

TO THIS HONORABLE COURT:

Defendant, St. Andrew's Episcopal Church located in Fort Worth, Texas at 917 Lamar Street, represented by Lisa Jamieson, R.H. Wallace and Edwin Seilheimer, joined by Defendants, The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth, represented by J. Shelby Sharpe, collectively "movants," file this motion for reconsideration of the Court's order denying Amended Joint Motion for Summary Judgment of Defendant St. Andrew's Episcopal Church of Fort Worth, Texas, The Episcopal Diocese of Fort Worth, and The Corporation of The Episcopal Diocese of Fort Worth signed August 16, 2010.

Issues

- (1) Did the Court err in failing to grant the amended joint motion for summary judgment when the undisputed facts established that there was only one St. Andrew's Episcopal Church in Fort Worth, Texas at the time Mrs. Brants signed the trust, which is movant St. Andrew's Episcopal Church that is still located where Mrs. Brants and other family members were members and attended?**
- (2) Did the Court err in denying the amended joint motion for summary judgment since the construction of an unambiguous trust instrument is a question of law to be ascertained from the language used within the four corners of the instrument and this language unequivocally identifies movant St. Andrew's, which is still located where it was when the trust was signed by Mrs. Brants?**
- (3) Did the Court err in denying the amended joint motion for summary judgment since it is undisputed that there was only one St. Andrew's at the time Mrs. Brants signed the trust, which is movant St. Andrew's that is still located where Mrs. Brants and her family were members, and the trust reference to St. Andrew's cannot refer to a small group of people that began to meet some years later at another location after the trust was executed considering the language of the trust and Texas Property (Trust) Code Section 112.051(c)?**
- (4) Did the Court err in denying the amended joint motion for summary judgment since it is undisputed that there was only one St. Andrew's**

at the time of the execution of the trust, which is movant St. Andrew's that continues to exist at the location where Mrs. Brants and her family were members, and where it previously received distributions from the Brants Trust?

- (5) Did the Court err in denying the amended joint motion for summary judgment because there has recently developed a dispute about whether a small group that has begun to meet at another location calling itself St. Andrew's is the one named in the trust since it is undisputed that this group was not meeting at the time the trust was executed and this issue, which is not relevant to the suit here, is before the Tarrant County Court?
- (6) Did the Court err in denying the amended joint motion for summary judgment based, in whole or, in part, on a Fort Worth Court of Appeals' mandamus opinion, which ordered the trial court to strike pleadings of attorneys found not hired by The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth?
- (7) Did the Court err in denying the amended joint motion for summary judgment after having denied a plea in abatement, a motion to intervene filed by an alleged bishop, and a motion for continuance, all based, in whole, or, in part on, of the Court's determination that this declaratory judgment is not required to await the determination of which of two factions is entitled to control the religious organizations involved in the Tarrant County suit, including movant St. Andrew's?

Reasons Motion for Reconsideration Should Be Granted

There are eight reasons, which are also undisputed facts, that support the granting of this motion for reconsideration, to wit:

- (1) Mrs. Brants specifically named as a beneficiary of her trust executed on January 22, 2002, "ST. ANDREW'S EPISCOPAL CHURCH and its successors, of Fort Worth, Texas," where she and other family members had been members for years.
- (2) Movant St. Andrew's has been ministering since 1912 at the location where Mrs. Brants and other family members were members, which includes the time when the trust was executed and where previous benefits from the trust were received by the church.

- (3) There is no language in the Brants Trust bequest to St. Andrew's that the benefits of the trust for St. Andrew's are conditioned on anything other than its continued existence, which is undisputed.
- (4) There is, also, no language in the trust that the benefits of the trust for St. Andrew's would pass to the two other named beneficiaries, unless St. Andrew's ceased to exist, without successors, which has not happened.
- (5) There is, also, no language in the trust that a dispute about the identity of the leadership of St. Andrew's, which is to be decided in Tarrant County litigation that was filed before this litigation, is a legal reason for not sending the trust benefits to movant St. Andrew's at the location where Mrs. Brants and other family members were members.
- (6) There is no ruling or reasoning in the Fort Worth Court of Appeals opinion that movant St. Andrew's no longer exists or has been succeeded by some other entity.
- (7) Because Plaintiff Trustee has already made two distributions to movant St. Andrew's and it continues to minister at the location where it was when the trust was executed and the previous distributions were made, Plaintiff Trustee is estopped from not continuing to make the distributions to movant St. Andrew's at that location.
- (8) For Plaintiff Trustee to lawfully distribute movant St. Andrew's' portion of the trust to any other entity or person would require an amendment to the trust, which would be contrary to the express language of the trust and contrary to Section 112.051(c) of the Texas Property (Trust) Code.

Issue (1)

Did the Court err in failing to grant the amended joint motion for summary judgment when the undisputed facts established that there was only one St. Andrew's Episcopal Church in Fort Worth, Texas at the time Mrs. Brants signed the trust, which is movant St. Andrew's Episcopal Church that is still located where Mrs. Brants and other family members were members and attended?

It appears that Mrs. Brants' clearly expressed intentions as set forth in her trust naming movant St. Andrew's as a beneficiary are being ignored. Even though all parties to this suit agree movant St. Andrew's continues to exist, the arguments about either its affiliation with

other ecclesiastical organizations or the identity of its leadership or that a small group has recently begun to worship at a location where Mrs. Brants and family members never worshipped claiming to be “St. Andrew’s” or the identity of its lawyers find no support in the trust language Plaintiff Trustee has asked the Court to interpret or in well-established trust law.

Determinative Date

The trust declares that one of three beneficiaries is “ST. ANDREW’S EPISCOPAL CHURCH and its successors, of Fort Worth, Texas.” Mrs. Brants executed this trust on January 22, 2002. There was only one St. Andrew’s Episcopal Church of Fort Worth on that date, your movant St. Andrew’s Episcopal Church. Plaintiff Trustee judicially admits “that a congregation existed, organized as an unincorporated association, known as St. Andrew’s Episcopal Church, **prior to 2008 and 2009** . . . and the majority of that congregation continues to meet together and to use and occupy the premises at 10th and Lamar.” Plaintiff’s Response to Motions for Summary Judgment, p. 9 (emphasis added). At that time in January of 2002 when the trust was executed, there was no small group calling itself St. Andrew’s Episcopal Church of Fort Worth meeting at Trinity Episcopal Church in Fort Worth or anywhere else.

Brants Trust Language

An examination of the language of the trust bequest to “ST. ANDREW’S EPISCOPAL CHURCH and its successors, of Fort Worth, Texas,” can have only one reasonable interpretation using ordinary rules of grammar and word usage. It identifies movant St. Andrew’s. It cannot be referring to some small group calling itself “St. Andrew’s Episcopal Church” that came into existence years after the date of the execution of the trust. Furthermore, Plaintiff Trustee judicially admits repeatedly movant St. Andrew’s is still located at the same place it was when

the trust was executed and where two prior distributions from the trust were made to it. Plaintiff's First Amended Petition, paragraph III; Plaintiff's Response to Motions for Summary Judgment, pp. 5, 9, 13. Specifically, it is further admitted the "vestry and clergy" of movant St. Andrew's still "occupy the building at 10th and Lamar, control its records, and conduct church services there" with "[a]pparently over 90% of the previous congregation." Plaintiff's Response to Motions for Summary Judgment, p. 5.

Established Trust Law

A demand that trust benefits be paid to a group calling itself by the name of a named beneficiary, which did not exist at the time of the execution of the Brants Trust, cannot succeed in the face of well-established trust law. See *Cutrer v. Cutrer*, 162 Tex. 166, 345 S.W.2d 513, 519 (1961). Restatement (First) of Trusts, Section 4; 72 Tex. Jur.3d Trusts, Section 6. Justice Walker writing for the Supreme Court of Texas in *Cutrer* declares what is found in all other reported opinions and treatises on trusts that it is the expressed intention of the settlor of a trust "at the time" a trust is "created" that "is determinative" of its interpretation. "It would be quite strange," *Cutrer* reasons, "to ascertain that intention by looking" to events "after the trust instruments became effective." 345 S.W.2d 519.

Therefore, whatever happened after the execution of the Brants Trust in 2002 is irrelevant to any interpretation of the trust.

Plaintiff Trustee's Flawed Position

The declaration sought by Plaintiff Trustee based on "a dispute . . . between rival claimants concerning which entity is the beneficiary designated in the Trust to receive the gift to 'St. Andrew's Episcopal Church of Fort Worth or its successors'" fails to create an issue of

identity of beneficiary for the Court to decide evidencing the determinative effect of January 22, 2002, the date the trust was executed. Plaintiff Trustee's arguments that movant St. Andrew's is no longer affiliated with The Episcopal Church and the Fort Worth Court of Appeals mandamus opinion have no legal relevance to Mrs. Brants' intent as of the date she executed the trust in 2002.

The confusion Plaintiff Trustee wrongly accuses movants of creating has in truth been created by Plaintiff Trustee. His petition never should have named any defendant who is not named in the trust. Every entity that is not named in the trust has no standing in this suit. But, the greatest confusion Plaintiff Trustee has created is in failing to call to the Court's attention the established trust law that the date of execution of a trust is determinative of Mrs. Brants' intentions and should be dispositive of any claim coming from an unnamed entity on behalf of a named beneficiary that came into existence after the execution of the trust .

The confusion Plaintiff Trustee has created is apparent in the primary opinion Plaintiff Trustee relies on, which is not even one involving a declaratory judgment of a trust. The opinion is *Presbytery of the Covenant v. First Presbyterian Church of Paris*, 552 S.W.2d 865 (Tex.Civ.App. – Texarkana, 1977, no writ), involving an intra-church dispute requiring the interpretation of ecclesiastical governing documents. The sole issue in *Presbytery of the Covenant* is which of two rival factions was entitled to ownership or control of a church's property following a vote of the church members to withdraw from the Presbyterian Church in the United States. 552 S.W.2d 871. This is a totally different property issue from interpreting a settlor's intent expressed in a trust of who gets the benefits of the trust.

Therefore, based upon the undisputed facts established at the July 14, 2010, hearing, the amended joint motion for summary judgment should have been granted and the granting of this motion for reconsideration can correct this error.

Issue (2)

Did the Court err in denying the amended joint motion for summary judgment since the construction of an unambiguous trust instrument is a question of law to be ascertained from the language used within the four corners of the instrument and this language unequivocally identifies movant St. Andrew's, which is still located where it was when the trust was signed by Mrs. Brants?

Neither Plaintiff Trustee nor any other party to this litigation has alleged that the language of the bequest to St. Andrew's is ambiguous. In fact, the declaration sought asks the Court to determine between two defendants, which is the "real" St. Andrew's, which is not even an ambiguity claim. Furthermore, established trust law declares this is an irrelevant determination because the second group did not exist when the trust was executed.

Under this posture of the declaratory judgment claim in light of the undisputed facts established, the Court, according to *Eckels v. Davis*, 111 S.W.3d 687, 694 (Tex.App. – Fort Worth 2003, pet. denied), declares that this "is a question of law for the trial court." The *Eckels* opinion explains that the "intent of the settlor must be ascertained from the language used within the four corners of the instrument" and determined according to *Cutrer* "at the time," the trust is "created." 111 S.W.3d 694; 345 S.W.2d 519. Thus, the suit before the Court is a proper subject for summary judgment. See *SAS Inst., Inc. v. Breitenfeld*, 167 S.W.3d 840, 841 (Tex. 2005).

Therefore, the Court erred in denying the amended joint motion for summary judgment, which should be corrected by granting this motion for reconsideration.

Issue (3)

Did the Court err in denying the amended joint motion for summary judgment since it is undisputed that there was only one St. Andrew's at the time Mrs. Brants signed the trust, which is movant St. Andrew's that is still located where Mrs. Brants and her family were members, and the trust reference to St. Andrew's cannot refer to a small group of people that began to meet some years later at another location after the trust was executed considering the language of the trust and Texas Property (Trust) Code Section 112.051(c)?

No reasonable interpretation of Plaintiff Trustee's position and the arguments made in support of it can be made other than that Plaintiff Trustee is asking this Court for an interpretation, which would require different language in the trust notwithstanding his protestations to the contrary. Similarly, the Episcopal Defendants in their motion for summary judgment against Plaintiff Trustee are taking a position and making an argument that would, also, require different language in the trust to support their position and arguments. To have different language in a trust from the language in the trust requires an amendment.

If language using ordinary rules of grammar and word usage has any meaning, these positions and arguments are defeated by paragraph 3 of the Brants Trust, which permits Mrs. Brants alone to alter or amend the trust. Thus, the positions and arguments of Plaintiff Trustee as well as those of the Episcopal Defendants are, also, defeated by Section 112.051(c) of the Texas Property (Trust) Code, which requires a written instrument to modify or amend the language of a trust.

The Fort Worth Court of Appeals in *McClure v. J.P. Morgan Chase Bank*, 147 S.W.3d 648, 653 (Tex.App. – Fort Worth 2004, pet. denied), quoting from its earlier opinion in *Runyan v. Mullins*, 864 S.W.2d 785, 788-89 (Tex.App. – Fort Worth 1993, writ denied), writes:

“When the terms of a trust set out a specific method or manner in which to amend the trust, the Texas Trust Code indicates that those terms are controlling and must be followed.”

This statement of law is supported by all other reported opinions in Texas and none has been cited by Plaintiff Trustee or the Episcopal Defendants to the contrary.

Therefore, the Court’s failure to grant the amended joint motion for summary judgment is error and should be corrected by granting this motion.

Issue (4)

Did the Court err in denying the amended joint motion for summary judgment since it is undisputed that there was only one St. Andrew’s at the time of the execution of the trust, which is movant St. Andrew’s that continues to exist at the location where Mrs. Brants and her family were members, and where it previously received distributions from the Brants Trust?

Plaintiff Trustee’s declaratory judgment claim is additionally defeated by the affirmative defense of estoppel based on four undisputed facts. First and foremost, movant St. Andrew’s was in existence in 2002 when the trust was executed and no other “group” was claiming its name. Second, movant St. Andrew’s has already received at its current location two distributions from the trust. In Plaintiff Trustee’s response to both motions for summary judgment, he judicially admits he “made distributions to an unincorporated association holding itself out as St. Andrew’s Episcopal Church in early 2008.” Response, p. 13. Third, these distributions were made to movant St. Andrew’s where Mrs. Brants and other family members were members. Fourth, movant St. Andrew’s, as well as its registered agent, are still at the same location where the previous two distributions were received from Plaintiff Trustee.

The law set out in *Lopez v. Munoz, Hockema & Reid*, 22 S.W.3d 857, 864 (Tex. 2000), by the Supreme Court of Texas, affirms that these facts estop Plaintiff Trustee from paying any other claimant. The *Lopez* opinion states that a party is precluded “from asserting, to another’s disadvantage, a right inconsistent with the position previously taken.” 22 S.W.3d 864. No reasonable person can conclude that Plaintiff Trustee’s refusal to continue to send distributions from the trust to movant St. Andrew’s is not a contrary position to that previously taken at the time when prior distributions were made to movant St. Andrew’s.

Therefore, the Court’s denial of the amended joint motion for summary judgment is error because the affirmative defense of estoppel is established, as a matter of law, thereby making it proper to grant this motion.

Issue (5)

Did the Court err in denying the amended joint motion for summary judgment because there has recently developed a dispute about whether a small group that has begun to meet at another location calling itself St. Andrew’s is the one named in the trust since it is undisputed that this group was not meeting at the time the trust was executed and this issue, which is not relevant to the suit here, is before the Tarrant County Court?

Plaintiff Trustee’s contention that the Court must determine which of “rival claimants” is St. Andrew’s in order to decide the declaratory judgment claim is not only contrary to the language of the trust and trust law as explained under Issue (1); but, is also contrary to established law on the nature of an unincorporated association. An unincorporated association, which is what Plaintiff Trustee judicial admits St. Andrew’s is, is a distinct entity from its leadership and members. *Cox v. The Evergreen Church*, 836 S.W.2d 167, 173 (Tex. 1992); Section 252.006(a), Texas Business Organizations Code. In *Cox*, the Supreme Court of Texas

quoting from a California opinion established the law in Texas “that unincorporated associations are now entitled to general recognition as separate legal entities” from its members. 836 S.W.2d 173. This was codified in Section 252.006 of the Texas Business Organizations Code. Therefore, it is the unincorporated association that is the proper party to this declaratory judgment suit, not its leadership or some group of members.

Therefore, the Court erred in failing to grant the amended joint motion for summary and should correct that error by granting this motion for reconsideration.

Issue (6)

Did the Court err in denying the amended joint motion for summary judgment based, in whole or, in part, on a Fort Worth Court of Appeals’ mandamus opinion, which ordered the trial court to strike pleadings of attorneys found not hired by The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth?

Plaintiff Trustee and the Episcopal Defendants are making a valiant effort to try to persuade this Court that the opinion of the Fort Worth Court of Appeals¹ in the Tarrant County litigation conditionally granting a mandamus ordering the trial court to strike the pleadings that Mr. Nelson and Ms. Wells filed on behalf of The Episcopal Diocese of Fort Worth and The Corporation for The Episcopal Diocese Fort Worth is somehow relevant to the declaratory judgment claim before this Court. In the response to both motions for summary judgment, Plaintiff Trustee contends that “in light of the Fort Worth Court of Appeals” opinion neither “side has established its rights to summary judgment.” Response, p. 11. After quoting from page 13 of the opinion that there is only one Diocese and one Diocesan Corporation with “both a

¹ Even though the opinion now appears at 2010 WL 2555622, the citation to pages of the opinion will be to the original opinion the court of appeals handed down that the Court has already received.

majority and a minority faction” claiming a right to control, Plaintiff Trustee asserts there “is a factual and legal dispute whether there is only one St. Andrew’s Episcopal Church congregation (an unincorporated association) with a majority and a minority faction or whether these are two unincorporated associations.” Response, p. 12. Next, Plaintiff Trustee reaches the erroneous conclusion quoting from the opinion that “the Court of Appeals is trying to say that neither group can hold itself out” to be the Diocese or the Diocesan Corporation because it would give the “appearance that the issue [identity of authorized persons for both entities] is already resolved in favor of one party.” Response, p. 12.

The most conspicuous part of the opinion demonstrating the lack of merit of Plaintiff Trustee’s position is in the primary issue before the Court of Appeals. The issue raised in the mandamus proceedings is whether or not the trial court abused discretion in failing to strike the pleadings of Nelson and Wells on behalf of The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth. Opinion, p. 15. Based on the trial court’s order finding “that Mr. Nelson and Ms. Wells have not established authority to represent the Fort Worth Diocese and the Corporation,” the court of appeals finds that “the trial court clearly abused its discretion” in not striking the “pleadings filed by Mr. Nelson and Ms. Wells” on behalf of these two organizations. Opinion, p. 15. In explaining the lack of an adequate remedy by appeal, the appellate court **is only addressing a Rule 12 motion** filed against Nelson and Wells. Since the evidence at the Rule 12 hearing was solely directed at whether or not these attorneys had authority to represent the Diocese and the Diocese Corporation, it is unreasonable to read the opinion beyond this context.

It is important that this Court not miss the appellate court finding in support of its Rule 12 ruling that there is only one Diocese and one Diocesan Corporation, which “both a majority and a minority faction claim to control.” Opinion, p. 13. The opinion cites *DeZavala v. Daughters of The Republic of Texas* in connection with this finding, wherein a non-profit corporation successfully sued a minority faction claiming to be its officers. Opinion, p. 13. Accordingly, the language in the opinion that “a lawyer may not be hired to represent a corporation by one of two factions in the organization against the other faction” is true as the opinion states as to one faction litigating against another faction. It is not true if members of a faction are the duly authorized officials of a corporation as was the situation in *DeZavala* or an unincorporated association because they would have the authority to hire attorneys on behalf of the corporation or unincorporated association.

The confusion Plaintiff Trustee claims movants are causing is not the confusion described in the opinion. The confusion the court of appeals describes is based on the law that “a corporation cannot sue itself.” Opinion, p. 17. Because Nelson and Wells did not prove in the Rule 12 hearing they had been hired by individuals authorized to act on behalf of the Diocese and the Diocesan Corporation, they are permitted only to represent the “individuals” who hired them “but not the entities when they did not discharge their burden of proving authority to do so.” Opinion, p. 14. The opinion explains that:

“unless the trial court’s order is modified to **strike the pleadings filed by Mr. Nelson and Ms. Wells on behalf of the Corporation and the Fort Worth Diocese . . . confusion in the litigation will be perpetuated**, including the appearance that the issue is already resolved in favor of one party before the questions of identity and title to the property held by the corporation and the Fort Worth Diocese are determined **in the course of the litigation**.”

Moreover, **as the parties are currently postured**, any judgment against the Iker Group would be reversible **because the Iker Group** was not shown to have authorized bringing this suit on behalf of the corporation for the Fort Worth Diocese.”

The preceding language is not subject to a reasonable interpretation that the Iker Group cannot prove in a Rule 12 hearing that the “Corporation and Fort Worth Diocese” did not duly elect the Iker Group to act for it in hiring attorneys. It cannot be viewed as a prejudgment of an inability of the Iker group to establish authority to act on behalf of the Diocese and the Diocesan Corporation. Opinion, p. 17. Because a corporation and an unincorporated association act through its duly elected officers, it is only those officers who have authority to act for a corporation and an unincorporated association as a party to litigation. This was the case in the *DeZavala* suit where only the duly elected officials had authority to act for the non-profit corporation Daughters of The Republic of Texas to sue those individuals claiming to be its officers.

It is, also, significant to observe that the parishes and missions, which would include movant St. Andrew’s, were not parties to the mandamus proceedings although they had become parties to the Tarrant County trial court proceedings prior to the filing of the petition for mandamus. Thus, the appellate opinion has no application to St. Andrew’s.

Therefore, if the Court denied the amended joint motion for summary judgment thinking that the Fort Worth Court of Appeals opinion might somehow be relevant to ruling on that motion, it was error and the motion for reconsideration should be granted.

ISSUE (7)

Did the Court err in denying the amended joint motion for summary judgment after having denied a plea in abatement, a motion to intervene filed by an alleged bishop, and a motion for continuance, all based, in whole, or, in part, of the Court's determination that this declaratory judgment is not required to await the determination of which of two factions is entitled to control the religious organizations involved in the Tarrant County suit including movant St. Andrew's?

On March 16, 2010, the Court denied Episcopal Defendants' motion to abate this suit. The motion the Court denied alleged that "a companion, dominant case pending in Tarrant County . . . deals with the identical primary issues . . . who has the authority to control the real and personal property of the Episcopal Diocese of Fort Worth and its congregations." Motion, p. 1.

Subsequently, on June 2, 2010, the Court granted a motion to sever and plea in abatement to Episcopal Defendants' Original Cross-Petition and Counter-Petition and granted a motion to strike an attempted intervention by C. Wallis Ohl. The motion to sever and plea in abatement the Court granted were based on the fact that the claims and relief sought in the cross-petition and counter-petition are "identical claims and relief" sought in the Tarrant County litigation and had nothing to do with the declaratory judgment claim pending before this Court. The motion to strike Ohl's plea in intervention the Court granted was postured on the basis that because he was not named in the trust he had no standing to appear on behalf of an unincorporated association and the Fort Worth Court of Appeals opinion did not give him standing to represent St. Andrew's.

Then, on July 14, the Court denied motions for continuance of Plaintiff Trustee and the Episcopal Defendants claiming the Fort Worth Court of Appeals opinion was relevant to the

motions for summary judgment scheduled to be heard that day. Plaintiff Trustee asked for the continuance so that it could be determined “whether and to what extent the Court of Appeals’ ruling is applicable to the lawsuit in this Court.” Motion, p.2.

In view of these prior rulings of the Court, it appears the denial of the amended joint motion for summary judgment is contradictory of the reasoning that had to support the Court’s prior rulings. Had this Court found that the Tarrant County litigation would be dispositive of the declaratory judgment claim, the Court would have abated the proceedings in March of this year. Similarly, when intervention was sought by one not named in the trust was rejected by the Court, it had to be based, in large part, if not exclusively, on the basis that the leadership issue of St. Andrew’s is not relevant to a decision of the declaratory judgment claim. And, lastly, the denial of the motion to continue a hearing on the amended joint motion for summary judgment had to be on the ground the Fort Worth Court of Appeals opinion has no bearing on the suit in Hood County.

These prior rulings logically suggest that the amended joint motion for summary judgment should have been granted because the undisputed proof establishes that there was only one St. Andrew’s at the time of the execution of the trust and it continues to exist where previous distributions were made.

Therefore, based on the prior rulings of the Court, which are grounded on undisputed facts of the existence of St. Andrew’s in 2002 at its location since 1912, the denial of the amended joint motion for summary judgment is inconsistent with those prior rulings, making it appropriate to grant this motion for reconsideration that will result in the granting in the amended joint motion for summary judgment.

WHEREFORE, PREMISES CONSIDERED, Defendants St. Andrew's Episcopal Church, The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth pray that this motion for reconsideration be set for a hearing; that following a hearing on this motion, the Court grant the motion; that the amended joint motion for summary judgment be granted; and that a hearing be set pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code for movants to recover their costs and reasonable and necessary attorney's fees, if those fees and costs are not stipulated in an agreed order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR RECONSIDERATION OF DENIAL OF AMENDED JOINT MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ST. ANDREW'S EPISCOPAL CHURCH OF FORT WORTH, TEXAS, THE EPISCOPAL DIOCESE OF FORT WORTH, AND THE CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH has been served as required by Texas Rules of Civil Procedure, U.S. via facsimile and U.S. certified mail, return receipt requested, on James C. Gordon, GORDON, SYKES & CHEATHAM, LLP, 1320 S. University, Suite 806, Fort Worth, Texas 76107, and on all other attorneys of record in this cause by facsimile and regular U.S. mail, on the _____ day of August, 2010, as follows:

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