S182407

IN THE SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE
CASE NO. G042454

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

- "*[W]hen* defendants *disaffiliated from the Episcopal Church, the local church property reverted to the general church.*" (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 493, emphasis added.)
- "*When it disaffiliated from the general church, the local church did not have the right to take the church property with it.*" (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 473, emphasis added.)

It is unimaginable what more this Court might have said, or said differently, to make any clearer to lower courts and the parties that the issue of property ownership has been decided—the disputed church property belongs to the Diocese of Los Angeles ("Diocese") and The Episcopal Church (collectively, the "Church"). End of story. Indeed, the Court reiterated its core holding on property ownership in response to defendants' earlier petition for

rehearing which asked the Court to clarify whether the property ownership question remained open for further litigation.

Despite the Court's holding, upon remand to the superior court, defendants, who now have occupied property that does not belong to them for nearly six years, continued aggressively to contest ownership, contending a 1991 letter[1] (previously considered and rejected by this Court) somehow demonstrated the Church had abandoned its rights to the property. The superior court agreed with defendants and denied the Church's motion for judgment on the property ownership question. The Church then sought a writ of mandate in the Court of Appeal.

Having analyzed this Court's opinion, the Court of Appeal granted the writ petition directing the superior court to enter judgment on property ownership. In doing so, the Court of Appeal observed:

- "[T]he high court did conclusively 'decide' who *now* owns the property." (Typed opn., 2, original emphasis.)

- "This is not a case where we must peer through a dark glass. The Supreme Court used clear, unequivocal language in its opinion, including the post-modification version of it." (Typed opn., 3.)

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[1] Defendants have cited to no other facts (either in their rehearing petition before this Court or in the pending writ proceedings) in support of their claim that the Court's determination of the property ownership question was erroneous.

- The Supreme Court had stated "the local church property reverted" to the Church (*Episcopal Church Cases*, 45 Cal.4th at p. 493)." (Typed opn., 2.) The Court of Appeal commented, "'[r]everted' is a past tense, already-happened, done-deal sort of word." (*Ibid.*)

This petition for review from an unpublished Court of Appeal opinion seeks relitigation of issues long since decided, and now marks the *second* occasion defendants have sought to alter this Court's determination on property ownership. Where this Court has stated unequivocally the disputed property belongs to the Church, further litigation on this issue must close. If, as a general matter, lower courts and parties were not bound by the unqualified decisions of this Court, judicial supremacy would be rendered meaningless and litigants, like defendants here, would be encouraged to continue to press specious claims despite the high Court's pronouncements. Further inappropriate trial court proceedings will needlessly increase litigation costs and not alter the result. The time has come, indeed passed, to terminate this property dispute with finality once again—just as the Court did in *Episcopal Church Cases*.

LEGAL DISCUSSION

THIS COURT DECIDED THE ISSUE OF PROPERTY OWNERSHIP WITH FINALITY.

A. The Court's opinion makes clear plaintiffs are entitled to judgment and return of their property.

In its February 2009 opinion (after modification), the Court, with clarity and certainty, held that plaintiffs are entitled to the church property in question. By way of example:

- "We granted review to decide whether this action is subject to the special motion to strike under Code of Civil Procedure section 425.16 [the anti-SLAPP provision] *and to address the merits of the church property dispute.*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 476, emphasis added.)
- Heading: "B. *Resolving the Dispute over the Church Property.*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 478.)
- "We will also address this question [of the dispute over ownership of the local church], which the parties as well as various amici curiae have *fully briefed.*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 478, emphasis added.)
- Heading "2. *Resolving the Dispute of This Case.*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 485.)

- "*The question before us* is, which prevails—the fact that St. James Parish holds record title to the property, or the facts that it is bound by the constitution and canons of the Episcopal Church and the canons impress a trust in favor of the general church? In deciding this question, we are not entirely free from constitutional constraints." (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 486, emphasis added.)

- "[T]he Episcopal Church's adoption of Canon I.7.4 . . . strongly supports the conclusion that, once *defendants left the general church, the property reverted to the general church.*" (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 487, emphasis added.)

- "Applying the neutral principles of law approach, we *conclude*, on this record, *that the general church, not the local church, owns the property in question.*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 473, emphases added.)

- "So it would appear that [Corporations Code section 9142] also compels the *conclusion* that *the general church owns the property now that defendants have left the general church.*" (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 489, emphasis added.)

- "In short, St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments." (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 489.)

- "In this case, those documents show that the local church agreed and intended to be part of a larger entity and to be bound by the rules and governing documents of that greater entity." (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 493.)

These passages demonstrate the Court's determination of property ownership is not limited to a stray remark or theoretical aside, but embedded throughout the opinion.

Similarly, the concurring/dissenting opinion also recognized the property ownership issue had been decided: "I agree with the majority that *the Protestant Episcopal Church* in the United States of America (Episcopal Church) *owns the property . . . .*" (*Episcopal Church Cases, supra,* 45 Cal.4th at p. 493 (conc. & dis. opn. of Kennard, J.), emphasis added.)

The Court of Appeal thus correctly noted this Court's conclusion on property ownership was framed both in terms of *current ownership* and *present terms*. (Typed opn. 7-8.) This means litigation of property ownership is over—nothing else on this issue remains open.[2]

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[2] Defendants contend plaintiffs took an inconsistent position regarding the finality of *Episcopal Church Cases* in the United States Supreme Court. (PFR 9.) Not so. In opposing the petition, plaintiffs accurately asserted that they were entitled to judgment in light of this Court's opinion, although defendants were nevertheless continuing to litigate the matter. (Return of Real Parties in Interest (RPR), exh. 30, p. 1277, fn. 3.)

B. Although the Court granted review in *Episcopal Church Cases* to establish the legal framework for applying the neutral principles approach, it did not stop there; instead, it proceeded to analyze the factual record and rule definitively on who owned the property.

In *Episcopal Church Cases*, the Court held that secular courts called on to resolve church property disputes should apply neutral principles of law to the extent the court can resolve the dispute without reference to church doctrine. (*Episcopal Church Cases*, 45 Cal.4th at p. 485.) The court further articulated a framework for applying neutral principles in church property disputes: "The court should consider sources such as [i] the *deeds to the property* in dispute, [ii] the local church's *articles of incorporation,* [iii] the *general church's constitution, canons, and rules*, and [iv] *relevant statutes*, including statutes specifically concerning religious property, such as Corporations Code section 9142." (*Ibid.*, emphases added.)

After declaring California courts should apply neutral principles rather than the "principle of government" approach employed by the Court of Appeal, and establishing the four-factor evidentiary test to analyze the neutral principles, the Court could simply have remanded the case for application of this legal standard. In that event, the Court would have had no cause to further consider the factual record. That is not what happened. Instead, the Court devoted another 10 pages to a detailed review and analysis of the specific facts, followed by the application of the

neutral principles test to those very facts. In doing so, it concluded the local church property "reverted to the general church" when defendants disaffiliated. (*Episcopal Church Cases*, 45 Cal.4th at p. 493.)[3]

C. The Court reached the merits of property ownership because it had the benefit of an ample factual record.

The Court reached the merits of property ownership because it determined the record adequate for a dispositive determination. Using the extensive factual record developed in the superior court, the Court identified and examined documentary evidence it deemed sufficient for its analysis of each of the four neutral principles factors:

- *Deeds to the property.* The record contained, and the Court reviewed, a *history* of the recorded deeds to the disputed property. (*Episcopal Church Cases*, 45 Cal.4th at p. 474.)
- *Articles of incorporation.* The record contained, and the Court reviewed, the progression of the local church's articles of

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[3] Citing the South Carolina Supreme Court's decision in *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina* (S.C. 2009) 685 S.E.2d 163, defendants assert the court should revisit its decision in *Episcopal Church Cases*. (PFR 25-26.) *All Saints* contains very little legal analysis. It makes no reference to any of the seven state high courts (including this Court) that have ruled uniformly in favor of the Church over the past 30 years. Moreover, the decision certainly has nothing to say concerning the dispositive effect of California Corporations Code section 9142.

incorporation from 1949 to the present. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 474.)

- *The general church's constitution, canons, and rules.* The record contained, and the Court reviewed, the Church Constitutions and Canons from 1868 to the present. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 474-475 ["The record shows, and no one disputes, that the Episcopal Church first adopted [the property Canons] in 1868" and added the current trust provision "in 1979 when it amended Canon I.7"].)

- *Relevant statutes.* The Court engaged in an extensive analysis of Corporations Code section 9142. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 488-489.)

This undisputed documentary evidence in the record was complete as to each element of the neutral principles framework and was left uncontested by defendants. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 493 ["The only intent a secular court can effectively discern is that expressed in legally cognizable documents"].)

Given the undisputed nature of the facts relevant to each factor identified in *Episcopal Church Cases*, the record contained everything necessary for the Court's dispositive determination. It held that a trust created at the highest level of a hierarchical religious denomination, as a matter of law, cannot be revoked by action taken at the local church level. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 491 ["The language of section 9142, subdivision (d), requires any revocation of that trust to exist in the document that created it"].) The evidence in the record showed the

Church's Canons had established a trust which had never been amended to revoke it. (*Id.* at pp. 485-486.) As a result, the Court did not leave open any possibility there might be other evidence which might change its conclusion.

Furthermore, defendants simply cannot overcome the fact that "St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments." (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 489.) This commitment is conclusively evidenced by St. James' articles of incorporation filed with the Secretary of State—evidence submitted by defendants. (PWM, exh. 18, p. 292.) Nor can defendants deny that "[the] greater church's governing instruments . . . make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church." (*Episcopal Church Cases*, at pp. 489; see also *id.* at p. 492.) These facts more than amply support this Court's conclusion on the merits. What remains to be reviewed? Nothing.

Despite the mature factual record and briefing by the parties, defendants nevertheless assert the Court exceeded its authority by reaching the merits and concluding the Church owns the property. (RPR 48-49.) This Court, of course, has absolute latitude to choose the issues it determines, and "is empowered to decide issues necessary for the proper resolution of the case before it, whether or

not raised in the courts below." (*Broughton v. CIGNA Healthplans* (1999) 21 Cal.4th 1066, 1078, fn. 4.)[4]

D. The Court did not retreat from its dispositive determination in response to the petition for rehearing despite defendants' reliance on the 1991 "waiver" letter.

Defendants contend the Court's decision should not be considered final on the issue of property ownership because they did not have an opportunity to litigate the effect of a 1991 "waiver" letter. They again are mistaken. The 1991 letter was asserted by defendants both in the trial court in 2005 and included in the appellate record. (PWM, exhs. 17, 18, pp. 286, 294-295, 478.) Indeed, defendants made the 1991 letter the *very centerpiece* of their petition for rehearing, expressly arguing it constitutes "a written *waiver* confirming that the property of St. James on 32nd Street in Newport Beach was 'not held in trust for the Diocese of Los Angeles

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[4] "We must remember that the Supreme Court can decide any issue it pleases that is 'fairly included' in the briefing. (*People v. Alice* (2007) 41 Cal.4th 668, 677 ['Rule 8.516(b)(1) of the California Rules of Court provides that, without permitting the parties to submit supplemental briefs, "[t]he Supreme Court may decide any issues that are raised or fairly included in the petition [for review] or answer."']). " (Typed opn. 3.) Furthermore, this Court has rejected defendants' argument that the law of the case doctrine does not apply when an appellate court reviews a judgment flowing from a demurrer or other preliminary motion. (See, e.g., *Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 168-170.)

or the Corporation Sole.'" (PWM, exh. 4, p. 63, original emphasis.)[5] Based on this argument, defendants implored the Court to modify its opinion to make clear they were free to re-litigate all of the facts upon remand to the trial court. (PWM, exh. 5, pp. 63-65.) In doing so, defendants pointed to *no other evidence* they wished to present other than the 1991 letter. (See *ibid.*) Plaintiffs responded by emphasizing the letter and waiver arguments already were included in the appellate record and "there is simply nothing left to litigate." (PWM, exh. 5, pp. 82-83.)

This Court's decision on the rehearing petition rejected defendants' request and affirmed plaintiffs' position. (PWM, exhs. 7, 8, pp. 170, 171.) The Court did not limit its broad and conclusive language that the Church owned the property or permit the defendants to re-litigate the 1991 letter on remand. (See PWM, exh. 8, p. 171.) To the contrary, it emphasized the Church, not defendants, owned the property based "'on this record,'" which included the 1991 letter. (*Ibid.*) The conclusion follows as a matter of course from the Court's holding, under Corporations Code section 9142, any revocation of the trust must appear in the same instrument creating the trust—i.e., the Church Canons. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 491.) The 1991 letter does

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[5] Defendants made a strategic decision not to argue the 1991 letter (which demonstrates defendants knew about the Church's property Canons) in their earlier appellate briefing because it would have directly contradicted their argument that they were unaware of such Canons. (See PWM, exh. 32, p. 1047.) Having made a conscious decision to forego arguing the 1991 letter in the first round of appellate briefing, their litigation gamesmanship should not be rewarded with a second or third bite at the apple.

not, as a matter of law, demonstrate the Church Canons were amended to revoke the trust.

The Court of Appeal properly rejected defendants' argument that this Court had not intended to foreclose further litigation based on facts contained in the appellate record, which included the 1991 letter. "[T]he Supreme Court could easily, had it decided to, have qualified its 'reverted' and 'now owns' language with a small footnote to the effect that there might *still* be arguments as to the claim of the local church that had not yet been considered and so 'reverted' and 'now owns' was to be understood in some metaphysical, advisory sense. It didn't do any such thing, and the one qualification of adding 'on this record,' as we have seen, actually reinforced the finality of the determination of ownership." (Typed opn., 14, original emphasis.)[6]

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[6] In their petition for rehearing, defendants asked the Court to modify its decision "to make clear that...the *factual* merits of [plaintiffs'] claim to own [parish] property remain to be litigated." (PWM, exh. 4, p. 65.) As one example, they requested the Court modify the opinion to say "'the local church *may not have had the right* to take the church property'" in place of the Court's dispositive language "the local church *did not have the right* to take the church property." (PWM, exh. 4, pp. 64-65, emphasis added.) The Court did not accept any of defendants' proposed modifications, again confirming the record was sufficient to support its conclusions. (See PWM, exhs. 7, 8, pp. 170, 171.)

E. Defendants have received more than sufficient due process, and are precluded from relitigating every issue previously decided by this Court.

Defendants repeatedly complain they must have their "day in court." (RPR, 52; see RPR 49.) Yet, they have been afforded more than ample opportunity to present and test their arguments. Specifically, they already have had some 2,088 days within which to litigate their claims, and have pursued their theories in four different courts—twice in the superior court, twice in the Court of Appeal, three times before this Court, and once in the United States Supreme Court. Enough is enough.

Prior to issuance of the writ, defendants signaled their intent to relitigate every issue decided by *Episcopal Church Cases*. They wished to pursue a full panoply of "discovery, depositions, motions," and ultimately trial. (PWM, exh. 44, p. 1629.) Among other issues, they sought to challenge whether the Episcopal Church's trust canon was "properly passed" and whether the Episcopal Church is a hierarchical church or "superior religious body" for purposes of Corporations Code section 9142 (RPR 16-17, 51), matters addressed and decided by this Court based on the considerable record before it. (*Episcopal Church Cases*, *supra*, 45 Cal.4th at pp. 488-489, 492.)

Defendants cannot successfully dispute the dispositive evidence, and have been unable to do so in nearly six years of litigation. Their protestations notwithstanding, they also had an opportunity to present any relevant affirmative defenses in their answer. (PWM, exhs. 10, 35-37, 42.) In response to the demurrer and motion for judgment on the pleadings, defendants had free rein

to show how any allegation in their answer or affirmative defenses might constitute materially different evidence sufficient to avoid the disposition in *Episcopal Church Cases*. They failed, and did not allege any new material facts that could possibly alter the outcome under the framework established by this Court. Judgment on the pleadings was not only procedurally proper, but mandated as a matter of law.

F. This Court's determination in *Episcopal Church Cases* does not support further review.

Defendants suggest this Court's specific mandate in *Episcopal Church Cases*—"'We affirm the judgment of the Court of Appeal'"—must be read together with the Court of Appeal's mandate which recognized "'[f]urther proceedings shall be consistent with this opinion.'" (PFR 7.)

On the issue of property ownership, both the Court of Appeal and this Court conclusively held the property belongs to the Church. (See typed opn., 9 ["And it was the judgment of the Court of Appeal, stated in one place in the present tense that 'the higher church authorities, not defendants, own the disputed property' and in another place in the past tense that the property has already 'reverted to the general church,' which was the judgment of the Supreme Court: 'We affirm the judgment of the Court of Appeal, which reached the same conclusions, although not always for the same reasons.' (*Episcopal Church Cases I, supra*, 45 Cal.4th at 473)"].)

Even though the Court's opinion fully and finally resolved the issue of property ownership in the Church's favor, as reflected in the Court of Appeal's mandate, "further proceedings" on other issues were still contemplated. For example, plaintiffs' complaint asserts additional claims for damages and an accounting. These issues were left to be resolved in "[f]urther proceedings [] consistent with [the Court's] opinion."

CONCLUSION

For all of these reasons, Defendants fail to meet the standard for review. Further, review is unwarranted because the unusual posture of this protracted proceeding is unlikely to occur again and, as the Court of Appeal's opinion is left unpublished, it does not create any precedent that merits this Court's review of the same issue for a third time. The petition for review must be denied.

May 24, 2010

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1)

The text of this petition consists of 3,587 words as counted by the Microsoft Word version 2007 word processing program used to generate the petition.

Dated: May 24, 2010

Jeremy B. Rosen

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

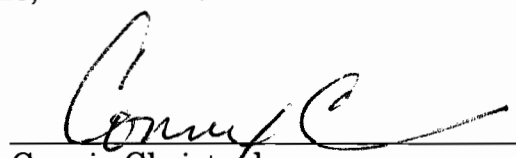
On May 24, 2010, I served true copies of the following document(s) described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2010, at Encino, California.



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