

THE EPISCOPAL CHURCH, et al.,)	IN THE DISTRICT COURT OF
)	
)	TARRANT COUNTY, TEXAS
VS.)	
)	141 ST DISTRICT COURT
)	
FRANKLIN SALAZAR, et al.)	

EPISCOPAL PARTIES’ RESPONSE TO DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’ SUMMARY JUDGMENT MOTIONS AND EVIDENCE

Now come the “Local Episcopal Parties”,¹ the “Local Episcopal Congregations,”² and The Episcopal Church (collectively, the “Episcopal Parties”) and file this Response to

¹ The term “Local Episcopal Parties” includes the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells.

² The term “Local Episcopal Congregations” includes The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints’ Episcopal Church (Fort Worth); The Rev. ClayOla Gitane and Cynthia Eichenberger as representatives of All Saints’ Episcopal Church (Weatherford); The Rev. ClayOla Gitane and Harold Parkey as representatives of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as a representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Roberts Marks, IV and William Davis as representatives of St. Alban’s Episcopal Church (Arlington); Vernon Gotcher and Ken Hood as representatives of St. Stephen’s Episcopal Church (Hurst); Sandra Shockley as a representative of St. Mary’s Episcopal Church (Hamilton); Sarah Walker as a representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as a representative of St. Anne’s Episcopal Church (Fort Worth); the Rev. Susan Slaughter and Larry Hathaway individually and as representatives of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as a representative of St. Mary’s Episcopal Church (Hillsboro); All Saints’ Episcopal Church (Fort Worth); All Saints’ Episcopal Church (Wichita Falls); All Saints’ Episcopal Church (Weatherford); Christ the King Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban’s Episcopal Church (Arlington); St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen’s Episcopal Church (Hurst); St. Mary’s Episcopal Church (Hamilton); St. Anne’s Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary’s Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth’s Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban’s Episcopal Church (Hubbard); St. Andrew’s Episcopal Church (Fort Worth); St. Andrew’s Episcopal Church (Breckenridge); St. Andrew’s Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory’s Episcopal Church (Mansfield); St. John’s Episcopal Church (Fort Worth); St. John’s Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph’s Episcopal Church (Grand Prairie); St. Laurence’s Episcopal Church (Southlake); St. Luke’s Episcopal Church (Mineral Wells); St. Mark’s Episcopal Church (Arlington); St. Matthew’s

Defendants' Objections to Plaintiffs' Summary Judgment Motions and Evidence and in support thereof would respectfully show the Court as follows:

I. DEFENDANTS' OBJECTIONS SHOULD BE OVERRULED BECAUSE THEY ARE NOT SUFFICIENTLY CLEAR OR SPECIFIC.

Defendants' objections to the Episcopal Parties' evidence and/or motions are not sufficiently clear or specific to allow this Court to properly consider and rule on them. Objections to summary judgment evidence should "enable[] the trial court to understand the precise grounds so as to make an informed ruling, affording the offering party an opportunity to remedy the defect, if possible." *See McKinney v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 772, S.W.2d 72, 74 (Tex. 1989). Here, Defendants fail to specify the basis for many of their objections. They do not cite to rules of evidence or other authority for excluding evidence, and their objections frequently take the form of legal arguments related to the substance of the underlying claims, but unrelated to evidentiary rules. Defendants' also fail to specify which portions of affidavits or attachments they find objectionable. For these reasons, the Episcopal Parties request that the Court overrule all of Defendants' objections. In the alternative, the Episcopal Parties respond to Defendants' specific objections below.

II. SPECIFIC RESPONSES TO DEFENDANTS' OBJECTIONS

A. Response to Defendants' Objection No. 1

Defendants object that unspecified portions of the affidavits of the Rt. Rev. C. Wallis Ohl, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells "regarding use of the real, personal, and intangible property of the Diocese and Corporation" are inadmissible because these parties

Episcopal Church (Comanche); St. Michael's Episcopal Church (Richland Hills); St. Paul's Episcopal Church (Gainesville); St. Patrick's Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the Apostle Episcopal Church (Jacksboro); St. Timothy's Episcopal Church (Fort Worth); and St. Vincent's Episcopal Church (Bedford); St. Stephen's Episcopal Church (Wichita Falls); Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls).

lack standing. This objection lacks any legal basis. Defendants' argument that these parties lack standing is a legal issue related to the substance of the underlying claims that will be resolved by the court in ruling on the motions for summary judgment, not an evidentiary objection. Defendants offer no authority, and there is none, to support the argument that summary judgment affiants must have standing to raise claims in order for their testimony to be admissible. Defendants' objection should therefore be overruled.

B. Response to Defendants' Objection No. 2

Defendants object to the Affidavits of Rev. Wallis Ohl, the Rev. Edward F. Gulick, Jr., and Kathleen Wells by arguing that the validity of special conventions and elections must be resolved based on neutral principles of law. But as above, this objection is a legal argument as to the substance of the underlying claims and not a basis for excluding factual testimony based on personal knowledge. Defendants also object to "expert testimony summarizing or interpreting documents," but they fail to specify which affidavit and where in that affidavit such testimony is found. The authority Defendants cite stands only for the proposition that interpretation of the legal effect of unambiguous contractual documents is a question of law and not subject to proof by expert testimony.³ This has no bearing on whether any of the Episcopal Parties' evidence is admissible. Defendants' objection should therefore be overruled.

C. Response to Defendants' Objections No. 3 and No. 4

Defendants object to the opinions in the Affidavit of Dr. Robert Bruce Mullin. Again, Defendants fail to specify which portions of Dr. Mullin's affidavit that they find objectionable, instead objecting only generally to "ecclesiastical opinions . . . regarding the organization and structure of The Episcopal Church," "property issues," and "whether a diocese can withdraw

³ See *Dickerson v. BeBarbieris*, 964 S.W.2d 680, 690 (Tex. App.—Houston [14th Dist.] 1998, no writ); *United Gas Pipe Line Co. v. Mueller Eng'g Corp.*, 809 S.W.2d 597, 602 (Tex. App.—Corpus Christi 1991, writ denied).

from TEC.” Defendants also offer no authority in support of their objections, instead citing only to general authority recognizing and purportedly applying “neutral principles,” which, as stated above, relates to how the underlying claims should be addressed and not the admissibility of evidence. Defendants have filed affidavits from their own purported expert regarding the same general subjects. It is therefore improper for Defendants to argue that Dr. Mullin’s opinions are inadmissible while the opinions of their own experts on the same subjects are admissible. Defendants’ objections should therefore be overruled.

D. Response to Defendants’ Objection No. 5

Defendants object to pages A123-A290 (Title IV) of Exhibit 1 of the Affidavit of Mark Duffy because those provisions do not become effective until July 2011. While this objection is more specific, an examination of the supposedly objectionable documents still makes it unclear to what documents Defendants refer. The page numbers in Defendants’ objection (A123-290) correspond to all but a few pages of the Episcopal Parties’ Exhibit D-1 (2009 Constitution and Canons of The Episcopal Church), but the basis for Defendants’ objection (that the provisions are not yet in effect) is confined to Title IV of the included Canons, which comprises only pages A247-290. Defendants’ objection therefore should be limited to the version of Title IV within the 2009 Constitution and Canons of The Episcopal Church, found at pages A247-290. These pages are not relied upon in either of the Episcopal Parties’ Motions for Summary Judgment and were included in the Episcopal Parties’ evidence only for the sake of completeness. Defendants’ objection is therefore overly broad, as it seeks to exclude provisions from the Canons which are currently in effect (pages A123-A246), and unnecessary as to the remaining provisions (pages A247-290) because those provisions are not relied upon by the Episcopal Parties. Defendants’ objection should therefore be overruled.

E. Response to Defendants' Objection No. 6

Defendants' objection to "portions of [Dr. Mullin's affidavit] regarding a trust imposed by TEC" again fails the specificity test explained above and should be overruled on this basis alone. This objection is also merely a series of legal arguments related to the substance of the underlying claims, not an evidentiary objection, as evidenced by Defendants' citation to arguments in their own motion for summary judgment rather than any rule of evidence or other authority. Defendants' objection should therefore be overruled.

F. Response to Defendants' Objection No. 7

Defendants object to the Affidavit of Jonathan Nelson and the attachments to the same as "a violation of the Texas Disciplinary Rules of Professional Conduct" by claiming that Mr. Nelson has improperly used "confidential information of a former client to the disadvantage of the former client after the representation is concluded" in violation of Texas Disciplinary Rule of Professional Conduct 1:05(b)(3). Again, Defendants fail to identify with specificity to which portions and attachments of Mr. Nelson's affidavit they object. But regardless, any objection on the basis of Texas Disciplinary Rule of Professional Conduct 1:05(b)(3) is without merit. First, Defendants' characterization of Mr. Nelson's affidavit as using "confidential information of a former client" is inaccurate. Mr. Nelson's affidavit attaches only publicly filed pleadings and affidavits attested to by Bishop Iker and others and states that the positions in those admissions were successfully maintained. Second, the authority cited by Defendants in support of their objection is inapposite. The *Southtex* court rejected an affidavit from counsel based on Texas Disciplinary Rule of Professional Conduct Rule 3.08's prohibition of an attorney "appearing as both witness and counsel." *Southtex 66 Pipeline Co., Ltd. v. Spoor*, 238 S.W. 538, 544 (Tex. App.-Houston [14th Dist.] 2007, pet. denied). But Rule 3.08 is not the basis of Defendants'

objection here nor are the policy considerations implicated by Rule 3.08 applicable to Rule 105(b)(3). And neither *Southtex* nor any other authority stands for the broad proposition that any Texas Disciplinary Rule of Professional Conduct can serve as a basis for excluding evidence. Moreover, whether the Corporation is a former client or a former and current client of Mr. Nelson depends on the Court's resolution of the merits of the identity issue. Defendants' objection should therefore be overruled.

G. Response to Defendants' Objection No. 8

Defendants object to the Episcopal Parties' "motions to the extent they seek an implied trust" based on Defendants' argument that the Episcopal Parties "have not pleaded or requested an implied trust in their pleadings." Implied trust allegations, however, appear throughout each of the Episcopal Parties' pleadings and inform the Episcopal Parties' requests for relief.⁴ Defendants' objection should therefore be overruled.

H. Response to Defendants' Objection No. 9

Defendants object to "the Local TEC request for an order that Defendants vacate their parish churches within one week" on the basis that a verified pleading is required for a "temporary injunction" under Texas Rule of Civil Procedure 682. Defendants, however, misinterpret the requirements of Rule 682. Numerous courts have held that a verified petition is not required in order for a court to grant injunctive relief where such relief is granted after a full hearing.⁵ The Local Episcopal Parties' request for injunctive relief is not based solely on the

⁴ See, e.g., Individual Plaintiffs' Sixth Amended Original Petition at ¶ 73 (stating that "all property held by or for the Diocese is held and may only be used for the mission and benefit of the Church and its subordinate Diocese . . .") and ¶ 101(j) (requesting "a declaration that all property held by or for the Diocese . . . is held for and may be used only for the mission of the Church and the Diocese"); Plaintiff The Episcopal Church's Third Amended Original Petition at ¶ 60 and subparagraph 'd' within "Relief Requested" (p. 20) (same).

⁵ See, e.g., *Nguyen v. Intertex, Inc.*, 93 S.W.3d 288, 298 (Tex. App.—Houston 2002, no pet.) (holding that "a verified petition for injunctive relief is not required to obtain a permanent injunction when a full evidentiary hearing on evidence has been held" because "the writ of injunction is not granted upon the averments of the petition alone"); *Atkinson v. Arnold*, 893 S.W.2d 294, 297 (Tex. App.—Texarkana 1995, no writ) (explaining that "[a] verified

facts stated in their pleadings, but rather on all of the evidence supporting their motion for summary judgment, and this injunctive relief will be granted only after the Court hears the motions for summary judgment. As a result, injunctive relief in favor of the Local Episcopal Parties is proper even without a verified pleading.⁶

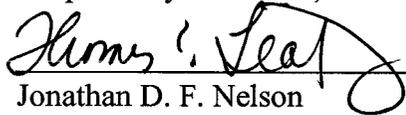
PRAYER

For the reasons explained above, the Episcopal Parties respectfully pray that the Court overrule Defendants' objections to the Episcopal Parties' summary judgment evidence.

petition is not essential to the granting of a temporary injunction" when "the writ of injunction is not granted upon the averments of the petition alone, but upon sworn and competent evidence admitted upon a full hearing") (citing *Magnolia Petroleum Co. v. State*, 218 S.W.2d 855, 857 (Tex. Civ. App.—Austin 1949, writ ref'd n.r.e.); *Georgiades v. Di Ferrante*, 871 S.W.2d 878, 882 (Tex. App.—Houston [14th Dist.] 1994, writ denied)).

⁶ See *id.*

Respectfully submitted,



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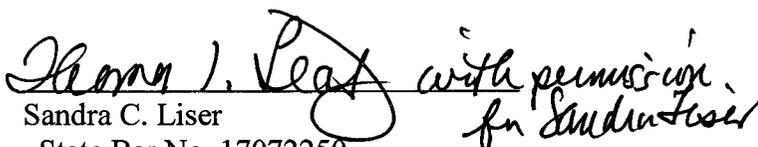
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent this 11th day of January, 2011, by Federal Express or hand delivery and email, to:

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