

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION

953NP OF 2001

In re: CHURCH OF ST. JAMES THE LESS :

O P I N I O N

Joseph D. O'Keefe, A. J.

10 March 2003

Procedural History

The Petitioners filed this suit on 26 July 2001, requesting a citation upon the Respondents in this case and in the companion case entitled In re CSJL Foundation. Those citations were issued on 1 August 2001. On 25 September 2001, the Respondents filed Preliminary Objections, alleging Petitioners had no standing to assert the claims in their Petition. The Court denied the Preliminary Objections on 8 February 2002. The pleadings in this matter closed 9 April 2002. On 30 September 2002, the Respondents made a motion to amend their Answer, which was granted on 15 October 2002. However, Respondents declined to act on this ruling by serving and filing their Amended Complaint. Trial was held

from 15 October 2002 to 16 October 2002.

Facts

On 26 September 1846, members of the Episcopal denomination in Philadelphia County in the Commonwealth of Pennsylvania founded the Church of St. James the Less under the corporate name “Rector, Church Wardens and Vestrymen of the Church of Saint James the Less,” (hereinafter referred to as “St. James I”).¹ Subsequent to incorporation, St. James I submitted its articles of incorporation (hereinafter referred to as “the Articles”) to the Diocesan Standing Committee (hereinafter referred to as “the Standing Committee”) for the Standing Committee’s review and approval. The Standing Committee approved St. James I’s Articles.² On 22 May 1846, the Committee admitted St James I to the Convention of the Diocese of Pennsylvania.³

Throughout the course of St. James I’s corporate existence, the Canons of the Protestant Episcopal Church in the United States of America (hereinafter referred to as “the Church”) and the Protestant Episcopal Diocese of Pennsylvania (hereinafter referred to as “the Diocese”) required each parish to submit any proposed amendments to its corporate articles, or corporate charter, directly to the Standing Committee and its diocesan bishop. If the Standing Committee and the bishop approved the proposed corporate amendments, the

¹Exhibit P-16

²Exhibit P-1 at SJ-3400; Exhibit P-72 at SJ-0116

³Exhibit P-72

parish was then permitted to present those changes to the state in seeking its approval.⁴ If, however, the Standing Committee and the bishop did not approve the proposed corporate amendments, those proposals would founder, and the parish would continue according to its unchanged, unamended articles. St. James I's corporate charter reflects these diocesan requirements in specifying that St. James I "recognize(s) and adopt(s) the Constitutions, and Canons" of the Diocese⁵ including that St. James I's gains Diocesan approval before amending its articles.⁶

In 1919, St. James I submitted certain proposed amendments to its articles to the Standing Committee and Bishop. The Standing Committee and Bishop ratified the amendments.⁷ Subsequent to Diocesan approval, St. James I submitted the ratified articles to the Orphans' Court of Philadelphia (hereinafter referred to as "the Court") for its approval. The Court approved the ratified amendments and thereby authorized St. James I to file its revised articles with the Pennsylvania Department of State (hereinafter referred to as "the Department of State").

Again, in 1967, St. James I submitted certain proposed amendments its articles to the Standing Committee and Bishop. The Standing Committee and Bishop ratified the amendments.⁸ Subsequent to Diocesan approval, St. James I submitted the ratified articles

⁴Exhibit P-53 at Canon 1.4.1

⁵Exhibit P-16 at Article II; P-17 at Article III; and P-10 at Articles III (1846, 1919 and 1967 Articles)

⁶Exhibit P-53 at Canon 1.4.1

⁷Exhibit P-19 at 2

⁸Exhibit P-9 at SJ-3277

to the Court for its approval. The Court approved the ratified amendments and thereby authorized St. James I to file its revised articles with the Department of State.

Despite the respective amendments to its original charter in 1919 and 1967, the substance of the following intrinsic provisions remained completely intact within St. James I's corporate charter:

- The purpose of St. James I is to support the worship of Almighty God according to the faith and discipline of the Protestant Episcopal Church of the United States;
- St. James I acknowledges the authority of the Episcopal Church and Diocese over it and accedes to the discipline, Constitution and Canons of each;
- St. James I adopts the constitution, canons, doctrine, discipline and worship of the Episcopal Church and the Diocese in its Articles; and
- No vestryman or member of the corporation can serve in that capacity if he fails to conform to the discipline, Constitution and Canons of the Episcopal Church and the Diocese of Pennsylvania.⁹

Further, the original 1846 Articles of Incorporation stated that St. James I's corporate purpose was "the Support of the Public Worship of Almighty God According to the faith and discipline of the Protestant Episcopal Church in the United States of America and the Protestant Episcopal Church in the Diocese of Pennsylvania."¹⁰ The 1919 and 1967 revised articles repeated this very language.¹¹

Further, St. James I's original 1846 Articles of Incorporation stated that:

⁹Exhibits P-10, P-16 and p-17

¹⁰Exhibit P-16 at 5

¹¹Exhibit P-17 at Article II (1919 Articles); Exhibit P-10 at Article II (1967 Articles).

This Church acknowledges itself to be a member of, and belong to, the Protestant Episcopal Church in the State of Pennsylvania, and the Protestant Episcopal Church in the United States of America. As such, it accedes to, recognizes, and adopts the constitution, canons, doctrines, discipline, and worship of the Protestant Episcopal Church in the State of Pennsylvania, and of the Protestant Episcopal Church in the United States, and acknowledges their authority accordingly.¹²

The 1919 and 1967 revised articles repeated this very language.¹³

Further, St. James I's original 1846 Articles of Incorporation stated that:

Any member of this Church or Corporation, who shall disclaim, or refuse conformity to, the said authority, shall cease to be a member of this Corporation, and shall not be elected, or vote in the election of Vestryman, or exercise any office or function in, concerning, or connected with the said Church or Corporation.¹⁴

This language was repeated in the 1911 and 1967 Articles.¹⁵ Additionally, at all times relevant, either the Canons of the Episcopal Church or St. James I's own charter required it to obtain the Standing Committee and Bishop's approval before permitting any mortgage or other encumbrance to be placed against its property.¹⁶

¹²Exhibit P-16 at Article II

¹³Exhibit P-17 at Article III (1911 Articles); Exhibit P-10 at Article III (1967 Articles)

¹⁴Exhibit P-16 at Article II

¹⁵Exhibit P-17 at Article VI (1911 Articles); Exhibit P-10 at Article VI, Sec. 2 (1967 Articles)

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Exhibit P-16 at Article IV. The record indicates that St. James I only encumbered its real estate on two occasions. Each time, it appeared before the Diocesan Standing Committee and obtained its approval. Exhibit P-3 at SJ-3259 (where the Standing Committee gives the Warden of St. James I permission to mortgage the land purchased in 1851 to pay debts incurred in the building of the rectory and "hall edifice"); Exhibit P-4 at SJ-3262 (where the Standing Committee approves the request of St. James I's vestry to mortgage its property to secure a \$2,000 loan which would be applied to pay off the existing mortgage).

St. James I's original 1846 articles of incorporation, St. James I's restated 1919 articles of incorporation, and St. James I's restated 1967 articles of incorporation all contain provisions recognizing an ultimate control over the disposition of St. James I's property in the Episcopal Church. St. James I's 1846 articles provided that St. James I would not "grant, sell, alien or otherwise dispose of any lands, messuages, tenements or hereditaments in them vested, nor charge nor encumber the same to any person or any persons whomsoever", without assent of the General Convention.¹⁷

St. James I did not acquire title to any parcel of land until after adopting the 1846 Articles and being admitted to the Episcopal Diocese. On 17 October 1846, St. James I acquired a parcel of ground in Philadelphia upon which it ultimately erected a church structure.¹⁸ On 26 May 1850, the Right Reverend Bishop Potter of the Diocese consecrated the church structure.¹⁹ During the consecration service, St. James I committed the church structure to the Diocese on behalf of Almighty God.²⁰

On 23 May 1851, St. James I acquired a second parcel of land adjacent to the first parcel.²¹ Subsequent to this acquisition of land, on 24 November 1857, the Rev. Bishop Onderdonk of the Diocese consecrated this second parcel of land, which became part of the

¹⁷Exhibit P-16 at Article IV(1846 Articles)

¹⁸Exhibit P-11

¹⁹Exhibits SJ-1; SJ-16 at 83

²⁰Exhibit SJ-16 at 81

²¹Exhibit P-12

church yard and served as the site of the rectory between 1874 and 1918.²² During the consecration service, St. James I committed the second parcel to the Diocese on behalf of Almighty God

On 13 May 1878, St. James I acquire a third parcel of land at 33rd and Clearfield Sts. in Philadelphia.²³ Subsequent to this acquisition of land, the Rt. Rev. Bishop Welles of Wisconsin, acting on behalf of Rt. Rev. Bishop Stevens of the Diocese of Pennsylvania consecrated this third parcel of land, which served as part of the church yard.²⁴ On 7 March 1913, St. James I acquired a fourth parcel of land at 32nd and Clearfield Sts. in Philadelphia.²⁵ Additionally, on January 13, 1926, St. James I acquired a fifth parcel of land at 32nd and Lippincott Sts. in Philadelphia.²⁶ During each successive consecration service, St. James I committed each acquisition to the Diocese on behalf of the Almighty.

The 1919 amendments and restatement of its articles additionally changed the official corporate name of St. James I from the “Rector, Church Warden and Vestrymen of the Church of St. James the Less” to the “Church of St. James the Less,” and added, inter alia, Article IX. Article IX clearly provided that:

In case of the dissolution of the Corporation, all its property shall vest in trustees, in trust, to hold and convey the same to and for some existing or future congregation of members of the Protestant Episcopal Church in the Diocese of

²²Exhibit SJ-39 at 35, 38

²³Exhibit SJ-3

²⁴Exhibit SJ-39 at 35

²⁵Exhibit P-14

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Exhibit SJ-5

Pennsylvania, and to and for no other purpose; and the said trustees shall consist of such persons as may be appointed by the proper court on the application of a member of the Corporation at the time of its dissolution or of the Bishop or Standing Committee of the Diocese or any other interested party.²⁷

St. James I's 1919 Articles also adopted the Canons of the Church and those of the Diocese.²⁸

Through its 1967 amended and restated articles St. James I provided a measure in expressing its clear intent as to the appropriate disposition of parish property upon the unfortunate occasion of corporate dissolution. Article IX, Section 3 of the 1967 articles provided that :

In case of the (corporate) dissolution of the corporation, all its property shall vest in The Church Foundation IN TRUST to hold same, and by and with the consent and approval of the Bishop of the Diocese of Pennsylvania of the Protestant

²⁷Article IX (1919 Articles)

²⁸Exhibit P-17 at Article III.

As of 1916, the National Canons prohibited any Episcopal denomination church from alienating any consecrated property building, or any buildings used for Divine Worship without the consent of the Diocesan Standing Committee and the Bishop. Specifically, National Canon 47 Sec. II provided:

It shall not be lawful for any Vestry, Trustees, or other body authorized by laws of any State or Territory to hold property for any Diocese, Parish, or Congregation, to encumber or alienate any consecrated Church or Chapel, or a Church or Chapel which has been used solely for the Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.

Exhibit P-41 at Canon, Sec. II (1916 National Canons). See also Exhibit P-42 at Canon 49, Sec. II (1919 National Canons) (setting forth the identical rule under a different Canon number).

As of 1919, the Diocesan Canons adopted by St. James I in its Articles provided that no parish could "encumber or alienate or suffer to become alienated, or cause to be removed" from any common use any consecrated Church or Chapel without the consent of the Bishop and Standing Committee. Exhibit P-50 at Canon XI. (1918 Diocesan Canons).

Episcopal Church and of the Standing Committee of said Diocese... to convey the said property or to continue to hold the same in trust for some existing or future congregation of members of the said in trust for some existing or future congregation of members of the said Church in the said Diocese, or, by and with like consent and approval, to sell said property at public or private sale, and grant and convey the same to the purchaser without liability on the part of the purchaser to see to the application of the purchase money, and to hold or dispose of the proceeds thereof or the income derived from the investment of such proceeds for such uses and purposes as may be determined by said Church Foundation acting by and with the consent and approval of the said Bishop and Standing Committee.²⁹

The 1967 Articles also provided that St. James I could make “[n]o grant... of the Church edifice, rectory or parish house... nor [allow]... any charge [to] be imposed thereon, except by the consent of a majority of the whole vestry... in accordance with the canons of the Diocese of Pennsylvania...”³⁰

St. James I, as a parish in the Episcopal Church, was bound by the National Constitution and the national and diocesan Canons as those documents were amended from time to time. In 1941, the Diocesan Canons were amended to include the following relevant provision:

It is hereby declared that all real property which has heretofore been or shall hereafter be devised, conveyed to, or acquired by... any incorporated, or unincorporated Parish or Mission in said Diocese, for use for religious

²⁹Exhibit P-10 at Article IX, Sec. 3 (1967 Articles).

³⁰Exhibit P-10 at Article IX, Sec.2.

worship, or for a Rectory, Parish House or School, shall be taken and held by such devisee or grantee for the work of the Protestant Episcopal Church in the Diocese of Pennsylvania, and no sale, conveyance or mortgage thereof, or lease for more than one year, shall be made by ... any incorporated or unincorporated Parish without the previous written consent of the Ecclesiastical Authority and a majority of the members of the Standing Committee, or, if there be no Bishop able to act, then by consent of the Standing Committee only; but these restrictions on sale, mortgaging and leasing shall not apply to real estate used for purposes of sepulture, or held only for investment; and nothing herein shall authorize the diversion of any property from the purposes, uses and trusts to which it may have been heretofore lawfully dedicated or to which it may hereafter consistently herewith be lawfully dedicated.³¹

³¹Exhibit P-67 at Canon XII, Sec. II.

In 1967, the language quoted became Canon 13. Exhibit P-52.

In 1989, Canon 13.4 was modified as follows:

Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised or conveyed to, or be in any manner in the lawful possession of any incorporated body, for use in connection with the work of the Episcopal Church in this Diocese, and such incorporated body

(a) through loss of membership or otherwise is, or shall become, incapable of corporate action, or

(b) in the determination of the Standing Committee has, in fact, discontinued normal exercise of corporate functions, or

(c) through its Vestry or Board of Directors shall formally resolve its wishes to relinquish such trust, or

(d) shall legally dissolve, or

(e) In the determination of the Bishop, with the advice and consent of the Standing Committee, has ceased to act in accordance with the Constitution, Canons, doctrine, discipline, and worship of the Episcopal Church and the Constitution and Canons of this Diocese, then Ecclesiastical authority, anything in the articles of incorporation or by-laws to the contrary notwithstanding, shall be the trustee thereof, by and with consent of the Standing Committee, to take such steps as may be

The National Constitution and Canons additionally provided from at least 1846 to the present that:

It shall not be lawful for any Vestry, Trustee, or other body authorized by laws of any State or Territory to hold property for any Diocese, Parish, or Congregation, to encumber or alienate any consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the

legally necessary or proper to vest such property, real or personal, in The Church Foundation under the same trusts under which it had been held by such incorporated body, or if there be no such trusts, or if the same, in the judgment of the Ecclesiastical Authority, have become impractical of execution, then under such additional or different trusts as may be declared by the Ecclesiastical Authority by and with the approval of the Standing Committee. In the even of the application of clause (e) of this Canon 13.4, nothing herein shall be construed to preclude the Ecclesiastical Authority from first seeking reconciliation. Exhibit P-63

In 1979, the Episcopal Church Canons were amended to include the following provisions:

Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon I.7.4. Exhibit P-60 at Title II, Canon 6, Sec. 4.

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons. Exhibit P-60 at Title I, Canon 7, Sec. 5.

Further, all evidence presented at trial relating to the intent of the founders of St. James I and the individuals who donated time, money and labor to purchase land and build the church and related buildings is found in the St. James I Articles of Incorporation which repeated each time the intent that the Episcopal Church and the Diocese had control over the disposition and alienation of its property even during those years St. James I remained in operation and, starting in 1911, contained express provisions giving its property outright to the Diocese in trust in the event St. James I ceased operation.

Standing Committee of the Diocese.³²

The National Constitution and Canons continually imposed on all parishes in the Episcopal Church including St. James I restrictions on the vestry's right to use property at the expense of the rector.³³ Additionally, the National Constitution and Canons from 1846 continually provided that no property could be consecrated unless the Bishop first certified that it was fully paid for and free of any danger or alienation.³⁴ Finally, the National Canons required

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Exhibit P-41 at page 121 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1916, Canon 47). See also Exhibits P-42 at page 128 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1919, Canon 49); P-43 at page 51 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1964, Canon 25); P-45 at page 55 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1967, Canon 25); P-60 at page 60 (Constitution and Canons of the Episcopal Church, as adopted in the general Convention of 1789 to 2000, Canon II.6.2).

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Exhibit P-41 at page 63 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1916, Canon 16); P-42 at page 72 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1919, Canon 20); P-43 at page 111 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1964, Canon 44); P-45 at page 114 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1967, Canon 44); P-60 at page 84 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Canon III.14.1).

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“No Church or Chapel shall be consecrated until the Bishops shall have been sufficiently certified that the building and the ground on which it is erected have been fully paid for, and are free from lien or other encumbrance; and also that such building and ground are secured from the danger of alienation, either in whole or in part, from those who profess and practise [sic] the Doctrine, Discipline, and Worship of this Church, except in the cases provided in secs. II. and III. of this Canon.”

Exhibit P-44, at page 120 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1916, Canon 47). See also Exhibits P-42 at page 128 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1919, Canon 49); P-43 at page 51 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1964, Canon 25); P-45 at page 55 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1967, Canon 25); P-60 at page 60 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1780 to 2000, Canon II.6.1).

each parish to maintain adequate insurance on its buildings and properties.³⁵

St. James I is governed by a twelve person board of directors, or Vestry. The twelve Vestrymen are Respondents to this litigation. In August 1997, Respondent Karl Spaeth on behalf of the individual respondents filed for the creation of a new nonprofit corporation called CSJL Foundation.³⁶ Respondent Spaeth testified that the Vestry desired to create CSJL Foundation to have at hand a mechanism whereby Respondents could remove the assets of St. James I from the Diocese.³⁷ Respondent Spaeth was aware that St. James I's existing charter prohibited removing the assets from the Diocese and that the charter could not be amended by the Vestry alone without the approval of the Diocese.³⁸ In furtherance of their desire to usurp parish property and while functioning as Vestry members owing a fiduciary duty to the parish and Diocese, Respondent Spaeth and the other Respondents devised a scheme to remove St. James I's assets from the control of the Diocese. According to Mr. Spaeth, the plotting began in 1996, about a year before CSJL Foundation's corporate filing with the Department of State.³⁹

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Trial Transcript at 39-41. See also Exhibits P-43, at page 21 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1964, Canon 6); P-45, at page 24 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1967, Canon 6); P-60, at page 38 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Canon I.7.1).

³⁶Exhibit SJ-51 (Articles of Incorporation for CSJL Foundation as filed with Department of State).

³⁷Trial Transcript at 202-03 (Testimony of Respondent Spaeth).

³⁸Trial Transcript at 252, 229 (Testimony of Respondent Spaeth).

³⁹Trial Transcript at 211 (Testimony of Respondent Spaeth).

Respondents' decision to leave the Episcopal Church was based on their personal religious conviction that they wanted to worship according to "traditional Biblical and Anglican principles." They were also indignant because they resented the Bishop's pastoral right to visit St. James I and to celebrate the Eucharist with its parishioners and because the Bishop exercised his discretion in not renewing the license of Father Willis, an assistant rector at St. James I.⁴⁰

On 8 February 1999, the Vestry of St. James I voted to approve an Agreement and Plan of Merger that contemplated the merger of St. James I into the intended CSJL Foundation. The desired merger ostensibly would leave CSJL Foundation as the surviving corporation.⁴¹ On 8 February 1999 the Vestry adopted the Agreement and Plan of Merger. On 15 April 1999, the Vestry dated the Agreement and Plan of Merger.⁴² The members of St. James the Less were neither asked to consider the contemplated merger nor presented the opportunity to vote on it for an additional several months.⁴³

On 25 April 1999, the members met. According to Mr. Spaeth, about 35 members out of the "60 to 70" members of the church, including the 12 vestry members, attended the meeting.⁴⁴ St. James I's rector, Father Ousley, spoke at the meeting and informed the

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Trial Transcript at 199-200, 243-46 (Testimony of Respondent Spaeth); Exhibit P-54 (Minutes of 4/25/99 Members' Meeting at St. James I).

⁴¹Exhibit P-27

⁴²Exhibit SJ-60 at R-261.

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For some reason, Respondents scheduled member meetings twice (on 14 March and 18 April) and then cancelled them. Trial Transcript at 213 (Testimony of Respondent Spaeth).

⁴⁴Trial Transcript at 212 (Testimony of Respondent Spaeth).

members that counsel had advised the vestry that the legality of the merger was suspect.⁴⁵ He also advised the members that upon the effective date of the merger, CSJL Foundation would be the surviving corporation and would have title to all of St. James I's property.

A Summary of Merger sent to the members of St. James I misinformed the members that, following the merger, CSJL Foundation would be the surviving entity, St. James I would cease to exist, and CSJL Foundation would succeed to the rights, privileges, properties, assets, interests and liabilities of St. James I.⁴⁶ The Summary of Merger also misinformed the members of St. James I that the surviving corporation would immediately adopt the name "Church of St. James the Less," i.e., the very name used by St. James I. The new "Church of St. James the Less" (hereinafter referred to as St. James II) not only would have all the assets of St. James I, but also would have the very same vestry, the same rector and the same membership.⁴⁷ The Summary of Merger stated that the main difference between St. James I and St. James II would be that the latter would have significantly revised Articles of Incorporation which would no longer connect the church to the Episcopal Church and would extinguish the rights of the Bishop and Standing Committee in the property of St. James I.⁴⁸

⁴⁵Exhibit P-54 at 1 (Minutes of 4/25/99)

⁴⁶Exhibit P-33 at 231, 232.

⁴⁷Exhibit P-33 at 233.

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Exhibit P-33 at 233. There are a number of unanswered questions regarding the membership vote taken on the merger. Pennsylvania law requires that a meeting of members of a nonprofit corporation duly called shall not be organized for the transaction of business unless a quorum is present. Unless otherwise provided in a bylaw adopted by the members: (1) The presence of members entitled to cast at least a majority of the votes which all members are entitled to cast on the matters to be acted upon at the meeting shall constitute a quorum. See 15 P.S. §5756 (2002). Respondents put forth no evidence to establish that a majority of the

The proposed merger between St. James I with CSJL Foundation would represent a fundamental change to St. James I's corporate articles. However, the fundamental changes to St. James I's corporate articles were neither submitted to the Diocese, nor to this Court for their successive requisite approval. On the contrary, the Vestry filed corporate merger documents directly with the Department of State.

Following the unauthorized attempted merger, CSJL Foundation amended its own corporate articles to reflect a corporate name change from CSJL Foundation to the "Church of St. James the Less," i.e. St. James II.⁴⁹ All the listed attributes of both the intended CSJL Foundation and St. James II duplicated those of St. James I, including its assets, tax ID number, employees and management.⁵⁰ In fact, the only difference between the two entities were certain provisions in their Charters. Namely, St. James II would recognize no relationship with nor tie to the Episcopal Church nor the Diocese, and it substantially would have altered its corporate purpose to providing a place for worship in accordance with traditional biblical and Anglican principles.⁵¹

members of St. James I actually voted in favor of the merger. Thus, if Mr. Spaeth's estimate of 70 members is accurate, then the merger was not approved by the requisite majority vote. If the 80 number set forth by Respondents in their answer is accurate, then the merger failed.

⁴⁹Exhibit P-36 at Art. I.

⁵⁰See e.g. Trial Transcript at 226 (Testimony of Respondent Spaeth)

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See Exhibit P-36 at R-256, Article 3. Traditional Anglican Principles, at least as that phrase is used by Respondents, is not the same as worshipping pursuant to the faith and discipline of the Episcopal Church and Diocese of Pennsylvania, the corporate purpose of St. James I.. Among other things, the traditional Anglican principles set forth in St. James II's by-laws involve the conviction that only men can receive the Holy Orders of Pries, Bishop and Deacon and that members must worship pursuant to prayer books prepared prior to 1928. Exhibit P-26 at R-164 (Bylaws of CSJL Foundation). The faith and discipline of the Episcopal Church permits the ordination of women and requires (absent the permission of the Diocese) the use of the 1979 Book of Common Prayer.

The "traditional Anglican principles" followed at St. James II are also distinct from the faith and

The Episcopal Church in the United States is a hierarchically governed body composed of 113 geographically distinct dioceses within which are numerous individual worshipping congregations.⁵² The Episcopal Church has a hierarchical form of government consisting of three democratically elected tiers.⁵³ At the parish level, government is by a Vestry, consisting of the rector, who is an ordained priest elected by the parish membership at their annual meeting.⁵⁴ At the diocesan level, government is by an annual Convention made up of the diocesan and other bishops, who have been elected as bishops by the Convention, the rectors and other clergy resident in the diocese, and lay delegates elected by their parishes.⁵⁵ At the national level, government is by the General Convention, made up of a House of Bishops, consisting of most Bishops in the Episcopal Church of the United States, a House of Deputies, consisting of clergy and lay persons elected by the conventions of the dioceses.⁵⁶

discipline of the Episcopal Church because respondents were opposed to Formal visitations (i.e. visitations where the Diocesan Bishop presides over the Eucharist) by the Diocesan Bishop, an event that has been required by the Constitution and Canons of the Church and Diocese since the founding of the Protestant Episcopal Church in 1789. Exhibit P-40, at page 287 (Constitution and Canons of the Episcopal Church, as adopted in th General Convention of 1789 to 1844, Canon XXV).

Respondents also did not offer any evidence regarding why their individual and collective decision to leave the Protestant Episcopal of the United States to worship according to “traditional Anglican principles” could no be accomplished without attempting to remove the property of St. James I through the merger.

⁵²Trial Transcript at 26-27 (Testimony of Professor Annand).

⁵³Trial Transcript at 22-23, 26-27 (Testimony of Professor Annand).

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See Exhibit P-60, at page 48 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Canon I.14)

⁵⁵Trial Transcript at 26-27 (Testimony of Professor Annand).

⁵⁶Trial Transcript at 22-23 (Testimony of Professor Annand).

While the ultimate authority is democratically elected, the Church is nonetheless hierarchical because it functions under a National Constitution and Canons that grant the General Convention and the individual bishops of the diocese broad authority over the affairs of the individual parishes, and because each tier of the Episcopal Church's polity is bound by, and may not take actions that conflict with, the decisions of a higher tier.⁵⁷

The General Convention meets every three years.⁵⁸ It is composed of a House of Bishops, consisting of all active and most resigned bishops⁵⁹ and a House of Deputies, consisting of four clergy and four lay persons elected by each of the 113 dioceses.⁶⁰ All actions of the General Convention must be taken by vote of both houses.⁶¹ Finally, the General Convention has enacted canons that directly govern the manner in which responsibilities are to be carried out in individual parishes.⁶² All dioceses, all parishes and

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Trial Transcript at 122-23 (Testimony of Professor Annand). The Episcopal Church recognizes no formal authority in the presiding bishops that lead related churches elsewhere in the world. For example, the Archbishop of Canterbury has no authority over the Protestant Episcopal Church of the United States in its Constitution or Canons. Trial Transcript at 52-53 (Testimony of Professor Annand).

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Exhibit P-60, at page 3 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Const. Art. I.7.).

⁵⁹Id. at Const. Art. 1.2

⁶⁰Id at Const. Art. I.4.

⁶¹Id. at Const. Art. I.1.

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For example, the canons require that the parishes elect their vestries and wardens, that vestries elect their rectors and assisting clergy (in consultation with the diocesan bishop), and that diocesan bishops be elected by the lay and clerical members of the diocesan Conventions. Id. at Canon I.14, III.17, III.22.

The National Church's Constitution and Canons also govern parish spiritual and business practice. The national canons direct that worship is to be conducted pursuant to the Book of Common Prayer adopted by the General Convention unless special forms of worship are authorized by the diocesan bishop, Exhibit P-60, at page 57 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Canon II.3); that clergy are to be educated, evaluated, ordained and elected to parish positions in accordance with certain procedures, Id. at Canon III.7; that parishes are to keep records, make

all clergy are required to defer to the overarching authority of the constitution and canons of the national church and the diocese.⁶³

Each Diocese also has a legislative body called the Diocesan Convention, which meets annually. Each Diocese can and does enact canons that supplement or implement the national canons.⁶⁴ On a day to day basis, a diocese is governed by its Bishops and Standing Committee which serve as the equivalent of a corporate CEO and its board of directors.⁶⁵ The foundation level of the legislative pyramid is the parish. A parishes can legislate only for itself through its vestry, and only then on issues not preempted by the dioceses in the General Convention.⁶⁶

While the Episcopal Church has a presiding Bishop, who is elected by the House of

reports and manage their funds in accordance with prescribed business methods and make certain contributions to the pensions of their rectors. *Id.* at Canon I.7. The national canons also prescribe certain matters such as the performance of marriage, resolution of disputes between clergy and vestries and the use and disposition of parish property. *Id.* at Canon I.19, III.20, I.7.

While the ultimate governing authority rests with the General Convention, the constitution and canons give the church's bishop special oversight responsibilities for the administration of their diocese (Title I), making provisions for forms of worship (Title II), the ordination of clergy and visitation of parishes within the diocese (Title III) and discipline of clergy (Title IV). See generally Exhibit P-60, (Constitution and Canons of the Episcopal Church, as adopted in the general Convention of 1789 to 2000).

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See id. at Const. Art. V. Thus, all priests at their ordination subscribe to a declaration that they do solemnly engage to conform to the Doctrine, discipline and worship of the Episcopal Church. See id. at Const. Art. VIII. There are no restrictions at all in the Constitution and Canons of the kinds of things that can be subject of legislation by the General Convention. Trial Transcript at 122-23 (Testimony of Professor Annand).

⁶⁴Trial Transcript at 122-23 (Testimony of Professor Annand)

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Id. at 25-26; id at 162 (Testimony of Rev. Temme). The Episcopal Constitution and Canons are of equal authority within the Church. Trial Transcript at 69 (Testimony of Professor Annand). The Constitution and Canons are subject to amendment, but only by the General Convention: the Canons by the vote of two-thirds majority and the Constitution by a simple majority voting in two consecutive conventions. Trial Transcript at 70 (Testimony of Professor Annand).

⁶⁶Trial Transcript at 119-20.

Bishops and confirmed by the House of Deputies for a term of nine years, he has no direct governing responsibility.⁶⁷ Instead, the presiding bishop serves as the chief Pastor and Primate of the Church.⁶⁸ Otherwise, he serves the House of Bishops and the joint sessions of the general Convention and chairs the Executive Council that serves as the board of directors of the National Church.⁶⁹

Legal Analysis

The very word “Episcopalism” intends upon a principle of hierarchy. By definition, “Episcopalism” means “the theory that in church government supreme authority resides in a body of bishops and not in any one individual.”⁷⁰ The Episcopal Church system is in all respects hierarchical. The Church functions under a national Constitution that grants broad authority over the affairs of individual parishes to the General Convention and to the bishops of the dioceses. Each parish is consequently directly accountable to the General Convention and to its diocesan bishop.⁷¹

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Exhibit P-60, at page 25 (Constitution of the Episcopal Church, as adopted in the General Convention of 1789 to 2000, Canon I.2)

⁶⁸Id. at Canon I.2(4)(a).

⁶⁹Id. at Canons I.2 and I.4.

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Webster’s Third New Int’l Dictionary. 765 (1976) quoted in Dixon v. Edwards, 290 F.3d 699, 716 (4th Cir. 2002)

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See Trial Transcript at 23. Cf., Kendroff et al. v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 110, 73 S.Ct. 143, 151 (1952) (Hierarchical churches may be defined as those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head.)

No contradiction exists in the fact that the polity of the Episcopal Church is at once both hierarchical and democratic. A similar hierarchy of government exists in the American system, whereby the electorate becomes bound by the legislation of its democratically elected officials. Reflective of that national structure, the membership of the Church becomes bound by the canons of their democratically elected bodies.⁷² Ultimately, in determining the nature of a denomination's governing structure, the Court considers five factors as outlined by the United States Supreme Court in Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). The five factors are: 1) the parish is organized under a statute governing the incorporation of religious societies that are part of a larger whole, 2) the parish has passed resolutions recognizing its subordination to the whole, 3) the parish's by-laws are submitted to the whole for approval, 4) the priest takes an oath of loyalty to the superior authority, and 5) provisions in the constitution can canons of the superior and subordinate levels suggest a hierarchical relationship.⁷³ Both Petitioners and Respondents provided sufficient evidence at trial to satisfy each criterion required by the Supreme Court in Milivojevich.⁷⁴ It could neither reasonably nor successfully be argued that the Episcopal Church is other than hierarchical in structure. Unreasonable argument to the contrary, violates the very trust upon which the Church exists.

As a consequence of its membership in the Episcopal hierarchy, all real and personal property of St. James I is held subject to the control and disposition of the Standing

⁷²Dixon, 290 F.3d at 716 (“the Canons of the Episcopal Church clearly establish that it is a hierarchy.”).

⁷³ See Dixon, 290 F.3d at 716.

⁷⁴See findings of Fact.

Committee and Bishop of the Diocese of Pennsylvania in accordance with the laws of the Commonwealth of Pennsylvania, the Constitution of the Church, the National and Diocesan Canons, and the corporate Charter of St. James I. In 1935, the Commonwealth enacted specific legislation (hereinafter referred to as “the Act of 1935” or simply “the Act”) addressing the control and disposition of church property held by denominations with hierarchical structures.⁷⁵ The Act of 1935 bears decisively upon the matter at hand. The Act provides the very statutory authority upon which subsequent canonical law on point depends. Remarkably, however, neither the statute in its entirety, nor, in deed, the statute’s title in *its* entirety appear to enjoy the thorough attention warranted by so relevant a state law. At best, the Act is referenced as an after-thought of the very Diocesan Canon that the Act authorizes. In its entirety the Act reads:

Church Property to be Subject to Control of Officers or Authorities Thereof;
Validation of Certain Charters.

Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, or religious society, which control

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See 10 P.S. §81

and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter consistently herewith, be lawfully dedicated; And provided, All charters heretofore granted for any church, congregation, or religious society, without incorporating therein the requirement that any property, real and personal, of such corporation, shall be taken, held, and enured subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and valid, for all purposes, as if the said requirements had been inserted therein when the said charters were originally granted; and the title to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect as though the said requirements had been contained in the charter of such corporation when the same was originally granted: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.

The statute, as punctuated in its title, stands as two interrelated segments. The first segment “Church Property to be Subject to Control of Officers or Authorities Thereof” elucidates a hierarchical church structure and provides for the control and disposition of the church’s property adherent to that hierarchical structure and according to the rules and

regulations, usages, canons, discipline and requirements of that entire denomination. The second segment “Validation of Certain Charters” applies *retroactively* to insert the first segment directly into the original charter of a given corporate entity in those instances where a corporate entity’s original charter lacked such language or intent.⁷⁶ Combined, the two segments of the Act of 1935 operate upon “the title(s) to all property, real and personal, heretofore bequeathed, devised, or conveyed to such church, congregation, or religious society, or which may have heretofore been granted or conveyed by such corporation,” to place those titles “firm(ly) and stable(ly) forever” within the recognized hierarchy “as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.”⁷⁷

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Stim, et al. v. Bezinec, et al., 39 Lack.Jur. 65, 68 (1938). ((T)here is no question that the Act is in accordance with the Constitution of Pennsylvania).

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To go one step further and in the absence of a specific canon, the statute according to the present facts would read, as follows:

Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to the corporation St. James I, the bishop, (etc.), for the use of the Episcopal Church, (or the) congregation of St. James I,... , for or in trust for religious worship or sepulture, or for use by the Episcopal Church, (or the) congregation of St. James I, ..., for a school, educational institution, ..., rectory, parsonage, hall, auditorium, the control and disposition of such officers or authorities of the Episcopal Church, (i.e. the Bishop and Standing Committee)... having controlling power according to the rules, regulations, usages, or corporate requirements of such church, congregation, ... , which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, *canons*, discipline and requirements of the religious body, denomination or organization to which the Episcopal Church, (and) the congregation of St. James I, shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated; (*Emphasis added*).

and continue:

And provided, **All charters** heretofore granted for the Episcopal Church, the congregation of St. James I, ... without incorporating therein the requirement that any property, real and personal, of such corporation, shall be taken, held, and enured subject to the control and disposition as herein provided, but which are in other respects good and valid, and shall be in all respects as good and

In Church of God v. Church of God, the Supreme Court of Pennsylvania held that the “law of the Commonwealth concerning the control and disposition of property owned by religious societies that are units of a denominational system is embodied in ... the Act of June 20, 1935, ... by the terms of which the control of any local congregation over property conveyed to its use is to be exercised in accordance with and subject to the rules, regulations, usages, canons, discipline, and requirements of the religious body, denomination, or organization to which the local congregation belongs.”⁷⁸ Additionally, in Gabster v. Mesaros, the Supreme Court held that “(i)t is the law in Pennsylvania that when property, real or personal, is vested in a religious society for the worship of Almighty God, that it is a charitable use... if a congregation had been organized and holds property as a constituent part of any particular religious denomination, it cannot sever itself from such religious denomination without forfeiting its rights and property to those of the organization who maintain the original status,” and continues, “(t)his has not only been established by common law development, but is mandated by the statute.”⁷⁹

valid, for all purposes, *as if the said requirements had been inserted therein when the said charters were originally granted*; and *the title* to all property, real and personal, heretofore bequeathed, devised, or conveyed to the Episcopal church, (or) the congregation of St. James I, ..., or which may have heretofore been granted or conveyed by such corporation, shall be firm and stable forever, with like effect *as though the said requirements had been contained in the charter of such corporation when the same was originally granted*: Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding. (*Emphasis added*).

⁷⁸ Church of God v. Church of God, 335 Pa. 478, 485, 50 A.2d 357 (1947).

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Gabster v. Mesaros, 422 Pa. 116, 120, 220 A.2d 639, 641 (1966) See, Act of June 20, 1935, P.L. 353 s 1, 10 P.S. s81; see also, Kraftican v. St. Peter and St. Paul’s Russian Greek Cathedral Congregation, 366 Pa. 431, 77 A.2d 875 (1951); Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 191 A. 140 (1937)

The present case is no different. In 1846, members of the Episcopal denomination founded St. James the Less. Their membership in and affiliation with the Episcopal Diocese predated their membership in and affiliation with the parish that they founded. In fact, the impetus behind the actual founding of St. James I ostensibly derived from their desire to express their diocesan affiliation to the community-at-large. Those members were no less than members of the Episcopal faith and Diocese before they erected a church or other parish buildings. Likewise, they were no more than members of the Episcopal faith and Diocese after having erected those same buildings. Subsequent property acquisitions merely increased the parishioners' visible presence in the neighborhood community.

In founding of St. James I, the members cemented the parish and all of its property securely into the infrastructure of the Church hierarchy to be held in trust for the membership and in trust for the Diocese-at-large. Thereafter, that property could neither ascend through the hierarchy without proper authority, nor could it be extricated from that infrastructure without proper authorization.

The fact that St. James I did not acquire title to any parcel of land until after adopting its 1846 Articles and being admitted to the Episcopal Diocese is noteworthy, but otherwise chronologically inconsequential. The Act of 1935 immediately engrafted onto St. James I's original articles of 1846 its own language that "any property, real or personal, (that) has heretofore been or shall hereafter be bequeathed, devised, or conveyed for or in trust for religious worship... shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having controlling power according to the rules, regulations, usages, or corporate requirements of such

church.”⁸⁰ Those officers or authorities of the Episcopal Church are the Standing Committee and Bishop. This very statutory mandate reflected in subsequent canons and amendments thereto, whereby member parishes came under the protective umbrella of the Diocese, was expressed symbolically through the numerous acts of consecration performed by the respective bishops on theretofore or thereafter acquired parcels of land. Such sacred ceremonies worked to confirm in the heart those affiliations already confirmed in the law.

Within the statutory language of the Act, the word “canon” demands particular attention. A “Canon” is a “law, rule, or ordinance in general, and of the church in particular; an ecclesiastical law or statute; a rule of doctrine or discipline; a criterion or standard of judgment; a body of principles, standards, rules, or norms.”⁸¹

The Orphans’ Court is not here to determine the extent to which a particular form of worship complies with a given canon. Better judgment, and, indeed, the First Amendment as incorporated through the Fourteenth Amendment prohibits this Court’s excessive entanglement in such matters. Yet, the Petitioners actively solicit this Court to hold that “Respondents are not engaged in the public worship of Almighty God according to the faith and discipline of the Diocese and Episcopal Church.” According to this petition, the Court supposes that Petitioners, themselves, would be as receptive to some subsequent ruling by a different court that measured Petitioners’ own brand of “public worship” of the Almighty as against a different diocesan or denominational standard. The Court will not and cannot

⁸⁰10 P.S. §81

⁸¹Black’s Law Dictionary (5th ed.) 187 1979

become entangled in such politics.

However, it is within the Court's jurisdiction to determine the extent to which a particular canon complies with a given statute authorizing it. The statutory language of the Act of 1935 refers to the "control and disposition" of property as "shall be exercised in accordance with and subject to the rules and regulations, usages, *canons*, discipline and requirements" of the Episcopal Church, (emphasis added). It happens that the rules, regulations, disciplines, and requirements of the Episcopal denomination are embodied in the very definition of what are called "canons." The Pennsylvania legislature thereby knowingly extended an invitation to the Episcopal Diocese, in this instance, to develop an internal mechanism, or canon, whereby the Diocese could efficiently manage its property within the state. To the extent that such resultant canon concerns civil law not ecclesiastical law and is consistent with the enabling Commonwealth legislation, that canon enjoys the full weight and authority which the Act of 1935 authorizes and the courts confer.

It is therefore no coincidence that in 1941, the Episcopal Diocese of Pennsylvania amended its Canons to include Canon XII. Canon XII reads as follows:

It is hereby declared that all real property which has heretofore been or shall hereafter be devised, conveyed to, or acquired by... any incorporated, or unincorporated Parish or Mission in said Diocese, for use for religious worship, or for a Rectory, Parish House or School, *shall be taken and held by such devisee or grantee for the work of the Protestant Episcopal Church in the Diocese of Pennsylvania, and no sale, conveyance or mortgage thereof, or lease for more than one year, shall be made by ... any incorporated or unincorporated Parish without the previous written consent of the*

*Ecclesiastical Authority and a majority of the members of the Standing Committee, or, if there be no Bishop able to act, then by consent of the Standing Committee only; but these restrictions on sale, mortgaging and leasing shall not apply to real estate used for purposes of sepulture, or held only for investment; and nothing herein shall authorize the diversion of any property from the purposes, uses and trusts to which it may have been heretofore lawfully dedicated or to which it may hereafter consistently herewith be lawfully dedicated (Emphasis added).*⁸²

⁸²Exhibit P-67 at Canon XII, Sec. II.

In 1967, the language quoted became Canon 13. Exhibit P-52.

In 1989, Canon 13.4 was modified as follows: **p8**

Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised or conveyed to, or be in any manner in the lawful possession of any incorporated body, for use in connection with the work of the Episcopal Church in this Diocese, and such incorporated body

(a) through loss of membership or otherwise is, or shall become, incapable of corporate action, or

(b) in the determination of the Standing Committee has, in fact, discontinued normal exercise of corporate functions, or

(c) through its Vestry or Board of Directors shall formally resolve its wishes to relinquish such trust, or

(d) shall legally dissolve, or

(e) In the determination of the Bishop, with the advice and consent of the Standing Committee, has ceased to act in accordance with the Constitution, Canons, doctrine, discipline, and worship of the Episcopal Church and the Constitution and Canons of this Diocese, then Ecclesiastical authority, anything in the articles of incorporation or by-laws to the contrary notwithstanding, shall be the trustee thereof, by and with consent of the Standing Committee, to take such steps as may be legally necessary or proper to vest such property, real or personal, in The Church Foundation under the same trusts under which it had been held by such incorporated body, or if there be no such trusts, or if the same, in the judgment of the Ecclesiastical Authority, have become impractical of execution, then under such additional or different trusts as may be declared by the Ecclesiastical Authority by and with the approval of the Standing Committee. In the even of the application of clause (e) of this Canon 13.4, nothing herein shall be construed to preclude the Ecclesiastical Authority from first seeking reconciliation. Exhibit P-63

p9. In 1979, the Episcopal Church Canons were amended to include the following provisions:

Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect

Not only does Canon XII conform with the Act of 1935, Canon XII is practically identical to it. As such, Canon XII and its canonical offspring stand in the bold light of day as wholly consistent with the letter and substance of the Act of 1935.

Most significantly, Canon XII reiterated the intent behind the Act of 1935 that the relevant property “*shall be taken and held by such devisee or grantee for the work of the Protestant Episcopal Church in the Diocese of Pennsylvania.*” Such “devisee or grantee” is notably the Diocesan Bishop. Accordingly, the language of Canon XII consistent with the

to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon I.7.4. Exhibit P-60 at Title II, Canon 6, Sec. 4.

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons. Exhibit P-60 at Title I, Canon 7, Sec. 5.

The Episcopal Church Constitution and Canons also provided from at least 1846 to the present that:

It shall not be lawful for any Vestry, Trustee, or other body authorized authorised by laws of any State or Territory to hold property for any Diocese, Parish, or Congregation, to encumber or alienate any consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese. Exhibit P-41 at page 121 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1916, Canon 47). See also Exhibits P-42 at page 128 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1919, Canon 49); P-43 at page 51 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1964, Canon 25); P-45 at page 55 (Constitution and Canons of the Episcopal Church, as adopted in the General Convention of 1789 to 1967, Canon 25); P-60 at page 60 (Constitution and Canons of the Episcopal Church, as adopted in the general Convention of 1789 to 2000, Canon II.6.2).

Further, all evidence presented at trial relating to the intent of the founders of St. James I and the individuals who donated time, money and labor to purchase land and build the church and related buildings is found in the St. James I Articles of Incorporation which repeated each time the intent that the Episcopal Church and the Diocese had control over the disposition and alienation of its property even during those years St. James I remained in operation and, starting in 1911, contained express provisions giving its property outright to the Diocese in trust in the event St. James I ceased operation.

language of the Act of 1935 clearly places the legal title to all Church property in the Diocese of Pennsylvania in the name of the Diocesan Bishop to hold in trust for the benefit of the members of the Diocese.

The Act of 1935, itself, would have operated to yield the same administrative results for the Episcopal Diocese without Canon XII and its derivatives. Yet, owing to the myriad of denominations intended to be reached by the Act, and their respective labyrinthine internal political and administrative structures, the Pennsylvania legislature wisely inserted into the statute a self-governing clause, whereby a given denomination could draft “rules and regulations, usages, canons, discipline and requirements” consistent with the statute to effect specific statutory compliance with administrative ease. The resultant property “canons,” are at once separate from the state law and subordinate to it. Canon XII and its derivatives are borne out of the Act of 1935.

A denominational hierarchy may from time to time amend its canons to facilitate its internal operations. Those succeeding internal amendments do not alter the Act. Likewise, as long as the canons conform with the statute, the statute does not alter the canons. However, a statutory amendment would alter a canon to the extent of the canon’s inconsistency. Respondents presented no evidence to this Court of canonical inconsistency with the Act of 1935. Through its amendments, Canon XII, or in its present form and title Canon 13.4, is wholly consistent with Pennsylvania state law and therefore binding upon its affiliate member parishes. It accomplishes the same end with the same facility of process intended by the Pennsylvania legislature.

Lest the second segment of the Act of 1935, the “Validation of Certain Charters”

segment, continue in obscurity, this Court now plucks it from the realm of the ignored:

That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition *as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted, any other or different provision therein notwithstanding.* (Emphasis added)⁸³

This segment has the obviously significant consequence of applying the Act of 1935 retroactively to the point of incorporation. More subtle but no less significant a consequence arises from the Act's incorporative nature, whereby through reference the Act also applies to *subsequent canons* pursuant thereto, retroactively to the point of incorporation. An amendment to a corporation's original charter does nothing to supercede state legislation or Diocesan canon. The amended charter becomes heir to all of the restrictions of its predecessor charter absent Diocesan exception.

This retroactive application of the Act and canons immediately occurs without any ratification process at parish level "*as though such provision had been inserted in the charter of such corporation when originally granted.*"⁸⁴ In this way, Canon XII was engrafted onto the existing corporate charter of St. James I in 1941; subsequently Canon 13 was engrafted onto the existing corporate charter in 1967; and finally, Canon 13.4 was engrafted onto the existing corporate charter in 1989, with each successive canon displacing or complementing its predecessor according to the purpose of its amendment. Respondents' argument that St.

⁸³10 P.S. §81

⁸⁴10 P.S. §81

James I never officially adopted a given canon, therefore, has no merit. Those canons were adopted for St. James I by the Diocese with the full authority of state law. St. James I is thereby bound by those canons as if the founding members themselves had penned them in to the original charter.

Petitioners argue that the corporate merger between St. James I and the CJSL Foundation was ultra vires and therefore void. The *proposed* merger was ultra vires and therefore void. However, there was no corporate dissolution of St. James I, and therefore no devolvement of its property to the Diocese. An act is ultra vires when it goes “beyond the scope of the powers of a corporation, as defined by its charter or the laws of the state of incorporation” and in “excess of powers granted and not prohibited.”⁸⁵

St. James I was required by its own Articles, by state law,⁸⁶ and by the canons of the Episcopal Church to seek the permission of the Diocese and of this Court to effectuate any material changes to its corporate articles. Gaining permission to materially alter its corporate articles involves a three step processes: 1) The membership of St. James I according to the terms of its corporate articles must vote upon the proposed material changes; 2) If the membership of St. James I according to the terms of its corporate articles adopts the proposed material changes, then St. James I must submit the proposed material changes to the Diocesan Standing Committee and Bishop for ratification; and 3) If the Diocesan Standing Committee and Bishop ratify the proposed material changes, then St. James I, as

⁸⁵Blacks' Law Dictionary 1522 (6th ed. 1998) (citation omitted)

⁸⁶15 P.S. sec 5547

a non-profit organization, must petition the Orphans' Court for the Court's ultimate approval of those ratified proposals of material changes to its corporate articles. If, and only if, all of these steps are satisfied, can St. James I then lawfully file the material changes to its corporate articles with the Pennsylvania Department of State.

This three step process is well known to St. James I, the Diocese, and the Orphans' Court. In both 1919 and 1967, St. James I submitted proposed amendments to its corporate articles first to the Standing Committee and Bishop for ratification, and subsequently submitted the ratified amendments to the Orphans' Court for its approval. Consistent with this process, St. James I completed each step before lawfully filing those changes with the Pennsylvania Department of Commonwealth.

If, however, the process fails at any of the three enumerated steps, then the entire transaction fails. The transaction does not fail to the direct legal detriment of St. James I, nor does it fail to the direct legal benefit of the Diocese. It simply fails leaving St. James I in the same exact position it occupied before initiating the entire process.

The Petitioners seek from this Court a self-contradictory ruling. On one hand, Petitioners argue that because St. James I did not follow the legally correct three step process to legitimize a material alteration to its articles of incorporation, the proposed merger failed. On the other hand, Petitioners also argue that as the result of the *successful* merger between St. James I and CSJL Foundation, St. James I as a corporate entity was dissolved, and that as a result of the dissolution and according to its corporate articles and the Diocesan canons, St. James I's real and personal property devolved back to the Church Foundation *in trust for the (sole) benefit of the Diocese of Pennsylvania*. This is not the case. Equitable

title to the real and personal property is now, as it has always been, held by St. James I for the benefit of the membership of St. James I parish *and* for the benefit of the Diocese of Pennsylvania “in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body”⁸⁷ To the extent that Petitioners, through this line of contradictory reasoning, seek to alter the beneficial status of the parish property from what existed before the proposed merger, their petition is denied. The proposed merger simply failed for want of proper authorization. St. James I continues as it had before the proposal.

Petitioners suggest that the very purpose of its canons on point was to prevent a vestry from removing parish property from the Diocese. It now becomes evident that the canons and the Act of 1935 also operate to protect a parish membership from a Diocese intent upon its dismantling.

The proposed merger failed at its inception. The Petitioners actively elicited testimony from Mr. Spaeth casting certain doubt on the result of the parish membership vote. Pennsylvania law requires that “a meeting of members of a nonprofit corporation duly called shall not be organized for the transaction of business unless a quorum is present.”⁸⁸ Unless otherwise provided in a bylaw adopted by the members.”⁸⁹ Mr. Spaeth testified that about 35 of the “60 to 70” members of the parish attended the meeting. Additional testimony

⁸⁷ 10 P.S. § 81.

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the presence of members entitled to cast at least a majority of the votes which all members are entitled to cast on the matters to be acted upon at the meeting shall constitute a quorum

⁸⁹ 15 P.S. § 5756 (2000).

suggested that the proposed merger passed at the parish level by a “near unanimous vote.” Subsequent testimony or documentation on point was neither sought nor volunteered in specifying the exact number of parishioners present at the meeting. Respondents went no further in proving that “near unanimous” of “about 35” of the “60 to 70” members constituted a quorum and resultant successful vote. Neither did Petitioners go further in proving that “near unanimous” of “about 35” of the “60 to 70” members did *not* constitute a quorum and resultant successful vote. It is wholly undetermined whether a quorum was or was not present and whether a successful vote was or was not attained. This Court will not assume evidence. It will not assume that “about 35” equals 34 or 36 members. Neither will it assume that “60 to 70” equals 60 nor 70. Without more, the Court is left little choice than to conclude that the proposed merger never got beyond the first step of the three step process.

Assuming *arguendo* that a quorum was met and a successful vote was passed, it remains quite certain that St. James I never presented the proposed merger to the Diocese for ratification, and never presented a ratified proposal to the Orphans’ Court of Philadelphia for approval. Therefore, steps two and three clearly were never satisfied. Instead, the proposed merger floundered and eventually expired somewhere in the realm of step one.

Yet both Respondents and Petitioners alike, upon this they agree, urge the Court to look beyond the procedural shortcomings of the proposed merger, and to deliver the real and personal property of St. James I to the door-step of an actual merger. Respondents motives are clear and easily understood as the subject of this present controversy. If this Court

delivered the corporate entity of St. James I to the doorstep of a merger with CSJL Foundation, then Respondents could merge and thereby remove property from the Diocese that was not theirs. According to the Act of 1935 and Diocesan Canons, this is not possible.

Petitioners reasons are much more subtle and worthy of analysis. If the court delivered the corporation to the doorstep of the merger, and a successful merger transpired, then the original corporation of St. James I would have dissolved. At dissolution all of the property of St. James I would have devolved to the Diocese according to St. James I's corporate charter and the Diocesan Canons.⁹⁰ Property that devolves to the Diocese is held by the Church Foundation IN TRUST... for the use and purpose of the Diocese” alone and not as it previously stood *in trust for the benefit of the membership of St. James I and in trust for the benefit of the Diocese of Pennsylvania.*

Granted, the corporate dissolution clause upon which the Diocese depends is a valid clause. However, corporate dissolution is not so easily triggered as Petitioners would like. “Dissolution of a corporation is the termination of its existence as a body politic. This may take place in several ways as by act of the legislature where it is constitutional; by

⁹⁰ Exhibit P-17 (1919 Articles at Article IX). The 1919 Articles provided:

In case of the dissolution of the Corporation, all its property shall vest in trustees, in trust, to hold and convey the same to and for some existing or future congregation of members of the Protestant Episcopal Church in the Diocese of Pennsylvania, and to and for no other purpose; and the said trustees shall consist of such persons as may be appointed by the proper court on the application of a member of the Corporation at the time of its dissolution or if the Bishop or Standing Committee of the Diocese or any other interested party.

Exhibit P-10 (1967 Articles at Article IX, Sec. 3) The 1967 Articles provide that “In case of the dissolution of the corporation, all its property shall vest in The Church Foundation IN TRUST to hold the same...” for the use and purpose of the Diocese as determined by the Church Foundation, the Bishop and the Standing Committee. (capitalization in original).

surrender or forfeiture of its charter; by expiration of its charter by lapse of time; by proceedings for winding it up under the law; by loss of all its members or the reduction below the statutory limit; by bankruptcy.”⁹¹ There are, as the definition suggests, several methods by which a corporate dissolution occurs. Not one of which methods applies to the present case.

Contrary to the Petitioners’ determination, corporate dissolution does not occur as the unfortunate default from a failed or incomplete attempt on the part of the corporation to amend its articles. There was no “act of the legislature,” no “surrender or forfeiture of its charter,” no “expiration of its charter by lapse of time,” nor was there “a loss of all its members,” nor “bankruptcy.” Additionally, St. James I’s failed adherence to procedural requirements precluded lawful “proceedings for winding (the corporation) up under law.” The only default that occurred in the process for St. James I, was a default back to start without penalty. The most significant consequence to the attempted merger now before the Court concerns the fiduciary obligations of the vestry to act on behalf of the Diocese in the management of the parish. The disciplining of vestry members and those members who voted to disaffiliate from the Church are secondary to the matters now before the Court. In those matters, this Court defers to the ecclesiastical determinations of the Standing Committee and Bishop.

It is apparent, however, that Respondents did attempt to merge St. James I with CSJL Foundation, albeit without proper authorization. While the merger attempt was precluded on procedural grounds, there are residual matters that require the Court’s attention.

⁹¹Black’s Law Dictionary 5th. 425 (1979)

First, CSJL Foundation lacks the proper authorization to execute its stated corporate purpose. Respondents offered testimonial evidence that confirms this determination.⁹² Neither the Diocesan canons, nor the charter of St. James I can rightly prevent the lawful formation of a corporate entity, by citizens of the State or otherwise, according to the laws of the Commonwealth. There is every indication that CSJL Foundation was formed according to the procedural laws of filing with the Commonwealth. To the extent that its corporate purpose was authorized by the Commonwealth, CSJL Foundation would have been a viable entity. Therein lies the rub. Respondent Spaeth testified under oath at trial that CSJL Foundation was created to have at hand a mechanism Respondents could use to pull the assets of St. James I out of the Diocese.⁹³ The corporate purpose of CSJL Foundation was clearly unauthorized and therefore invalid, thereby precluding its effective formation. CSJL Foundation was void at its inception, a byproduct of the deception of the Respondents against the Department of State.

Second, St. James I is a valid corporation. For the reasons already discussed, the Vestry of St. James I could not initiate a merger without proper authorization, nor could the Diocese simply will a corporate dissolution for its singular benefit. The attempted corporate merger was not authorized and therefore any filings contrary to that fact must be unwound, unfiled, and undone as if it had never happened. Respondents cannot circumvent lawful process through the deceitful filing of documents with Department of State. The Department of State was deceived. That deception now uncovered does nothing to perpetuate an illicit

⁹²Trial Transcript at 202-03

⁹³Trial Transcript at 202-03

outcome. Effectively, despite any filing for merger or an apparent merger result, no authorized merger could have transacted. What remained was the original St. James I as a corporate entity and CSJL Foundation with an unauthorized corporate purpose.

In light of the non-viability of CSJL Foundation, the following sequence of events reveals the comically redundant corporate result of “St. James the Less” doing business as “St. James the Less.” All charades notwithstanding, the original St. James the Less remained at all times entirely unchanged, with its corporate assets, vestry, rector and parish membership intact.

The sequence of events is reminiscent of a shell game. The Vestry approved and adopted an Agreement Plan of Merger whereby St. James the Less would merge with nothing. The Vestry called a membership meeting and informed the members that counsel had advised the Vestry that the legality of the merger was suspect. In lawyer talk, suspect must mean unauthorized. Yet acting on that guarded advice of counsel, the Vestry sent copies of a Summary of Merger to the members for their inspection. The Summary of Merger informed the members that St. James the Less would merge with nothing, retain its corporate name and characteristics and lose nothing in the process. As a result, St. James the Less blissfully continued its daily operations undeterred, all as if nothing had changed, when in fact, unbeknownst to the Vestry, indeed, nothing had changed.

Under Diocesan Canon 13.4, the Bishop and the Standing Committee mistakenly determined St. James I to be an “inactive or extinct” member church. Petitioners argue that this determination was the product of “good faith deliberations,” remind the Court that the

“Standing Committee serves as the highest ecclesiastic authority in the Diocese,” and assert that “this Court must defer to its holding that St. James I had become inactive.” This argument is a house built on sand.

In support of their position, Petitioners cite Presbytery of Beaver-Butler v. Middlesex Presbyterian Church,⁹⁴ in which the Pennsylvania Supreme Court quotes Watson v. Jones,⁹⁵ in which the United States Supreme Court held that “(W)henver the question of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judiciaries to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.” Within the span of but a few lines, Petitioners manage to misquote both Supreme Courts.

If the Bishop and Standing Committee confer to deliberate upon the status of a church and consequently conclude that a member church has become “inactive or extinct,” then the member church is, indeed, inactive or extinct. In following both the Pennsylvania and the United States Supreme Courts, this Court respectfully agrees. This provision assumes, however, that the Bishop and Standing Committee were deliberating upon “question(s) of discipline, or of faith, or ecclesiastical rule, custom, or law.”

Petitioners encourage this Court to misinterpret the word “law” in the preceding sentences as an all inclusive term encompassing at once ecclesiastical law, civil law, and ostensibly even, criminal law. This Court declines such indiscretion and assures Petitioners that they are mistaken. Correctly read, the Pennsylvania Supreme Court quoted and the

⁹⁴507 Pa. 255,259, 489 A.2d 1317, 1319 (1985)

⁹⁵80 U.S. 679 (1871)

United States Supreme Court held that “(W)henever the question of discipline, or of faith, or ecclesiastical rule, (ecclesiastical) custom, or (*ecclesiastical*) law have been decided by the highest of these church judiciaries to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.” This Court is not bound by any determination of the Bishop and Standing Committee on matters of civil law. To the extent that the Bishop and Standing Committee concluded that the merger was ultra vires, that the merger dissolved St. James I, and that St. James I’s property thereby devolved to the Diocese, they were mistakenly interpreting Corporate Law, Property Law and related Commonwealth statutes under the guise of ecclesiastical law. This Court respectfully declines to follow, but takes certain notice of the fact that in the very next sentence of Petitioners’ brief the words “ecclesiastical law” unambiguously appear side-by-side.

Petitioners rely upon Canon 13.4(d) in holding this Court bound by the determination of the Bishop and Standing Committee Canon 13.4 reads:

Whenever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised or conveyed to, or be in any manner in the lawful possession of any incorporated body, for use in connection with the work of the Episcopal Church in this Diocese, and such *incorporated body*

(d) shall legally dissolve,...

Thorough analysis has revealed that St. James the Less did not legally dissolve. Canon 13.4 (d), therefore, is inapplicable.

Petitioners brought this present action against the Vestry members of the Church of St. James the Less. The Vestry members *in toto* comprise a component of the entire incorporated body of the St. James the Less. Despite the actions of the Vestry which have so vexed the Bishop, there is no foundation in law to conclude that the “incorporated body... has legally dissolved.” On the contrary, there is every indication that St. James the Less, through all of these proceedings, has continued in the normal exercises of its corporate functions. An attempt on the part of the Bishop and Standing Committee to dissolve what this Court has determined to be a legally viable corporation according to the laws of the Commonwealth, is beyond the scope of Canon 13.4, and itself, *ultra vires*.

Granted, when the Bishop and Standing Committee met to deliberate upon the corporate viability of St. James the Less, they met in good faith under the mistaken notion that St. James the Less had dissolved through a merger. As it happened, no corporate merger occurred. To the extent that the Bishop and Standing Committee met to deliberate under civil law upon the question of whether St. James the Less had legally dissolved, that question was moot, and their determination inconsequential. To the extent that the Bishop and Standing Committee, however, met to deliberate under ecclesiastical law upon questions of discipline, or of faith, or ecclesiastical rule, ecclesiastical custom, or ecclesiastical law in regard to the actions of the Vestry, this Court respectfully follows the Supreme Court of Pennsylvania and the Supreme Court of the United States in deferring to their disciplinary findings pertaining to individual Vestry members.

In deliberating, the Bishop and Standing Committee found as a matter of

ecclesiastical law, that the Vestry members of St. James I had “(b)y voting to disaffiliate from the Episcopal Church... rendered themselves ineligible to hold office under the express provisions of the corporate charter...”⁹⁶ To this ecclesiastical determination, the Court defers. The 1967 Charter and all prior Charters forbade any person who did not submit to the rules and authority of the Episcopal Church and the Diocese from belonging to or acting on behalf of St. James I as a member, Vestry member, or officer.⁹⁷ Thus, as found by the Standing Committee, the Vestry members, simultaneously with their act of voting to disaffiliate from the Episcopal Church and the Diocese, “*rendered themselves ineligible*” to function as vestry members. That rendering was not in itself determinative of ineligibility. The determination of ineligibility came later as a result of the Bishop and Standing Committee’s deliberation.

Having determined the offending Vestry members ineligible to continue in their offices, what remains is a naming or electing of their replacements. There is, however, no indication that the Bishop and Standing Committee have actively pursued the remedy of replacing the current Vestry. As a consequence, the Vestry members continue to function in their offices pending their replacement. The offending Vestry members shall be removed, and new Vestry members shall replace any offending Vestry members. The new Vestry shall be elected or appointed according to the corporate charter, Diocesan Constitution, Canons, and as otherwise required and where necessary with the approval of the Orphans’ Court of Philadelphia.

⁹⁶Exhibit P-47 (May 25, 1999 Findings and Resolution of the Standing Committee).

⁹⁷Exhibit P-10 (1967 Articles at Art. VI.).

Contrary to the Petitioners' assertions, St. James the Less never became inactive or extinct. The benefit of its property therefore neither defaults to the Diocese nor to the Church Foundation. Legal title to the real property of St. James I is now, as it has been since 1935, held by the Bishop and Standing Committee in trust for St. James the Less for the benefit of its membership and for the benefit of the Diocese of Pennsylvania "in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body." The case law authorities provided by Petitioners assumes St. James the Less' corporate dissolution and are therefore not applicable. Their arguments therefore expire before reaching matters of unjust enrichment and constructive trusts under the Denis Canon or otherwise.

In accordance with and subject to the National and Diocesan canons of the Episcopal Diocese, pursuant to Pennsylvania state law, legal title to all Diocesan property is now, and has been since at least the effective date of the Act of 1935, held in the name of the Bishop and Standing Committee of the Episcopal Diocese of Pennsylvania in trust for the benefit of the membership of the Episcopal denomination. The Bishop holds legal title to all real property within the Diocese while the membership-at-large holds equitable title to that property and are thereby beneficiaries of the use and enjoyment of those places of worship. No Bishop can violate his fiduciary duty to hold that property in its rightful position within the hierarchical pyramid of the Episcopal denomination. Likewise, no Vestry can violate its fiduciary duty to manage the property within that same hierarchical pyramid.

The Respondents, as members of St. James' vestry, were fiduciaries of St. James the

Less corporation.⁹⁸ Respondents served as “agents and legal representatives of the Parish in all matters concerning its corporate property and the relations of the Parish to its Clergy.”⁹⁹ Moreover, Respondents’ fiduciary obligations ran not to the members of the corporation who elected the Vestry, as respondent Spaeth believed, but to the corporation, which at its very inception intended to bind itself inextricably to the Episcopal Diocese to which it subscribed.¹⁰⁰

In Pennsylvania, “a fiduciary obligation includes both a duty of care and a duty of loyalty.”¹⁰¹ In pursuing his duties, the fiduciary must act with the utmost good faith in the furtherance and advancement of the interests of his principal.”¹⁰² Determination of what these interests are and of the appropriateness of the actions is a question of fact, dependent on rigorous scrutiny of the circumstances of the case.¹⁰³

In order to recover for breach of fiduciary duty, the Petitioners must show they were

⁹⁸ 15 P.S. Sec 5712

⁹⁹ Exhibit P-45 (National Canons at Canon 13).

¹⁰⁰ Trial Transcript at 241.

¹⁰¹ Anchel v. Shea, 2000 PA Super 289, 37, 762 A.2d 346, 357 (2000) (citing 15 Pa.C.S. S 1712(a)).

¹⁰²

McDermott v. Party City Corp., 11 F. Supp. 2d 612, 626-27 (E.D. Pa. 1998) (quoting Garbish v. Malvern Fed. Sav. & Loan Assoc., 517 A.2d 547, 553-54 (Pa. Super. 1986) (further citation omitted)).

¹⁰³

See Selheimer v. Manganese Corp., 423 Pa. 563, 581, 224 A.2d 634, 644 (Pa. 1966) (“(W)hat may be negligence [on behalf of a corporate fiduciary] in one case may not be want of ordinary care in another, and the question of negligence is therefore ultimately a question of fact, to be determined under all the circumstances.”) (citation and internal quotation marks omitted); In re Main Inc., C.A. No. 98-5947, 1999 U.S. Dist. LEXIS 9312, at *42 (E.D. Pa. June 23, 1999) (citing Pepper v. Litton, 308 U.S. 295, 306 (1939) (rigorous scrutiny applied to actions of fiduciary)).

injured and that the injury came as a result of the breach.¹⁰⁴ There is, however, no need to prove individual intent. The officers and directors of a corporation are jointly and severally liable for any willful neglect, mismanagement or “misconduct of corporate affairs if they jointly participate in the breach of fiduciary duty or approve of, acquiesce in, or conceal a breach by a fellow officer or director’.”¹⁰⁵

The vestry members of St. James violated the rules in their own charter by failing to obtain the necessary Diocesan ratification and court approval of their plan to amend St. James’ articles through a merger. Their knowing failure to follow the corporation’s own charter is a breach of their fiduciary duty of due care as a matter of law.¹⁰⁶ The same result follows from Respondents’ intentional decision to circumvent court approval in their attempted removal of St. James’ assets from their original charitable purpose to a new purpose.¹⁰⁷ The Vestry acted to promote its own interests and the individual interests of the parish membership over the interests of the corporation to whom they owed a fiduciary duty.

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See McDermott, 11 F.Supp. 2d at 626 n.18 (“The elements the plaintiff must prove in claim of breach of fiduciary duty are: (1) that the defendant negligently or intentionally failed to act in good faith and solely for the benefit of plaintiff in all matters for which he or she was employed; (2) that the plaintiff suffered injury; and (3) that the agent’s failure to act solely for the plaintiff’s benefit... was a real factor in bring(ing) about plaintiff’s injuries...” (quoting Pa. S.S.J.I. § 4.16 (1991))).

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In re Main, Inc., 1999 U.S. Dist. Lexis, at *42 (quoting Seaboard Indus. v. Monaco, 442 Pa. 256, 263, 276 A.2d 305, 309 (1971)).

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See generally SICPA Holdings S.A. v. Optical Coating Lab., Inc., C.A. No. 15129, 1997 Del. Ch. LEXIS 1 at *15 (Del. Ch. January 6, 1997) (noting that lack of authority to undertake an action implicates fiduciary duties).

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See Miller v. A.T. & T., 507 F.2d 759 (3d Cir. 1974) quoted in Gagliardi v. Trifood International, Inc., 683 A.2d 1049, 1051 n.2 (Del. Ch. 1996) (directors are liable for breaches of fiduciary duties due to a transaction that “is known to constitute a violation of applicable positive law.”)

Finally, Respondents took all the steps precedent to the merger attempt and voted for the merger itself against the advice of counsel. Counsel advised the respondents that the attempted merger was suspect. While Respondent Spaeth took the position that counsel was merely telling him that the litigation might go on a long time and be expensive, it is clear from the context that the counsel was advising respondent not to undertake the merger and instead to file a quiet title action. Regardless, undertaking corporate action against the advice of counsel and without at least seeking a second opinion is not the act of a reasonably prudent person acting in a corporation's best interest.

As a result of these breaches, the Petitioners suffered injury on their own in bringing this action. Likewise, the vestry members caused injury to St. James the Less corporation in instigating this lawsuit. The vestry members' fiduciary breach requires an accounting and an assessment of damages to St. James the Less corporation.

Petitioners desire that Respondents be ejected from the property of St. James the Less. Petitioners present a compelling argument for ejection, but base that argument upon the invalid premise that St. James the Less' corporation has been dissolved. For that reason, ejection will not follow on the heels of their argument. However, the Bishop and Standing Committee did find as a matter of ecclesiastical law, that the vestry members of St. James I had "(b)y voting to disaffiliate from the Episcopal Church... rendered themselves ineligible to hold office under the express provisions of the corporate charter..."¹⁰⁸ As aforementioned, to this ecclesiastical determination, the Court defers. The Standing Committee and Bishop

¹⁰⁸Exhibit P-47 (May 25, 1999 Findings and Resolution of the Standing Committee).

need only replace the present acting Vestry. The new vestry shall be elected or appointed according to the corporate charter, Diocesan Constitution, Canons, and as otherwise required and where necessary with the approval of the Orphans' Court of Philadelphia.

Finally, despite advancing a number of counterclaims pertaining to the alleged bad faith dealings on the part of Bishop Bennison, Respondents failed to produce any evidence at trial of their damages. That failure precludes this Court's finding in Respondents' favor.

Conclusions of Law

1. The actions undertaken by the Vestry of St. James the Less were Ultra Vires and invalid as they were not ratified by the Standing Committee and Bishop as required under St. James the Less' Articles of Incorporation.

2. The actions undertaken by the Vestry of St. James the Less were Ultra Vires and invalid as they were not authorized by the Orphans' Court as required by Pennsylvania statute.

3. Respondents acted in bad faith by deceiving the Pennsylvania Secretary of State by incorporating CSJL Foundation with the unauthorized corporate purpose of absorbing St. James the Less property through a merger.

4. Respondents acted in bad faith by holding a parish membership vote to initiate a corporate merger, and thereby breached their fiduciary duties of care and loyalty to St. James

the Less corporation.

5. Respondents acted in bad faith by deceiving the Pennsylvania Secretary of State in filing for an unauthorized merger of St. James the Less and CSJL Foundation.

6. The intended transfer of property from St. James the Less was unauthorized by the Court, and therefore no property transferred from St. James the Less.

7. The intended transfer of property to CSJL Foundation was unauthorized by the Court, and therefore no property was received by CSJL Foundation from St. James the Less.

8. St. James the Less did not dissolve as a result of the attempted merger.

9. The property of St. James the Less did not devolve to the Church Foundation as a result of the attempted merger.

10. CSJL Foundation's attempted corporate name change to St. James the Less was invalid as the corporate name was still in use by the original St. James the Less corporation.

11. The Episcopal Church is hierarchical.

12. Legal title to the property of St. James the Less is held by the Standing Committee and Bishop of the Diocese in trust for the benefit of the members of St. James the Less and in trust for the benefit of the Episcopal Diocese of Pennsylvania pursuant to the laws of Pennsylvania and the National and Diocesan canons.

13. Legal title to all Church property within the Diocese of Pennsylvania is held by the Standing Committee and Bishop of the Diocese in trust for the benefit of the members of the Episcopal denomination pursuant to the laws of Pennsylvania and the National and Diocesan canons.

14. Neither Respondents nor any subsequent vestry has any property rights, either by

Church or by State law, to the ownership or unauthorized administration of any Diocesan property.

15. The courts must defer to the decisions of the Standing Committee and Bishop of the Diocese of Pennsylvania in matters of ecclesiastical law.

16. The Standing Committee and Bishop must defer to the courts in matters of civil law.

17. St. James the Less is a viable corporation under the statutes of Pennsylvania.

18. Any and all unauthorized corporate filings with the Pennsylvania Department of State are invalid and must be unwound, unfile and undone as if they never occurred.

19. Respondents have not demonstrated a breach of any fiduciary duty on the part of the Bishop.

20. Respondents have not shown a breach of any covenant of good faith and fair dealing on the part of the Bishop.

21. The fiduciary breaches of the vestry members in bringing about this law suit requires an accounting and an assessment of damages to St. James the Less corporation and to the Diocese.

BY THE COURT

JOSEPH D. O'KEEFE, A.J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
ORPHANS' COURT DIVISION

953NP OF 2001

In re: CHURCH OF ST. JAMES THE LESS :

AMENDED ORDER

This AMENDED ORDER corrects the date from 10 March 2002 to 10 March 2003. All else remains unchanged:

And now this 10th day of March 2003, upon consideration of all facts and circumstances evidence related to the above captioned matter, it is hereby ORDERED and DECREED:

1. That Respondents, the Vestry of the Church of St. James the Less, be removed from their office;
2. That Petitioners, in accordance with the National and Diocesan Canons of the Episcopal Church and the laws of the Commonwealth of Pennsylvania, elect or appoint a new Vestry for the Church of St. James the Less to continue in the daily managerial duties of the parish;
3. That the Pennsylvania Department of State process all documentation necessary to return the Church of St. James the Less, incorporated in 1846, to its corporate standing as existed before the attempted merger;

4. That all Church property held by the former Vestry be returned to the parish and Diocese;
5. That any filings initiated by the Diocese related to the mistaken corporate dissolution of the Church St. James the Less be withdrawn;
6. That the title to the property of the Church of St. James the Less reflect that the property is held in the name of the Bishop and Standing Committee in trust for the members of St. James the Less and in trust for the benefit of the Episcopal Diocese of Pennsylvania;
7. That an accounting and an assessment by a certified public accountant be conducted of all damages to the Church of St. James the Less corporation and to the Diocese related to the bringing about of this lawsuit;
8. That the expenses attendant to conducting such accounting and assessment of damages be included in arriving at a total damages figure.
9. That the results of the accounting and assessment be provided to Petitioners and Respondents.

The directives within this Order are to be commenced immediately upon issuance of this Order.

BY THE COURT

JOSEPH D. O'KEEFE, A.J.