

THE EPISCOPAL CHURCH ET AL.,	)	IN THE DISTRICT COURT OF
	)	
Plaintiffs,	)	
	)	
VS.	)	TARRANT COUNTY, TEXAS
	)	
FRANKLIN SALAZAR ET AL.,	)	
	)	
Defendants/Counter-Defendants.	)	141 <sup>ST</sup> DISTRICT COURT

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 THOMAS A. WILDE  
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**THE EPISCOPAL CHURCH’S RESPONSE TO DEFENDANTS’  
MOTION FOR PARTIAL SUMMARY JUDGMENT<sup>1</sup>**

Defendants’ Motion for Partial Summary Judgment is flawed in two fundamental respects: it consistently disregards critical undisputed facts and ignores governing Texas law. First, defendants ignore the undisputed fact that the Episcopal Diocese of Fort Worth (the “Diocese”) was formed as a subordinate part of The Episcopal Church (the “Church”), which, under the undisputed facts, is a hierarchical church. As a result, their motion fails entirely to take into account the law that governs this case: the Texas Supreme Court’s decision in *Brown v. Clark* and its progeny – including two recent Texas decisions involving The Episcopal Church – holding that in a dispute over church property between two competing factions of a hierarchical

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<sup>1</sup> In support of this Response, the Church relies upon and incorporates by reference the following exhibits to the Church’s Motion for Summary Judgment and to this Response: (1) Appendix to All Episcopal Parties’ Motions for Summary Judgment and Partial Summary Judgment, filed jointly by The Episcopal Church and the Local Episcopal Parties on October 18, 2010, containing Appendix pages A1-1264; (2) Plaintiff The Episcopal Church’s Supplemental Evidence in Support of Its Motion for Summary Judgment, filed October 22, 2010, containing Appendix pages A1265-69; (3) Supplemental Evidence in Support of All Episcopal Parties’ Motions for Summary Judgment and Partial Summary Judgment, filed December 21, 2010, containing Appendix pages A1270-1284; and (4) Supplemental Evidence in Support of All Episcopal Parties’ Responses to Defendants’ Motion for Partial Summary Judgment, filed January 7, 2011, containing Appendix pages A1285-1377.

church, the faction that is identified as loyal to the hierarchical church wins. Under this well-established “identity” precedent alone, defendants’ motion should be denied.

Second, defendants overlook the commitments made by the Diocese when it became part of the Church and thereafter. As we set out in detail below, the undisputed facts show that the Diocese has since its inception promised to abide by the rules of the Church, including its rules requiring that Church property be used for the mission of The Episcopal Church and no other denomination. Basic fairness mandates that these promises be enforced to forbid defendants from removing Diocesan property to another denomination. So does the law governing voluntary associations, which requires local chapters of national organizations to abide by the rules of those organizations and forbids dissenting members from avoiding those rules by attempting to “withdraw” the local entity from the parent. Indeed, under the undisputed facts here, even the “neutral principles” analysis proposed by defendants (but never actually applied in Texas) requires the same conclusion. Finally, defendants’ suggestion that they may avoid the Diocese’s obligations by amending the corporate documents of its subsidiary corporation should be rejected: Texas law rejects the notion that corporations may avoid their obligations by amending corporate documents. For these reasons, as well, defendants’ motion should be denied.

- I. In Texas, Church Property Disputes Turn on a “Simple Question of Identity,” and Under this Precedent the Local Episcopal Plaintiffs are Entitled to Possession and Control of the Diocese, Its Corporation, and All Diocesan Assets.

Defendants’ Motion for Partial Summary Judgment asserts that the “ultimate legal question” facing the Court is whether to decide this case under “neutral principles” or “divergent opinions about the structure, history, beliefs, and practice of a religious denomination over hundreds of years.” Defs.’ Mot. at 1. But that is not the question facing the Court at all, for a century’s worth of Texas cases dictates that courts must apply the simple “identity” test to

resolve hierarchical church property disputes. As set out in detail in the Church's motion for summary judgment, this body of law and the undisputed facts in this case require summary judgment in favor of the plaintiffs; consequently, they also mandate the denial of defendants' motion.

In short, since *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909), the law of Texas has been that “[w]hen a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity.” *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 871 (Tex. Civ. App.—Texarkana 1977, no writ) (emphasis added). See Plaintiff The Episcopal Church's Motion for Summary Judgment and Brief in Support Thereof (“Church's Mot.”) at 3-5, 34-52 (also citing *Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 706-07 (Tex. App.—Dallas 1986, writ ref'd n.r.e.); *Norton v. Green*, 304 S.W.2d 420, 424 (Tex. Civ. App.—Waco 1957, writ ref'd n.r.e.); *Browning v. Burton*, 273 S.W.2d 131, 136 (Tex. Civ. App.—Austin 1954, writ ref'd n.r.e.); *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex. App.—Austin 1991, writ denied); *Templo Ebenezer, Inc. v. Evangelical Assemblies, Inc.*, 752 S.W.2d 197, 198 (Tex. App.—Amarillo 1988, no writ); *Diocese of Nw. Tex. v. Masterson*, No. A-07-0237-C, Modified Final Summary Judgment at 1-2 (51st Dist. Ct., Tom Green County, Tex. Dec. 16, 2009), *appeal*

docketed, No. 03-10-00015-CV (Tex. App. Jan. 7, 2010) (Attach. A to the Church's Mot.); *Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 602 (5th Cir. 1975)).<sup>2</sup>

With their suggestion that "it does not matter whether the church is hierarchical or who is its ecclesiastical authority" (Defs.' Mot. at 6), defendants pretend that this entire body of controlling law does not exist. But under this precedent, defendants' motion should be denied (and plaintiffs' motion granted) as a matter of law because the undisputed facts conclusively show that (1) The Episcopal Church is hierarchical and (2) the Local Episcopal Parties represent the faction that has remained loyal to the Church. *See* Church's Mot. at 39-47.

When we filed our motion in October 2010, one Texas court had already applied this "identity" principle to require former Episcopalians to return church property to loyal Episcopalians. *See Diocese of Nw. Tex.*, Modified Final Summary Judgment at 1-2. Since that time, a second Texas court has applied this same body of law to arrive at the same conclusion. In *St. Francis on the Hill Church v. The Episcopal Church*, No. 2008-4075, Final Summary Judgment (210th Dist. Ct., El Paso County, Tex. Dec. 17, 2010) (Attachment A hereto), the District Court in El Paso County held that "The Episcopal Church is hierarchical as a matter of law"; thus, "the long-established Texas precedent governing hierarchical church property disputes" applied, which precedent "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"; and "[u]nder [that law], those are the individuals who remain entitled to the use and control of the church property." *Id.* at 1-2. Moreover, the local church "is

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<sup>2</sup> Defendants' suggestion that the avoidance of constitutional questions requires that other legal principles control this case (Defs.' Mot. at 3) is a red herring: *Brown* and its progeny set out Texas common law, as cabined by the First Amendment, prescribing a straightforward test for resolving these types of church property disputes.

represented by those of its members who have remained part of The Episcopal Church”; and “possession and control of the property held by [the local church] is awarded to the continuing Episcopal congregation.” *Id.* at 3. As in that case, here the property at issue belongs in the hands of loyal Episcopalians.<sup>3</sup>

Defendants try to avoid the same conclusion in this case by arguing that their amendments to the corporate articles of the Corporation of the Episcopal Diocese of Fort Worth (the “Diocesan Corporation”), which holds most of the Diocese’s property, purportedly severing the Corporation’s ties to the Church, also released the Corporation from its obligations to the Church. Defs.’ Mot. at 21. But, not surprisingly, they cite no support for the proposition that a corporation may avoid its prior obligations by amending its corporate articles. And they ignore the fact that the Diocesan Corporation is but a subsidiary of the Diocese (*see* Church’s Mot. at 23-24), which in turn is bound by the Church’s rules forbidding the removal of Church property from the mission of the Church to another denomination (*id.* at 14-15, 22-23, 55-57).

Indeed, the Texas cases setting out the “identity” principle that controls this case also have consistently rejected similar attempts by dissident factions to hold on to local church property by amending a local church entity’s corporate bylaws. *See Presbytery of the Covenant*, 552 S.W.2d at 870, 872 (awarding local church property to faction loyal to the hierarchical church despite creation by the local incorporated church of a separate corporation to which it transferred the church’s assets); *Church of God in Christ*, 507 F.2d at 600-02 (rejecting dissident pastor’s “opinion that if the local church were incorporated the new bishop could not remove

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<sup>3</sup> Defendants’ claim that the Church is trying to “take property it did not pay for and has never owned” (Defs.’ Mot. at 2) is disingenuous in two respects: First, it is clear from the Church’s pleadings that it seeks not to take control of the property itself but rather to have the property placed in the control of local Episcopalians. Second, as we show below, the property at issue came to belong to the Diocese through the generosity of Episcopalians since its inception – in other words, none of the defendants paid for it, either. *See infra* at 14-15 (describing deeds).

him” and that the corporate entity had rights in property that the local church did not otherwise have under the hierarchical church’s rules, and awarding property to the loyal faction).

Texas courts’ recognition that the secular act of incorporation does not alter the relationship between a local church and its hierarchical parent also finds support in Texas statutory law, *see* TEX. REV. CIV. STAT. ANN. art. 1396, § 2.02(A)(16) (Vernon 2003) (“Any religious ... institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property *for the use and benefit and under the discretion of, and in trust for* any convention, conference or association ... with which it is affiliated, or which elects its board of directors, or which controls it, *in furtherance of the purposes of the member institution.*”) (emphasis added); as well as the law in other states in cases involving The Episcopal Church and its parishes. *See Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 922 n.4, 925 (N.Y. 2008) (changes to corporate documents did not preclude holding that parish property is held in trust for The Episcopal Church and the Diocese); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1291, 1293 (Conn. 1993) (same); *Huber v. Jackson*, 96 Cal. Rptr. 3d 346, 358 (Ct. App. 2009), *review denied*, No. S175401, 2009 Cal. LEXIS 9850 (Ct. App. Sept. 17, 2009), *cert. denied*, 78 U.S.L.W. 3498 (Mar. 1, 2010) (No. 09-708) (rejecting argument that religious corporation was separate from parish and existed outside The Episcopal Church and the Diocese), *id.* at 361 (religious corporation subordinate to ecclesiastical body); *New v. Kroeger*, 84 Cal. Rptr. 3d 464, 479 (Ct. App. 2008), *ordered published by* 202 P.3d 1089 (Cal. 2009) (religious corporation does not change the ecclesiastical status of Episcopal Church congregation). Indeed, to find otherwise would risk First Amendment implications. *See First Born Church of the Living God, Inc. v. Hill*, 481 S.E.2d 221, 222 (Ga. 1997) (“[a]s a matter of

constitutional law,” local church members have “no legal right [under Georgia corporations code] to wrest the governing of the Church from the [duly elected Church leaders]”). Under these sensible and well-established principles, defendants should not be allowed to avoid the conclusion required by *Brown* by amending the Diocesan Corporation’s corporate documents.<sup>4</sup>

Defendants next try to avoid the result dictated by *Brown* by arguing that (1) even though they have left The Episcopal Church, *they* are the real Trustees of the Diocesan Corporation (Defs.’ Mot. at 12-15), not the Trustees recognized by the Church; and (2) even though he has openly disavowed membership in The Episcopal Church and as a result has been removed as a bishop of the Church, *defendant Iker* is the real bishop of the Diocese (Defs.’ Mot. at 15-19), not Bishop Ohl, who was elected by loyal Episcopalians in the Diocese and has been recognized as the Bishop by the Church. These arguments fail, as well.

As we set out in detail in our motion, only churches may determine the identity of their leaders; as a matter of First Amendment law, courts may not interfere with or look behind such peculiarly “ecclesiastical” determinations. Church’s Mot. at 43-47. Where a hierarchical church is concerned, courts must defer to the determination of the highest authority in the church on such questions. *Id.* Thus, as we have shown before, the Church’s recognition of Bishop Ohl as the bishop of the Diocese, and its recognition of the Episcopalians elected to fill vacancies in the Diocesan leadership (including as Trustees of the Diocesan Corporation) as the true leaders of

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<sup>4</sup> Nor should defendants be allowed to suggest that because all parties agree that the Corporation holds the Diocesan assets, defendants should win because they “represent” the Corporation. Defs.’ Mot. at 7. This bald assertion ignores the fact that the identity of the individuals authorized to control the Diocesan Corporation is at the heart of the dispute in this case, and flies in the face of the Fort Worth Court of Appeals’ June 25, 2010, mandamus opinion holding that neither of two competing factions may litigate in the name of an entity whose identity and control is disputed. *In re Salazar*, 315 S.W.3d 279, 285-87 (Tex. App.—Fort Worth 2010, orig. proceeding); *see also* Rule 12 Mot. Challenging Authority of Attorneys J. Shelby Sharpe, Scott Brister, and Kendall Gray (filed Dec. 29, 2010).

the Diocese constitute the final word on those matters. *Id.* These are ecclesiastical determinations by the Church's highest authorities to which this Court must defer, and defendants' protestations otherwise must be rejected.

A recent decision from the California Court of Appeal, issued after the filing of our motion, echoes this conclusion. In a case involving an Episcopal diocese whose former leaders, like defendants here, purport to have taken the Diocese and its assets out of the Church, the appellate court confirmed that the Church's determinations regarding the identity of its bishops are ecclesiastical matters on which courts must defer to the Church. *Schofield v. Superior Court*, 190 Cal. App. 4th 154, 162 (2010) ("the validity of [the Church's] removals and appointments [of its bishops] are not subject to further adjudication by the trial court"). Moreover, the court held that the question of whether a Diocese may "withdraw" from the Church is also an ecclesiastical question that only the Church itself may answer: "The continuity of the diocese as an entity within the Episcopal Church is likewise a matter of ecclesiastical law, finally resolved, for civil law purposes, by the Episcopal Church's recognition of Lamb as the bishop of that continuing entity." *Id.* This latter holding directly undermines defendants' argument that they may remove the Diocese, its Corporation, and all of those entities' assets from the Church.

Defendants' suggestion that it is they, and not the remaining loyal Episcopalian plaintiffs, who are the true leaders of the Diocese is especially preposterous since their removal occurred in adherence to the plain rules governing the Diocese and its Corporation since their inception. Although the Church's determinations regarding the identity of the Diocese's leaders would deserve First Amendment deference even if they were made outside the confines of governing



church rules (that is, after all, what deference is all about<sup>5</sup>), the undisputed facts show that was not the case here. Rather, those facts show that (1) defendant Iker withdrew from The Episcopal Church (Church's Mot. at 30-31); (2) as a result, pursuant to the Church's rules, he was formally removed as a bishop of the Church (*id.* at 31); (3) the other defendants who held leadership positions in the Diocese also left The Episcopal Church (*id.* at 30); (4) these actions, under the Church's rules, deprived the defendants of standing to retain any offices in the Diocese (*id.* at 16, 29); and, (5) as a result, the Diocesan Convention, composed of the remaining Episcopalians in the Diocese and in consultation with the Presiding Bishop according to the Church's rules, chose a Provisional Bishop and elected other Diocesan leaders to fill the vacancies created by defendants' departure (*id.* at 31).<sup>6</sup> Defendants may wish to pretend that none of these events took place, but they did, and they are dispositive under the Church's rules as to who governs the Diocese.<sup>7</sup>

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<sup>5</sup> See, e.g., *Patterson v. Southwestern Baptist Theological Seminary*, 858 S.W.2d 602 (Tex. App.—Fort Worth 1993, no writ) (a “civil court may not decide whether the church complied with the procedural rules contained in the church constitution and penal code in defrocking one of its bishops”) (citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 722-23 (1976)).

<sup>6</sup> Defendants' suggestion that the Church's rules commit the selection of diocesan bishops entirely to the dioceses themselves (Defs.' Mot. at 16-18) misreads those rules. It is clear that while the Church *delegates* to the individual dioceses the authority to select rules for electing their bishops, it nevertheless places limits on those elections (*i.e.*, bishop-elect must be at least 30 and no more than 72 years old), and requires that the diocese's selection receive the consent of the rest of the Church before the bishop-elect is ordained. See Church's Mot. at 13; Const. Art. II.1 (A128). Further, through its disciplinary rules the Church has the power to remove a bishop from office. See Church's Mot. at 15. And aside from those provisions, the Church's rules provide that a diocese without a bishop may, by act of its Convention and in consultation with the Presiding Bishop, choose a provisional bishop to exercise the office of diocesan bishop until that office is filled. Church Canon III.13 (A242). That is precisely what occurred here.

<sup>7</sup> Defendants' additional suggestion that the identity of the Trustees is governed solely by the Texas Non-Profit Corporation Act and the Corporation's bylaws (Defs.' Mot. at 12-15) again ignores the fact that the Diocesan Corporation is but a subsidiary of the Diocese, which in turn is bound by the rules of the Church, and overlooks the Diocese's rules requiring that such persons be loyal Episcopalians and the Church's rules requiring that all officers of the Church carry out

II. Under “Neutral Principles” and Under the Law Governing Secular Voluntary Associations, the Undisputed Facts Compel the Conclusion that Plaintiffs are Entitled to the Property at Issue in this Case and Defendants’ Motion Should be Denied.

Having ignored *Brown* and its progeny, defendants suggest they are entitled to summary judgment instead under the law governing secular voluntary associations (Defs.’ Mot. at 3-5, 15-16) and the “neutral principles” analysis adopted by another state and approved by the U.S. Supreme Court (*id.* at 5-6). They cite no support for the proposition that these bodies of law, rather than *Brown*’s “identity” principle, apply to hierarchical church property disputes in Texas; nor are we aware of any such precedent. Nevertheless, as we show below, even under these alternate analyses, in the light of the undisputed facts in this case defendants are not entitled to summary judgment, but plaintiffs are.

A. Under “Neutral Principles,” the Diocese’s Property May Not Be Diverted from the Mission of The Episcopal Church.

Defendants argue that this case should be determined under the four-factor “neutral principles” test adopted in Georgia and approved by the U.S. Supreme Court – despite the fact that *not a single Texas court* has applied that four-factor test. And further, without explanation, defendants do not even apply the test themselves! But we do: and as our analysis shows, under “neutral principles” defendants’ motion should be denied.

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their duties in compliance with the Church’s rules. Church’s Mot. at 16, 23, 29. Texas law does not permit defendants to manipulate state statutes or otherwise read local church bylaws to avoid the Church’s rules. See *Green v. Westgate Apostolic Church*, 808 S.W.2d at 552 (“[i]n a conflict between the general procedures outlined in the Texas Non-Profit Corporation Act and the specific procedures contained in the church bylaws, we must defer to the church bylaws”; thus, “[t]he trial court properly found that the members could not invoke the Texas Non-Profit Corporation Act to remove the board of trustees”); *Norton v. Green*, 304 S.W.2d at 423-24 (rejecting argument that incorporation of local church meant “that a majority of the corporation could secede from” the hierarchical church under general principles of corporations law because the general church’s governing documents required that the local church’s corporate “Charter and By-laws must always be in accord with the standards of the [general] Church”).

1. In Texas, the “Neutral Principles” Test Does Not Apply to Hierarchical Churches.

In *Jones v. Wolf*, 443 U.S. 595 (1979), the U.S. Supreme Court approved the “neutral principles” analysis as one constitutional method for resolving church property disputes. As defendants acknowledge (Defs.’ Mot. at 5-6), that analysis is comprised of four factors: “[1] the language of the deeds, [2] the terms of the local church charters, [3] the state statutes governing the holding of church property, and [4] the provisions in the constitution of the general church concerning the ownership and control of church property.” *Jones*, 443 U.S. at 603.<sup>8</sup> Courts are required to examine these factors “to determine whether there [is] any basis for a trust in favor of the general church.” *Id.* at 600.

*Not one* of the seven cases defendants cite for the proposition that “neutral principles” applies here in fact applied the four-factor “neutral principles” analysis. Moreover, six of those cases involved *congregational* churches; and the seventh, which involved a hierarchical church, applied *Brown*’s “identity” principle!

In *Dean v. Alford*, 994 S.W.2d 392, 395 n.1, 395-96 (Tex. App.—Fort Worth 1999, no pet.), a case considering whether a local congregational church had properly ousted its pastor, the

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<sup>8</sup> Even in applying neutral principles, courts cannot ignore a church’s polity. In *Jones*, the Court cautioned that the First Amendment’s Free Exercise guarantee “requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization,” 443 U.S. at 602. The Court explained that the neutral principles analysis meets that constitutional imperative because,

“[t]hrough appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.”

*Id.* at 603-04. Thus, like the “identity” approach to church property disputes and principles of Texas law applicable to voluntary associations generally, the “neutral principles” analysis requires that the polity and internal rules of a religious organization be respected and enforced.

court dismissed the case for lack of subject-matter jurisdiction. Similarly, in *Westbrook v. Penley*, 231 S.W.3d 389, 392-93, 405 (Tex. 2007), involving tort claims against a marriage counselor who was also a pastor for disclosing a (congregational) church member's extra-marital affair to the congregation, the court dismissed the case for lack of subject-matter jurisdiction. In *Libhart v. Copeland*, 949 S.W.2d 783, 793-94 (Tex. App.—Waco 1997, no writ), former members of a dissolved (congregational) church sued their former pastor alleging fraud and misappropriation of the church's funds; the four-factor "neutral principles" test again was not applied. *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756, 758, 759 (Tex. App.—Houston [14th Dist.] 2002, no pet.), involved a dispute between two factions of a congregational church over control of the church and its assets; there, the court held that because that church had no governing documents, it could not apply "neutral principles" and therefore dismissed the case for lack of subject-matter jurisdiction. *Cherry Valley Church of Christ/Luther Clemons v. Foster*, No. 05-00-01798-CV, 2002 WL 10545, at \*3, \*4 (Tex. App.—Dallas Jan. 4, 2002, no pet.) (not designated for publication), also involved a dispute between two factions of a congregational church over control of the church and its assets; there, the court deferred to the congregation's vote to remove one faction from power because, as a congregational church, "the congregation was the highest authority in the church"; the "neutral principles" analysis was not applied. In *Chen v. Tseng*, No. 01-02-01005-CV, 2004 WL 35989 at \*1-3, \*6 (Tex. App.—Houston [1st Dist.] Jan. 8, 2004, no pet.) (mem. op.), two factions of a church were in dispute over control of the church and whether the church was subject to the authority of a particular Patriarch, and was therefore "hierarchical," or was independent of the Patriarch and thus free to manage its own affairs. In the light of no evidence proving a hierarchical relationship between

the church and the Patriarch, the court resolved the dispute over control by construing the church's bylaws. *Id.* at \*14-17. Again, the four “neutral principles” factors were not applied.<sup>9</sup>

Finally, as discussed above and at length in our motion (Church's Mot. at 35-36), in *Presbytery of the Covenant* – the only case cited by defendants involving a hierarchical church – the court applied *Brown's* “identity” principle to conclude that the local church property belonged to the faction that had remained loyal to the hierarchical church. 552 S.W.2d at 871-72. Interestingly, the court in that case characterized the “identity” analysis as its own version of “neutral principles.” *Id.* at 871 (in determining which faction is loyal to the hierarchical church, “the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights. *In doing so, the court applies neutral principles of law ....*”) (emphasis added). While this characterization may be confusing, it remains clear that the *Presbytery of the Covenant* court applied the “identity” analysis set out in *Brown*, and did not apply *Jones's* four-factor “neutral-principles” test.

It is evident from these cases – not to mention *Brown* and its progeny – that the four-factor “neutral principles” test simply does not apply to hierarchical church property disputes in Texas. What these cases suggest, however, is that Texas courts may apply “neutral principles” to resolve *congregational* church property disputes. See *Waters v. Hargest*, 593 S.W.2d 364, 365-66 (Ct. Civ. App.—Texarkana 1979, no writ) (approving application of “neutral principles” analysis in a dispute involving a congregational church, where there are “no hierarchical constitution or regulations governing the right [at issue], and no church adjudicatories having

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<sup>9</sup> Indeed, in *Greanias v. Isaiah*, No. 01-04-00786-CV, 2006 WL 1550009, at \*9 (Tex. App.—Houston [1st Dist.] June 8, 2006, no pet.), a case involving a hierarchical church, the Houston Court of Appeals expressly rejected the argument that *Chen* required application of “neutral principles” because *Chen* involved a congregational church, among other reasons.

jurisdiction to determine questions concerning such [rights].”). But as we set out in our motion, the undisputed evidence conclusively shows that The Episcopal Church is hierarchical, and every court in the nation to have addressed the question has reached that conclusion. Church’s Mot. at 39-43. Defendants’ attempt to circumvent Texas’s well-settled “identity” approach with “neutral principles” should thus be rejected.

2. Even Under The “Neutral Principles” Analysis, Defendants’ Motion Should be Denied and Plaintiffs’ Motions Granted.

After invoking *Jones*’s “neutral principles” test, defendants, curiously, make no attempt to apply the test’s four factors.<sup>10</sup> As it turns out, and as we show below, each of the *Jones* factors favors a finding that the Diocese’s property must be used for the mission of the Church. Accordingly, even under this analysis, the result is the same: Those persons remaining loyal to and recognized by the Church are entitled to possession and control of the Diocese’s property.

a. *The “Language of the Deeds” Requires that Diocesan Property be Held for the Mission of the Church.*

The Diocese owns three parcels of real property for its use.<sup>11</sup> Each of these parcels was originally granted to either (1) “The *Episcopal* Diocese of Fort Worth” or (2) the “Bishop of the Diocese of Dallas of *the Episcopal Church*” (or the “Bishop of the *Protestant Episcopal Church* of the Diocese of Dallas”) and his successors in office. *See* Deed for Camp Crucis Property to Charles Avery Mason, as Bishop of the Protestant Episcopal Church, for the Diocese of Dallas (A1343-45) [regarding first parcel, containing three tracts of land]; Deed for Camp Crucis

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<sup>10</sup> As a result, defendants fail to carry their burden on summary judgment. TEX. R. CIV. P. 166a; *Black v. Victoria Lloyds Ins. Co.*, 797 S.W.2d 20, 27 (Tex. 1990); *Swilley v. Hughes*, 488 S.W.2d 64, 67 (Tex. 1972). On this ground alone, their motion should be denied.

<sup>11</sup> The Diocese also holds title to multiple other parcels of property, which it holds for the benefit of Episcopal congregations in the Diocese, many of which occupy those properties as their worship spaces. Only the three parcels held for *diocesan* use are presently at issue.

Property to A. Donald Davies, Bishop of the Diocese of Dallas of the Episcopal Church in the United States of America (A1346-48) [second parcel, one tract]; Deed for Alameda St. Property to Episcopal Diocese of Fort Worth (A1359-65) [third parcel, one tract]; Deed for Alameda St. Property from Episcopal Diocese of Fort Worth to Corporation of The Episcopal Diocese of Fort Worth (A1366-72) [same third parcel] (emphasis added). Two of the parcels were conveyed by the Diocese of Dallas to the Diocese of Fort Worth in 1984 by court order after the Diocese of Fort Worth was formed and admitted into union with the Church; that order described the Diocese as “The Episcopal Diocese of Fort Worth” which was “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America.” See Church’s Mot. at 25-26; Certified Copy, Judgment, *The Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (95th Dist. Ct. Dallas County) (A1139-52). Thus, contrary to defendants’ insinuations, see Defs.’ Mot. at 1, the majority of the Diocese’s property was neither donated nor acquired *by defendants* for the Diocese, but rather was freely transferred by another *Episcopal* diocese.

Moreover, the deed to the property that comprises the Diocese’s Camp Crucis complex contains an express trust restricting use of the property to the mission of the Church:

“This conveyance . . . is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas, in the State of Texas, and for this purpose the said Charles Avery Mason [then-Bishop of the Diocese of Dallas], as aforesaid, and his successors in office, shall hold, use, improve, manage and control the above described property in such manner as to him or them may seem best for the interest of said Church within said Diocese.... And in the event of death, resignation, suspension, deposition or removal from office for any cause of any Bishop in whom may at the time of such death, resignation, suspension, deposition or other removal from office, be vested the title to the above described premises, as trustee under this instrument, then, and in that event, the senior Bishop of the Protestant Episcopal Church in the United States of America shall be held and deemed to be, for the purpose of sustaining and perpetuating this trust, as successor in office of said Bishop until vacancy shall have been regularly filled.” (A1344-45.)

Accordingly, the “language of the deeds,” *Jones*, 443 U.S. at 603, confirms that diocesan property is intended for a Diocese that is part of The Episcopal Church, and is committed to the mission of the Church and no other denomination.

- b. *“State Statutes Governing the Holding of Church Property” Confirm that Diocesan Property Must be Held for the Mission of the Church.*

Texas statutes confirm that religious corporations are subordinate to and controlled by the hierarchical religious organizations that formed them, and hold property for the benefit of and in trust for those hierarchical organizations. Thus, Texas’s Non-Profit Corporation Act provides that subordinate parts of a hierarchical church “may incorporate under this Act with the consent of a majority of its members, who shall authorize the incorporators to execute the articles of incorporation.” TEX. REV. CIV. STAT. ANN. art. 1396, § 3.01(B) (Vernon 2003). When the constituent entity incorporates, the Act provides that the incorporated entity will hold property for the benefit of the general church:

*“Any religious ... institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association ... which controls it, in furtherance of the purposes of the member institution.”*

Art. 1396, § 2.02(A)(16) (emphasis added). Likewise, “[b]oards of directors of religious ... institutions may be affiliated with, elected and controlled by a convention, conference or association ... whose membership is composed of representatives, delegates, or messengers from any church or other religious association.” Art. 1396, § 2.14(B). Texas’s “statutes governing the holding of church property,” *Jones*, 443 U.S. at 603, thus support the conclusion that the Diocesan Corporation holds its property in trust for The Episcopal Church.



- c. *The “Terms of the Local Church Charters” and the “Provisions in the Constitution of the General Church Concerning the Ownership and Control of Church Property” Conclusively Demonstrate that Diocesan Property is Held for the Mission of the Church.*

The third and fourth factors of the “neutral principles” test – governing documents of the Church and the Diocese – are most easily analyzed together. As we set out in detail in our motion (Church’s Mot. at 10-16, 20-25), these undisputed documents clearly show that the Diocese agreed to be, is, and always has been governed by the Church’s rules; and that those rules have always included the requirement that all Episcopal Church property must be used for the mission of the Church and not diverted elsewhere.

In short, at the time of the Diocese’s formation as a diocese of The Episcopal Church, it is undisputed that the Church had the following rules:

- Its Constitution required new dioceses to “accede[] to the Constitution and Canons of this Church”;
- Its Constitution and *Book of Common Prayer* required every ordained person to pledge to “conform to the Doctrine, Discipline, and Worship of the Episcopal Church”;
- Its Canons required all persons holding offices in the Church to “well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church”;
- Its Canons prohibited parishes from “encumber[ing] or alienat[ing]” any of its real property without the consent of the Diocesan Bishop and Standing Committee; and
- Its Canons provided that “[a]ll 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.”

See Church’s Mot. at 20-22.<sup>12</sup> Further, it is undisputed that the newly-formed Diocese took the following actions:

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<sup>12</sup> The Church also had multiple other rules, set out in our motion, showing the Church’s general hierarchical authority over its dioceses and parishes. Church’s Mot. at 20-22. Those additional rules are not laid out here.

- Its first Convention adopted a resolution stating that it “fully subscribe[s] to and accede to the Constitution and Canons of The Episcopal Church”;
- Its first Constitution provided that the Diocese “accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church”;
- That same Constitution further provided that the Diocesan Convention could adopt only canons that were “not inconsistent with ... the Constitution and Canons of the General Convention”;
- The Constitution provided for the creation of the Diocesan Corporation and described its purpose as holding title to all real estate acquired “for the use of the Church in this Diocese”; and
- The first Diocesan Canons required that the Trustees of the Diocesan Corporation be Episcopalians in good standing in the Diocese.

*See Church’s Mot.* at 23-24. These documents make clear that the new Diocese had notice of and agreed to the Church’s policy regarding church property. The Diocese knew the terms of the deal, and it took that deal. The defendants are bound by it.

Defendants’ suggestion that the Diocese’s accession to the Church’s governance was somehow “qualified” by Article 13 of the newly-adopted Diocesan Constitution and Canon 12.4 of the newly-adopted Diocesan Canons, *Defs.’ Mot.* at 9, should be rejected because it misunderstands the import of those provisions.

Article 13 of the new Diocesan Constitution (A534) provided, in full:

“The title to all real estate acquired for the use of the Church in this Diocese, including the real property of all parishes and missions, as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as “Corporation of the Episcopal Diocese of Fort Worth.” All such property as well as all property hereafter acquired for the use of the Church and the Diocese, including parishes and missions, shall be vested in Corporation of the Episcopal Diocese of Fort Worth.

“The Corporation of the Episcopal Diocese of Fort Worth shall hold real property acquired for the use of a particular parish or mission in trust for the use and benefit of such parish or mission. The income from such property shall belong to such parish or mission, which will be responsible for expenses attributable

thereto. Such property may not be conveyed, leased, or encumbered by the Corporation of the Episcopal Diocese of Fort Worth without the consent of the Rector, Wardens and Vestry of such parish or mission. Upon dissolution of such parish or mission, property held in trust for it shall revert to said Corporation for the use and benefit of the Diocese, as such.

“All other property belonging to the Diocese, as such, shall be held in the name of the corporation known as “Corporation of the Episcopal Diocese of Fort Worth,” and no conveyance or encumbrance of any kind shall be valid unless executed by such corporation and as may otherwise be provided by the Canons of the Diocese.”

Canon 12.4 (A538) provided, in full:

“Real property acquired by the Corporation for the use of a particular parish or mission shall be held by the Corporation in trust for the use and benefit of such parish or mission. It is immaterial whether said acquisition is by conveyance to the Corporation by a parish or mission now holding title, by the Bishop now holding title as a corporate sole, or by subsequent conveyance to the Corporation, so long as such property was initially acquired by a parish or mission by purchase by its parishioners, or by gift or devise to it, as a parish or mission. Such parish or mission shall be entitled to all income from property held for it in trust by the Corporation and will be responsible for the direct expenses attributable to such property, but not for any administrative expenses of the Corporation. Property held in trust by the Corporation for a particular parish or mission may not be conveyed, leased or encumbered in any way by the Corporation without the written consent of the Rector, Wardens and Vestry of the parish, or the Wardens and Vestry of the mission, for which said property is held in trust. Upon dissolution of a parish or mission, such property held in trust for it shall revert to the Corporation for the use and benefit of the Diocese, as such.”

A bit of context may be helpful. In some Episcopal dioceses, parish real property is titled in the name of the parish; in others, it is titled in the name of the diocese; and in others, there is a mix. Mission property is always held in the name of the diocese. With the quoted provisions, the Diocese of Fort Worth required that parish property in that diocese be held by the Diocesan Corporation, in trust for the benefit of the parish. Thus, under these rules, the Diocesan Corporation was required to be the owner of the buildings in which parish and mission congregations worshipped and otherwise carried out their church activities. Not surprisingly, then, these provisions also provide some protection for parish and mission congregations by

requiring the Diocesan Corporation to obtain the consent of the local leadership before alienating or encumbering the property they use.

Nothing about these provisions has the effect that defendants claim – that is, to contradict the Church’s rules requiring that all church property be held in trust for the mission of the Church, and thereby to “qualify” the Diocese’s original accession to those rules. Indeed, these provisions say *nothing* about the Church’s rules, and do not conflict with them in any way; there is nothing contradictory between a requirement that all church property be held in trust for the mission of the Church, on the one hand, and a prohibition against a diocesan entity holding parish property from alienating or encumbering it without the parish’s permission, on the other. Defendants’ suggestion that these rules “established a trust *only* for the benefit of local parishes and the Diocese, and expressly prohibited any other encumbrances (like a trust in favor of [the Church])” (Defs.’ Mot. at 9) (emphasis in original) simply invents text that is not there.

The fact is, as we have seen above, the Diocese agreed to the Church’s property rules, including the provision setting out the Church’s trust interest in all property. These provisions’ restriction on the use of the property *by the Diocesan Corporation* had no impact on the Church’s trust interest in that property, which was created and operated independently of the actions of the Diocesan Corporation.<sup>13</sup>

Accordingly, the undisputed “terms of the local church charters” and “provisions in the constitution of the general church concerning the ownership and control of church property,”

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<sup>13</sup> Indeed, by its terms, the Church’s trust interest “in no way limit[s] 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.” Church Canon I.7(4) (A166).

*Jones*, 443 U.S. at 603, conclusively show that the property at issue in this case is held in trust for the mission of The Episcopal Church, and may not be diverted to another denomination.<sup>14</sup>

In sum, each factor of the “neutral principles” analysis requires denial of defendants’ motion.

B. Texas Law Governing Secular Voluntary Associations Forbids Defendants From Unilaterally Altering the Diocese’s Affiliation with The Episcopal Church and Diverting its Property to Another Denomination.

As defendants acknowledge, Texas law governing voluntary associations holds that the rules of a voluntary association constitute a binding contract between an association and its members. *See* Defs.’ Mot. at 15; *see also, e.g., Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 138 Tex. 537, 545, 549, 160 S.W.2d 915 (1942) (a voluntary association’s internal rules are “part and parcel of the contract the [members] made for

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<sup>14</sup> Petitioners’ suggestion that private trust law principles apply here, Defs.’ Mot. at 7-12, is contradicted by *Brown* and its progeny, which apply the “identity” principle rather than private trust law principles (there is no discussion of “settlers,” for example, in these cases). Nor are private trust principles appropriate in cases resolving property disputes under the law of voluntary associations, *see, e.g., Minor v. St. John’s Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893 (Tex. Civ. App.—Galveston 1910, writ ref’d), and church property disputes under the “neutral principles” analysis, *see, e.g., Jones*, 443 U.S. 595; *Episcopal Church Cases*, 87 Cal. Rptr. 3d 275 (Cal. 2009), *cert. denied*, 130 S. Ct. 179 (2009); *Huber v. Jackson*, 96 Cal. Rptr. 3d 346 (Ct. App. 2009), *review denied*, No. S175401, 2009 Cal. LEXIS 9850 (Sept. 17, 2009), *cert. denied*, 78 U.S.L.W. 3498 (U.S. Mar. 1, 2010) (No. 09-708); *New v. Kroeger*, 84 Cal. Rptr. 3d 464 (Ct. App. 2008), *ordered published by* 202 P.3d 1089 (Cal. 2009); *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85 (Colo. 1986); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280 (Conn. 1993); *Rector, Wardens and Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga.*, 699 S.E.2d 45 (Ga. Ct. App. July 8, 2010); *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916 (Mass. 2003); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920 (N.Y. 2008); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76 (App. Div. 1999); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005). *But see All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 685 S.E.2d 163 (S.C. 2009). The *All Saints* decision is unpersuasive because South Carolina did not in fact apply the four-factor “neutral principles” approach approved by the U.S. Supreme Court in *Jones* and applied in every other state court utilizing “neutral principles.” *See All Saints*, 685 S.E.2d at 172.

themselves when they became members”); *see also Stevens v. Anatolian Shepherd Dog Club of Am., Inc.*, 231 S.W.3d 71, 74 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (“A member, by becoming such, subjects himself to his organization’s power to administer, as well as its power to make, its rules.”).

Applying this principle, Texas courts have held that, where a local organization is part of a larger national organization, members of the local chapter must honor the rules of the national organization; while the individuals may leave the organization, they may not take the local chapter or its assets with them. In *Minor v. St. John’s Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893 (Tex. Civ. App.—Galveston 1910, writ ref’d), a majority of the members of a local lodge attempted to withdraw from a parent organization (the Grand Lodge), form another, similar organization, and transfer the lodge’s property to that other organization. The court held that this would be improper. The local lodge

“is not an independent organization existing solely for the benefit of its members, but ... it is a part and parcel of a larger organization known as the Grand Lodge organized for specific purposes, which purposes are to be accomplished by and through such subordinate bodies as the local lodge in this case. The local lodge came into being by virtue of the power conferred upon its members to organize themselves into a subordinate lodge.... When the property was conveyed to the trustees of [the local lodge] it was for the use and benefit of this body in carrying out the purposes of its organization under the jurisdiction and authority of the Grand Lodge from which it received the warrant for its existence. It was not in the power of the members of this lodge to destroy the old organization and form a new one entirely foreign to the original lodge, and thereby pass the title of this property to this new organization. A majority of them, no matter how large, could just as well have dissolved [the local lodge] and formed themselves into a business association of any kind thus devoting the property to purely business purposes. The action of the members in forming [the new local lodge] was not simply to change the name ..., but its necessary result, if carried out, was to destroy the old lodge, and, without any authority from the original parent body, to create a new one. The court finds that [the local lodge] has never ceased to exist; that enough members thereof to constitute a lodge under the laws of the governing body, have always remained, and still remain, preserving their allegiance to the Grand Lodge, and through it, the life of the subordinate lodge, and that appellees are the true and lawful successors, under the laws of the order, of the original

trustees of [the local lodge] to whom the property was conveyed. This being true, they are entitled to hold the property for the use of this lodge.”

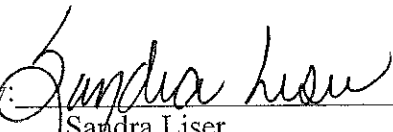
*Id.* at 896-97 (citing *Brown*, 116 S.W. 360); *see also Progressive Union of Tex. v. Indep. Union of Colored Laborers*, 264 S.W.2d 765, 768 (Tex. Civ. App.—Galveston 1954, writ ref’d n.r.e) (“It is well settled that when a person ceases to be a member of a voluntary association, his interest in its funds and property ceases and the remaining members become jointly entitled thereto, and this rule applies where a number of members secede in a body and although they constitute a majority and organize a new association.”); 7 C.J.S. *Associations* § 44 (2004) (“members who withdraw ... lose their rights to associate property, title to which stays in the members remaining in the association”); 6 Am. Jur. 2d *Associations & Clubs* § 24 (2008) (“a member who abandons the association thereby renounces any interest in the property, and those who remain and succeed such member are entitled to his or her interest”); *Norton v. Green*, 304 S.W.2d 420, 425 (Tex. Civ. App.—Waco 1957, writ ref’d n.r.e.) (relying on 36 Tex. Jur. *Religion & Religious Societies* § 20 (1935), which describes the application to church property disputes of voluntary association law, wherein “[t]hose who adhere to the acknowledged organization are entitled to the use of property”).

As we showed in our motion and as we showed again above, the Church’s and the Diocese’s governing documents and course of conduct make clear that the Diocese is a subordinate part of the Church, bound by the Church’s rules, and therefore is just like the local chapter in *Minor*. As such, under the law of voluntary associations, neither the Diocese, its Corporation, nor their assets can be removed from the Church by a group of disgruntled members. Under this body of law, as well, defendants’ motion should be denied.

CONCLUSION

For the reasons set out herein, defendants' motion for partial summary judgment should be denied.

Respectfully submitted,

By:   
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Dated: January 7, 2011

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served

this 7<sup>th</sup> day of January, 2011, as follows:

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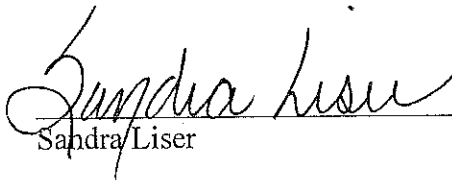
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FILED  
 GILBERT SANCHEZ  
 DISTRICT CLERK  
 IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS  
 210<sup>TH</sup> JUDICIAL DISTRICT  
 2010 DEC 17 AM 10:12  
 EL PASO COUNTY, TEXAS

ST. FRANCIS ON THE HILL CHURCH, )  
 a Texas non-profit Corporation, )  
 Formerly known as ST. FRANCIS ON THE )  
 HILL EPISCOPAL CHURCH, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 THE EPISCOPAL CHURCH, a Non-Profit )  
 Unincorporated Association, THE DIOCESE OF )  
 THE RIO GRANDE, a Non-Profit )  
 Unincorporated Association, and THE TRUSTEES )  
 OF PROPERTY OF THE EPISCOPAL CHURCH, )  
 DIOCESE OF THE RIO GRANDE, IN TEXAS, )  
 A Texas Non-Profit Corporation, )  
 )  
 Defendants. )

BY \_\_\_\_\_  
 DEPUTY

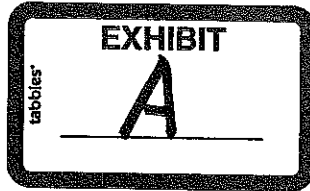
Cause No. 2008-4075

**FINAL SUMMARY JUDGMENT**

The Court, having considered the pleadings, the parties' cross-motions for summary judgment and the responses thereto, the evidence on file, and the argument of counsel, denies Plaintiffs' Motion for Summary Judgment, grants Defendants' Motions for Summary Judgment, and renders Judgment for the Defendants.

The Court hereby issues a Declaratory Judgment, pursuant to Texas Civil Practices and Remedies Code §37.001:

1. that The Episcopal Church is a hierarchical church as a matter of law and that Plaintiff, prior to October 28, 2008 was a mission and later a parish member of said Church. Because the Episcopal Church is such, the Court follows the long-established 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 the Texas courts, those are the individuals who remain entitled to the use and control of the church property. *Id.* Plaintiff's arguments based on the Texas Corporations Code and trust law do not alter the result dictated by the Texas precedent specifically governing church property disputes;

2. that even if the Court applied neutral principles of law to resolve this church property dispute, the neutral principles considerations favor Defendants, because (a) the deeds provide that the property is to be held by "St. Francis on the Hill Episcopal Church"; (b) prior to plaintiff's attempt to leave the Church and the Diocese, the incorporated parish was known as "St. Francis on the Hill Episcopal Church," and the bylaws of the corporation acceded to the rules of the Church and the Diocese; (c) the Church's and the Diocese's longstanding canons provide that parish property is held in trust for the Church and the Diocese and confirm the interest of the Church and the Diocese in seeing to it that property held by Episcopal parishes be used solely for the mission of the Church and the Diocese; (d) the Diocese's canons further set forth when, how and why a member parish may be allowed to incorporate; and (e) the Texas Non-Profit Corporations Act permits subordinate parts of hierarchical churches to incorporate, but such

corporations remain subject to the rules of the religious organizations that formed them and hold property for the benefit of and in trust for those organizations;

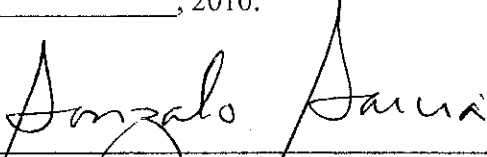
3. that the vestry and/or membership of Plaintiff may not unilaterally alter the status of St. Francis on the Hill Episcopal Church as a parish of the Church and the Diocese;
4. that the real and personal property held by St. Francis on the Hill Episcopal Church is held and may be used only for the ministry and work of the Church and the Diocese and may not be diverted, alienated, or used except as provided by the Constitution and canons of the Church and the Diocese;
5. that St. Francis on the Hill Episcopal Church is represented by those of its members who have remained part of The Episcopal Church, under the leadership of the clergy recognized by the Church and the Diocese;
6. that Plaintiff is enjoined from diverting, alienating, or using the real or personal property of St. Francis on the Hill Episcopal Church except as provided by the Constitution and canons of the Church and the Diocese; and
7. that possession and control of the property held by St. Francis on the Hill Episcopal Church is awarded to the continuing Episcopal congregation for use in furtherance of the parish/mission's ministry and mission pursuant to the Constitution and canons of the Church and the Diocese.

Based on the above, it is therefore ORDERED, ADJUDGED, AND DECREED:

1. that Plaintiff's motion for summary judgment is DENIED;
2. that Defendants' motions for summary judgment are GRANTED;

3. that within thirty (30) days of the signing of this judgment, Plaintiff shall relinquish control of all real and personal property of St. Francis on the Hill Episcopal Church and deliver said property to the Vestry/Bishop's Committee of St. Francis on the Hill Episcopal Church or the appropriate Diocesan agency;
4. that execution shall issue for this judgment;
5. that within sixty (60) days of the signing of this judgment, Plaintiff shall render an accounting to the Vestry/Bishop's Committee of St. Francis on the Hill Episcopal Church of the disposition of all property of St. Francis on the Hill Episcopal Church since October 20, 2008;
6. that within sixty (30) days of the signing of this judgment, Plaintiff shall permit members of the Diocesan archive access to the records of St. Francis on the Hill Episcopal Church for the purpose of obtaining copies of all documents related to St. Francis, the Diocese and/or the Episcopal Church;
7. that this judgment is final, disposes of all claims of the parties, and is appealable;  
and
8. that all other relief not expressly granted herein is denied.

SIGNED this 16 day of December, 2010.

  
\_\_\_\_\_  
Gonzalo Garcia, Judge  
210<sup>th</sup> Judicial District Court