

SUPREME COURT                      STATE OF NEW YORK  
COUNTY OF BROOME

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The Diocese of Central New York,  
Plaintiff,

AFFIDAVIT

Index No. 2008-000980

– against –

The Rector, Church Wardens, and Vestrymen of the  
Church of the Good Shepherd,  
Defendant.

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STATE OF NEW YORK )  
COUNTY OF BROOME ) ss:

Matt Kennedy, being duly sworn, deposes and says:

1. I am a priest of the Anglican Church of Kenya which is a part of the Worldwide Anglican Communion, and I am the rector of Church of the Good Shepherd in Binghamton, New York which is the defendant in this proceeding, and I am familiar with the facts as set forth in the answer to the complaint, the facts contained in this affidavit and in the affidavit of George Conger, and the facts contained in the affirmation of Raymond J. Dague which are all submitted herewith and which recite various facts, and I know, or believe based upon information and belief, all of the facts set forth this affidavit and in the other aforementioned papers to be true.

2. In keeping with an informal agreement made with Bishop Adams, on or about November 8, 2007, subsequent to two parish meetings, the Church of the Good Shepherd adopted a resolution by the action of the vestry terminating our affiliation with the Episcopal Church, the Diocese of Central New York, and its bishop, Gladstone B. Adams, III. I did not renounce my orders as a priest which were conferred upon me by Bishop Adams when he ordained me on December 22nd, 2002, but rather transferred to the Anglican province of the Anglican Church of Kenya.

3. One of the many exhibits contained in the papers of the Diocese is Exhibit W attached to the

affidavit of Bishop Gladstone Adams III is a resolution of the Diocesan Convention of the Diocese of Central New York adopted on November 15, 2008 which declared that the Church of the Good Shepherd is no longer in union with the convention and that our vestry no longer meets. Attached hereto is copy of that resolution of the Diocesan Convention of the Diocese of Central New York adopted on November 15, 2008 as Exhibit "A"

4. Our case here is different from the Court of Appeals case of Diocese of Rochester v. Harnish, because in that case the Convention of the Diocese of Rochester on November 19th, 2005, declared All Saints parish to be "extinct".

5. The Diocese of Central New York by this resolution has indicated that the Church of the Good Shepherd continues to have existence even though we are no longer in union with them. Indeed the Church of the Good Shepherd is not in union with the Convention of the Diocese of Central New York, its bishop, or the Episcopal Church. But we most certainly continue to worship formally as a parish and we regularly hold official vestry meetings on the third Wednesday of every month and call special meetings when necessary.

6. Our most recent vestry meeting was held on Saturday December 6, 2008. At that meeting we adopted a resolution agreeing in part with the Diocesan Convention resolution adopted on November 15th, 2008 stating that the Church of the Good Shepherd is no longer "in union" with the Diocese of Central New York nor with the Episcopal Church. Attached hereto is copy of that resolution adopted on December 6, 2008 as Exhibit "B"

7. The Church of the Good Shepherd which I lead and which is here being sued by the Episcopal Diocese of Central New York was affiliated with the Episcopal Church since its inception over a hundred years ago, and that affiliation has been maintained until 2007 when we disaffiliated from it.

8. I have seen the enormous stack of motion papers filed in this case against us with almost a thousand pages of exhibits attached which, I am told, seek to prove that we were affiliated with the Episcopal Church from the time of our founding until recently. That is an obvious truth, which we have not denied. I do not know what this huge set of papers do other than to seek to intimidate or to make these legal proceedings more expensive to everyone.

9. If it needs be said succinctly, I shall say it here: Church of the Good Shepherd when it was founded was affiliated with the Episcopal Church (although not with the Diocese of Central New York, which itself came into existence more than 50 years after the founding of Church of the Good Shepherd). We maintained that affiliation until our recent disaffiliation. I was ordained by Bishop Adams as an Episcopal Priest, and so served at Church of the Good Shepherd as its rector until 2007 when I transferred my orders to the Anglican Church of Kenya. I still serve as the rector of Church of the Good Shepherd. That church is located in Binghamton less than a mile from the courthouse where the court will decide whether we will lose all of our property. We are a vital part of our south-side neighborhood with more than one hundred worshipers who celebrate regular Sunday and weekday religious services, participate weekly in six small group Bible studies, engage in a substantial outreach program to the community including weekly bread distributions, free health care events, and a soup kitchen called the Shepherd's Bowl which provides over 50 hungry people with a free warm meal every Thursday evening, and most importantly, proclaim the Gospel of Jesus Christ in the Anglican tradition which means, we believe and confess Jesus Christ to be the Way, the Truth, and the Life: no one comes to the Father but by Him.

10. Because the Episcopal Church, the Diocese of Central New York, and its bishop, Gladstone B. Adams, III have ceased to teach and proclaim Christian truth in accordance with the revelation of God through his Apostles and Prophets as recorded in the Old and New Testaments, we have, as a matter of religious conscience, disaffiliated from the Diocese of Central New York and the Episcopal Church so that we might remain faithful to our Lord Jesus Christ's great commission to

his Church to make disciples of all nations, baptizing them, and “teaching them to obey all my commands” (Matthew 28:19-20).

11. For this reason, and in keeping the the Convention Resolution of the Diocese of Central New York adopted on November 15th, 2008 recognizing that we are no longer “in union” with the diocese or the Episcopal Church, on Saturday, December 6, 2008 our vestry adopted the resolution (referred to in paragraph 6 above) authorizing the Church of the Good Shepherd to file an amendment to its certificate of incorporation. A copy of the amendment to our certificate of incorporation dated December 9, 2008 is annexed hereto as Exhibit “C”

12. Because the Diocese of Central New York by the action of its diocesan convention has declared itself to be no longer in union with us, we doubt that they have any standing to oppose this request of ours to amend our certificate of incorporation. But knowing that the Diocese of Central New York has sued us and is seeking to seize all of our property, we are here putting the plaintiff on notice of our amendment to our certificate of incorporation.

13. There is no issue that we were once affiliated with the Episcopal Church. There is no issue that this affiliation, by the actions of both the Diocese of Central New York and Church of the Good Shepherd, is now terminated. There should be no issue that we are an ongoing church, since we clearly are.

14. The issue here is the legal effect which this disaffiliation has on our retaining our property in light of the alleged Dennis Canon which the Diocese claims means they get our property.

15. The official commentary to the canons of the Episcopal Church is White & Dykman, Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, Church Publishing Inc (1981). On page 296 of this commentary there is a note of a defect in the adoption of the Dennis Canon, and page 301 of this commentary

notes that, “it would appear to permit a majority faction in a parish to amend its parish charter to delete all references to the Episcopal Church, and thereafter to affiliate the parish-- and its property – with a new ecclesiastical group.” A copy of title page and pages 296 and page 301 containing these comments is annexed hereto as Exhibit “D”.

16. There is no court or other tribunal in the Episcopal Church to which we could have turned for redress, or for an interpretation or construction of the canons. They are interpreted, and in some cases twisted, by whichever bishop happens to be claiming to apply them to a particular situation, and there is no court of appeal from a bishop's use or abuse of the canons.

17. The Diocese in its complaint asserts that the Episcopal Church and the plaintiff has a hierarchical form of government and that it has a canon which asserts a trust over the property of our church. Neither of these facts is true, and in 5 and 6 of our answer we have denied them, and I here on behalf of Church of the Good Shepherd again reiterate that denial, and reaffirm the other denials as contained in our answer to this complaint.

18. A heirarchy implies a system of authority where there is accountability. There is no accountability in the Episcopal Church. This litigation is prosecuted and continues, as does other litigation across the country by Episcopal bishops against their former parishes, because the bishop at the head of the organization which is prosecuting has money to pay legal fees for litigation. There is no accountability of any bishop in this or in most other areas apart from church discipline processes under Title IV of the Canons. There are no courts for the settlement of any disputes other than these Title IV church discipline courts.

19. As my attorney's affirmation states, the General Convention of the Episcopal Church did not adopt a Dennis Canon placing a trust on our church’s property. The deed is in the name of our church alone, and nothing in our certificate of incorporation indicates any trust. Church history of the Episcopal Church and its structure from its inception in 1785 demonstrate no trust with

respect to property of a parish. The failed attempt in 1979 to place a unilateral trust on our church is here denied. I have read the pertinent parts of the Journal of the 1979 General Convention which is attached to our attorney's affirmation, and it does not indicate that this so-called Dennis Canon passed both houses of that convention.

20. In accordance with the informal agreement (the same as that referenced in paragraph 2 above) that was made between Bishop Adams and representatives of Church of the Good Shepherd prior to Good Shepherd's disaffiliation from the Diocese of Central New York on November 8th, 2007, and in an attempt to avoid litigation, Good Shepherd sent two formal proposals to the Diocese of Central New York, offering specific amounts of money in exchange for which the Diocese would relinquish its claim on our property. The Diocese of Central New York refused both proposals without written explanation or counter-offer.

21. The Diocese also in the 4th Cause of action in the complaint wants the court to deprive Church of the Good Shepherd of the rights under the will of our longstanding church member Robert A. Branan. A copy of the will of Robert A. Branan dated December 3, 1986 is annexed hereto as Exhibit "E"

22. According to the will, paragraph SIXTH, we are the remainder beneficiary of 30% of the estate after the death the last to die of Grace Felter and Eva Wincek.

23. According to paragraph SEVENTH of the will, "in the event The Church of the Good Shepherd shall cease to exist or shall merge with another church, the bequests set forth in paragraphs FIFTH and SIXTH shall be to the successor by merger church or in the event said church ceases to exist such bequests shall be to the RECTOR, WARDENS AND VESTRYMEN OF CHRIST EPISCOPAL CHURCH OF BINGHAMTON, by whatever name known."

24. According to paragraph EIGHTH of the will, the Marine Midland Bank, N.A. is the trustee of

this trust and the executor of the will.

25. Upon information and belief, Robert A. Branan died and his will has been probated in the surrogates court of Broome County, and letters have been issued to Marine Midland Bank, N.A. as trustee of this trust and the executor of the will. One lifetime beneficiary of the bequest for which our church has a reminder interest, Grace Felter, is deceased, and the other lifetime beneficiary of the bequest for which our church has a reminder interest, Eva Wincek, is alive.

26. Upon information and belief, the Church of the Good Shepherd will not receive any monies until both of these two life beneficiaries are deceased.

27. As I understand the construction of the Branan will, this is the bequest for which the Diocese of Central New York is contending in their FOURTH cause of action in their complaint.

28. Upon information and belief, the bank known as HSBC is the successor in interest to Marine Midland Bank, N.A.

29. Christ Episcopal Church of Binghamton is an Episcopal Church in Binghamton which, upon information and belief, is an operating church with a vestry and ongoing religious services, and which is not the same legal entity as the Diocese of Central New York. We have not, in the words of the Branan will, forfeited our right to the bequest by having “cease[d] to exist or...merge[d] with another church.”

30. There is nothing in the church canons of the Diocese of Central New York or in the Canons of the General Convention which permits the Diocese to litigate on behalf of a parish of that diocese to contend for a bequest left to another church. This is yet another example of the lack of accountability and lawlessness which exists in the Episcopal Church, as mentioned, supra. It is possible because there is simply no mechanism to prevent the bishop from telling the lawyers to

sue us in this manner, notwithstanding the lack of merit to such lawsuit. The accountability of a hierarchy is completely absent.

31. Upon information and belief, neither Christ Episcopal Church of Binghamton nor HSBC as the successor in interest to Marine Midland Bank, N.A. has been made a party to this litigation.

30. The Diocese of Central New York has no standing to sue us for our interest in the Branan Trust, and has not named the necessary parties in this litigation to be able to do so, even if they did have standing.

31. There is much correspondence in the motion papers for the Diocese of Central New York pertaining to the taking of my deposition on October 27, 2008. I was out of town on that date and not available, but as my attorney has stated to the court and the other attorney, if discovery is reopened, I stand ready at any time convenient to the schedules of all of the lawyers schedules to answer questions under oath about this lawsuit.

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Matt Kennedy

Sworn to before me this  
9<sup>th</sup> day of December, 2008

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notary public