

THE EPISCOPAL CHURCH, et al.	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
	§	
FRANKLIN SALAZAR, et al.,	§	141ST JUDICIAL DISTRICT

THOMAS A. WILDER
 DISTRICT CLERK
 2011 MAR 30 AM 9:31
 TARRANT COUNTY
 FILED COUNTY

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO SEVER AND STAY

Defendants file this Reply in support of their Motion to Sever and Stay that is set for hearing on March 31, 2011 (the earliest available setting).

1. **TEC has not objected to severance.** TEC has not objected, so claims between TEC and Defendants can be severed. Texas courts routinely grant severance when claims involving one party have been disposed by summary judgment while claims regarding others remain pending. See, e.g., *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (reviewing appeal from summary judgment granted to one defendant and severed from remainder of the case). The Court's order disposes of all TEC's claims for declaratory relief. TEC has not proposed new parties, new discovery, or new motions for summary judgment. At a minimum, Defendants' motion should be granted as to TEC.

2. **All parties will be bound by the summary judgment.** The Local TEC Plaintiffs object that severance would split their claims against the Defendants from identical claims against the Intervening 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. As these claims will never have to be tried twice, they are not "interwoven" as contemplated by Rule 41. See *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 693-94 (Tex. 2007) (holding severance was abuse when it required same issues to be litigated twice).

3. There are no declaratory claims left to try. The Local TEC Plaintiffs say they have additional claims for declaratory relief that severance would split, but never say precisely what they are. They drafted the summary judgment order, and the Court granted some declarations and struck others. A comparison of their live pleadings and their motion for summary judgment reflects no declaratory claims left for decision.

4. Adding parties, discovery, and more motions won't change the decisive question for appeal. Since the Motion to Stay was filed, the Local TEC Plaintiffs have given every indication of seeking aggressive, extensive, expensive, and potentially disruptive acts, including:

- a demand to send teams of people to inspect and videotape all personal property at all churches affiliated with Defendants;
- 38 requests for production, calling for production of (1) every bank statement or financial record from every church since January 2006, (2) every repair and maintenance expense at every church since 2008, (3) every letter sent since 2008 that contains the Diocese's name, and (4) every invoice and check related to litigation expense; and
- interrogatories asking for (1) the names of everyone serving in virtually any capacity in the Defendant congregations, (2) the compensation paid to all other Defendants by any church since 2008, (3) every item of personal property owned since 2008 worth \$500 or more, (3) every payment exceeding \$500 or more since 2008, and (4) every receipt of \$100 or more (except charitable contributions) since 2008.

To ensure that each congregation feels the brunt of this inquisition, Plaintiffs promise to file more "parish-specific claims" soon. But if an appeal is successful, Plaintiffs will be entitled to none of this because none of it is their property. And if an appeal is unsuccessful, Plaintiffs will need none of this because the property will be turned over to them. This is simply stirring up trouble unnecessarily.

5. All property has been preserved for two years without any court order. After two years of litigation, there has been no dissipation of church assets. No real or personal property has been sold outside the ordinary course of business. *See Parrott affidavit attached hereto.* The Diocese's endowment and restricted funds

show balances well above those in November 2008. *Id.* Only \$94,500 has been drawn on the Jude Funding line of credit (*not* \$3.5 million), and all of that was for legal fees in this litigation. All other legal fees to date have been paid through contributions or income received since November 2008.

6. Prejudice: imaginary nightmares are not evidence. The Local TEC Plaintiffs present neither evidence nor reasons why they will suffer “extreme prejudice” if severance is granted. By their own theory of the case, these properties are held for the benefit of TEC (whom the Local TEC Plaintiffs do not represent), and for the local parishes (of whom they are not members). How can it be said that the property is threatened by “extreme prejudice” if left in the hands of those who have preserved and maintained it for years? There is no evidence that the Defendants will dissipate or transfer these assets to avoid the judgment, or inadequately maintain the properties during the appeal.

7. Prejudice: a 1,500-page record is not enough? The Local TEC Plaintiffs fret that they need to add materials to the summary judgment record. But the deed records don’t matter for appeal — the dispute in this case is not about *what* the Diocese owns, but about *who* is entitled to use and control it.

8. Prejudice: who gains by closing down churches? The Local TEC Plaintiffs insist that every item of property be listed in the Court’s order so they can immediately enforce it “by way of a writ of execution.” *Response p. 14.* This is their goal: evicting parishioners pending appeal. As shown in the Defendants’ Motion to Sever, that is more likely to harm these properties than preserve them.

The Motion to Sever and Stay should be granted. It is in the best interests of all concerned that the Court provide for the quickest appellate resolution of the dispositive issue in this case, without wasting time and church resources on collateral and largely unnecessary matters.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2011, a true and correct copy of the foregoing *Objections to Form of Summary Judgment Orders* was forwarded to all counsel of record by facsimile.

Scott A. Brister

Scott A. Brister *by permission* *JSS*

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Plaintiffs	§	
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VS.	§	TARRANT COUNTY, TEXAS
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FRANKLIN SALAZAR, ET AL	§	
	§	
Defendants	§	141 ST JUDICIAL DISTRICT

AFFIDAVIT OF JANE R. PARROTT

BEFORE ME, the undersigned authority, personally appeared Jane R. Parrott, who being duly sworn by me according to law, on her oath deposed and stated the following:

“My name is Jane R. Parrott. I am the Director of Business and Finance for the Episcopal Diocese of Fort Worth. I have personal knowledge of the facts hereinafter set forth by virtue of the fact that I personally am involved in the financial and business affairs of the Episcopal Diocese of Fort Worth and by virtue of my examination of the records maintained by the Episcopal Diocese of Fort Worth.

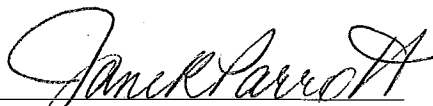
“From and since November 2008, the accounts listed on Exhibit A, attached hereto and incorporated by reference herein, have experienced gains as reflected on Exhibit A. Any withdrawals from the accounts that have been made since November 2008 were made in the usual and ordinary course of business of the Episcopal Diocese of Fort Worth and were taken from additional contributions to and/or earnings of these accounts since November 2008.

“In addition, 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 of the Episcopal Diocese of Fort Worth and/or its parishes and missions since November 2008. Any record reflecting any sale, transfer

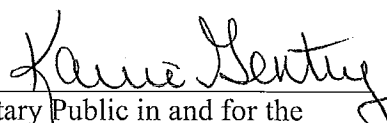
or dissipation of any real or personal property owned by the Corporation of the Episcopal Diocese of Fort Worth or the Episcopal Diocese of Fort Worth has been produced for copying and inspection by counsel for the minority faction that has chosen to break away and dissociate themselves from the Episcopal Diocese of Fort Worth.

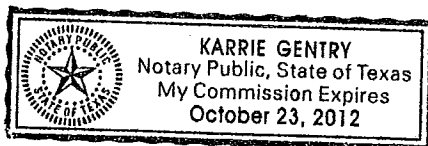
“The only substantial new encumbrance of any of the property of the Corporation of the Episcopal Diocese of Fort Worth since November 2008 is the lien granted by the Corporation of the Episcopal Diocese of Fort Worth to Jude Funding, Inc. A line of credit was established by the Episcopal Diocese of Fort Worth with Jude Funding, Inc. for a total amount of \$3.5 million; however, the current balance of the indebtedness to Jude Funding, Inc. is \$94,500.00. The loan was made for the purpose of supplementing contributions by individuals within the Episcopal Diocese of Fort Worth for the substantial legal fees and expenses that have been incurred and that have been made necessary due to the above-styled litigation instituted by the Protestant Episcopal Church in the United States of America and the local minority faction that elected to break away and dissociate themselves from the Episcopal Diocese of Fort Worth.

“Further, the Affiant sayeth not.”


Jane R. Parrott

SUBSCRIBED and SWORN to before me by Jane R. Parrott, on this 29th day of March, 2011, to certify which witness my hand and official seal.


Notary Public in and for the
State of Texas



Episcopal Diocese of Fort Worth - Frost Investments

	Balance NOV. 2008	Balance FEB. 2011
Endowment for the Episcopate Acct. WA396	477,698.16	622,687.36

To support the ministry of Bishop including his stipend and other expenses.

Diocesan Fund Acct WA39603	63,327.07	89,300.56
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At the establishment of the Diocese of Fort Worth, 35% of a fund (Dallas Diocese Episcopal Funds) was given to the Diocese of Fort Worth. The Board of Trustees approved a name change to Diocesan Fund on April 20, 1983. The Board also approved the Bishop to act as Trustee for this Fund.

Edward Disney Farmer Fund Acct WA 39602	545,737.85	678,224.74
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Established in 1930. Amended in September 1982 purposed to provided assistance to the aged and infirmed.

Anne S and John Brown Trust - Acct WA39605	250,492.95	301,384.74
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Purpose appointed to be charitable and educational. To provide solely for the education of persons preparing for the priesthood

Betty Ann Montgomery Farley Fund - Acct WA 39607	172,435.05	294,437.11
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*Bequeathed in 1994 to the Bishop of Diocese of Fort Worth and his successors in office to be devoted to charitable or religious enterprises as he may from time to time select. In 2005 St. Paul's Memorial Fund was merged with the Farley fund. In Oct 2010 proceeds from bequeathed by Eugenia Turner was added, The Fund was then renamed **Farley/Turner Fund**. Funds to be used for the benefit of the Diocese at the Bishop's Discretion*

Memorial Scholarship Fund - Acct WA39603	206,135.81	211,064.24
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Purposed to make monies available to the Bishop to assist seminarians and clergy in pursuit of Theological Education. Thomas Meek Scholarship Fund was merged with this fund.

Huerta Fund - Certificate of Deposit (12 mo. Maturity in Feb.)	22,151.11	23,208.09
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Established in 1995 by Rev. Efrain Huerta. The income/interest to be used to aid in housing expenses for Vicar of Iglesias San Juan Apostol.