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SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

Supreme Court Copy

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

ANSWER BRIEF ON THE MERITS

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THE EPISCOPAL CHURCH

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IN THE SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

ANSWER BRIEF ON THE MERITS

INTRODUCTION

This case returns to the Supreme Court yet again, this time to review whether the Court of Appeal properly directed entry of judgment on the pleadings in plaintiffs' favor. In its first opinion, *Episcopal Church Cases* (2009) 45 Cal.4th 467 (*Episcopal Church Cases*), this Court acted within its authority, based on uncontroverted material evidence in the record, to conclude plaintiffs own the sacred property at issue. Upon remand, plaintiffs sought judgment on the pleadings as to the issue of property ownership. The trial court denied the motion, following which the Court of Appeal issued a writ directing that plaintiffs are entitled to judgment.

Defendants offer no facts or argument that could possibly change an inevitable outcome, but complain that judgment on the pleadings is not a proper remedy. They are mistaken. It is beyond dispute Code of Civil Procedure section 438 grants authority to trial and appellate courts to terminate litigation, any time after a case is

at-issue, when the pleadings and judicially-noticed facts establish a party is entitled to judgment as a matter of law. The only question, then, is whether the facts and circumstances of this case support judgment on the pleadings within the established framework of section 438. They unquestionably do.

Plaintiffs satisfy the standard of review for judgment on the pleadings. Defendants have conceded critical facts that are subject to judicial notice: i) from inception of the parish, they promised to follow Church Canons; ii) St. James' articles incorporated Church Canons by reference; and iii) in 1979, the Church adopted Canon I.7.4 to establish a trust in local church property. In *Episcopal Church Cases*, this Court established the applicable law of the case, again subject to judicial notice for purposes of section 438, that Canon I.7.4 creates an express trust under Corporations Code section 9142, and that trust can be modified *only* if the canon is amended. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 488-490.)

Based on the decisive law of the case in *Episcopal Church Cases* and undisputed facts subject to judicial notice, plaintiffs rightly invoked Code of Civil Procedure section 438 to bring an end to further litigation on this issue. Contrary to defendants' parade of purported due process horrors, judgment on the pleadings is neither "unprecedented" nor "revolutionary," but rather a straight-

forward application of the procedural flexibility afforded by section 438 under the unique circumstances of this case.¹

Furthermore, the Court of Appeal's decision can also be affirmed for two independent reasons. First, the undisputed facts here are identical to those in two recent cases where judgment was ordered in favor of the Church and Diocese. (See *Huber v. Jackson* (2009) 175 Cal.App.4th 663, 683 (*Huber*); *New v. Kroeger* (2008) 167 Cal.App.4th 800, 822 (*New*)). Second, because there are no facts that could result in defendants prevailing in this dispute, they have failed to meet their burden of showing a "miscarriage of justice" or prejudice justifying reversal. (See Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.)

SUMMARY OF ARGUMENT

A. In its Prior Opinion, this Court Sent a Repeated and Unambiguous Message the Episcopal Church and Diocese Own the Property.

In *Episcopal Church Cases*, this Court left no doubt over how this property dispute should be resolved. As explained by the Court of Appeal majority: "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

¹ While the Court of Appeal's decision brings finality to the property dispute, plaintiffs' claims for damages still remain to be determined in the superior court.

opn., 3.) “[T]he high court did conclusively ‘decide’ who *now* owns the property”—“[its] opinion speaks for itself” (Typed opn., 2, 4.):

- “*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, emphasis added.)
- “[W]hen defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 493, emphasis 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.)
- “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.)

With these frequent and decisive pronouncements, this Court conveyed an unmistakable message to the litigants, lower courts, and the general public. Indeed, Justice Kennard (in her concurring and dissenting opinion), courts, commentators, and even defendants (in their petition for writ of certiorari) all have read this Court’s opinion as a final determination on property ownership. (See *Episcopal Church Cases, supra*, 45 Cal.4th at p. 493 [“I agree with the majority that the [Episcopal Church] owns the property”];

Huber, supra, 175 Cal.App.4th at p. 672; *Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 435-436 (*Iglesia Evangelica*); see also Note: *Church Property and Institutional Free Exercise: The Constitutionality of Virginia Code Section 57-9* (2009) 95 Va. L.Rev. 1841, 1876, fn. 190 (hereafter *Church Property and Institutional Free Exercise*); RPR, exh. 29, pp. 1221-1222.)

B. This Court Did Not Confine Its Decision to the Demurrer Context—It Appropriately Exercised Its Authority to Reach the Merits.

Defendants do not refute the plain meaning of this Court’s carefully selected words on the issue of property ownership, but contend that since the opinion merely overruled a demurrer, judgment is premature. But defendants miss a critical point.

In affirming the Court of Appeal’s “judgment,” this Court explained it read the Court of Appeal’s decision as *dispositive* on the issue of property ownership. It noted specifically the Court of Appeal “ruled that . . . the higher church authorities, not defendants, own the disputed property.” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 476, emphasis added.) This Court continued, “For these reasons, we agree with the Court of Appeal’s conclusion (although not with all of its reasoning) that, on this record, when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.” (*Id.* at p. 493, emphasis added.)

Moreover, in its lengthy discussion on the merits, this Court does not once reference the demurrer or state of the pleadings below. To the contrary, it applies the neutral principles approach to an extensive factual record—this Court did not confine itself to the allegations in the Episcopal Church’s complaint-in-intervention as would be the case in a demurrer context. In fact, rather than rotely assuming the truth of the allegations in the complaint, this Court accepts the truth of *defendants’ factual allegations* before concluding, based on the undisputed material facts in the record, plaintiffs own the property. (See *Episcopal Church Cases, supra*, 45 Cal.4th at pp. 492-493 [“We may assume that St. James Parish’s members did what defendants say they did for all this time”].)

C. As Demonstrated by this Court’s Ruling on Defendants’ Petition for Rehearing, There is Nothing Further to Litigate Regarding Property Ownership.

The fallacy of defendants’ position—that this Court did nothing more than find the complaint stated sufficient facts to survive the demurrer—is underscored by this Court’s response to defendants’ petition for rehearing or modification. In their petition, defendants asked this Court to narrow the scope of its opinion by expressly stating, “sufficient issues exist to defeat demurrer” and by “mak[ing] clear that [defendants] are free to raise these and any other applicable affirmative defenses on remand, and that the *factual* merits of [plaintiffs’] claim to own St. James Church’s

property remain to be litigated.” (PWM, exh. 4, p. 64-65.)² This Court’s modified opinion did not include defendants’ proffered language or anything remotely similar, nor did it retreat from its conclusive determination on property ownership. This Court remained conspicuously silent regarding defendants’ requested clarification that they remained free to relitigate the issue of property ownership on remand.

D. Enough is Enough.

Based upon the law of the case established in *Episcopal Church Cases* and the extensive factual record developed in the course of the anti-SLAPP proceedings, judgment on the pleadings should have been entered on the issue of property ownership upon remand from *Episcopal Church Cases*.

After more than six years of litigation, during which defendants have retained possession of plaintiffs’ sacred property, their plea for yet more “due process” rings hollow. They cannot successfully dispute the dispositive evidence contained in the record, nor can they point to any additional evidence or arguments that could possibly alter the conclusion that plaintiffs are entitled to the property. Their protestations notwithstanding, defendants have had more than a full opportunity to present their defenses.

In response to the motion for judgment on the pleadings, defendants had free rein to demonstrate how any allegation in their

² “PWM, exh. ____” refers to exhibits submitted by plaintiffs in the Court of Appeal in support of their petition for writ of mandate.

answer or affirmative defenses might constitute materially different evidence sufficient to avoid the determination reached in *Episcopal Church Cases*. They failed, however, to allege any new material facts that could possibly change the outcome under the framework established by this Court. Thus, even if this Court had left the door open for defendants to engage in further litigation—and it did not—there is absolutely no conceivable basis for them to alter the determination on property ownership. Under these circumstances, judgment on the pleadings was not only procedurally proper, but mandated as a matter of law.

In any event, the Court of Appeal's decision returning the property to plaintiffs does not "result[] in a miscarriage of justice" that would justify reversal because defendants cannot show any remote likelihood they would be able to prevail even if allowed to proceed further. (Cal. Const., art. VI, § 13; see also Code Civ. Proc., § 475.) The conclusion reached by the Court of Appeal must be affirmed.

STATEMENT OF FACTS

The following facts, asserted in the complaint, are uncontroverted based on admissions made by defendants in the record. These very facts, therefore, are subject to judicial notice for purposes of a motion for judgment on the pleadings.

1. St. James became a parish of the Episcopal Church in 1947. (RPR, exh. 9, p. 200.)³

2. As a condition of obtaining parish status, and prior to acquiring the property, defendants “promise[d] to follow [the Church’s Canons].” (RPR, exh. 12, p. 380.)

3. In 1949, St. James prepared articles of incorporation. These articles incorporate by reference the Church’s Constitution and Canons. (RPR, exh. 12, pp. 403-404.)

4. In 1979, the Episcopal Church adopted Canon I.7.4. It states: “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.” (RPR, exh. 12, p. 405.)⁴ At no time prior to these proceedings did defendants dispute the creation, validity or plain meaning of the canon.

5. Subdivisions (c) and (d) of Corporations Code section 9142 were enacted in 1982. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 488.)

6. In July 2004, defendants “resolved to end all relations with the Diocese and the Episcopal Church.” (RPR, exh. 12, p. 383.)

³ “RPR, exh. ____” refers to exhibits submitted by real parties/defendants in support of their return.

⁴ As this Court noted in *Episcopal Church Cases*, Canon I.7.4 is consistent with earlier enacted Canons imposing substantial limitations on a local parish’s use of church property. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 487.)

7. Upon learning of defendants' action, the Diocese appointed a new priest-in-charge of the parish. (RPR, exh. 12, p. 383.)

8. The Diocese declared the departing members of the vestry were no longer authorized to act on behalf of the parish. (RPR, exh. 12, p. 384.) Defendants refused to relinquish control of parish property.

These core facts remain undisputed and are more than sufficient, under the neutral principles test, to support judgment in plaintiffs' favor on property ownership.

PROCEDURAL BACKGROUND

Upon remand, defendants answered and the case was fully at-issue. (PWM, exh. 10.) The Episcopal Church then filed its motion for judgment on the pleadings, and the Diocese joined. (PWM, exhs. 12, 13.) It argued *Episcopal Church Cases* established the law of the case and, combined with undisputed material facts subject to judicial notice, entitled it to judgment on the pleadings under Code of Civil Procedure section 438. (*Ibid.*) Defendants opposed the motion, asserting this Court had not issued a "decisive [] rul[ing]" on property ownership and it would be improper for the lower court to consider extrinsic evidence. (PWM, exh. 42, p. 1605.)

The superior court denied the motion. (PWM, exh. 3.) Plaintiffs petitioned the Court of Appeal for writ of mandate. The Court of Appeal issued the writ directing the superior court to enter judgment on the pleadings. Defendants appealed, and this Court

granted review on the limited issue of whether the Court of Appeal properly directed entry of judgment on the pleadings under *Episcopal Church Cases*.

LEGAL DISCUSSION

I. THE COURT OF APPEAL WAS CORRECT IN FINDING PLAINTIFFS ARE ENTITLED TO THE PROPERTY.

A. *Episcopal Church Cases* established the decisive law of the case on property ownership.

1. This Court made clear plaintiffs are entitled to the property.

In its February 2009 opinion (after modification), this Court, with unwavering clarity, held that plaintiffs are entitled to the church property. 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.)
- “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, 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.)
- “Subdivision (c) [of Corporations Code section 9142] permits the governing instruments of the general church to create an express trust in church property, which Canon I.7.4 does. Subdivision (d) permits changing a trust, but only if done in the instrument that *created* it. Canon I.7.4 has not been amended.” (*Episcopal Church Cases*, 45 Cal.4th at pp. 488-489, original emphasis.)
- “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 this Court’s determination of property ownership is not limited to a stray remark or theoretical aside, but rather embedded throughout the opinion.

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 can have only one meaning—litigation of property ownership is over and nothing further remains on that issue.

2. This Court’s ruling has been perceived widely as a final determination on property ownership.

Justice Kennard, in her concurring and dissenting opinion, summarized the majority’s ruling in direct terms. “Applying California’s statute [Corporations Code section 9142] in resolving church property disputes, *the majority concludes that the Episcopal*

Church now is the owner of the St. James Parish property in question.” (*Episcopal Church Cases*, *supra*, 45 Cal.4th at p. 495, emphasis added.) “I agree with the majority that the Protestant Episcopal Church in the United States of America (Episcopal Church) *owns the property* to which St. James Parish in Newport Beach (St. James Parish) has held title since 1950. This conclusion is compelled by Corporations Code section 9142, subdivision (c)(2).” (*Id.* at p. 493, emphasis added.) As observed by the Court of Appeal, the “majority . . . did nothing to try to disabuse Justice Kennard of her reading of the majority opinion.” (Typed opn., 14-15.)

Similarly, lower courts faced with church property disputes have had no trouble concluding this Court meant what it said when it declared the general church, not the local church, owns the property in question. (*Huber*, *supra*, 175 Cal.App.4th at p. 672 [“*[Episcopal Church Cases]* resolves the property dispute here in favor of the Episcopal Church and the diocese. The court held . . . *a local parish held property in trust for the national church* under facts substantively the same as those here”]; *Iglesia Evangelica*, *supra*, 173 Cal.App.4th at pp. 435-436 [“*[Episcopal Church Cases]* held that *under the governing documents of the local church and the national church, all church property reverted to the national church upon disaffiliation*”].) This Court allowed both decisions to stand without review or correction. (See *Huber*, *supra*, 175 Cal.App.4th 663, review denied Sept. 17, 2009, S175401; *Iglesia Evangelica*, *supra*, 173 Cal.App.4th 420, review denied July 8, 2009, S173315.)

Even defendants recognized the dispositive impact of this Court’s ruling. In their petition for writ of certiorari in the United

States Supreme Court, they conceded *Episcopal Church Cases* had ruled on the issue of property ownership. They stated, “the California Supreme Court interpreted Section 9142(c) of the California Corporations Code to permit churches claiming to be hierarchical to unilaterally create a trust interest for their own benefit in property in which legal title is held by an affiliated local church corporation, *thus giving dispositive and retroactive weight to the disputed 1979 Canon* while disregarding other neutral principles including deeds and property statutes.” (RPR, exh. 29, pp. 1221-1222, emphasis added.) They further acknowledged *Episcopal Church Cases* “necessarily accepted the Episcopal Church’s doctrinal contention that it was a purely hierarchical church and thus ‘superior’ or ‘general’ under Section 9142(c),” and “*thereby effectively resolved this church property dispute.*” (RPR, exh. 29, pp. 1241, 1243, emphasis added.) In the same petition, defendants asserted this Court had erred by “giving *dispositive weight* to a contested Church Canon.” (RPR, ex. 29, p. 1239, emphasis added, boldface omitted.)

Episcopal Church Cases also has received national attention, with legal commentators pointing out this Court decided the issue of property ownership. (See, e.g., *Church Property and Institutional Free Exercise, supra*, 95 Va. L. Rev. at p. 1876, fn. 190 [*Episcopal Church Cases* “held that . . . the canons impress a trust in favor of the general church”].)

There can be no reasonable debate on this issue. As defendants admit, this Court gave *dispositive* weight to Canon I.7.4 and *resolved* the property ownership issue with finality.⁵

B. This Court granted review in *Episcopal Church Cases* to establish the neutral principles test, but then proceeded to analyze the extensive factual record and determine who owned the property.

In *Episcopal Church Cases*, this 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, supra*, 45 Cal.4th at p. 485.) This Court further articulated a framework for applying neutral principles: “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.)

⁵ Defendants contend plaintiffs took an inconsistent position regarding the finality of *Episcopal Church Cases* in the United States Supreme Court. (OBOM 12.) They are in error. In opposing the petition, plaintiffs accurately asserted they were entitled to judgment in light of this Court’s opinion, however defendants nevertheless were seeking to litigate the matter further. (RPR, exh. 30, p. 1277, fn. 3.)

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 neutral principles, this Court could simply have remanded the case for application of this legal standard. In that event, this Court would have had no cause to further consider the factual record. However, that did not happen. Instead, this Court devoted another 10 pages to a detailed review and analysis of the specific facts in the record before it, followed by 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, supra*, 45 Cal.4th at p. 493.)

C. This Court acted well within its purview to reach the merits of property ownership because it had the benefit of an ample factual record containing uncontested material facts and full briefing by the parties.

1. This Court has wide latitude to choose the issues it addresses.

This Court, of course, has absolute discretion to select the issues it wishes to determine, 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.) “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.) Here, as this Court observed, “the parties as well as various amici curiae [had] fully briefed [the issue of property ownership].” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 478.)

2. The undisputed evidence provided a complete record for application of the neutral principles test.

This Court reached the merits of property ownership because it determined the record sufficiently complete for a dispositive determination—never suggesting or even implying any further factual development was necessary. Using the extensive factual record developed in the trial court, this Court identified and examined documentary evidence it deemed sufficient for its analysis of each of the four neutral principles factors.

In every instance, as shown below, defendants did not dispute the evidence cited by this Court.

- *Deeds to the property.* The record contained, and this Court reviewed, a history of the recorded deeds for the disputed

property. (See *Episcopal Church Cases, supra*, 45 Cal.4th at p. 474.)

➤ Defendants conceded the deeds in the record were undisputed and a proper subject for judicial notice. (RPR, exh. 12, p. 403.)

- *Articles of incorporation.* The record contained, and this Court reviewed, the progression of the local church's articles from 1949 to the present. (See *Episcopal Church Cases, supra*, 45 Cal.4th at p. 474.)

➤ Defendants submitted the articles as a proper subject for judicial notice, and acknowledged the Constitutions and Canons of the Church were incorporated by reference. (RPR, exh. 12, p. 404.)

- *The general Church's Constitution, Canons, and rules.* The record contained, and this Court reviewed, the Church Constitutions and Canons from 1868 to the present. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 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".])

➤ Defendants conceded "the national Episcopal Church enacted Canon I.7(4) (also known as the 'Dennis Canon'), which purports to declare a trust over all local church property: '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.” (RPR, exh. 12, p. 405.)

- *Relevant statutes.* This Court engaged in an extensive analysis of Corporations Code section 9142. (See *Episcopal Church Cases, supra*, 45 Cal.4th at pp. 488-489.) It soundly rejected defendants’ contention the statute is unconstitutional as applied here. (See *Id.* at p. 492.)

3. Based on its reading of Corporations Code section 9142, the uncontroverted evidence compelled this Court’s determination on property ownership.

This undisputed evidence in the record, along with the plain language of section 9142, amply supported this Court’s conclusion on property ownership. This Court ruled decisively that section 9142, subdivision (c) “permits the governing instruments of the general church to create an express trust in church property, which Canon I.7.4 does.” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 488.) Further, section 9142 “does not permit state interference in religious doctrine and leaves control of ecclesiastical policy and doctrine to the church.” (*Ibid.*)

This Court also made clear the trust created by Canon I.7.4, pursuant to section 9142, was established and remains in place despite defendants’ contention this result “would be unjust and contrary to the intent of the members.” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 492.) It explained courts in church property

disputes must restrict their analysis to the plain language of documentary evidence such as Canon I.7.4. (*Id.* at p. 493 [“The only intent a secular court can effectively discern is that expressed in legally cognizable documents. 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”].)

For purposes of applying section 9142, 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 provided by defendants. (PWM, exh. 18, p. 292.) Defendants also explicitly conceded they had “promise[d] to follow [the Church’s Canons]” in order to obtain parish status prior to acquiring the property. (RPR, exh. 12, p. 380.) 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, supra*, 45 Cal.4th at p. 489; see also *id.* at p. 492.) These admitted facts overwhelmingly support this Court’s conclusion on the merits.

Given the uncontroverted nature of the facts relevant to this Court’s application of section 9142, the record contained everything necessary for this Court’s final determination. It held that, under

the statute, 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 uncontested evidence in the record reflected that Church Canons had established a trust which had never been amended or revoked. (*Id.* at pp. 485-486, 489.) As a result, this Court did not leave open any possibility there might be other evidence which could affect its conclusion.

4. This Court did not limit its holding to the demurrer context.

In light of this Court’s application of the law to the facts, the argument made in the Court of Appeal’s dissenting opinion—that this Court did not intend to reach the merits of property ownership, but instead did nothing more than find the allegations of the Church’s complaint stated a cause of action for purposes of the demurrer (Typed opn., 5 [dis. opn. of Fybel, J.]—is not persuasive. In this Court’s lengthy discussion of the property dispute, it never once made reference to the “demurrer” or state of the pleadings below. Instead, it plainly and simply states plaintiffs now own the property.

D. This Court did not retreat from its dispositive determination in response to defendants' petition for rehearing despite their reliance on the 1991 "waiver" letter, nor did this Court leave open the ability for defendants to continue litigating other property-related issues.

Defendants primarily contend this 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 advanced by defendants both in the trial court in 2005 and included in the appellate record. (PWM, exh. 17, p. 286; exh. 18, pp. 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 or the Corporation Sole.'" (PWM, exh. 4, p. 63.) Based on this argument, they implored this Court to modify its opinion to make clear they were free to relitigate all of the facts upon remand to the trial court. (PWM, exh. 4, 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, exh. 7, p. 170; exh. 8, p. 171.) This Court did not dilute its broad and conclusive language that the Church owned the property or permit the defendants to relitigate the 1991 letter or any other issue relating to property ownership. (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.*)

As the Court of Appeal explained, "[t]he March 1991 letter that the local church now relies on to argue waiver was *itself* part of the 'record' before this court and the Supreme Court." (Typed opn., 5.) It is undisputed defendants filed a declaration and brief in support of their anti-SLAPP motion in the trial court, attaching the 1991 letter and *making the same waiver arguments* contained in their subsequent answer and cross-complaint. (Typed opn., 5-6.) When this Court determined the property belongs to plaintiffs based on "this record," the 1991 letter and related arguments were unquestionably included in that record. (Typed opn., 13-14.)

The Court of Appeal cogently rejected defendants' argument that this Court had not intended to foreclose any further litigation based on the 1991 letter or any other facts in the record. "[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, first emphasis in original, second emphasis added.)

E. The case was procedurally ripe for judgment on the pleadings on the issue of property ownership.

1. On remand, the record included the definitive law of the case and uncontroverted critical facts.

As the Court of Appeal determined, the record before the superior court, on remand from this Court, fully supported granting the Episcopal Church's motion for judgment on the pleadings. The superior court had before it:

- The law of the case from *Episcopal Church Cases*—" [W]e 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.)
- An extensive factual record that included undisputed documentary evidence relied on by the Court in *Episcopal Church Cases* to reach its decision on property ownership under the neutral principles test.
- Numerous admissions and concessions by defendants contained in record before this court.

Each of these was a proper subject for judicial notice.

2. Under Code of Civil Procedure section 438, both the law of the case and undisputed facts are subject to judicial notice.

Based on this record, the Court of Appeal correctly concluded plaintiffs had satisfied the standard of review for motions for judgment on the pleadings—“that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law.” (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) In reviewing a motion for judgment on the pleadings, a court “may consider matters that may be judicially noticed, including a party’s admissions or concessions which can not reasonably be controverted.” (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989-990 (*Pang*)). This Court need not simply accept the non-moving party’s “contentions, deductions, or conclusions of fact or law” and “must take judicial notice of this state’s decisional and statutory law.” (*Mack v. State Bar* (2001) 92 Cal.App.4th 957, 961.) “In determining whether the pleadings, together with matters that may be judicially noticed, entitle a party to judgment, a reviewing court can itself conduct the appropriate analysis and need not defer to the trial court.” (*Schabarum*, at p. 1216, emphasis added.) These standards are clearly satisfied here.

3. The law of the case, combined with the critical uncontroverted facts, mandated judgment on the pleadings.

The Court of Appeal took notice of the dispositive findings in *Episcopal Church Cases* as the law of the case. In a prior decision, this Court 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 (*Penziner*)). In *Penziner*, the trial court sustained defendant's demurrer, but the judgment was reversed on appeal. (*Id.* at p. 168.) In the course of reversing the judgment, the appellate court made an express ruling on the merits even though the case had never proceeded past the demurrer stage. (*Ibid.*) On remand, the "argument advanced by the defendant against the application of the doctrine of the law of the case . . . is that in the former appeal the court had before it only the allegations of the complaint [and not the document now relied upon by defendant]." (*Ibid.*)

The Supreme Court rejected this position, one identical to that taken by defendants here:

It is clearly established by the decisions in this state that when the precise question before the court has been decided in a former appeal in the same action and under substantially the same state of facts, the parties are stopped from again litigating this question in any subsequent proceeding either before the trial or

appellate courts. [Citations omitted.] . . . “Where upon an appeal, the Supreme Court, in deciding the appeal, states in its opinion a principle or rule necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal . . . and this, although in its subsequent consideration this court may be clearly of the opinion that the former decision is erroneous in that particular.”

(*Penziner, supra*, 10 Cal.2d at pp. 169, 170.)

Moreover, the superior court should have given due weight, as did the Court of Appeal, to the undisputed documentary evidence in the record, along with defendants’ admissions and concessions regarding the evidence. (See *Pang, supra*, 79 Cal.App.4th at pp. 989-990.) As shown above, the material facts concerning: i) defendants’ articles of incorporation; ii) the Church’s adoption of Canon I.7.4; and iii) the application of section 9142 cannot be controverted. The Court of Appeal’s determination as to property ownership should be affirmed.

F. Defendants have received more than sufficient due process, and are precluded from relitigating issues 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 2,225 days within which to litigate their claims, and have pursued their theories in four different courts—twice in the superior court (before two different judges), twice in the Court of Appeal, three times before this Court, and once in the United States Supreme Court.

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 Canon I.7.4 had been “properly passed,” some twenty-five years after its adoption, and whether the Episcopal Church is hierarchical or a “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. (See *Episcopal Church Cases*, *supra*, 45 Cal.4th at pp. 488-489, 492.)

Defendants cannot successfully dispute the critical evidence, and have been unable to do so during nearly six years of litigation. In response to the motion for judgment on the pleadings, they had free rein to demonstrate how any allegation in their answer or affirmative defenses might constitute materially different evidence sufficient to avoid the disposition in *Episcopal Church Cases*. They utterly failed, and did not allege any new facts that could possibly alter the outcome under the framework established by this Court. The handful of material facts sufficient to establish the property belongs to plaintiffs, as a matter of law, remain uncontroverted.

G. Even now, despite ample opportunity, defendants proffer no evidence that, even if accepted as true, could change this Court's conclusion regarding property ownership.

Defendants contend there remain but five "open factual issues" they should be allowed to litigate. (OBOM 43-46.) Each is addressed separately below. As we now explain, none could possibly change the outcome of the property dispute, and therefore present no legal impediment to entry of judgment on the issue of property ownership.

1. Whether the Diocese waived any beneficial trust interest based on the 1991 letter.

Defendants assert they should be allowed to litigate "the history, meaning and effect of a 1991 letter purporting to relinquish any claim to property located on 32nd Street in Newport Beach." (OBOM 44.) This argument fails because defendants made the same argument before the superior court and later in their petition for rehearing in *Episcopal Church Cases*, but this Court still held plaintiffs own the property. (See discussion *ante*, pp. 12-14.)⁶

⁶ In the Court of Appeal, defendants quoted at length from the deposition of Reverend MacPherson to suggest the record has changed since the California Supreme Court's opinion. (RPR 13-16.) This alleged "new evidence," however, does nothing more than authenticate the 1991 letter and recite language from the letter that already was considered by the Court. (See, e.g., RPR 13-15 [quoting
(continued...)]

In any event, defendants' waiver argument fails as a matter of law based on this Court's reading of Corporations Code section 9142, subdivision (d). (*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. [N]othing in section 9142 or the governing instruments of the Episcopal Church suggests that defendants may [revoke the trust] in this case"].) Thus, the alleged waiver letter has no legal effect—only an amendment to the Church Canons can revoke the trust, and defendants concede no such amendment has occurred.

2. Whether the Episcopal Church is a “superior religious body” or “general church” within the meaning of Corporations Code section 9142, subdivision (c).

Defendants assert “discovery may well prove” the Episcopal Church is not a “superior religious body” or “general church” for purposes of section 9142. (OBOM 44.) This argument also fails as a matter of law because the issue has been decided by this Court, two recent Court of Appeal decisions, and countless courts in other jurisdictions.

In *Episcopal Church Cases, supra*, 45 Cal.4th at p. 491, this Court held “the general church’s canons . . . created the trust” under

(...continued)

deposition testimony that simply quotes and paraphrases language from 1991 letter, and authenticates the signature on the letter].)

section 9142. This statement confirms the Episcopal Church is a “superior religious body” or “general church” under the statute and precludes further relitigation of the issue. (See also *Huber, supra*, 175 Cal.App.4th at p. 667 [“The Episcopal Church . . . is a hierarchical church comprised of 111 dioceses”]; *New, supra*, 167 Cal.App.4th at p. 808 [“The Episcopal Church is a hierarchical church with a three-tiered organizational structure”].)

Moreover, numerous decisions throughout the country uniformly have held the Episcopal Church is undisputedly hierarchical. (See e.g., *Dixon v. Edwards* (2001) 172 F.Supp.2d 702, 715 [“Courts have repeatedly and invariably recognized that the [Episcopal] Church is hierarchical. Indeed, there appears to be no case to the contrary and Defendants have noted none”]; *Parish of the Advent v. Protestant Episcopal Diocese* (1997) 426 Mass. 268, 281-282 [688 N.E.2d 923, 931-932] [“[T]he Protestant Episcopal Church is hierarchical. The constitution and canons of [the Episcopal Church] detail the authority exercised by [the Episcopal Church] through a diocese to each local parish. . . . [¶] . . . The United States Supreme Court and the highest courts in other States have reached the same view. [Citations.] To our knowledge there are no judicial holdings to the contrary”].)

Defendants’ dogged refusal to accept this well-established legal fact demonstrates their desire to string these proceedings out as long as possible by raising issues and taking positions that are patently without merit. Only this Court can bring an end to such folly. To do otherwise would allow this case to languish unnecessarily in the judicial system far beyond reason.

3. Whether as-yet-unknown facts might refute plaintiffs' understanding and application of the trust canon.

Defendants suggest additional discovery “may well reveal *factual* disputes not yet resolved by any court” relating to plaintiffs' understanding and enforcement of the trust canon. (OBOM 44-45.) Again, their argument fails as a matter of law.

This Court effectively disposed of this issue in *Episcopal Church Cases, supra*, 45 Cal.4th at p. 492. After reviewing numerous out-of-state cases involving similar church property disputes, this Court held the Church Canons created an enforceable trust. (*Id.* at p. 491.) This Court rejected a similar argument by defendants that the Episcopal Church did not properly adopt Canon I.7.4. (*Id.* at p. 492 [“It is a bit late to argue that Canon I.7.4 was not effectively adopted, a quarter of a century later, and, in light of the consistent conclusions of the out-of-state cases that that canon is, indeed, part of the Episcopal Church's governing documents, the argument seems dubious at best”].)

Significantly, this Court held it could not, in any event, reach this question because it involves “one of those questions regarding ‘religious doctrine or polity’ . . . on which we must defer to the greater church's resolution.” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 492.) For precisely the same reason, defendants' speculative challenge to the Church's understanding and application of Canon I.7.4 must also fail as a matter of law because it raises questions over religious doctrine or polity. Moreover, given

the absolute effect of Canon I.7.4, there is no fact that could lead to any conclusion other than the property belongs to the Episcopal Church and Diocese. The existing canon effectively preempts anything to the contrary.

4. Whether defendants should be given more time to determine whether they can develop a new theory of their case.

Defendants contend future discovery “might reveal a new fact or defense” that could somehow allow them to “pursue a completely different attack upon the accusations made against them.” (OBOM 45.) According to defendants, this “is the nature of the litigation process consistent with due process.” (*Ibid.*)

Due process does not justify providing defendants yet more time to embark on a never-ending and futile expedition to support some amorphous new theory yet to be identified. They have briefed and argued the merits of this case through all levels of the California judiciary, as well as the United States Supreme Court, for more than six years. They allege no new facts or law that could conceivably alter this Court’s conclusion. Due process does not guarantee a party’s right to endlessly litigate issues that could not possibly affect the outcome of the case, particularly given this Court’s conclusions.

5. Whether individual defendants are personally liable.

Defendants assert the Diocese's claims for damages against the individual defendants somehow preclude judgment on the pleadings on the issue of property ownership. (OBOM 45-46.) Plaintiffs' claims for damages and an accounting were left to be resolved during "[f]urther proceedings . . . consistent with [the Court's] opinion." (*In re Episcopal Church Cases* (2007) 152 Cal.App.4th 808 [61 Cal.Rptr.3d 845, 895] [Court of Appeal opinion's disposition]; cf. *Episcopal Church Cases, supra*, 45 Cal.4th at p. 493 ["we affirm the judgment of the Court of Appeal"].) This takes nothing away from the fact, however, this Court ruled dispositively the property belongs to plaintiffs.

II. THE COURT OF APPEAL'S OPINION SHOULD BE AFFIRMED ON THE INDEPENDENT GROUND THAT PLAINTIFFS MET THE STANDARD FOR JUDGMENT ON THE PLEADINGS BASED ON TWO RECENT COURT OF APPEAL DECISIONS ADDRESSING IDENTICAL FACTS.

In addition to this Court's ruling on property ownership, the decision below should be affirmed on a further and independent basis. In two recent Court of Appeal decisions, judgment for the Episcopal Church and Diocese was affirmed based on facts identical

to those which are undisputed here. (*New, supra*, 167 Cal.App.4th 800; *Huber, supra*, 175 Cal.App.4th 663.)⁷

In *New* and *Huber*, members of the governing board of the local parish resigned their membership in the Episcopal Church. (*New, supra*, 167 Cal.App.4th at p. 806; *Huber, supra*, 175 Cal.App.4th at p. 670.) In both cases, the Diocesan Bishop advised the departing members they were no longer qualified to serve as board members and appointed new leadership for the parish. (See *New, supra*, 167 Cal.App.4th at p. 806; *Huber, supra*, 175 Cal.App.4th at p. 670.)

Based on these facts, the court in each case directed entry of judgment as a matter of law in favor of the Episcopal Church and Diocese. “[W]hen defendants resigned from the Episcopal Church, they were no longer empowered to act, and their actions in attempting to amend the bylaws and articles of incorporation were a nullity. They also ceased being directors of the Parish corporation as they were not members in good standing of the Episcopal Church.” (*New, supra*, 167 Cal.App.4th at p. 822.) “Applying neutral principles of law, *we conclude as a matter of law* that when defendants voted for disaffiliation, they denounced their prior promises to be subject to the governing documents of the national

⁷ This Court originally granted review in *New v. Kroeger* but, in the wake of *Episcopal Church Cases*, subsequently dismissed the petition and ordered the decision to be republished. (See *New, supra*, 167 Cal.App.4th 800, review dism. Mar. 11, 2009, S168611, opn. ordered repub. Mar. 11, 2009.) This Court denied review in *Huber, supra*, 175 Cal.App.4th 663, review denied Sept. 17, 2009, S175401.)

church and the diocese, abandoned their membership in the corporation, and lost the power and authority to be directors of the corporation, as they were no longer members in good standing of the Episcopal Church. Thus, their purported amendment of the articles of incorporation and bylaws . . . were a legal nullity or ultra vires.” (*Huber, supra*, 175 Cal.App.4th at p. 683, emphasis added.)

The facts admitted by defendants in this case are indistinguishable from the dispositive facts in both *New* and *Huber*. In their brief filed in the Court of Appeal, they acknowledged: i) the directors of the parish “resolved to end all relations with the Diocese and the Episcopal Church” on July 22, 2004 (RPR, exh. 12, pp. 382-383); ii) upon learning of this action, the Diocese appointed a new priest in charge of the parish (RPR, exh. 12, p. 383); and iii) the Diocese declared the departing members of the board were no longer authorized to act on behalf of the parish. (RPR, exh. 12, p. 384.) Based on these undisputed facts, identical to those in *New* and *Huber*, the same result—judgment in favor of the Episcopal Church and Diocese—is required here.⁸

The decisions in *New* and *Huber* provide an independent basis for affirming the decision reached by the Court of Appeal.

⁸ The Episcopal Church included this argument in support of its motion for judgment on the pleadings (PWM, exh. 12, pp. 235-237), joined in by plaintiffs. (PWM, exh. 13.) The factual admissions made by defendants are a proper subject of judicial notice for purposes of a motion for judgment on the pleadings. (See *Pang, supra*, 79 Cal.App.4th at pp. 989-990.)

III. IN ANY EVENT, DEFENDANTS CANNOT SHOW THE REQUISITE MISCARRIAGE OF JUSTICE TO SUPPORT REVERSAL.

A. The California Constitution and Code of Civil Procedure require defendants to demonstrate a miscarriage of justice.

Article VI, section 13 of the California Constitution provides that “no judgment shall be set aside . . . for any error as to any matter of procedure, *unless*, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” (Emphasis added.) Under this section, “[the court has] the power to review conflicting evidence for the purpose of ascertaining whether or not an error ‘has resulted in a miscarriage of justice.’” (*Vallejo etc. R. R. Co. v. Reed Orchard Co.* (1915) 169 Cal. 545, 554; *Ibid.* [“It is no longer the case that injury is presumed from error; the injury must appear affirmatively to the mind of the court after the examination required, or from the nature of the error itself”]; see also *Juneau Spruce Corp. v. I. L. & W. Union* (1953) 119 Cal.App.2d 144, 146 [“Even if the court was in error in entering its judgment before the final affirmance of the Alaska judgment the error was without prejudice since the same judgment would necessarily have followed if the court had delayed its action for the few weeks intervening between November 20, 1951, and the January 7th following”].)

Code of Civil Procedure section 475 similarly provides “[t]he court must, in every stage of an action, disregard any error . . . which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error . . . unless it shall appear from the record that such error . . . was prejudicial . . . and also that by reason of such error . . . the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error . . . had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.” (See also *Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 833 [“In other words, we are not to look to the particular ruling complained of in isolation, but rather must consider the full record in deciding whether a judgment should be set aside”].)

B. Defendants fail to carry their burden because there is no basis on which they could prevail even if the decision were reversed.

Defendants cannot show that a miscarriage of justice has occurred. Even if the Court of Appeal’s opinion were reversed, defendants would be unable to prevail. The law of the case established in *Episcopal Church Cases*, coupled with the decisions in *New* and *Huber*, combined with the undisputed facts, create an insurmountable impediment for defendants to establish any legal right to the property. (See discussion, *ante*, at pp. 19-23.)

A review of the full record demonstrates defendants cannot carry their burden of showing a miscarriage of justice would result if the judgment were not reversed. Nor can defendants point to any fact or legal theory to support a finding they are likely to achieve a more favorable outcome if the Court of Appeal's opinion were reversed and the case remanded for further proceedings. Article VI, section 13 of the California Constitution and Code of Civil Procedure section 475, each provide an alternative basis for upholding the Court of Appeal's opinion. (See *Antonsen v. San Francisco Container Co.* (1937) 20 Cal.App.2d 214, 216 [affirming default judgments under section 475 because, even if it was error to enter judgments, party failed to show any meritorious defense that could change outcome].)

CONCLUSION

The Court of Appeal properly directed entry of judgment on the issue of property ownership based upon the unique circumstances of this case:

- It acted within its authority to address the specific issue of property ownership to resolve the lingering legal uncertainty on a matter of widespread public interest and provide concrete guidance to lower courts and litigants.
- This Court reached the merits based on the uncontroverted documentary evidence before it in the record.

- Despite ample opportunity, defendants have proffered no new legal theory or evidence that could possibly change this Court's determination on property ownership.
- Based on the law of the case and undisputed evidence subject to judicial notice, the case was ripe for judgment on the pleadings.
- In any event, defendants cannot demonstrate a miscarriage of justice sufficient to merit reversal of the judgment directed by the Court of Appeal. There is no reason to further delay the inevitable conclusion on property ownership.

For all of these reasons, this Court should affirm the Court of Appeal's opinion without further delay.

October 7, 2010

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1).)

The text of this Brief consists of 9,310 words as counted by the Microsoft Word version 2007 word processing program used to generate the Brief.

Dated: October 7, 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 October 7, 2010, I served true copies of the following document(s) described as **ANSWER BRIEF ON THE MERITS** 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 October 7, 2010, at Encino, California.



Connie Christopher

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