

CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH, et al.,)	IN THE DISTRICT COURT OF
)	
VS.)	TARRANT COUNTY, TEXAS
)	
FRANKLIN SALAZAR, et al. ¹)	141 ST DISTRICT COURT

ORDER GRANTING LOCAL EPISCOPAL PARTIES' AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT


On January 14, 2011, came on for consideration (1) the Local Episcopal Parties' Amended Motion for Partial Summary Judgment² and (2) the Defendants' Motion for Partial Summary Judgment. The Court considered the pleadings, motions, any responses and replies, the evidence on file subject to the Court's rulings on the objections to the evidence and the motions, the governing law, and arguments of counsel, and the Court orders as follows:

The Local Episcopal Parties' Amended Motion for Partial Summary Judgment is **GRANTED**.

The Defendants' Motion for Partial Summary Judgment is **DENIED**.

The parties should confer, and the Local Episcopal Parties should submit a more detailed declaratory order within ten days of the date of this order.

Signed this 21 day of January, 2011.



JUDGE PRESIDING

¹ The style is being shortened at the request of the Clerk's office. It does not imply that any parties are omitted or dropped from the case.

² The Local Episcopal Parties consist of the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Miculi, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells.

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ORDER ON SUMMARY JUDGMENT

On January 14, 2011, came on for consideration (1) The Episcopal Church's Motion for Summary Judgment and (2) Defendants' Motion for Partial Summary Judgment. Having considered the pleadings, motions, any responses and replies, evidence on file subject to the Court's rulings on the objections to that evidence, the governing law, and arguments of counsel, the Court orders as follows:

The Episcopal Church's Motion for Summary Judgment is **GRANTED**.

Defendants' Motion for Partial Summary Judgment is **DENIED**.

The Court hereby issues a DECLARATORY JUDGMENT pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq., declaring that:

1. The Episcopal Church (the "Church") is a hierarchical church as a matter of law, and since its formation in 1983 the Episcopal Diocese of Fort Worth (the "Diocese") has been a constituent part of the Church. Because the Church is hierarchical, the Court follows Texas precedent governing hierarchical church property disputes, which holds that in the event of a dispute among its members, a constituent part of a hierarchical church consists of those individuals remaining loyal to the hierarchical church body. *See, e.g. Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex.Civ.App. - Texarkana 1977, no writ). Under the law articulated by Texas courts, those are the individuals who remain entitled to the use and control of the church property. *Id.*

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Defendants' arguments based on the Texas Corporations Code and private trust law do not alter the result dictated by the Texas precedent specifically governing hierarchical church property disputes.

2. Accordingly, Bishops Gulick and Oja and other leaders of the Episcopal Diocese of Fort Worth recognized by the Church (the "Diocesan plaintiffs") are, and have been since February 2009, the authorities and representatives of the Diocese entitled to use and control the Diocesan Corporation and the real and personal property of the Diocese; defendants are not such authorities or representatives and have no such entitlements.

3. As a further result of the principles set out by the Supreme Court in *Brown* and applied in Texas to hierarchical church property disputes since 1909, the Court also declares that, because The Episcopal Church is hierarchical, all property held by or for the Diocese may be used only for the mission of the Church, subject to the Church's Constitution and canons.

4. Applying those same cases and their recognition that a local faction of a hierarchical church may not avoid the local church's obligations to the larger church by amending corporate documents or otherwise invoking nonprofit corporations law, *see Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex. App. – Austin 1991, writ denied); *Presbytery of the Covenant*, 552 S.W.2d at 870, 872; *Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 600-02 (5th Cir. 1975); *Norton v. Green*, 304 S.W.2d 420, 423-24 (Tex. Civ. App. – Waco 1957, writ ref'd n.r.e.), the Court further declares that the changes made by Defendants to the articles and bylaws of the Diocesan Corporation are *ultra vires* and void.

5. Even if the Court were to apply the "neutral principles" analysis proposed by Defendants, the result would be the same because:

a. Defendants did not satisfy their burden in support of their motion by failing to submit evidence of the deeds at issue in the case;

b. Taken together, the four neutral principles factors require the conclusion as a matter of law that all property of the Diocese is held in trust for the Church:

i. The deeds submitted by the Church in response to Defendants' motion show that the property of the Diocese was conveyed to an entity affiliated with The Episcopal Church;

ii. The Texas Non-Profit Corporations Act permits subordinate parts of hierarchical churches to incorporate and hold property "for the use and benefit and under the discretion of, and in trust for" the larger church that controls it, "in furtherance of the purposes of" the larger church. TEX. REV. CIV. STAT. ANN. art. 1396, § 2.02(A)(16);

iii. The Church's longstanding canons require that church property be held in trust for the Church; and

iv. The Diocese acceded to those rules when it became a Diocese in 1983.

The Court hereby ORDERS the Defendants to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs and to provide an accounting of all Diocesan assets within 60 days of this Order.

The Court hereby ORDERS the Defendants not to hold themselves out as leaders of the Diocese.

Signed this 21 day of January, 2011.



JUDGE PRESIDING