

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

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**COPY**

Bishop of the Episcopal Diocese of Georgia, Inc., and the Episcopal Church, )  
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Plaintiffs, )  
)  
)

Civil Action No. CV07-2039-KA

Christ Church Episcopal and the Rector, )  
Wardens and Vestry of Christ Church )  
Episcopal, )  
)  
Intervening Plaintiffs, )  
)  
)

v. )  
)  
)

The Rector, Wardens and Vestrymen of )  
Christ Church in Savannah, Marcus B. )  
Robertson, Samuel B. Adams, Thomas )  
R. Cooper, Jr., Bryan S. Creasey, Stephen )  
P. Dantin, Elizabeth M. Glass, George D. )  
Hardison, Cynthia M. Jones, Michael T. )  
Lee, Corley H. Nease, Francis Eugene )  
Prevatt, R. Clay Ratterree, Carol Rogers )  
Smith, Nancy L. Solana and Don H. )  
White, Jr., )  
)  
Defendants. )

**ORDER  
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This case is one of a series around the country involving parishes of the Episcopal Church who have sought to disaffiliate because of doctrinal differences. Specifically, the case at bar involves a schism in what is likely the oldest church in the state of Georgia. The division within the church has resulted in one faction taking control of the church property, while the other has

sued to regain it. It appears that both sides are passionate about the doctrinal issues, but it is well settled that courts have no business intervening in such disputes. Each side has moved for summary judgment. For the reasons that follow, the court GRANTS plaintiffs' motion and DENIES defendants' motion. The facts are not materially in dispute and will be recited briefly.

**The Undisputed Facts  
and Contentions of the Parties**

The competing factions seek to control the property of Christ Church, located on Johnson Square in downtown Savannah. Plaintiffs are the Episcopal Church [the National Church], the Diocese of Georgia and the local group which remained loyal to the National Church and the Diocese. The local plaintiffs, who were added by petition to intervene, formed a new vestry, changed their name slightly and began holding services elsewhere, but continued to press their claim to the disputed property. Defendants are the group which has disassociated itself from the National Church and Diocese, and who retain control of church property. At issue before the court is whether church property is impressed with a trust in favor of the National Church and Diocese. If so, then plaintiffs are entitled to control the property. If not, then defendants will continue their dominion over it.

In order to understand the present controversy, some historical background is necessary. Christ Church was founded in 1733, shortly after the arrival of General Oglethorpe and the original colonists. The church was formally organized in 1758 by act of the colonial government of Georgia. At the time of its founding, the church was a constituent of the Church of England. After the Revolutionary War, affiliation with the English church was no longer possible in the newly formed country.

The National Church then began to organize in 1789 as a hierarchical institution. The church organization has three tiers – the National Church, the dioceses and the local parishes or missions. At the present time, the church is comprised of 111 dioceses and thousands of individual churches, each of which must be affiliated with a diocese. The National Church is governed by a general convention composed of bishops and deputies. The dioceses are governed by bishops and an annual convention. The local churches, which are referred to as parishes, are governed by the vestry, which is akin to a board of directors. The vestry of each church sends delegates to its diocesan convention, and each diocese sends delegates to the general convention. There are governing documents at each level of the church. The National Church has a constitution and canons, which are similar to bylaws. The dioceses also have constitutions and canons, but these are subordinate to the National Church. The individual parishes are controlled by the terms of their charters and bylaws, which are in turn subordinate to both the diocese and the National Church. In addition, the dioceses and parishes are subject to the doctrine, discipline and worship of the National Church generally.

Although the National Church began to organize as a hierarchical body in the other states, there were too few local parishes in Georgia to qualify as a diocese at that time. Eventually, however, in 1823 the Diocese of Georgia was formed and admitted into the National Church. As a result, the Diocese and the local parishes, including Christ Church in Savannah, became subject to the “usual disciplines of the Protestant Episcopal Church” and the constitutions and canons of both the Diocese and the National Church.

At the heart of the present dispute is the existence vel non of an implied or express trust

over church property<sup>1</sup> in favor of the Bishop of the Diocese of Georgia and the National Church.

Plaintiffs acknowledge that the parish owns its real estate, but contend that the discipline, canons and constitutions of the National Church and the Diocese have established an implied and express trust over such real estate for the uses of the Church. They maintain that an implied trust has always been church policy and that it was formalized into an express trust by the adoption of the Trust Canon of 1979 by the General Convention of the National Church. This canon is sometimes referred to as the "Dennis Canon." The canon was enacted in response to the decision of the United States Supreme Court in *Jones v. Wolf*.<sup>2</sup> Thus, plaintiffs assert that the Christ Church parish of Savannah acceded to this implied trust by its voluntary affiliation with the Diocese of Georgia in 1823, the admission of the Diocese into the Episcopal Church of the United States and the subsequent affirmations of its adherence to church doctrine beginning in 1918 and continuing until 2006. Plaintiffs contend that the local church has never disputed the existence of the implied trust policy, nor objected to the subsequent passage of the Dennis Canon which expressly states that all parish real and personal property is held in trust for the National

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<sup>1</sup>Title is in dispute as to at least four parcels of real estate that are commonly known as follows: a church building at 28 Bull Street, Savannah, conveyed to the parish's predecessor, "Christ-Church," by Act of the government in 1758; a church parish house at 18 Abercorn Street in Savannah, conveyed to the "Rector, Church Wardens and Vestrymen of Christ Church in Savannah" in 1940; two lots on the Southwest corner of Congress and Drayton Streets in Savannah used for parking conveyed to the "Rector, Church Wardens and Vestrymen of Christ Church in Savannah" in 1994; and one and one-half lots at 134 Houston Street in Savannah used for a school conveyed to the "Rector, Church Wardens and Vestrymen of Christ Church in Savannah" in 1947 and 1958.

<sup>2</sup>443 U.S. 595 (1979). This is the landmark case on the involvement of courts in resolving disputes within churches. The Supreme Court noted that hierarchical churches could establish a trust over local church property by amending their governing documents. *See infra* pp. 12-14 of this order.

Church and the Dioceses thereof.<sup>3</sup> Plaintiffs further contend that OCGA §§ 14-5-46 and 14-5-47 support their trust argument.

On the other hand, defendants, who purport to represent a majority of church membership, claim that no trust, implied or express, exists over church property. Consequently, defendants maintain that they are free to disaffiliate from the Diocese and the National Church, taking the property with them. Their position is based on several factors, some of which are unique to Christ Church in Savannah. First is the fact that the land on which the church sits was designated as a place of worship in 1733 when the colony of Georgia was founded. Title was later vested in the church by act of the provincial legislature in 1758. This legislative land grant was reaffirmed shortly after the Revolution by the General Assembly of Georgia in 1789. In the same act the church was incorporated under state law. To this end, defendants contend that this history sets them apart from other parishes because they received their property by land grant rather than by deed and the land grant clearly places the property in their control. They also contend that they took title to the property prior to the existence of the Diocese of Georgia and before the National Church had any presence in this state. Second, while defendants admit their

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<sup>3</sup>The Dennis Canon provides:

Sec. 4-All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Sec. 5-The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.

later affiliation with the Diocese, they contend they did not amend their charter to surrender their property rights. Third, the defendants contend that the statutes relied on by plaintiffs, originally enacted in 1805, relating to title to church property in Georgia generally, do not apply to Christ Church because their title was established by act of the Legislature, not by deed and because it predated the statute. Fourth, defendants contend an amendment to the church charter in 1918 only accepted the doctrine, discipline, worship, canons and constitutions of the Diocese and the National Church up to that point, and not into the future. Fifth, the defendants contend that the Dennis Canon was invalidly adopted and thus, does not create an express trust over the church property. Sixth, and finally, they point to Canon II.8 of the Diocese of Georgia, which they contend reserves all property rights to the parish.

### Conclusions of Law

#### 1. Applicable law

It is well settled that civil courts cannot intervene in doctrinal disputes within a church.<sup>4</sup> *U.S. Const. Amend. I; First Evangelical Methodist Church v. Clinton*, 257 Ga. 459 (1987) (stating that inquiry must be as to neutral principles of property law, with no admixture of doctrinal concerns). However, where a church property dispute can be resolved by application of neutral principles of law, a court is authorized to render a decision which enforces the rights of the parties. *Carnes v. Smith*, 236 Ga. 30 (1976); *Holiness Baptist Assn., Inc. v. Barber*, 274 Ga. 357 (2001); *Howard v. Johnson*, 264 Ga. App. 660 (2003); *Crumbley v. Solomon*, 243 Ga. 343

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<sup>4</sup>“...[W]hen asked to do so, secular courts may, and indeed must, resolve internal church disputes over ownership of church property.” *In re Episcopal Church Cases*, 45 Cal. 4th 467, 478 (2009). This is true even though it may arise out of a dispute over doctrine or other ecclesiastical questions, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy.

(1979). While Georgia has adopted a presumptive rule of majority representation, that presumption may be overcome by application of neutral principles of law. *Jones v. Wolf*, 244 Ga. 388 (1979), *on remand from Jones v. Wolf*, 443 U.S. 595 (1979).<sup>5</sup> Neutral principles of law include examining state statutes, corporate charters, relevant deeds, and the organizational constitutions and bylaws of the denomination. *Crumbley, supra, citing Carnes, supra; Pritchett v. Wesleyan Pentecostal Church*, 265 Ga. App. 565 (2004); *see also In re Episcopal Church Cases*, 45 Cal. 4th 467 (2009) (stating that the court should consider sources such as the deeds to the property in dispute, the local church's articles of incorporation, the general church's constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property).

## **2. Application of Neutral Principles**

In examining the claims of the parties, the court has reviewed the entire record, including the land grant to Christ Church, later deeds of other property, the charter of Christ Church and all amendments thereto, the state statutes, the canons of the Diocese and the National Church, as well as the constitution and other governing documents of the National Church, and also the affidavits and depositions of record. In doing so, the court has avoided any consideration of religious doctrine and practice.

### ***The Land Grant***

The provincial legislature confirmed the grant of land to Christ Church in Savannah by naming the rector and giving him and his successors the possession and title to the church and

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<sup>5</sup>*See also Crumbley, supra* (stating that if church organization is hierarchical, then "neutral principles of law" are applied to determine whether the local church or parent church has the right to control the property).

church lands. In this sense, the church is held in trust for future members of the parish, but not for the Diocese of Georgia or the National Church, as those entities had yet to come into existence.<sup>6</sup> Thus, the land grant does not establish the trust relied on by plaintiffs. Moreover, in 1789, the Legislature of the State of Georgia confirmed the act of the colonial legislature, establishing title to the church property in the wardens and vestrymen of the church and establishing the church as a body corporate with the power to sue and be sued.

### *The Statutes*

In support of their position that a trust exists, plaintiffs rely on a provision of the corporation code, OCGA § 14-5-46, originally enacted in 1805, which now provides:

All deeds of conveyance executed before April 1, 1969, or thereafter for any lots of land within this state to any person or persons, to any church or religious society, or to trustees for the use of any church or religious society for the purpose of erecting churches or meeting houses shall be deemed to be valid and available in law for the intents, uses, and purposes contained in the deeds of conveyance. *All lots of land so conveyed shall be fully and absolutely vested in such church or religious society or in their respective trustees for the uses and purposes expressed in the deed to be held by them or their trustees for their use by succession, according to the mode of church government or rules of discipline*

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<sup>6</sup>This is similar to the case of *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008). In *Harnish*, the court reviewed the deeds and found that “[t]here [was] nothing in the deeds that establishe[d] an express trust in favor of the Rochester Diocese or National Church.” *Harnish*, 11 N.Y.3d at 351. Notwithstanding, the *Harnish* court went on to hold that the church canons clearly established an express trust in the real and personal property in favor of the diocese and National Church. The *Harnish* court also noted that a prior New York court “still found an express trust existed under the Dennis Canons even though three of the deeds granted the property to the local church and the fourth deed granted the land and church building to the Diocese.” *Episcopal Diocese of Rochester v. Harnish*, 17 Misc.3d 1105 (N.Y. Sup. Sep 13, 2006), *order aff’d by Episcopal Diocese of Rochester v. Harnish*, 43 A.D.3d 1406 (N.Y.A.D. 4 Dept. Sep 28, 2007), *aff’d by Harnish, id., citing Trustees of Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 250 A.D.2d 282, 284 (3d Dept. 1999).



*exercised by such churches or religious societies.* (Emphasis added.)

Further, OCGA § 14-5-47 provides:

All trustees to whom conveyances are or shall be executed, for the purposes expressed in Code Section 14-5-46, shall be subject to the authority of the church or religious society for which they hold the same in trust and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.

Plaintiffs contend that since Christ Church is hierarchical in nature the rules of discipline exercised by the church compel the existence of a trust in favor of the National Church.

Defendants have multiple arguments opposing the application of this code section to Christ Church. Among them are that the church received title to its property by grant from the Legislature, not by deed; that the section does not apply to the church because its title had already been confirmed by act of the Legislature; that the church was an incorporated body capable of taking good title prior to the enactment of the code section; and that the purpose of the section was in aid of other religious bodies, but not Christ Church.

Defendants' argument, however, fails to consider an important distinction. At the time Christ Church was incorporated and the Legislature confirmed its land grant, it was a congregational church, unaffiliated with either the Diocese or the National Church. When the church joined the hierarchy in 1823, the two code sections had been promulgated eighteen years earlier. By taking the steps to affiliate itself with the larger church body, Christ Church made itself subject to the code sections. Even though the first part of OCGA § 14-5-46 did not change the status of the church's title to its property, which was already valid by the earlier act of the Legislature, the second sentence became applicable. This is so because, as will be seen later,

“the mode of church government [and] rules of discipline” of the National Church established a trust. Therefore, the statutes support a conclusion of the existence of a trust over Christ Church property.

### *The Governing Church Documents*

The original charter of Christ Church and the subsequent amendments thereto did not create an express trust over the church’s property in favor of the National Church. However, beginning with the first meeting of the Convention of the Diocese of Georgia in 1823, any church making application to the convention for admission was required to accede to the diocesan constitution and canons. The diocese, in turn, was required to accede to the National Church’s constitution, canons and discipline. Here, Christ Church not only became a parish of the Georgia Diocese in 1823, it was instrumental in the formation of the diocese. Christ Church held itself out and participated as a full member of this diocese from 1823 until at least 2006. It is undisputed that the Georgia Diocese has remained a constituent and subordinate part of the National Church since it was established in 1823.

Plaintiffs contend that there has always been an understanding within the Episcopal church that parish property, regardless of how it was titled, was held in trust for the National Church and the Diocese. The evidence of this understanding comes from plaintiffs’ expert witness, Robert Bruce Mullin, Ph.D. Dr. Mullin is a church historian who has testified around the country in similar cases involving the Episcopal church. Dr. Mullin’s affidavit lays out in great detail how the implied trust over property belonging to the parishes arose and how the general understanding of the existence of such trusts prevailed within the church.

Defendants rely on their land grant from the Legislature, deeds to other property and their

corporate charter to show their independence from any trust relationship with the National Church. They point to the language in the deeds and land grant which convey fee simple title to the parish, through the rector, wardens and vestry. By their reckoning the manner in which their title was acquired renders it unfettered by any trust in favor of the National Church. They also point to their charter which enabled the parish to hold and defend title to its property. Thus, they maintain that by reference to these neutral documents of title it can be seen that no trust exists.

The sticking point in defendants' position is the amendment to their charter in 1918. By that amendment, Christ Church "acknowledge[d] and accede[d] to the doctrine, discipline, and worship and the Constitution and Canons of the Protestant Episcopal Church in the United State [sic] of America and the Constitution and Canons of the same church in the Diocese of Georgia." The church also reserved the power to adopt rules or bylaws not inconsistent with the civil and ecclesiastical laws governing it. By this action Christ Church accepted the existence of the implied trust, which had become a part of the fabric of governance of the Episcopal Church, as explained by Dr. Mullin. Defendants' protestations to the contrary, based primarily on the assertion that their expression of loyalty to church law extended only to the date of the charter amendment, are without merit. There can be no doubt that Christ Church has always held itself out as a parish of the Diocese of Georgia and a full participant in the affairs of the Episcopal church at every level. Christ Church has always adhered to the canons of the church, even those enacted after 1918, and correspondingly received the benefits that membership in the church union provided. To now argue that it limited its profession of loyalty to the larger church up to 1918 only is fatuous. "In agreeing to abide by all 'canonical and legal enactments,' it is unlikely that the parties intended that the local parish could reserve a veto over every future change in the

canons.” *Harnish*, 11 N.Y.3d at 352.

More importantly, Christ Church has acted in direct contradiction to its claim that fealty extended only to 1918. For reasons that are not clear, but are ultimately immaterial to this issue, Christ Church re-recorded its 1918 charter amendment in the office of the Secretary of State of Georgia<sup>7</sup> in 1981.<sup>8</sup> This action can only be seen as a ratification and reaffirmation of the church’s accession to the doctrine, discipline, worship, constitution and canons of the National Church and the Diocese as of 1981. Thus, the fealty-to-1918-only argument is rendered nugatory. Furthermore, the Dennis Canon was already in existence when Christ Church reaffirmed its adherence to the canons of the National Church. How can defendants dispute the existence and efficacy of the Dennis Canon when they publicly acknowledged their adherence to all canons of the National Church after the Dennis Canon was enacted?<sup>9</sup>

Another example of defendants’ inconsistent argument regarding their independence from the National Church can be seen in the circumstances surrounding their adoption of the Book of

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<sup>7</sup>As noted earlier, Christ Church was incorporated by act of the Legislature in 1789. Subsequently in 1879, Georgia law was amended to give the superior courts ministerial power to grant and amend corporate charters. Thus, the charter amendments in 1918 and 1923 were granted by this court. In 1976, Georgia law was again amended to vest ministerial power to grant and amend corporate charters in the Secretary of State. Jerome L. Kaplan, *Georgia Corporation Law*, §§ 2-3, 2-4 (1988). These changes in Georgia corporations law would explain why the re-filing of the 1918 and 1923 charter amendments were done with the Secretary of State. The reason for the re-filing remains unclear.

<sup>8</sup>Defendants’ exhibit 2.

<sup>9</sup>The court is aware of the affidavit of John Miller relied on by defendants to establish their lack of knowledge of the passage of the Dennis Canon. The court is well acquainted with, and has the highest regard for, Mr. Miller. Nevertheless, the court does not read his affidavit to suggest anything other than the extent of his knowledge of church affairs at that time. The affidavit is not sufficient to support a conclusion that the church had no knowledge of or was not on notice of the Dennis Canon.

Common Prayer. On one hand, in 1793 the church adopted the prayer book, but reserved to itself the right to accept or reject future modifications to the book. This was at a time prior to their affiliation with the National Church. On the other hand, after joining the National Church defendants amended their corporate charter to accept the discipline of the National Church, but failed to include any reservation of rights against future changes. Thus, before even affiliating with the National Church, Christ Church guarded its independence as it related to the prayer book, but after joining the National Church it failed to take similar steps in its charter amendment. Defendants counter by pointing out that other parishes have affirmatively accepted future changes in church discipline. They maintain that this distinction somehow proves that Christ Church accepted church doctrine only up to 1918, the date of their charter amendment. But viewed against their actions with regard to the prayer book, this argument is not compelling. And, of course, what other parishes may or may not have done is not dispositive of whether this church bound itself to future changes.

Case law around the country also supports the contention that an implied trust has always existed. “[T]he Dennis Canon ‘merely codified in explicit terms a trust relationship’ that was implicit in St. James’ Charter.” *In re Church of St. James the Less*, 888 A.2d 795, 810 (2005); *The Rector, Wardens and Vestrymen of Trinity-St. Michael’s Parish, Inc. v. The Episcopal Church in the Diocese of Connecticut*, 620 A.2d 1280 (1993)(stating that “the evidence at trial overwhelmingly established that the Dennis Canon adopted in 1979 merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of PECUSA in 1789.”); *see also Harnish, supra, citing Trustees of Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 250 A.D.2d at 288 (observing

that “[a]lthough this express trust provision [the Dennis Canon] was absent from the national canons at the time Trinity Episcopal Church acquired the parcels of land . . . retroactive application of such trust provisions would not . . . extinguish the real property rights of every local church or parish throughout New York, so long as a court finds that the trust provisions were declaratory of existing church policy.”). In the *Trustees of Diocese of Albany* case, the court concluded that “the record supports the conclusion that the ‘Dennis Canon’ amendment expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church.” *Id.* at 288.

The court recognizes that the authorities cited above are from foreign jurisdictions and therefore, are not binding. Nevertheless, the court is persuaded by the legal analyses therein and the consistency of the opinions. Also, the concept of an implied trust is evidenced by other canons of the National Church which limit the ability of local parishes to dispose of or encumber consecrated property. These canons include Canon II.6(2) and (3), Canon III.9.5(a) and various sections of Canon I.7. *See, e.g., In re Episcopal Church Cases, supra* at 487 (stating that “. . . Canon I.7.4 is consistent with earlier-enacted canons that, although not using the word ‘trust,’ impose substantial limitations on the local parish’s use of church property and give the higher church authorities substantial authority over that property.”). Moreover, the Georgia Supreme Court has also recognized the existence of an implied trust over property in a similar case, relying on the analysis from an Indiana case:

[W]e agree with the reasoning of the Indiana Court in its recent decision of *United Methodist Church v. St. Louis &c. Methodist Church*, 150 Ind. App. 574, *supra*, where it considered a similar church property dispute. That court said (p. 589): “A local church, if it desires to remain independent of the influence of a parent

church body, must maintain this independence in the important aspects of its operation -- e.g., polity, name, finances. It cannot, as here, enter a binding relationship with a parent church which has provisions of implied trust in its constitution, by-laws, rules, and other documents pertaining to the control of property, yet deny the existence of such relationship. It does not matter whether such agreement to be bound is memorialized. A local church cannot prosper by the benefits afforded by the parent, participate in the functioning of that body, yet successfully disclaim affiliation when the parent acts to the apparent disadvantage of the local, so to shield from equitable or contractual obligation the valuable property acquired by the local church either before or during such affiliation." Accord, *Ohio Southeast Conference of E. V. B. Church v. Kruger*, 17 Ohio Misc. 8 (243 NE2d 781) (1968).

*Carnes*, 236 Ga. at 39.

Defendants also contend that they were free to amend the church charter in 2006, and by doing so they changed the status of their affiliation with the Diocese and the National Church. Although they are correct that Georgia law which governs non-profit corporations permits such amendments, it did not have the effect desired by defendants. Defendants confuse concepts of corporations law with property law. They cannot amend their way out of an already existing trust, any more than they could amend their way out of a mortgage. Yes, the amendment might be valid as a matter of corporate law, but it does not sever the strands of the trust that attached to parish property. The question might fairly be asked, how then did the 1918 amendment have any greater effect than the one in 2006? The answer, as noted earlier, is that in 1918 Christ Church made explicit that which had always been implicit. By retracting the explicit affirmation to church doctrine in 2006, the implicit obligation of loyalty still remained. And again, Christ Church ratified the Dennis Canon in 1981, specifically agreeing to the express trust in favor of the National Church and Diocese. Christ Church can no more shrug off the trust, than the

National Church could unilaterally impose it. The trust has historical roots going back to the English church and the founding of the Episcopal church in this country. Christ Church got the benefit of its bargain with the National Church for many years. The National Church has the right to insist on its part of the bargain as well.

Defendants' reliance on *Presbyterian Church v. Eastern Heights Presbyterian Church*, 225 Ga. 259 (1969), for the proposition that implied trusts over all church property have been abolished, is misplaced. First, that case was decided prior to *Jones v. Wolf*, 443 U.S. 595 (1979), which distinguished and explained it. Second, subsequent Georgia cases have also noted that the prohibition in *Presbyterian Church* was to an implied trust theory based on a departure from doctrine, where a court would have to decide the ecclesiastical issue, i.e., did the larger church depart from the tenets of faith such as would defeat the implied trust. See *Carnes v. Smith*, *supra*; *Coles v. Wilburn*, 241 Ga. 322 (1978); *Crocker v. Stevens*, 210 Ga. App. 231 (1993), *disapproved on other grounds*, *Kim v. Lim*, 254 Ga. App. 627 (2002). No such issue is presented in the case at bar.

Furthermore, the actions of Christ Church belie defendants' contention that no trust existed. In 1978, before the Dennis Canon was enacted, Christ Church sought and received the consent of the Bishop and Standing Committee of the Diocese to sell a rectory on Washington Avenue in Savannah.<sup>10</sup> In 1984, Christ Church again sought and received the consent of the Bishop and the Standing Committee to sell a rectory on East York Street.<sup>11</sup> In 1987, the vestry of Christ Church sought and received permission from the Bishop and the Standing Committee to

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<sup>10</sup>Plaintiffs' exhibit 33. Permission was granted in 1979.

<sup>11</sup>Plaintiffs' exhibit 34.



borrow \$950,000 in order to renovate the parish house and to encumber the property located at 18 Abercorn Street to secure that loan.<sup>12</sup> These actions compel the conclusion that Christ Church intended to, and did, hold its property in trust for the diocese and the National Church. Why else would a parish ask permission to sell or encumber property, unless it was held in trust?

Notwithstanding, defendants also contend that the Dennis Canon is not binding canonical law because it was invalidly adopted. Defendants claim that insufficient notice was given prior to the passage of the canon. They claim that the National Church, which is an unincorporated association based in New York, is bound by the law of New York, which requires that notice be given prior to any change. They point out that the matter came before the General Convention without any advance notice, that it was passed without opportunity for the parishes to discuss it and that it was made effective immediately, contrary to long standing practice of the Convention.

This court, however, agrees with the Supreme Court of California when it stated:

It is a bit late to argue that Canon I.7.4 was not effectively adopted, a quarter of a century later, and, in light of the consistent conclusions of the out-of-state cases that that canon is, indeed, part of the Episcopal Church's governing documents, the argument seems dubious at best. But, in any event, this is one of those questions regarding "religious doctrine or polity" (or, as we phrased it in *Catholic Charities of Sacramento, Inc. v. Superior Court*, *supra*, 32 Cal.4th at page 541, 10 Cal.Rptr.3d 283, 85 P.3d 67, "religious doctrine and internal church governance") on which we must defer to the greater church's resolution. (*Jones v. Wolf*, *supra*, 443 U.S. at p. 602, 99 S.Ct. 3020.) Over the years, the Episcopal Church has consistently taken the position that Canon I.7.4 was effectively adopted.

*In re Episcopal Church Cases*, 45 Cal.4th at 492. Similarly, this court finds it hard to credit defendants' argument twenty-five plus years after the fact, when they uttered no protest to the

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<sup>12</sup>Plaintiffs' exhibit 35. Permission was granted in 1988.

canon heretofore. In addition, the same argument has been considered and rejected by courts in New York, the state of residence of the National Church, where presumably a direct claim against the efficacy of the canon would be resolved. *Harnish, supra*; see also *Huber v. Jackson*, 175 Cal. App. 4th 663 (2009). And again it should be noted that Christ Church specifically reaffirmed its adherence to church doctrine and rules some two years after the Dennis Canon was passed. By defendants' failure to take any steps to disavow the canon and its specific action in 1981, defendants have ratified the validity of the Dennis Canon. *Griggs v. Dodson*, 223 Ga. 164, 169 (1967) (“[R]atification is the confirmation by one of an act performed by another without authority.”). Defendants' contention that ratification in this instance is equivalent to title by estoppel is without merit. See *Crumbley, supra*.

Defendants' reliance on Canon II.8 of the Diocese of Georgia is misplaced. The canon does state that “[n]othing in these Canons shall prejudice the legal rights of any Parish or Vestry already existing by act of incorporation.” However, diocesan canons are subordinate to the canons of the National Church.<sup>13</sup> To the extent that II.8 and the Dennis Canon conflict, the Dennis Canon would control.

### 3. The *All Saints Parish Waccamaw*<sup>14</sup> Case

While these motions for summary judgment were pending, the Supreme Court of South Carolina decided the *All Saints* case. Although there are certain factual similarities between that case and this one, ultimately the decision in *All Saints* is distinguishable and its holding is not

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<sup>13</sup> The Episcopal Church Const. art. V, § 1; Mullin Aff. ¶¶ 15 and 22.

<sup>14</sup> *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, \_\_\_ S.E.2d \_\_\_ (S.C. Sept. 18, 2009).

persuasive. The church in *All Saints* was organized as a parish of the English church by the colonial legislature of South Carolina. Title to the church property was by deed to the trustees for the inhabitants of Waccamaw Neck for use as a church.<sup>15</sup> After the Revolutionary War, the Legislature reestablished the parish and in 1820 incorporated the wardens and vestry of the parish, thus enabling the parish to “have, hold, take and receive” real and personal property. In 1880, South Carolina passed a law declaring that title to inactive Episcopal churches would be held in trust by the Trustees of the Diocese of South Carolina. Thereafter, in 1902 the Waccamaw congregation, out of concern over the status of its title to church property, asked for cooperation of the Diocese in having its corporate charter renewed. The Diocese agreed and suggested that an eleemosynary corporation be formed. The Diocese also offered to, and did, execute a quit-claim deed transferring to the corporation any interest the Diocese may have had in the property. Eventually, the All Saints parish split with the National Church and the South Carolina diocese over similar doctrinal issues as in the case at bar. The Supreme Court of South Carolina held that the Dennis Canon did not apply and that title to the property was vested in the local parish, free of any trust in favor of the National Church or the Diocese.

Defendants, of course, regard this decision as highly persuasive authority and urge the court to adopt the reasoning of the South Carolina Supreme Court. In particular, they rely on that court’s conclusion that a party cannot establish a trust over property that it does not own. To the extent that the Dennis Canon attempted to do this, the court found the canon to be without legal effect.

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<sup>15</sup>An issue regarding the status of the trust created in the deed was also decided by the South Carolina court, which is not germane to this case.

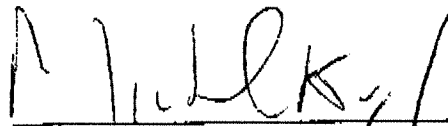
There are distinctions, however, between the titles to the church in Waccamaw and the church in Savannah. There is no reference in the South Carolina decision to an implied trust, although the quit-claim deed from the Diocese would support an inference that such trust existed. Moreover, the delivery of the quit-claim deed extinguished any trust then existing, express or implied. And, unlike Christ Church, there is nothing in the South Carolina case to show a declaration by the church of its intent to be bound by the discipline and governing documents of the Episcopal church. Thus, insofar as the church in Waccamaw is concerned, it cannot be said that the enactment of the Dennis Canon merely made explicit that which had been implicit, i.e., that the existence of the implied trust was formalized into an express trust by the canon. For these reasons, the court finds that it cannot rely on the decision in the *All Saints* case as persuasive authority in the case at bar.

#### **Conclusion**

In this case, it is undisputed that the Episcopal Church is hierarchical in nature, that Christ Church has been a member of the hierarchical organization since 1823 (for over 180 years), and that Christ Church through its own 1918 charter and subsequent actions made itself subject to the hierarchy's discipline. Such discipline unquestionably provides that the Episcopal Church "shall hold all church property," thereby implying a trust for the benefit of the National Church, which became an express trust with the enactment of the Dennis Canon. Defendants claim they have no relationship with the National Church and the Diocese which would enable such a trust to exist over the property. However, these parties are not strangers in the night. There is more than a mere connectional relationship between them. As stated throughout this order, Christ Church joined the National Church in 1823 as a founding church of the Diocese of

Georgia. At that time, Christ Church submitted itself to the discipline of the National Church and Diocese. In 1918, Christ Church made its adherence to the discipline even more explicit by amending its corporate charter. Christ Church ratified this adherence in 1981 when they refiled their 1918 charter and in doing so ratified the 1979 Dennis Canon. Taking all of these factors into account, the court is entirely satisfied that a trust over the property exists in favor of the National Church and the Diocese of Georgia. Accordingly, the court finds that the church property reverts to the control of the Bishop of the Diocese of Georgia for the uses and purposes of the Episcopal Church and that plaintiffs are entitled to immediate possession. Finally, it should be noted that the court has considered defendants' remaining arguments and concludes that they lack merit.

**SO ORDERED** this 27 day of October, 2009.



Michael L. Karpf, Judge, Superior Court  
Eastern Judicial Circuit of Georgia

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