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Date: 4/25/2011 Matter No.: 189454 No. of pages (including cover sheet): 28

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Message

Re: Cause No. 141-237105-09; *The Episcopal Church, et al. vs. Franklin Salazar, et al.*; 141st Judicial District Court, Tarrant County, Texas

Treasury Circular 230 Disclosure – To comply with requirements imposed by the Internal Revenue Service, we inform you that any tax advice contained in this written communication (including any attachment) is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed on the person. If this written communication contains any tax advice that is used or referred to in connection with the promoting, marketing or recommending of any transaction(s) or matter(s), this written communication should be construed as written to support the promoting, marketing or recommending of the transaction(s) or matter(s) addressed by this written communication, and the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. No limitation has been imposed by Andrews Kurth LLP on disclosure of the tax treatment or tax structure of the transaction(s) or matter(s).

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J. SHELBY SHARPE

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April 25, 2011

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

HAND-DELIVERED

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

Dear Clerk:

Enclosed you will find the original and one (2) copies of DEFENDANT'S MOTION TO SET SUPERSEDEAS and the original and two (2) copies of Notice of Hearing. Please place your file mark on the copies and return them to the courier standing before you.

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

Very truly yours,


J. Shelby Sharpe

JSS:klg
Enclosures

cc (w/enclosures):

Scott A. Brister – *Via E-Mail*
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Suite 1700
Austin, TX 78701

R. David Weaver – *Via E-Mail*
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Arlington, Texas 76011

LAW OFFICES OF

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*Clerk, 141st District Court**April 25, 2011**Page 2***VIA FACSIMILE TRANSMISSION*****Via Facsimile 817-274-9724***

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CAUSE NO. 141-252083-11

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

NOTICE OF HEARING

Please take notice that the Defendants' Motion to Set Supersedeas has been set for oral hearing on Thursday, April 28, 2011 at 2:00 p.m., in the courtroom of the 141st Judicial District Court.

Respectfully submitted,

Scott A. Brister
 State Bar No. 00000024
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 (512) 320-9200
 (512) 320-9292 (fax)

Scott A. Brister *per permission* *[Signature]*
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 Telephone: (817) 338-4900
 Facsimile: (817) 332-6818

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, a true and correct copy of the foregoing Notice of Hearing was forwarded to all counsel of record by facsimile.

THOMAS A. WILDER
DISTRICT CLERK

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TARRANT COUNTY

Scott A. Brister *per permission* *[Signature]*
 Scott A. Brister

CAUSE NO. 141-252083-11

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

DEFENDANTS' MOTION TO SET SUPERSEDEAS

Defendants ask the Court to set the amount necessary to supersede the Amended Order on Summary Judgment at \$0, or some other nominal amount. In that Order, the Court held that Plaintiffs are entitled to "all Diocesan property." As a result, the Defendants have no unencumbered assets to pledge.

The Law

1. By passing House Bill 4 in 2003, the Legislature made extensive changes to supersedeas practice in Texas. The changes override all appellate rules, and prohibit rule changes that conflict with them.¹ Texas law now prohibits supersedeas amounts that (a) would cause substantial economic harm to the appellant, or (a) exceed 50% of the appellant's net worth.² For the reasons stated below, both of those statutory requirements limit supersedeas in this case to \$0.

2. The purpose of supersedeas is to preserve the status quo as it existed before entry of the order on appeal.³ During the two-year pendency of this action, no real personal property has been harmed, no endowment funds have been dissipated, and expenditures have been made by Defendants other than in the ordinary course

¹ See Tex. Civ. Prac. & Rem. Code § 52.005.

² See Tex. Civ. Prac. & Rem. Code § 52.006; Tex. R. App. P. 24.2.

³ *In re Tarrant County*, 16 S.W.3d 914, 918 (Tex. App.—Fort Worth 2000, no pet.).

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 TARRANT COUNTY
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 THOMAS A. WILDER
 DISTRICT CLERK

business and in defense of this lawsuit.⁴ Both parties have conducted separate worship services, offices, and websites. Requiring a large supersedeas amount would change this status quo, and hamper Defendants' ability to continue operations pending final resolution on appeal.

Defendants Have No Assets to Pledge After the Summary Judgment

3. Real and personal property. The summary judgment order holds that Plaintiffs are entitled to "all Diocesan property." As a result, the Defendant Diocese and Corporation do not have sufficient unencumbered real or personal property to support a bond.⁵ A party cannot pledge encumbered property, at least not without the consent of the party who owns the encumbrance.⁶ Plaintiffs have not given such consent in this case. If the Order here is affirmed on appeal, all property currently controlled by the Defendants will be transferred to Plaintiffs, leaving nothing against which a surety could draw. As a matter of law, the Defendants Diocese and Corporation have insufficient assets with which to post a bond.

4. Endowment accounts. After receiving a threatening letter from Plaintiffs' counsel, Frost Bank has frozen all of the Diocese's endowment and restricted funds. As a result, Defendants are currently barred from making the following ordinary operating expenditures from those accounts:

<u>Fund</u>	<u>Annual draw</u>	<u>Purpose</u>
Endowment for Episcopate	\$25,000	operations
Diocesan Fund	\$2,500	operations
Brown Trust	\$24,000	aid for seminarians
Memorial Scholarship Fund	\$21,000	aid for seminarians
Farley/Turner Fund	\$15,000	special needs

⁴ See Affidavit of Jane R. Parrott filed on March 30, 2011 (copy attached as Exhibit A).

⁵ See Second Affidavit of Jane R. Parrott attached hereto as Exhibit B.

⁶ Cf. *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 919 (Tex. App.—Houston [14th Dist.] 2005, no pet.). (finding debtor could obtain bond because "the judgment Creditors are willing to lift the arrestment and inhibition to the extent that Ramco Energy would use the covered assets to supersede the judgment.").

8. The Defendant individuals. The Defendant individuals are present in this case only in their official capacities, and have no net worth in that capacity. Plaintiffs have pleaded claims against them individually, but after severance those claims remain pending in the original case. This severed case concerns only whether Defendants can serve as representatives of the Diocese and Corporation, a claim that addresses only their official capacities. Moreover, state law prohibits individual liability for acts taken in an official capacity as officers or trustees of a non-profit.¹⁴ As a result of the trial court's summary judgment order, the individual Defendants in their official capacities hold neither property nor funds. Accordingly, their net worth in that capacity is zero.

Substantial Economic Harm Limits Supersedeas

9. The substantial-economic-harm limit. Texas law prohibits supersedeas bonds in an amount that would cause "substantial economic harm":

On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court *shall* lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

Tex. Civ. Prac. & Rem. Code § 52.006(c) (emphasis added). This rule is mandatory.¹⁵

10. Factors. Neither the statute nor the rules define "substantial economic harm." "But it is clear that it is something less than 'irreparable harm,' the legal standard utilized under the previous version of the statute."¹⁶ Among the factors trial courts should consider are:

- Does the judgment debtor have sufficient cash or other assets on hand to post a supersedeas bond in this amount?

¹⁴ See Tex. Rev. Civ. Stat. Art. 1396-2.20(D), 1396-2.22, 1396-2.28(B).

¹⁵ See Tex. R. App. P. 24.2(b) ("The trial court must lower the amount of security ... to an amount that will not cause the judgment debtor substantial economic harm" (emphasis added); see also *Alpert v. Riley*, 274 S.W.3d 277, 297 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) ("We agree that this language is mandatory").

¹⁶ *LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 487 (Tex. App.—Houston [1st Dist.] 2007, pet. denied); accord, *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 916 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

- Does the judgment debtor have unencumbered assets to sell or pledge?
- Does the judgment debtor have the ability to borrow funds to post the requisite security?
- What economic impact would such transactions likely have on the judgment debtor?
- Would the bond likely trigger liquidation or bankruptcy or have other harmful consequences?
- Would the bond drain the judgment debtor's ability to pay attorney's fees and other costs of appeal?¹⁷

11. A bond is likely to cause substantial economic harm. If the Defendants must file a substantial bond, substantial economic harm is likely to occur. As noted above, there are insufficient funds to post a bond and meet current expenditures. And to the extent bond cannot be posted, substantial harm is likely to occur, including:

- 57 ministers affiliated with the Defendant congregations will likely be barred from ministering at their churches during the appeal, as Plaintiffs purported to depose them all in 2010;
- many parishioners loyal to Defendants are likely either to reduce their giving or perhaps even leave their parishes to avoid supporting TEC, leading to catastrophic losses to local church budgets, bank notes, and families of ministers;
- vendors and creditors are likely to be unwilling to deal on anything but a cash basis until it is finally decided who the authorized directors are.¹⁸

12. A bond would effectively bar appeal. The bond amount cannot effectively deny Defendants' right to appeal.¹⁹ In determining whether Defendants are likely to suffer substantial economic harm, the Court must also consider the amounts they need to pay attorney's fees and other costs of appeal.²⁰ As shown above, any appreciable bond would render Defendants unable to meet current operating expenses, much less the extraordinary expenses of this litigation and appeal.

¹⁷ See *Ramco*, 171 S.W.3d at 917.

¹⁸ See Affidavit of Charles A. Hough, III, filed with the Court on January 27, 2011 (copy attached as Exhibit C).

¹⁹ *In re Dallas Area Rapid Transit*, 967 S.W.2d 358, 360 (Tex. 1998) ("[D]iscretion does not extend to denying a party any appeal whatsoever.").

²⁰ See *Ramco*, 171 S.W.3d at 917.

13. Protection for Plaintiffs is not the statutory test. Before 2003, trial courts had to weigh irreparable harm to a judgment debtor against the degree of security to the judgment creditor. The Legislature removed the latter from the statute in its 2003 amendments:

In amending section 52.006, the Legislature struck a new balance between a judgment creditor's interest in protecting its judgment pending appeal and a judgment debtor's interest in having the ability to challenge the adverse judgment on appeal. . . . [T]he statute no longer requires the judgment debtor to demonstrate that allowing lesser security will not substantially decrease the degree to which a judgment creditor's recovery would be secured, in order to obtain relief from the statutory Security Amount. *This means the court need not consider how any reduction of the Security Amount might affect the judgment creditor's ability to recover under the judgment.*²¹

Thus, while all the evidence indicates the Plaintiffs will not be harmed by a \$0 supersedeas, such proof is unnecessary under the current statute.

Actual Rental Value Limits Supersedeas

14. No real rental value. The general rule for a judgment for recovery of real property is that a supersedeas bond must cover the value of the property's rent during the appeal.²² But in this case the Plaintiffs will lose no rentals during appeal because no rent can be collected by the Corporation or Diocese, whoever their proper representatives are. The local parishes either have paid for or are paying for the properties they occupy, and have a right to the use and benefit of those properties. Moreover, the Plaintiffs are likely to save money during the appeal if enforcement is

²¹ See *id.* (citations omitted); accord, *Shook v. Walden*, 304 S.W.3d 910, 918 (Tex. App.—Austin 2010, no pet.); see also Elaine A. Carlson, *Reshuffling the Deck: Enforcing and Superseding Civil Judgments on Appeal After House Bill 4*, 46 S. Tex. L.R. 1035, 1093 (2005) (“The recent legislative modifications to supersedeas requirements effective . . . after September 1, 2003, reflect a shift in concern from that of protecting the judgment creditor’s ability to collect the judgment if affirmed on appeal, to protecting the judgment debtor from substantial economic harm by appellate security requirements that may effectively preclude the ability to seek appellate review.”).

²² Tex. Civ. Prac. & Rem. Code § 52.006(a); Tex. R. App. P. 24.2(a)(2).

suspended, as parishioners affiliated with Defendants continue to pay mortgages and upkeep that may not occur if the judgment is not superseded and parishioners leave.²³

Alternatively, Other Orders Can Substitute for Supersedeas

15. An injunction prohibiting non-normal course transactions. Alternatively, the new statute allows trial courts to prevent intentional dissipation of assets. Under the statute, a court may enjoin dissipation of assets to avoid the judgment *if the injunction does not interfere* with the normal course of business:

Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

Tex. Civ. Prac. & Rem. Code § 52.006(e).

16. No injunction absent evidence of dissipation. A permanent injunction must be supported by evidence of a threat of irreparable injury.²⁴ Accordingly, a trial court abuses its discretion by issuing a post-judgment injunction against dissipating assets without evidence that dissipation is likely.²⁵ In this case, there is no evidence of dissipation or transfer,²⁶ and thus no grounds for an injunction. But if the Court finds that Texas law does not prohibit a substantial supersedeas (which Defendants deny), then without waiving objections thereto the Defendants alternatively urge the Court to forego a bond and issue a post-judgment injunction barring use, transfer, conveyance,

²³ See Hough Affidavit (Exhibit C).

²⁴ See *Operation Rescue-Nat'l v. Planned Parenthood of Houston and Se. Texas, Inc.*, 975 S.W.2d 546, 554, 560 (Tex. 1998); *Frey v. DeCordova Bend Estates Owners Ass'n*, 647 S.W.2d 246, 247 (Tex. 1983)

²⁵ *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d 222, 227 (Tex. App.—San Antonio 2006, no pet.) (“The trial court abuses its discretion in ordering a post-judgment injunction if the only reasonable decision that could be drawn from the evidence is that the judgment debtor would not dissipate or transfer its assets.”); accord, *Texas Custom Pools, Inc. v. Clayton*, 293 S.W.3d 299, 314 (Tex. App.—El Paso 2009, mand. denied) (“Given the absence of evidence that TCP has dissipated or transferred its assets to avoid satisfaction of the judgment, there was no evidence presented to the trial court that it would do so in the future. We therefore conclude that the trial court abused its discretion by entering the post-judgment injunction.”).

²⁶ See First Parrott Affidavit (Exhibit A).

or dissipation of assets except in the normal course of business.

Conclusion

Accordingly, Defendants ask the Court to set the amount necessary to supersede the Amended Order on Summary Judgment at \$0, or some other nominal amount.

Respectfully submitted,

Scott A. Brister by permission [initials]
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 State Bar No. 18123000
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 (512) 320-9200
 (512) 320-9292 (fax)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

On April 20th and 21st, 2011, opposing counsel notified me by email that they did not agree to the merits of this motion. Therefore it is presented to the Court for determination.

Scott A. Brister by permission [initials]
 Scott A. Brister

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, a true and correct copy of the foregoing Defendants' Motion to Set Supersedeas Bond was forwarded to all counsel of record by facsimile.

Scott A. Brister by permission [initials]
 Scott A. Brister

EXHIBIT A

Cause No. 141-237105-09

THE EPISCOPAL CHURCH, ET AL

Plaintiffs

VS.

FRANKLIN SALAZAR, ET AL

Defendants

§
§
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§
§
§
§
§

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

141ST JUDICIAL DISTRICT

AFFIDAVIT OF JANE R. PARROTT

BEFORE ME, the undersigned authority, personally appeared Jane R. Parrott, who being duly sworn by me according to law, on her oath deposed and stated the following:

"My name is Jane R. Parrott. I am the Director of Business and Finance for the Episcopal Diocese of Fort Worth. I have personal knowledge of the facts hereinafter set forth by virtue of the fact that I personally am involved in the financial and business affairs of the Episcopal Diocese of Fort Worth and by virtue of my examination of the records maintained by the Episcopal Diocese of Fort Worth.

"From and since November 2008, the accounts listed on Exhibit A, attached hereto and incorporated by reference herein, have experienced gains as reflected on Exhibit A. Any withdrawals from the accounts that have been made since November 2008 were made in the usual and ordinary course of business of the Episcopal Diocese of Fort Worth and were taken from additional contributions to and/or earnings of these accounts since November 2008.

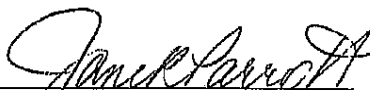
"In addition, no real or personal property owned by the Corporation of the Episcopal Diocese of Fort Worth or the Episcopal Diocese of Fort Worth has been sold, transferred or dissipated except in the ordinary course of business of the Episcopal Diocese of Fort Worth and/or its parishes and missions since November 2008. Any record reflecting any sale, transfer

EXHIBIT A

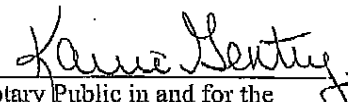
or dissipation of any real or personal property owned by the Corporation of the Episcopal Diocese of Fort Worth or the Episcopal Diocese of Fort Worth has been produced for copying and inspection by counsel for the minority faction that has chosen to break away and dissociate themselves from the Episcopal Diocese of Fort Worth.

"The only substantial new encumbrance of any of the property of the Corporation of the Episcopal Diocese of Fort Worth since November 2008 is the lien granted by the Corporation of the Episcopal Diocese of Fort Worth to Jude Funding, Inc. A line of credit was established by the Episcopal Diocese of Fort Worth with Jude Funding, Inc. for a total amount of \$3.5 million; however, the current balance of the indebtedness to Jude Funding, Inc. is \$94,500.00. The loan was made for the purpose of supplementing contributions by individuals within the Episcopal Diocese of Fort Worth for the substantial legal fees and expenses that have been incurred and that have been made necessary due to the above-styled litigation instituted by the Protestant Episcopal Church in the United States of America and the local minority faction that elected to break away and dissociate themselves from the Episcopal Diocese of Fort Worth.

"Further, the Affiant sayeth not."


Jane R. Parrott

SUBSCRIBED and SWORN to before me by Jane R. Parrott, on this 29th day of March, 2011, to certify which witness my hand and official seal.


Notary Public in and for the
State of Texas

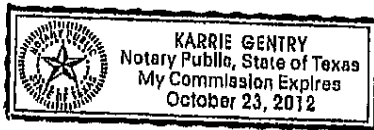


EXHIBIT A

Episcopal Diocese of Fort Worth - Frost Investments

	Balance NOV. 2008	Balance FEB. 2011
<u>Endowment for the Episcopate</u> - Acct. WA396	477,698.16	622,687.36
<i>To support the ministry of Bishop including his stipend and other expenses.</i>		
<u>Diocesan Fund</u> - Acct WA39603	63,327.07	89,300.56
<i>At the establishment of the Diocese of Fort Worth, 35% of a fund (Dallas Diocese Episcopal Funds) was given to the Diocese of Fort Worth. The Board of Trustees approved a name change to Diocesan Fund on April 20, 1983. The Board also approved the Bishop to act as Trustee for this Fund.</i>		
<u>Edward Disney Farmer Fund</u> - Acct WA 39602	545,737.85	678,224.74
<i>Established in 1930. Amended in September 1982 purposed to provided assistance to the aged and infirmed.</i>		
<u>Anne S and John Brown Trust</u> - Acct WA39605	250,492.95	301,384.74
<i>Purpose appointed to be charitable and educational. To provide solely for the education of persons preparing for the priesthood</i>		
<u>Betty Ann Montgomery Farley Fund</u> - Acct WA 39607	172,435.05	294,437.11
<i>Bequeathed in 1994 to the Bishop of Diocese of Fort Worth and his successors in office to be devoted to charitable or religious enterprises as he may from time to time select. In 2005 St. Paul's Memorial Fund was merged with the Farley fund. In Oct 2010 proceeds from bequeathed by Eugenia Turner was added, The Fund was then renamed <u>Farley/Turner Fund</u>. Funds to be used for the benefit of the Diocese at the Bishop's Discretion</i>		
<u>Memorial Scholarship Fund</u> - Acct WA39603	206,135.81	211,064.24
<i>Purposed to make monies available to the Bishop to assist seminarians and clergy in pursuit of Theological Education. Thomas Meek Scholarship Fund was merged with this fund.</i>		
<u>Huerta Fund</u> - Certificate of Deposit (12 mo. Maturity In Feb.)	22,151.11	23,208.09
<i>Established in 1995 by Rev. Efrain Huerta. The Income/Interest to be used to aid in housing expenses for Vicar of Iglesias San Juan Apostol.</i>		

EXHIBIT B

NO. 141-252083-11

THE EPISCOPAL CHURCH, et al.

§
§
§
§
§

IN THE DISTRICT COURT

v.

TARRANT COUNTY, TEXAS

FRANKLIN SALAZAR, et al.

141ST JUDICIAL DISTRICT

SECOND AFFIDAVIT OF JANE R. PARROTT

BEFORE ME, the undersigned authority, personally appeared Jane R. Parrott, who, after being duly sworn by me according to law, on her oath deposed and stated the following:

“My name is Jane R. Parrott. I am the Director of Business and Finance for the Episcopal Diocese of Fort Worth. I have personal knowledge of the facts hereinafter set forth by virtue of the fact that I personally am involved in the financial and business affairs of the Episcopal Diocese of Fort Worth and by virtue of my examination of the records maintained by the Episcopal Diocese of Fort Worth.

“The bank accounts of the Diocese are maintained with Frost Bank. Except for the Diocese operating accounts, all other accounts of the Diocese with Frost Bank have been frozen, making them unavailable to the Diocese since approximately April 11, 2011. The current balance in the non-frozen operating accounts as of the execution of this affidavit is approximately \$275,000.00. As monthly operating expenses normally approximate this balance, the funds in these accounts generally roll over monthly as new contributions replace withdrawals. In addition, we have a revolving fund account with a balance of approximately \$110,000.00 set aside for emergency parish expenses that is not used by the Diocese.

“As a result of the summary judgment order that was severed into this suit The Defendants Episcopal Diocese of Fort Worth and The Corporation for The Episcopal Diocese of Fort Worth do not have sufficient unencumbered real or personal property to give as security to

EXHIBIT B


obtain a bond. Posting a bond in anything higher than a nominal amount would cause substantial economic harm to the Diocese and its current operations.

"As of the signing of this affidavit, litigation costs have been made mostly from gifts and contributions, which are not assets of the Diocese or Diocesan Corporation.

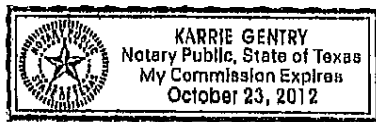
"The Diocese is currently barred from making the following ordinary operating expenditures from endowment and restricted funds accounts:

<u>Fund</u>	<u>Annual Draw (appx.)</u>	<u>Purpose</u>
(1) Endowment for Episcopate	\$25,000	operations
(2) Diocesan Fund	\$2,500	operations
(3) Brown Trust	\$24,000	aid for seminarians
(4) Memorial Scholarship Fund	\$21,000	aid for seminarians
(5) Farley / Turner Fund	\$15,000	special needs
(6) Huerta Fund	\$1,500	housing assistance

"Further, the affiant sayeth not."


Jane R. Parrott

SUBSCRIBED and SWORN to before me by Jane R. Parrott, on this 22nd day of April, 2011, to certify which witness my hand and official seal.



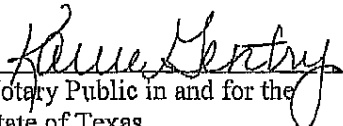

Notary Public in and for the
State of Texas

EXHIBIT C

NO. 141-237105-09

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

AFFIDAVIT OF CHARLES A. HOUGH, III
IN SUPPORT OF OBJECTIONS TO FORM OF SUMMARY JUDGMENT ORDERS

STATE OF TEXAS §
COUNTY OF TARRANT §

On this day personally appeared before me Charles A. Hough, III, who, after being placed under oath, stated the following:

- (1) My name is Charles A. Hough, III. My business address is 2900 Alameda Street, Fort Worth, Texas 76108.
- (2) I am Canon of The Episcopal Diocese of Fort Worth, a Texas unincorporated nonprofit association, hereafter "the Diocese," and have served in this capacity since January 1, 1994.
- (3) I have reviewed the two summary judgment orders signed by the Court on January 21, 2011, and Objections to Form of Summary Judgment Orders, hereafter "Objections," filed by Defendants on January 25, 2011.
- (4) In my role as Canon of the Diocese, I am a custodian of its records and also have personal knowledge of the factual statements made on pages 2 and 3 of the Objections.
- (5) If Defendants described in the Court's orders of January 21, 2011, are required to surrender the property described in those orders, the following events are reasonably foreseeable based on my personal knowledge:
 - If parishes are transferred to the Plaintiffs in accordance with the January 21, 2011 orders, 57 ministers of Defendant congregations may not be allowed to minister at these churches during the appeal because they were deposed in 2010, as described in Attachment A to the Objections, a true and correct copy of which is attached to this affidavit, which is a record in my custody.
 - It is reasonable for me to believe, based on my knowledge, of the Parishioners loyal to Bishop Iker, they will leave their parishes. The Defendant parishes have about

FILED
TARRANT COUNTY
2011 JAN 27 PM 2:33
THOMAS A. MILLER
DISTRICT CLERK

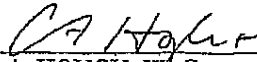
EXHIBIT C

5,600 people in average Sunday attendance; those attending Plaintiff congregations number only a fraction of that amount. The effects of the Court's interim orders on church buildings, budgets, and bank notes could be catastrophic.

- Even if they don't leave, based on my knowledge of these parishioners, they may stop giving because they do not want to place offerings in TEC's hands. This again could have catastrophic effects on scores of pastors, staff, and families who depend on these gifts for food, clothing, and shelter, which hardships would, in my judgment, be impossible to be undone if the appellate courts overturn these orders.
- In many churches, there is *no one* loyal to TEC. I have read, as a part of the records of the Diocese, First Amended Original Plea in Intervention filed on November 2010, and note that the Plaintiffs listed the names of loyal "representatives" for 12 churches, but listed 34 additional churches as to which *nobody* appears to have been willing to be a loyal representative for TEC. It is reasonably conceivable that there would be no one to occupy these churches, which would adversely affect their condition if they are abandoned.
- At least 13 families affiliated with the Defendants live in homes owned by the Corporation. As these ministers and staff are no longer recognized by TEC, the Court's orders appear to allow the Plaintiffs to evict them.
- Almost 200 employees, spouses, and children of ministers and staff are covered by a group insurance policy. If a significant number of these are no longer employed by a local church, their insurance and perhaps that of the entire group may lapse.
- The property here includes schools where classes are ongoing. Surrendering these schools immediately is likely to cause losses of both students and teachers, losses that may be unrecoverable even if these orders are reversed after these people are enrolled or employed elsewhere.
- The bishops and staff of both sides must move out of their current administrative offices into new ones, a move that will have to be repeated if the summary judgment orders are reversed.
- Defendants will have to relinquish personal property owned by the Diocese or Corporation, such as autos, cell phones, office equipment and supplies, computers, and the like without any promise by the Plaintiffs to pay future rentals or invoices related to them, and which can be replaced only by incurring substantial extra expenses.
- Vendors and creditors have relied on the Corporation's books and records, which are a part of the records that I am custodian, regarding which directors are authorized to promise re-payment. By unsettling who that might be, the Court's orders will make it difficult for either side to secure credit until all appeals are concluded and it is finally decided who the authorized directors are.

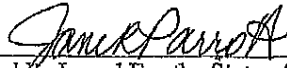
EXHIBIT C

I swear under penalty of perjury that all of the foregoing statements are based upon my own personal knowledge and are true and correct.



CHARLES A. HOUGH, III, Canon
The Episcopal Diocese of Fort Worth

SUBSCRIBED AND SWORN TO BEFORE ME by the said Charles A. Hough, III on this 27th day of January, 2011.



Notary Public In and For the State of Texas

My Commission Expires:



EXHIBIT C

FROM: [REDACTED] FAX NO. 1 Dec. 13 2007 09:52PM P1

ATTACHMENT A



THE EPISCOPAL DIOCESE OF FORT WORTH

The Rt. Rev. C. Waller Ch., Jr., Provisional Bishop of Fort Worth

February 16, 2010

- To:
- The Presiding Bishop
 - The Bishops of the Episcopal Church
 - The Ecclesiastical Authorities of Dioceses without Bishops
 - The Secretary of the House of Bishops
 - The Secretary of the House of Deputies
 - The Recorder of Constitutions
 - The Episcopal Conference of Bishops
 - The Church Pension Fund
 - The Clergy of the Episcopal Diocese of Fort Worth
 - The Vestries of Episcopal Diocese of Fort Worth
 - The Secretary of the Convocation of the Episcopal Diocese of Fort Worth
 - The Standing Committee of the Episcopal Diocese of Fort Worth
 - Each of the Priests and Deacons the subject of this Notice of Deposition

Notice of Deposition of Priests and Deacons For Abandonment of Communion of The Episcopal Church

On July 2, 2009, in accordance with the determination of the Standing Committee of the Episcopal Diocese of Fort Worth, the following Priests and Deacons were inhibited pursuant to the provisions of Title IV.10.1. The canonically required time of the inhibition having elapsed without reconciliation or renunciation, recantation, or denial as provided by Canon IV.10.2, I hereby adjudge and pronounce upon each of the following Priests and Deacons the Sentence of Deposition, pursuant to Canon IV.10.2.(1) and Canon IV.12.1.(d).(1),(iv), as a result of their having abandoned the Communion of The Episcopal Church:

- | | |
|---------------------------------------|------------------------------|
| The Rev. Dewayne M. Adams | The Rev. William R. Dinkson |
| The Rev. M. Jay Atwood | The Rev. Jonathan Duncan |
| The Rev. J. Ronald Baker | The Rev. Janyssa A. Evans |
| The Rev. Patricia A. Banks | The Rev. Lana K. Farley |
| The Rev. Canon William B. Blewett | The Rev. Randall Foster |
| The Rev. Andrew P.L. Bradley | The Rev. Roger Grist |
| The Very Rev. Christopher T. Cantrell | The Rev. Dennis W. Helbert |
| The Rev. Richard A. Cantrell | The Rev. Thomas E. Hightower |
| The Rev. William A. Cary | The Rev. Charles Hough IV |
| The Rev. Christopher Culpepper | The Rev. Cecil Dow James |
| The Rev. Sergio Diaz | The Rev. Stephan W. Jones |

3150 Southwest Loop 820, Fort Worth, TX 76133 phone 817 221.4533 fax 817 525,8278 email info@episcopal-fortworth.org
 A Diocese of the Episcopal Church

fta

EXHIBIT C

FROM :

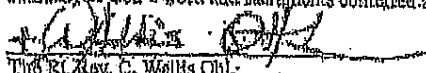
FROM NO. :

Dec 13 2007 05:53PM P2

ATTACHMENT A

- | | |
|---------------------------------------|---|
| The Rev. Kingsley Ohi Jon-Ubaduoo | The Rev. Timothy P. Perkins |
| The Rev. John W. Jordan | The Rev. John M. Phelps |
| The Rev. Taienge N. Jordan | The Rev. Daryl J. Pigeon |
| The Rev. Thomas B. Kennedy | The Very Rev. Ryan S. Reed |
| The Rev. David F. Klein | The Rev. W. Ann Richards |
| The Rev. Edward B. Kucanowaty | The Rev. Zoko L. Rogers |
| The Rev. I. Javier Loya | The Rev. Stuart B. Smith |
| The Rev. Kenneth W. MacKenzie | The Rev. Mioda Snell |
| The Rev. Timothy M. Matkin | The Very Rev. Christopher C. Steinbrook |
| The Rev. Sandra McCowan | The Rev. Mark Stockstill |
| The Rev. Alan B. Mochizuki | The Rev. S. Philip Swickard |
| The Rev. Keith L. Molyneux | The Rev. Lewis T. Tappin |
| The Rev. Robert D. Myhanell | The Rev. Korwin K. Wade |
| The Rev. Chad Nysbaum | The Rev. Nancy S. Weaver |
| The Rev. Chuan David B. Nyberg | The Rev. Joshua Whitfield |
| The Rev. William K. O'Connell | The Very Rev. J. Scott Wilson |
| The Rev. Jonathan Ogilofor | The Very Rev. Scott R. Wooten |
| The Rev. Vance C. Page | |

I declare that from and after 12:01 a.m. on Tuesday, February 16, 2010 each of these Priests and Deacons shall be deprived of the right to exercise the gifts and spiritual authority of God's word and sacraments conferred at ordination in this Church.


 The Rt. Rev. C. Walks Ohi,
 Episcopal Bishop
 Episcopal Diocese of Fort Worth

Pronounced and declared in the presence of two Priests:

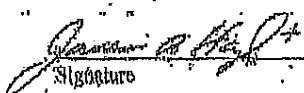
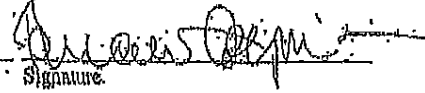
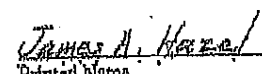
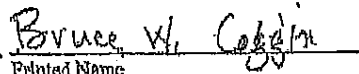
	
Signature	Signature
	
Printed Name	Printed Name

EXHIBIT D

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

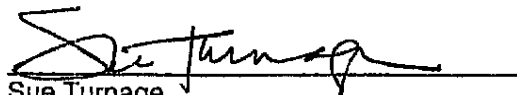
AFFIDAVIT OF SUE TURNAGE

BEFORE ME, the undersigned authority, personally appeared Sue Turnage, who, after being duly sworn by me according to law, on her oath deposed and stated the following:

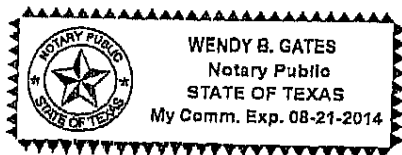
My name is Sue Turnage. I am Executive Vice-President of The Frost National Bank ("Frost Bank") and North Texas Regional Manager, Frost Financial Management Group. I am familiar with the investment and depository accounts of the Episcopal Diocese of Fort Worth at Frost Bank. I have personal knowledge of the facts hereinafter set forth.

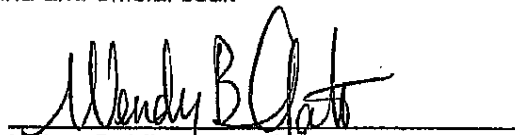
Attached hereto as Exhibit A is a true and correct copy of a letter sent to Frost Bank by Jonathan D.F. Nelson that Frost Bank received on or about April 1, 2011. Following receipt of this letter, Frost Bank placed a hold on the managed investment accounts of the Episcopal Diocese of Fort Worth at Frost Bank, which hold is currently in effect. A list of the affected accounts is attached hereto as Exhibit B. No holds have been placed on the depository accounts in the name of the Episcopal Diocese of Fort Worth at Frost Bank.

Further, the affiant sayeth not.


Sue Turnage

SUBSCRIBED AND SWORN to before me by Sue Turnage on this 25th day of April, 2011, to certify which witness my hand and official seal.




Notary Public, State of Texas

JONATHAN D. F. NELSON, P.C.

ATTORNEY AT LAW

1400 WEST ABRAHAM STREET
ARLINGTON, TEXAS 76013
OFFICE 817-261-2222
DIRECT 817-276-4944RECEIVED
CORPORATE COUNSEL

APR 01 2011

JONATHAN D. F. NELSON, P.C.
BOARD CERTIFIED CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
jnelson@jdfnlaw.com

March 28, 2011

Frost National Bank
Commercial Loan Department RB-2
P. O. Box 1500
San Antonio, Texas 78296Frost National Bank
777 Main Street
Fort Worth, TexasATTENTION: Vance Arnold, Urban McKeever,
Brad Henderson, Mace McClainRe: No. 141-237105-09
The Episcopal Diocese of Fort Worth, et al
v.
Salazar, et alEpiscopal Diocese of Fort Worth, Corporation of the Episcopal
Diocese of Fort Worth; Fund for the Endowment of the Episcopate,
Revolving Fund, and other foundations, accounts and funds of the
Diocese and its related parishes, missions and other entities

Dear Frost Bank and Addressees:

I am one of the counsel of record for The Episcopal Diocese of Fort Worth ("Diocese"), the Corporation of the Episcopal Diocese of Fort Worth ("Diocesan Corporation") the Fund for the Endowment of the Episcopate ("Endowment Fund"), The Rt. Rev. C. Wallis Ohi, Bishop of the Diocese, and the trustees and other representatives of these entities ("Local Episcopal Parties"), all associated with The Episcopal Church, in the above referenced litigation.

EXHIBIT A

Frost National Bank

2

March 28, 2011

This letter is to follow up on the December 22, 2008 letter to Frost National Bank from Mary Kostel, counsel for The Episcopal Church and its presiding bishop, the Most Rev. Katharine Jefforts Schori. A copy of that letter is attached.

Litigation

Although the Bank already has notice of the above-referenced dispute and litigation, I enclose for your files a true copy of the Amended Order on Summary Judgment, granting in part the Local Episcopal Parties' Amended Motion for Summary Judgment and The Episcopal Church's Motion for Summary Judgment (and denying the Defendants' motions for summary judgment), signed by the district judge on February 8, 2011. In this Amended Order the Court has made declarations that directly affect who is entitled to use and control Church property, including:

1. The individuals who remain loyal to the Episcopal Church are the individuals entitled to use and control church property. (Those persons include my clients and do not include the faction, including Defendants Jack Leo Iker, Franklin Salazar, Jo Ann Patton, Walter Virden III, Rod Barber and Chad Bates, who have left the Church but still claim authority to act as trustees of the Diocesan Corporation;
2. All property held by or for the use of the Episcopal Diocese of Fort Worth may be used only for the mission of The Episcopal Church, subject to the Episcopal Church's Constitution and Canons (and not for the churches under which Iker and his followers claim allegiance); and
3. The changes made by Iker and the other Defendants in 2006 and 2009 to the articles and bylaws of the Diocesan Corporation (under which Iker and the other defendants seek to retain control over the Diocesan Corporation after they left The Episcopal Church in 2008) are *ultra vires* and void.

Also please note that notices of lis pendens have been filed in the counties covered by The Episcopal Diocese of Fort Worth.

Also enclosed is a copy of the March 16, 2011 opinion of the Austin Court of Appeals in another case, confirming and supporting the legal position of the Local Episcopal Parties in the Tarrant County case.

Frost National Bank

3

March 28, 2011

Supplemental Demand on Frost Bank

Ms. Kostel's December 22, 2008 letter specifically advised the Bank of the lack of authority of Iker and of those purporting to act under his authority to act on behalf of the Diocese and related entities, and the Church's intention to "hold Frost National Bank accountable for any dispositions made by it of such funds at the direction of Jack Leo Iker or anyone on his behalf."

However, we have knowledge that despite this letter, after December 22, 2008 Frost Bank has apparently continued to account to and take direction from Iker, the other putative trustees of the Corporation, and others under their direction, regarding Church property that existed on November 15, 2008, the date on which Iker and the other Defendants left the Church. This property includes endowments, funds, and accounts held by Frost Bank in the name of and for the use and benefit of the Diocese or its parishes and missions, respectively, maintained and/or managed by one or more offices and officials of Frost Bank. Apparently Frost Bank has since December 22, 2008 supported the use by Iker and others of funds and other Church property, including that for the use of the parishes and missions of the Diocese that existed on November 13, 2008. In addition, Frost Bank has apparently participated in purporting to sell, transfer and encumber and otherwise control real and personal property of the Diocesan Corporation Fund for the Endowment of the Episcopate, and parishes and missions of the Diocese. In addition, we understand that one of the Defendants in the case, Rod Barber, is also an officer of Frost Bank.

The purpose of this letter is to reaffirm that the Bank continues to deal with Iker, the other Defendants in the above-referenced litigation, including Rod Barber, and those acting under their authority, including Charles A. Hough III, regarding the church property or funds at its own peril.

My clients will evaluate transactions entered into by Iker and his followers since November 15, 2008 and reserve the right to seek to avoid any and all those transactions and to seek any other available remedies against all parties involved.

Bishop Ohl and other trustees of the Diocesan Corporation invite you and legal counsel for Frost Bank to meet with them in the coming weeks to inventory the various accounts and assets currently in control of Frost Bank on behalf of the Diocese and to account for disbursements, transfers, and other activity under the purported authority of Iker and others since November 14, 2008. Please let me know a few alternate times and dates in the coming weeks that would be convenient for you or the Bank's legal counsel.

Frost National Bank

4

March 28, 2011

In addition, the Episcopal Parties are requesting that subpoena be issued to Frost Bank for production of records regarding the church accounts and other property being held or managed by Frost Bank and its related entities, including the accounts and property of the Diocese, its Diocesan Corporation, Endowment Fund, and its parishes, missions and other entities. Would you please advise me of the name and address of the custodian of records or other bank official to whom the subpoena should be directed?

Conclusion

I encourage you to check the Diocesan website at www.episcopal-diocese-fortworth.org for additional information regarding the status of the Diocese.

Thank you for your courtesy. Please let me know if you have any questions regarding this letter or the litigation.



Sincerely,

Jonathan D. F. Nelson

JDFN/kaf

Enc.

cc: ✓ Stanley McCormick
Executive Vice President, Corporate Counsel and Secretary
Frost National Bank
100 W. Houston Street, Suite 1270
San Antonio, Texas 78205-1457

The Ret. Rev. C. Wallis Ohl
The Corporation of the Episcopal Diocese of Fort Worth
Fund for the Endowment of the Episcopate

Mary Kostel

David Booth Beers

Managed Investment Accounts of The Episcopal Diocese of Fort Worth

Endowment for the Episcopate Fund - #WA396

Diocesan Fund - #WA39601

E.D. Farmer Fund - #WA39602

Memorial Scholarship Fund - #WA39603

Ann and John Brown Agency Fund - #WA39605

Farley/Turner Fund - #WA39607

Exhibit B