

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

**LOCAL EPISCOPAL PARTIES' MOTION TO CONTINUE HEARING ON  
SUPERSEDEAS AND FOR ADDITIONAL PROTECTION**

TO THE HONORABLE COURT:

The Local Episcopal Parties<sup>1</sup> respectfully show as follows:

1. At 2 p.m. on Good Friday, Defendants served Plaintiffs with a "draft" motion to set supersedeas at \$0, six days (including Easter weekend) before the proposed hearing.
2. As a matter of law, supersedeas hearings require evidence. Defendants waited 17 days to serve their draft motion, served it at 2 p.m. on Good Friday, and took absolutist positions (such as that the substantial real property at issue in this case should be valued at \$0) without providing even a starting point in proper evidence. Plaintiffs are entitled to more than six days including Easter weekend to marshal responsive evidence.
3. There is no colorable basis for this "rush"; Plaintiffs have already offered Defendants an agreed order temporarily suspending Defendants' obligations under the judgment, so that the parties may conduct a proper supersedeas hearing.
4. This is a crucial issue: Defendants claim no bond is necessary because they have not dissipated Church assets since November 15, 2008; but, during the lawsuit, they have encumbered Church property with a multi-million dollar lien and granted mineral leases on Church property without accounting for any signing bonuses or royalties. This does not even

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<sup>1</sup> Local Episcopal Parties are defined as 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.

account for the non-monetary damage to the Episcopal Parties, who have been without the use of their historic church properties now for three Christmases and three Easters.

5. Every Texas court to consider an ex-Episcopal breakaway faction case has set a substantial supersedeas bond plus additional protective covenants. On March 31, the *St. Francis* court in El Paso set supersedeas at \$200,000 plus protective covenants in a *single-parish case*. The present case involves at least 47 parishes and missions plus diocesan assets.<sup>2</sup> With so much at stake, there is simply no basis for a rushed and improper supersedeas proceeding.

## II. BACKGROUND

6. On April 5, the Court made final and appealable its order that Defendants have no right to Plaintiffs' property. Defendants wish to keep using Plaintiffs' property for a period of years during appeal, to the exclusion of Plaintiffs, secured by a bond of \$0.

7. Defendants waited 17 days to serve this motion. They served it in "draft" form at 2 p.m. on Good Friday, April 22, without filing with the Court. Defendants have given Plaintiffs six days (including Easter Weekend) to marshal evidence to respond to Defendants' claims, which are supported only by conclusory statements from interested parties.

8. Defendants premise this "deadline" on the upcoming May 5 date for enforcement of the Court's judgment. But Plaintiffs have already offered Defendants an agreed order temporarily suspending Defendants' obligations under the judgment, in order to conduct a proper supersedeas hearing. Any perceived "rush" is tactical – an effort to hurry through a result that defies Texas law.

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<sup>2</sup> See Exhibit A to Leatherbury Aff., March 31 Supersedeas Order in *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075 in the County Court at Law No. 5, El Paso County, Texas.

### III. REQUEST FOR CONTINUANCE

9. A supersedeas bond requires competent evidence. Defendants fail to meet this burden. But Plaintiffs should not be forced to rely on Defendants' failure to provide competent evidence. Plaintiffs are entitled to affirmatively refute Defendants' claims with actual evidence, both in a responsive motion and at hearing. Otherwise, Plaintiffs are severely prejudiced and risk facing an improper and insufficient supersedeas bond.

**A. Supersedeas bonds require evidence; failure to hear such evidence is error.**

10. Pursuant to Texas Rule of Appellate Procedure 24.2(a)(2): "When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security **must be at least:**

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal."<sup>3</sup>

This amount must be reduced if it will cause the judgment debtor substantial economic harm:

On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.<sup>4</sup>

Both issues require competent evidence:

When the trial court renders a judgment for the recovery of real property, the amount of security must be at least the value of the [real] property interest's rent or revenue. **Therefore, to determine the proper amount of security, the trial court must hear**

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<sup>3</sup> TEX. R. APP. P. 24.2(a)(2) (emphasis added).

<sup>4</sup> TEX. CIV. PRAC. & REM. C. § 52.006(c); *see also* TEX. R. APP. P. 24.2(b).

evidence of the value of the property interest's rent or revenue.<sup>5</sup>

As to the . . . determination of whether the Judgment Debtors are likely to suffer substantial economic harm, the Judgment Debtors have the burden of proof . . . [W]e conclude that the testimony of interested witnesses Bertram and Moar does not satisfy the *Lofton* standard for conclusive evidence. Accordingly, the testimony of these witnesses did not conclusively prove that Ramco Energy will likely suffer substantial economic harm if it is required to post security in an amount greater than \$200,000.<sup>6</sup>

11. Failure to allow presentation of such evidence is error: "The trial court [] erred in setting the amount of security without conducting an evidentiary hearing."<sup>7</sup> These issues are subject to immediate appellate review. A court of appeals "may remand to the trial court for entry of findings of fact or for the taking of evidence."<sup>8</sup> As the Fort Worth Court of Appeals ruled in *Culbertson v. Brodsky*:

The order of the trial court with regard to the amount of supersedeas bond required of the Culbertsons is set aside. This case is remanded to the trial court with instructions that **the trial court shall conduct a hearing and consider evidence relating to the sufficiency of the supersedeas bond, including . . . the value of the rent and/or hire of the property** and return to this court its findings of fact in that regard.<sup>9</sup>

12. Less than a month ago, a Texas court held a supersedeas hearing in a nearly identical case, *St. Francis on the Hill Church v. The Episcopal Church, et al.* There, as here, an ex-Episcopal breakaway faction was facing a judgment to return Episcopal property to the loyal Episcopalians. The breakaway faction moved to supersede the judgment pending appeal. The

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<sup>5</sup> *Reyes v. Credit Based Asset Servicing and Securitization*, 190 S.W.3d 736, 741 (Tex. App.—San Antonio 2005, no pet.) (Duncan, J., concurring) (internal citations and modifications omitted) (finding error harmless where movant failed to argue harm) (emphasis added).

<sup>6</sup> *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 917 (Tex. App.—Houston [14 Dist.] 2005, no pet.) (emphasis added).

<sup>7</sup> *Reyes*, 190 S.W.3d at 741 (Duncan, S., concurring) (internal citations and modifications omitted) (finding error harmless where movant failed to argue harm).

<sup>8</sup> TEX. R. APP. P. 24.4(d).

<sup>9</sup> 775 S.W.2d 451, 455 (Tex. App.—Fort Worth 1989, writ dismissed w.o.j.) (emphasis added).

Court held an evidentiary hearing. The loyal Episcopalians presented testimony from a licensed appraiser to arrive at a fair market rental value pursuant to Rule 24.2(a)(2). The breakaway faction presented competing evidence from a realtor. The Court reached its conclusion, setting a \$200,000 bond, plus protective covenants, to safeguard the parish's property "after hearing the evidence."<sup>10</sup> While that case involved a single congregation's property, this case involves 47 congregations as well as diocesan assets.

**B. Here, Plaintiffs must respond not only to the normal evidentiary matters, but to Defendants' absolutist legal positions; Defendants' failure to provide competent evidence on these matters forces additional tasks on Plaintiffs.**

13. Plaintiffs face an especially burdensome challenge here, as Defendants have opted to take absolutist positions with essentially zero documentary evidence. For instance, *Defendants claim that they have no assets*, based on strange and insupportable legal positions and omissions; as a result they have provided almost no documentation on their holdings. Similarly, *Defendants have taken the strange position that the property at issue in this case should be valued at \$0*, based on an absurd premise, so they have provided no evidence regarding the square footage or rental value of the real property or the value of the personal property.

14. Because Defendants have staked out such odd and unsupported positions, Plaintiffs must pursue the documents that Defendants have failed to produce and put Defendants' conclusory claims to the test, with only six days including Easter weekend.

15. While, at first blush, Plaintiffs could sit back and rest on Defendants' failure to meet their burden, Plaintiffs should not be forced to assume that risk; with over 170 years of their historic property at risk, Plaintiffs are entitled to the due process right of testing Defendants'

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<sup>10</sup> Exhibit A to Leatherbury Aff., March 31 Supersedeas Order, *St. Francis on the Hill*.

conclusory evidence and presenting rebuttal evidence to actively discredit these positions to avoid an improper bond.

16. For instance, Defendants do not provide a single piece of evidence on the value of real or personal property that must be secured. Instead, Defendants make the conclusory assertion that the real property at issue should be valued at \$0 “because no rent can be collected by the Corporation or Diocese [as] local parishes either have paid for or are paying for the properties they occupy, and have a right to the use and benefit of those properties.”<sup>11</sup> In fact, on information and belief, Defendants have collected rent for over two years on some church property, including residential rent property held and parking lots, including one in downtown Fort Worth. *But this is irrelevant, because it is not the legal test.* Courts routinely determine market values for property defined as what a hypothetical willing buyer (or lessee) would pay a hypothetical willing seller (or lessor), not what a particular person can exact as income.<sup>12</sup> The purpose of this valuation is to secure the property, not to actually rent it. And, wholly separately, Defendants also seem to forget that the congregations with the rights they allege are parties to the appeal and will be bound by the judgment, as Defendants repeatedly told the Court.<sup>13</sup>

17. Similarly, Defendants claim a “substantial economic hardship” reduction without producing any evidence regarding the assets of over 55 Defendants. Appellants cannot rely on bonds filed by other appellants.<sup>14</sup> “Substantial economic hardship” is a fact issue, to be

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<sup>11</sup> Defendants’ Motion at 6.

<sup>12</sup> See generally *Tex. Elec. Serv. Co. v. Lineberry*, 349 S.W.2d 105, 106 (Tex. 1961).

<sup>13</sup> See paragraph 19, *infra*.

<sup>14</sup> *Valerio v. Laughlin*, 307 S.W.2d 352, 353 (Tex. App.—San Antonio 1957, orig. proceeding) (holding that every member of a County Commissioner’s Court had to move to supersede in their individual capacities a judgment requiring them to allow the plaintiff to sit on the Court) (“The only one of the above named persons who attempted to file a supersedeas bond was Jose D. Ramos. The judgment being one other than for money, could only be superseded after the trial court had made an order setting the amount of such supersedeas bond. Rule 364(e), Texas Rules of Civil Procedure. Even if the bond filed by Ramos had been a legal one, it would not inure to the benefit of the other defendants who made no attempt to file a supersedeas bond.”).

determined by competent evidence. Defendants attempt to avoid these obligations by using conclusory assertions to purport a net worth of \$0. For instance, Defendants argue:

This severed case concerns only whether Defendants can serve as representatives of the Diocese and Corporation, a claim that addresses only their official capacities . . . . As a result of the trial court's summary judgment order, the individual Defendants in their official capacities hold neither property nor funds. Accordingly, their net worth in that capacity is zero.<sup>15</sup>

But this argument is circular and self-defeating. The Individual Defendants are attempting to *supersede* a judgment that says they are not "representatives of the Diocese and Corporation." Unless and until they supersede that judgment, they cannot hide behind official capacities and pretend to have no assets. If the Individual Defendants wish to supersede the judgment against them, they can post a legally-required bond. And if they wish to make a "substantial economic harm" argument, they can present evidence of their resources. They have not done so, and Plaintiffs must start from scratch to establish an evidentiary record on point.

18. Defendants also claim that their "diocesan" institution has no independent assets. But their only support for this claim is an affidavit from their Director of Business and Finance.<sup>16</sup> As a matter of law, an affidavit from an interested witness is not adequate evidence.<sup>17</sup> And while that affiant averred that "[t]he bank accounts of the Diocese are maintained with Frost Bank" in Fort Worth, the scant documents Defendants have produced to date identify at least one out-of-state bank account, apparently opened by Defendants in 2010, with a six-figure balance.<sup>18</sup> Plaintiffs are entitled to pursue evidence to determine what other assets may be "out there" before conclusory assertions by an interested witness form the basis of a supersedeas bond.

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<sup>15</sup> Defendants' Motion at 4.

<sup>16</sup> Defendants' Motion (Ex. A and B).

<sup>17</sup> *Ramco*, 171 S.W.3d at 917.

<sup>18</sup> See Exhibit B to *Leatherbury Aff.*, Bank Statements for Business First Account, as produced by Defendants.

19. And Defendants fail even to address, much less provide evidence on, any separate assets held by the Defendant *Congregations*. This omission is curious, as Defendants have repeatedly told the Court and Plaintiffs, on the record, that Defendant *Congregations* are bound by the severed final order and will appeal it as to their rights and property. Defendants have told the Court, for example:

- **“All parties will be bound by the summary judgment** [original emphasis]. The Local TEC Plaintiffs object that severance would split their claims against the Defendants from identical claims against the Intervening [Defendant] *Congregations*. But since the Motion to Sever was filed, Defendants have repeatedly offered to stipulate that all parties affiliated with all sides should be bound by the Court’s summary judgment Order [original emphasis]. As these claims will never have to be tried twice, they are not ‘interwoven’ as contemplated by Rule 41.”<sup>19</sup>
- DEFENDANTS: “They think we should . . . make sure everybody is in one judgment . . . . If the summary judgment is right, none of that’s necessary, because your order says turn it all over to them. So let’s think for a second, if somebody is not named or some sofa is not listed, does that mean we can keep it? Your order said turn it over.”<sup>20</sup>
- PLAINTIFFS: “[A]s the Court recalls, we did not -- we did not move against the defendant congregations, we were trying to break it down and keep it at the diocesan level first and then move on to the defendant congregation . . . . So that’s a big part of the supplemental motion for summary judgment . . . .

THE COURT: Okay.

DEFENDANTS: And as I told him for the last six weeks, and I’ll do it right now on the record, we stipulate that the nonmoving congregations are bound by your summary judgment. They don’t need to do -- they’re going to send us hundreds of pages of more summary judgment stuff, it’s

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<sup>19</sup> Defendants’ Reply in Support of Motion to Sever and Stay, filed with this Court on March 30, 2011.

<sup>20</sup> Exhibit C to Leatherbury Aff., March 31 Hearing, Reporter’s Record at 6-7.



not going to be over in 22 days, we're going to spend \$30,000 trying to establish something I just stipulated to."<sup>21</sup>

- DEFENDANTS: "We're willing to stipulate to bind the congregations, and we've done it on the record, so that's that."

Since Defendants have repeatedly told the Court that severance was proper since Defendant Congregations are bound by the severed judgment, Defendants must present evidence regarding Defendant Congregations' assets if they wish to reduce the statutory supersedeas bond under a "substantial economic harm" analysis. And Plaintiffs are entitled to a fair opportunity to respond.

20. Plaintiffs must rebut all of these unsupported claims: that the property at the heart of this case should be valued at zero, that Defendants have no assets or access to loans or additional donations, and so forth. The fact that Defendants have relied on conclusory and absolutist arguments, without providing even nominal documentation, only makes the task more onerous, requiring continuance.

**C. Plaintiffs are also entitled to rebut Defendants' claim that they have not dissipated Church assets, when all signs indicate they have.**

21. As the equitable centerpiece of their argument, Defendants claim that they have not dissipated or transferred any funds to date outside the ordinary course of business or for legal fees. They tell the Court: "As of the signing of this affidavit, litigation costs have been made mostly from gifts and contributions, which are not assets of the Diocese or Diocesan Corporation."<sup>22</sup> They tell the Court their ordinary operating expenses from endowments, restricted funds, and operating accounts are about \$89,000 annually.<sup>23</sup> Defendants repeatedly tell the Court, on the record, and tell Plaintiffs: "the accounts that [Plaintiffs are] talking about,

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<sup>21</sup> Exhibit C to Leatherbury Aff., March 31 Hearing, Reporter's Record at 26.

<sup>22</sup> Defendants' Motion at Ex. A (Parrott Affidavit 2).

<sup>23</sup> Defendants' Motion at 2-3 and Ex. B (Parrott Affidavit 2).

they've got a bigger value today than they did at the time of separation. They haven't gone down, they've gone up. The values of the properties haven't gone down, they've gone up."<sup>24</sup> But the test is not whether accounts have gone up; it is whether Defendants have dissipated the assets that were present in November 2008 and the income on those assets. And while it is impossible to understand and determine this for certain without discovery, an initial review of the scant documents Defendants have tendered to date indicates that Church property may have indeed been transferred and dissipated. Add to this the \$94,500 that Defendants concede they have drawn down on the \$3.5 million Jude Funding line of credit. Add to this the \$3.5 million lien to secure this line of credit that Defendants took out on Church property, owed to a single-owner, single-purpose entity created on the day of the transaction by a named Defendant.<sup>25</sup> Add to this any missing oil and gas lease signing bonuses and royalties on Church property.<sup>26</sup> Add to this the new bank account with six-figures in assets that Defendants opened out-of-state in 2010<sup>27</sup> (while claiming under oath that all Church funds are held in Fort Worth).<sup>28</sup> Perhaps there is a benign explanation for all of this. Plaintiffs are entitled to find out before a bond is set based on Defendants' (conclusory and self-serving) equitable claim -- trumpeted on page 1 of their Motion -- that they have not dissipated or transferred assets.

**D. Based on the above, Plaintiffs are entitled to a continuance to present evidence countering Defendants' motion.**

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<sup>24</sup> Exhibit C to Leatherbury Aff., March 31 Hearing, Reporter's Record at 30 (emphasis added).

<sup>25</sup> A certified copy of the purported Deed of Trust to Jude Funding, Inc. was included in with the Supplemental Appendix in Support of Local Episcopal Parties' and Local Episcopal Congregations' Supplemental Motion for Partial Summary Judgment, as filed March 31, 2011 in Cause No. 141-237105-09, as Ex. AA-1 (A1438-1454).

<sup>26</sup> A few examples of documents showing over \$50,000 in payments made or due to the Corporation of the Episcopal Diocese of Fort Worth since November 15, 2008 are attached as Exhibit E to Mr. Leatherbury's affidavit. These documents are not intended to reflect all such payments, but instead are only a few examples from the documents Defendants' provided on March 22, 2011.

<sup>27</sup> See Exhibit B to Leatherbury Affidavit.

<sup>28</sup> Defendants' Motion at Ex. A (Parrott Affidavit 2).

22. Defendants force Plaintiffs to respond to all of these claims, in order to ensure that their property is secured by a proper bond and not further dissipated.

23. Six days including Easter weekend is not a reasonable amount of time to take reasonable discovery and prepare for a hearing on these issues.

24. The Texas Rules of Civil Procedure authorize Plaintiffs to pursue this information specifically for supersedeas purposes. Rule 621a states:

[A]t any time after rendition of judgment, either party may, for the purpose of obtaining information relevant to motions allowed by Texas Rules of Appellate Procedure 47 and 49 [now Rule 24] initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters.

Plaintiffs will need to depose Defendants' interested-party affiants, Jane Parrott and Charles Hough, subpoena records from financial institutions on Defendants' assets, and prepare an expert report on property values, all to rebut Defendants' false claims.

25. Plaintiffs have already offered Defendants an agreed motion to temporarily suspend their obligations under the judgment, so Defendants have no colorable basis to rush this supersedeas process or to try it by ambush. Any purported "rush" is merely tactical – an attempt by Defendants to hurry through an improper result that will not stand up to scrutiny.

**E. Alternatively, the Court can deny Defendants' motion on its face and let the judgment take effect; Defendants have provided no evidence of actual harm from letting this correct judgment execute.**

26. Defendants have said that the only possible bond is \$0. Their arguments fail. They have not proposed or requested a reasonable bond in the alternative. And they have not provided legally-sufficient evidence as to property value or substantial economic harm, if any, that might support a reasonable bond amount.

27. Supersedeas is not a pre-requisite to appeal. This Court can simply deny Defendants' inadequate motion for a bond of \$0 and let judgment execute.

28. Defendants have provided no actual evidence of harm from letting a proper judgment take effect. First, Defendants cynically suggest that if they cannot spend Plaintiffs' money, they will not be able to hold church services. But Plaintiffs have managed to hold church services for the last two years *without access to their own money or property*, which Defendants have wrongfully withheld contrary to law. And Defendants' arguments are supported only by a single affidavit from a highly interested witness – one of their own leaders. That affidavit is based on rampant speculation to which Plaintiffs have already filed objections: the affiant describes harms that are “*reasonably conceivable*,” “*reasonable for me to believe*,” and “*could be catastrophic*.”<sup>29</sup> He suggests parishioners “*may stop giving*” because those funds might end up with The Episcopal Church (a suggestion that makes little sense, as parishioners could of course donate to Defendants' new, separate church). As a matter of law, speculation from an interested witness is not conclusive or even competent evidence.

29. Second, Defendants' claim that they cannot appeal without using Plaintiffs' money is defeated by their own admissions. Defendants try to have it both ways. They tell the Court they will not be able to afford appeal without using Plaintiffs' assets.<sup>30</sup> And then in the same motion, they tell the Court, “no real or personal property owned by the Corporation of the Episcopal Diocese of Fort Worth or the Episcopal Diocese of Fort Worth has been sold, transferred, or dissipated except in the ordinary course of business.”<sup>31</sup> “As of the signing of this

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<sup>29</sup> Defendants' Motion at Ex. C (Hough Affidavit) (emphasis added).

<sup>30</sup> Defendants' Motion at 5.

<sup>31</sup> Defendants' Motion at Ex. A (Parrott Affidavit).

affidavit, litigation costs have been made mostly from gifts and contributions, which are not assets of the Diocese or Diocesan Corporation.”<sup>32</sup>

30. Defendants try to resolve this obvious contradiction by saying that donations cannot be counted as assets. But that argument confuses a “net worth” analysis with a “substantial economic harm” analysis. The “net worth” analysis is not relevant here, as that statutory provision applies only to money judgments (despite Defendants’ strikingly wrong attempt to apply it to property judgments, which are governed by a different statutory provision).<sup>33</sup> And a substantial economic harm analysis considers, as one factor among at least seven other “flexible” considerations, a very different question; as *Ramco* put it: “the drain on the judgment debtor’s resources caused by the attorney’s fees and other costs of appealing the judgment *could also be* a legitimate factor to consider.”<sup>34</sup> Clearly, under this framework, the court can consider the fact that, according to Defendants, as a historical matter over two years, there has been no drain to date for Defendants, as fees have consistently, “mostly” come from outside sources. And, under the same analysis, courts also consider: “Does the judgment debtor have any other source of funds available? Does the judgment debtor have the ability to borrow funds to post the requisite security?”<sup>35</sup> This also allows consideration of the fact that to date, Defendants have enjoyed a consistent ability to cover fees largely through donations. And Defendants present no evidence from their donors and financial backers that this will change.

31. Because Defendants have only requested a bond of zero, which they do not and cannot support under the statute, the Court could simply deny their motion and let the judgment

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<sup>32</sup> Defendants’ Motion at Ex. A (Parrott Affidavit 2).

<sup>33</sup> See TEX. R. APP. P. 24.2(a)(1)-(2); accord TEX. CIV. PRAC. & REM. C. § 52.006 (applying the net worth cap expressly “when a judgment is for money”).

<sup>34</sup> *Ramco*, 171 S.W.3d at 917.

<sup>35</sup> *Id.* See also *LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 487 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (adopting *Ramco* test); *EnviroPower, L.L.C. v. Bear, Stearns & Co., Inc.*, 265 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (en banc) (same); *Anderton v. Cawley*, 326 S.W.3d 725 (Tex. App.—Dallas 2010, no pet. h.) (same).

take effect. If, however, the Court is inclined to hold a supersedeas hearing, even though Defendants have not provided the required evidence, Plaintiffs respectfully request a continuance to marshal a proper record to protect their right to a sufficient bond.

#### IV. REQUEST FOR INTERIM PROTECTIONS

32. At least in the interim, Plaintiffs are entitled to protections on their property, in light of Defendants' obvious risk of dissipation and transfer of assets. *See* paragraphs 21 and 22, *supra*. **Both Texas courts to rule on ex-Episcopal breakaway factions cases to date have imposed both a substantial bond and injunctive protections to protect Church property.** And, since Plaintiffs are willing to temporarily suspend Defendants' obligations under the judgment to turn over the property pending a supersedeas proceedings, Plaintiffs need these injunctive protections in the interim (and after any supersedeas is set).

33. The Court has already indicated its intent to put such protections in place:

THE COURT: I mean, couldn't we do an order like they do across the hall in a family case and just say all property has to stay where it is and status quo on all property. I mean, that would be something I think that we could do. Y'all wouldn't be opposed to that, would you?

MR. BRISTER: No.

THE COURT: Okay.<sup>36</sup>

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THE COURT: Here's what I would like to do. I mean, I would like to get this to the appellate court as fast as I can, and y'all do, too, I think, and we need to figure out the best way to do that. **And I think we can craft an order somehow, similar to what they do across the hall, saying that nothing can happen to any of the property while this case is pending, and if they want to draw down money, they need to come in and ask, you know, and we can argue about that then.**

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<sup>36</sup> Exhibit C to Leatherbury Aff., March 31 Hearing at 9-10.

MR. LEATHERBURY: And if there's some reporting, perhaps, you know, so there's some verification of what's going on with the funds in the meantime, because they are spending the income from our property, as well as our property.

MR. BRISTER: I'm not sure what he means.

THE COURT: We'll figure that out.<sup>37</sup>

34. The standard for post-judgment injunctions is low. Plaintiffs have already met this burden. The trial court "may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business"<sup>38</sup> "[T]he applicable standard is a factual matter requiring the trial court to determine whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment."<sup>39</sup> The burden is easily met: a trial court "abuses its discretion in ordering a post-judgment injunction if the only reasonable decision that could be drawn from the evidence is that the judgment debtor would not dissipate or transfer its assets."<sup>40</sup> That standard is more than satisfied, many times over, under these facts. *See supra* at paragraphs 21-22.

35. Plaintiffs will therefore submit a proposed order for the Court's consideration granting injunctive relief similar to the relief granted in the *St. Francis* and *Masterson* cases,<sup>41</sup> both of which presented similar issues, with the reporting and verification requirements the Court has already discussed (*see supra*).

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<sup>37</sup> Exhibit C to Leatherbury Aff., March 31 Hearing at 20-21 (emphases added).

<sup>38</sup> TEX. R. APP. P. 24.2(d) (the trial court "may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business").

<sup>39</sup> *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d 222, 227 (Tex. App.—San Antonio 2006, no pet.).

<sup>40</sup> *Id.*

<sup>41</sup> *See* Exhibits A and F to Leatherbury Affidavit.

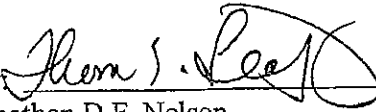
## V. REQUEST FOR RELIEF

36. **Plaintiffs respectfully request a continuance of one month to prepare their response to Defendants' flawed Motion to Set Supersedeas at \$0.** As a matter of law, supersedeas hearings require evidence. Defendants served their motion 17 days after judgment, served it at 2 p.m. on Good Friday, and took unsupportable positions (such as the property at issue in this case should be valued at \$0) without providing even a starting point in proper evidence. Plaintiffs are entitled to more than six days (including Easter Weekend) to marshal responsive evidence.

37. **Plaintiffs respectfully request that the Court enter post-judgment injunctions, which Plaintiffs will tender in the form of a proposed order (see paragraph 35, *supra*) to protect Church property from (further) dissipation or transfer in the interim.** These protections are essential, as Defendants' own documents show that they have encumbered Church property with a multi-million dollar lien and have granted mineral leases on Church property without accounting for any signing bonuses or royalties.



Respectfully submitted,

By  \_\_\_\_\_

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[jnelson@hillgilstrap.com](mailto:jnelson@hillgilstrap.com)

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(817) 332-4740 fax  
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William D. Sims, Jr.  
State Bar No. 18429500  
Thomas S. Leatherbury  
State Bar No. 12095275  
**VINSON & ELKINS LLP**  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
(214) 220-7703  
(214) 999-7703 (fax)

**Attorneys for Third-Party Defendants and  
Counterclaimants**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Continuance and Additional Protection has been sent this 25th day of April, 2011, by Federal Express and email pdf, to:

J. Shelby Sharpe, Esq.  
Sharpe Tillman & Melton  
6100 Western Place, Suite 1000  
Fort Worth, TX 76107

Scott A. Brister, Esq.  
Andrews Kurth L.L.P.  
111 Congress Avenue, Suite 1700  
Austin, TX 78701

R. David Weaver, Esq.  
The Weaver Law Firm  
1521 N. Cooper Street, Suite 710  
Arlington, TX 76011

Kendall M. Gray, Esq.  
Andrew Kurth L.L.P.  
600 Travis, Suite 4200  
Houston, TX 77002

David Booth Beers, Esq.  
Adam Chud  
Goodwin Procter, LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001

Mary E. Kostel, Esq.  
c/o Goodwin Procter LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001

Sandra Liser, Esq.  
Naman Howell Smith & Lee, LLP  
Fort Worth Club Building  
306 West 7th Street, Suite 405  
Fort Worth, TX 76102

Frank Hill, Esq.  
Hill Gilstrap, P.C.  
1400 W. Abram Street  
Arlington, TX 76013



A handwritten signature in black ink, appearing to read "Steve Liser", is written over a horizontal line.

**AFFIDAVIT**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, personally appeared Thomas S. Leatherbury, who, after first being duly sworn, deposed and stated as follows:

1. My name is Thomas S. Leatherbury. I am over twenty-one (21) years of age, of sound mind, and am fully competent to make this Affidavit. The facts stated in this Affidavit are within my personal knowledge and are true and correct.

2. I am counsel of record for the Local Episcopal Parties in the above-captioned case, having day-to-day contact with this litigation and having knowledge of the following matters in that capacity.

3. I have been involved in the preparation of the Local Episcopal Parties' Motion to Continue Hearing on Supersedeas and for Additional Protection. The facts stated therein are within my personal knowledge and are true and correct. I received an email with a draft of Defendants' Motion to Set Supersedeas on Good Friday, April 22, 2011, at approximately 2 p.m. Defendants have informed us that their motion was "tentatively set for hearing on Thursday, April 28, 2011 at 2 p.m." I offered to agree to a temporary order suspending Defendants' obligations under the judgment. Given the evidence necessary to establish an appropriate and sufficient supersedeas bond, six days (including Easter weekend) does not provide enough time for my clients to prepare for the hearing on Defendants' motion. Plaintiffs want to take reasonable discovery, including deposing Defendants' affiants, but Defendants take the position that they will not permit discovery. This continuance is not sought for delay only, but that justice may be done.

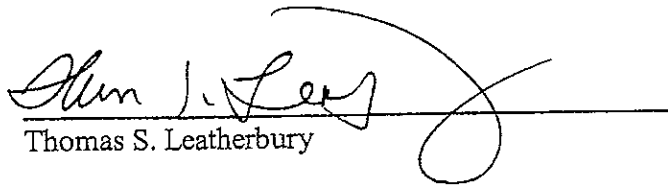
4. Attached hereto as Exhibit A is a true and correct copy of the Order issued by Judge Carlos Villa on March 31, 2011 in *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075 in the County Court at Law No. 5, El Paso County, Texas, as this Order was received from The Episcopal Church, a party in that case.

5. Attached hereto as Exhibit B are true and correct copies of bank statements for a commercial checking account held in the name of the Episcopal Diocese of Fort Worth in Business First Bank, a bank located in the state of Louisiana. The account numbers have been redacted from these bank statements.


6. Attached hereto as Exhibit C is a true and correct copy of excerpts of the court reporter's transcript of the severance hearing held March 31, 2011 in Cause No. 141-237105-9, the cause from which the above-captioned case was severed.

7. Attached hereto as Exhibit D are true and correct copies of documents produced by Defendants on March 22, 2011 and subsequently Bates-labeled as SC 2749, SC 2570, SC 2613, SC 2580, and SC 2641. These documents reflect payments (or payments due) to the Corporation of the Episcopal Diocese of Fort Worth after November 15, 2008. These payments appear to total more than \$50,000 from third parties for oil and gas leases purportedly held on Episcopal Property.

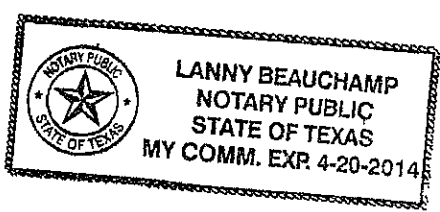
8. Attached hereto as Exhibit E is a true and correct copy of the "Cash Deposit and Additional Security" as filed with the clerk in *Diocese of Nw. Tex. v. Masterson*, Cause No. A-07-0237-C in the 51<sup>st</sup> District Court of Tom Green County, Texas, as received from counsel for the Plaintiffs in that case.

  
Thomas S. Leatherbury

SUBSCRIBED AND SWORN to before me this 25th day of April, 2011, to certify which  
witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires:  
4-20-2014



# EXHIBIT A



**CARLOS VILLA**

**JUDGE COUNTY COURT AT LAW NO. 5**

EL PASO COUNTY COURTHOUSE  
5<sup>TH</sup> FLOOR, ROOM 806  
EL PASO, TEXAS 79901

(915) 546-2004 • FAX (915) 543-3861

**PATRICIA BUSTAMANTE**  
COURT COORDINATOR

**MIKE GARCIA**  
DEPUTY

March 31, 2011

**ROSIE MORENO**  
OFFICIAL COURT REPORTER

**Via Facsimile (915) 541-8830**

Mr. John Mobbs  
Attorney at Law  
7170 Westwind Dr., Ste. 201  
El Paso, TX 79912

**Via Facsimile (915) 546-8186**

Mr. William O. Juvrud  
Attorney at Law  
465 Mystic Desert  
Horizon City, TX 79928

**Via Facsimile (915) 545-4433**

Mr. Harrel L. Davis  
Gordon, Davis, Johnson & Shane, P.C.  
4695 N. Mesa St., Ste. 100  
El Paso, TX 79912

**Via Facsimile (915) 546-8333**

Mr. Richard Munzinger  
Mr. Robert R. Feuille  
Scott, Hulse  
201 E. Main Dr., 11<sup>th</sup> Fl.  
El Paso, TX 79901

**Via Facsimile (202) 346-4444**

Mr. Adam M. Chud  
Goodwin Procter LLP  
901 New York, Ave, NW  
Washington, D.C 20001

**RE: St. Francis on the Hill Church v. The Episcopal Church;**  
**Cause No. 2008-4075**

Dear Counsel:

The Court, after hearing the evidence on Plaintiff's Motion to Set Lesser Amount to Supersedeas Judgment, and after considering the briefs and arguments of the parties, makes the following orders:

1. Supersedeas Bond is set at \$200,000.00 cash or by corporate surety;
2. As a condition of the Supersedeas Bond, the Plaintiff, St. Francis on the Hill Church, will keep the real property and contents, made the subject of this lawsuit, fully insured;
3. Further, the Plaintiff, St. Francis on the Hill Church, will not encumber, destroy or dispose any of the real or personal property, made the subject of this lawsuit.

Mr. Davis is to prepare the judgment reflecting the above and submit to all counsel for approval as to form.

Sincerely,

JUDGE CARLOS VILLA  
County Court at Law No. 5

CC: Judge Gonzalo Garcia  
210<sup>th</sup> Judicial District Court

CV/pb

Equal Opportunity Employer

# **EXHIBIT B**





8440 Jefferson Highway  
 Suite 101  
 Baton Rouge, LA 70809  
 Telephone: (877) 614-7600  
 (225) 248-7600  
 Web Site: [www.b1bank.com](http://www.b1bank.com)

\*\*\*\*\*AUTO\*\*MIXED AADC 076  
 1204 0.4670 MB 0.382 6 17 1  
 EPISCOPAL DIOCESE OF FORT WORTH  
 2900 ALEMEDA STREET  
 FORT WORTH TX 76108-5960

Date 11/30/10 Page 1  
 Account Number  
 Enclosures

Business First will observe the following holiday schedule: closing at 2:00 pm on 12/23/10 and closed Christmas Eve; closed New Years Eve; closed 01/17/11 for Martin Luther King Day.

---- CHECKING ACCOUNTS ----

COMMERCIAL CHECKING		Number of Enclosures	0
Account Number		Statement Dates 11/01/10 thru 11/30/10	30
Previous Balance	152,486.71	Days in the statement period	30
Deposits/Credits	.00	Average Ledger	152,486
Checks/Debits	.00	Average Collected	152,486
Service Charge	.00		
Interest Paid	.00		
Ending Balance	152,486.71		

Daily Balance Information  
 Date Balance  
 11/01 152,486.71

REDACTED

SC 3787



8440 Jefferson Highway  
 Suite 101  
 Baton Rouge, LA 70809  
 Telephone (877) 614-7600  
 (225) 248-7600  
 Web Site: [www.b1bank.com](http://www.b1bank.com)



\*\*\*\*\*AUTO\*\*MIXED AADC 076  
 1275 0.4670 MB 0.382 6 17 5  
 EPISCOPAL DIOCESE OF FORT WORTH  
 2900 ALEMEDA STREET  
 FORT WORTH TX 76108-5960

Date: 2/28/11 Page 1  
 Account Number  
 Enclosures

---- CHECKING ACCOUNTS ----

COMMERCIAL CHECKING		Number of Enclosures	0
Account Number		Statement Dates 2/01/11 thru	2/28/11
Previous Balance	131,192.79	Days in the statement period	28
Deposits/Credits	.00	Average Ledger	131,192
Checks/Debits	.00	Average Collected	131,192
Service Charge	.00		
Interest Paid	.00		
Ending Balance	131,192.79		

Daily Balance Information  
 Date Balance  
 2/01 131,192.79

REDACTED

SC 3788

MEMBER FDIC

NOTICE SEE REVERSE SIDE FOR IMPORTANT INFORMATION  
 Payments received at the address indicated on this statement by 5:00 p.m. Central Time

FORM NO VS 1080LJ

# **EXHIBIT C**

REPORTER'S RECORD

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Cause No. 141-237105-09

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THE EPISCOPAL DIOCESE OF FORT WORTH, THE CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH, and THE EPISCOPAL CHURCH,

Plaintiffs,

VS.

FRANKLIN SALAZAR, JO ANN PATTON, WALTER VIRDEN, III, ROD BARBER, CHAD BATES, JACK LEO IKER, and THE ANGLICAN PROVINCE OF THE SOUTHERN CONE'S "DIOCESE OF FORT WORTH," holding itself out as "THE EPISCOPAL DIOCESE OF FORT WORTH,"

Defendants/Third-Party Plaintiff

VS.

EDWIN F. GULICK, JR., MARGARET MIEULI, WALT CABE, ANNE T. BASS, J. FREDERICK BARBER, CHRISTOPHER JAMBOR, DAVID MADISON and KATHLEEN WELLS

Third-Party Defendants X 141ST JUDICIAL DISTRICT

Hearing

**COPY**

1 BE IT REMEMBERED that on the 31st day of  
2 March, 2011, the following proceedings came on to be  
3 heard in the above-entitled and -numbered cause before  
4 the Honorable John P. Chupp, judge presiding, held in  
5 Fort Worth, Tarrant County, Texas.

6 The proceedings were reported by machine  
7 shorthand.

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## A P P E A R A N C E S

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## APPEARING FOR PLAINTIFFS:

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State Bar No. 09632000  
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State Bar No. 14900700  
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Austin, Texas 78701  
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Facsimile: (512) 542-5220

A P P E A R A N C E S (Continued)

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Mr. J. Shelby Sharpe  
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 Facsimile: (817) 460-5908

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Argument by Mr. Leatherbury .....	10	1
Adjournment .....	37	1
Reporter's Certificate .....	38	1



## P R O C E E D I N G S

(Thursday, March 31, 2011, 8:56 a.m.)

\*-\*-\*-\*-\*

1  
2  
3  
4 THE COURT: Okay. We have y'all's  
5 motion to sever.

6 MR. BRISTER: Right, Your Honor.

7 THE COURT: Okay. And it appears that  
8 they're saying that there are some things we should do  
9 before we sever.

10 MR. BRISTER: Two different views.  
11 They think we should inventory everything, let's go  
12 out and inspect all these properties, take pictures of  
13 it, give us interrogatories listing everybody's name  
14 who's served on every vestry. The idea being to  
15 inventory all of the properties and get the name --  
16 add a bunch of new parties, make sure everybody is in  
17 one judgment.

18 Our view is -- well, to stay all of  
19 that, postpone all of that, and let's find out if the  
20 summary judgment is right or wrong. Three reasons for  
21 that.

22 One, obviously, if the summary judgment  
23 is wrong, none of that's necessary. If the summary  
24 judgment is right, none of that's necessary, because  
25 your order says turn it all over to them. So let's

1 think for a second, if somebody is not named or some  
 2 sofa is not listed, does that mean we can keep it?  
 3 Your order said turn it over. So why do we need to  
 4 list the sofa?

5                   Number two, the delay. The longer this  
 6 takes, the more people are not going to like it, and  
 7 they're going to go -- some of them are going to go to  
 8 other churches, and some of them are never going to  
 9 come back, even if -- regardless of who wins. So,  
 10 delay doesn't help anybody.

11                   And, three, I just want to point out to  
 12 the Court, this is going to lead to hard feelings.  
 13 When we're talking about inspections, they're talking  
 14 about sending people from one parish from downtown out  
 15 to Southlake or Weatherford, "Hi, we're here to take  
 16 pictures of everything in your church, now we'd like  
 17 to see the pastor's office, now we'd like to look  
 18 through your books and records." These are people  
 19 that they don't know, that we didn't vote for.

20                   And why? If any of this stuff is not  
 21 there, it doesn't -- if we lose on the summary  
 22 judgment and declaratory relief, all of the way up,  
 23 it's all theirs, we're going to turn it over for them,  
 24 we admit that, we've been willing to stipulate that.  
 25 And there's no reason to spend a bunch of money on

1 give something specific that has happened or they  
2 think will happen, then the Court can draft something  
3 around that.

4                   And, more importantly, when we say for  
5 a stay, we're not saying, you know, and the Court  
6 loses jurisdiction. The Court keeps jurisdiction  
7 during all this, if something is going on, they can  
8 come in and complain about it.

9                   THE COURT: I mean, couldn't we do an  
10 order like they do across the hall in a family case  
11 and just say all property has to stay where it is and  
12 status quo on all property. I mean, that would be  
13 something I think that we could do.

14                   Y'all wouldn't be opposed to that,  
15 would you?

16                   MR. BRISTER: No.

17                   THE COURT: Okay.

18                   MR. BRISTER: As long as we can do  
19 ordinary course stuff that --

20                   THE COURT: Yes.

21                   MR. BRISTER: -- and attorney's fees.  
22 That's it. That's all.

23                   THE COURT: Okay. Well, why don't  
24 y'all tell me what you think.

25                   I mean, it seems to me that -- and I'll

1 tell you what my thought is, is that if this goes up  
2 on appeal and they overturn what I did, then your tort  
3 claims may go away, because you -- they wouldn't have  
4 conversion any more, because it's their property.

5 MR. BRISTER: Sure.

6 MR. LEATHERBURY: Your Honor, let me --  
7 let me start by saying Ms. Liser and I spoke last  
8 night, and she's in depositions out of town, but I was  
9 authorized by her and Mr. Biers, the national counsel,  
10 to indicate that they oppose to motion to stay and  
11 sever at this time.

12 We are not opposed to any severance or  
13 any stay of proceedings on the tort claims or the  
14 declaratory judgment attorney's fees claim, Your  
15 Honor. What we are trying to do is to prevent the  
16 declaratory and injunctive claims from being split,  
17 and we're trying to make sure that all the related  
18 declaratory judgment and injunctive claims against all  
19 the parties who are currently in here go up together  
20 in one binding final judgment.

21 And let me just tell the Court briefly  
22 what we have done since our last hearing to try to get  
23 the Court in a proper position or to try to posture  
24 the case so a properly severed order can be entered.  
25 We entered into a Rule 11 agreement with the

1 THE COURT: Okay.

2 MR. BRISTER: Let me just say one thing  
3 on Jude Funding.

4 THE COURT: Okay.

5 MR. BRISTER: That's a lien on  
6 undeveloped property. We'll be happy to tell them any  
7 time we're going to draw down on it and how much. I  
8 think we can do that. And if they think -- it's not  
9 going to be 3.5 million, I wish my rate was that high,  
10 but it's not going to be anywhere close to that, but  
11 we'll be happy to tell them that.

12 THE COURT: Okay. Here's what I would  
13 like to do. I mean, I would like to get this to the  
14 appellate court as fast as I can, and y'all do, too, I  
15 think, and we need to figure out the best way to do  
16 that.

17 And I think we can craft an order  
18 somehow, similar to what they do across the hall,  
19 saying that nothing can happen to any of the property  
20 while this case is pending, and if they want to draw  
21 down money, they need to come in and ask, you know,  
22 and we can argue about that then.

23 MR. LEATHERBURY: And if there's some  
24 reporting, perhaps, you know, so there's some  
25 verification of what's going on with the funds in the

1 meantime, because they are spending the income from  
2 our property, as well as our property.

3 MR. BRISTER: I'm not sure what he  
4 means.

5 THE COURT: We'll figure that out.

6 MR. HILL: With all due respect, and I  
7 think it is certainly appropriate to talk about what  
8 restrictions, reporting, and the like would be in  
9 place during appeal. It seems to me that the  
10 overarching issue today is this, there is going to be  
11 an appeal, the question is whether -- and there's  
12 going to be a severance to enable that. The question  
13 is, is this Court going to do it today on this record  
14 or 30 days from now? Because if both parties are  
15 sincere in saying they want to get this appeal going  
16 so we can get finality, then with the comprehensive  
17 and supplemental motion for summary judgment that  
18 they're filing today, that is that Tom talks about,  
19 there will be a hearing within 22 days on that, there  
20 will be a ruling, presumably, because the Court is so  
21 familiar with everything, so within 30 days the record  
22 that Mr. Leatherbury and others on our side of this  
23 are saying is necessary to protect against a reversal,  
24 all of that can be done in 30 days.

25 So, the question -- and with all due

1                   MR. BRISTER: And as I told him for the  
2 last six weeks, and I'll do it right now on the  
3 record, we stipulate that the nonmoving congregations  
4 are bound by your summary judgment. They don't need  
5 to do -- they're going to send us hundreds of pages of  
6 more summary judgment stuff, it's not going to be over  
7 in 22 days, we're going to spend \$30,000 trying to  
8 establish something I just stipulated to. We've told  
9 them that for six weeks. We have told them we will  
10 stipulate. Things that -- on the declaratory relief  
11 that you struck out are denied. We will stipulate  
12 that they preserve error on that. That's not good  
13 enough. They want to ask you to do it again. We do  
14 not want to badger the Judge to rule on something you  
15 ruled on already. We do not --

16                   THE COURT: Okay. Hold on. What are  
17 you saying he's not stipulating to?

18                   MR. LEATHERBURY: Your Honor, if they  
19 want to stipulate to our further -- or agree to our  
20 further motion for summary judgment and those  
21 additional declarations, that's fine --

22                   THE COURT: No, no, no --

23                   MR. LEATHERBURY: We're not --

24                   THE COURT: -- specifically, what do  
25 you want him -- what has he not stipulated to?

1 thing, the legal -- and by the way, the mandamus  
2 opinion has already found there's one diocese, there's  
3 one diocesan corporation. That's not an issue before  
4 the Court.

5                   What is before this Court is properly  
6 severable. The stipulations that co-counsel has made  
7 protect it. And, by the way, the accounts that  
8 they're talking about, they've got a bigger value  
9 today than they did at the time of separation. They  
10 haven't gone down, they've gone up. The values of the  
11 properties haven't gone down, they've gone up.

12                   And the last I heard, you know these  
13 oil and gas leases they're talking about, I think oil  
14 and gas is going up, it's not going the other  
15 direction.

16                   These folks are not in danger of losing  
17 anything, because remember, it was 80 percent of the  
18 diocese that voted to go. I think they've got a  
19 stronger interest in their property than in people who  
20 don't even inhabit many of these parishes. They're  
21 not even there.

22                   So, Your Honor, what we are requesting  
23 is reasonable, and we believe this will get it to the  
24 appellate court with the protections you've already  
25 described, and it will be decided one way or the



# **EXHIBIT D**


St. Elizabeths

7

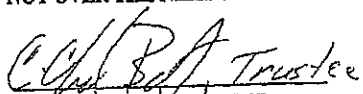
LEASE RECEIPT

Twenty Thousand Four Hundred and 00/100  
PAYABLE TO The Corporation of the Episcopal Diocese of Fort Worth, AS  
LESSOR(S), BASED ON 4.0800 NET ACRES AT \$5,000.00 PER NET ACRE, VIA  
U.S. MAIL ON OR BEFORE SIXTY (60) BUSINESS DAYS FROM MARCH 9TH,  
2009 (DATE) AS A SIGNING BONUS FOR PROPERTY DESCRIBED AS:  
Lots 23B, 24B & 25B, Saint Elizabeths Addition  
PAYMENT IS SUBJECT TO ACCEPTABLE VERIFICATION OF MINERAL  
OWNERSHIP.

EXECUTED BY:

  
\_\_\_\_\_  
LANDMAN, AUTHORIZED AGENT FOR  
FOUR SEVENS ENERGY

I (WE), Corporation of the Episcopal Diocese of Fort Worth, HEREBY  
ACKNOWLEDGE AS OF THIS 9TH DAY OF MARCH, 2009, THAT I (WE) HAVE  
NOT PREVIOUSLY ENTERED INTO AN OIL AND GAS LEASE AGREEMENT,  
COVERING THESE LANDS, WITH ANY COMPANY PRIOR TO THIS DATE,  
NOR TRANSFERRED ANY MINERAL OWNERSHIP OR RIGHTS AND WILL  
NOT OVER THE NEXT 60 BUSINESS DAYS.

  
\_\_\_\_\_  
LESSOR SIGNATURE

\_\_\_\_\_  
LESSOR SIGNATURE

For additional information about Chesapeake Energy, the Barnett Shale and mineral leasing, please visit  
[AskChesapeake.com](http://AskChesapeake.com)

Four Sevens Energy Co. LLC is an Independent Contractor Authorized to Buy Oil and Gas  
Leases on behalf of Chesapeake Energy and its Subsidiaries.

Four Sevens Energy Co. LLC  
6100 Western Center Blvd. Fort Worth, TX 76107  
817-732-2022 • Fax 817-763-9335

Christ the King

LEASE RECEIPT

Seventeen Thousand Three Hundred Six and 00/100  
PAYABLE TO The Corporation of the Episcopal Diocese of Fort Worth, AS LESSOR(S), BASED ON 3.4612 NET ACRES AT \$5,000.00 PER NET ACRE, VIA U.S. MAIL ON OR BEFORE SIXTY (60) BUSINESS DAYS FROM MARCH 9th, 2009 (DATE) AS A SIGNING BONUS FOR PROPERTY DESCRIBED AS: Lots 10 & 11-R, Block 16 & Lot 1, Block 17, Z. Boaz Country Place Addition  
PAYMENT IS SUBJECT TO ACCEPTABLE VERIFICATION OF MINERAL OWNERSHIP.

EXECUTED BY:

  
\_\_\_\_\_  
LANDMAN, AUTHORIZED AGENT FOR  
FOUR SEVENS ENERGY

I (WE), The Corporation of the Episcopal Diocese of Fort Worth, HEREBY ACKNOWLEDGE AS OF THIS 9th Day of March, 2009, THAT I (WE) HAVE NOT PREVIOUSLY ENTERED INTO AN OIL AND GAS LEASE AGREEMENT, COVERING THESE LANDS, WITH ANY COMPANY PRIOR TO THIS DATE, NOR TRANSFERRED ANY MINERAL OWNERSHIP OR RIGHTS AND WILL NOT OVER THE NEXT 60 BUSINESS DAYS.

  
\_\_\_\_\_  
LESSOR SIGNATURE

\_\_\_\_\_  
LESSOR SIGNATURE

For additional information about Chesapeake Energy, the Barnett Shale and mineral leasing, please visit [AskChesapeake.com](http://AskChesapeake.com)

Four Sevens Energy Co. LLC is an Independent Contractor Authorized to Buy Oil and Gas Leases on behalf of Chesapeake Energy and its Subsidiaries.

Four Sevens Energy Co. LLC  
6100 Western Center Blvd. Fort Worth, TX 76107  
817-732-2022 • Fax 817-763-9335

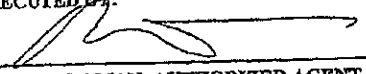
All 52/100 - FW.

7

LEASE RECEIPT

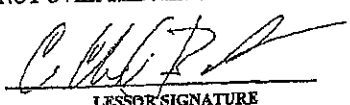
SEight Thousand Fifty Three and 00/100 \_\_\_\_\_  
PAYABLE TO The Corporation of the Episcopal Diocese of Fort Worth, AS  
LESSOR(S), BASED ON 1.6111 NET ACRES AT \$5,000.00 PER NET ACRE, VIA  
U.S. MAIL ON OR BEFORE SIXTY (60) BUSINESS DAYS FROM MARCH 9TH,  
2009 (DATE) AS A SIGNING BONUS FOR PROPERTY DESCRIBED AS:  
Block 14, Lots 1 thru 8 and Block 26, lots 5A, 6, 7, 8, & 9A, Chamberlain Arlington  
Heights Addition.  
PAYMENT IS SUBJECT TO ACCEPTABLE VERIFICATION OF MINERAL  
OWNERSHIP.

EXECUTED BY:



LANDMAN, AUTHORIZED AGENT FOR  
FOUR SEVENS ENERGY

I (WE), Corporation of the Episcopal Diocese of Fort Worth, HEREBY  
ACKNOWLEDGE AS OF THIS 9TH DAY OF MARCH, 2009, THAT I (WE) HAVE  
NOT PREVIOUSLY ENTERED INTO AN OIL AND GAS LEASE AGREEMENT,  
COVERING THESE LANDS, WITH ANY COMPANY PRIOR TO THIS DATE,  
NOR TRANSFERRED ANY MINERAL OWNERSHIP OR RIGHTS AND WILL  
NOT OVER THE NEXT 60 BUSINESS DAYS.



LESSOR SIGNATURE

LESSOR SIGNATURE

For additional information about Chesapeake Energy, the Barnett Shale and mineral leasing, please visit  
[AskChesapeake.com](http://AskChesapeake.com)

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6100 Western Center Blvd, Fort Worth, TX 76107  
817-732-2022 • Fax 817-763-9335

[www.legacyfinancial.com](http://www.legacyfinancial.com)

*St Anthony, Alvarado*

**From:** Cavanah, Janet [mailto:Janet.Cavanah@williams.com]  
**Sent:** Wednesday, November 11, 2009 11:02 AM  
**To:** Chad Bates  
**Subject:** Episcopal Diocese - Colonel Spencer Division Order

Chad,

This is a follow up to our telephone conversation this morning. Episcopal Diocese owns a royalty interest in the Colonel Spencer well. Their decimal is calculated as follows:  $\frac{1}{2} \times 2.24/249.564 \times .25 = .00112196$ . The  $\frac{1}{2}$  represents the portion of the mineral rights under the tract they hold an interest in. The 2.24 is the acres in the tract and the 249.564 is the total acreage in the well. The .25 is the royalty rate that is reflected in their lease. There is currently a little over \$3000 in suspense pending receipt of the signed division order.

If you have any other questions, please let me know.

*Janet S. Cavanah, CDA*  
Division Order Analyst  
Williams Exploration & Production  
Phone: 918-573-2962  
Fax: 918-573-0681  
Email: [Janet.Cavanah@Williams.com](mailto:Janet.Cavanah@Williams.com)

Chesapeake Operating, Inc.

253581 CORPORATION OF EPISCOPAL

No 1166376

VOUCHER NUMBER	INVOICE DATE	INVOICE NUMBER	DESCRIPTION OR GROSS AMOUNT DISCOUNT	NET AMOUNT
436911	08/03/09	KPI01	BARNETT TIER 1 LSE BNS/ 1 158	2316 00
Total for check				\$2,316 00

*mailed to church  
on 7th June on  
8-19-09  
JP*

CHESAPEAKE OPERATING, INC  
P O Box 18496, Oklahoma City, OK 73154-0496  
(877) 245-1427

Bank of Oklahoma  
88 105/1031

Check Number

Date  Amount

■ TWO THOUSAND THREE HUNDRED SIXTEEN 00/100 DOLLARS \*\*\*\*\*

Vendor No.  
253581

Pay to  
The  
Order Of

CORPORATION OF EPISCOPAL  
DIOCESE OF FORT WORTH  
2900 ALEMEDA ST  
FT WORTH TX 76108

VOID AFTER 90 DAYS  
NO THIRD PARTY ENDORSEMENTS

*Jennifer M. Amisberg*

⑈000⑆1166376⑈ ⑆103⑆10⑆055⑆ 209037734⑈

SC 2641

# **EXHIBIT E**

THE DIOCESE OF  
NORTHWEST TEXAS, THE REV.  
CELIA ELLERY, DON GRIFFIS, and  
MICHAEL RYAN,

IN THE 51st DISTRICT COURT

v.

OF

ROBERT MASTERSON, MARK  
BROWN, GEORGE BUTLER, CHARLES  
WESTBROOK, RICHEY OLIVER,  
CRAIG PORTER, SHARON WEBER,  
JUNE SMITH, RITA BAKER,  
STEPHANIE PEDDY, BILLIE RUTH  
HODGES, DALLAS CHRISTIAN, and  
THE EPISCOPAL CHURCH  
OF THE GOOD SHEPHERD

TOM GREEN COUNTY, TEXAS

**CASH DEPOSIT AND ADDITIONAL SECURITY**

WHEREAS, on December 16, 2009, judgment was signed in this case in favor of plaintiffs and against defendants for possession of property which is the subject of this suit being (i) 5.287 acres in the HILLSIDE TERRACE SUBDIVISION, a subdivision of land in the City of San Angelo, Tom Green County, Texas and the improvements located thereon which is currently being operated as a church by Defendants located at 3355 W. Beauregard Ave. San Angelo, Texas ("Real Property"); and (ii) personal property related to and used by the church located at the Real Property ("Personal Property) from which defendants will appeal;

WHEREAS, on January 4, 2010, defendants filed their notice of appeal; and

WHEREAS, defendants desire to suspend enforcement of the judgment pending determination of the appeal and in accordance with an agreed order of the court submit and file this Cash Deposit and Additional Security in accordance with Tex. R. App. P. 24.



NOW, THEREFORE, in consideration of the suspension of enforcement of the judgment pending determination of the appeal of the December 16, 2009 judgment, defendant Anglican Church of the Good Shepherd, a Texas non-profit corporation (formerly named Episcopal Church of the Good Shepherd), makes this Cash Deposit and provides Additional Security as follows:

1. **Cash Deposit:**

Anglican Church of the Good Shepherd, a Texas non-profit corporation (formerly named Episcopal Church of the Good Shepherd) has made a cash deposit of Thirty Five Thousand And No/100 Dollars (\$35,000.00) on behalf of all defendants (the "Cash Deposit"), conditioned that the Defendants are bound to pay the Cash Deposit to Plaintiffs in the event of any of the following: (a) Defendants do not perfect an appeal of the December 16, 2009 judgment; (b) any such appeal is dismissed; or (c) after a final judgment on such appeal in this cause results in a determination that Defendants do not own the Real Property.

2. **Additional Security:**

In addition to the Cash Deposit, defendant Anglican Church of the Good Shepherd, a Texas non-profit corporation, formerly named Episcopal Church of the Good Shepherd, covenants and agrees to do and perform each of the following during the pendency of its appeal of the December 16, 2009 judgment:

(A) timely pay each monthly installment (estimated to be \$741.00 per month) as it becomes due on that certain purchase money real estate lien note having a principal balance of \$67,639.25 after the installment due 12-1-09 was paid, which note is secured by a lien on the Real Property;

(B) renew or discharge said real estate lien note described in paragraph 2.A. when its principal balance balloons and becomes due and payable on June 1, 2010;

(C) timely pays the insurance premiums (which were \$6,880.00 in 2009) on the Real Property and Personal Property and maintain in force and good standing property and casualty insurance (presently with Church Mutual Insurance Co.) on the Real Property and Personal Property;

(D) pay on a current basis the utilities (electricity, gas, water/sewer, garbage) on the Real Property, which utilities were approximately \$16,200 in 2009;

(E) maintain the grounds of the Real Property, including lawn maintenance that cost approximately \$2,000 in 2009;

(F) regularly clean the interior of the buildings located on the Real Property which in 2009 cost approximately \$6,600;

(G) keep the improvements on the Real Property occupied and operated as a church;

(H) keep the Real Property and Personal Property in good repair, normal wear and tear excepted;

(I) not to in any way alienate, dispose of, lease or encumber any part of the Real Property and the Personal Property; and

(J) provide to Plaintiffs, through their attorney, on at least a quarterly basis documents and other satisfactory evidence that the covenants contained in paragraph s 2 A.- I are being complied with on a current basis.

The Cash Deposit shall remain with the clerk of this court and the Additional Security shall be performed through the entire appeal of the December 16, 2009 judgment. In the event that after any and all appeals a final judgment in this cause results in a determination that

Defendants do not own the Real Property, Defendants will not in any manner or form seek return of or restitution for any part of the Cash Deposit or Additional Security as the same constitutes compensation to Plaintiffs for the Defendants' use and possession of the Real and Personal Property.

Signed March \_\_\_\_\_, 2010.

Anglican Church of the Good Shepherd,  
A nonprofit Corporation  
3355 W. Beauregard Ave.  
San Angelo, Texas 76903

By: \_\_\_\_\_  
Charles Westbrook, Senior Warden

**APPROVAL BY CLERK**

I acknowledge that Anglican Church of the Good Shepherd has made a \$35,000.00 cash deposit into the registry of the court and have approved and filed this Cash Deposit and Additional Security on March \_\_\_\_\_, 2010.

\_\_\_\_\_  
Sheri Woodfin  
District Clerk of the 51<sup>st</sup> Judicial District  
Court of Tom Green County, Texas

CAUSE NO. 141-252083-11

THE EPISCOPAL CHURCH, et al.

VS.

FRANKLIN SALAZAR, et al.

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)  
)  
)  
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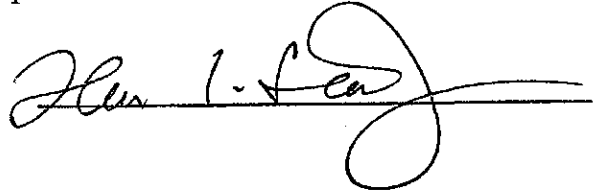
IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

141<sup>ST</sup> DISTRICT COURT

**CERTIFICATE OF CONFERENCE ON LOCAL EPISCOPAL PARTIES' MOTION TO CONTINUE HEARING ON SUPERSEDEAS AND FOR ADDITIONAL PROTECTION**

I certify that on April 25, 2011, I conferred with opposing counsel on the merits of the Local Episcopal Parties' Motion to Continue Hearing on Supersedeas and for Additional Protection. A reasonable effort was made to resolve the dispute without the necessity of court intervention, and the effort failed. Therefore, it is presented to the Court for determination.

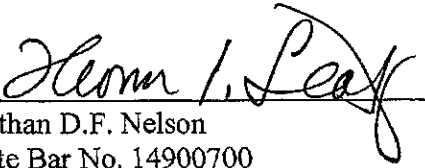


THOMAS A. WILDER  
DISTRICT CLERK

2011 APR 25 PM 4: 09

FILED  
TARRANT COUNTY

Respectfully submitted,

By:   
Jonathan D.F. Nelson  
State Bar No. 14900700

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(817) 332-4740 fax  
[chancellor@episcopaldiocesefortworth.org](mailto:chancellor@episcopaldiocesefortworth.org)

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Thomas S. Leatherbury  
State Bar No. 12095275  
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Dallas, Texas 75201-2975  
(214) 220-7703  
(214) 999-7703 (fax)

**Attorneys for Local Episcopal Parties**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Certificate of Conference on Local Episcopal Parties' Motion for Continuance and Additional Protection has been sent this 25th day of April, 2011, by facsimile to:

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