

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 05/01/2013

TIME: 11:57:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: Kim G. Dunning

CLERK: Cheryl Henderson

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: JCCP 4392

CASE INIT.DATE: 02/06/2008

CASE TITLE: Episcopal Church Cases

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 71708424

EVENT TYPE: Chambers Work

APPEARANCES

PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION ON THE ISSUE OF PROPERTY OWNERSHIP
DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF ISSUES AND SUMMARY JUDGMENT

There are no appearances by any party.

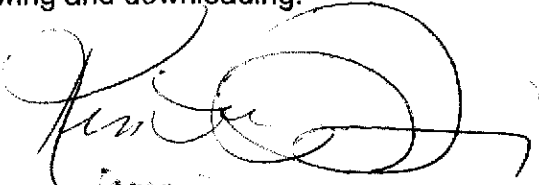
The Court, having taken the above-entitled matter under submission on 02/20/13 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court's ruling on the motions is attached. (Code Civ. Proc., § 437c, subd (g).)

Orders on plaintiffs' objections to defendants' evidence and cross-defendants' objections to cross-complainants' evidence filed this date.

The clerk is directed to electronically file this ruling and the accompanying orders and telephone all counsel to advise the rulings are available online for viewing and downloading.

May 1, 2013


KIM G. DUNNING

This ruling pertains to the case of Rasmussen v. Bunyan, JCCP 4392.

The parties involved in the pending motions are:

1. Plaintiffs and Cross-Defendants The Protestant Episcopal Church in The Diocese of Los Angeles, and the Right Rev. J. Jon Bruno, Bishop Diocesan of The Episcopal Diocese of Los Angeles and Plaintiff Jane Hyde Rasmussen (collectively, Diocese);
2. Plaintiff in Intervention Episcopal Church; and
3. Defendants and Cross-Complainants The Rector, Wardens and Vestrymen of Saint James Parish in Newport Beach, California, and individual defendants (collectively, "Local Church" [note, however, the individual defendants are not cross-complainants]).

The Motions

1. Cross-Motions by the Diocese and the Local Church for Summary Adjudication of Issues as to the First and Sixth Causes of Action in the Diocese's First Amended Verified Complaint.

At the February 20, 2013 hearing on this motion, the Diocese voluntarily dismissed the allegations in paragraphs a, c, e, f and g of the First Cause of Action for Declaratory Relief. The now-abbreviated First Cause of Action against all defendants seeks a declaration that the assets of St. James Parish are held in trust for the Episcopal Church and the Diocese, both of whom have the right to occupy and exercise dominion and control over the real and personal property. The Sixth Cause of Action is for ejection from the church property and enforcement of a trust against the individual defendants.

The Local Church asserted equitable estoppel, promissory estoppel and waiver as affirmative defenses to the Diocese First Amended Verified Complaint. The Local Church acknowledges that these affirmative defenses are for the court, not a jury, to decide. It urges this court to decide the applicability of these defenses in this motion. the court will do so.

2. By the Local Church for Summary Adjudication of Issues in its favor on the First Cause of Action in its Cross-Complaint (promissory estoppel).

3. By the Local Church for Summary Judgment in its favor as to the Episcopal Church's First Amended Complaint-in-Intervention.

The Local Church identified the following five issues:

"Noticed Issue No. 1: The Diocese and the Episcopal Church expressly represented to and/or promised St. James Church that St. James Church would, from 1991 onward, own and control all real property acquired and held in its name located along 32nd Street in the City of Newport Beach, County of Orange, California.

"Noticed Issue No. 2: St. James Church had no reason to disbelieve that both the Diocese and the Episcopal Church had validly and legally agreed to allow St. James Church to purchase in its name, and own outright, all real property located on 32nd Street in Newport Beach, California, and not in trust for the benefit of either the Diocese and/or the Episcopal Church.

"Noticed Issue No. 3: St. James Church materially and detrimentally changed its position in reliance on the representations and/or promises made by the Diocese and the Episcopal Church.

"Noticed Issue No. 4: St. James Church will suffer extreme prejudice, unfairness and financial harm if the doctrines of either equitable estoppel or promissory estoppel are not applied to bar the Diocese's and the Episcopal Church's claims of an ownership interest in, or a trust in their favor with respect to, the improved real property titled in the name of St. James Church and located on 32nd Street in the City of Newport Beach, County of Orange, California.

"Noticed Issue No. 5: The Diocese and the Episcopal Church knowingly and voluntarily permitted, and consented to, St. James Church owning, controlling and holding title to all real property located along 32nd Street in the City of Newport Beach, County of Orange, California."

Background

These motions involve three church properties in Newport Beach.¹ The first two properties came into the hands of St. James Parish, a religious corporation under California law, in mid-to-late 20th century. As is the protocol for local Episcopal

¹ It appears that more than three lots or parcels comprise these three properties.

parishes, title to those two properties was in the name of the local parish. (Officially, title was in the name of "The Rector, Wardens and Vestrymen of St. James' Parish, Newport Beach, California," a California religious corporation. For convenience, the court will shorten this title to "St. James Parish".) (See, e.g., exh. L to the Oct. 2, 2012 declaration of Canon David R. Tumilty; exhs. B – E to the Dec. 4, 2012 declaration of James M. Dale.) The second property, used as a parking lot, is across the street from the first property. The properties apparently have always used one address, 3209 Via Lido, Newport Beach.

In 1991, St. James Parish purchased and improved a third property, adjacent to the first property, but with an address on 32nd Street in Newport Beach. Title to that property was also taken in the name of St. James Parish. (The geographical information was taken from the Local Church's Memorandum of Points and Authorities and does not appear to be in dispute by any party.)

In 2004, certain members of St. James Parish voted to leave the Episcopal Church and join the Anglican Church. (Exhs. E, F to Oct. 2, 2012 Tumilty declaration.) The Episcopal Church and the Diocese seek to keep the St. James Parish properties. The Local Church, having disassociated itself from the Episcopal Church, seeks a declaration that it owns these properties free of the Diocese or Episcopal Church.

For the reasons that follow, this court finds as a matter of law that the real property belongs to/is held in trust for the Diocese and Episcopal Church.

Evidentiary Rulings

1. Defendants/Cross-Complainants' written objections filed February 6, 2013, to declarations of Robert Bruce Mullin (Sept. 1, 2011), Canon Janet Wylie, David Tumilty, Robert Bruce Mullin (Oct. 17, 2012), Brent Rychener: Overruled; failure to comply with California Rules of Court, rule 3.1354.
2. Plaintiffs' written objections filed February 6, 2013, to declarations of James M. Dale (Dec. 4, 2012) and Daniel Lula (Feb. 6, 2013): Rulings indicated on the proposed order submitted by plaintiffs; order filed this date.
3. Defendants/Cross-Complainants' written objections filed February 15, 2013, to declaration of Rt. Rev. Frederick Borsch: Overruled; failure to comply with California

Rules of Court, rule 3.1354. The court notes, however, that it did not rely on this declaration.

Discussion

This case has a long and well-documented history. (*Episcopal Church Cases* (2009) 45 Cal.4th 467; *Rasmussen v. Superior Court* (2011) 51 Cal.4th 804.) It is one of three actions coordinated by the Judicial Council (JCCP 4392). The Supreme Court described *Rasmussen v. Bunyan* as follows: "In this case, a local church has disaffiliated itself from a larger, general church with which it had been affiliated. Both the local church and the general church claim ownership of the local church building and the property on which the building stands. The parties have asked the courts of this state to resolve this dispute." (*Episcopal Church Cases I, supra*, at p. 472.)

The Supreme Court determined that "secular courts of this state resolve [such] disputes . . . [¶] [by] applying the neutral principles of law approach." (*Id.* at p. 473.) Specifically, "[s]tate courts must not decide questions of religious doctrine; those are for the church to resolve. Accordingly, if resolution of the property dispute involves a doctrinal dispute, the court must defer to the position of the highest ecclesiastical authority that has decided the doctrinal point. But to the extent the court can resolve the property dispute without reference to church doctrine, it should use what the United States Supreme Court has called the "neutral principles of law" approach. (*Jones v. Wolf* (1979) 443 U.S. 595, 597.) The court should consider sources such as the deeds to the property in dispute, the local church's articles of incorporation, the general church's constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as Corporations Code section 9142." (*Episcopal Church Cases, supra*, at p. 473.)

Applying the four sources identified above, this court previously granted summary adjudication in favor of the Diocese and Episcopal Church in the other two coordinated cases on the issue of ownership of church property and entered judgments in favor of the Episcopal Church on September 6, 2012. (*Adair v. The Rev. Jose Poch and O'Halloran v. The Rev. William A. Thompson.*)

This case differs from the other two coordinated matters in the following respect: On March 18, 1991, The Rev. Canon D. Bruce MacPherson, "Canon to the Ordinary and Attorney in-Fact for the Bishop of Los Angeles" wrote a letter to The Rev. David C. Anderson, the pastor of St. James' Episcopal Church in Newport Beach (the 1991 Letter). The complete text of the 1991 Letter (without greeting, closing or signature) is:

This is to confirm our conversations and my previous correspondence to you about the possible acquisition of additional property.

Please know that the position of Bishop Borsch and the Diocese is as follows:

The Rector, Wardens and Vestry of Saint James' Parish, Inc. of Newport Beach, are given permission by the Bishop of Los Angeles, the Rt. Rev. Frederick H. Borsch, to purchase and own the property on 32nd Street in Newport Beach, in the name of the Rector, Wardens and Vestry of Saint James' Parish, Inc. and not held in trust for the Diocese of Los Angeles, or the Corporation Sole.

I trust this will be sufficient. If not, please do not hesitate to contact me.

This comes with my best wishes.

Referring to this document, the Supreme Court has written, "We express no opinion regarding the legal significance, if any, of the 1991 letter. We merely hold that a court must decide the question." (*Rasmussen, supra* at p. 809.)

All parties agree the interpretation, i.e., the legal significance of this letter, presents a question of law for this court to decide. The Diocese and Episcopal Church contend the 1991 Letter has no legal significance because a diocesan Bishop had no authority to alter Canon 1.7.4 or to waive the Episcopal Church's trust interest in local parish property. Unless that Canon is amended, all parish property is held in trust for the Diocese and Episcopal Church (Corp. Code, § 9142, subds. (c)(2), (d).) The Local Church asserts the doctrines of equitable estoppel, promissory estoppel and waiver must be applied to enforce the 1991 Letter and award it full ownership of the property acquired by St. James Parish in 1991.

The 1991 Letter

The 1991 Letter has no legal significance as to the first two properties acquired by St. James' Parish. Those properties were clearly not the subject of the 1991 Letter, a point defendants/cross-complainants concede in their own Memorandum of Points and Authorities: "Here, the 1991 Letter leaves no doubt about 'the position' that the Episcopal Church took vis-à-vis St. James Church with respect to title and ownership of the real property **to be newly-acquired and improved 'on 32nd Street.'** By its own terms, it expressly gave St. James Church 'permission . . . **to purchase** and own the property on 32nd Street in Newport Beach in the name of [St. James Church] and not held in trust for the Diocese of Los Angeles, or the Corporation Sole.'" (Dec. 5, 2012 Memo of Points and Authorities, p. 14:6-10, emphasis added.) The Local Church appears to have retreated from this position in its December 5, 2012 Separate Statement (items nos. 2 – 5), where it relies on the James M. Dale declaration to assert that all three properties are located on 32nd Street (but see rulings on evidentiary objections to Dale declaration).

There is no triable issue of material fact on this point. St. James Parish owned the first two properties well before the 1991 Letter. As a matter of law, the 1991 Letter excluded and cannot extend to the first two properties. The issue, then, is the legal significance, if any, as to the property on 32nd Street acquired in 1991.

In 1979, the General Convention of the Episcopal Church enacted Canon 1.7.4: "All real and personal property held by or for the benefit of any Parish, Mission or congregation is held in trust for this Church and the Diocese thereof in which such parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons." This canon "expressly confirms that on a parish's disaffiliation from the church, parish property belongs to the Episcopal Church or the diocese." (*Huber v. Jackson* (2009) 175 Cal.App.4th 663, 669; see also *Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 473 ["Although the deeds to the property have long been in the name of the local church, that church agreed from the beginning of its existence to be part of the greater

church and to be bound by its governing documents. These governing documents make clear that church property is held in trust for the general church and may be controlled by the local church only so long as that local church remains a part of the general church. When it disaffiliated from the general church, the local church did not have the right to take the church property with it.".)

The year before enactment of Canon 1.7.4, the California Legislature enacted Corporations Code section 9142, operative January 1, 1980. Corporations Code section 9142, subdivision (c)(2) permits a religious corporation, by its articles of incorporation or bylaws, or "a superior religious body or general church of which the [religious] corporation is a member" to declare that all assets of the religious corporation are held in trust for the general church. Subdivision (d) sets forth the conditions under which such trusts may be amended or dissolved: "by the articles, bylaws, or governing instruments creating the trusts."

James M. Dale, a former parishioner of St. James Parish, submitted a declaration dated December 4, 2012, in support of the Local Church's position on the property ownership issue. He attached the 1948 Articles of Incorporation for St. James Parish and the Constitution for the Episcopal Diocese of Los Angeles as exhibit A.

The Articles of Incorporation were filed with the Secretary of State on March 1, 1949. They provide in part:

"SECOND: That the purposes for which this corporation is formed are:

(a) To establish and maintain a Parish which shall form a constituent part of the diocese of Los Angeles in that branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America; and so that the Constitution and Canons, Rules, regulations and discipline of said Church in the United States of America and the Constitution and Canons in the diocese of Los Angeles, for the time being shall, unless they be contrary to the laws of this State, always form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline; that a

copy thereof is attached hereto, marked Exhibit A and A-1, and made a part hereof as though set out in full herein;

(b) . . .

(c) to maintain a church edifice for public worship and to conduct religious services therein according to the form and Canons of the Protestant Episcopal Church in the United States of America

(d) Generally to . . . exercise any and all powers and privileges in anywise permitted or granted by the Laws of the State of California to Religious corporations and not contrary to the Constitution, Canons, Rules and Regulations of said Church in the United States of America and/or the diocese of Los Angeles;"

The court will not repeat the provisions of Articles II, III, IV, and XVIII of the attached Constitution of the Diocese of Los Angeles in detail here, but Article II provides that the Diocese "accedes to the Constitution of, and recognizes the authority of the "the Protestant Episcopal Church in the United States of America." The authority in the Los Angeles Diocese "is vested in and exercised by its Bishop . . . acting under and in subordination to the Protestant Episcopal church in the United States of America" Article IV acknowledges that the Bishop of the Diocese of Los Angeles "is the Ecclesiastical Authority of this Diocese." Article XVIII, § 39 provides that a "Parish may be admitted" into the Episcopal Church when the "Parish expressly accedes to the Constitution, Canons, doctrine, discipline and worship of the Protestant Episcopal Church in the United States of America, and to the Constitution and Canons of the Church in the Diocese of Los Angeles."

St. James' Parish amended its Bylaws in 1981 (Oct. 17, 2012 declaration of Brent Rychener, exh. A.) Article I provides in part:

Corporation Part of Episcopal Church

The corporation (sometimes herein called the 'Parish') is an integral subordinate unit and constituent part of the Protestant Episcopal Church in the Diocese of Los Angeles and of the Protestant Episcopal Church in the United States of America. The

Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution and Canons of the said church in the diocese of Los Angeles, nor or hereafter in effect, are incorporated, by reference, in these Bylaws, as a basic and essential part hereof. . . .

Article III of the St. James Parish Bylaws reads in full:

Dedication of Assets

The properties and assets of this nonprofit corporation are irrevocably dedicated to religious purposes. No part of the net earnings, properties, or assets of this corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any member or director of this corporation. On liquidation or dissolution, all properties and assets and obligations shall be distributed and paid over to the Protestant Episcopal Church in the Diocese of Los Angeles, a corporation, which is organized and operated exclusively for religious purposes.

All these documents, as well as Corporations Code section 9142, were in place when the 1991 Letter was written. Canon 1.7.4 is the governing instrument under which all assets of an Episcopal religious corporation are held in trust for the Episcopal Church and the Diocese. The 1949 Articles of Incorporation for St. James Parish state it is a "constituent part" of the Episcopal Church and accedes to the Constitution and Canons of the Diocese and Episcopal Church. The 1981 Amended Bylaws of St. James Parish state that the parish is an "integral subordinate unit" of the Episcopal Church and, upon the dissolution of that parish, all its assets are to be turned over to the Episcopal Church and Diocese.

Written on behalf of the diocesan Bishop, the 1991 Letter did not purport to amend Canon 1.7.4. It did not purport to amend the Articles of Incorporation or Bylaws of St. James Parish. Even if it so purported, according to ecclesiastical authority, the Bishop of the Diocese did not, and does not, have the authority to amend any of these

instruments. (Oct. 17, 2012 declaration of Robert Bruce Mullin [filed Oct. 23, 2012], p. 6:12-28.) The Mullin declaration concerns "religious entity governance and administration," and this court is bound by it. (*New v. Kroeger* (2008) 167 Cal.App.4th 800, 815; see also *Jones v. Wolf*, *supra*, 443 U.S. at p. 602; *Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 492.)²

The 1991 Letter did not purport to and – in any event, could not – constitute an amendment to Canon 1.7.4. As a matter of law it was not effective to erase the trust under which the St. James Parish properties were held. (Corp. Code, § 1942, subds. (c)(2), (d).)

Property Ownership/Enforcement of Trust

With the issue of the 1991 Letter resolved, this court, as it has done in the other coordinated cases, looks to the deeds to the properties in dispute, the local parish's Articles of Incorporation and Bylaws, the Constitution of the Diocese and/or General Church, and relevant statutes. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 473.)

The deeds are held in the name of St. James Parish.

The Articles of Incorporation for St. James Parish, filed in 1949, affirm that this religious corporation is a part of the Episcopal Church. The 1981 Amended Bylaws for St. James Parish confirm that all assets of the Parish are held in trust for the Episcopal Church and are to be turned over to the Diocese and Episcopal Church should St. James Parish cease to be a "constituent part" or "subordinate unit" of the Episcopal Church. Canon 1.7.4 of the Episcopal Church confirms that all Episcopal parishes hold their real and personal property "in trust for this Church and the Diocese thereof" Canon 1.7.4 can only be amended by the General Convention of the Episcopal Church, by whom it was enacted.

California Corporations Code section 1942, subdivision (c)(2) provides that assets of a religious corporation are impressed with a trust only if "the articles of bylaws

² This court has previously ruled, in accordance with consistent binding appellate authority in this state, that the Episcopal Church is hierarchical. (See, e.g., *Episcopal Church Cases*, *supra*, 45 Cal.4th at pp. 472, 492; *Huber v. Jackson*, *supra*, 175 Cal.App.4th at p. 667.) It is a "superior religious body" and "general" church within the meaning of Corporations Code section 9142.

of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide." Once such a trust is created it "may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments creating the trusts." (Corp. Code, § 1942, subd. (d).)

Canon 1.7.4 is the governing instrument creating the trust. It has not been amended. As a matter of law, the property now under the control of the Local Church belongs to the Diocese and the Episcopal Church. (*Huber v. Jackson, supra*, 175 Cal.App.4th 663.)

Affirmative Defenses

As the Local Church concedes, the affirmative defenses of promissory estoppel, equitable estoppel and waiver are for this court, not a jury, to decide. It is doubtful whether the Local Church even has standing to assert these equitable defenses. It must be remembered that for its entire existence up to 2004, St. James Parish, pursuant to its own Articles of Incorporation and Bylaws, as well as the Constitution and Canons of the Episcopal Church, had no identity apart from that of the Episcopal Church. St. James Parish existed only so long as it remained a "constituent part" and "subordinate unit" of the Episcopal Church. (See, e.g., *Huber v. Jackson, supra*, 175 Cal.App.4th at p. 681.) Its right to own and possess church property impressed with a trust in favor of the Diocese and the Episcopal Church existed only so long as it remained part of the Episcopal Church.

No representations or promises were made to the Local Church. The Local Church did not exist in 1991 when the additional property was acquired in 1991. Accordingly, the Local Church could not detrimentally rely on representations made to St. James Parish, a separate religious corporation inextricably and contractually bound to the Diocese and Episcopal Church. And St. James Parish, the religious corporation that is part of the Diocese and Episcopal Church, has not been harmed. Its own governing documents acknowledge the superior claims of the Diocese and Episcopal Church. Without any harm to St. James Parish, there is no reason to apply any equitable or promissory estoppel or waiver to harm now alleged by the Local Church.

Rulings on Noticed Issues

"Noticed Issue No. 1: The Diocese and the Episcopal Church expressly represented to and/or promised St. James Church that St. James Church would, from 1991 onward, own and control all real property acquired and held in its name located along 32nd Street in the City of Newport Beach, County of Orange, California."

The 1991 Letter addressed only the third property that had not yet been acquired. The representations were made to St. James Parish and they were true so long as St James Parish remained a subordinate unit of the Diocese and Episcopal Church. They were not made to "St. James Church," the Local Church involved in this action. St James Parish was always entitled to own and control all property in which it held title, but only so long as it was part of the Episcopal Church. The Parish's own governing documents were unambiguous on that point. Having disavowed affiliation with the Episcopal Church and the Diocese, the Local Church does not stand in the shoes of St. James Parish.

"Noticed Issue No. 2: St. James Church had no reason to disbelieve that both the Diocese and the Episcopal Church had validly and legally agreed to allow St. James Church to purchase in its name, and own outright, all real property located on 32nd Street in Newport Beach, California, and not in trust for the benefit of either the Diocese and/or the Episcopal Church."

No representations were made to "St. James Church," i.e., the Local Church. The 1991 Letter was addressed to St. James Parish, which had every reason to believe the property in its name was held in trust for the Diocese and Episcopal Church. St. James Parish existed only as a part of the Episcopal Church, and the Diocese and Church's Constitution and Canons are clear on property ownership and imposition of a trust. (See Canon 1.7.4, the Constitution of the Diocese, and St. James Parish's own Articles of Incorporation and Bylaws.)

"Noticed Issue No. 3: St. James Church materially and detrimentally changed its position in reliance on the representations and/or promises made by the Diocese and the Episcopal Church."

Once again, no representations were made to an entity other than St. James Parish, a member of the Diocese and Episcopal Church. The Diocese and Church Constitutions and Canons are clear on property ownership. Any representations by the diocesan Bishop to St. James Parish to the contrary were of no moment. Facially, they contradicted the governing instruments for St. James Parish, the Diocese and the Episcopal Church and, according to the Episcopal Church, they were made without any authority to do so. But the contradiction had no practical or legal significance because all property in the name of St. James Parish was held in trust for both the Diocese and the Episcopal Church. The 1991 Letter was addressed to a subordinate unit of the Diocese and Episcopal Church. It was not addressed to "St. James Church," which is a member of a greater or general church other than the Episcopal Church.

"Noticed Issue No. 4: St. James Church will suffer extreme prejudice, unfairness and financial harm if the doctrines of either equitable estoppel or promissory estoppel are not applied to bar the Diocese's and the Episcopal Church's claims of an ownership interest in, or a trust in their favor with respect to, the improved real property titled in the name of St. James Church and located on 32nd Street in the City of Newport Beach, County of Orange, California."

As discussed above, the 1991 Letter, even if interpreted as the Local Church argues, would apply only to the property acquired in 1991. St. James Parish has not been prejudiced or suffered financial harm. St. James Parish's own governing documents establish it exists only as a member of the Episcopal Church in the Diocese of Los Angeles. In those documents, St. James Parish agreed it owned the properties only so long as it remained a part of the Episcopal Church. The Local Church was a stranger to the 1991 Letter. The Local Church's efforts to claim it has been harmed, where no harm exists as a matter of law vis-à-vis St. James Parish, do not justify application of equitable or promissory estoppel or waiver.

"Noticed Issue No. 5: The Diocese and the Episcopal Church knowingly and voluntarily permitted, and consented to, St. James Church owning, controlling and holding title to all real property located along 32nd Street in the City of Newport Beach, County of Orange, California."

The Diocese and Episcopal Church gave knowing and voluntary permission and consent for St. James Parish, a religious corporation bound to both the Diocese and Episcopal Church, to own, control and hold title to all the properties that comprised its parish. The Diocese and Episcopal Church offered no such permission or consent to the Local Church. The Local Church made a knowing and voluntary decision not to maintain membership in the Diocese or the Episcopal Church. The Local Church changed its own course based on its own decision. That decision has consequences. One of them is that the right to own, control and hold title to the parish properties in Newport Beach was essentially forfeited because upon disaffiliation the properties reverted to the Diocese and Episcopal Church. The Articles of Incorporation and Bylaws of St James Parish are clear on this point, as are the Constitution and Canons of the Diocese and the Episcopal Church are clear and Corporations Code section 9142, subdivisions (c)(2) and (d). The Local Church was not misled, and it cannot obtain equitable relief based on estoppel or waiver.

Conclusion

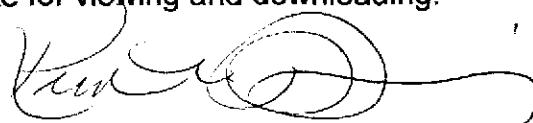
The motion for summary adjudication of issues as to the first and sixth causes of action in the Diocese's verified first amended complaint is granted. As a matter of law, all the church property acquired by and held in the name of St. James Parish is held in trust for the Episcopal Church and the Diocese, which have the exclusive right to possession and dominion and control. (Corp. Code, § 9142.)

This court further determines that the equitable affirmative defenses of estoppel and waiver do not abridge the Episcopal Church's or Diocese's right to possession and dominion and control. As a matter of law, the Diocese is entitled to enforce the trust in its favor and eject the current occupants.

The Local Church's cross-motion for summary adjudication of issues as to the Diocese and motion for summary judgment as to the Episcopal Church are denied.

The clerk is directed to electronically file this ruling and notify all counsel by telephone that is available on the court's website for viewing and downloading.

May 1, 2013

A handwritten signature in black ink, appearing to be "Kevin D.", written in a cursive style.