

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

**ALL EPISCOPAL PARTIES’ OBJECTIONS TO DEFENDANTS’
SUMMARY JUDGMENT EVIDENCE**

Now come the “Local Episcopal Parties,”¹ the “Local Episcopal Congregations,”² and The Episcopal Church and file these objections to the summary judgment evidence filed by

¹ The term “Local Episcopal Parties” includes the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Mieuli, 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.

² The term “Local Episcopal Congregations” includes The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints’ Episcopal Church (Fort Worth); The Rev. ClayOla Gitane and Cynthia Eichenberger as representatives of All Saints’ Episcopal Church (Weatherford); The Rev. ClayOla Gitane and Harold Parkey as representatives of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as a representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Roberts Marks, IV and William Davis as representatives of St. Alban’s Episcopal Church (Arlington); Vernon Gotcher and Ken Hood as representatives of St. Stephen’s Episcopal Church (Hurst); Sandra Shockley as a representative of St. Mary’s Episcopal Church (Hamilton); Sarah Walker as a representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as a representative of St. Anne’s Episcopal Church (Fort Worth); the Rev. Susan Slaughter and Larry Hathaway individually and as representatives of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as a representative of St. Mary’s Episcopal Church (Hillsboro); All Saints’ Episcopal Church (Fort Worth); All Saints’ Episcopal Church (Wichita Falls); All Saints’ Episcopal Church (Weatherford); Christ the King Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban’s Episcopal Church (Arlington); St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen’s Episcopal Church (Hurst); St. Mary’s Episcopal Church (Hamilton); St. Anne’s Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary’s Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth’s Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban’s Episcopal Church (Hubbard); St. Andrew’s Episcopal Church (Fort Worth); St. Andrew’s Episcopal Church (Breckenridge); St. Andrew’s Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory’s Episcopal Church (Mansfield); St. John’s Episcopal Church (Fort Worth); St. John’s Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph’s Episcopal Church (Grand Prairie); St. Laurence’s Episcopal Church (Southlake); St. Luke’s Episcopal Church (Mineral Wells); St. Mark’s Episcopal Church (Arlington); St. Matthew’s Episcopal Church (Comanche); St. Michael’s Episcopal Church (Richland Hills); St. Paul’s Episcopal Church (Gainesville); St. Patrick’s Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the

Defendants in support of Defendants' Motion for Partial Summary Judgment, and in support thereof would respectfully show the Court as follows:³

I. OBJECTIONS TO UNAUTHENTICATED DOCUMENTS

The Documents attached as Tabs B, C, and E to Defendants' motion, and cited therein, are not supported by affidavit and are not verified, certified, or otherwise authenticated in any way as required by Rule 901 of the Texas Rules of Evidence.⁴ These documents also constitute inadmissible hearsay pursuant to Rules 801 and 802 of the Texas Rules of Evidence because they are offered to prove the truth of matters asserted therein and do not fall under any exclusion or exception under Rules 801, 803, or 804.⁵ Specifically, these documents do not qualify as records of regularly conducted activity pursuant to Rule 803(6) because there is no testimony of a custodian or other qualified witness that these documents were "made at or near the time by, or from information transmitted by, a person with knowledge," that the documents were "kept in the course of a regularly conducted business activity," or that "it was the regular practice of that business activity to make" these documents.

The Court makes the following rulings with respect to these objections:

TAB B:	_____SUSTAINED	_____OVERRULED
TAB C:	_____SUSTAINED	_____OVERRULED
TAB E:	_____SUSTAINED	_____OVERRULED

Apostle Episcopal Church (Jacksboro); St. Timothy's Episcopal Church (Fort Worth); and St. Vincent's Episcopal Church (Bedford); St. Stephen's Episcopal Church (Wichita Falls); Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls)

³ The Episcopal Parties reserve the right to file supplemental or amended objections to Defendants' summary judgment evidence in advance of the Court's hearing on Defendants' Motion.

⁴ The documents at Tabs A and D are properly authenticated in the Local Episcopal Parties' and The Episcopal Church's summary judgment evidence.

⁵ See *Southland Corp. v. Lewis*, 940 S.W.2d 83, 85 (Tex. 1997) (holding that hearsay is not competent summary judgment proof).

II. OBJECTIONS TO THE HOUGH AFFIDAVIT AND EXHIBITS

A. Best Evidence Objections

Paragraphs 7, 8, 9, 10, 11, 12, 13, 16, and 21 of the Affidavit of Charles A. Hough, III are inadmissible as evidence pursuant to Rule 1002 of the Texas Rules of Evidence because they purport to prove the contents of unspecified “records of the Diocese” without attaching the originals or duplicates of such records. The statements in these paragraphs are also inadmissible because they are based on hearsay.⁶

The Court makes the following rulings with respect to these objections:

- PARAGRAPH 7: ___SUSTAINED ___OVERRULED
- PARAGRAPH 8: ___SUSTAINED ___OVERRULED
- PARAGRAPH 9: ___SUSTAINED ___OVERRULED
- PARAGRAPH 10: ___SUSTAINED ___OVERRULED
- PARAGRAPH 11: ___SUSTAINED ___OVERRULED
- PARAGRAPH 12: ___SUSTAINED ___OVERRULED
- PARAGRAPH 13: ___SUSTAINED ___OVERRULED
- PARAGRAPH 16: ___SUSTAINED ___OVERRULED
- PARAGRAPH 21: ___SUSTAINED ___OVERRULED

B. Lack of Personal Knowledge

The statements in the final sentences of paragraphs 8 and 10 of the Affidavit of Charles A. Hough, III are inadmissible pursuant to Rule 602 of the Texas Rules of Evidence and Rule 166a(f) of the Texas Rules of Civil Procedure because Hough lacks personal knowledge of the result of elections for Bishop of the Diocese or for the Board of Trustees of the Corporation of

⁶ See *id.*

the Episcopal Diocese of Fort Worth after he left the Episcopal Diocese of Fort Worth in November 2008.

The Court makes the following rulings with respect to these objections:

PARAGRAPH 8 (final sentence): _____SUSTAINED _____OVERRULED

PARAGRAPH 10 (final sentence): _____SUSTAINED _____OVERRULED

C. Improper Legal Conclusions

The final sentences of paragraphs 14 and 15 and all of paragraph 17 of the Affidavit of Charles A. Hough, III are inadmissible as summary judgment evidence because they merely state unsupported legal conclusions which the affiant is not qualified to give. “[L]egal conclusions and opinions made in an affidavit are not competent summary judgment evidence.” *Green v. Unauthorized Practice of Law Committee*, 883 S.W.2d 293, 297 (Tex. App.—Dallas 1994, no writ).

The Court makes the following rulings with respect to these objections:

PARAGRAPH 14 (final sentence): _____SUSTAINED _____OVERRULED

PARAGRAPH 15 (final sentence): _____SUSTAINED _____OVERRULED

PARAGRAPH 17 (all): _____SUSTAINED _____OVERRULED

D. Inadmissible Hearsay

Exhibits 4-8 to the Affidavit of Charles A. Hough, III constitute inadmissible hearsay pursuant to Rules 801 and 802 of the Texas Rules of Evidence because they are offered to prove the truth of matters asserted in these documents, and the Hough Affidavit does not contain facts sufficient to establish the applicability of any exclusion or exception under Rules 801, 803, or 804.⁷ Specifically, these documents do not qualify as records of regularly conducted activity

⁷ See *id.* Exhibits 1-3 to the Hough Affidavit are properly proved up in the Local Episcopal Parties’ and The Episcopal Church’s summary judgment evidence.

pursuant to Rule 803(6) because Hough does not testify that these documents were “made at or near the time by, or from information transmitted by, a person with knowledge,” that the documents were “kept in the course of a regularly conducted business activity,” that “it was the regular practice of that business activity to make” these documents, or that the documents are exact duplicates of the originals.

The Court makes the following rulings with respect to these objections:

EXHIBIT 4: _____SUSTAINED _____OVERRULED

EXHIBIT 5: _____SUSTAINED _____OVERRULED

EXHIBIT 6: _____SUSTAINED _____OVERRULED

EXHIBIT 7: _____SUSTAINED _____OVERRULED

EXHIBIT 8: _____SUSTAINED _____OVERRULED

III. OBJECTIONS TO THE VIRDEN AFFIDAVIT AND EXHIBITS

A. Best Evidence Objection

Paragraph 9 of the Affidavit of Walter Virden, III is inadmissible as evidence pursuant to Rule 1002 of the Texas Rules of Evidence because it purports to prove the contents of unspecified “records of the Corporation” without attaching the originals or duplicates of such records. The statements in this paragraph are inadmissible because they are based on hearsay.⁸

The Court makes the following rulings with respect to these objections:

PARAGRAPH 9: _____SUSTAINED _____OVERRULED

B. Lack of Personal Knowledge

The statement in the final sentence of paragraph 9 of the Affidavit of Walter Virden, III is inadmissible pursuant to Rule 602 of the Texas Rules of Evidence and Rule 166a(f) of the Texas Rules of Civil Procedure because Walter Virden lacks personal knowledge of the result of

⁸ See *id.*

elections for the Board of Trustees of the Corporation of the Episcopal Diocese of Fort Worth after he left the Episcopal Diocese of Fort Worth in November 2008.

The Court makes the following rulings with respect to these objections:

PARAGRAPH 9 (final sentence): _____SUSTAINED _____OVERRULED

C. Improper Legal Conclusions

Paragraphs 8 and 10 of the Affidavit of Walter Virden, III are inadmissible as summary judgment evidence because they merely state unsupported legal conclusions which the affiant is not qualified to give. “[L]egal conclusions and opinions made in an affidavit are not competent summary judgment evidence.” *Green*, 883 S.W.2d at 297.

The Court makes the following rulings with respect to these objections:

PARAGRAPH 8: _____SUSTAINED _____OVERRULED

PARAGRAPH 10: _____SUSTAINED _____OVERRULED

D. Inadmissible Hearsay

Exhibits 3 and 4 to the Affidavit of Walter Virden, III constitute inadmissible hearsay pursuant to Rules 801 and 802 of the Texas Rules of Evidence because they are offered to prove the truth of matters asserted in these documents, and the Virden Affidavit does not contain facts sufficient to establish applicability of any exclusion or exception under Rules 801, 803, or 804.⁹ Specifically, these documents do not qualify as records of regularly conducted activity pursuant to Rule 803(6) because Virden does not testify that these documents were “made at or near the time by, or from information transmitted by, a person with knowledge,” that the documents were “kept in the course of a regularly conducted business activity,” that “it was the regular practice of

⁹ See *Lewis*, 940 S.W.2d at 85. Exhibits 1 and 2 are properly proved up in the Local Episcopal Parties’ and The Episcopal Church’s summary judgment evidence.

that business activity to make” these documents, or that the documents are exact duplicates of the originals.

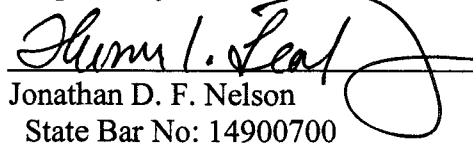
The Court makes the following rulings with respect to these objections:

EXHIBIT 3: _____SUSTAINED _____OVERRULED

SIGNED this ____ day of January, 2011.

PRESIDING JUDGE

Respectfully submitted,

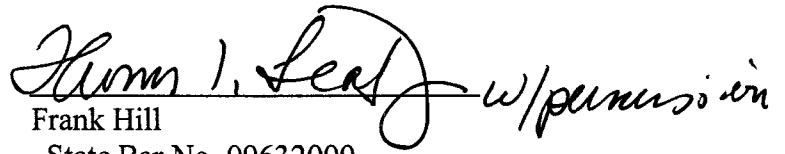


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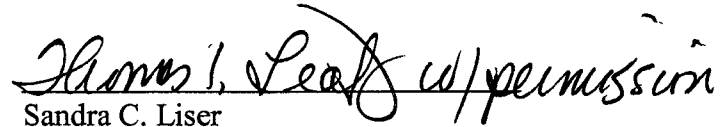
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CERTIFICATE OF SERVICE

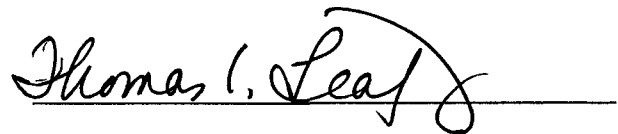
This is to certify that a true and correct copy of the foregoing document has been sent this 7th day of January, 2011, by facsimile or hand-delivery and by email, to:

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A handwritten signature in cursive script, reading "Thomas L. Leaf", is written over a horizontal line.