

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**EPISCOPAL DIOCESE OF FORT WORTH**

**Plaintiff,**

**VS.**

**THE RT. REV. JACK LEO IKER**

**Defendant.**

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**NO. 4:10-cv-00700-Y**

**NOTICE OF CONCLUSIVE DETERMINATION BY STATE COURT**

TO THE HONORABLE COURT:

Pursuant to the Court’s January 6, 2011 Order Staying Proceedings, Plaintiff the Episcopal Diocese of Fort Worth (“Plaintiff”) files this Notice of Conclusive Determination by State Court and would respectfully show:

1. On January 6, 2011, the Court stayed this cause in light of the related state-court action. The Court ordered: “Once the state court conclusively determines the true identity of the Diocese and Corporation and the proper disposition of the Diocese’s property, Plaintiff shall notify the Court of that determination within twenty-one (21) days of the relevant order.” The Court ruled that “once the state court determines the identity and ownership issues, the Lanham Act causes of action (though intertwined with the identity and ownership issues) will require resolution by this Court.”

2. On April 5, 2011, the state court conclusively determined these identity and ownership issues, rendering final and appealable its interlocutory ruling that the ex-Episcopal breakaway faction, including Defendant Iker, shall “desist from holding themselves out as leaders of the Diocese when this Order becomes final and appealable” and shall “surrender all

Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs 30 days after Judgment becomes final.”

3. Specifically, on January 21, 2011 and again on February 8, 2011, the state court, the Honorable Judge John P. Chupp, entered interlocutory orders (1) granting partial summary judgment to The Episcopal Church and to its loyal Diocesan officials (Plaintiff in this case); (2) denying partial summary judgment to the ex-Episcopalian faction (including Defendant in this case); and (3) issuing a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code that, as a matter of Texas law, “in the event of a dispute among its members, a constituent part of a hierarchical church consists of those individuals remaining loyal to the hierarchical church body” and that “those are the individuals who remain entitled to the use and control of the church property.” On April 5, 2011, the state court severed its February 8, 2011 interlocutory Amended Order on Partial Summary Judgment, rendering it final and appealable.

4. Pursuant to this Court’s January 6, 2011 Order, now that the state court’s order is final, Plaintiff respectfully notifies the Court that the state court has “conclusively determine[d] the true identity of the Diocese and Corporation and the proper disposition of the Diocese’s property.” (*See* Exhibit A, State Court’s January 21 and February 8, 2011 Interlocutory Orders and its April 5, 2011 Final Order, attached hereto).

5. Relevant to this federal Lanham Act case, Defendant Iker has continued to hold himself out as the Bishop of the Episcopal Diocese and to use the Diocese’s federally-registered service marks to solicit money from the community, even after the state court ruled that he does not represent the Diocese, continuing the likelihood of confusion. (*See* Exhibit B, Defendant Iker’s Solicitation Letter, attached hereto).

Respectfully submitted:

Dated: April 7, 2011

/s/ Thomas S. Leatherbury  
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**Attorneys for Plaintiff  
Episcopal Diocese of Fort Worth**

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2011, I served a true and correct copy of the foregoing document on counsel of record by electronic notice via filing with the Court CM/ECF system and via electronic mail.

/s/ Thomas S. Leatherbury

# **EXHIBIT A**

CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH, et al.,	)	IN THE DISTRICT COURT OF
	)	TARRANT COUNTY, TEXAS
VS.	)	
	)	141 <sup>ST</sup> DISTRICT COURT
FRANKLIN SALAZAR, et al. <sup>1</sup>	)	

**ORDER GRANTING LOCAL EPISCOPAL PARTIES'  
AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT**

On January 14, 2011, came on for consideration (1) the Local Episcopal Parties' Amended Motion for Partial Summary Judgment<sup>2</sup> and (2) the Defendants' Motion for Partial Summary Judgment. The Court considered the pleadings, motions, any responses and replies, the evidence on file subject to the Court's rulings on the objections to the evidence and the motions, the governing law, and arguments of counsel, and the Court orders as follows:

The Local Episcopal Parties' Amended Motion for Partial Summary Judgment is **GRANTED**.

The Defendants' Motion for Partial Summary Judgment is **DENIED**.

The parties should confer, and the Local Episcopal Parties should submit a more detailed declaratory order within ten days of the date of this order.

Signed this 21 day of January, 2011.



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JUDGE PRESIDING

<sup>1</sup> The style is being shortened at the request of the Clerk's office. It does not imply that any parties are omitted or dropped from the case.

<sup>2</sup> The Local Episcopal Parties consist of the Rt. Rev. C. Wallis Ohi, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Miceli, 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.

CAUSE NO. 141-237105-09

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

**ORDER ON SUMMARY JUDGMENT**

On January 14, 2011, came on for consideration (1) The Episcopal Church's Motion for Summary Judgment and (2) Defendants' Motion for Partial Summary Judgment. Having considered the pleadings, motions, any responses and replies, evidence on file subject to the Court's rulings on the objections to that evidence, the governing law, and arguments of counsel, the Court orders as follows:

The Episcopal Church's Motion for Summary Judgment is **GRANTED**.

Defendants' Motion for Partial Summary Judgment is **DENIED**.

The Court hereby issues a **DECLARATORY JUDGMENT** pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq., declaring that:

1. The Episcopal Church (the "Church") is a hierarchical church as a matter of law, and since its formation in 1983 the Episcopal Diocese of Fort Worth (the "Diocese") has been a constituent part of the Church. Because the Church is hierarchical, the Court follows Texas precedent governing hierarchical church property disputes, which holds that in the event of a dispute among its members, a constituent part of a hierarchical church consists of those individuals remaining loyal to the hierarchical church body. See, e.g. *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex.Civ.App. - Texarkana 1977, no writ). Under the law articulated by Texas courts, those are the individuals who remain entitled to the use and control of the church property. *Id.*

Defendants' arguments based on the Texas Corporations Code and private trust law do not alter the result dictated by the Texas precedent specifically governing hierarchical church property disputes.

2. Accordingly, Bishops Gulick and Oka and other leaders of the Episcopal Diocese of Fort Worth recognized by the Church (the "Diocesan plaintiffs") are, and have been since February 2009, the authorities and representatives of the Diocese entitled to use and control the Diocesan Corporation and the real and personal property of the Diocese; defendants are not such authorities or representatives and have no such entitlements.

3. As a further result of the principles set out by the Supreme Court in *Brown* and applied in Texas to hierarchical church property disputes since 1909, the Court also declares that, because The Episcopal Church is hierarchical, all property held by or for the Diocese may be used only for the mission of the Church, subject to the Church's Constitution and canons.

4. Applying those same cases and their recognition that a local faction of a hierarchical church may not avoid the local church's obligations to the larger church by amending corporate documents or otherwise invoking nonprofit corporations law, *see Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex. App. – Austin 1991, writ denied); *Presbytery of the Covenant*, 552 S.W.2d at 870, 872; *Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 600-02 (5th Cir. 1975); *Norton v. Green*, 304 S.W.2d 420, 423-24 (Tex. Civ. App. – Waco 1957, writ ref'd n.r.e.), the Court further declares that the changes made by Defendants to the articles and bylaws of the Diocesan Corporation are *ultra vires* and void.

5. Even if the Court were to apply the "neutral principles" analysis proposed by Defendants, the result would be the same because:

- a. Defendants did not satisfy their burden in support of their motion by failing to submit evidence of the deeds at issue in the case;
- b. Taken together, the four neutral principles factors require the conclusion as a matter of law that all property of the Diocese is held in trust for the Church:
  - i. The deeds submitted by the Church in response to Defendants' motion show that the property of the Diocese was conveyed to an entity affiliated with The Episcopal Church;
  - ii. The Texas Non-Profit Corporations Act permits subordinate parts of hierarchical churches to incorporate and hold property "for the use and benefit and under the discretion of, and in trust for" the larger church that controls it, "in furtherance of the purposes of" the larger church. TEX. REV. CIV. STAT. ANN. art. 1396, § 2.02(A)(16);
  - iii. The Church's longstanding canons require that church property be held in trust for the Church; and
  - iv. The Diocese acceded to those rules when it became a Diocese in 1983.

The Court hereby ORDERS the Defendants to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs and to provide an accounting of all Diocesan assets within 60 days of this Order.

The Court hereby **ORDERS** the Defendants not to hold themselves out as leaders of the  
Diocese.

Signed this 2 day of January, 2011.

  
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JUDGE PRESIDING

CAUSE NO. 141-237105-09

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

**AMENDED ORDER ON SUMMARY JUDGMENT**

This Amended Order on Summary Judgment supersedes the Orders on Summary Judgment signed by the Court on January 21, 2011.

On January 14, 2011, came on for consideration (1) The Episcopal Church’s Motion for Summary Judgment, (2) The Local Episcopal Parties’ Amended Motion for Partial Summary Judgment; and (3) Defendants’ Motion for Partial Summary Judgment. Having considered the pleadings, motions, any responses and replies, evidence on file subject to the Court’s rulings on the objections to that evidence, the governing law, and arguments of counsel, the Court orders as follows:

The Episcopal Church’s Motion for Summary Judgment is **GRANTED** in part.

The Local Episcopal Parties’ Amended Motion for Partial Summary Judgment is **GRANTED** in part.

Defendants’ Motion for Partial Summary Judgment is **DENIED**.

The Court hereby issues a DECLARATORY JUDGMENT pursuant to Texas Civil Practice and Remedies Code §§ 37.001, et seq., declaring that:

1. The Episcopal Church (the “Church”) is a hierarchical church as a matter of law, and since its formation in 1983 the Episcopal Diocese of Fort Worth (the “Diocese”) has been a constituent part of the Church. Because the Church is hierarchical, the Court follows Texas precedent governing hierarchical church property disputes, which holds that in the event of a dispute among its members, a constituent part of a hierarchical church consists of those

individuals remaining loyal to the hierarchical church body. See, e.g. *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865 (Tex.Civ.App. - Texarkana 1977, no writ). Under the law articulated by Texas courts, those are the individuals who remain entitled to the use and control of the church property. *Id*

2. As a further result of the principles set out by the Supreme Court in *Brown* and applied in Texas to hierarchical church property disputes since 1909, the Court also declares that, because The Episcopal Church is hierarchical, all property held by or for the Diocese may be used only for the mission of the Church, subject to the Church's Constitution and canons.

3. Applying those same cases and their recognition that a local faction of a hierarchical church may not avoid the local church's obligations to the larger church by amending corporate documents or otherwise invoking nonprofit corporations law, see *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex. App. - Austin 1991, writ denied); *Presbytery of the Covenant*, 552 S.W.2d at 870, 872; *Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 600-02 (5th Cir. 1975); *Norton v. Green*, 304 S.W.2d 420, 423-24 (Tex. Civ. App. - Waco 1957, writ ref'd n.r.e.), the Court further declares that the changes made by Defendants to the articles and bylaws of the Diocesan Corporation are *ultra vires* and void.

The Court hereby ORDERS the Defendants to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs 30 days after Judgment becomes final.

The Court hereby ORDERS the Defendants to desist from holding themselves out as leaders of the Diocese when this Order becomes final and appealable.

Signed this 8 day of February, 2011.

  
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JUDGE PRESIDING

NO. 141-237105-09

THE EPISCOPAL CHURCH, et al.	§	IN THE DISTRICT COURT
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
FRANKLIN SALAZAR, et al.	§	141 <sup>ST</sup> JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANTS' MOTION TO SEVER AND TO STAY PROCEEDINGS**

On this day came on to be considered Defendants' Motion To Sever and To Stay Proceedings. The Court, after reviewing the motion and the opposition, and having heard the argument of counsel, finds that Defendants' Motion To Sever and To Stay Further Proceedings should be granted and the following order entered:

**IT IS, THEREFORE, ORDERED** that all claims that are the subject of this Court's Amended Order on Summary Judgment signed on February 8, 2011, are severed from this cause and shall appear on the docket of this Court as Cause No. 141-252083-11 styled *The Episcopal Church, et al vs. Franklin Salazar, et al.*

**IT IS FURTHER ORDERED** that the clerk of this Court shall make a new file for the severed suit including the following Court papers from this suit:

- (1) Order Granting Rule 12 Motion (9-16-09);
- (2) Judgment and Opinion of Second District Court of Appeals (6-25-10);
- (3) Modified Order Granting Rule 12 Motion (7-8-10);
- (4) Plaintiff The Episcopal Church's Third Amended Original Petition (10-12-10);
- (5) Individual Plaintiffs' Sixth Amended Original Petition (12-21-10);
- (6) First Amended Third-Party Petition of Defendant The Episcopal Diocese of Fort Worth (12-23-10);

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- (7) First Amended Third-Party Petition of Intervenor The Corporation of The Episcopal Diocese of Fort Worth (12-23-10);
- (8) First Amended Original Plea in Intervention (11-15-10) (Weaver);
- (9) Intervenor's Third Amended Original Answer to Third-Party Defendants' Counterclaim and Second Amended Original Answer to Plaintiffs' Third Amended Original Petition (11-5-10);
- (10) Defendants' Answer to Plaintiff The Episcopal Church's Third Amended Original Petition (12-23-10);
- (11) Defendants' Answer to Individual Plaintiffs' Sixth Amended Original Petition (12-23-10);
- (12) The Episcopal Diocese of Fort Worth's Answer to Counterclaims of Third-Party Defendants (12-23-10);
- (13) The Corporation of The Episcopal Diocese of Fort Worth's Answer to Counterclaims of Third-Party Defendants (12-23-10);
- (14) Original Answer of Judy Mayo, The Rev. Christopher Cantrell, The Rev. Timothy Perkins and The Rev. Ryan Reed (10-12-10);
- (15) Original Answer of Julia Smead (11-5-10);
- (16) The Episcopal Diocese of Fort Worth's Answer to Counterclaims of Third-Party Defendants (12-23-10);
- (17) Fourth Amended Answer and Counterclaims to Southern Cone Diocese's Third-Party Petition (12-21-10);
- (18) Fourth Amended Answer and Counterclaims to Southern Cone Corporation's Plea in Intervention and Third-Party Petition (12-21-10);
- (19) Plaintiff The Episcopal Church's Motion for Summary Judgment and Brief in Support of Motions (10-18-10);
- (20) Appendix to All Episcopal Parties' Motions for Summary Judgment and Partial Summary Judgment (10-18-10);
- (21) Plaintiff The Episcopal Church's Supplemental Evidence in Support of Its Motion for Summary Judgment (10-22-10);

- (22) Local Episcopal Parties' Amended Motion for Partial Summary Judgment (12-21-10);
- (23) Supplemental Evidence in Support of All Local Episcopal Parties' Motions for Summary Judgment (12-21-10);
- (24) Defendants' Motion for Partial Summary Judgment (12-23-10);
- (25) Appendix to Defendants' Motion for Partial Summary Judgment (12-23-10);
- (26) Defendants' Objections to Plaintiffs' Summary Judgment Motions and Evidence (1-7-11);
- (27) Defendants' Supplemental Appendix (1-7-11);
- (28) Defendants' Response to Plaintiff The Episcopal Church's Motion for Summary Judgment (1-7-11);
- (29) Defendants' Response to Local Episcopal Parties' Amended Motion for Partial Summary Judgment (1-7-11);
- (30) The Episcopal Church's Response to Defendants' Motion for Partial Summary Judgment (1-7-11);
- (31) Local Episcopal Parties' Response to Defendants' Motion for Partial Summary Judgment (1-7-11);
- (32) Supplemental Evidence in Support of All Local Episcopal Parties' Responses to Defendants' Motion for Partial Summary Judgment (1-7-11);
- (33) All Episcopal Parties' Objections to Defendants' Summary Judgment Evidence (1-7-11);
- (34) The Episcopal Church's Reply in Support of Its Motion for Summary Judgment (1-11-11);
- (35) Episcopal Parties' Objections to Defendants' Supplemental Appendix and Evidence Attached to Response (1-11-11);
- (36) Motion for Leave to File Supplemental Affidavits (1-14-11);
- (37) Supplemental Affidavit of Walter Virden, III (1-14-11);
- (38) Supplemental Affidavit of Charles A. Hough, III (1-14-11);

- (39) Order Granting Motion for Leave to File Supplemental Affidavits (1-14-11);
- (40) Order on Summary Judgment (1-21-11);
- (41) Order Granting Local Episcopal Parties' Amended Motion for Partial Summary Judgment (1-21-11);
- (42) Objections to Form of Summary Judgment Orders (1-25-11);
- (43) Affidavit of Charles A. Hough, III in support of Objections to Form of Summary Judgment Orders (1-27-11);
- (44) Episcopal Parties' Response to Defendants' Objections to Form of Summary Judgment Orders (1-31-11);
- (45) Episcopal Parties' Objections to Affidavit of Charles A. Hough, III (1-31-11);
- (46) Amended Order on Summary Judgment (2-8-11);
- (47) Defendants' Motion to Sever and Stay Remaining Proceedings (2-8-11);
- (48) This Order Granting Defendants' Motion To Sever and To Stay Proceedings;
- (49) Docket Sheet itemizing the foregoing items.

**IT IS FINALLY ORDERED** that all further proceedings in this cause are stayed pending a final determination of the severed claims through the appellate process.

SIGNED this 5 day of <sup>April</sup>~~March~~, 2011.

  
JUDGE PRESIDING

# **EXHIBIT B**



## THE EPISCOPAL DIOCESE OF FORT WORTH

The Rt. Rev. Jack L. Iker, D.D., *Bishop of Fort Worth*

### THE BISHOP'S DOLLARS ANNUAL APPEAL

LENT 2011

Dear People of God:

During this Lenten season of fasting, prayer, and self-denial, it is my custom to send you an annual appeal for financial support of "The Bishop's Dollars" campaign. Each household is asked to make a gift to assist me in responding to a variety of needs that are brought to me during the course of the year.

Your contribution will enable me to respond with tangible help in meeting a number of ministry needs that are not included in the diocesan operating budget. The other primary source that I can draw upon for such needs is the Bishop's Discretionary Fund, which is supported by the special offerings received at the time of my annual visitation to your congregation. In addition to enabling me to assist clergy families from time to time in a crisis situation, these funds also help support our seminarians and their families.

Enclosed is an offering envelope for you to use. Checks may be made payable to "The Bishop's Dollars." Please know of my sincere gratitude for your generosity in responding to this appeal in any way that you can.

Faithfully in Christ,

The Rt. Rev. Jack Leo Iker  
Bishop of Fort Worth

Enclosure