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**APPENDIX A**

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**SUPREME COURT OF SOUTH CAROLINA**

**All Saints Parish Waccamaw, a South Carolina Non-profit Corporation; D. Clinch Heyward, Warden for All Saints Parish, Waccamaw; W. Russell Campbell, Warden for All Saints Parish, Waccamaw; Martha M. Lachicotte, Ann Usher Mercer, Vandell Arrington and Rives Kelly, Individually and as Representatives of the Inhabitants of the Waccamaw Neck Region of Georgetown County; and Evelyn Labruce, Individually and as a Descendant of George Pawley; Of Whom W. Russell Campbell in his capacity as Senior Warden of All Saints Church, is also a Defendant by way of Counterclaim, Plaintiffs,**

**Of Whom All Saints Parish Waccamaw, a South Carolina Non-profit Corporation; D. Clinch Heyward, Warden for All Saints Parish, Waccamaw; W. Russell Campbell, Warden for All Saints Parish, Waccamaw are, Respondents/Appellants,**

**v.**

**The Protestant Episcopal Church in the Diocese of South Carolina; The Episcopal Church, a/k/a The Protestant Episcopal Church in the United States of America; Mark Sanford, in his official capacity as the Governor of the State of**

**South Carolina; and John and Jane Doe, as descendants to George Pawley and William Poole, Defendants,**

**Of Whom The Protestant Episcopal Church in the Diocese of South Carolina; The Episcopal Church, a/k/a The Protestant Episcopal Church in the United States of America are, Appellants/Respondents,**

**And Mark Sanford, in his official capacity as The Governor of the State of South Carolina; and John and Jane Doe, as descendants to George Pawley and William Poole are, Respondents.**

**Guerry Green, on behalf of All Saints Parish, Waccamaw, and in his capacity as Senior Warden of the same; Carl Short, on behalf of all of All Saints Parish, Waccamaw, and in his capacity as Junior Warden of the same; and George Townsend, James Chapman, and Edward Mills, on behalf of All Saints Parish, Waccamaw, and in their capacities as Members of the Vestry of the same; The Protestant Episcopal Church in the Diocese of South Carolina and the Right Reverend Edward L. Salmon, Jr., in his capacity as Bishop of the Protestant Episcopal Church in the Diocese of South Carolina, Appellants/Respondents,**

**v.**

**W. Russell Campbell, in his capacity as Senior Warden of All Saints Church; D. Clinch Heyward, in his capacity as Junior Warden of All**

**Saints Church; Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou Paquette, Hugh Patrick and Daniel W. Stacy, in their capacity as Vestry Members of All Saints Church; David E. Grabeman, in his capacity as Treasurer of All Saints Church; All Saints Church, an unincorporated association; All Saints Church, Waccamaw, Inc., a South Carolina Non-profit Corporation; Henry McMaster, in his capacity as Attorney General for the State of South Carolina; Mark Hammond, in his capacity as Secretary of State for the State of South Carolina; and John and Jane Doe, as Unknown Descendants of George Pawley, Defendants,**

**Of Whom W. Russell Campbell, in his capacity as Senior Warden of All Saints Church; D. Clinch Heyward, in his capacity as Junior Warden of All Saints Church; Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou Paquette, Hugh Patrick and Daniel W. Stacy, in their capacity as Vestry Members of All Saints Church; David E. Grabeman, in his capacity as Treasurer of All Saints Church; All Saints Church, an unincorporated association; All Saints Church, Waccamaw, Inc., a South Carolina Non-profit Corporation are, Respondents/Appellants,**

**And Henry McMaster, in his capacity as Attorney General for the State of South Carolina; Mark Hammond, in his capacity as Secretary of State for the State of South Carolina; and John and Jane Doe, as Unknown Descendants of**

**George Pawley are, Respondents.**

**No. 26724.**

Heard: Mar. 5, 2009.

Filed: Sept. 18, 2009.

**COUNSEL:** Benjamin Allston Moore, Jr., Julius H. Hines, David S. Yandle, all of Buist, Moore, Smythe & McGee, and Coming B. Gibbs, Jr., of Gibbs & Holmes, all of Charleston; and David Booth Beers and Heather H. Anderson, both of Goodwin Procter, LLP, of Washington, for Appellant-Respondents.

Attorney General Henry Dargan McMaster, Assistant Attorney General C. Havird Jones, both of Columbia; and Fred B. Newby, of Newby, Sartip, Masel & Casper, of Myrtle Beach, for Respondents.

Henrietta U. Golding and Amanda A. Bailey, both of McNair Law Firm, of Myrtle Beach, for Respondent-Appellants.

C. Mitchell Brown, William C. Wood, Jr., A. Mattison Bogan, all of Nelson, Mullins, Riley & Scarborough, of Columbia, and Lloyd J. Lunceford, of Baton Rouge, for Amicus Curiae.

**JUDGES:** CHIEF JUSTICE TOAL. WALLER, BEATTY, JJ., Acting Justice James E. Moore and Acting Justice Perry M. Buckner, concur.

**OPINION BY:** TOAL

**OPINION**

**CHIEF JUSTICE TOAL:** This case presents two questions that arise out of a dispute over church property and corporate control: (1) whether the trial court correctly determined that a trust deed, executed in 1745 for the establishment of a Parish in the

Waccamaw Neck region of South Carolina,<sup>1</sup> remains valid; and (2) whether the trial court correctly determined that the vestry representing a minority group of the congregation were the officers of the congregation's corporate entity, All Saints Parish, Waccamaw, Inc.

### **FACTUAL/PROCEDURAL BACKGROUND**

Underlying this appeal are two lawsuits that were consolidated for trial in Georgetown County. The first lawsuit ("the 2000 Action") was a declaratory judgment action filed by All Saints Parish, Waccamaw, Inc. against the Episcopal Church in the United States of America ("ECUSA") and the South Carolina Diocese ("Diocese"). The 2000 Action was precipitated by the Diocese's recording of a notice with the Georgetown County clerk of court by which it purported to put the public on notice that the congregation of All Saints Parish held its property in trust for the Diocese and ECUSA.

After the congregation fractured, the second lawsuit ("the 2005 Action") was filed by a minority faction of the original congregation against its majority which had voted to sever ties with the ECUSA and the Diocese. The minority faction remained loyal to the denominational authorities and was represented by a vestry led by Guerry Green ("the minority vestry"). The majority group was represented by a vestry led by W. Russell Campbell ("the majority vestry"). In the 2005 Action, the minority vestry sought

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<sup>1</sup> The Waccamaw Neck is a geographical area bounded by the Waccamaw River and Winyah Bay on the west and south, the Atlantic Ocean on the east, and the North Carolina line in the north.

a declaration that they, and not the majority vestry, were the officers of All Saints Parish, Waccamaw, Inc. The 2000 Action and the 2005 Action were consolidated and tried in March 2006. This appeal is from the trial court's order.

The facts relevant to this appeal date to the early eighteenth century. By the Church Act of 1706, the South Carolina Commons House of Assembly ("Commons House") established the Church of England as the official religion of colonial South Carolina and created the first parishes in the colony. Parishes were regionally defined and served as ecclesiastical and political entities. All Saints Parish, however, was not formed at that time.

In 1734, George Pawley, a member of the Commons House, was appointed by legislative enactment to erect church buildings in the St. John's and the Prince George Parishes. He was "authorized to accept and take any grant or conveyance of any lands within said parishes respectively, to them and their heirs, in trust, for the inhabitants of said parishes." Act No. 567 at § 6, 3 S.C. Stat. 374, 375 (1734). In 1745, Percival and Ann Pawley transferred approximately 60 acres to George Pawley and William Poole. The language of this trust deed ("the 1745 Trust Deed") provided that George Pawley and William Poole were deeded the land "forever in Trust For the Inhabitants On Waccamaw Neck for Use of A Chapel or Church for divine Worship of the Church of England established by Law . . . ." Consideration for this transfer was "the Sum of one hundred pounds cur-

rent Money of South Carolina.”<sup>2</sup> The terms of the 1745 Trust Deed did not bestow any duties upon the trustees, and there is no evidence to suggest that the trustees exercised any duties relative to the 1745 Trust Deed.

On December 10, 1766, the inhabitants of the Waccamaw Neck formally petitioned the Commons House requesting the establishment of their own parish. In 1767, an Act of the Commons House carved out a piece of the Prince George Parish, thus creating a new Parish named All Saints in the Waccamaw Neck region. Subsequently, on January 2, 1767, the 1745 Trust Deed was recorded in Charleston.<sup>3</sup> By 1774, both George Pawley and William Poole had died. Neither the 1745 Trust Deed nor the trustee’s will named a successor trustee. By all accounts, the property at issue has been actively used as a place of worship since at least 1767, if not before.

The relationship between South Carolina’s colonial parishes and the Diocese of London was severed during the Revolutionary War. Nonetheless, the South Carolina General Assembly re-established All Saints Parish in 1778. Even though the Church of England was formally disestablished as the official

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<sup>2</sup> According to the “Average Earnings Index,” one hundred (100) British Pounds in 1745 was worth One Hundred Forty-One Thousand, Eight Hundred Twenty-Five (141,825) British Pounds or Two Hundred Seventy-Seven Thousand, Seven Hundred and Seventy-Eight (277,778) U.S. Dollars in 2007.

<sup>3</sup> At the time, Charleston was the only place in South Carolina at which land instruments could be recorded.

religion of South Carolina in 1790, the property at issue continued to be used as a place of worship.

In 1820, the South Carolina General Assembly passed an Act which officially incorporated the wardens and the vestry of All Saints Parish. The Act expressly enabled the congregation to “have, hold, take and receive” both real and personal property. The congregation’s incorporation was only effective for a period of fourteen years. In 1839, the South Carolina General Assembly renewed the incorporation for an additional fourteen years and, in 1852, the General Assembly did so indefinitely.

An 1880 Act of the South Carolina General Assembly established that title to any property belonging to inactive Episcopal corporations, churches, or dormant parishes was held in trust by the Trustees of the South Carolina Episcopal Diocese. The record makes clear that in 1902, due to the 1880 Act, the All Saints congregation became concerned over the status of their incorporation and the status of title to church property. Evidence in the record also indicates that this concern was exacerbated by the destruction of certain property records in a “great storm.”

In May 1902, as a result of its concern, the congregation asked the Diocese to “cooperate with [them] in having the charter of th[e] Parish renewed.” The Diocese’s Chancellor responded positively and not only suggested that the congregation formally incorporate with the Secretary of State as a South Carolina eleemosynary corporation, but also indicated that the Diocese would execute a quit-claim deed transferring to the congregation any interest the Diocese may have had in the All Saints property.

Therefore, at the direction of the Diocese, the congregation re-incorporated in 1902 under the name “All Saints Parish, Waccamaw, Inc.” Shortly thereafter, in 1903, the Trustees of the Diocese signed a quit-claim deed (hereinafter the “1903 Quit-Claim Deed”) transferring any interest the Diocese may have had in the congregation’s property to All Saints Parish, Waccamaw, Inc. The Diocese did not retain any interest in the property, reversionary or otherwise. The 1903 Quit-Claim Deed was recorded in the Georgetown County public records on May 30, 1903.

In 1987, the Diocese amended its constitution and canons so as to include the “Dennis Canon.” The Dennis Canon purports to declare a trust, in favor of the ECUSA and the Diocese, on all real and personal property held by any congregation.<sup>4</sup> No such property canons existed in 1902 when the Diocese directed the congregation to incorporate, or when it executed the 1903 Quit-Claim Deed in favor of the newly created All Saints Parish, Waccamaw, Inc.

In August 2000, due to concern over the status of title to its property, the All Saints congregation conducted a formal title examination. The examiner concluded that the 1745 Trust Deed and the 1903 Quit-Claim Deed were the only recorded deeds pertaining to the congregation’s property. Soon thereafter, in September 2000, the Diocese recorded a notice

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<sup>4</sup> Presumably, the Dennis Canon was enacted in reaction to the Supreme Court of the United States’s opinion in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979). In *Jones*, the Supreme Court established that the First Amendment did not require a civil court to defer completely to ecclesiastical authorities when adjudicating church disputes.

in Georgetown County purporting to declare that the congregation held its property, pursuant to the Dennis Canon, in trust for the benefit of the ECUSA and the Diocese (“the 2000 Notice”). Because of the 2000 Notice and the 1745 Trust Deed, the congregation was unable to acquire title insurance.

In October 2000, the congregation, in the name of its corporate entity, All Saints Parish, Waccamaw, Inc., filed a declaratory judgment action against the ECUSA and the Diocese in which it sought an order declaring that the congregation held title to its property or, in the alternative, held its property in trust for the benefit of the inhabitants of the Waccamaw Neck pursuant to the 1745 Trust Deed. The Diocese and the ECUSA answered and counterclaimed asserting that the property was subject to their canons and the 2000 Notice.

By consent order, a guardian *ad litem* was appointed to represent the interests of John and Jane Doe, the unknown heirs of the original trustees to the 1745 Trust Deed, George Pawley and William Poole. The Does and the congregation filed joint motions for summary judgment. The motions were granted and, pursuant to the 1745 Trust Deed, the trial court found that the Does held legal title to the property at issue and that the inhabitants of the Waccamaw Neck held equitable title as beneficiaries to the 1745 Trust Deed. The matter was remanded to the probate court for further fact finding with respect to the identity of the parties to the 1745 Trust Deed.

The ECUSA and Diocese appealed. The court of appeals found that there were genuine issues of material fact concerning whether the trust created by the 1745 Trust Deed failed when the Church of Eng-

land ceased to be established as the official religion of South Carolina and whether the Statute of Uses operated to execute the trust. Accordingly, the court of appeals remanded the case to the circuit court. *All Saints Parish, Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004), *cert denied*, July 2005.

In August 2003, prompted by events that are not relevant here, the congregation appointed a committee to recommend whether it should leave the Diocese and the ECUSA. On December 9, 2003 the committee recommended that the corporate charter of All Saints Parish, Waccamaw, Inc. be amended so as to delete references to the canons and rules of the Diocese and the ECUSA. Specifically, the committee recommended that “Article Fourth”<sup>5</sup> of the 1902 Certificate of Incorporation be amended to read:

The purpose of All Saints Parish, Waccamaw, Inc., also known as All Saints Church, is to create an environment in which all people and especially the inhabitants of the Waccamaw Neck come to know Jesus Christ: to Love Him, to Worship Him, to Learn of Him, to Proclaim Him, and to Minister in His Name.

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<sup>5</sup> Prior to the amendment, “Article Fourth” read: “The purpose of the said proposed Corporation is to conduct Religious services, and prosecute religious works under the forms and according to the canons and rules of the protestant Episcopal Church, and as a component part of the Diocese of said Church in South Carolina.”

Furthermore, the committee recommended that the congregation additionally amend its charter so as to affirmatively sever its affiliation with the ECUSA and the Diocese.

On December 17, 2003, after learning of the proposed amendments, Edward L. Salmon, Jr., Bishop of the Diocese, sent a letter to the congregation's wardens and each member of the vestry stating that the congregation's status was reduced from that of a parish to a "mission." In his letter, Bishop Salmon also declared that the members of the congregation's vestry had abandoned their offices.<sup>6</sup>

On December 21, 2003, sixty members of the congregation signed a "Request for Special Congregational Meeting." The purpose of this meeting was to discuss and vote on whether the congregation should take the committee's recommendations and vote to amend its charter so as to change its corporate purpose and sever its affiliation with the ECUSA and the Diocese. Notice of the meeting was sent to the congregation's members on December 23, 2003.

On January 8, 2004, five-hundred and seven of the congregation's members attended the Special Congregational Meeting and more than a two-thirds majority voted to amend the congregation's 1902 Certificate of Incorporation adopting the aforementioned amendment to "Article Fourth." Additionally, more than a two-thirds majority voted to amend the charter so as to withdraw from the Diocese and the ECUSA, but remain part of the Anglican Commu-

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<sup>6</sup> In his letter, Bishop Salmon did not opine as to the status of the congregation's members in so far as it concerned their ability to meet and vote on corporate action.

ion by affiliating themselves with the Episcopal Church of Rwanda and its Anglican Mission in America.<sup>7</sup> Accordingly, the corporate secretary for All Saints Parish, Waccamaw, Inc. prepared and signed the Articles of Amendment to the 1902 Certificate of Incorporation. These Articles of Amendment were filed in the South Carolina Secretary of State's office on January 15, 2004.

On January 9, 2005, a small group of members who remained loyal to the Diocese and the ECUSA met with Bishop Salmon and purported to elect a new vestry for the congregation—the minority vestry. Subsequently, on January 16, 2004, the majority group of members re-elected the vestry removed by the Bishop—the majority vestry.

On January 20, 2005, the minority vestry filed the 2005 Action against the majority vestry alleging that they forfeited office by recommending that the congregation sever its affiliation with the ECUSA and the Diocese. The minority vestry sought a declaration that they were All Saints Parish, Waccamaw, Inc.'s true officers. Additionally, they sought the return of the congregation's real and personal property. The Diocese and Bishop Salmon joined in the action. Subsequently, the trial court consolidated the 2000 Action and the 2005 Action.

The consolidated cases were tried and, after each of the parties presented its case, the trial court decided both underlying actions as a matter of law. With respect to the 2000 Action, the trial court held

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<sup>7</sup> The Anglican Communion is the worldwide body of Episcopal Dioceses. The Episcopal Church of Rwanda is the Rwandan equivalent of the United States' ECUSA.

that, pursuant to the terms of the 1745 Trust Deed, legal title to the real property remained in the unknown Heirs of George Pawley and William Poole, while beneficial title was possessed by the “inhabitants of Waccamaw Neck.”<sup>8</sup> As to the 2005 Action, the trial court held that members of the minority vestry were the true officers of All Saints Parish, Waccamaw, Inc. In its original bench order, however, the trial court declined to eject the majority group from the real property because the identity of the parties to the trust created by the 1745 Trust Deed was yet to be determined by the probate court. Nonetheless, upon a motion for reconsideration, the trial court ordered the Secretary of State to cancel the Articles of Amendment filed by the majority group, ejected the majority vestry from the property it occupied which was not granted to the congregation by the 1745 Trust Deed, and restrained the majority vestry from acting as the officers of All Saints Parish, Waccamaw, Inc.

### **QUESTIONS PRESENTED**

This Court granted certiorari to review the decision of the trial court and the parties raise the following issues for review:

- I. Did the trial court err in holding that the trust created by the 1745 Trust Deed remains valid?
- II. Did the trial court err in holding that members of minority vestry were the corpo-

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<sup>8</sup> The trial court made its ruling on the 2000 Action pursuant to Rule 39(b), SCRCP.

rate officers of All Saints Parish, Waccamaw, Inc.?

### **STANDARD OF REVIEW**

Because the trial court made its ruling on the 2000 Action pursuant to Rule 39(b), SCRPC, the standard of review with respect to the 2000 Action is the same as that for an action at law tried without a jury. In an action at law tried without a jury, the judge's finding of fact will not be disturbed unless there is no evidence to support the court's finding. *Jowers v. Hornsby*, 292 S.C. 549, 552, 357 S.E.2d 710, 711 (1987).

The standard of review for the grant of a directed verdict applies to the review of the 2005 Action. When reviewing a denial of a motion for directed verdict, this Court applies the same standard as the trial court. *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, 374 S.C. 171, 175, 648 S.E.2d 585, 588 (2007). In ruling on a motion for a directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. *Hurd v. Williamsburg County*, 363 S.C. 421, 426, 611 S.E.2d 488, 491 (2005).

### **LAW/ANALYSIS**

In this case, we are called upon to adjudicate two disputes. The 2000 Action is a dispute between a congregation and its denomination over title to church property. The 2005 Action is a dispute among the congregation's members over corporate control. Because church disputes are very often prompted by disagreements over religious doctrine and belief, the civil courts in this country have addressed them carefully, keeping the First Amend-

ment in mind. The decisions of the Supreme Court of the United States concerning church dispute litigation make clear that there is no constitutionally prescribed rule for a civil court's disposition of such matters. Nonetheless, there is a general constitutional command, based in the First Amendment, mandating that civil courts "decide church...disputes without resolving underlying controversies over religious doctrine." *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

Within the context of this general constitutional command, the Supreme Court of the United States has expressly approved two methods for a civil court's resolution of church disputes. These approaches have become known as the "deference approach" and the "neutral principles of law approach." We hereby explicitly reaffirm that, when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), and expressed by this Court in *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996). The following context is necessary for a clear understanding of this rule and its application to the facts presented by this case.

The Supreme Court of the United States first approved the "deference approach" in 1871. See *Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666 (1871). Under this approach, a court must only determine whether a church is "congregational" or "hierarchi-

cal” in nature.<sup>9</sup> If the church is congregational, the court will resolve the dispute by deferring to a majority of the congregation. However, if the congregation at issue is part of a hierarchical organization, the court will defer to the decision of the ecclesiastical authorities.

Because the deference approach was, for a long time, the only approach explicitly approved as constitutional by the Supreme Court of the United States, this Court has issued a handful of opinions that are consistent with the deference approach. *See Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956) (holding that a minority group of a local, hierarchical Presbyterian church’s members were entitled to ownership and control of church property because they were recognized as the true congregation by the hierarchical authorities); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975) (holding that where a majority of a local Presbyterian congregation voted to sever its connection with its hierarchical authorities, the minority faction which the hierarchical authorities recognized as the true congregation was entitled to control of the church properties); *Seldon v. Singletary*, 248 S.C. 148, 326 S.E.2d 147 (1985) (holding that a local church was part of a hierarchical denomination, thus, the minority group of members recognized by the hierarchical authorities were entitled to possession and control of church prop-

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<sup>9</sup> “A congregational church is an independent organization, governed solely within itself . . . , while a hierarchical [or ecclesiastical] church may be defined as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head.” *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985).

erty). In each of these cases we applied the deference approach and analyzed the issues by determining whether the church at issue was congregational or hierarchical in nature and deferred accordingly. This short analysis disposed of those cases and, in so doing, these decisions complied with the First Amendment's command that "civil courts. . .decide church property disputes without resolving underlying controversies over religious doctrine."<sup>10</sup> *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).

The deference approach, which the Supreme Court of the United States never explicitly held was the only constitutional method of adjudicating church disputes, is rigid in its application and does not give efficacy to the neutral, civil legal documents and principles with which religious congregations and denominations often organize their affairs. Thus, throughout the country, other approaches to the resolution of church disputes have slowly developed.

In 1979, the Supreme Court of the United States expressly approved the use of a second method of resolving church disputes. In *Jones v. Wolf*, the Supreme Court affirmed a Georgia court's use of the neutral principles of law approach to resolve church disputes. 443 U.S. at 603 (holding that a state is constitutionally entitled to adopt the neutral principles of law approach as a means of adjudicating

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<sup>10</sup> This command applies to state courts by way of the Fourteenth Amendment.

church disputes). This method “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” *Id.* at 603. Church disputes that are resolved under the neutral principles of law approach do not turn on the single question of whether a church is congregational or hierarchical. Rather, the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes.

A clear recitation of the neutral principles of law approach as adopted by this Court was enunciated in *Pearson v. Church of God*. In *Pearson*, we articulated the rule that South Carolina civil courts must follow when adjudicating church dispute cases. We reaffirm and more fully explain this rule here. The *Pearson* rule provides:

- (1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration;
- (2) courts cannot avoid adjudicating rights growing out of civil law;
- (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

325 S.C. at 53, 478 S.E.2d at 854.

The *Pearson* rule establishes that where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so. Nonetheless, where a civil court is presented an issue which is a question of re-

religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues. *See Serbian Eastern Orthodox Diocese*, 426 U.S. at 709 (finding that the controversy before the Court “essentially involve[d] not a church property dispute, but a religious dispute the resolution of which . . . is for ecclesiastical and not civil tribunals.”).

It is with the *Pearson* rule in mind that we now turn to the two issues before us in this appeal. We remain mindful of the First Amendment and its protections of religious liberty. Nonetheless, adjudication of this matter does not require us to wade into the waters of religious law, doctrine, or polity. We find that the Diocese and ECUSA organized their affairs with All Saints Parish in a manner that makes the complete resolution of the questions presented achievable through the application of neutral principles of property, trust, and corporate law.

### **I. Property Ownership**

Turning to the 2000 Action, the trial court held that the trust created by the 1745 Trust Deed remained valid and that legal title is held by the unknown heirs of George Pawley and William Poole while the beneficial title is held by the “Inhabitants of Waccamaw Neck.” We disagree.

Based upon an application of the relevant neutral principles of law, we hold that the trial court erred in determining that the trust created by the 1745 Trust Deed remains valid. Further, we hold that this trust was executed by the Statute of Uses and that title to the property is held by the congregational corporate entity—All Saints Parish, Waccamaw, Inc.

### A. The Statute of Uses

It is well established that “where there is a conveyance to one for the use of another, and the trustee is charged with no duty which renders it necessary that the legal estate should remain in him to enable him properly to perform such duty, the Statute of Uses executes the use and carries the legal title to the [beneficial] use.” *Faber v. Police*, 10 S.C. 376, 389-90 (1877).<sup>11</sup> Further, in a trust where the trustees have no duties, “the legal and equitable titles are merged in the beneficiaries and the beneficial use is converted into legal ownership.” *Johnson v. Thornton*, 264 S.C. 252, 257, 214 S.E.2d 124, 127 (1975). Nonetheless, the Statute of Uses will not operate to execute a trust where there is no beneficiary capable of taking legal title. See *Bowen v. Humphreys*, 24 S.C. 452, 455 (1886) (holding that the Statute of Uses cannot execute a trust where there is no identifiable beneficiary capable of holding title).

Therefore, there are two questions that must be asked in order to determine if the trust created by the 1745 Trust Deed was executed by the Statute of Uses: (1) whether the trustees had any duties relative to their office, and (2) whether there is a beneficiary capable of taking title. We hold that the trustees of this trust did not have any duties relative to their office and that the congregation of All Saints Parish was the intended beneficiary and, upon its formation, was clearly capable of taking title.

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<sup>11</sup> England enacted the Statute of Uses during the reign of Henry VIII. 27 Henry VIII ch. 10 (1535). It was adopted by the South Carolina Commons House of Assembly in 1712. Act No. 322, 2 S.C. 401 (1712) at 466.

### 1. Trustees' Duties

We hold that the 1745 Trust Deed did not impose any duties upon the trustees, George Pawley and William Poole. Pawley and Poole were colonial appointees given the authority to accept conveyances of land for the purpose of establishing parishes. When named trustees to the 1745 Trust Deed, they were acting as appointees of the colony, not as trustees with traditional duties. This conclusion is supported by the relevant legal realities of that time. The court of appeals in *All Saints* correctly stated that “in colonial times, churches could not be recognized by the government until they owned property, and they could not own property until they had been officially recognized.” *All Saints*, 358 S.C. at 225, 595 S.E.2d at 262. “As such, a colonial practice arose in which a settlor placed property in trust for a congregation until such a time as the government recognized the church.” *Id.* (citing *Town of Pawlett*, 9 Cranch 292, 13 U.S. at 330 (holding “no parish church . . . could have legal existence until consecration and consecration was expressly inhibited unless a suitable endowment of land.”)). Pawley and Poole did not have any duties relative to the trust, but simply acted as custodians of the property at issue until All Saints Parish was officially established. This conclusion is supported by language of the 1745 Trust Deed which did not expressly impose any duties upon them, nor is there any evidence in the record which suggests that either of the trustees performed any acts relative to their office as trustee.

Further, Percival and Ann Pawley were not traditional settlors of a trust. Rather, they sold the property at a price far above nominal value. They were clearly sellers of property to colonially appointed commissioners for the establishment of a

parish, purposes specified by the colonial government.

## **2. Beneficiary Capable of Taking Title**

Holding that the trustees to the 1745 Trust Deed had no duties, we now analyze whether there was a beneficiary capable of taking title. According to the terms of the 1745 Trust Deed, the beneficiaries were “the Inhabitants of Waccamaw Neck.” This term is ambiguous and parol evidence should be used to ascertain its meaning. *See Shelley v Shelley*, 244 S.C. 598, 606, 137 S.E.2d 851, 855 (1964) (holding that parol evidence is admissible so long as its admission is merely intended to explain and apply what the settlor has written).

Based on the following application of parol evidence, we hold that the term “Inhabitants of Waccamaw Neck” was used by the settlers of the trust as an expression referring to the yet-to-be-created All Saints Parish. Early South Carolina colonial statutes used the term “inhabitants” when referring to the colony’s parishes. For instance, The Church Act of 1706 contains multiple uses of the term “inhabitants” referring to parishes. *See Act No. 256 at §§ 7, 10, 12, 13, 19, 21, 22, 29, 30, 35, 2 S.C. Stat. 284-89 (1706)*. Additionally, this understanding of the term is supported by the historical context in which the 1745 Trust Deed was executed. In 1745, the inhabitants of Waccamaw Neck were parishioners of Prince George’s Parish. They were clamoring for the establishment of their own Parish congregation and had already been worshipping on the land at issue for approximately eight years. It was within this historical context that the 1745 Trust Deed was executed in expectation that the subject property would

be for the benefit of the yet-to-be formed All Saints Parish.

Additionally, according to the express terms of the original Church Act of 1706, a colonial Parish could hold title to land. The Act specifically empowered commissioners “to take up by grant from the Lords Proprietors, or purchase the same for them, or any other person, and have, taken and receive so much land as they think necessary for the several sites of the several churches.” Act No. 256 at § 8, 2 S.C. Stat. 284. Thus, when the Church Act of 1767 formed All Saints Parish, the Statute of Uses operated to execute the trust created by the 1745 Trust Deed and title vested in the intended beneficiary, the congregation of All Saints Parish.

#### **B. 1903 Quit-Claim Deed**

Moreover, the 1903 Quit-Claim Deed makes clear that All Saints Parish, Waccamaw, Inc. holds title to its property. The All Saints Parish congregation was officially incorporated in 1820. In 1902, due to doubt over the status of the congregation’s incorporation, the Diocese directed it to re-incorporate as “All Saints Parish, Waccamaw, Inc.” Shortly thereafter, in order to settle any doubt as to the status of title to Parish property, the Diocese voluntarily executed the 1903 Quit-Claim deed. The 1903 Quit-Claim Deed makes clear that title to the property at issue is currently held by the congregation’s corporate entity—All Saints Parish, Waccamaw, Inc.

### **C. 2000 Notice and Dennis Canon**

Furthermore, we hold that neither the 2000 Notice nor the Dennis Canon has any legal effect on title to the All Saints congregation's property. A trust "may be created by either declaration of trust or by transfer of property . . ." *Dreher v. Dreher*, 370 S.C. 75, 80, 634 S.E.2d 646, 648 (2006). It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

For the aforementioned reasons, we hold that title to the property at issue is held by All Saints Parish, Waccamaw, Inc., the Dennis Canons had no legal effect on the title to the congregation's property, and the 2000 Notice should be removed from the Georgetown County records.

### **II. Corporate Control**

Turning to the 2005 Action, we find that the trial court applied the deference approach, determined that the congregation was part of a hierarchical organization, and deferred to the Diocese's ecclesiastical authority's determination that members of the minority vestry were the true officers of All Saints Parish, Waccamaw, Inc. We disagree.

While it is true that "[c]ourts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration," *Pearson*, 325 S.C. at 53, 478 S.E.2d at 854, the resolution of the 2005 Action does not require such judicial meddling. The 2005 case turns on a determination of

whether the Articles of Amendment approved by the members of All Saints Waccamaw, Inc. on January 8, 2004 were adopted in compliance with the South Carolina Non-Profit Act. *See* S.C. Code Ann. § 33-31-1001, *et. seq.* We find that the Articles of Amendment were lawfully adopted and effectively severed the corporation's legal ties to the ECUSA and the Diocese. Therefore, we find that the members of the majority vestry are the true officers of All Saints Parish, Waccamaw, Inc.

Pursuant to the South Carolina Non-Profit Act, a religious corporation may amend its Articles of Incorporation to add or change a provision permitted in the articles or delete a provision not required in the articles. S.C. Code Ann. § 33-31-1001. Amendment to a corporation's articles, to be adopted, must be approved by (1) the board of directors, (2) the members "by two-thirds of the votes cast or a majority of the voting power, whichever is less," and (3) any person whose approval is required by the Articles of Incorporation. S.C. Code Ann. § 33-31-1003(a)(1-3). The passage of the Articles of Amendment approved by the congregation on January 8, 2004 complied with all three of these requirements.

First, the Articles of Amendment were approved by the board of directors. On December 8, 2003, while still in good standing with the Diocese, the majority vestry, acting as the corporation's board of directors, approved the Articles of Amendment at issue here. Thus, the passage of the Articles of Amendment met the requirements of S.C. Code Ann. § 33-31-1003(a)(1).

Second, the Articles of Amendment were approved by the members of All Saints Parish, Waccamaw, Inc. by two-thirds of the votes cast. Five

hundred and seven members of All Saints Parish, Waccamaw, Inc. were present at the January 8, 2004 meeting which was called to discuss and vote upon the Articles of Amendment. Of the five hundred and seven members present, four hundred and sixty-four votes were cast in favor of amending the Articles of Incorporation. Therefore, more than nine-tenths of the votes cast were in favor of the amendments, clearly more than the two-thirds statutorily required. There is no evidence in the record to suggest that the members present and voting were not in good standing at the time of the vote. Thus, the passage of the Articles of Amendment clearly met the requirements of S.C. Code Ann. § 33-31-1003(a)(2).

Finally, nothing in the All Saints Parish, Waccamaw, Inc. by-laws or the Constitutions and Canons of the ECUSA or Diocese requires third-party approval for amendments to the congregation's corporate charter, therefore the congregation's adoption of the Articles of Amendment complied with the requirements of S.C. Code Ann. § 33-31-1003(a)(3). The statutory provisions pertaining to a religious corporation's amendment of its corporate charter were amended in 1994 so as to add the option of third-party approval. *See* 1994 S.C. Acts 384. There is no evidence in the record that, since that time, the Diocese has ever attempted to gain approval power over amendments to the All Saints Parish, Waccamaw, Inc. corporate charter.

The facts presented by this case demonstrate that the congregation, in compliance with relevant statutory provisions and applicable bylaws, passed the Articles of Amendment, thus removing any reference to the ECUSA and Diocese and explicitly severing any legal relationship with those organizations. Therefore, through the application of neutral princi-

ples of law, it is clear to us that the true officers of All Saints Parish, Waccamaw, Inc. are the members of the majority vestry.

**CONCLUSION**

For the foregoing reasons, we reverse the trial court's decision with respect to both the 2000 Action and the 2005 Action.

**WALLER, BEATTY, JJ., Acting Justice  
James E. Moore and Acting Justice Perry M.  
Buckner, concur.**

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**APPENDIX B**

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**Court of Appeals of South Carolina.**

**ALL SAINTS PARISH, WACCAMAW, a South Carolina non-profit corporation, a/k/a The Episcopal Church of All Saints and a/k/a The Vestry and Church Wardens of the Episcopal Church of All Saints Parish, and Martha M. Lachicotte, Frances Ward Cromwell, and Alberta Lachicotte Quattlebaum, Individually and as Representatives of the Inhabitants of the Waccamaw Neck Region in Georgetown County, and Evelyn LaBruce, Individually and as descendant of George Pawley, Plaintiffs,**

**Of Whom All Saints Parish, Waccamaw, a South Carolina non-profit corporation, a/k/a The Episcopal Church of All Saints and a/k/a The Vestry and Church Wardens of the Episcopal Church of All Saints Parish are Respondents,**

**v.**

**THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America, Mark Sanford, in his official capacity as the Governor of South Carolina, State of South Carolina and John Doe and Jane Doe as descendants to George Pawley and William Poole,**

**Defendants,**

**Of Whom the Protestant Episcopal Church in the Diocese of South Carolina, The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America are Appellants,**

**and**

**Mark Sanford, in his official capacity as the Governor of the State of South Carolina, State of South Carolina and John Doe and Jane Doe as descendants to George Pawley and William Poole are Respondents.**

**No. 3757.**

Heard: Sept. 10, 2003.

Filed: Mar. 8, 2004.

**COUNSEL:** Benj. Allston Moore, Jr., Julius H. Hines and Coming B. Gibbs, Jr., all of Charleston, for Appellants.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Deputy Attorney Treva Ashworth, Senior Assistant Attorney General C. Havird Jones, Jr., all of Columbia; Fred B. Newby and Henrietta U. Golding, both of Myrtle Beach, for Respondents.

**JUDGES:** HOWARD, J. STILWELL and KIT-TREDGE, JJ., concur

**OPINION BY:** HOWARD

**OPINION**

**HOWARD, J.:** This is a suit involving All Saints Parish, Waccamaw (“the Parish”), the Protestant

Episcopal Church in the Diocese of South Carolina (“the Diocese”), the Protestant Episcopal Church in the United States of America (“the National Church”), and the descendants of the trustees (“the Does”) to determine who owns real and personal property located on Pawley’s Island, South Carolina.

In 1745, a trust was created for the “Inhabitants On Waccamaw Neck for the Use of a Chapple or Church for divine worship of the Church of England established by Law.” The trust was not recorded until 1767, the same year the Parish was recognized by the colonial government. During the next 100 years, the Parish became affiliated with the Diocese and the National Church.

In September 2000, after an ecclesiastical dispute arose between the Parish, the Diocese, and the National Church, the Bishop of the Diocese filed a notice with the Register of Deeds in Georgetown County, stating the Diocese and the National Church held an interest in the property by means of church canons. The Parish filed suit to have the statement removed from the deed book and to have the circuit court declare the Parish to be the sole owner of all real and personal property.

Because of the existence of the trust deed, the circuit court appointed a guardian *ad litem* to represent any interest the Does might have in the property. The Does moved for partial summary judgment, alleging they owned legal title to the real property. Based on the Parish’s affiliation with the Diocese and the National Church, the Diocese and the National Church claimed an interest in the property by means of the Statute of Uses, adverse possession, laches, and staleness. The circuit court ruled for the Does on the motion for summary judgment,

finding the Does held legal title to the real property. The Diocese and the National Church appeal. We vacate in part, reverse in part, and remand.

### **FACTUAL/PROCEDURAL BACKGROUND**

The property at issue in this case is located in Georgetown County, in an area known as the Waccamaw Neck region. In 1745, Percival Pawley and his wife conveyed the property<sup>1</sup> to two trustees, George Pawley and William Poole, “in Trust For The Inhabitants On Waccamaw Neck for the Use of a Chapple or Church for divine worship of the Church of England established by Law.”

In 1767, the General Assembly passed an act creating the Parish in the “Waccamaw Neck” region and appointing seven men to serve as commissioners for the Parish.<sup>2</sup> *See* Act No. 961 of May 23, 1767, 4 Stat. 266. That same year, the 1745 trust deed was recorded in Charleston County.

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<sup>1</sup> The Pawleys received the property from John Hutchinson’s widow in 1731. John Hutchinson received the property in 1711 as a land grant from the Lords Proprietors. *See Coburg Dairy v. Lesser*, 318 S.C. 510, 512 n.1, 458 S.E.2d 547, 548 n.1 (1995) (“From 1672 until 1730, grants of land were made by the Lords Proprietors who were granted enormous tracts of land in America by Charles II, King of England. The Lords Proprietors owned all of Carolina and acted in the stead of the sovereign in making land grants.”).

<sup>2</sup> In 1770, the Royal Privy Council disallowed the Parish’s colonial charter. However, in 1778, the Parish was recognized by the government of the newly formed state of South Carolina. *See* Act No. 1071 of Mar. 16, 1778, 4 Stat. 407; S.C. Const. of 1778, arts. XII-XIII.

Although the charter was renewed on several occasions,<sup>3</sup> in 1902 the Parish became concerned that its charter had “probably long since expired,” vesting its property with the Diocese.<sup>4</sup> To remedy this situation, the Chancellor of the Diocese suggested the Parish apply to the South Carolina Secretary of State for a corporate charter and request a quitclaim deed from the Diocese. Later that same year, the Parish received its certificate of incorporation from the Secretary of State. In 1903, the trustees of the Diocese executed a quitclaim deed that relinquished title of the property to the Parish.

Subsequent to the recording of this deed, the Parish leased parts of the property for uses not authorized by the trust and mortgaged the property.<sup>5</sup>

In September 2000, after an ecclesiastical dispute arose involving the Parish, the Diocese, and the National Church, the Bishop of the Diocese issued a notice setting forth the canons of the Diocese and the National Church that limit the alienation and encumbrance of church property. This notice was recorded in the public records of Georgetown County.

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<sup>3</sup> In 1839, the original Parish charter was “revived” for a fourteen-year term. *See* Act No. 2788 of December 21, 1839, 11 Stat. 70. The charter was renewed for an unspecified term in 1852. *See* Act No. 4081 of December 16, 1852, 12 Stat. 137.

<sup>4</sup> According to an 1880 statute, title to “all property belonging to any of the corporations or churches or dormant parishes formerly connected with the [Episcopal Church for the South Carolina Diocese], but which have now ceased to have active operation . . . or whose charters of incorporation may have expired” vested in the Diocese. *See* Act No. 222 of Feb. 20, 1880, 17 Stat. 257.

<sup>5</sup> The Diocese authorized these mortgages.

In response to the recording of this notice, the Parish filed a complaint in October 2000, seeking a removal of the notice from the deed book and a declaration that it owned the real and personal property located on Pawley's Island. The Diocese and the National Church answered and counterclaimed, alleging the property was owned by the Parish subject to the canons of the Diocese and the National Church.

The Parish requested the court appoint a guardian *ad litem* to represent the interests of John and Jane Doe, the representatives of the descendants to the original trustees of the 1745 trust.

After the circuit court appointed a guardian *ad litem* to represent the Does, the Does petitioned for partial summary judgment on the issue of the ownership of the real property, arguing they were the sole owners of the real property. Thereafter, the Parish aligned itself with the Does' position.<sup>6</sup>

At the hearing, the Diocese and the National Church defended against the Does' claim,<sup>7</sup> maintaining the position that the Parish owned the real property and they owned an interest in any property owned by the Parish.

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<sup>6</sup> The Parish also filed a motion for summary judgment asking the circuit court to declare "the subject property [was] governed by the 1745 Trust Deed, and as a matter of law [the Diocese] and [the National Church] have no right to assert any interest in the said property." The circuit court declined to rule on the Parish's motion because of its disposition on the Does' motion.

<sup>7</sup> Neither the Diocese nor the National Church filed a cross-motion for summary judgment.

After hearing extensive argument on the Does' motion for summary judgment, the circuit court concluded the language contained in the 1745 trust deed was clear and unambiguous and therefore refused to consider parol evidence to explain the terms in the trust deed. The circuit court granted the Does' motion for partial summary judgment, ruling "the 1745 Deed created an active valid and binding charitable trust and legal title to the Subject Property is held by the common law heirs of George Pawley represented by John Doe and Jane Doe, and the equitable title is held by the inhabitants of the Waccamaw Neck as the Trust beneficiaries." In making its ruling, the circuit court determined: 1) the Diocese and the National Church did not have standing to assert Statute of Uses, adverse possession, laches, and staleness; 2) the Statute of Uses did not execute the trust; 3) the trust did not fail when the Church of England ceased to be recognized in the United States; 4) the Parish did not acquire the property by adverse possession; 5) the Does' claim was not barred by laches; 6) the Does' claim was not barred by staleness; 7) the Diocese and the National Church were "at best, incidental beneficiaries" to the trust; and 8) the court did not have subject matter jurisdiction to determine the ownership of the personal property. The Diocese and the National Church appeal.

#### **ISSUES PRESENTED**

1. Did the circuit court err by holding the Diocese and the National Church did not have standing to assert Statute of Uses, adverse possession, laches, and staleness?

2. Did the circuit court err by ruling on summary judgment that the Statute of Uses did not execute the trust?

3. Did the circuit court err by ruling on summary judgment that the trust did not fail when the Church of England ceased to be recognized in the United States?

4. Did the circuit court err by granting summary judgment to the Does on the claim of adverse possession?

5. Did the circuit court err by granting summary judgment to the Does on the claim of laches?

6. Did the circuit court err by granting summary judgment to the Does on the claim of staleness?

7. Did the circuit court lack subject matter jurisdiction to declare the Diocese and the National Church to be incidental beneficiaries of the trust?

8. Did the circuit court err by declaring it did not have subject matter jurisdiction to determine the ownership of the personal property?

## LAW/ANALYSIS

### I. Standing

The Diocese and the National Church argue the circuit court erred by holding they did not have standing to assert Statute of Uses, adverse possession, laches, and staleness. We agree.

A party must have a personal stake or interest in the subject matter of the lawsuit to have standing. *Anchor Point v. Shoals Sewer*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992) (holding a party has standing to sue if the party has “a real, material, or substantial interest in the subject matter of the action, as opposed to . . . only a nominal or technical interest in the action”); *Duke Power v. South Carolina Pub. Serv. Comm’n*, 284 S.C. 81, 96, 326 S.E.2d 395, 404 (1985) (“To have standing to present a case before the courts of this State, a party must have a personal

stake in the subject matter of the lawsuit.”); *see Town of Sullivan’s Island v. Felger*, 318 S.C. 340, 346, 457 S.E.2d 626, 629 (Ct. App. 1995) (holding the town has standing in a declaratory action to determine whether Felger owns fee simple title to the property, even though the town does not have a direct interest in ownership of the property).

The present lawsuit began as an action with the Parish as plaintiff and the Diocese and the National Church as co-defendants. The Parish initiated the lawsuit after the Bishop of the Diocese filed a notice in the County of Georgetown Deed Book, claiming the Diocese and National Church hold an interest in any property owned by the Parish based on the canons of the Diocese and the National Church.<sup>8</sup> In its

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<sup>8</sup> The quoted language from the canons of the Diocese read, in part, “all real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina.” The quoted language from the canons of the National Church was nearly identical. Although the Parish claims it is not bound by these canons, the Parish does not deny it has been affiliated with the National Church since as early as 1820 and with the Diocese since at least 1903. We note the interpretation of the canons is an ecclesiastical dispute and beyond the jurisdiction of the civil court. *See Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 323 S.C. 418, 421-23, 475 S.E.2d 767, 769-70 (Ct. App. 1996) (“The trial court . . . found that the issue of whether the 1975 deed comported with Church discipline so as to effectively transfer the subject property to the National Church was ecclesiastical in nature, and therefore beyond the jurisdiction of the civil court. . . . [In affirming the trial court’s decision, this Court stated], the interpretation of the Discipline, and what it mandates, is a matter for the ecclesiastical tribunal of the National Church, not the civil court.”);

complaint, the Parish requested the circuit court declare it to be the sole owner of the property.

Because the Parish requested it be declared the sole owner of the property and did not simply ask the circuit court to determine the claims between the Parish, the Diocese, and the National Church, the circuit court heard arguments for the appointment of representatives for anyone having an interest in the property. The circuit court appointed the Does to represent the claim of the descendants of the trustees to the 1745 trust.

After being appointed, the Does moved for partial summary judgment, claiming they alone held legal title to the real property. The Parish supported this motion. Unless the Diocese and the National Church are able to assert the Parish owns the real property, their claim to an interest in the property will be lost based solely on the Parish's decision not to pursue the issue. Thus, the Diocese and National Church have a stake in any lawsuit that could affect the Parish's interest in the property.

Therefore, the circuit court erred by ruling the Diocese and the National Church did not have standing to assert Statute of Uses, adverse possession, laches, and staleness. Consequently, we reverse.

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*see also Seldon v. Singletary*, 284 S.C. 148, 149-50, 326 S.E.2d 147, 148-49 (1985) (holding a local congregation that is part of a hierarchical church is under the government and control of the religious organization); *Morris Street Baptist Church v. Dart*, 67 S.C. 338, 343, 45 S.E. 753, 754 (1903) (“Episcopalians subject themselves, in church affairs, to the authority of synods and councils.”).

## II. Summary Judgment

### Standard of Review

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC.

“In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). “If triable issues exist, those issues must go to the jury.” *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 367 (1991).

“An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, South Carolina Rules of Civil Procedure.” *Lanham v. Blue Cross & Blue Shield of South Carolina*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

### A. Statute of Uses

The Diocese and the National Church argue the circuit court erred by ruling on summary judgment that the Statute of Uses did not execute the trust. We agree.

In a trust where the trustee is instructed to use the property for the benefit of another, the Statute of Uses executes to vest legal title with the beneficiary, if the beneficiary is capable of taking legal title and the trustee has no active duties. *Restatement (Second) of Trusts* § 67 (1959); *see id.* at cmt. b (“When

the Statute of Uses executes a use or trust not only is the interest of the beneficiary made legal but the interest of the person who otherwise would hold subject to the use or trust is extinguished. The Statute thus has a double effect in turning the equitable interest of one person into a legal interest and extinguishing the legal interest of the other.”); *Johnson v. Thornton*, 264 S.C. 252, 257, 214 S.E.2d 124, 127 (1975) (“In a passive trust the legal and equitable titles are merged in the beneficiaries and the beneficial use is converted into legal ownership, but as to an active trust the title remains in the trustee for the purpose of the trust.”); see also *Young v. McNeill*, 78 S.C. 143, 153, 59 S.E. 986, 989 (1907) (holding the Statute of Uses will not execute the trust if the beneficiary of the trust is not capable of taking legal title); *Bowen v. Humphreys*, 24 S.C. 452, 455 (1886) (holding the Statute of Uses will not execute the trust “as long as there is anything remaining for the trustee to do which renders it necessary that he should retain the legal title in order fully to perform the duties imposed upon him by the trust”).

The Does argued the Statute of Uses did not execute the trust. According to the Does, the plain language of the trust deed established the beneficiary was not capable of taking legal title, and the trustee had active duties.

The circuit court agreed with the Does, ruling the term “inhabitants on Waccamaw Neck” referred to the people living in the geographic region and ruling the language in the deed imposed an affirmative duty upon the trustees to assure “continued use of

the property for a chapel or church and to ensure that divine worship [was] maintained.”<sup>9</sup>

Because of these rulings, the circuit court refused to consider parol evidence regarding the issues of whether the beneficiary was capable of taking legal title and whether the trustee lacked affirmative duties.

“The primary consideration in construing a trust is to discern the settlor’s intent.” *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995). When the beneficiary “is described in terms applicable . . . to more than one person or thing, [parol] evidence is admissible to prove which of the persons or things so described was intended.”<sup>10</sup> *Cunningham v. Cun-*

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<sup>9</sup> In finding the settlor’s intent was to ensure the property was used for divine worship, the circuit court ignored the words “Church of England established by Law.” Because this language revealed the settlor’s intent to use the property to house a chapel for a specific denomination of the Christian faith, we hold the circuit court erred in this ruling. See *First Carolinas Joint Stock Land Bank v. Deschamps*, 171 S.C. 466, 480, 172 S.E. 622, 627 (1934) (“In view of the . . . provisions of the trust deed and of the decisions cited, . . . this construction gives full effect to the intention as expressed in every part of the deed.”); *Town of Pawlet v. Clark*, 13 U.S. 292, 324, 3 L.Ed. 735 (1815) (holding the interpretation of a grant must “give full effect to all the words” in the document); see also *Combe v. Brazier*, 2 S.C. Eq. 431, 446-47, 2 Des. Eq. 431, 446-47 (1806) (holding that because there are “slight shades of difference between the different sects of protestant Christians,” a trust deed which provided for a Methodist minister to preach at a church failed when the minister became an Episcopal priest).

<sup>10</sup> The law relating to discerning the drafter’s intent is identical for wills and trusts. See *Deschamps*, 171 S.C. at 480, 172 S.E. at 627 (holding courts are authorized to ascertain a

*ningham*, 20 S.C. 317, 330 (1884) (quoting James Wigram & John O'Hara, *A Treatise on Extrinsic Evidence in Aid of the Interpretation of Wills* 142 (1872)); see *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813 (“When there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor’s intent.”). Furthermore, the evidence must be considered in light of the law as it existed at the time. See *id.* (holding it was proper to review the case law applicable to the time when the settlor wrote his trust deed to determine “issue” had only one legal interpretation at the time, meaning no latent ambiguity existed).

In adopting the Does’ argument, the circuit court ignored the argument of the Diocese and the National Church that “Inhabitants on Waccamaw Neck” referred to the Parish. According to the Diocese and the National Church, the settlor intended to deed the property to the Parish but could not do so directly until such time as the church was officially recognized by the government. Based on this argument, the Statute of Uses executed the trust once the Par-

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maker’s intent in the construction of wills and trust deeds); *South Carolina Nat’l Bank v. Bonds*, 260 S.C. 327, 331-32, 195 S.E.2d 835, 837 (1973) (“In construing the terms used by the Testator in his will, the paramount consideration of this Court is to ascertain and effectuate the intent of the Testator.”); *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813 (“The primary consideration in construing a trust is to discern the settlor’s intent.”).

ish was officially established, meaning the trustees had no continuing duties.<sup>11</sup>

To advance their point, the Diocese and the National Church offered parol evidence, statutes, cases, and constitutions to demonstrate that in colonial times churches could not be recognized by the government until they owned property, and they could not own property until they had been officially recognized. *See Pawlet*, 13 U.S. at 330 (holding “no parish church . . . could have a legal existence until consecration and consecration was expressly inhibited unless upon a suitable endowment of land”). As such, a colonial practice arose in which a settlor placed property in trust for a congregation until such time as the government recognized the church. *See id.* at 331 (“It would form an exception to the generality of the rule, that to make a grant valid there must be a person *in esse* capable of taking it. And under such circumstances until a parson should be legally inducted to such new church, the fee of its lands would remain in abeyance.”). The Diocese and the National Church argued this practice was followed by the settlor as evidenced by the fact that the trust was not recorded until the year the Parish was recognized by the government, approximately twenty years after the trust was created.

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<sup>11</sup> Because the Royal Privy Council disallowed the 1767 Act creating the Parish in 1770, the Diocese and the National Church raise the possibility that the property may have escheated to the government three years after vesting with the Parish. Because we remand this case in full, we need not further address this issue.

Because uncertainty arose when attempting to effectuate the trust deed, we hold “inhabitants on Waccamaw Neck” was a latent ambiguity, and it was error for the circuit court to refuse to consider parol evidence, statutes, cases, and constitutions in determining whether the beneficiary was capable of taking legal title and whether the trustees lacked affirmative duties.<sup>12</sup> See *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813 (“[W]hen there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor’s intent.”).

When the parol evidence is considered, there is at least a genuine issue of material fact as to the meaning of “inhabitants on Waccamaw Neck.” Therefore, the circuit court erred by ruling on summary judgment that the Statute of Uses did not execute the trust. See *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

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<sup>12</sup> The circuit court relied on *Beckham v. Short*, 298 S.C. 348, 349-50, 380 S.E.2d 826, 827 (1989), to support the proposition that parol evidence is inadmissible to vary the terms of a deed in the absence of fraud, mistake, or other grounds for reformation or rescission. Because the Diocese and the National Church sought to introduce the parol evidence to explain the term, not to vary it, we hold the circuit court erred in its reliance on *Beckham*. See *Shelley v. Shelley*, 244 S.C. 598, 606, 137 S.E.2d 851, 855 (1964) (“Evidence is admissible which merely intends to explain and apply what the testator has written.” (quoting *McCall v. McCall*, 25 S.C. Eq. 447, 456, 4 Rich. Eq. 447, 456 (1852))).

**B. Failure of the Trust**<sup>13</sup>

The Diocese and the National Church argue the circuit court erred by ruling on summary judgment that the trust did not fail when the Church of England ceased to be recognized in the United States.<sup>14</sup>

We agree.

“Charitable trusts are entitled to peculiar favor; the courts will construe them to give them effect, if possible, and to carry out the general intention of the donor.” *Colin McK. Grant Home v. Medlock*, 292 S.C. 466, 470, 349 S.E.2d 655, 657 (Ct. App. 1986).

“Although a court has considerable discretion to adapt a trust to changed circumstances, this flexibility is not unlimited.” *Id.* at 471, 349 S.E.2d at 658; see *Bonds*, 260 S.C. at 337, 195 S.E.2d at 840 (“There is no question that where conditions have substantially changed, the Court is allowed considerable discretion [in trying to effectuate the intent of the testa-

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<sup>13</sup> The Does and the National Church assert this argument only if, upon remand, the Statute of Uses is determined not to execute the trust in a subsequent circuit court proceeding. If the Statute of Uses executed the trust in 1767, the possibility that the trust failed in the 1770s as a result of the disestablishment of the Church of England in the United States is irrelevant.

<sup>14</sup> As part of its ruling, the circuit court concluded the trust did not fail when the Church of England ceased to be recognized as the official church in the United States. The Diocese and the National Church argued against this ruling, alleging the trust failed once the Church of England was no longer “established by law” as required by the language of the trust. The Diocese and the National Church make this argument in connection with their assertion that the Parish holds the property by adverse possession.

tor].”); *Furman Univ. v. McLeod*, 238 S.C. 475, 490, 120 S.E.2d 865, 872 (1961) (“The Court of Equity has the power upon a proper showing, to permit a deviation from the strict terms of a trust if necessary or advisable to carry out the purposes thereof.”).

A court is authorized to deviate from the terms of a trust to carry out the settlor’s intent but is prohibited from applying the trust property to a different charitable purpose from that designated by the terms of the trust. *Bonds*, 260 S.C. at 337-41, 195 S.E.2d at 840-42; *see id.* at 341-42, 195 S.E.2d at 842-43 (“The Testator’s primary purpose was to create a perpetual memorial . . . by aiding deserving high school graduates in pursuit of their education . . . . With the many changes which have taken place since the Testator’s death . . . it is obvious that if the terms of the trust were literally complied with and the beneficiaries limited to the graduates of ‘Greenville City High Schools,’ the Testator’s main purpose would be defeated rather than effectuated.”); *McLeod*, 238 S.C. at 489, 120 S.E.2d at 871-73 (holding the circuit court was authorized to deviate from the strict terms of the trust because the intent of the testator was to benefit the school); *Pringle v. Dorsey*, 3 S.C. 502, 507-09 (1872) (holding the trust was for the benefit of a particular church that was subsequently destroyed by fire, and no departure from the trust was authorized because no evidence suggested the testator indicated any organization other than the particular church was to benefit from the trust); *Attorney Gen. v. Jolly*, 21 S.C. Eq. 379, 394-96, 2 Strob. Eq. 379, 394-96 (1848) (holding the income of a trust could not be diverted from a particular congregation to the national church, when the testator specifically requested the money be given to the congregation).

We find *Bonds* instructive on this point. In *Bonds*, a Greenville County resident created a trust whose income was “to be used for assistance of deserving students of Greenville City High Schools in completing their education.” *Bonds*, 260 S.C. at 330, 195 S.E.2d at 836. When the document was written in 1941, two Greenville City High Schools existed. By the time the trust became effective in 1971, one of these high schools had been destroyed by fire and students were bused throughout the consolidated Greenville County school system to achieve racial integration. As a result, students who would have been eligible for trust proceeds in 1941 did not qualify in 1971 and vice versa. *Id.* at 330-36, 195 S.E.2d at 836-39. In determining whether the trust failed, our supreme court stated that because “a change in conditions which the Testator could not have reasonably anticipated” occurred, the application of the trust language to the “factual situation [as it existed in 1971] resulted in certain latent ambiguities and uncertainties.” *Id.* at 336, 332, 195 S.E.2d at 839, 838. Thus, our supreme court concluded it was proper to admit parol evidence to determine if the intent of the testator could be carried out with a deviation from the literal words of the trust or if the change of circumstances meant that the purpose of the trust had been frustrated. *Id.* at 331-342, 195 S.E.2d at 837-43.

Similarly, in the present case, the trust required the property be used to house a chapel for worship of the “Church of England established by Law.” When the settlor wrote this term in 1745, there was no ambiguity as to the meaning of the term. The term referred to the state church of England which was recognized by the ruling authorities of the American colonies. However, after the formation of the United

States, both the national constitution and state constitution disallowed the establishment of a state-sponsored church. *See* U.S. Const. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”); S.C. Const. art. I, § 2 (“The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.”).

Thus, a latent ambiguity arose once the Church of England ceased to be recognized in the United States. Therefore, the circuit court erred by refusing to consider parol evidence concerning the legal successor of the Church of England in the United States. *See Bonds*, 260 S.C. at 332, 195 S.E.2d at 838 (holding “the application of [the trust] language to the current factual situation resulted in certain latent ambiguities and uncertainties”); *cf. Pawlet*, 13 U.S. at 323-36 (holding the court should consider common law, statutes, and historical material in determining whether a charter grant of “one share for a glebe<sup>15</sup> for the church of England as by law established” was either void or devolved to the state after the American Revolution).

When the parol evidence is considered, there is at least a genuine issue of material fact as to whether the trust failed when the “Church of England established by law” ceased to exist in the United States. Thus, the circuit court erred by granting summary judgment to the Does on this issue. *See George*, 345 S.C. at 452, 548 S.E.2d at 874 (“The pur-

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<sup>15</sup> A glebe is the “land possessed as part of the endowment or revenue of a church or ecclesiastical benefice.” *Black’s Law Dictionary* 698 (7th ed. 1999).

pose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

### **C. Adverse Possession**

#### **i. Evidence of Adverse Possession**

The Diocese and the National Church argue the circuit court erred by granting summary judgment to the Does on the claim of adverse possession because ample evidence was presented that the Parish had adversely possessed the property in excess of forty years. We agree.

“To constitute adverse possession, the possession must be continuous, hostile, open, actual, notorious and exclusive for . . . [the required] statutory period.” *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986).

Where the party claims the property under color of title, the statutory period is forty years. S.C. Code Ann. § 15-3-380 (1977) (“No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.”); see *Black’s Law Dictionary* 260 (7th ed. 1999) (stating color of title is “a written instrument or other evidence that appears to give title, but does not do so”).

In 1903, the Diocese presented the Parish with a quitclaim deed to the property. At least from 1903 to the filing of the lawsuit in 2000, the Parish continu-

ally possessed the property at issue in this case.<sup>16</sup> During this period, the Parish built structures on the property, improved the property, and sold burial plots from the property. Additionally, the Parish mortgaged the property on four separate occasions from 1959 to 1993. On each occasion, the Parish represented to the lender that it held fee simple title to the property.<sup>17</sup> See *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992) (holding evidence of adverse possession included mortgage payments paid on the property, taxes paid on the property, and boundary lines marked on the disputed property); see also *First Baptist Church of Woodruff v. Turner*, 248 S.C. 71, 81, 149 S.E.2d 45, 49 (1966) (“The giving of a deed or mortgage by one in possession of land is ordinarily evidence of assertion of title.” (quoting *Carr v. Mouzon*, 86 S.C. 461, 467, 68 S.E. 661, 663 (1910))).

Thus, the Diocese and the National Church presented ample evidence that the possession by the Parish was continuous, hostile, open, actual, notorious, and exclusive from at least 1903 to 2000, a period of nearly 100 years. See *Presbyterian Church of James Island v. Pendarvis*, 227 S.C. 50, 57, 86 S.E.2d 740, 743 (1955) (holding evidence of adverse possession included the church’s dealings with the property

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<sup>16</sup> The Parish began possession of the property once it was chartered in 1767. There is some dispute as to whether the Parish existed continuously from 1767 to 1903. Because our analysis on adverse possession is not affected by the events of this time period, we decline to comment on this issue.

<sup>17</sup> On each occasion, the Parish obtained permission from the Diocese, as required by the canons of the Diocese and the National Church.

as if it owned the property in fee simple for a period of more than half a century, and the fact that the church's title had not been questioned for approximately fifty years). Viewing the evidence in the light most favorable to the Diocese and the National Church, there is at least a genuine issue of material fact as to whether the Parish had adversely possessed the property for at least forty years. Therefore, the circuit court erred by granting summary judgment in favor of the Does on this issue. See *George*, 345 S.C. at 452, 548 S.E.2d at 874 (“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

#### **ii. Requirement of Hostile Possession**

The Diocese and the National Church argue the circuit court erred by ruling on summary judgment that the Parish was not in hostile possession of the property. We agree.

Hostile possession is “possession asserted against the claims of all others.” *Black’s Law Dictionary* 1184 (7th ed. 1999).

An adverse possession claim fails if the claimant’s possession is not hostile. *Perry v. Heirs at Law and Distributees of Gadsden*, 316 S.C. 224, 225, 449 S.E.2d 250, 251 (1994).

In the present case, the circuit court cited *Cook v. Eller*, 298 S.C. 395, 397, 380 S.E.2d 853, 854 (Ct. App. 1989), for the proposition that possession cannot be hostile if based on a mistaken belief of ownership.

Our supreme court stated the rule that “possession under a mistaken belief that property is one’s own and with no intent to claim against the property’s true owner cannot constitute hostile posses-

sion . . . is applicable only to cases involving boundary disputes between adjoining landowners.” *Perry*, 316 S.C. at 226, 449 S.E.2d at 251; see *Pendarvis*, 227 S.C. at 57-58, 86 S.E.2d at 743 (holding a party’s possession was adverse even when “due to the long lapse of time all parties, including the congregation and the ministers, had simply forgotten the trust”).

Because the dispute in this case concerns the entire piece of property and is not merely a boundary dispute, the circuit court erred by applying *Cook*.<sup>18</sup>

As an additional ground for finding the Parish’s possession was not hostile, the circuit court cited *Frady v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921), for the proposition that one who enters property based on permissive use may not fulfill the hostility requirement of adverse possession.<sup>19</sup>

Although our supreme court noted a party cannot adversely possess property used with the permission of the owner, it stated a party may adversely possess such property upon a clear disclaimer of the owner’s title. *Monteith*, 289 S.C. at 180, 345 S.E.2d at 726; see *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773,

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<sup>18</sup> Although the Parish admits it was not aware of the trust until 1986, the deed was properly recorded in 1767 and remained on record from that time. Thus, the Parish had constructive notice of the trust. *Pendarvis*, 227 S.C. at 57-58, 86 S.E.2d at 743 (holding the parties had constructive notice of the 1713 trust because it was recorded in the office of the Register of Deeds in 1732).

<sup>19</sup> Even *Frady* does not preclude a party whose possession began under permissive use from adversely possessing the property, so long as the party “either surrendered the possession or gave notice of an adverse possession.” *Id.*

774 (Ct. App. 1985) (“Where one enters land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party.”).

The actions of the Parish from at least 1903 to 2000, including leasing the property for uses not permitted by the trust and mortgaging the property, could not have been based on the permission of the trustees because no additional trustees were appointed after the death of the last trustee in 1774. Further, none of the four mortgages taken out by the Parish made reference to any ownership interest related to the 1745 trust.<sup>20</sup> Thus, the circuit court erred in applying *Fradley* to these facts.

Viewing the evidence in the light most favorable to the Diocese and the National Church, there is at least a genuine issue of material fact as to whether the Parish fulfilled the hostility requirement for adverse possession. Thus, the circuit court erred by granting summary judgment to the Does on this issue. See *George*, 345 S.C. at 452, 548 S.E.2d at 874 (“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

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<sup>20</sup> See footnote 17, *supra*.

### iii. Repudiation of the Trust by a Beneficiary or a Trustee<sup>21</sup>

The Diocese and the National Church argue the circuit court erred by ruling on summary judgment that the Parish had not repudiated the trust. We agree.

In a claim for adverse possession “where one’s possession was begun in privity with or in subservience to the title of another,” adverse possession cannot begin until the trust is openly repudiated by “a clear, positive, and continued disclaimer of the title . . . [and the adverse claim is] brought home to the other party.” *Bradley v. Calhoun*, 125 S.C. 70, 82, 117 S.E. 811, 815 (1923); *cf. Ham v. Flowers*, 214 S.C. 212, 218-19, 51 S.E.2d 753, 756 (1949) (holding when a party took possession of property to protect his interest as a mortgagee, that party entered “the premises in the quasi character of trustee for the mortgagor and [could] not hold adversely to [mortgagor’s] rights until he distinctly disavows and repudiates his mortgagee relationship and notice thereof is brought home to the mortgagor”).

Repudiation “need not be in specific words but may consist of conduct inconsistent with the existence of the trust.” *Pendarvis*, 227 S.C. at 57-58, 86 S.E.2d at 743-44 (holding the party’s leasing the

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<sup>21</sup> The Diocese and National Church assert this argument only if the Parish is determined to be the beneficiary of the trust during a subsequent circuit court proceeding or the Parish is determined to be the trustee of the trust in a subsequent probate court proceeding. *See* S.C. Code Ann. § 62-7-201(a)(1) (Supp. 2002) (stating the probate court has exclusive jurisdiction to appoint trustees).

property and using the property in a manner not consistent with the trust was “tantamount to a repudiation of the trust”).

Although the factual situations in *Calhoun*, *Ham*, and *Pendarvis* involved trustees adversely possessing against the trust, “the same requirements logically apply to the possession by a beneficiary.” See *Reasor v. Peoples Fin. Servs.*, 276 Ga. 534, 579 S.E.2d 742, 744 (2003) (holding a trustee or a beneficiary may adversely possess against the trust by denying the trust and possessing in a continuous, hostile, open, actual, notorious, and exclusive manner); see also *Lewis v. Hawkins*, 90 U.S. 119, 126, 23 L.Ed. 113 (1874) (holding a beneficiary can adversely possess against the trust if a distinct denial of the trust or a possession inconsistent with it is clearly shown).

In 1947, the Parish leased portions of the property for uses not authorized by the trust. This act constituted evidence of repudiation. See *Pendarvis*, 227 S.C. at 57-58, 86 S.E.2d at 743-44.

From 1959 to 1993, the Parish mortgaged the property at least four times, each time listing itself as the owner of the property.<sup>22</sup> Because neither the language of the trust nor an order of the probate court authorized such action, mortgaging the property was additional evidence of repudiation. See 27 S.C. Jur. *Mortgages* § 12(i) (1996) (“A trustee may not mortgage trust property unless the trust agreement specifically authorizes such action without court approval.”); see also *Chapman v. Williams*, 112 S.C. 402, 405-06, 100 S.E. 360, 361 (1919) (“This

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<sup>22</sup> See footnote 17, *supra*.

court does not say that under no circumstances will it allow trustees to put a mortgage on trust property, but three things must appear: (a) the necessity for the mortgage must be absolute; (b) the trustees must consent to the mortgage; and (c) the trustees must have the power to make the mortgage.”).

Viewing the evidence in the light most favorable to the Diocese and the National Church, there is at least a genuine issue of material fact as to whether the Parish repudiated the trust. Thus, the circuit court erred by granting summary judgment to the Does on this issue. *See George*, 345 S.C. at 452, 548 S.E.2d at 874 (“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

#### **D. Laches**

The Diocese and the National Church argue the circuit court erred by granting summary judgment to the Does on the claim of laches. We agree.

Laches is an equitable doctrine, which “arises upon the failure to assert a known right.” *Ex parte Stokes*, 256 S.C. 260, 267, 182 S.E.2d 306, 309 (1971); *see Byars v. Cherokee County*, 237 S.C. 548, 559, 118 S.E.2d 324, 330 (1961) (“Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or omitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence.”).

To prove laches, a party must establish: “(1) delay, (2) unreasonable delay, [and] (3) prejudice.” *Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988); *see Arceneaux v. Arrington*, 284 S.C.

500, 503, 327 S.E.2d 357, 358 (Ct. App. 1985) (“Whether . . . [a claim] is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party.”).

In addition, “the circumstances must . . . [be] such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts.” *Byars*, 237 S.C. at 559, 118 S.E.2d at 330; see *Pendarvis*, 227 S.C. at 58, 86 S.E.2d at 744 (holding a party seeking to enforce a trust “may become barred by laches if he fails to proceed with reasonable diligence”).

Assuming the trust still exists, no assertion of rights has been made on behalf of the trust in approximately 200 years. During this 200-year period, the Parish leased the property for uses not mentioned in the trust and mortgaged it on at least four different occasions.<sup>23</sup>

In the mortgages dated 1979, 1988, and 1993, the Parish covenanted it was “lawfully seised” of the property it was mortgaging. According to *Black’s Law Dictionary*, “seise” means to hold in fee simple. *Black’s Law Dictionary* 1362 (7th ed. 1999). Thus, for approximately fifteen years, the Parish was specifically claiming to a third party that it held the property in fee simple.<sup>24</sup> During this fifteen-year time period, the Does did not challenge the Parish’s

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<sup>23</sup> This lawsuit was commenced in 2000. The Parish mortgaged the property for a fifth time in 2001.

<sup>24</sup> See footnote 17, *supra*.

claim of ownership, even though a default on the mortgage could have resulted in foreclosure.

Prejudice is arguably shown because to allow the Does to assert ownership of the property after such a delay could cause the outstanding balances on the mortgages to come due immediately. *See Arceneaux*, 284 S.C. at 503, 327 S.E.2d at 358 (holding a claim is barred by laches if the delay prejudices the other party).

Viewing the evidence in the light most favorable to the Diocese and the National Church, there is at least a genuine issue of material fact as to whether the Does' claims are barred by laches. Thus, the circuit court erred by granting summary judgment in favor of the Does on the issue of laches. *See George*, 345 S.C. at 452, 548 S.E.2d at 874 ("The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.").

#### **E. Staleness**

The Diocese and the National Church argue the circuit court erred by granting summary judgment to the Does on the claim of staleness. We agree.

A stale demand is "one that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied." *Pendarvis*, 227 S.C. at 59, 86 S.E.2d at 744 (quoting *Bell v. Mackey*, 191 S.C. 105, 123, 3 S.E.2d 816, 824 (1939)).

We find *Pendarvis* instructive on this issue. In *Pendarvis*, a trust was established in 1713. *Pendar-*

*vis*, 227 S.C. at 53, 86 S.E.2d at 741. The deed was recorded in the Register of Deeds Office for Charleston County within twenty years of the creation of the trust. *Id.* at 56, 86 S.E.2d at 742. However, the existence of the trust was forgotten for the next 200 years. *Id.* During this time period, the church treated the property as its own. *Id.* at 52-56, 86 S.E.2d at 741-43. Because no successor trustees were appointed after the original trustees died, no one representing the trust asserted ownership of the property pursuant to the terms of the trust during this 200-year period. *Id.* at 54, 86 S.E.2d at 742. When the church decided to subdivide the property in 1945, the trust was rediscovered and a suit was commenced to clear title to the property. *Id.* at 56, 86 S.E.2d at 742. In explaining numerous reasons not to enforce the trust, our supreme court reviewed these facts and then stated a court “should not now undertake to enforce this ancient trust.” *Id.* at 57, 86 S.E.2d at 743.

Similarly, in the present case, a trust established in 1745 was recorded in the Register of Deeds Office for Charleston County approximately twenty years after the trust’s creation. The trust was then forgotten for the next 200 years, during which time the Parish treated the property as its own. No successor trustees were appointed after the original trustees died, and thus, no one representing the trust asserted any ownership rights to the property during this 200-year period. The trust was rediscovered in 1986 and still no claim was made by the descendants of the trustees for another twenty years. It was not until the Diocese gave notice to the Register of Deeds Office for Georgetown County that both the Diocese and the National Church held an interest in the

property that a lawsuit was filed in which the Does eventually asserted a claim to the property.

Viewing the evidence in the light most favorable to the Diocese and the National Church, there is at least a genuine issue of material fact as whether the Does' claims were stale.<sup>25</sup> *See id.* at 59, 86 S.E.2d at 744. Thus, the circuit court erred by granting summary judgment in favor of the Does on the staleness claim. *See George*, 345 S.C. at 452, 548 S.E.2d at 874 (“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.”).

### **III. Subject Matter Jurisdiction**

#### **Standard of Review**

“Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.” *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998); *see Eaddy v. Eaddy*, 283 S.C. 582, 584, 324 S.E.2d 70, 72 (1984) (“Subject matter jurisdiction . . . may be raised at any stage of the proceeding.”).

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<sup>25</sup> The dispute between the parties concerning the term “inhabitants on Waccamaw Neck” in the present case exemplifies why it is “difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties.” *Pendarvis*, 227 S.C. at 59, 86 S.E.2d at 744. The Parish claims this term should be read according to its plain meaning. The Diocese and the National Church contend the term had a special meaning in colonial times and referred to the political unit that would exist once a parish was established. In attempting to ascertain the intent of the settlor, we note the extreme difficulty in determining which of these meanings would have been more prevalent in colonial times.

### **A. Ascertaining Beneficiaries**

The Diocese and the National Church argue the circuit court lacked subject matter jurisdiction to declare the Diocese and the National Church to be incidental beneficiaries of the trust. To the extent the circuit court order does this, we agree and vacate.

The probate court has exclusive jurisdiction to “ascertain beneficiaries.” S.C. Code Ann. § 62-7-201(a)(3) (Supp. 2002). A beneficiary “includ[es] a person who has any present or future interest, vested or contingent . . . and, as it relates to a charitable trust, includes any person entitled to enforce the trust.” S.C. Code Ann. § 62-1-201(2) (1987).

The circuit court found the Diocese and the National Church were “at best, incidental beneficiaries” to the trust. To the extent that the circuit court’s statement was a finding that the Diocese and the National Church were incidental beneficiaries, we vacate.

### **B. Personal Property**

The Diocese and the National Church argue the circuit court erred by declaring it did not have subject matter jurisdiction to determine the ownership of the personal property. We agree.

“The probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts.” S.C. Code Ann. § 62-7-201 (Supp. 2002).

In its complaint, the Parish sought a declaration that it owned the personal property located on the real property. The Diocese and the National Church counterclaimed for a declaration that all personal property located on the real property was owned by

the Parish, subject to an interest held by both the Diocese and the National Church.

After the circuit court determined the holders of both legal and equitable title to the real property, the circuit court stated it had “no further jurisdiction regarding this case.” In the Rule 59(e), South Carolina Rules of Civil Procedure, motions to alter or amend the judgment, the Diocese and the National Church noted the issue of personal property had not been resolved. The circuit court did not address this issue in its order denying the motion.

The language of the trust deed refers only to real property.<sup>26</sup> Thus, because the personal property is not subject to the trust, the probate court cannot have exclusive jurisdiction over the personal property. Accordingly, we remand this issue to the circuit court.

### CONCLUSION

Based on the foregoing, the circuit court’s order is

**VACATED IN PART, REVERSED IN PART and REMANDED.**

**STILWELL and KITTREDGE, JJ., concur.**

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<sup>26</sup> In their brief, the Does concede the personal property is not subject to the trust.

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**APPENDIX C**


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STATE OF SOUTH	)	IN THE COURT OF
CAROLINA	)	COMMON PLEAS,
	)	OF THE
COUNTY OF GEORGE-	)	FIFTEENTH JUDI-
TOWN	)	CIAL CIRCUIT
	)	
ALL SAINTS PARISH,	)	C/A No. 2000-CP-22-
WACCAMAW, a South	)	0720
Carolina Non-profit Cor-	)	
poration; D. CLINCH	)	
HEYWARD, Warden for	)	
All Saints Parish, Wac-	)	
camaw; W. RUSSELL	)	
CAMPBELL, Warden for	)	
All Saints Parish, Wac-	)	
camaw; MARTHA M.	)	
LACHICOTTE, ANN	)	
USHER MERCER,	)	
VANDELL ARRING-	)	
TON, and RIVES	)	
KELLY, Individually and	)	
as Representatives of the	)	
Inhabitants of the Wac-	)	
camaw Neck Region of	)	
Georgetown County; and	)	
EVELYN LABRUCE, In-	)	
dividually and as a De-	)	
scendant of George Paw-	)	

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ley; )  
)  
Of whom W. RUSSELL )  
CAMPBELL, in his ca- )  
pacity as Senior Warden )  
of All Saints Church, is )  
also a Defendant by way )  
of Counterclaim, )

Plaintiffs, )

v. )

THE PROTESTANT )  
EPISCOPAL CHURCH )  
IN THE DIOCESE OF )  
SOUTH CAROLINA; )  
THE EPISCOPAL )  
CHURCH, a/k/a The )  
Protestant Episcopal )  
Church in the United )  
States of America; MARK )  
SANFORD, in his official )  
capacity as The Governor )  
of the State of South )  
Carolina; and JOHN and )  
JANE DOE, as descen- )  
dants to George Pawley )  
and William Poole, )

Defendants; and

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GUERRY GREEN, on )  
behalf of All Saints Par- )

**ORDER ON RE-  
CONSIDERATION**

C/A No. 2000-CP-22-  
0720

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ish, Waccamaw, and in )  
 his capacity as Senior )  
 Warden of the same; )  
 CARL SHORT, on behalf )  
 of All Saints Parish, Wac- )  
 camaw, and in his capac- )  
 ity as Junior Warden of )  
 the same; and GEORGE )  
 TOWNSEND, JAMES )  
 CHAPMAN, and ED- )  
 WARD MILLS, on behalf )  
 of All Saints Parish, Wac- )  
 camaw, and in their ca- )  
 pacities as Members of )  
 the Vestry of the same; )  
 THE PROTESTANT )  
 EPISCOPAL CHURCH )  
 IN THE DIOCESE OF )  
 SOUTH CAROLINA and )  
 THE RIGHT REVER- )  
 END EDWARD L. )  
 SALMON, JR., in his ca- )  
 pacity as Bishop of the )  
 Protestant Episcopal )  
 Church in the Diocese of )  
 South Carolina, )  
 )  
 Plaintiffs by way of Coun- )  
 terclaim, )  
 )  
 vs. )  
 )  
 W. RUSSELL CAMP- )  
 BELL, in his capacity as )  
 Senior Warden of All )  


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Saints Church; D. )  
CLINCH HEYWARD, in )  
his capacity as Junior )  
Warden of All Saints )  
Church; DONALD AL- )  
FORD, BUTLER F. DAR- )  
GAN, DIANE DEBLOCK, )  
ROBERT L. JONES, A.H. )  
(DOC) LACHICOTTE, )  
DAVID LANE, LOU L. )  
PAQUETTE, HUGH )  
PATRICK, and DANIEL )  
W. STACY, in their ca- )  
pacity as Vestry Members )  
of All Saints Church; )  
DAVID E. GRABEMAN, )  
in his capacity as Treas- )  
urer of All Saints Church; )  
ALL SAINTS CHURCH, )  
an unincorporated asso- )  
ciation; ALL SAINTS )  
CHURCH , WAC- )  
CAMAW, INC., a South )  
Carolina Non-profit Cor- )  
poration; THE HONOR- )  
ABLE HENRY MCMAS- )  
TER, in his capacity as )  
Attorney General for the )  
State of South Carolina; )  
THE HONORABLE )  
MARK HAMMOND, in )  
his capacity as Secretary )  
of State for the State of )  
South Carolina; and )  
JOHN and JANE DOE, )

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as Unknown Descendants )  
of George Pawley, )

Defendants by way of  
Counterclaim.

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*In Re:* All Saints Parish, )  
Waccamaw, a South )  
Carolina Non-profit Reli- )  
gious Corporation. )

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#### BACKGROUND

The cases above were consolidated for trial, and were tried before a jury in Georgetown County beginning March 6, 2006. After all the evidence had been presented, and all parties had rested, this Court decided the issues as matters of law, applying the principles of Rule 50 of the *South Carolina Rules of Civil Procedure*, taking the factual evidence in each case in the light most favorable to the non-moving party. The Court then issued a Bench Order on March 13, 2006. The lawyers were invited to submit proposed written Orders if they wished to, but none were submitted. Following receipt of that portion of the trial transcript containing the Court's Order, it was necessary to make certain corrections and modifications, almost exclusively of a structural or grammatical nature. No substantive changes were made to the Order issued from the bench. As a result, a modified Bench Order, in written form, was prepared and has been filed immediately prior to the filing of this Order.

In response to the original Bench Order issued on March 13, 2006, certain parties filed Motions to

Reconsider and/or Alter or Amend, pursuant to Rule 59(e) SCRCP.

CASE NUMBER: 2000-CP-22-720

MOTION OF THE 2000 PLAINTIFFS

The 2000 Plaintiffs request that the Court's judgment be altered or amended to clarify its ruling and specifically find that its ruling in the 2000 case was made on motion for directed verdict by the 2000 Plaintiffs and the Does, that the 2000 Plaintiffs moved for the directed verdict to be set aside and to have an entry of judgment in accordance with the directed verdict pursuant to Rule 50(b), SCRCP, that Plaintiffs waived their right to a jury trial in the 2000 case regarding title to the All Saints Property, and that the Court's ruling in favor of the 2000 Plaintiffs and the Does is a decision of law on the merits of a complex legal matter pursuant to Rule 38(b), [sic] SCRCP.

The above Motion is granted When this case was filed, neither side requested a jury trial. However, when the Defendants in this case filed a counterclaim, the Plaintiffs moved for a jury trial. Over objection of the Defendants, this Court granted the Plaintiffs' Motion for a Jury Trial. The Plaintiffs by Motion appeared to be waiving their right to a jury trial and asking that the Court's ruling in favor of the 2000 Plaintiffs and the Does is a decision of law on the merits of a complex legal matter pursuant to Rule 39 (b) SCRCP. Although this Court announced its decision as a directed verdict on the issues involved, the more correct standard upon which the decision was based was that of Rule 39 (b) SCRCP. Moreover, the Defendants have consistently contended that their Amended Counterclaim did not alter the central issues in the case and that the Plain-

tiffs were not entitled to a Jury Trial in any event. For that reason, the Motion of the 2000 Plaintiffs is granted.

### **MOTIONS OF 2005 PLAINTIFFS**

Guerry Green, Carl Short, George Townsend, James Chapman, Edward Mills, the Protestant Episcopal Church in the Diocese of South Carolina (“the Diocese”) and the Right Reverend Edward L. Salmon, Jr., move with respect to case number 2000-CP-22- 0720, that the Court’s judgment be altered or amended in the following particulars:

1. That the judgment be amended to include a specific ruling on the Movants’ laches defense, which was asserted against the ownership claims of John Doe and Jane Doe.

2. That the judgment be amended to include a specific ruling on the Movants’ defense based on S.C. Code § 15-3-380. This defense argued that All Saints Parish, Waccamaw obtained good title against the world after possessing the subject property for more than forty years under color of a written instrument, namely the 1903 deed from the Diocese.

3. The Movants also request specific rulings on their defenses based on the common law presumption of title after 20 years of peaceful possession and adverse possession under Sections 15-3-340 and 15-3-350 of the South Carolina Code of Laws.

The Motions of the 2005 Plaintiffs are denied for the reasons set out below.

### **CONCLUSIONS OF LAW**

No entity can lay a claim to the All Saints Property by means of adverse possession because there has been no hostile possession adverse to the 1745 Trust Deed. All Saints Parish, Waccamaw, has been

in continuous possession and control of the All Saints Property since incorporation in 1903. There can be little doubt that such possession by All Saints Parish Waccamaw has been open and actual. However, All Saints Parish, Waccamaw has not ever been in possession of the all Saints Property hostile to the legal title holder or the beneficiaries under the 1745 Trust Deed. It seems contrary to the long established public policy in this State to permit adverse possession to operate against a valid and active charitable trust.

Under no circumstances can a trustee set up a claim to the trust property adverse to the cestui que trust, nor can he deny his title. *International Agr. Corp. v. Lockhart Power Co.*, 188 S.E. 243, 246 (1936). “The principle is just and well-established that, where one’s possession was begun in privity with or in subservience to the title of another, a quasi fiduciary relation is established, and, before a foundation can be laid for the operations of the statute of limitations or the defense of adverse possession by the acquisition of any outstanding title, a clear, positive, and continued disclaimer of the title under which he entered and the assertion of an adverse claim must be brought home to the other party. Until the trust is openly repudiated, the cestui que trust may rely upon the integrity of the trustee without endangering his right by lapse of time.” *Brunson v. Sports*, 121 S.E.2d 294, 298 (1961) (quoting *Bradley, et al v. Calhoun*, 125 S.C. 70, 117 S.E. 811, 815). All Saints Parish, Waccamaw, as the custodian or de facto trustee, cannot lay claim to the All Saints Property without open repudiation of the 1745 Trust. *Brunson v. Sports*, 121 S.E.2d 294, 298 (1961). Although All Saints Parish, Waccamaw has remained in possession and control of the All Saints Parish, it has never openly repudiated the 1745 Trust because

the property continues to be carried out for the benefit of the inhabitants of the Waccamaw Neck for use as a church or chapel for divine worship. The all Saints Property has never been used for any purpose other than for worship purposes. Similarly, All Saints Parish, Waccamaw, as beneficiary or a member of the class of beneficiaries,<sup>1</sup> of the Trust cannot adversely possess charitable trust property.

A charitable trust by definition is created for “public charitable purposes, being for objects of permanent interest and benefit to the public, and perhaps being perpetual in their duration,” *Porcher v. Cappelmann*, 198 S.E. 8, 10 (1938). This definition of a charitable trust permits and anticipates its creation in perpetuity for public benefit. To permit the custodian, trustee, beneficiary, Diocese, or Episcopal Church, USA to lay claim to property held in perpetuity for charitable purposes would be inapposite to the public policy favoring charitable trusts and upholding their enforcement indefinitely. See *Epworth Children’s Home v. Beasley*, 365 S.C. 157, 166, 616 S.E.2d 710, 715 (2005); *Porcer*, 198 S.E. at 10, *Colin McK. Grant Home v. Medlock*, 292 S.C. 466, 470, 349 S.E.2d 655, 657 (Ct. App. 1986).

The Movants assert that any interest or claims to the all Saints Property by the heirs of George Pawley and William Poole and the Inhabitants of the Waccamaw Neck are barred by the statutes of limitations as set forth in S.C. Code Ann. Section 15-3-340, 15-3-350, and 15-3-380, adverse possession, the presump-

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<sup>1</sup> This Court does not have jurisdiction to ascertain beneficiaries. S.C. Code Ann. Section 62-7-201.

tion of grant derived from twenty years peaceful possession, and the doctrines of laches and stale claims.

Each of the Diocese's assertions must fail because the Heirs and the Inhabitants have never been deprived of possession or beneficial use of the All Saints Property at anytime throughout the 250 years of history. Importantly, the Inhabitants and the Heirs are currently in possession and have beneficial use of the AU Saints Property for the purposes set forth in the 1745 Trust Deed. Section 15-3-340 provides that "No action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action." Section 15-3-340 provides for a statute of limitations on actions for *recovery* of real property. However, the Heirs and the inhabitants have never been deprived of possession or beneficial use of the All Saints Property at anytime throughout the over 250 years of history. In fact, the all Saints Property has never been used for any purpose other than for worship purposes by the Inhabitants of the Waccamaw Neck, and is currently so used.

Section 15-3-350 provides: "No cause of action or defense to an action founded upon a title to real property or to rents or services out of the same shall be effectual unless it appears that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was *seized* or *possessed* of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made." (emphasis supplied) This Section

is inapplicable, similar to Section 15-3-340, because the Heirs and the Inhabitants have never been deprived of possession or beneficial use of the All Saints Property at anytime throughout the over 250 years of history.

Lastly, with respect to the Diocese's contention that the Heirs and Inhabitants claims or interests to the All Saints Property are barred by the statute of limitations set forth in Section 15-3-380 of the South Carolina Code, the Movants rely upon the 1903 Trust Deed in support of this argument. Section 15-3-380 states: "No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person, claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole, or connected, pursuant to the provisions of this Section shall be deemed valid against the world after the lapse of such a period." This argument is premised upon the Diocese's assertion that All Saints Parish, Waccamaw has been in possession of the All Saints Property since the 1903 Quit Claim Deed, such possession began the running of the statute of limitations against the Heirs and the Inhabitants, and this statute of limitations has long since lapsed. However, as set forth above, the Heirs and the Inhabitants have not been deprived of possession or beneficial use of the All Saints Property at anytime throughout the over 250 years of history. Importantly, the Inhabitants and the Heirs are currently in possession and have beneficial use of the All Saints Property.

Additionally, the statute of limitations on a cause of action does not begin to run until the cause of action accrues. “A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. The law presumes at least nominal damages at that point.” *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 397, 596 S.E.2d 42, 46 (2004) (citing *Stephens v. Draffin*, 327 S.C. 1,5,488 S.E.2d 307, 309 (1997)). Although a trustee may act adversely to a trust for many years, the time period for the statute of limitations is tolled until the trustee openly repudiates the trust to the beneficiaries, (*see Nesbit v. Clark*, 187 S.C. 365, 197 S.E. 302, 384 (1938)), or in the present case, open repudiation of the 1745 Trust by All Saints Parish, Waccamaw. Any cause of action or defense by the Heirs and the Inhabitants did not accrue until the Diocese attempted to repudiate the 1745 Trust and filed the 2000 Notice. Prior to that time, the Heirs and the Inhabitants retained peaceful possession and beneficial use of the property. All Saints Parish, Waccamaw has been in possession and control of the property since 1903 and operated as the property custodian, using the All Saints Property only in furtherance of the Trust. There had been no wrongful conduct by All Saints Parish, Waccamaw on which the Heirs or the Inhabitants could assert a cause of action. The Heirs and the Inhabitants had no cause of action to enforce the terms of the Trust until the 2000 Notice filed by the Diocese purported to claim that the All Saint Property no longer held for the charitable purposes of the 1745 Trust Deed. As a result, the Plaintiffs claims are not barred by the statute of limitations or laches. *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956) (finding laches within the period of the statute of limitations is no defense at law).

Therefore, the Motions of the 2005 Plaintiffs are respectfully DENIED.

**CASE NUMBER: 2005-CP-22-0068**

This Plaintiffs in this case request that the Court's Judgment be altered or amended in the following particulars:

1. To specifically enjoin W. Russell Campbell, D. Clinch Heyward, Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou L. Paquette, Hugh Patrick, and Daniel W. Stacy, and their successors in office ("the AMiA Vestry") against holding themselves out as officers of All Saints Parish, Waccamaw, as requested in the First Cause of Action.

2. To order the South Carolina Secretary of State to cancel the Articles of Amendment filed by the AMiA Vestry and restore the certificate of incorporation for All Saints Parish, Waccamaw to its original form, as requested in the Second Cause of Action.

3. To award the remedy of ejectment with respect to any real property of All Saints Parish, Waccamaw which is not the subject of the 1745 deed.

4. To specifically state whether or not the AMiA Vestry are enjoined against using the name "All Saints Parish, Waccamaw" or any substantially similar name, as was requested in the Sixth Cause of Action.

5. To rule on the request for an order enjoining the AMiA Vestry from using the Federal Employer Identification Number for All Saints Parish, Waccamaw (57-0423483), as requested in the Seventh Cause of Action.

The 2005 Defendants request that the Court's Judgment be altered or amended in the following particulars:

6. That the Court's ruling in the 2005 case fails to apply neutral principles of law.

7. That the Court's ruling in the 2005 case fails to identify any religious doctrine inconsistent with the South Carolina Non-profit Corporation Act.

8. That the Court erred in relying upon *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975) and *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956) to support its holding that Guerry Green, et al. were entitled to the All Saints Parish, Waccamaw name and personal property, and an accounting of the funds as of January 8, 2004.

9. That the Court declined to address the corporate status of the organizations.

10. That the Court erred in finding that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the corporate name.

11. That the Order erroneously finds that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the personal property of All Saints Parish, Waccamaw as of January 8, 2004.

12. That the Order erroneously finds that the 2005 Plaintiffs, Guerry Green, et al., are entitled to the personal property of All Saints Parish, Waccamaw and an accounting of funds of All Saints Parish, Waccamaw as of January 8, 2004.

13. That the Order denies the 2005 Plaintiffs their constitutional rights pursuant to the First and Fourteenth Amendments to the United States Constitution by failing to apply civil law to decide the issues in the 2005 case.

This Court initially declined to grant the relief sought by the 2005 Plaintiffs in paragraphs 1, 2, 4, & 5 above, fearing that would be an unwarranted judicial intrusion into Ecclesiastical matters. However, on reconsideration, this Court believes that the 2005 Plaintiffs are entitled to the relief requested for reasons set out in the CONCLUSIONS OF LAW portion of this Order below.

The Motion of 2005 Plaintiffs set out in paragraph 3 above to award ejectment with respect to any real property of All Saints Parish, Waccamaw, which is not the subject of the 1745 Deed is granted. For the reasons set out below, any real property of the parish which is not the subject to the 1745 Deed and any personal property acquired before January 8, 2004, is subject to the findings of this Court set out in its Bench Order (modified as of April 20, 2007) and this Order. This applies to the 2000 and the 2005 cases equally.

The Motions of the 2005 Defendants set out in paragraphs 6, 7, 8, 9, 10, 11, 12, and 13 above are denied for the reasons set out in the CONCLUSIONS OF LAW portion of this Order below.

#### **CONCLUSIONS OF LAW**

The 2005 Defendants suggest that *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) “adopted the ‘neutral principles of law’ approach to resolving church disputes” and implicitly overruled prior South Carolina case law dealing with divisions in hierarchical church congregations. *Pearson*, however, does not adopt the neutral principles approach to the exclusion of other South Carolina law. Instead, *Pearson* and other recent South Carolina church litigation cases recognize that South Carolina law is generally in accord with United States Su-

preme Court precedent, but continue to acknowledge an important distinction between hierarchical and congregational churches.

*South Carolina Church Law*

Under South Carolina law “[r]eligious organizations are generally divided into two groups: (1) congregational churches and (2) hierarchical churches.” *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985). A congregational church is “an independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government.” In a hierarchical church, “a local church is but a member of a larger and more important religious organization, and is under its government and control, and the voluntary act of joining the general denominational organization subjects the local church to its rules and regulations.”

Two cases from the South Carolina Supreme Court hold that, in the event of a schism or division within the congregation of a hierarchical church, the question of which faction represents the church is determined by which of the factions “adhere[s] to or is recognized by the governing body of the church.” *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956). Those who withdraw from the denomination, even if they constitute the majority of the congregation, are no longer considered part of the church. *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975), *cert. denied*, 423 U.S. 913 (1975). *Adickes* specifically rejected the argument that the application of “neutral principles of law” required a ruling in favor of “the majority of the members of the First

Presbyterian Church of God, an eleemosynary corporation.” 215 S.E.2d at 445.

While *Bramlett* and *Adickes* do not appear to involve efforts to amend the articles of incorporation of a hierarchical church, the earlier case of *Harmon v. Dreher*, 17 S.C. Eq. (Speers Eq.) 87 (1843) is authority for the proposition that an incorporated hierarchical church cannot be converted into a congregational church. *Harmon* reasoned as follows:

It has been argued that the majority of the congregation should govern; and that it would be a violation of liberty to deny a controlling influence to their determinations. If this were a Congregational Church, this might be true. But why? Because, if the congregation had been so incorporated, it would be according to the very terms of the association that the majority should govern. *But if the incorporation of the church as a Lutheran Church, . . ., it would be a breach of all liberty as well as of faith, that the majority should impose a new contract upon the minority.* Suppose a majority should next year spring up in favor of the Roman Catholic or Mohammedan Religion . . . would not these defendants, however small a minority they might form, see and feel that their liberties were trampled on, by so gross a violation of the contract of association contained in their charter?

*Id.* at 123-24. It was thus a “fraud upon those who have contributed to [the church], and those who have entered it as such, for any majority in that congregation, however, numerous, to pervert the charter and convert it into a Congregational Church.” *Id.* at 123.

According to *Harmon*, a congregation which incorporates as part of a hierarchical church and subjects itself to the authority of the larger denomination is not free to change the character and affiliation of the incorporated church merely by taking a majority vote.

*Jones v. Wolf and Neutral Principles of Law*

In *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020 (1979), the United States Supreme Court considered whether Georgia's "neutral principles" approach to church property disputes was consistent with First Amendment jurisprudence. Georgia law once held that the property of local churches affiliated with hierarchical church organizations was held in trust for the general church, so long as that church had not "substantially abandoned" the tenets of its faith and practice. In *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S. Ct. 601 (1969), the United States Supreme Court held Georgia's original approach unconstitutional, on the grounds that civil courts had no jurisdiction to decide whether a church had abandoned its religious tenets. In response, the Supreme Court of Georgia abandoned its implied trust rule and inquired into whether there was any other basis for a trust interest on the part of the general church, such as a provision to that effect in the church constitution. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658, 659 (1969), *cert. denied*, 396 U.S. 1041 (1970). Finding none, the court found legal title in two local churches. 167 S.E.2d at 659-60.

*Jones* featured a review of another Georgia church dispute involving property owned by a local church and not subject to any express trust provisions. As in *Hull*, the Georgia courts applied the

neutral principles doctrine and held that the property was owned by the local church. On certiorari review, the United States Supreme Court held that “a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.” 443 U.S. 604.

*Jones* also involved the question of which of two factions was representative of the true church. The Court held that a rebuttable presumption of majority rule was constitutionally permissible, but that if the membership of the church was to be determined according to the Presbyterian Book of Church Order, the Georgia courts would have to defer to the Presbytery’s determination of who represented the true church. *Id.* at 608-609. On further proceedings on remand from the United States Supreme Court, the Georgia Supreme Court applied neutral principles to the question of which faction controlled. *Jones v. Wolf*, 244 Ga. 388, 260 S.E.2d 84 (1979), *cert. denied*, 444 U.S. 1080 (1980).

*South Carolina Law Since Jones v. Wolf*

South Carolina cases since *Jones v. Wolf* have preserved this state’s well-established distinction between hierarchical and congregational churches. Most obviously, the *Seldon* case cited above for this distinction was decided in 1985, six years after *Jones*. *Seldon* cited the *Bramlett* and *Adickes* cases with complete approval, and indeed acknowledged them as controlling in a dispute between majority and minority factions of a hierarchical church. 326 S.E.2d at 149-50.

The Plaintiffs, however, argue that the 1996 case of *Pearson v. Church of God* “set forth and adopted the ‘neutral principles of law’ approach to resolving church disputes.” The Plaintiffs would read *Pearson*

as abandoning *Harmon*, *Bramlett*, *Adickes*, *Seldon* and other South Carolina hierarchical church cases, apparently in favor of the “neutral principles” doctrine as applied in Georgia. *Pearson*, however, does not overrule *Bramlett et al.* in favor of Georgia-style neutral principles. Instead, it holds that existing South Carolina law in this area is consistent with *Jones* and other United States Supreme Court precedent.

In *Pearson*, a former minister of the Church of God sued his church, alleging the wrongful discontinuation of his pension benefits. The governing church documents provided that aged ministers were eligible to receive pension benefits, but that their eligibility ceased upon revocation of their ministry. *Pearson v. Church of God*, 318 S.C. 417, 458 S.E.2d 68, 69 (Ct. App. 1995), *aff’d in result*, 325 S.C. 45, 478 S.E.2d 849 (1996). *Pearson*’s pastoral license was revoked for adultery, whereupon his pension benefits were stopped. In his suit against the church, *Pearson* argued that as a retired minister he had no ministry to revoke, whereas the revocation of his license was not equivalent to the revocation of his non-existent ministry. 458 S.E.2d 70.

The South Carolina Court of Appeals reversed a jury verdict in favor of *Pearson* on the grounds that the dispute could not be resolved without “in-depth analysis of the substantive criteria by which a matter of fundamental church administration and policy are decided.” The words “license” and “ministry,” the Court of Appeals reasoned, are “by their very nature defined in terms of the authority they impart to the holder. This necessarily implicates the power to direct the ecclesiastical affairs of the Church.” 458 S.E.2d at 72. By making “value judgments” about the meaning of such terms to the Church of God, the

Court “would wade into waters prohibited to us by the First Amendment and South Carolina Constitution.” *Id.*

The South Carolina Supreme Court affirmed in result, but held that jurisdiction could be exercised over the dispute without violating the federal and state constitutions. In so holding, the Court reviewed the United States Supreme Court’s “most recent pronouncements on the subject of judicial review of religious disputes.” 478 S.E.2d at 851. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372 (1976) was first cited for the requirement that “courts must accept in litigation the religious determinations of the highest judiciaries of a religious organization.” *Id.*

The Court then moved to *Jones*, which it described as “reiterat[ing]” the constitutional requirement of deference to hierarchical church decisions on questions of religious doctrine or polity. Although the Court discussed *Jones*’ approval of Georgia’s neutral principles approach, it did not cite adopt Georgia’s neutral principles doctrine, or for that matter cite any Georgia case law. Rather, *Jones* was cited for the proposition that reliance on familiar concepts of trust and property law tended to avoid entanglement in religious affairs. The Court was quick, however, to observe that any purportedly “neutral” interpretation of church governance documents must avoid reliance on religious precepts. Where interpretation of “religious concepts” in such documents would require the court to resolve a religious controversy, the court must “defer to the resolution of the doctrinal issue by the authoritative religious body.” 478 S.E.2d at 852 (quoting *Jones*, 443 U.S. at 604).

Having reviewed *Milivojevich* and *Jones*, the Court pronounced them “consistent in letter and spirit” with South Carolina case law. Citing *Bramlett*, the Court noted South Carolina’s recognition that courts “do have jurisdiction as to civil, contract and property rights which are involved in a church controversy,’ even though they have no jurisdiction of ‘ecclesiastical questions and controversies.” 478 S.E.2d at 852 (quoting *Bramlett*, 93 S.E.2d at 873, 882). The Court also cited *Morris Street Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753 (1903), for the proposition that courts may adjudicate contract rights in church controversies “having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves to it.” *Pearson*, 478 S.E.2d at 853 (quoting *Dart*, 45 S.E. at 754).

The Court then announced the following “general principles” which emerged from its analysis of United States and South Carolina case law: (1) courts may not resolve disputes over “religious law, principle, doctrine, discipline, custom, or administration;” (2) courts may not avoid adjudicating civil law rights; and (3) in resolving civil law disputes, courts must accept as binding hierarchical church decisions as to religious law, doctrine, discipline etc. *Id.* Applying these principles, the Court held that jurisdiction existed over Pearson’s pension claim. Pearson’s right to benefits was, ultimately, a matter of contract which civil courts could adjudicate. That right was, however, contingent on the status of Pearson’s ministry, which was an ecclesiastical matter. The Church of God had determined that Pearson’s ministry had been revoked, and that ecclesiastical determination was binding in civil courts. It followed that Pear-

son's legal right to pension benefits had been terminated by the church's unreviewable revocation of his ministry. *Id.* at 853-54.

*Pearson* did not work any changes to South Carolina law. On the contrary, *Pearson* concluded, after a review of recent United States Supreme Court jurisprudence, that existing South Carolina law was consistent with federal constitutional requirements. *Pearson* did not adopt any principles of Georgia law, nor did it overrule *Bramlett* (which was cited with approval) or *Adickes*. Moreover, *Pearson* specifically acknowledged the distinction between hierarchical and congregational churches under federal and South Carolina law. With respect to hierarchical churches, the court's role was to apply the final actions of the highest ecclesiastical tribunal or body. With respect to congregational churches, the final action of a majority of the congregation controlled. 479 S.E.2d at 853 n.4. It was further noted that "[t]he Church of God has a hierarchical structure." *Id.* at 854 n.6. *Cf. Knotts v. Williams*, 319 S.C. 473, 462 S.E.2d 288, 291 n.5 (1995) (while congregation governs Baptist church, "[t]he situation is substantially different when a hierarchical church is involved").

*Pearson* stands for the proposition that civil courts remain free to adjudicate civil rights in the context of church controversies, although they must accept certain judgments of religious organizations as binding. As expressly noted in *Pearson*, that has always been the law in South Carolina. *Pearson* left untouched the well-established South Carolina rule that, in the event of a division in the congregation of a hierarchical church, the true church is that faction which is recognized by the higher church authorities.

*Pearson Applied to this Case*

Like *Pearson*, this case involves a mixture of civil and ecclesiastical issues. The civil law issue is, in essence, which of two opposing vestries are entitled to recognition as the true officers of the church, including the religious corporation which gives the church its civil law existence. That civil law issue depends on an ecclesiastical question: which of two church factions should be recognized as the “communicants” who, under the parish constitution, make up the voting membership of the church and are therefore entitled to choose its officers?

As in *Pearson*, here the ecclesiastical question has been conclusively answered by the hierarchical church authorities. Bishop Salmon, who is the ecclesiastical authority for the Diocese, recognized the faction remaining loyal to the Diocese and the Episcopal Church as the communicants of All Saints Parish, Waccamaw. The civil court has no jurisdiction to identify the communicants of a church. That quintessentially religious question is left to the church authorities. See *Pearson*, 478 S.E.2d at 852-53 (quoting *Dart*, 45 S.E. at 754) (“the action of church authorities in the deposition of pastors and the expulsion of members is final”). The civil court’s role is to adjudicate civil rights based on the church’s pronouncement as to who makes up its membership. In a hierarchical church, this pronouncement comes from the higher church authorities, not the local church.

The 2005 Defendants contend that a congregational vote was taken on January 8, 2004, to remove certain references to the Diocese and the Episcopal Church from the articles of incorporation of All Saints Parish, Waccamaw. This change, it is argued,

converted the corporation from a component parish of the Diocese into a congregational church.

However, that argument fails for the following reasons:

First, the congregation had to be communicants of the parish, and thus also communicants of the Diocese and National Church to which it belonged, to vote on any matters affecting parish governance. While as a matter of form the majority faction voted to leave the Diocese and the Episcopal Church after voting to amend the charter, in substance they had already resolved to leave the Diocese and the Episcopal Church when they voted to amend the articles of incorporation. Those who voted in favor of the amendment obviously had every intention of voting to leave the denomination a few moments later. Their vote to amend the articles of incorporation was simply a step in their overall plan to leave the Diocese and the Episcopal Church, as had been recommended by the former vestry in October and December of 2003.

In *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 281 Cal. Rptr. 396, 410, 230 Cal. App. 3d 480, *cert. denied*, 502 U.S. 1073 (1991), church members who had previously voted to leave the denomination were held to have forfeited their right to vote on amendments to the articles of incorporation. Here, although as a technical matter the vote to amend preceded the vote to leave the denomination, that distinction should not make a difference if those voting for the amendment did so for the purpose of leaving the Diocese and the Episcopal Church. Their acts were simply inconsistent with their purported status as communicants of the church they were voting to leave.

Second, even if the vote to amend was effective, the amendment did not convert the corporation from a component of a hierarchical church to an independent congregational church. While the articles of incorporation were certainly one indication that All Saints Parish, Waccamaw, was formed as part of a hierarchical church, the more important fact is that All Saints Parish Waccamaw *did* operate as a component of a hierarchical church for the better part of a century. As noted in *Seldon*, the voluntary act of joining a hierarchical denomination subjects the local church to the rules and regulations of the denomination. 326 S.E.2d. at 148. All Saints Parish, Waccamaw is a component part of the Diocese not only because its original articles said so, but also because it voluntarily affiliated itself with the Diocese, attended and voted at annual meetings of the Diocese, and otherwise involved itself in the affairs of the Diocese in any number of ways. It remains subject to the “implied obligations” imputed to those who have “voluntarily submitted themselves to the authority of the church by connecting themselves with it.” *Pearson*, 478 S.E.2d at 853 (quoting *Dart*, 45 S.E. at 754). Those pre-existing obligations are not undone by amendments to the articles of incorporation. See S.C. Code § 33-31-1008 (existing rights are not affected by amendments to the articles of a non-profit corporation).

Finally, although religious corporations are generally subject to South Carolina’s Non-Profit Business Corporation Act, that Act yields to religious doctrine where required by the federal and state constitutions. S.C. Code § 33-31-180. To transform a group of Episcopal communicants into communicants of another church (here a parish of the Church of Rwanda) would be contrary to the religious doctrine

of the Episcopal Church and the Diocese. One need not cite constitutions or canons<sup>2</sup> to show that hierarchical churches generally disapprove of their component churches being wrested away and reassigned to other ecclesiastical bodies. To allow a corporate amendment to redefine a group of Episcopal communicants would result in a invasion of First Amendment protections. A component of a hierarchical church will have been severed and reassigned to another church based in a country on the other side of the world. Long-standing communicants of that church would be faced with the choice either of forsaking their membership in the Diocese and the Episcopal Church and transferring elsewhere, or else being reduced to the status of visitors in a church in which they were previously entitled to vote and run for office. *Harmon* rightly characterized such actions as a fraud on the minority who joined and contributed to the church based on its hierarchical affiliation.

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<sup>2</sup> In any case, various canons show the relationship between parish corporations and both the Diocese and the Episcopal Church. The Plaintiffs have point out that, according to the Diocese's Standing Resolution 10, parishes and missions are to be incorporated. Under Diocesan Canon VI, parishes are required to hold annual meetings for the purpose of electing wardens, vestry and delegates to the annual Diocesan convention. Canon VII lists certain minimum qualifications for wardens and vestry (who are the officers of any parish corporation), as well as their canonical duties to the parish. These canons also apply to the governance of parish corporations. The religious doctrine embodied in them would obviously be subverted if parishes could set them aside simply by voting to amend the articles of incorporation.

All Saints Parish, Waccamaw is (according to a parish constitution) made up of *communicants*—not “members” as is the case in most secular non-profit corporations. “Communicant” is clearly a religious term. The Court has no jurisdiction to review the Diocese’s determination as to which faction makes up the communicants of All Saints Parish, Waccamaw, or to entertain arguments that a corporate amendment somehow redefined the term. *Pearson* requires courts to accept such determinations and adjudicate civil rights accordingly.

Therefore, the 2005 Defendants’ Motion to Reconsider is Denied.

It is therefore ORDERED, ADJUDGED and DECREED that:

AS TO CASE NUMBER 2000-CP-22-0720

The Motion of the 2000 Plaintiffs to waive their right to a Jury Trial and convert this Court’s earlier rulings to a decision of law on the merits of a complex legal matter pursuant to Rule 39 (b) SCRCP is granted;

That, as to the Motion of 2005 Plaintiffs to include a specific ruling on their laches defense, and the defenses based on S.C. Code Section 15-3-340, Section 15-3-350, and Section 15-3-380, that has been granted to the extent that his Court has included a specific ruling on those defenses, but has denied the 2005 Plaintiffs the relief sought therein.

AS TO CASE NUMBER 2005-CP-22-0068

That W. Russell Campbell, D. Clinch Heyward, Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou L. Paquette, Hugh Patrick, and Daniel W. Stacy, and their successors in office (“the AMiA Vestry”) are specifically enjoined against holding themselves out as officers of All Saints Parish, Waccamaw.

That the South Carolina Secretary of State is directed to cancel the Articles of Amendment filed by the AMiA Vestry and restore the certificate of incorporation for All Saints Parish, Waccamaw to its original form.

That the remedy of ejectment with respect to any real property of All Saints Parish, Waccamaw which is not the subject of the 1745 deed is granted.

That the AMiA Vestry are enjoined against using the name “All Saints Parish, Waccamaw.”

That the AMiA Vestry is enjoined from using the Federal Employer Identification Number for All Saints Parish, Waccamaw (57-0423483).

That the Motions of the 2005 Defendants set out in paragraph 6, 7, 8, 9, 10, 11, 12, & 13 have been addressed in this Order and the relief sought therein has been denied.

AND IT IS SO ORDERED.

At Chambers	/s/
Manning, South Carolina	_____ Thomas W. Cooper, Jr. Fifteenth Judicial Circuit

April 27, 2007

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**APPENDIX D**


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STATE OF SOUTH	)	IN THE COURT OF
CAROLINA	)	COMMON PLEAS,
	)	OF THE
COUNTY OF GEORGE-	)	FIFTEENTH JUDI-
TOWN	)	CIAL CIRCUIT
	)	
ALL SAINTS PARISH,	)	C/A No. 2000-CP-22-
WACCAMAW, a South	)	0720
Carolina Non-profit Cor-	)	
poration; D. CLINCH	)	
HEYWARD, Warden for	)	
All Saints Parish, Wac-	)	
camaw; W. RUSSELL	)	
CAMPBELL, Warden for	)	
All Saints Parish, Wac-	)	
camaw; MARTHA M.	)	
LACHICOTTE, ANN	)	
USHER MERCER,	)	
VANDELL ARRING-	)	
TON, and RIVES	)	
KELLY, Individually and	)	
as Representatives of the	)	
Inhabitants of the Wac-	)	
camaw Neck Region of	)	
Georgetown County; and	)	
EVELYN LABRUCE, In-	)	
dividually and as a De-	)	
scendant of George Paw-	)	

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ley; )  
)  
Of whom W. RUSSELL )  
CAMPBELL, in his ca- )  
pacity as Senior Warden )  
of All Saints Church, is )  
also a Defendant by way )  
of Counterclaim, )

Plaintiffs, )

vs. )

THE PROTESTANT )  
EPISCOPAL CHURCH )  
IN THE DIOCESE OF )  
SOUTH CAROLINA; )  
THE EPISCOPAL )  
CHURCH, a/k/a The )  
Protestant Episcopal )  
Church in the United )  
States of America; MARK )  
SANFORD, in his official )  
capacity as The Governor )  
of the State of South )  
Carolina; and JOHN and )  
JANE DOE, as descen- )  
dants to George Pawley )  
and William Poole, )

Defendants; and

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GUERRY GREEN, on )  
behalf of All Saints Par- )

**MODIFIED BENCH  
ORDER\***

C/A No. 2005-CP-22-

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ish, Waccamaw, and in )  
 his capacity as Senior )  
 Warden of the same; )  
 CARL SHORT, on behalf )  
 of All Saints Parish, Wac- )  
 camaw, and in his capac- )  
 ity as Junior Warden of )  
 the same; and GEORGE )  
 TOWNSEND, JAMES )  
 CHAPMAN, and ED- )  
 WARD MILLS, on behalf )  
 of All Saints Parish, Wac- )  
 camaw, and in their ca- )  
 pacities as Members of )  
 the Vestry of the same; )  
 THE PROTESTANT )  
 EPISCOPAL CHURCH )  
 IN THE DIOCESE OF )  
 SOUTH CAROLINA and )  
 THE RIGHT REVER- )  
 END EDWARD L. )  
 SALMON, JR., in his ca- )  
 pacity as Bishop of the )  
 Protestant Episcopal )  
 Church in the Diocese of )  
 South Carolina, )  
 )  
 Plaintiffs by way of Coun- )  
 terclaim, )  
 )  
 vs. )  
 )  
 W. RUSSELL CAMP- )  
 BELL, in his capacity as )  
 Senior Warden of All )  


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Saints Church; D. )  
CLINCH HEYWARD, in )  
his capacity as Junior )  
Warden of All Saints )  
Church; DONALD AL- )  
FORD, BUTLER F. DAR- )  
GAN, DIANE DEBLOCK, )  
ROBERT L. JONES, A.H. )  
(DOC) LACHICOTTE, )  
DAVID LANE, LOU L. )  
PAQUETTE, HUGH )  
PATRICK, and DANIEL )  
W. STACY, in their ca- )  
pacity as Vestry Members )  
of All Saints Church; )  
DAVID E. GRABEMAN, )  
in his capacity as Treas- )  
urer of All Saints Church; )  
ALL SAINTS CHURCH, )  
an unincorporated asso- )  
ciation; ALL SAINTS )  
CHURCH , WAC- )  
CAMAW, INC., a South )  
Carolina Non-profit Cor- )  
poration; THE HONOR- )  
ABLE HENRY MCMAS- )  
TER, in his capacity as )  
Attorney General for the )  
State of South Carolina; )  
THE HONORABLE )  
MARK HAMMOND, in )  
his capacity as Secretary )  
of State for the State of )  
South Carolina; and )  
JOHN and JANE DOE, )

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as Unknown Descendants )  
of George Pawley, )  
) )  
Defendants by way of )  
Counterclaim; and )

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*In Re:* All Saints Parish, )  
Waccamaw, a South )  
Carolina Non-profit Reli- )  
gious Corporation. )

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THE COURT: Ladies and gentlemen, this Court recognizes fully that the origin of this legal dispute arose out of theological differences. Those differences have spilled over into the courts, and we have been called upon now to decide certain issues.

This Court does not, and it cannot, decide theological disputes. We cannot under our Constitution address those ecclesiastical differences. They will continue to exist, unfortunately, long after the Courts in this case have had their final say. And so this ruling does not address those matters of theology that divide you. This ruling is not based on religious principles or theology. It is based on the law as my finite mind understands it. And so this decision must not be interpreted as an endorsement or a criticism of the matters of faith that divide you.

Moreover, this case involves a complex intertwining of secular law which this Court has the authority to decide, ecclesiastical law into which I may not intrude, as well as a complex mixture of factual and legal disputes. And I have resolved to decide these issues as matters of law, applying the principles of

Rule 50 of the South Carolina Rules of Civil Procedure and taking the factual evidence on each case in the light most favorable to the non-moving party. Having done that, I find that the evidence yields only one inference as a matter of law.

#### I

1. As to case number 2000-CP-22-720, I find the Trust Deed of 1745 created a charitable trust, which, under our law, is entitled to peculiar favor in the law, and Courts are therefore instructed to construe them, if possible, to carry out the general intention of the Settlor.

2. I further find that the trust did not execute under the Statute of Uses for the following reasons. In the first place, there is no beneficiary capable of taking title. “The inhabitants of the Waccamaw Neck,” the named primary beneficiaries of the deed, are an amorphous, constantly changing group—precisely the kind of group that most charitable trusts are designed to benefit. Secondly, other jurisdictions have held that charitable trusts should not be executed by the Statute of Uses because they are often designed to benefit certain classes of people in perpetuity, as in this case “forever in trust.” Next, the trust continues to have an active purpose according to its terms, “for the use of a chapel or church for divine worship of the Church of England established by law.” The purposes are not satisfied by the completion of the initial building. An examination of the property today would reveal that the building has been on-going since this time, and the property must be maintained and protected in accordance with the trust, “forever in trust.”

3. I further find that the disestablishment of the Church of England as a state religion in the United

States does not act to defeat the trust. And here the Doctrine of Equitable Deviation should be applied by the Probate Court to carry out the intention of the Settlor in accordance with our law. The Attorney General of the State of South Carolina has also made this request, asking this Court to apply equitable principles to see that the charitable trust does not fail. And so the Probate Court below will determine the issues of Equitable Deviation in that regard. At this juncture I acknowledge that the jurisdictional limitation of this Court regarding trusts and the Probate Court's jurisdictional limitations regarding trusts are different. This Court has concurrent jurisdiction only to determine the existence or the non-existence of a trust. S. C. Code Ann. § 62-7-210(c). The Probate Court, on the other hand, has the exclusive jurisdiction to appoint the trustees to take the place of those original trustees and to determine the primary and incidental beneficiaries of the trust, and to deal with other matters regarding the trust itself.

4. I further find that the Parish has not been dormant and, therefore, that the 1820 and 1879 Acts which, in effect, provided for the escheatment of dormant, inactive parish property to the Diocese or an organization created by it, do not come into play. The evidence is that the parish was active from its inception. At the very least, there's no evidence that it was not. Therefore, the 1903 deed from the Diocese to the Parish does not act to divest the trustees of the title to the property. There is no deed into the Diocese in the first place, and, as I've just stated, no operation of law created title in the Diocese.

5. I further find that there has been no repudiation of the trust by the Parish. The evidence to the contrary, that the property has always been used for the inhabitants of the Waccamaw Neck for religious pur-

poses, for some arm of the Episcopal Church, is in accord with the terms of the trust. The single isolated lease of a parcel of the property located within the parish property does not act to repudiate the trust. Neither does the mortgaging of the property over a period of years act to repudiate the trust, since the evidence is that the funds obtained from the mortgages went back into the improvements of the property being used for religious purposes. Having determined that there has been no repudiation of the trust, no adverse possession lies because there has been no hostile use of the property. Indeed, the use of the property has been consistent with the terms of the trust.

6. I have distinguished the *Pawlet*<sup>1</sup> cited from the Statute of Uses portion of the Diocese's brief. There the question was whether or not the Church of England was a corporation capable of taking title to a glebe. In this particular case the Church of England was at best incidental beneficiary. It was not deeded title to the property that was in the Trust Deed.

7. I have considered Mr. Hines' arguments about the custom of the day and the treatment of trust property by others associated with these various trustees and sailors, However, in order to make the assumptions that I would have to make in order to reach the conclusion sought by the Diocese in that regard, I would have to disregard the peculiar favor in which these Courts are instructed to handle trusts, especially charitable trusts.

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<sup>1</sup> *Town of Pawlet v. Clark*, 13 U.S. 292 (1815).

8. I've addressed the adverse possession claim of the Diocese a moment ago. The same rationale applies to the other "lapse" theories of the Diocese and the National Church. The parish's use of the property has been in accord with the terms of the trust. It has not been adverse or hostile to it. The indebtedness secured by the trust property might, perhaps, be prejudicial to the trust, unless, as here, the monies obtained from those mortgages were used to improve the trust property. In fact, what that mortgage money did was enhance its value and usefulness for the trust purposes. The *Pendarvis* case,<sup>2</sup> cited as a basis for the stale claims argument, is factually distinguishable. There the property involved in the Pendarvis trust was obviously used for purposes which were antithetical to the trust purposes themselves. That trust property was subdivided and sold for profit without regard to the provisions of the Trust Deed.

9. I therefore find that trust created by the deed of 1745 is viable and that John Doe, as the legal heir of George Pawley, is the owner of the property and fee simple, subject to the terms of the trust and for the use and benefit for the principal and incidental beneficiaries of the trust as determined by the Probate Court, the only Court of competent jurisdiction to do so. I note here that the rights of no one in this room have been impinged upon necessarily by this ruling. The rights of the Diocese, the National Church, or either parish are yet to be determined by a Court of competent jurisdiction.

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<sup>2</sup> *Presbyterian Church of James Island v. Pendarvis*, 227 S.C. 50, 86 S.E.2d 740 (1955).

## II.

10. As to case 2005-CP-22-0068, this case involves a decision which treads even more gingerly against the boundaries of ecclesiastical law. The Episcopal Church in the United States of America is an hierarchical church. And All Saints Waccamaw Parish was a part of that union undeniably before January 8th of 2004. Ms. Golding asserts in her argument that prior to that date All Saints was a secular church for property purposes and a hierarchical church for matters of worship and other ecclesiastical matters. Our Supreme Court has been confronted with a similar request to recognize such a dichotomy in the past and has declined to do so. The case of *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975), is instructive and the facts in that case are, in many ways, parallel to the case before us today. That case involved the division of a church, the First Presbyterian Church of Rock Hill. I read certain parts of the facts today because you will be able to see certain similarities and I will note certain distinctions between that case and the case at hand.

11. “Prior to July 1, 1973, the entire membership of the First Presbyterian Church of Rock Hill (an eleemosynary corporation),” just as All Saints is, “was an integral part of” the national Presbyterian church—the Presbyterian Church in the United States—just as All Saints was with the Diocese of South Carolina and the National Church. *Adickes*, 264 S.C. at 398, 215 S.E.2d at 442.

“On July 1, 1973 certain members of the congregation of the First Presbyterian Church of Rock Hill, being dissatisfied with the Presbyterian Church in the United States, proposed a resolution which was adopted by a vote of 295 in favor and 87 against.

That resolution recited that the congregation wished to free itself of its present denominational affiliation and concluded by resolving that ‘it do withdraw from the Presbytery of Bethel and the Presbyterian Church in the United States and by doing so does sever itself and its properties from all relationship with said bodies.’” *Id.* at 398, 215 S.E.2d at 442-43.

12. And on that same date the members sent a note to the stated clerk of the Presbytery, advising the Presbytery that the First Presbyterian Church had severed its relationship with the Presbytery and the National Church. And also on that same day, the same members addressed another communication to the stated clerk notifying that the church had united with another Presbytery, a part of another denomination. “On July 7 [six days later] a committee of members who remained loyal to church (the 87) communicated with the Bethel Presbytery, expressing their loyalty to the denomination and to the Presbytery. Subsequently, the Bethel Presbytery recognized the loyal group as the First Presbyterian Church of Rock Hill [much like the Bishop’s appointing a vestry in this particular case for All Saints]. Thereafter, Bethel Presbytery notified the majority group (the 295) that they no longer possessed any right or authority pertaining to First Presbyterian Church of Rock Hill. The majority group was further directed to turn over to the Judicial Commission of the Bethel Presbytery all evidence of ownership of church property, real and personal, along with church files and records.” *Id.* at 398-99, 215 S.E.2d at 443. (I note for purposes of clarity in this particular case I am talking only about personal property. I’ve already dealt with the real property of the church in Part I of this order.)

13. The plaintiffs in *Adiches* alleged that they were members and officers of the First Presbyterian Church of Rock Hill and they represented those who were loyal and remained subject to jurisdiction the Presbytery of Bethel and the Presbyterian Church. They spoke for the minority. The defendants were representatives of a class of elders and deacons and members purporting to be the First Presbyterian Church of Rock Hill and they were the majority. Those who approved the resolution referred to above had “seceded” in the eyes of the Court. *Id* at 399, 215 S.E.2d at 443 (paraphrasing).

“That church as it existed prior to July 1, 1973, owned real estate and personal property consisting, among other things, of funds in various banking institutions. Since its inception First Presbyterian Church of Rock Hill had been a member church of the Presbyterian Church in the United States (a parent organization), and of the Bethel Presbytery (an organization of several local Presbyterian Churches).” *Id.*

14. Clearly an analogy exists in this case in the relationship between the National Church and the Diocese and the local Parish, to the relationship of the Presbyterian Church in the United States, Bethel Presbytery and The First Presbyterian Church of Rock Hill.

15. The plaintiffs (the “loyal” minority) were asking the Court in that case to “hold (1) that they and the class they represent, are, and do compromise, the First Presbyterian Church of Rock Hill, and (2) that they are entitled to full and exclusive possession of the real and personal property and investments accounts of such church, and (3) that the defendants, who have renounced all allegiance to the Bethel

Presbytery and the Presbyterian Church in the United States, be required to vacate such property” and not be allowed to come back on the property. *Id* at 399-400, 215 S.E.2d at 443.

“The defendants admit that the purpose of their resolution of July 1, 1973 was to sever their connection with Bethel Presbytery and the Presbyterian Church in the United States. It is their contention that they, being the majority, are entitled to take over and control the properties.” *Id* at 400, 215 S.E.2d at 443. (I note that these defendants do not claim that, because they are the majority, they’re entitled to take over the property. They draw another distinction based on a legal matter which I will address in a moment.)

16. And, so, the basic question before the *Adickes* Court was which of these two competing groups comprised the First Presbyterian Church of Rock Hill, the exact same question, in a different context, that confronts this Court today.

17. The Supreme Court in *Adickes* quoted the case of *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956), which had established the law up until that point. As a matter of fact the majority group in *Adickes* was given permission to argue against precedent. Examining its decision in *Bramlett*, the *Adickes* Court acknowledged that the same basic issue was before it.

Therein we stated the questions could be as follows: ‘When a congregation of the Presbyterian Church decides in a congregational meeting, duly called and held in the manner prescribed by the form of government of the Presbyterian Church, to withdraw from the Presbytery of which it is a member, and from

the Presbyterian Church in the United States, are they entitled to keep the property of the church as against the claim of a minority group who did not vote to withdraw but remained loyal to such Presbyterian Church?

*Adickes*, 264 S.C. at 400-01, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 536-37, 93 S.E.2d at 882).

The *Bramlett* case involved a Presbyterian Church in the upper part of our state (McCarter Presbyterian Church). In that case the vote to withdraw was 38 to 2. There were actually 11 people who remained loyal. And the *Bramlett* Court said that

‘When a division occurs in a church congregation, which is always unfortunate, the question as to which faction is entitled to the church property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanctioned by the appropriate governing body of the denomination. It is a question of identity.’

*Id.* at 401, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 538, 93 S.E.2d at 883). Quoting further from *Bramlett*, the *Adickes* Court went on to say that “appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any kind of connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church.” *Id.*

18. Now, Ms. Golding is asking me to distinguish between the holdings in *Bramlett* and *Adickes* and the

case at bar on two bases: first, by stating that neither of those cases involves the amendment of a corporate charter prior to the action taken to leave the church, and secondly, that the Episcopal Church is a hierarchical church for ecclesiastical and worship purposes, but not for property purposes. I quote again from the *Adickes* case. “Counsel for appellants,” that is the majority who wanted to be put back, who had pulled out from the church,

in the first attack on the order of the lower court, has striven vigorously to distinguish this case from *Bramlett* by arguing that the Presbyterian Church in the United States is congregational and not connectional insofar as matters of property are involved. It is conceded that the Book of Church Order, which is the controlling authority of the Presbyterian Church in the United States [similar to the Cannons of the Episcopal Church] and, in turn, the Bethel Presbytery and the First Presbyterian Church of Rock Hill, has remained unchanged insofar as any issue in this case is concerned. We think that counsel has failed to point out any distinction between this case and *Bramlett* which would warrant a different result.

*Id.*

19. That disposes, in my view, of the dichotomy sought to be imposed in this case, that the Episcopal Church was one church for matters of property and another church for matters of worship. Our Supreme Court addressed that very issue in the cases above, and I can find no real distinction.

20. Now that raises the issue of the amendment of the corporate charter prior to the vote taken to se-

cede or to leave the denomination. On that case *Bramlett* is somewhat instructive. The *Bramlett* case involved the McCarter Presbyterian Church. That was actually a case in which the trustees of the McCarter Church, prior to pulling out of the Church, had deeded the property to another entity, and they had a right to do it under the law. In those days the Presbyterian Church, U.S., the Southern Presbyterian Church, in its Book of Order, did not have trust provisions which imposed a trust against the alienation of the property by a congregation, should they choose to do so. So, as the McCarter Church, had a right to do under corporate law, under state law, they conveyed their property to another entity, another corporation, and then withdrew from the Presbyterian Church in the United States.

21. The *Bramlett* Court determined, applying the principles that I just mentioned a few moments ago, that the minority who remained loyal to the church were entitled to have the realty impressed with a trust for the benefit of the church and its members, and to have the deed reformed to show that the McCarter Presbyterian Church is the true owner and to obtain an injunction. While that particular case does not deal with a factual situation as ours, in which the articles of incorporation were amended, at a duly called meeting, as a corporation had a right to do, it dealt with the transfer of property owned by the church, as the church had a right to do. The court set that transfer aside for the reasons cited above.

22. The *Adickes* case, citing further the rationale applied in that particular case, went on to say (and in this the *Adickes* case applied neutral principles of law) that the

appellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection, and when they did they forfeited any right to the use and possession of the property of that church under the long established law of that church and of South Carolina. Due process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take it with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church,<sup>3</sup> and it belongs to the same after they have withdrawn. They are simply now not a part of the church.

*Id.* at 402, 215 S.E.2d at 445.

23. There's nothing in my ruling today that establishes or sponsors or advances or supports either the religious belief of the majority or minority in this case. The Courts have traditionally avoided any intrusion into religious matters and have confined their rulings in such cases to identifying the faction which represents the church after a schism had occurred. I therefore find that as to the 2005-CP-22-

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<sup>3</sup> In this case it belonged to the trustees as I have claimed. And the real property belongs to the trustees—here we're talking about personal property. The personal property—to make it want more analogous—belonged to the First Presbyterian Church of Rock Hill before they joined the church.

0068 case, the rationales of the *Adickes* and *Bramlett* cases apply and control. This Court likewise does not intrude into religious matters. This ruling is confined to identifying that faction which represents the church after the schism. And applying the clear principles and precedent of our Supreme Court, I find that the representative and successor to the church as it existed before the division is the Vestry composed of Guerry Green, Senior Warden, Carl Short, Junior Warden and the Vestry of James Chapman, Steve Chapman, Francis Cromwell, Connie Dickerson, Edward Mills, Robert Myers, Alberto Quattlebaum, Rhett Roman, and George Roe Townsend.

24. I decline to grant the ejectment of the defendants from the real property because its ownership has not yet been determined. As to the personal property I do grant the plaintiffs' request of an accounting of funds and deposits as of January 8, 2004, before the division, and an accounting of expenditures only since that date. They would have no right to any income of the church after that date. However, they would have an interest in expenditures that had been made from monies which they have contributed prior to that date. So the accounting would apply only for funds and deposits as of January 8, 2004, and to expenditures only since that date.

25. The holding of this Court, in other words, has been designed, in my view, to try to follow the hierarchical principles that our Court has adopted, and to acknowledge what I feel to be the law as it is clearly suggested it to me. I will be glad to accept from either side or both sides in this case proposed written orders if you wish for me to expand upon what I have written in this oral order, which, of course, is being taken down even as I give it. I cau-

tion you, of course, not to put anything in those orders, and I'm sure you will not, that is counter or contrary to what I have held in this particular oral order. If you feel, for the purposes of appellate review, that you need some further edification, further legal argument, on behalf of your respective positions from which I have drawn, I will be glad to do that, if you wish for me to do that. I'll ask each of you to please let me know immediately as to whether you wish to submit written orders in that regard. Failing a request to submit written orders, the ten days to file post-trial motions will begin today.

Ms. Golding, any questions from your perspective?

MS. GOLDING: Just procedural questions, Your Honor, with respect to Rule 50. The way I read the rule, I should also seek a judgment in accordance with my motion for directed verdict which is different than post-trial motions.

THE COURT: Right.

MS. GOLDING: And just as a matter of course, Your Honor, I would like to make that motion, however, I don't want to—I want to make sure that the Court won't believe I'm out of place.

THE COURT: I understand that.

MS. GOLDING: I'm sorry?

THE COURT: I understand that. I won't be offended by it.

MS. GOLDING: Thank you, Your Honor. With respect—obviously I'll make note on the directed verdict motion with respect to the charitable trust where the Court found in the position that we had advocated. With respect to the corporation, I believe that to be State statute, State non-profit corporate

act is specifically sets forth the criteria this Court must follow. Because I believe it specifically sets forth what a church can and cannot do under that act. And therefore, I think that this Court by its ruling has not ruled upon the question as to the existence of the corporation and the amendment of the charter and the election of the corporate officers.

THE COURT: Right.

MS. GOLDING: And under that I would respectfully request the Court to reconsider as with respect to the directed verdict. Additionally, Your Honor, as we alleged in our pleadings, I think the Court's failure to—and I use the word failure only simply because it's not with regard to my position.

THE COURT: I accept that.

MS. GOLDING: Thank you, know Your Honor. The Court's failure to rule upon the non-profit corporate act, I believe also violates our first amendment rights in that this Court has co-mingled and put together Church and State. Thank you, Your Honor.

THE COURT: All right, thank you, ma'am. Mr. Newby.

MR. NEWBY: Your Honor, certainly I have no motions with regard to the 2000 case. I would like just to clarify and make sure I understand that all issues have been handled as a matter of law and at this point there are no issues remaining for the finders of the fact due to the Court's Order.

THE COURT: Yes, sir.

MR. NEWBY: And because you made it clear, I think that your decision in the 2005 case related only to personal property and the accounting and I have no motions in that case.

THE COURT: Thank you. Mr. Hines.

MR. HINES: Your Honor, in the 2005 case I just want to make sure that all of the causes of action we have in there have been addressed by your ruling. And based on what you have said, it appears that the claims for declaratory and injunctive relief as to who constitutes the church, those—your ruling in favor of the parties I represent on both of those causes of action.

26. THE COURT: That's right. In so far as the injunctive relief sought identification and did not pertain to real property.

MR. HINES: I understand.

THE COURT: All right.

MR. HINES: And there's also an injunctive claim relating to use of the church name. And I'm not sure that I heard that addressed in your ruling.

27. THE COURT: You did not. The church name in my view follows according to what hierarchical law says. It's in accord with the state law as I understand it. And I was reluctant to intrude too far into some of those matters because I didn't want to step on either Bishop Murphy's toes or Bishop Salmon's toes in that regard. It is, as I read the case and as I cited from the case, I think it gives us the instruction that we need into the identity. And I think quite frankly that the *Adickes*—and especially the *Adickes*—case clearly addresses the issue of the name. As a matter of fact, *Adickes*, citing *Bramlett*, said the appellants—that's the group that pulled away—cannot now comprise the former Presbyterian Church because they have seceded and disassociated

themselves by a voluntary action and vote.<sup>4</sup> I cited that specifically for that particular point and am willing to go no further in that regard.

MR. HINES: All right.

28. THE COURT: I was—I am very mindful of the narrow line that separates church and State. And, therefore, I have consciously attempted to analogize this case to that particular case in which our Supreme Court has spoken to what I believe on points which are very analogous to what I have here today to decide. Beyond that I'm willing to go no further.

MR. HINES: And on the claim and delivery cause of action which relates to the personal property, am I to understand that you're entering judgment in favor of the Episcopal Church vestry on that cause of action?

29. THE COURT: That's exactly right. I assume, however, taking what I've heard before, that an appeal bond would be or will be posted to avoid any undue intrusion about that while the appeal is pending, but I'll leave that for matters of another day. But that clearly is the import as I read the other cases.

MR. HINES: Thank you, Your Honor.

MS. GOLDING: May I inquire of the Court that claim and delivery as of the January 8, 2004, property that existed at that time?

THE COURT: Yes, ma'am. Yes, ma'am.

MS. GOLDING: Thank you, Your Honor.

THE COURT: All right. Ms. Anderson.

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<sup>4</sup> *Adickes*, 264 S.C. at 401, 215 S.E.2d at 444 (citing *Bramlett*, 229 S.C. at 538, 93 S.E.2d at 883).



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**APPENDIX E**

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STATE OF SOUTH CARO- ) IN THE COURT  
LINA, ) OF COMMON  
 ) PLEAS,  
COUNTY OF GEORGE- ) FIFTEENTH JU-  
TOWN ) DICIAL CIRCUIT  
 ) CIVIL ACTION  
 ) NO: 2000-22-720

ALL SAINTS PARISH, )  
WACCAMAW, a South Caro- )  
lina Non-Profit Corporation, )  
(a/k/a The Episcopal Church )  
of All Saints and a/k/a The )  
Vestry and Church Wardens) )  
of the Episcopal Church of )  
All Saints Parish, and )  
MARTHA M. LACHI- )  
COTTE, FRANCES WARD )  
CROMWELL, and AL- )  
BERTA LACHICOTTE )  
QUATTLEBAUM, Individu- )  
ally and as Representatives )  
of the Inhabitants of the )  
Waccamaw Neck Region in )  
Georgetown County, and )  
EVELYN LABRUCÉ, Indi- )  
vidually and as descendant )  
of George Pawley, )  
Plaintiffs, )

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shortly after the Does Motion, the Court need only consider the Does' Motion because the ruling upon this Motion concludes this Court's jurisdiction.

At the hearing, the Does were represented by Fred Newby of Newby, Pridgen & Sartip. The Plaintiffs were represented by Henrietta U. Golding and D. Michael Henthorne of the McNair Law Firm, P.A. The Defendant The Protestant Episcopal Church of the Diocese of South Carolina (the Diocese) was represented by Benjamin A. Moore, Jr. and Julius Hines of Buist, Moore, Smythe & McGee in Charleston. The Defendant The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America (the National Church) was represented by Coming B. Gibbs of Gibbs & Holmes, Charleston, South Carolina, and by Heather Anderson, of Shea & Gardner, Washington, D.C. The Defendant James Hodges, in his official capacity as the Governor of the State of South Carolina and the Defendant State of South Carolina, are represented by Kenneth P. Woodington with the Attorney General's office. Mr. Woodington did not appear at the hearing, but was provided notice.

#### **SUMMARY JUDGMENT STANDARD**

In deciding a Motion for Summary Judgment, the Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. *Pamplico Bank & Trust Co. v. Prosser*, 259 S.C. 621, 193 S.E.2d 539(1972). Summary Judgment "is appropriate in those cases in which plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." *Shuler v. Tuomey Re-*

*gional Medical Center, Inc.*, 313 S.C. 225, 437 S.E. 2d 128, 130 (Ct. App. 1993).

A party opposing a properly supported Motion for Summary Judgment, however, may not rest on the mere allegations or denials of their pleadings but must set forth or point to specific facts showing that there is a genuine issue of material fact. *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991). A genuine issue of fact can be created only by evidence which would be admissible at trial. *Hansen v. DHL Lab. Inc.*, 316 S.C. 505, 450 S.E.2d 624 (Ct. App. 1984), *aff'd* 319 S.C. 79 459 S.E.2d 850 (1995). If a party does not respond to a Motion for Summary Judgment by setting forth specific facts, which are admissible in evidence, summary judgment should be entered against him. *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988), (citing Rule 56(e), SCRPC).

After carefully considering the Memoranda submitted by each of the parties, the entire record in this matter and the parties' oral arguments, I make the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT**

1. The Plaintiff All Saints Parish, Waccamaw (All Saints) is a South Carolina eleemosynary corporation. All Saints is the sole occupant of approximately 50 acres located in the Waccamaw Neck Region, Georgetown County, State of South Carolina. This is the property designated as the Subject Property. This Subject Property has been used for worship services since 1739. A Church, known as All Saints, has existed on the Subject Property since the 1700's.

2. The Waccamaw Neck Region is "that piece of land between the Waccamaw River and the Atlantic

Ocean running from Winyah Bay up to the North Carolina line.” *Deposition of Eugene Zeigler*, p. 6. No dispute exists as to the existence of the region known as “Waccamaw Neck.”

3. The Subject Property was originally a portion of a 12,000 acre tract of land north of Hobcaw Barony received by John Hutchinson in a proprietors’ land grant. Charlotte Hutchinson, widow of John Hutchinson, deeded the Subject Property to Percival Pawley and Anna Pawley and this Deed was recorded in Deed Book Q-3 at Page 34-39 in 1731 in the Charleston County records. Then, by a Deed dated July 20, 1745 (the “Deed”), Percival Pawley and his wife Anna Pawley deeded to George Pawley and William Poole 50 acres of land “. . . in Trust for the inhabitants on the Waccamaw Neck for the use of a Chapele or Church for the divine worship of the Church of England. . . .” This Deed was recorded January 2, 1767 in the records in Charleston County in Book F-3 at Page 484. During this era, recordation of public records occurred in Charleston for Georgetown did not have a Courthouse. *Deposition of George Townsend*, pp. 29-30. There are no known deeds in existence conveying the Subject Property from George Pawley or William Poole and no evidence of such a deed ever being granted. This is the chain of title of the Subject Property. *Affidavit of Ross M Lindsay, III* and *Deposition of Ross M. Lindsay III*, pp. 16 and 17.

4. The Defendant The Protestant Episcopal Church in the Diocese of South Carolina (the Diocese) was formed in 1785 and joined the General Convention of the Defendant The Protestant Episcopal Church in the United States (the National Church) in 1795. *Amended Answer of Diocese*, p. 5. The Defendant Diocese is comprised of parishes and

missions in South Carolina. It has at least two types of members: the clergy and its parishes and missions. Deposition of Eugene Zeigler, p. 26. In the early 1920's, the Diocese split into two (2) separate entities, one known as the Diocese of Upper South Carolina and the other as The Protestant Episcopal Church in the Diocese of South Carolina, which is the Defendant in this action. *Id.* at 24. Prior to the split, the diocesan office was located in Columbia, South Carolina. After the split, the Defendant's office was moved to Charleston where it has remained to date. *Id.* at 25.

5. The Defendant, the Episcopal Church, a/k/a The Protestant Episcopal Church in the United States of America (the National Church), is a non-profit, unincorporated association headquartered in New York, New York. Answer of Defendant Episcopal Church to Plaintiffs' Amended Complaint, page 1. The National Church was founded in approximately 1789. Deposition of Bishop Edward L. Salmon, p. 29. This Defendant has no offices nor employees in South Carolina. Deposition of Eugene Zeigler, p. 54.

6. Neither the Diocese nor the National Church existed at the time Percival and Anna Pawley transferred the Subject Property in trust to George Pawley and William Poole in 1745.

7. Neither the Diocese nor the National Church are heirs to George Pawley or William Poole, the Trustees designated by Percival and Anna Pawley. Deposition of Eugene Zeigler, p. 57.

8. Neither the Diocese nor the National Church claim to be owners of the Subject Property and neither claim to be inhabitants of the Waccamaw Neck region.

9. All the parties in this action agree that the 1745 Deed from Percival and Anna Pawley to George Pawley and William Poole created a trust. The word “trust” appears in the Deed at least four (4) different times. This Court specifically inquired of each party present at the hearing whether each agreed that the 1745 Deed created a trust and the Court received an affirmative response from each party.

10. The grantors in the 1745 Deed are Percival Pawley and Anna Pawley. Deed dated July 20, 1745. The named trustees are George Pawley and William Poole. *Id.* The named beneficiaries are the inhabitants of the Waccamaw Neck. *Id.*

11. A Diocese witness, George Rowe Townsend, testified that she had been researching the history of All Saints for almost forty (40) years and had been looking for a deed to All Saints Parish for at least twenty (20) years. Deposition of George Townsend, pp 15, 27. In 1986, Ms. Townsend discovered the 1745 Trust Deed in the Charleston County Courthouse. *Id.* at 30-32. Townsend testified that she discovered no deed which purports to convey the Subject Property from the Trustees to All Saints Church or anyone else. *Id.* 33. Ms. Townsend further testified that she has neither discovered nor found any documents which grant or convey any interest in the Subject Property to either the Diocese or the National Church. *Id.* at 33-34. Finally, Townsend testified that, according to her historical research, the Subject Property has been used for worship services, and for no other purpose, since 1739. *Id.* at 37.

12. No party has alleged fraud, duress, mistake or any other ground for reformation or rescission of the Deed. Moreover, no party has alleged that the 1745 Deed is vague or ambiguous. To the contrary,

the Chancellor for the Diocese, Eugene Zeigler, testified that both the language and the terms of the Deed were clear. Deposition of Eugene Zeigler, page 50.

13. All Saints contends it has occupied the Subject Property as its caretaker in that there has been no Trustee appointed since George Pawley and William Poole. According to the Does' Answer to Amended Complaint, William Poole died in 1750, George Pawley died in 1774.

14. The Diocese's claims that All Saints, Waccamaw was "dormant" between 1866 and 1876, however, it has presented no evidence to support any dormancy. To the contrary, the existing vestry minutes of All Saints Parish reflect no such lapse or period of dormancy or abandonment. Deposition of John Berry, pp. 23-26, 29-30. Instead, the minutes reflect that the vestry continued to meet and operate as a parish during this period. *Id.*

15. The Diocese and the National Church assert that All Saints owns the Subject Property by reason of a 1903 Deed from the Diocese to All Saints but there is no conveyance of the Subject Property to the Diocese by the Trustees nor any of their heirs. Deposition of George Townsend, pp. 33-34. The 1903 Deed, by its own terms, is a Quit-Claim Deed with no warranty of title. Deposition of George Rowe Townsend, Plaintiff's Exhibit 4.

16. No Court of competent jurisdiction has appointed a successor Trustee for the Subject Property.

17. According to the deposition testimony of the Chancellor of the Diocese, the Diocese does not owe any obligation to the citizens of the Waccamaw Neck area. Deposition of Eugene Zeigler, pp. 91-92.

18. It is uncontroverted that an All Saints Church has conducted worship services on the property for well over 200 hundred years and continues to do so today. Affidavit of Martha M. Lachicotte; Affidavit of Evelyn LaBruce; Affidavit of Ross M Lindsay, III. Moreover, the parties do not contest that All Saints Church has parishioners who are Episcopalians as well as non- Episcopalians and All Saints provides a variety of outreach ministries to the inhabitants of the Waccamaw Neck. Therefore, All Saints, by offering worship services to the Waccamaw Neck Region, has ensured that the Subject Property has been used for the purposes set forth in, and consistent with, the 1745 Deed.

19. On September 19, 2000, the Diocese filed a notice in the public records of Georgetown, South Carolina, which states that the Subject Property is “held in Trust for the Episcopal Church and The Protestant Episcopal Church in the Diocese of South Carolina . . . .” The filing of this notice precipitated this action.

### CONCLUSIONS OF LAW

1. This case is essentially a property dispute. Therefore, it is the responsibility and obligation of a Trial Court to apply South Carolina law. The sole question presented is who owns the Subject Property. “There can be little doubt about the general authority of civil courts to resolve this question.” *Jones v. Wolf*, 443 US. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). “The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.” *Id.* (citing *Presbyterian Church v. Hull Church*, 393 US. 440 (1969)).

The Diocese and the National Church contend that, because The Protestant Episcopal Church in the United States of America is a hierarchical church, this Court is required to defer to the authority of the ecclesiastical tribunals as well as the Canons established by the Diocese and National Church. The United States Supreme Court has held, however, that regardless of the form of church government, it would be the “obvious duty” of the civil tribunal to enforce the “express terms” of a deed, will, or other instrument of church property ownership. *Jones*, 443 US. at 603 (citing *Watson v. Jones*, 80 US. at 722-723). In *Watson*, the Court stated:

“it seems hardly to admit of a rational doubt that **an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principals, providing that in doing so they violate no law of morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require. And it would seem also to be the obvious duty of the court, in the case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use.** So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principals prescribed in the active dedication, and so long as there is anyone so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the

property or fund to other and different uses. This is the general doctrine of courts of equity and its charities, and it seems equally applicable to ecclesiastical matters.”

80 US. at 722-723 (emphasis added).

Similar to the United States Supreme Court’s decision in *Jones, supra*, this Court finds that the First Amendment does not require State Courts to adopt a rule of compulsory deference to religious authority in resolving church property disputes, where no issue of doctrinal controversy is involved. See *Jones*, 443 U.S. at 605. This case involves a Deed containing an express trust and neither the Diocese nor the National Church is a party to this Deed.

In deciding this matter, because this Court is not required to address matters of discipline, faith, church organization or ecclesiastical rule, custom or law, I find that ecclesiastical or canonical law is not applicable. The South Carolina Supreme Court, in the case of *Wilson v. Presbyterian Church of John’s Island*, 19 S.C. Eq. 192, 2 Rich. Eq. 192 (1846), stated: “as the civil tribunals have no right to interfere with anything but property, so the ecclesiastical Judicatories have no authority whatever except over spiritual matters . . . their jurisdiction is over the church . . . but they have no power over the corporation [the trust], so as to affect its existence or to dispose of property.”

More recently, our State Supreme Court has held that “the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlining controversies over religious doctrine.” *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) (citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)). In

*Pearson*, the Court stated that “our case law has recognized civil courts ‘do have jurisdiction as to civil, contract, and property rights which are involved in a church controversy,’ even though they have no jurisdiction of ‘ecclesiastical questions and controversies.’ *Id.* (citing *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956)). Much like the Court in *Pearson*, this Court is not being asked to adjudicate a matter of religious law, principal, doctrine, discipline, custom, or administration. Rather, it is being called to resolve a property dispute involving a trust deed.

Although both church law and civil law exist, this case should be decided on the basis of civil law as it relates to real property and trusts in South Carolina.

2. I find that the 1745 Deed created an active, valid and binding trust for the benefit of the inhabitants of the Waccamaw Neck. All parties at the hearing agreed that this Deed created a Trust. Pursuant to South Carolina law, three elements are necessary to establish a trust: identifiable subject matter or property of the trust, one or more trustees, and one or more beneficiaries. *See Neel v. Clarke*, 193 S.C. 412 8 S.E.2d 740 (1940); 90 CJS Trusts § 2. I find that all three elements are present in the 1745 Deed. The trust established by the 1745 Deed identifies the trust property, names the trustees, George Pawley and William Poole, and identifies the chosen beneficiaries, the inhabitants of the Waccamaw Neck. Because the Trust is established for religious purposes and provides a social benefit to a reasonably large class of beneficiaries, the result is a valid charitable trust. *Restatement 2d, Trusts*, §§ 348, 368.

The Diocese and the National Church urge this Court to look beyond the four corners of the 1745 Deed to historical matters which, they contend, provide a context for this Court to construe the 1745 Deed. This Court declines to do so. Because no party has alleged that the 1745 Deed is vague or ambiguous, the Court may not look beyond the four corners of the Deed. The historical materials submitted by the Diocese and National Church, while interesting from a historical perspective, are nonetheless parol or extrinsic evidence. Parol or extrinsic evidence is not admissible, in the absence of fraud, duress, mistake or other ground for reformation or rescission, to supplement, vary, contradict or alter the terms of the deed. *Beckham v. Short*, 298 S.C. 348, 380 S.E.2d 826 (1989); see also *Restatement 2d, Trusts* § 38, 355; *Scott on Trusts*, §§ 38-164. 1.

3. To establish the identity of the owner of the property, this Court need look no further than the chain of title. I find that the only evidence of the chain of title is the Affidavit of Ross M. Lindsay, III, the deposition of George Townsend, and the 1745 Deed itself.

In spite of an established chain of title, the Diocese urges this Court to consider a monument in the All Saints Parish churchyard which recites that Thomas George Pawley gave the property to the Parish “with the privilege of retaining this burial place of his descendents.” Diocese’s Memorandum in Opposition, page 15. The Diocese contends that the monument’s inscription indicates the possible existence of a deed or instrument, other than the 1745 Deed, which has either been lost or forgotten.

It is well settled in this State that, in determining ownership of real property, the citizens of South

Carolina, and, in turn, South Carolina Courts, shall rely on validly executed and recorded deeds and instruments. Indeed, the reason that we have laws in South Carolina governing the execution and recording of instruments affecting title to real property is to give notice to all third parties. Moreover, in South Carolina, when a written agreement is clear and complete, extrinsic evidence of agreements or understandings contemporaneous with or prior to an execution of a written instrument cannot be used to contradict, explain or vary its terms. *Pee Dee State Bank v. National Fiber Corp.*, 287 S.C. 637, 340 S.E.2d 569 (Ct. App. 1986). Clearly, if a Court is not permitted to consider extrinsic evidence of agreements or understandings made contemporaneous with or prior to the execution of the 1745 Deed, this Court may not properly consider the monument to the Pawley family in the All Saints Parish churchyard, which according to the Diocese, was erected by George Pawley's last surviving great granddaughter who died in 1892. *See* Diocese's Memorandum in Opposition, page 15. Likewise, this Court will not fail to give effect to an existing deed because of mere speculation, or the fanciful possibility that a subsequent deed, although lost, once existed. Given that the 1745 Deed created an irrevocable trust, due to the lack of any reservation of the power of revocation in the settlor, and because the 1745 Deed contained no power by which the trustees were allowed to convey the Trust property, any subsequent deed, even if it existed, would have no legal effect on the 1745 Trust Deed. *See Thomson v. Peake*, 38 S.C. 440, 17 S.E. 45 (1893); *Bonney v. Granger*, 292 S.C. 308, 356 S.E.2d 138 (Ct. App. 1987) (citing *Restatement 2d, Trusts* § 331). The monument and its inscription

does not create a factual dispute for it has no legal significance.

4. I find that, according to the terms of the 1745 Deed, legal title was vested in George Pawley and William Poole as co-trustees. Their ownership of legal title to the property was subject, however, to the equitable interest created by the Deed. As trustees, George Pawley and William Poole held legal title to the property as joint tenants. When William Poole died in 1750, legal title to the property, as well as responsibility for trusteeship, passed to George Pawley. See 90 CIS, *Trusts*, § 237; *Scott on Trusts*, § 103. At common law, upon the death of a remaining trustee, legal title would pass to the remaining trustees' heirs at common law. *Kirton v. Howard*, 137 S.C. 11, 134 S.E. 859 (1926); *Delleney v. The Windsboro Granite Co.*, 72 S.C. 39, 51 S.E. 531 (1905). Further, at common law, the oldest son of the trustee is the designated heir and legal title is vested in him. See *Delleney, supra*. Accordingly, when George Pawley died in 1774, legal title to the property vested in his oldest son as the common law heir and, subsequently, continued to pass from generation to generation until the present day. *Restatement 2d, Trusts* § 104.

5. I find that, although the title to the trust property passed to the common law heirs of the original remaining trustee, those heirs are merely holders of bare legal title with no authority to administer the trust. *Restatement 2d, Trusts* § 104, comment a. As a result, because a successor trustee has not been appointed by a Court, John Doe and Jane Doe, as the common law heirs of George Pawley, hold legal title to the property.

6. I find that the inhabitants of the Waccamaw Neck are the beneficiaries of the Trust and continue to hold the equitable and beneficial interest in the Subject Property. *Restatement 2d, Trusts* § 2, 3.

7. I find that, although a successor Trustee has not been named and the sole remaining Trustee, George Pawley, died in 1774, a valid and binding Trust continues to exist for a Trust will not be allowed to fail for want of a proper Trustee. The principle that a Trust will never be permitted to fail for lack of a proper Trustee is one of the foundation principles of South Carolina trust law. *Leaphart v. Harmon*, 186 S.C. 362, 195 S.E.2d 628 (1938) (“*this Universal Rule requires no citation.*”).

8. Plaintiffs have submitted the affidavit of South Carolina attorney and adjunct law professor Albert L. Moses, an expert on wills and trusts. In his affidavit, Moses states that, in evaluation and forming opinions about the validity of the Trust in the 1745 Deed, he reviewed the pleadings, the 1745 Deed, the 1903 Deed, and the depositions of Bishop Edward Salmon and Eugene Zeigler, but relied primarily upon the 1745 Deed. Moses’ affidavit concludes that the 1745 Deed established an active, valid and binding charitable Trust, which has neither failed nor become a nullity due to non-use of the Trust property.

The South Carolina Court of Appeals has recently ruled that “an expert’s otherwise admissible opinion is not inadmissible simply because it embraces the ultimate issue to be decided by the trier of fact or simply because it expresses opinions and inferences.” *Dawkins v. Fields*, 345 S.C. 23, 545 S.E.2d 515 (Ct. App. 2001). Nevertheless, it is not necessary for the Court to consider Mr. Moses’ affidavit and

this Court declines to do so. This Court has applied the uncontested facts to the applicable law and upon such is issuing this Order.

9. I find that the Church Act of 1706, relied upon by the Diocese and the National Church, is inapplicable. The Church Act of 1706 does not apply because, by its own language, the Church Act purported to set aside those churches and churchyards which were “already built” and “already enclosed” for use by “the several parishes mentioned in this act.” Act 256 at § 13, 2 S.C. Stat. 285-86. The Diocese concedes that the Church Act “did not create All Saints Parish.” Diocese’s Memorandum in Opposition, page 20.

The Church Act and other statutes relied upon by the Diocese and the National Church, including the 1767 and 1778 Acts, while interesting from a historical perspective, are not determinative of title to the Subject Property. Having reviewed these Acts, I find that, even if admissible, they have no relevance to the facts of this case. Percival and Anna Pawley owned the Subject Property at the time they conveyed the property to George Pawley and William Poole. This Court finds that the express terms of the 1745 Trust Deed and evidence of the chain of title are sufficient to determine title and ownership of the Subject Property.

10. I find that the Diocese and the National Church have no interest in the Subject Property nor has either ever had any interest in the Subject Property. The Diocese and the National Church rely on South Carolina Act No. 222, approved February 20, 1880, and allege that this statute conferred an interest in the Subject Property to the Diocese, and, in turn, the National Church. This statute appointed

the Bishop and Standing Committee of the Diocese as “Trustees for the purpose of holding in Trust all property belonging to any of the corporations, or churches or dormant parishes formerly connected with [the Diocese], but which have now ceased to have active operation . . . .” As noted above, the vestry minutes of All Saints reflect no period of dormancy and that the parish, through its vestry, was active and operational in 1880 and in the several years preceding Act No. 222. Deposition of Jack Berry, pp. 23-26, 29-30. The record before the Court contains no evidence to the contrary. Thus, Act No. 222 does not apply to the facts of this case.

11. Since the Act No. 222 did not effectuate a transfer of ownership to the Diocese, the 1903 Quit-Claim Deed from the Diocese to All Saints Parish, Waccamaw conveyed no property. Accordingly, the 1903 Deed does not convey an interest in the Subject Property to All Saints.

12. Neither the Diocese nor the National Church claim to be the owners of the Subject Property, claim to be heirs of the trustees named in the 1745 Trust Deed, nor inhabitants of the Waccamaw Neck area (the beneficiaries). Therefore, the Diocese and the National Church may be, at best, incidental beneficiaries and are precluded from claiming any interest in the trust property. *Restatement 2d, Trusts*, § 126. An incidental beneficiary is one who, although he or she may benefit from the performance of a Trust, is not a true beneficiary of the Trust and cannot enforce it. *Id.*

One contention of the Diocese and the National Church is that, because the Church of England is extinct as the State religion, at least in South Carolina, the Trust must fail. Another contention, yet a con-

flicting one, is that these Defendants are successors to the Church of England. Neither contention creates a dispute as to material fact. The National Church, founded between 1785 and 1789, claims that the Episcopal Church is the sole successor to the Church of England in the United States and the sole recognized member Province of the Anglican Communion in this Country. As part of its Memorandum in Opposition to the Does' Motion the National Church submitted three (3) different letters from the Archbishop of Canterbury dated February 17, 2000, June 18, 2001 and August 24, 2001. While these letters are not admissible, they demonstrate that the Church of England apparently still exists. Although the Church of England may or may not exist as an authorized or recognized church in the United States, the Trust would not fail as a result. Similar to the Diocese and the National Church, the Church of England, at best, could be nothing more than an incidental beneficiary with no rights or authority whatsoever under the Trust. *Restatement 2d, Trusts*, § 126.

13. Both the National Church and the Diocese assert the Statute of Uses is applicable to this action. Each contend that the cases of *Frierson v. Porter Academy*, 217 S.C. 168, 60 S.E.2d 82 (1950) and *Furman University v. Glover*, 226 S.C. 1, 83 S.E.2d 559 (1954) provide authority for the application of the Statute of Uses. The Statute of Uses, which was originally enacted in England in 1535, provides that "where a person is seised of land 'to the use, confidence, or Trust' of any other person, the latter person shall be seised or possessed of the land in the same estate as he would otherwise have in use." *Restatement 2d, Trusts* § 67. When the Statute of Uses executes a "use" or Trust, the interest of the beneficiary

is made legal, while the interest of the person who would otherwise hold subject to the use or Trust is extinguished. *Id.* at comment b. Thus, the Statute of Uses confers legal title upon the holder of equitable title by extinguishing the legal title holder's interest. *Id.*

I find that neither the National Church nor the Diocese have standing to assert the Statute of Uses. An action or proceeding to enforce a trust or to enforce the liability of a trustee for a breach of trust can only be brought by one who has qualifying interest in the subject matter, or who is the representative of such a person. 76 AmJur 2d, *Trusts*, § 673. A suit can be maintained for the enforcement of a charitable trust by any public officer, or by a trustee, or by a person who has a special interest in the enforcement in the charitable trust, but not by persons who have no special interest or by the settlor or his heirs, personal representatives or next of kin. *Restatement 2d, Trusts* § 391. Generally, members of churches or other charitable religious organizations are merely members of the public and, absent a showing of a special interest in the enforcement of a charitable trust, cannot maintain such actions. 15 AmJur 2d, *Charities*, § 135.

Moreover, I find that even if the Diocese and the National Church had standing to assert the Statute of Uses, the Statute of Uses is inapplicable because (1) an undefined class of beneficiaries exists to whom the passage of title is not possible and (2) The Trust is active.

The Statute of Uses does not execute active trusts. *Restatement 2d, Trusts* § 69. The mere fact that the trustee is not expressly granted broad discretionary powers does not make the trust any less

an active trust. 76 AmJur 2d, *Trusts* § 10. “In short, a trust is active if it has a purpose and, under that purpose, the Trustee is engaged in doing something for the benefit of others.” *Id.* In this case, unlike the Trust instruments in the *Frierson* and *Furman University* cases, the 1745 Trust Deed does more than merely convey bare legal title to a Trustee. The 1745 Trust Deed imposes an affirmative duty upon the named Trustees, George Pawley and William Poole, to ensure that the property is used for a specific charitable purpose, that is, “for the use of a Chapele or Church for divine worship of the Church of England established by law . . . .” If the 1745 Deed merely stated “to have and to hold said 50 acres of land . . . unto the said George Pawley and William Poole and their heirs and executives forever in Trust for the inhabitants of Waccamaw Neck and their use,” the Trust may be deemed passive. However, the plain language of the 1745 Trust Deed specifically identifies a charitable purpose and requires the Trustees to perform the duties of the Trust for the benefit of a broad undefined class of beneficiaries. Thus, the Trustees are engaged in doing something for the benefit of others. The Trust does not simply require the building or erection of a chapel or church as its purpose, but for the continued use of the property for a chapel or church and to ensure that divine worship is maintained.

The Statute of Uses is also inapplicable because of the impossibility of conveying legal title to a large undefined class of beneficiaries, the inhabitants of the Waccamaw Neck. In a private trust, the Rule against Perpetuities would serve to defeat the trust after a period of time. Such is not the case for charitable trusts. By definition, a charitable trust is a fiduciary relationship with respect to property arising

as a result of the manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable purpose. *Restatement 2d, Trusts* § 348. “Such a charitable trust is valid although it is to continue for successive lives or for a hundred years or forever.” *Restatement 2d, Trusts* § 365, comment (a). Before legal title can be transferred to the beneficiaries as a result of the Statute of Uses, the beneficiaries must be able to be defined with some reasonable certainty. To date, such definition of beneficiaries has not occurred.

14. Similarly, I find that neither the National Church nor the Diocese has standing to assert laches or adverse possession. Because these parties do not have standing, and because All Saints has represented to this Court that it is not claiming that it has acquired ownership of the Subject Property through adverse possession, the National Church and the Diocese are unable to show a genuine issue of material fact sufficient to warrant a trial on whether All Saints owns the Subject Property by reason of adverse possession or laches.

Aside from the standing issue, laches is not applicable because no breach of trust is alleged. In *Charleston Library Soc. v. Citizens & Southern National Bank*, 201 S.C. 447, 23 S.E.2d 362 (1943), the South Carolina Supreme Court held:

The doctrine of “laches” applies to the enforcement of an express trust only when there has been an open and unequivocal breach or repudiation of the trust, assertion of an adverse right, title or interest, or other act of hostility to the trust by the trustee which has been so brought home to the ac-

tual or constructive knowledge of the cestui que trust (beneficiary) as to require him to assert his rights promptly and with such knowledge he has inexcusably and unreasonably delayed asserting his rights to the injury or prejudice of defendant, or under the circumstances, the lapse of time has been such as to give rise to a presumption of extinguishment of the trust, or such as to obscure the acts of the parties or the nature and character of the trust.

*Id.* (emphasis added).

The Doctrine of Laches does not apply because there has been no breach or repudiation of the Trust, no assertion of an adverse right, title or interest by a Trustee, and no other act of hostility to the Trust by the Trustee which has been brought within the actual or constructive knowledge of the beneficiaries so as to require them to assert their rights promptly. To the contrary, the very existence of this Trust has only been known since 1986. Deposition of George Townsend, pp. 32-33. No acts of breach, repudiation, or hostility could possibly have been performed by the Trustee because the last remaining Trustee died in 1774. Since that time, the heirs of George Pawley have been merely the holders of legal title. Moreover, until the filing of the notice and affidavit by the Diocese and the National Church in September, 2000, neither the Trust heirs nor the Trust beneficiaries (*i.e.* inhabitants of Waccamaw Neck area) had any reason to assert or attempt to protect their interest in the property.

As to adverse possession, at common law one in peaceful possession of real property may continue in possession until ousted **by the true owner**. *Watson*

*v. Motley*, 121 S.C. 42, 114 S.E. 412 (1922); *Stratos v. King*, 282 S.C. 501, 319 S.E.2d 356 (Ct. App. 1984) (emphasis added). In this case, neither the Diocese nor the National Church claims to be the true owner of the property, a successor trustee, or a beneficiary. Thus, the Diocese and the National Church lack standing.

Aside from the fact that the Diocese and the National Church do not have standing to assert that All Saints has title by reason of adverse possession, the law of adverse possession is not applicable. No evidence was presented to this Court that All Saints held the property contrary to the Trust in the 1745 Deed or that All Saints' ownership claim was hostile. Apparently, All Saints believed it owned the Subject Property for it held itself out as the property owner when it signed documents such as mortgages. However, if possession of land is predicated on either permissive use or a mistaken belief of ownership, then possession may not be hostile. *Fradley v. Ivester*, 118 S.C. 195, 110 S.E. 135 (1921); *Cook v. Eller*, 298 S.C. 395, 380 S.E.2d 853 (Ct. App. 1989).

Moreover, due to the relationship of privity between the parties, a Trustee cannot hold adversely against the beneficiary unless the Trustee repudiates the Trust. *Nesbitt v. Clark*, 187 S.C. 365, 197 S.E. 382 (1938); *See also Presbyterian Church at James Island v. Pendarvis*, 227 S.C. 50, 86 S.E.2d 740 (1955) (“... in a direct question between the Trustees and Cestui que Trust, the possession of the latter is the possession of the Trustees and cannot be adverse.”). Because there is no evidence in the record that a Trustee has ever repudiated the Trust, adverse possession does not apply to the facts of this case.

At the hearing, All Saints represented to this Court that it has been the caretaker for the Subject Property and it does not claim title by adverse possession. Further, neither the Does nor the inhabitants of Waccamaw Neck assert that All Saints has adversely possessed the property.

15. Similar to laches, staleness of demand is an equitable doctrine and its applications are controlled by equitable considerations. *Timms, supra*. Neither laches nor staleness of demand may be invoked to defeat justice and will be applied where, and only where, the enforcement of the right asserted would work an injustice. *Id.*; 30A CJS, *Equity*, § 115 (1965).

While laches denotes negligent failure to act for an unreasonable period of time, the Doctrine of Stale Demand bars action after an unexplained delay of such great length as to create a presumption that the action has been abandoned or satisfied. *Timms, supra*. (citing *Gray v. South Carolina Public Service Authority*, 284 S.C. 397, 325 S.E.2d 547 (1985)).

A “stale demand” implies a greater lapse of time than is necessary for “laches,” and is one that has for a long time remained unasserted; one that is first asserted after unexplained delay of such great length as to render it difficult or impossible for the Court to ascertain the truth of the matters in controversy and to do justice between the parties, or to create a presumption against the existence or validity of the claim, or the presumption that the claim has either been abandoned or satisfied. *Bell, Probate Judge v. Mackey*, 191 S.C. 105, 3 S.E.2 816 (1939).

Like laches, the equitable Doctrine of Stale Demand is equally inapplicable. It is undisputed that the Subject Property, in accordance with the Trust,

has been used for worship services that, churches and chapels have been built and maintained, and that the Trust beneficiaries have participated in the Trust functions. Thus, because the use established by the Trust Deed has been preserved for over two hundred fifty (250) years, there has been no valid claim or cause of action which could have become stale. Therefore, staleness has no applicability. Moreover, like laches, those who seek to utilize the Doctrine of Stale Demand must first satisfy the Court that they have standing to raise the defense. *Restatement 2d, Trusts* § 391. As noted above, neither the Diocese nor the National Church has the requisite standing to assert the staleness of demand because neither has an ownership interest in the Subject Property.

16. I find that the holdings in *Presbyterian Church at James Island v. Pendarvis*, 227 S.C. 50, 86 S.E.2d 740 (1955), relied upon by the Diocese and the National Church, do not apply to this case. In *Pendarvis*, the Court, interpreting a 1713 Trust Deed, noted that the use of the property had been “openly diverted” from the use stated in the Deed and that the James Island Church had used the property “for purposes of variance with those named in the Trust instrument.” *Id.* at 743. Most importantly, the Court found that the Trustee had clearly breached its fiduciary obligations under the Trust, which had “long since been repudiated to the knowledge of all concerned.” *Id.* Such is not the case with the 1745 Trust Deed.

The Subject Property has been used in a manner entirely consistent with the 1745 Trust Deed. Additionally, there is no evidence that the Trust has been repudiated nor has any party alleged that the Trustees breached their fiduciary duties. *Pendarvis*, and

its holdings, are plainly distinguishable and inapplicable to the facts of this case.

17. I find that the case relied upon by the Diocese, *Town of Pawlet v. Clark*, 13 US. 292 (1815) is factually distinguishable in that the *Pawlet* case deals with a royal land grant to an incorporated township. The present case, by contrast, deals with a private charitable trust created by individual settlers and with private individuals as Trustees. I further find that *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956) and *Seldon v. Singletary*, 284 S.C. 148, 326 S.E.2d 147 (1985), cited by the National Church, are also clearly distinguishable. Neither, the *Bramlett* nor *Seldon* considered situations in which a deed existed, prior to the formation of either the church or the denomination, that created a valid charitable trust. Moreover, in both cases, the congregations of a hierarchical church had split and one faction had elected to withdraw from the hierarchical church. These situations are not present in this case.

19. I find that no genuine issue of material fact exists regarding ownership of and title to the Subject Property. A charitable Trust exists with legal title to the Subject Property held by the Does and the equitable title held by the inhabitants of the Waccamaw Neck region. Accordingly, partial summary judgment in favor of John Doe and Jane Doe as descendants to George Pawley and William Poole is granted.

20. Because this Court has found that a valid charitable trust exists and that Defendants John Doe and Jane Doe, as descendants to George Pawley and William Poole, hold legal title to the Subject Property while the inhabitants of the Waccamaw Neck hold

the equitable title to the Subject Property, this Court has no further jurisdiction regarding this case. Any further decisions concerning the Trust or the appointment of successor Trustees are within the original exclusive jurisdiction of the Probate Court. THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that no genuine issue of material fact exists. As a matter of law, the 1745 Deed created an active valid and binding charitable trust and legal title to the Subject Property is held by the common law heirs of George Pawley represented by John Doe and Jane Doe, and the equitable title is held by the inhabitants of the Waccamaw Neck as the Trust beneficiaries.

AND IT IS SO ORDERED.

/s/

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The Honorable John L. Breeden, Jr.  
Presiding Judge of the Fifteen Judicial Circuit

Conway, SC  
Dated Oct. 15, 2001.