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FACSIMILE COVER PAGE

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TOTAL PAGES: 12

Re: *The Episcopal Church, et al vs. Franklin Salazar, et al*
No. 141-252083-11

MESSAGE: **Please see the attached.**

ALSO SENT BY: U.S. Mail CM/RRR FedEx Courier E-Mail

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October 13, 2011

Clerk, 141st District Court
Tarrant County Justice Center - 7th Floor
401 W. Belknap
Fort Worth, TX 76196-0224

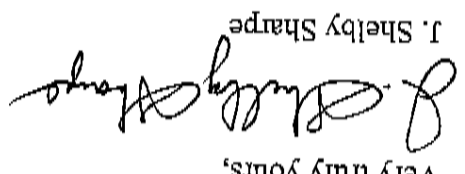
Re: The Episcopal Church, et al v. Franklin Salazar, et al; No. 141-252083-11

Dear Clerk:

Enclosed you will find the original and two (2) copies of *Defendants' Motion to Sign Superseas Order and For Temporary Injunction Relief*. Please place your file mark on the copies and return them to the courier standing before you. It is my understanding from talking with the Court Coordinator this motion will be heard with Plaintiffs' motion set for October 20, 2011, at 9:30 a.m.

By copy of this letter, all counsel of record are being served per the certificate of service.

Very truly yours,


J. Shelby Sharpe

JSS:kjg
Enclosures

cc (w/enclosures):

Scott A. Brister - *Via E-Mail*

R. David Weaver - *Via E-Mail*

Bishop Jack Leo Iker - *Via E-Mail*

Plaintiffs' argument for a supersedeas bond of \$950,000 as a minimum is based on the testimony of their expert witness. This witness, in response to questioning by the Court, admitted that Defendants have "probably none or little" collateral other than the properties that the Court has ordered Defendants to deliver to Plaintiffs. (May 19 hearing transcript, p. 65, lines 15-20.) Plaintiffs' expert witness also admitted to the Court under the Court's questioning that "if they don't have any property that they really have control over, they can't use that," for a bond. (May 19 hearing transcript, p. 66, lines 13-17.) Lastly, Plaintiffs' expert witness conceded to the Court that cash the witness suggested could be used to obtain letters of credit was a "budgeted surplus," not actual cash on hand. (May 19 hearing transcript, p. 66, lines 13-17, p. 67, lines 3-10.) Plaintiffs offered no other testimony in support of a supersedeas bond.

Summary of Evidence of May 19 Hearing

Defendants file this motion for the Court to sign a supersedeas order and for temporary injunction relief in the form of the proposed order attached to this motion believing that the proposed order is supported by the evidence the Court heard on May 19, 2011, and reflects the desire of Defendants, as a demonstration of good faith, concerning the property that is the subject of the Court's judgment on appeal.

Introduction

DEFENDANTS' MOTION TO SIGN SUPERSEDEAS ORDER AND FOR TEMPORARY INJUNCTION RELIEF

IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
141ST JUDICIAL DISTRICT

§
§
§
§
§

THE EPISCOPAL CHURCH, et al.
v.
FRANKLIN SALAZAR, et al.

NO. 141-252083-11

FILED
CLERK COURT
OCT 13 AM 9:56
THOMAS A. WILDER
DISTRICT CLERK

The supersedeas and temporary injunctive relief Plaintiffs seek is controlled by Rule 24, Texas Rules of Appellate Procedure, which sets out the requirements for a suspension of enforcement of a judgment pending appeal. The several methods of suspension of enforcement described in Rule 24.1 do not mention injunctive relief. Should the Court interpret subsection (e) of this rule titled "Orders of Trial Court" to include injunctive relief, this subsection must be read in harmony with Rule 24.2(d), which expressly addresses injunctive relief. Subsection (d) permits injunctive relief only if the Court is persuaded the judgment debtor during the normal course of business has dissipated or transferred assets to avoid the judgment or is likely to do either of these. But, "the trial court may not make an order that interferes with the judgment debtor's use, transfer, conveyance or dissipation in the normal course of business." Rule 24.2(d), Texas Rules of Appellate Procedure.

Applicable Law

Plaintiffs' argument for temporary injunctive relief is not supported by any credible evidence that Defendants have dissipated or transferred assets to avoid satisfaction of the judgment. Plaintiffs presented excerpts from a single deposition taken without a subpoena *duces tecum* requesting the proper records with poorly framed questions. A careful analysis of these questions and the answers cannot reasonably be interpreted by an ordinary person using accepted rules of grammar during the normal course of business any such dissipation has occurred or is likely to occur. In fact, it is undisputed that Defendants have continued to use the property as they have prior to the separation from Plaintiff The Episcopal Church and re-alignment with another Anglican province.

1 229 S.W.3d 469 (Tex.App. – Houston [1st Dist.] 2007, per. denied).
 2 229 S.W.3d 474.
 3 229 S.W.3d 481-82.
 4 229 S.W.3d 483.

Because the judgment that has been appealed is one for declaratory relief and the transfer of assets, the individual Defendants' resources are totally irrelevant for supersedeas. Additionally, the fact that one or more individuals have contributed to the defense of the litigation has not been found by any court or even under accepted accounting principles to be an asset. It is total speculation on whether or not funds would come in the future from those

repair company in *LMC*.

The services conducted on the properties here are unlike the services provided at the automobile have been transferred to Plaintiffs. The properties in and of themselves do not generate income. hundred percent of these monies, which come from those who attend services at properties that fails to appreciate the nature and source of those monies. Contributions make up almost one Plaintiffs' argument concerning the stream of money Defendants have been receiving

the situation here;⁴

net worth is solely dependent on having assets that are not subject to the judgment, which is not are sufficient assets to obtain a supersedeas bond.³ The discussion in Plaintiffs' reply on proving its operations. The entire question the supersedeas bond issue turns on is whether or not there assets have been ordered conveyed to Plaintiffs, *LMC* retained its assets to generate income for irrelevant here. *LMC* involved a money judgment for negligence.² Unlike here, where all of the times. Their reliance of *LMC Complete Automotive, Inc. v. Burke*¹ and similar authorities are Defendants have been ordered to transfer all of their property, which the Court has noted several The fundamental error in Plaintiffs' supersedeas bond argument lies in the fact that

Supersedeas Bond

this motion.

Accordingly, Defendants ask the Court to sign an order in the form of the one attached to

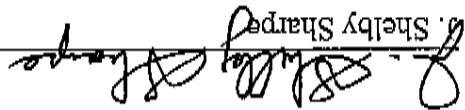
Conclusion

pending the appeal.

Court will find that this is a comprehensive injunction that should very well protect the property injunctive relief order in accordance with the terms set out in the attached proposed order. The However, Defendants, as a show of good faith, are agreeable to the Court signing a temporary Appellate Procedure, do not authorize the Court to sign an injunction against Defendants. avoid satisfaction of the judgment on appeal, the requirements of Rule 24.2(d), Texas Rules of normal business dissipated or transferred assets or are likely to dissipate or transfer assets to unable to offer evidence at the May 19 hearing that Defendants have outside the course of Turning to the temporary injunctive relief Plaintiffs seek, because the Plaintiffs were

Injunction

prior contributions in determining a supersedeas bond. individuals. It would be an absolute abuse of discretion for the Court to even consider those


J. Shelby Sharpe

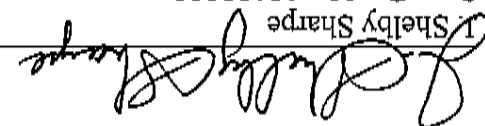
I hereby certify that on the 13th day of October, 2011, a true and correct copy of the foregoing *Defendants' Motion to Sign Supersedeas Order and For Temporary Injunction Relief* was forwarded to all counsel of record by facsimile.

CERTIFICATE OF SERVICE

ATTORNEYS FOR DEFENDANTS

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Respectfully submitted,

R. David Weaver
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THE WEAVER LAW FIRM
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the Court's judgment of February 8, 2011, is set at \$0.00.

IT IS, THEREFORE, ORDERED that the supersedeas bond to suspend enforcement of

agreement of Defendants as to an injunction.

dated February 8, 2011, pending the appeal of that judgment based on the Court's finding and the hereinafter. Therefore, the Court signs the following Order to supersede this Court's judgment as a demonstration of good faith, they are willing for the Court to sign an injunction as set out Rule 24.2(d), Texas Rules of Appellate Procedure. However, Defendants advise the Court that satisfaction of the Court's judgment so that an injunction is not proper at this time pursuant to evidence that Defendants have dissipated or are likely to dissipate or transfer assets to avoid to find \$0.00 is proper for a supersedeas bond. Additionally, the Court finds no credible Court finds that Defendants have no assets for a supersedeas bond, therefore requiring the Court have been unable to reach an agreement. Based on the evidence admitted at the hearing, the all parties an opportunity to attempt to reach agreement on the terms of an Order. The parties the evidentiary portion of the hearing, the Court recessed the proceedings to provide counsel for counsel for Defendants and Plaintiffs who announced ready for the hearing. At the conclusion of Supersedeas and Plaintiff Local Episcopal Parties' Motion for Additional Protection and came On the 19th day of May, 2011, came on to be heard Defendants' Motion to Set

ORDER SETTING SUPERSDEAS BOND AND GRANTING TEMPORARY INJUNCTIVE RELIEF

FRANKLIN SALAZAR, et al. §
§
§
§
§
IN THE DISTRICT COURT §
TARRANT COUNTY, TEXAS §
141ST JUDICIAL DISTRICT §

NO. 141-252083-11

IT IS FURTHER ORDERED that pending the appeal of the Court's judgment of

February 8, 2011, Defendants:

a. SHALL NOT use, transfer, dissipate, encumber, convey, destroy, conceal, or dispose of any "Subject Property"¹ other than in the normal course of business² and in accordance with the terms of this Order;

b. SHALL keep Subject Property fully insured and maintain in force and good standing property and casualty insurance at least at the coverage levels effective in 2010 to be confirmed by Defendants providing Plaintiffs with current coverage documentation within 30 days of the date of this order and providing within 30 days of receipt of applicable taxes, including income and payroll taxes, arising from any activities conducted by Defendants purportedly in the name of the Diocese or its constituent entities;

c. SHALL keep Subject Property in good repair, normal wear and tear excepted, observe all applicable zoning and code ordinances, and keep current all indebtedness secured by any Subject Property;

¹ "Subject Property" is defined and described in a verified statement by Defendants titled "Property Subject to Agreed Order Setting Supersedeas Bond and Granting Temporary Injunctive Relief" ("Property Schedule"), which is ordered to be filed no later than 30 days from the date of this order. The Property Schedule shall include a verified statement by Defendants that it is true and complete and that no other relevant property exists subject to the judgment according to the requirements below. Real property in the Property Schedule may be described by deed description or by reference to a document on file. Personal property shall not be inventoried in the Property Schedule. If at any point Plaintiffs believe the Property Schedule is inaccurate or incomplete, the Court shall resolve any such disputes after the parties have made a reasonable effort to resolve the dispute and after notice and hearing on why discovery is necessary. The property subject to the injunctions in this Order, to be scheduled in the Property Schedule as set forth above, is in general terms, all real and personal property that is not currently held by Plaintiffs and that was held or controlled as of November 14, 2008 by or for the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Endowment of the Episcopal Diocese of Fort Worth, any of the congregations of the Episcopal Diocese of Fort Worth, any of the parishes, or missions of the Episcopal Diocese of Fort Worth, or any other constituent entity of the Episcopal Diocese of Fort Worth, and which was still in existence as of the date of judgment. Because Defendants will not specifically schedule personal property, the Property Schedule shall contain an entry stating: "And all other personal property that was held or controlled as of November 14, 2008 by or for the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Endowment of the Episcopal Diocese of Fort Worth, any of the congregations of the Episcopal Diocese of Fort Worth, or any other constituent entity of the Episcopal Diocese of Fort Worth, and which was still in existence as of the date of judgment." The Property Schedule shall also state: "Income, gains, proceeds, or interest from the property in this Property Schedule is incorporated herein on an ongoing basis. Any property in this Property Schedule that is transferred or recharacterized is incorporated herein on an ongoing basis." "Normal course of business" is defined as the same general activities, expenses, and use of finances and assets that were occurring on November 14, 2008 under the Diocese and its Corporation, Endowment, parishes, missions, and other constituent entities that are set forth for Defendant Diocese in the 2008 budget adopted by the Diocese in evidence and Bates-labeled as SC3903-3906, and for all other Defendants in the budgets actually adopted by the corresponding entities, respectively, before 2008, for Fiscal Year 2008, and to use the property for defense of any litigation brought against any Defendant affecting a Defendant's property.

³ These documents are prepared or received in the normal course of business, and their production is not unduly burdensome.

⁴ Defendants shall continue their normal course in preparing such periodic financial reports and shall in no instance decrease the frequency of such reports (e.g., monthly, quarterly) after entry of this Order without notice, hearing, and obtaining leave of Court.

⁵ Balance of indebtedness does not include interest, which will accrue on indebtedness that has already been incurred or lawfully incurred in the future.

Defendants' agreement of reporting requirements in the injunctions, discovery in this cause shall releases, or otherwise limits any present or future claims or defenses of any party. Because of This order is for supersedeas purposes only. Nothing in this agreed order waives,

- i. SHALL notify the Court and Plaintiffs immediately of any significant change in Defendants' circumstances, significant sale or transfer of any Subject Property, or unfreezing of frozen accounts;
- h. SHALL jointly with Plaintiffs instruct all trustees of trusts, foundations, and other entities that are holding Subject Property not to make any extra-ordinary distributions without prior consent of both Plaintiffs and Defendants or by leave of Court, but continue to make disbursements as have been occurring since the annual budgets for the year 2008; and
- g. SHALL maintain the normal course of business of funding operations and expenses as was occurring prior to November 15, 2008; provided however, if Defendants believe they must depart from this normal course of business due to materially changed circumstances, they may seek modification of this Order with prior notice to Plaintiffs and a hearing to first obtain leave of Court;
- f. SHALL NOT increase the balance of indebtedness⁵ on the \$3.5 million line of credit from Jude Funding, Inc., or on any other debt secured or purportedly secured by Subject Property, or incur any indebtedness allegedly secured by Subject Property without first obtaining leave of Court, except to pay attorneys' fees and other litigation costs of any litigation arising out of Defendants' realignment within the Anglican Communion;
- e. SHALL provide to Plaintiffs, through their counsel, the periodic⁴ financial statements prepared by or for the Finance Committee and the Executive Council of Defendant Diocese, the Board of Directors of Camp Crusis, and the Defendant Corporation, respectively, and the annual December 31 or year-end financial statements for the Defendant Diocese within 30 days of preparation, and each Diocesan Annual Audit report from the auditors within 30 days of their receipt by the Defendant Diocese;
- d. SHALL provide to Plaintiffs, through their counsel, the Parish Annual Parochial Reports for 2008, 2009, and 2010 within 30 days of the date of this order and, annually thereafter, within 30 days of their receipt by Defendant Diocese.³

Judge Presiding

SIGNED this ____ day of October, 2011.

leave of Court following a hearing as heretofore stated in this Order.

not be permitted pending the appeal without giving notice to the opposing parties and obtaining