSEND, JAMES)
CHAPMAN, and EDWARD MILLS, on)
behalf of All Saints Parish, Waccamaw, and)
in their capacities as Members of the Vestry)

C/A No. 2005-CP-22-0068

of the same; THE PROTESTANT)
EPISCOPAL CHURCH IN THE DIOCESE)
OF SOUTH CAROLINA and THE RIGHT)
REVEREND EDWARD L. SALMON, JR.,)
in his capacity as Bishop of the Protestant)
Episcopal Church in the Diocese of South)
Carolina,)

Plaintiffs by way of Counterclaim,)

vs.)

W. RUSSELL CAMPBELL, in his capacity)
as Senior Warden of All Saints Church; D.)
CLINCH HEYWARD, in his capacity as)
Junior Warden of All Saints Church;)
DONALD ALFORD, BUTLER F.)
DARGAN, DIANE DEBLOCK, ROBERT L.)
JONES, A.H. (DOC) LACHICOTTE,)
DAVID LANE, LOU L. PAQUETTE,)
HUGH PATRICK, and DANIEL W.)
STACY, in their capacity as Vestry Members)
of All Saints Church; DAVID E.)
GRABEMAN, in his capacity as Treasurer of)
All Saints Church; ALL SAINTS CHURCH,)
an unincorporated association; ALL SAINTS)
CHURCH, WACCAMAW, INC., a South)
Carolina Non-profit Corporation; THE)
HONORABLE HENRY MCMASTER, in his)
capacity as Attorney General for the State of)
South Carolina; THE HONORABLE MARK)
HAMMOND, in his capacity as Secretary of)
State for the State of South Carolina; and)
JOHN and JANE DOE, as Unknown)
Descendants of George Pawley,)

Defendants by way of Counterclaim; and)

In Re: All Saints Parish, Waccamaw, a South)
Carolina Non-profit Religious Corporation.)

BACKGROUND

The cases above were consolidated for trial, and were tried before a jury in
Georgetown County beginning March 6, 2006. After all the evidence had been



presented, and all parties had rested, this Court decided the issues as matters of law, applying the principles of Rule 50 of the South Carolina Rules of Civil Procedure, taking the factual evidence in each case in the light most favorable to the non-moving party. The Court then issued a Bench Order on March 13, 2006. The lawyers were invited to submit proposed written Orders if they wished to, but none were submitted. Following receipt of that portion of the trial transcript containing the Court's Order, it was necessary to make certain corrections and modifications, almost exclusively of a structural or grammatical nature. No substantive changes were made to the Order issued from the bench. As a result, a modified Bench Order, in written form, was prepared and has been filed immediately prior to the filing of this Order.

In response to the original Bench Order issued on March 13, 2006, certain parties filed Motions to Reconsider and/or Alter or Amend, pursuant to Rule 59 (e) SCRPC.

CASE NUMBER: 2000-CP-22-720

MOTION OF THE 2000 PLAINTIFFS

The 2000 Plaintiffs request that the Court's judgment be altered or amended to clarify its ruling and specifically find that its ruling in the 2000 case was made on motion for directed verdict by the 2000 Plaintiffs and the Does, that the 2000 Plaintiffs moved for the directed verdict to be set aside and to have an entry of judgment in accordance with the directed verdict pursuant to Rule 50(b), SCRPC, that Plaintiffs waived their right to a jury trial in the 2000 case regarding title to the All Saints Property, and that the Court's ruling in favor of the 2000 Plaintiffs and the Does is a decision of law on the merits of a complex legal matter pursuant to Rule 38(b), [sic] SCRPC.

The above Motion is granted. When this case was filed, neither side requested a jury trial. However, when the Defendants in this case filed a counterclaim,

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the Plaintiffs moved for a jury trial. Over objection of the Defendants, this Court granted the Plaintiffs' Motion for a Jury Trial. The Plaintiffs by Motion appeared to be waiving their right to a jury trial and asking that the Court's ruling in favor of the 2000 Plaintiffs and the Does is a decision of law on the merits of a complex legal matter pursuant to Rule 39 (b) SCRPC. Although this Court announced its decision as a directed verdict on the issues involved, the more correct standard upon which the decision was based was that of Rule 39 (b) SCRPC. Moreover, the Defendants have consistently contended that their Amended Counterclaim did not alter the central issues in the case and that the Plaintiffs were not entitled to a Jury Trial in any event. For that reason, the Motion of the 2000 Plaintiffs is granted.

MOTIONS OF 2005 PLAINTIFFS

Guerry Green, Carl Short, George Townsend, James Chapman, Edward Mills, the Protestant Episcopal Church in the Diocese of South Carolina ("the Diocese") and the Right Reverend Edward L. Salmon, Jr., move with respect to case number 2000-CP-22-0720, that the Court's judgment be altered or amended in the following particulars:

1. That the judgment be amended to include a specific ruling on the Movants' laches defense, which was asserted against the ownership claims of John Doe and Jane Doe.

2. That the judgment be amended to include a specific ruling on the Movants' defense based on S.C. Code § 15-3-380. This defense argued that All Saints Parish, Waccamaw obtained good title against the world after possessing the subject property for more than forty years under color of a written instrument, namely the 1903 deed from the Diocese.


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3. The Movants also request specific rulings on their defenses based on the common law presumption of title after 20 years of peaceful possession and adverse possession under Sections 15-3-340 and 15-3-350 of the South Carolina Code of Laws.

The Motions of the 2005 Plaintiffs are denied for the reasons set out below.

CONCLUSIONS OF LAW

No entity can lay a claim to the All Saints Property by means of adverse possession because there has been no hostile possession adverse to the 1745 Trust Deed. All Saints Parish, Waccamaw, has been in continuous possession and control of the All Saints Property since incorporation in 1903. There can be little doubt that such possession by All Saints Parish Waccamaw has been open and actual. However, All Saints Parish, Waccamaw has not ever been in possession of the all Saints Property hostile to the legal title holder or the beneficiaries under the 1745 Trust Deed. It seems contrary to the long established public policy in this State to permit adverse possession to operate against a valid and active charitable trust.

Under no circumstances can a trustee set up a claim to the trust property adverse to the cestui que trust, nor can he deny his title. International Agr. Corp. v. Lockhart Power Co., 188 S.E. 243, 246 (1936). "The principle is just and well-established that, where one's possession was begun in privity with or in subservience to the title of another, a quasi fiduciary relation is established, and, before a foundation can be laid for the operations of the statute of limitations or the defense of adverse possession by the acquisition of any outstanding title, a clear, positive, and continued disclaimer of the title under which he entered and the assertion of an adverse claim must be brought home to the other party. Until the trust is openly repudiated, the cestui que trust may rely upon the integrity of the trustee without endangering his right by lapse of time." Brunson v. Sports, 121 S.E.2d 294, 298 (1961) (quoting Bradley, et al v. Calhoun, 125 S.C. 70, 117

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S.E. 811, 815) All Saints Parish, Waccamaw, as the custodian or defacto trustee, cannot lay claim to the All Saints Property without open repudiation of the 1745 Trust. Brunson v. Sports, 121 S.E.2d 294, 298 (1961). Although All Saints Parish, Waccamaw has remained in possession and control of the All Saints Parish, it has never openly repudiated the 1745 Trust because the property continues to be carried out for the benefit of the inhabitants of the Waccamaw Neck for use as a church or chapel for divine worship. The all Saints Property has never been used for any purpose other than for worship purposes. Similarly, All Saints Parish, Waccamaw, as beneficiary or a member of the class of beneficiaries,¹ of the Trust cannot adversely possess charitable trust property.

A charitable trust by definition is created for “public charitable purposes, being for objects of permanent interest and benefit to the public, and perhaps being perpetual in their duration,” Porcher v. Cappelmann, 198 S.E. 8, 10 (1938). This definition of a charitable trust permits and anticipates its creation in perpetuity for public benefit. To permit the custodian, trustee, beneficiary, Diocese, or Episcopal Church, USA to lay claim to property held in perpetuity for charitable purposes would be inapposite to the public policy favoring charitable trusts and upholding their enforcement indefinitely. See Epworth Children’s Home v. Beasley, 365 S.C. 157, 166, 616 S.E.2d 710, 715 (2005); Porcher, 198 S.E. at 10, Colin McK. Grant Home v. Medlock, 292 S.C. 466, 470, 349 S.E.2d 655, 657 (Ct. App. 1986).

The Movants assert that any interest or claims to the all Saints Property by the heirs of George Pawley and William Poole and the Inhabitants of the Waccamaw Neck are barred by the statutes of limitations as set forth in S.C. Code Ann. Section 15-3-340,

¹ This Court does not have jurisdiction to ascertain beneficiaries. S.C. Code Ann. Section 62-7-201.

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15-3-350, and 15-3-380, adverse possession, the presumption of grant derived from twenty years peaceful possession, and the doctrines of laches and stale claims.

Each of the Diocese's assertions must fail because the Heirs and the Inhabitants have never been deprived of possession or beneficial use of the All Saints Property at anytime throughout the 250 years of history. Importantly, the Inhabitants and the Heirs are currently in possession and have beneficial use of the All Saints Property for the purposes set forth in the 1745 Trust Deed. Section 15-3-340 provides that "No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action." Section 15-3-340 provides for a statute of limitations on actions for *recovery* of real property. However, the Heirs and the inhabitants have never been deprived of possession or beneficial use of the All Saints Property at anytime throughout the over 250 years of history. In fact, the all Saints Property has never been used for any purpose other than for worship purposes by the Inhabitants of the Waccamaw Neck, and is currently so used.

Section 15-3-350 provides: "No cause of action or defense to an action founded upon a title to real property or to rents or services out of the same shall be effectual unless it appears that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was *seized* or *possessed* of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made." (emphasis supplied) This Section is inapplicable, similar to Section 15-3-340, because the Heirs and the Inhabitants have never been deprived of possession or

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beneficial use of the All Saints Property at anytime throughout the over 250 years of history.

Lastly, with respect to the Diocese's contention that the Heirs and Inhabitants claims or interests to the All Saints Property are barred by the statute of limitations set forth in Section 15-3-380 of the South Carolina Code, the Movants rely upon the 1903 Trust Deed in support of this argument. Section 15-3-380 states: "No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person, claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole, or connected, pursuant to the provisions of this Section shall be deemed valid against the world after the lapse of such a period." This argument is premised upon the Diocese's assertion that All Saints Parish, Waccamaw has been in possession of the All Saints Property since the 1903 Quit Claim Deed, such possession began the running of the statute of limitations against the Heirs and the Inhabitants, and this statute of limitations has long since lapsed. However, as set forth above, the Heirs and the Inhabitants have not been deprived of possession or beneficial use of the All Saints Property at anytime throughout the over 250 years of history. Importantly, the Inhabitants and the Heirs are currently in possession and have beneficial use of the All Saints Property.

Additionally, the statute of limitations on a cause of action does not begin to run until the cause of action accrues. "A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. The law presumes at least nominal damages at that point." Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 397, 596 S.E.2d 42, 46 (2004) (citing Stephens v. Draffin, 327 S.C. 1,5, 488 S.E.2d 307, 309 (1997)). Although a

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trustee may act adversely to a trust for many years, the time period for the statute of limitations is tolled until the trustee openly repudiates the trust to the beneficiaries, (see Nesbit v. Clark, 187 S.C. 365, 197 S.E. 302, 384 (1938)), or in the present case, open repudiation of the 1745 Trust by All Saints Parish, Waccamaw. Any cause of action or defense by the Heirs and the Inhabitants did not accrue until the Diocese attempted to repudiate the 1745 Trust and filed the 2000 Notice. Prior to that time, the Heirs and the Inhabitants retained peaceful possession and beneficial use of the property. All Saints Parish, Waccamaw has been in possession and control of the property since 1903 and operated as the property custodian, using the All Saints Property only in furtherance of the Trust. There had been no wrongful conduct by All Saints Parish, Waccamaw on which the Heirs or the Inhabitants could assert a cause of action. The Heirs and the Inhabitants had no cause of action to enforce the terms of the Trust until the 2000 Notice filed by the Diocese purported to claim that the All Saint Property no longer held for the charitable purposes of the 1745 Trust Deed. As a result, the Plaintiffs claims are not barred by the statute of limitations or laches. Crotwell v. Whitney, 229 S.C. 213, 92 S.E.2d 473 (1956) (finding laches within the period of the statute of limitations is no defense at law).

Therefore, the Motions of the 2005 Plaintiffs are respectfully DENIED.

CASE NUMBER: 2005-CP-22-0068

This Plaintiffs in this case request that the Court's Judgment be altered or amended in the following particulars:

1. To specifically enjoin W. Russell Campbell, D. Clinch Heyward, Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou L. Paquette, Hugh Patrick, and Daniel W. Stacy, and their successors in office

A handwritten signature in black ink, appearing to be 'M. J. ...', located at the bottom center of the page.

("the AMiA Vestry") against holding themselves out as officers of All Saints Parish, Waccamaw, as requested in the First Cause of Action.

2. To order the South Carolina Secretary of State to cancel the Articles of Amendment filed by the AMiA Vestry and restore the certificate of incorporation for All Saints Parish, Waccamaw to its original form, as requested in the Second Cause of Action.

3. To award the remedy of ejectment with respect to any real property of All Saints Parish, Waccamaw which is not the subject of the 1745 deed.

4. To specifically state whether or not the AMiA Vestry are enjoined against using the name "All Saints Parish, Waccamaw" or any substantially similar name, as was requested in the Sixth Cause of Action.

5. To rule on the request for an order enjoining the AMiA Vestry from using the Federal Employer Identification Number for All Saints Parish, Waccamaw (57-0423483), as requested in the Seventh Cause of Action.

The 2005 Defendants request that the Court's Judgment be altered or amended in the following particulars:

6. That the Court's ruling in the 2005 case fails to apply neutral principles of law.

7. That the Court's ruling in the 2005 case fails to identify any religious doctrine inconsistent with the South Carolina Non-profit Corporation Act.

8. That the Court erred in relying upon Adickes v. Adkins, 264 S.C. 394, 215 S.E.2d 442 (1975) and Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956) to support its holding that Guerry Green, et al. were entitled to the All Saints Parish, Waccamaw name and personal property, and an accounting of the funds as of January 8, 2004.

9. That the Court declined to address the corporate status of the organizations.


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10. That the Court erred in finding that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the corporate name.


11. That the Order erroneously finds that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the personal property of All Saints Parish, Waccamaw as of January 8, 2004.

12. That the Order erroneously finds that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the personal property of All Saints Parish, Waccamaw and an accounting of funds of All Saints Parish, Waccamaw as of January 8, 2004.

13. That the Order denies the 2005 Plaintiffs their constitutional rights pursuant to the First and Fourteenth Amendments to the United States Constitution by failing to apply civil law to decide the issues in the 2005 case.

This Court initially declined to grant the relief sought by the 2005 Plaintiffs in paragraphs 1,2,4,& 5 above, fearing that would be an unwarranted judicial intrusion into Ecclesiastical matters. However, on reconsideration, this Court believes that the 2005 Plaintiffs are entitled to the relief requested for reasons set out in the CONCLUSIONS OF LAW portion of this Order below.

The Motion of 2005 Plaintiffs set out in paragraph 3 above to award ejectment with respect to any real property of All Saints Parish, Waccamaw, which is not the subject of the 1745 Deed is granted. For the reasons set out below, any real property of the parish which is not the subject to the 1745 Deed and any personal property acquired before January 8, 2004, is subject to the findings of this Court set out in its Bench Order (modified as of April 20, 2007) and this Order. This applies to the 2000 and the 2005 cases equally.


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The Motions of the 2005 Defendants set out in paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 above are denied for the reasons set out in the CONCLUSIONS OF LAW portion of this Order below.

CONCLUSIONS OF LAW

The 2005 Defendants suggest that *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) “adopted the ‘neutral principles of law’ approach to resolving church disputes” and implicitly overruled prior South Carolina case law dealing with divisions in hierarchical church congregations. *Pearson*, however, does not adopt the neutral principles approach to the exclusion of other South Carolina law. Instead, *Pearson* and other recent South Carolina church litigation cases recognize that South Carolina law is generally in accord with United States Supreme Court precedent, but continue to acknowledge an important distinction between hierarchical and congregational churches.

South Carolina Church Law

Under South Carolina law “[r]eligious organizations are generally divided into two groups: (1) congregational churches and (2) hierarchical churches.” *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). A congregational church is “an independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government.” In a hierarchical church, “a local church is but a member of a larger and more important religious organization, and is under its government and control, and the voluntary act of joining the general denominational organization subjects the local church to its rules and regulations.”

Two cases from the South Carolina Supreme Court hold that, in the event of a schism or division within the congregation of a hierarchical church, the question of which

faction represents the church is determined by which of the factions “adhere[s] to or is recognized by the governing body of the church.” *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956). Those who withdraw from the denomination, even if they constitute the majority of the congregation, are no longer considered part of the church. *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975), *cert. denied*, 423 U.S. 913 (1975). *Adickes* specifically rejected the argument that the application of “neutral principles of law” required a ruling in favor of “the majority of the members of the First Presbyterian Church of God, an eleemosynary corporation.” 215 S.E.2d at 445.

While *Bramlett* and *Adickes* do not appear to involve efforts to amend the articles of incorporation of a hierarchical church, the earlier case of *Harmon v. Dreher*, 17 S.C. Eq. (Speers Eq.) 87 (1843) is authority for the proposition that an incorporated hierarchical church cannot be converted into a congregational church. *Harmon* reasoned as follows:

It has been argued that the majority of the congregation should govern; and that it would be a violation of liberty to deny a controlling influence to their determinations. If this were a Congregational Church, this might be true. But why? Because, if the congregation had been so incorporated, it would be according to the very terms of the association that the majority should govern. *But if the incorporation of the church as a Lutheran Church, . . . , it would be a breach of all liberty as well as of faith, that the majority should impose a new contract upon the minority.* Suppose a majority should next year spring up in favor of the Roman Catholic or Mohammedan Religion . . . would not these defendants, however small a minority they might form, see and feel that their liberties were trampled on, by so gross a violation of the contract of association contained in their charter?

Id. at 123-24. It was thus a “fraud upon those who have contributed to [the church], and those who have entered it as such, for any majority in that congregation, however, numerous, to pervert the charter and convert it into a Congregational Church.” *Id.* at 123. According to *Harmon*, a congregation which incorporates as part of a hierarchical

church and subjects itself to the authority of the larger denomination is not free to change the character and affiliation of the incorporated church merely by taking a majority vote.

Jones v. Wolf and Neutral Principles of Law

In *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020 (1979), the United States Supreme Court considered whether Georgia's "neutral principles" approach to church property disputes was consistent with First Amendment jurisprudence. Georgia law once held that the property of local churches affiliated with hierarchical church organizations was held in trust for the general church, so long as that church had not "substantially abandoned" the tenets of its faith and practice. In *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S. Ct. 601 (1969), the United States Supreme Court held Georgia's original approach unconstitutional, on the grounds that civil courts had no jurisdiction to decide whether a church had abandoned its religious tenets. In response, the Supreme Court of Georgia abandoned its implied trust rule and inquired into whether there was any other basis for a trust interest on the part of the general church, such as a provision to that effect in the church constitution. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658, 659 (1969), *cert. denied*, 396 U.S. 1041 (1970). Finding none, the court found legal title in two local churches. 167 S.E.2d at 659-60.

Jones featured a review of another Georgia church dispute involving property owned by a local church and not subject to any express trust provisions. As in *Hull*, the Georgia courts applied the neutral principles doctrine and held that the property was owned by the local church. On certiorari review, the United States Supreme Court held that "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." 443 U.S. 604.

Jones also involved the question of which of two factions was representative of the true church. The Court held that a rebuttable presumption of majority rule was constitutionally permissible, but that if the membership of the church was to be determined according to the Presbyterian Book of Church Order, the Georgia courts would have to defer to the Presbytery's determination of who represented the true church. *Id.* at 608-609. On further proceedings on remand from the United States Supreme Court, the Georgia Supreme Court applied neutral principles to the question of which faction controlled. *Jones v. Wolf*, 244 Ga. 388, 260 S.E.2d 84 (1979), *cert. denied*, 444 U.S. 1080 (1980).

South Carolina Law Since Jones v. Wolf

South Carolina cases since *Jones v. Wolf* have preserved this state's well-established distinction between hierarchical and congregational churches. Most obviously, the *Seldon* case cited above for this distinction was decided in 1985, six years after *Jones*. *Seldon* cited the *Bramlett* and *Adickes* cases with complete approval, and indeed acknowledged them as controlling in a dispute between majority and minority factions of a hierarchical church. 326 S.E.2d at 149-50.

The Plaintiffs, however, argue that the 1996 case of *Pearson v. Church of God* "set forth and adopted the 'neutral principles of law' approach to resolving church disputes." The Plaintiffs would read *Pearson* as abandoning *Harmon*, *Bramlett*, *Adickes*, *Seldon* and other South Carolina hierarchical church cases, apparently in favor of the "neutral principles" doctrine as applied in Georgia. *Pearson*, however, does not overrule *Bramlett et al.* in favor of Georgia-style neutral principles. Instead, it holds that existing South Carolina law in this area is consistent with *Jones* and other United States Supreme Court precedent.

In *Pearson*, a former minister of the Church of God sued his church, alleging the wrongful discontinuation of his pension benefits. The governing church documents provided that aged ministers were eligible to receive pension benefits, but that their eligibility ceased upon revocation of their ministry. *Pearson v. Church of God*, 318 S.C. 417, 458 S.E.2d 68, 69 (Ct. App. 1995), *aff'd in result*, 325 S.C. 45, 478 S.E.2d 849 (1996). Pearson's pastoral license was revoked for adultery, whereupon his pension benefits were stopped. In his suit against the church, Pearson argued that as a retired minister he had no ministry to revoke, whereas the revocation of his license was not equivalent to the revocation of his non-existent ministry. 458 S.E.2d 70.

The South Carolina Court of Appeals reversed a jury verdict in favor of Pearson on the grounds that the dispute could not be resolved without "in-depth analysis of the substantive criteria by which a matter of fundamental church administration and policy are decided." The words "license" and "ministry," the Court of Appeals reasoned, are "by their very nature defined in terms of the authority they impart to the holder. This necessarily implicates the power to direct the ecclesiastical affairs of the Church." 458 S.E.2d at 72. By making "value judgments" about the meaning of such terms to the Church of God, the Court "would wade into waters prohibited to us by the First Amendment and South Carolina Constitution." *Id.*

The South Carolina Supreme Court affirmed in result, but held that jurisdiction could be exercised over the dispute without violating the federal and state constitutions. In so holding, the Court reviewed the United States Supreme Court's "most recent pronouncements on the subject of judicial review of religious disputes." 478 S.E.2d at 851. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372 (1976) was first cited for the requirement that "courts must accept in litigation the religious determinations of the highest judicatories of a religious organization." *Id.*

The Court then moved to *Jones*, which it described as “reiterat[ing]” the constitutional requirement of deference to hierarchical church decisions on questions of religious doctrine or polity. Although the Court discussed *Jones*’ approval of Georgia’s neutral principles approach, it did not cite adopt Georgia’s neutral principles doctrine, or for that matter cite any Georgia case law. Rather, *Jones* was cited for the proposition that reliance on familiar concepts of trust and property law tended to avoid entanglement in religious affairs. The Court was quick, however, to observe that any purportedly “neutral” interpretation of church governance documents must avoid reliance on religious precepts. Where interpretation of “religious concepts” in such documents would require the court to resolve a religious controversy, the court must “defer to the resolution of the doctrinal issue by the authoritative religious body.” 478 S.E.2d at 852 (quoting *Jones*, 443 U.S. at 604).

Having reviewed *Milivojevich* and *Jones*, the Court pronounced them “consistent in letter and spirit” with South Carolina case law. Citing *Bramlett*, the Court noted South Carolina’s recognition that courts “do have jurisdiction as to civil, contract and property rights which are involved in a church controversy,’ even though they have no jurisdiction of ‘ecclesiastical questions and controversies.’” 478 S.E.2d at 852 (quoting *Bramlett*, 93 S.E.2d at 873, 882). The Court also cited *Morris Street Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753 (1903), for the proposition that courts may adjudicate contract rights in church controversies “having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves to it.” *Pearson*, 478 S.E.2d at 853 (quoting *Dart*, 45 S.E. at 754).

The Court then announced the following “general principles” which emerged from its analysis of United States and South Carolina case law: (1) courts may not

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resolve disputes over “religious law, principle, doctrine, discipline, custom, or administration”; (2) courts may not avoid adjudicating civil law rights; and (3) in resolving civil law disputes, courts must accept as binding hierarchical church decisions as to religious law, doctrine, discipline etc. *Id.* Applying these principles, the Court held that jurisdiction existed over Pearson’s pension claim. Pearson’s right to benefits was, ultimately, a matter of contract which civil courts could adjudicate. That right was, however, contingent on the status of Pearson’s ministry, which was an ecclesiastical matter. The Church of God had determined that Pearson’s ministry had been revoked, and that ecclesiastical determination was binding in civil courts. It followed that Pearson’s legal right to pension benefits had been terminated by the church’s unreviewable revocation of his ministry. *Id.* at 853-54.

Pearson did not work any changes to South Carolina law. On the contrary, *Pearson* concluded, after a review of recent United States Supreme Court jurisprudence, that existing South Carolina law was consistent with federal constitutional requirements. *Pearson* did not adopt any principles of Georgia law, nor did it overrule *Bramlett* (which was cited with approval) or *Adickes*. Moreover, *Pearson* specifically acknowledged the distinction between hierarchical and congregational churches under federal and South Carolina law. With respect to hierarchical churches, the court’s role was to apply the final actions of the highest ecclesiastical tribunal or body. With respect to congregational churches, the final action of a majority of the congregation controlled. 479 S.E.2d at 853 n. 4. It was further noted that “[t]he Church of God has a hierarchical structure.” *Id.* at 854 n. 6. *Cf. Knotts v. Williams*, 319 S.C. 473, 462 S.E.2d 288, 291 n. 5 (1995) (while congregation governs Baptist church, “[t]he situation is substantially different when a hierarchical church is involved”).

Pearson stands for the proposition that civil courts remain free to adjudicate civil rights in the context of church controversies, although they must accept certain judgments of religious organizations as binding. As expressly noted in *Pearson*, that has always been the law in South Carolina. *Pearson* left untouched the well-established South Carolina rule that, in the event of a division in the congregation of a hierarchical church, the true church is that faction which is recognized by the higher church authorities.

Pearson Applied to this Case

Like *Pearson*, this case involves a mixture of civil and ecclesiastical issues. The civil law issue is, in essence, which of two opposing vestries are entitled to recognition as the true officers of the church, including the religious corporation which gives the church its civil law existence. That civil law issue depends on an ecclesiastical question: which of two church factions should be recognized as the “communicants” who, under the parish constitution, make up the voting membership of the church and are therefore entitled to choose its officers?

As in *Pearson*, here the ecclesiastical question has been conclusively answered by the hierarchical church authorities. Bishop Salmon, who is the ecclesiastical authority for the Diocese, recognized the faction remaining loyal to the Diocese and the Episcopal Church as the communicants of All Saints Parish, Waccamaw. The civil court has no jurisdiction to identify the communicants of a church. That quintessentially religious question is left to the church authorities. See *Pearson*, 478 S.E.2d at 852-53 (quoting *Dart*, 45 S.E. at 754) (“the action of church authorities in the deposition of pastors and the expulsion of members is final”). The civil court’s role is to adjudicate civil rights based on the church’s pronouncement as to who makes up its membership. In a hierarchical church, this pronouncement comes from the higher church authorities, not the local church.

The 2005 Defendants contend that a congregational vote was taken on January 8, 2004, to remove certain references to the Diocese and the Episcopal Church from the articles of incorporation of All Saints Parish, Waccamaw. This change, it is argued, converted the corporation from a component parish of the Diocese into a congregational church.

However, that argument fails for the following reasons:

First, the congregation had to be communicants of the parish, and thus also communicants of the Diocese and National Church to which it belonged, to vote on any matters affecting parish governance. While as a matter of form the majority faction voted to leave the Diocese and the Episcopal Church after voting to amend the charter, in substance they had already resolved to leave the Diocese and the Episcopal Church when they voted to amend the articles of incorporation. Those who voted in favor of the amendment obviously had every intention of voting to leave the denomination a few moments later. Their vote to amend the articles of incorporation was simply a step in their overall plan to leave the Diocese and the Episcopal Church, as had been recommended by the former vestry in October and December of 2003.

In *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 281 Cal. Rptr. 396, 410, 230 Cal. App. 3d 480, *cert. denied*, 502 U.S. 1073 (1991), church members who had previously voted to leave the denomination were held to have forfeited their right to vote on amendments to the articles of incorporation. Here, although as a technical matter the vote to amend preceded the vote to leave the denomination, that distinction should not make a difference if those voting for the amendment did so for the purpose of leaving the Diocese and the Episcopal Church. Their acts were simply inconsistent with their purported status as communicants of the church they were voting to leave.

Second, even if the vote to amend was effective, the amendment did not convert the corporation from a component of a hierarchical church to an independent congregational church. While the articles of incorporation were certainly one indication that All Saints Parish, Waccamaw, was formed as part of a hierarchical church, the more important fact is that All Saints Parish Waccamaw *did* operate as a component of a hierarchical church for the better part of a century. As noted in *Seldon*, the voluntary act of joining a hierarchical denomination subjects the local church to the rules and regulations of the denomination. 326 S.E.2d. at 148. All Saints Parish, Waccamaw is a component part of the Diocese not only because its original articles said so, but also because it voluntarily affiliated itself with the Diocese, attended and voted at annual meetings of the Diocese, and otherwise involved itself in the affairs of the Diocese in any number of ways. It remains subject to the “implied obligations” imputed to those who have “voluntarily submitted themselves to the authority of the church by connecting themselves with it.” *Pearson*, 478 S.E.2d at 853 (quoting *Dart*, 45 S.E. at 754). Those pre-existing obligations are not undone by amendments to the articles of incorporation. *See* S.C. Code § 33-31-1008 (existing rights are not affected by amendments to the articles of a non-profit corporation).

Finally, although religious corporations are generally subject to South Carolina’s Non-Profit Business Corporation Act, that Act yields to religious doctrine where required by the federal and state constitutions. S.C. Code § 33-31-180. To transform a group of Episcopal communicants into communicants of another church (here a parish of the Church of Rwanda) would be contrary to the religious doctrine of the Episcopal Church and the Diocese. One need not cite constitutions or canons² to show that hierarchical

² In any case, various canons show the relationship between parish corporations and both the Diocese and the Episcopal Church. The Plaintiffs have pointed out that, according to the Diocese’s Standing Resolution

churches generally disapprove of their component churches being wrested away and reassigned to other ecclesiastical bodies. To allow a corporate amendment to redefine a group of Episcopal communicants would result in a invasion of First Amendment protections. A component of a hierarchical church will have been severed and reassigned to another church based in a country on the other side of the world. Long-standing communicants of that church would be faced with the choice either of forsaking their membership in the Diocese and the Episcopal Church and transferring elsewhere, or else being reduced to the status of visitors in a church in which they were previously entitled to vote and run for office. *Harmon* rightly characterized such actions as a fraud on the minority who joined and contributed to the church based on its hierarchical affiliation.

All Saints Parish, Waccamaw is (according to a parish constitution) made up of *communicants*--not "members" as is the case in most secular non-profit corporations. "Communicant" is clearly a religious term. The Court has no jurisdiction to review the Diocese's determination as to which faction makes up the communicants of All Saints Parish, Waccamaw, or to entertain arguments that a corporate amendment somehow redefined the term. *Pearson* requires courts to accept such determinations and adjudicate civil rights accordingly.

Therefore, the 2005 Defendants' Motion to Reconsider is Denied.

It is therefore ORDERED, ADJUDGED and DECREED that:

AS TO CASE NUMBER 2000-CP-22-0720

10, parishes and missions are to be incorporated. Under Diocesan Canon VI, parishes are required to hold annual meetings for the purpose of electing wardens, vestry and delegates to the annual Diocesan convention. Canon VII lists certain minimum qualifications for wardens and vestry (who are the officers of any parish corporation), as well as their canonical duties to the parish. These canons also apply to the governance of parish corporations. The religious doctrine embodied in them would obviously be subverted if parishes could set them aside simply by voting to amend the articles of incorporation.

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The Motion of the 2000 Plaintiffs to waive their right to a Jury Trial and convert this Court's earlier rulings to a decision of law on the merits of a complex legal matter pursuant to Rule 39 (b) SCRCP is granted;

That, as to the Motion of 2005 Plaintiffs to include a specific ruling on their laches defense, and the defenses based on S.C. Code Section 15-3-340, Section 15-3-350, and Section 15-3-380, that has been granted to the extent that his Court has included a specific ruling on those defenses, but has denied the 2005 Plaintiffs the relief sought therein.

AS TO CASE NUMBER 2005-CP-22-0068

That W. Russell Campbell, D. Clinch Heyward, Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou L. Paquette, Hugh Patrick, and Daniel W. Stacy, and their successors in office ("the AMiA Vestry") are specifically enjoined against holding themselves out as officers of All Saints Parish, Waccamaw.

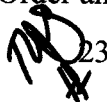
That the South Carolina Secretary of State is directed to cancel the Articles of Amendment filed by the AMiA Vestry and restore the certificate of incorporation for All Saints Parish, Waccamaw to its original form.

That the remedy of ejectment with respect to any real property of All Saints Parish, Waccamaw which is not the subject of the 1745 deed is granted.

That the AMiA Vestry are enjoined against using the name "All Saints Parish, Waccamaw".

That the AMiA Vestry is enjoined from using the Federal Employer Identification Number for All Saints Parish, Waccamaw (57-0423483).

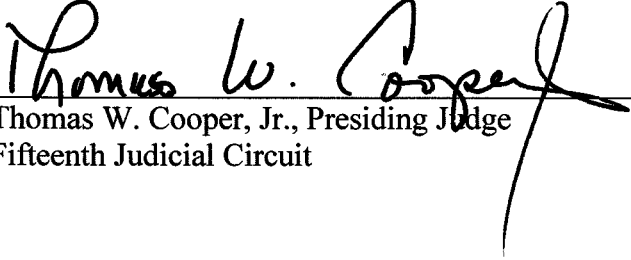
That the Motions of the 2005 Defendants set out in paragraph 6, 7, 8, 9, 10, 11, 12, & 13 have been addressed in this Order and the relief sought therein has been denied.

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AND IT IS SO ORDERED.

At Chambers
Manning, South Carolina

April 27, 2007


Thomas W. Cooper, Jr., Presiding Judge
Fifteenth Judicial Circuit