

CASE NO. S155094

SUPREME COURT OF THE STATE OF CALIFORNIA

EPISCOPAL CHURCH CASES

**PETITION FOR REHEARING OR
MODIFICATION OF DECISION**

Court of Appeal, Fourth Appellate District, Division Three
(Appeal Nos. G036096, G036408, G036868)

Orange County Superior Court (J.C.C.P. 4392; 04CC00647)
The Honorable David C. Velasquez, Coordination Trial Judge

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**PETITION FOR REHEARING OR
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Petitioners seek rehearing or modification of the opinion filed on January 5, 2009 (the “Opinion”). Specifically, the Opinion should be modified to make clear that Petitioners remain free to answer the operative complaints, to plead and litigate affirmative defenses, and otherwise to fully litigate all facts relevant to the property issues under the legal standard imposed by the Opinion.

PROCEDURAL POSTURE OF THIS CASE

Procedurally, this appeal is from the Superior Court’s *grant* of Petitioners’ (defendants below) anti-SLAPP motion (a motion that the Opinion holds procedurally did not lie) and the dismissal (after Petitioners’ successful demurrer) of a complaint in intervention. The Petitioners have never been called upon to answer either Respondent Episcopal Diocese of Los Angeles’s First Amended Complaint or Respondent The Episcopal Church’s First Amended Complaint in

Intervention; no affirmative defenses have yet been raised; no discovery has taken place; no full factual record has been developed; no cross-claims (if any) have been brought; and no trial has occurred. Respondents have never made any motion (e.g., a motion for summary judgment) seeking a resolution of their complaints or any other affirmative relief. Respondents have never proven any affirmative right to the property held by Petitioners and the judgment in the Superior Court from which this appeal arises is one in *Petitioners' favor*.

**THE DECISION UNFAIRLY MIGHT BE READ AS
PREDETERMINING ADVERSELY TO THE UNDERLYING
DEFENDANTS THE ULTIMATE MERITS OF THE
PROPERTY DISPUTE AT ISSUE ON NOTHING MORE THAN
AN APPEAL FROM A SUCCESSFUL ANTI-SLAPP MOTION
AND DEMURRER.**

The Opinion states that: “Applying the neutral principles of law approach, *we conclude that the general church, not the local church, owns the property in question. . . . When it disaffiliated from the general church, the local church did not have the right to take the church property with it*”; “For these reasons, we agree with the Court of Appeal’s conclusion (although not with all of its reasoning) *that when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.*” (Opn., pp. 2, 31; emphasis added.) In so stating without qualification, the Opinion suggests that this Court is determining the property dispute as a matter

of law before affirmative defenses have been pled, before trial, and before an opportunity to make a full factual record. The Opinion, thus, appears to presuppose the outcome of a case that has yet to be litigated.

This appeal arises from the grant of procedurally preliminary motions – an anti-SLAPP motion and a demurrer. The Opinion, however, is phrased in a manner that might be read as determinative of the ultimate facts at issue. Yet, Petitioners have never had the occasion to answer the operative complaints and to plead affirmative defenses, let alone to litigate any defenses – affirmative or otherwise – that they may have. To finally resolve Petitioners’ property rights at this preliminary stage would deprive them of their day in court and violate their due process rights.

This Court granted review to determine the legal standard governing church property disputes, including the effect of Corporations Code section 9142. At no time have Petitioners had the opportunity to present their full factual case under the legal standard that this Court has now announced. This case is simply not ripe for any ruling adverse to Petitioners other than vacating the Superior Court’s judgment and remanding for further proceedings under the legal framework announced in the Opinion.

**PETITIONERS HAVE SUBSTANTIAL AFFIRMATIVE AND
OTHER DEFENSES AND CROSS-CLAIMS WHICH HAVE
YET TO BE LITIGATED**

This request for rehearing or modification of the Opinion is far from idle or meaningless. Petitioners have substantial equitable and other defenses and cross-claims which may ultimately defeat or restrict the scope of Respondents' property claims once litigated. These defenses and the evidentiary support for them are not in the record simply because of the procedural posture of the case.

For example, in 1991, the Episcopal Diocese of Los Angeles and its Bishop (acting as agents of the general church) executed a written *waiver* confirming that the property of St. James Church on 32nd Street in Newport Beach was "not held in trust for the Diocese of Los Angeles or the Corporation Sole." (*See* Exhibit "A" hereto.) In reliance on that waiver, St. James Church raised and expended hundreds of thousands of dollars to purchase and improve its property. Regardless of this Court's ruling regarding Episcopal Canon I.7.4 under Corporations Code 9142(c), this 1991 waiver factually affects the scope of any trust that the Episcopal Church may be able to assert over the property of the local church. Accordingly, Petitioners intend to raise this as an equitable affirmative defense, along with other defenses, and seek affirmative relief based on the Diocese's violation of this express agreement.

Further, in the late 1990s, St. James Church conducted a capital campaign in which it raised several million dollars for the improvement of its property from its members. Many, if not most, of

the individual donors to that campaign expressly restricted their gifts to benefit only the local church and *not* the Episcopal Diocese or denomination. Upon remand, Petitioners expect that a number of these donors will assert their rights under the (including under Corporations Code sections 9142 and 9143) to enforce the terms of their restricted donations (or seek refund of the same) due to the Episcopal Church's claim on the property. Again, these issues have not been litigated previously solely due to the procedural posture of the case.

As a result of the foregoing, it is premature for the Opinion to unqualifiedly "conclude that the general church, not the local church, owns the property in question" and that "[w]hen it disaffiliated from the general church, the local church did not have the right to take the church property with it." (Opn., p. 2.) Many facts – yet to be established – may play into the ultimate conclusion to be reached by a trier of fact given the law articulated in the Opinion.

**THE DECISION SHOULD BE MODIFIED TO STATE THAT
FACT ISSUES MAY EXIST THAT MUST BE DETERMINED
BEFORE THERE CAN BE ANY FINAL RESOLUTION OF
PROPERTY OWNERSHIP ISSUES**

Given the procedural posture of this appeal, the Opinion should be modified to make clear that Petitioners' potential defenses and factual issues remain to be litigated. For example, instead of preemptively stating that "the general church, not the local church, owns the property in question," it might say, "sufficient issues exist to

defeat demurrer”; instead of stating, “When it disaffiliated from the general church, the local church did not have the right to take the church property,” it might read along the lines of, “When it disaffiliated from the general church, the local church may not have had the right to take the church property with it.”

Likewise, a demurrer and what the Opinion has determined to be an inapplicable anti-SLAPP motion are not the proper vehicles to determine whether Episcopal Canon I.7.4 is the final word of the general church here, especially as there is a factual dispute as to the relevant governing body – the national Episcopal Church or the broader Anglican Communion – the governing rules of which have not been factually adduced.

The Opinion should be modified to make clear that Petitioners are free to raise these and any other applicable affirmative defenses on remand, and that the *factual* merits of the Respondents’ claim to own of St. James Church’s property remain to be litigated.

Despite its sometimes broad language, even the Court of Appeal’s judgment is consistent with the limited nature of the procedural posture on appeal. It directed that “the judgments of dismissal against the diocese and the national church are both reversed. Further proceedings shall be consistent with this opinion.” Rather than agreeing with a conclusion that the Court of Appeal did not direct – that “the local church property reverted to the general church” (Opn., p. 31) – the Opinion should be limited in the same way as the Court of Appeal’s judgment that it affirms: the judgments of dismissal in favor of Petitioners are reversed and the matter is remanded for further proceedings.

None of this, of course, is to suggest that Petitioners agree with the Opinion's legal determination regarding Corporations Code section 9142(c) and as applied to Episcopal Canon I.7.4. Petitioners do not. They believe that the Opinion in this regard violates the First Amendment's guarantees against the establishment of religion and of Petitioners' free exercise rights. But even so, under the neutral principles of law framework, the legal rule is not that a general church automatically owns a local church's property just because it says so. The legal standard adopted in the Opinion still permits litigation of relevant factual issues including affirmative and other defenses under neutral principles of law. Petitioners are entitled to and should be afforded that opportunity.

CONCLUSION

For the foregoing reasons, this Court should grant rehearing or modify the Opinion filed on January 5, 2009, to make clear that the ultimate merits of the property ownership dispute in this case have not been finally decided.

DATED: January 20, 2009

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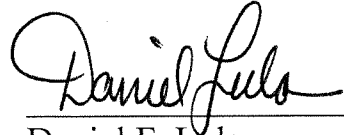
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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c)(1))

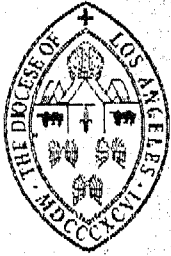
The text of this Petition for Rehearing or Modification of Decision consists of 1,500 words as counted by the Microsoft Word word-processing program used to generate the Petition.

DATED: January 20, 2009

A handwritten signature in cursive script that reads "Daniel Lula". The signature is written in black ink and is positioned above a horizontal line.

Daniel F. Lula

EXHIBIT A



THE
EPISCOPAL CHURCH
IN THE
DIOCESE OF LOS ANGELES

DIOCESAN HOUSE

March 18, 1991

The Rev. David C. Anderson
St. James' Episcopal Church
3209 Via Lido
Newport Beach, CA 92663

Dear David:

This is to confirm our conversations and my previous correspondence to you about the possible acquisition of additional property.

Please know that the position of Bishop Borsch and the Diocese is as follows:

The Rector, Wardens and Vestry of Saint James' Parish, Inc. of Newport Beach, are given permission by the Bishop of Los Angeles, the Rt. Rev. Frederick H. Borsch, to purchase and own the property on 32nd Street in Newport Beach, in the name of the Rector, Wardens and Vestry of Saint James' Parish, Inc. and not held in trust for the Diocese of Los Angeles, or the Corporation Sole.

I trust this will be sufficient. If not, please do not hesitate to contact me.

This comes with my best wishes.

Faithfully in Christ,

THE REV. CANON D. BRUCE MACPHERSON
Canon to the Ordinary
and Attorney in-Fact for the
Bishop of Los Angeles

PROOF OF SERVICE

Episcopal Church Cases
Appeal No. S155094

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, California 92614.

I am employed by Payne & Fears LLP. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service and common carriers promising overnight delivery. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service or the common carrier on the same day I submit it for collection and processing.

On January 20, 2009, I served the following document(s) described as letter of **PÉTITION FOR REHEARING OR MODIFICATION OF DECISION** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes, addressed as follows:

SEE ATTACHED LIST

I then deposited such envelopes, with postage thereon fully prepaid, for collection and mailing on the same day at 4 Park Plaza, Suite 1100, Irvine, California 92614.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 20, 2009, at Irvine, California.

SUSANNE J. ZIMMERMAN

Episcopal Church Cases
Appeal No. S155094

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Appeal Nos. G036096,
G036408, G036868

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