

CAUSE NO. 141-252083-11

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

**MOTION TO STAY PROCEEDINGS AND RESPONSE TO MOTION TO SET ASIDE
ORDER ON DEFENDANTS’ MOTION TO SET SUPERSEDEAS BOND**

I. Introduction

Four years ago, Defendants argued to this Court: “[A] substantial amount of the Court’s time and the parties’ money must be spent—and potentially wasted—if the . . . claims must be tried before there is an appeal.”¹ The same is true today. Although the Texas Supreme Court reversed this Court’s judgment, Plaintiffs intend to petition the United States Supreme Court for review. In the meantime, Plaintiffs ask for nothing more than the same relief that Defendants asked for and received: preservation of the status quo pending resolution of the appeal.

While the appeal continues, this Court’s order requiring Defendants to post security and refrain from mishandling the property should stay in place. That order rested on the Court’s consideration of substantial evidence of Defendants’ challenged conduct. For example, Defendants moved money out of state in an attempt to avoid the Court’s jurisdiction:

Q. So you thought that that money would be harder for a court to reach out of state?

¹ Defs.’ Mot. to Sever & Stay Proceedings 4.

A. That is not what I said, but that was the thought of the Diocese, not of me, but of the Diocese, that was the decision that was made.²

* * *

Q. Why didn't you tell the Court about the Louisiana bank account?

A. Because at the time, it did not enter my mind. I forgot.³

* * *

Q. Why wasn't [the Louisiana account] listed on the books?

A. I don't have an answer to that. It just wasn't.

Q. Did you prepare these books?

A. Yes.⁴

Defendants dissipated over a half million dollars from the operating accounts before this Court's protections were put in place:

Q. So operating accounts . . . [have] a total of \$547,030.13 gone between October 31st, 2008 and February 28th, 2011 from these 12 accounts; is that correct?

A. That's what it adds to, yes, sir.⁵

* * *

Q. [W]e wouldn't expect hundreds of thousands of dollars to disappear from operating accounts, would we?

A. I would not, no, sir.

Q. Okay. We could call that dissipation, couldn't we?

A. Yes, sir.⁶

And Defendants encumbered Church property with a \$3.5 million off-the-books lien to a shell entity created by a named individual Defendant during litigation:

² Parrot Dep. at 93:18–22.

³ *Id.* at 88:3–6.

⁴ *Id.* at 98:3–7.

⁵ *Id.* at 63:12–64:4.

⁶ *Id.* at 55:5–15.

Q. So if you testified about a \$3.5 million line of credit or lien from Jude Funding, that would not be proper testimony because you – that is not within your purview? Is that what you’re saying?

A. I’m saying I don’t have knowledge of it. That’s right.

Q. Okay. Let’s turn to your affidavit. This is your first affidavit, Exhibit A. [Reading extensive testimony about Jude Funding lien.] Did I read it correctly?

A. Yes, you did.

Q. So you’ve testified quite a bit about Jude Funding, haven’t you?

A. And I apologize. I mean – I misrepresented myself⁷

* * *

Q. In your history as the director of business and finance for the Diocese, how many \$3.5 million liens has the Diocese taken out on church property?

....

A. Other than this, none.⁸

* * *

Q. Did you put it on the books?

A. The – no, sir, it is – it’s not on the books.⁹

Because of the extensively-documented evidence of Defendants’ mishandling of the disputed property during litigation, the Court required, among other things, that Defendants keep the property insured and in good repair and that they not dispose of the property outside the normal course of business. According to the Order, those protections were to last “*during the appeal in this case and until further order of the Court.*”¹⁰

The appeal is not over. This Court’s summary judgment was correct, and Plaintiffs have a right to make that case to the U.S. Supreme Court, just as Defendants had a right to make their case to the Texas Supreme Court. Defendants have tried to minimize the importance of these

⁷ *Id.* at 76:16–77:16.

⁸ *Id.* at 80:6–80:11.

⁹ *Id.* at 83:13–15.

¹⁰ Supersedeas Order 2 (emphasis added).

issues for the U.S. Supreme Court.¹¹ But Defendants' own parent organization has told the U.S. Supreme Court the opposite.¹²

Although the appeal continues, Defendants want the Court to return the deposit securing the disputed property now and to lift all protections related to the property. To argue for that relief, Defendants rely on nothing more than their misinterpretation of a single, 75-year old case. But the same reason for requiring the deposit and additional protection in the first place still applies today: there is a substantial risk that Defendants will resume dissipating the disputed property while the appeal continues.

Therefore, the Court should continue to stay proceedings pending resolution of the appeal and deny Defendants' motion to set aside the Court's order requiring security during the appeal and establishing protections for the property.

II. Grounds for a Stay

On February 8, 2011, this Court granted partial summary judgment to Plaintiffs, holding that they were entitled to the disputed property. Shortly thereafter, Defendants asked the Court to sever the claims decided in Plaintiffs' favor so that Defendants could immediately appeal the grant of summary judgment.¹³ At the same time, Defendants requested that the Court stay all remaining proceedings during the pendency of the appeal.¹⁴

In support of their request for a stay, Defendants cited "the centrality of the summary

¹¹ Defs.' Resp. to Emergency Mot. for Stay, *Episcopal Diocese of Fort Worth v. Episcopal Church*, No. 11-0265, (Tex. Mar. 27, 2014).

¹² See Brief of the Anglican Church in North America et al. as Amici Curiae in Support of Petitioners, *Falls Church v. Protestant Episcopal Church in the U.S.*, 2013 WL 6021151, at *1 (U.S. Nov. 8, 2013) (No. 13-449) [hereinafter "ACNA Brief"] (citing "the confused state of the law" under *Jones v. Wolf* and urging the Supreme Court to address the issue "that only it can resolve: . . . whether the First Amendment requires civil courts to enforce denominational rules that purport to recite an express trust in favor of the hierarchical church.").

¹³ Defs.' Mot. to Sever & Stay Proceedings 4.

¹⁴ *Id.*

judgment issues” and the “uncertainty about the appellate result.”¹⁵ They also stressed that resolution of the appeal would obviate the need for discovery and trial on certain issues.¹⁶ Most importantly, they argued that the Court’s time and the parties’ money would be “wasted . . . if the remaining claims must be tried before there is an appeal.”¹⁷ Defendants told this Court: “If the Court stays the proceedings on the remaining claims, this possibility is avoided with no damage to any party.”¹⁸ The same arguments apply today, because there is a significant chance of wasting time and resources if proceedings resume in this Court while the appeal continues.

Moreover, the stay Plaintiffs now request will be of far shorter duration than what Defendants have already enjoyed. This Court granted Defendants’ motion to sever and stay proceedings on April 5, 2011.¹⁹ Thus, more than three years have elapsed during which Defendants have enjoyed a stay of proceedings while they pursued an appeal. Now Plaintiffs ask for a stay while they pursue an appeal with the U.S. Supreme Court. The petition for certiorari is due June 19, 2014.²⁰ If the Court grants the petition, it will likely dispose of the case no later than June 2015—the end of the Court’s 2014 Term. Thus, at the *longest*, Plaintiffs request a stay of just over a year, which is far shorter than the three-year stay that Defendants have enjoyed. If as Defendants claim, *certiorari* will be denied, the stay would be even shorter.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ Order Granting Defs.’ Mot. to Sever & Stay Proceedings.

²⁰ Ninety days after March 21, 2014, the day the Texas Supreme Court denied Plaintiffs’ motion for rehearing, is June 19, 2014. *See* U.S. Sup. Ct. R. 13 (“Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.”).

Further, as Defendants argued, a stay will cause “no damage to any party.”²¹ Defendants will suffer no prejudice if the Court stays proceedings while the appeal continues because *they possess most of the property*. On the contrary, denying a stay would force the parties to endure parallel appellate and trial proceedings, leading to potentially unnecessary discovery motions, hearings, depositions, and summary judgment proceedings in this Court, while dispositive issues continue to be argued in the appeal. The U.S. Supreme Court recently called for a response to a petition for writ of certiorari in a related case and relisted that matter three times—strong signs of the Court’s interest in these matters.²² Because a short extension of the stay that Defendants have enjoyed would prevent a waste of time and resources and would cause no damage to any party, the Court should stay proceedings for the duration of the appeal.

III. Grounds for Security and Additional Protection

Moreover, the Court’s Order requiring Defendants to post security and establishing additional protection for the property should stay in place. That Order – wholly reasonable in light of Defendants’ documented conduct – instituted protections “*during the appeal in this case* and until further order of the Court.” The appeal is ongoing.²³ Therefore, the protections should remain in place, in accordance with the terms of the Order.

²¹ Defs.’ Mot. to Sever & Stay Proceedings 4.

²² *Falls Church v. Protestant Episcopal Church in the U.S.*, 740 S.E.2d 530 (Va. 2013), *cert denied*, 82 U.S.L.W. 3237 (U.S. Mar. 10, 2014) (No. 13-449); *see also* David C. Thompson & Melanie F. Wachtell, 16 Geo. Mason L. Rev. 237, 250 (2009) (requesting response to petition for certiorari is a “strong sign that the Court is interested in hearing argument”). The instant case is an even better candidate for review. Not only will it raise the split among state courts as to whether a denominational express-trust canon trumps contrary state law—an issue Defendants’ own parent organization has urged the U.S. Supreme Court to decide, *see* ACNA Brief, 2013 WL 6021151, at *1—but it will also question the continued viability of the neutral principles approach in light of recent U.S. Supreme Court cases, and it will argue that the application of neutral principles to religious groups that arranged their affairs under an established rule of deference is unconstitutionally retroactive.

²³ *Cf.* Tex. R. App. P. 24.1(d) (supersedeas rules protect “all damages and costs that *may be* awarded against the debtor . . . *during the pendency of the appeal.*” (emphasis added)).

Defendants have shown that the consequences of lifting the protections could be dire. If, on final appeal, the U.S. Supreme Court reaffirms this Court's proper summary judgment, Defendants will have had a full year to dissipate and encumber the assets at stake. Their prior attempts to evade the Court's jurisdiction by moving money out of state, their dissipation of over half a million dollars of operating funds since the schism, and their multi-million dollar encumbrance of disputed property more than justifies the protection that the Court ordered – and this conduct justifies continuing these protections throughout the appeal, as the Court's order provides.

Defendants cite *Harris v. Keoun*, 135 S.W.2d 194, 195 (Tex. Civ. App.—Waco 1939, writ ref'd.), for the proposition that the Texas Supreme Court's reversal of this Court's judgment entitles Defendants to return of the deposit “as a matter of law.”²⁴ But *Harris* says no such thing. *Harris* held only that an *appellee* may *recover on* a supersedeas bond, even when, after appeal, the judgment in appellee's favor is less than the trial court's original judgment.²⁵ The case says nothing about an *appellant's* right to *the return* of a deposit *when an appeal is ongoing*. Defendants' miscitation should not change this Court's common-sense response to Defendants' conduct.

III. Conclusion

Plaintiffs respectfully request that the Court stay proceedings pending resolution of the appeal and deny Defendants' motion, leaving in place its order of October 20, 2011 in which it set the amount of security at \$100,000 and required additional protection of the property “during the appeal in this case and until further order of the Court.”

²⁴ Mot. to Set Aside Order on Defs.' Mot. to Set Supersedeas Bond & the Local Episcopal Parties' Mot. for Additional Protection 2.

²⁵ 135 S.W.2d at 196.

Respectfully submitted,

Jonathan D. F. Nelson
State Bar No. 14900700
JONATHAN D. F. NELSON, P.C.
1400 West Abram Street
Arlington, Texas 76013
817.261.2222
817.274.9724 (facsimile)
jnelson@hillgilstrap.com

/s/ Thomas S. Leatherbury
William D. Sims, Jr.
State Bar No. 18429500
Thomas S. Leatherbury
State Bar No. 12095275
Daniel L. Tobey
State Bar No. 24048842
VINSON & ELKINS LLP
2001 Ross Ave., Suite 3700
Dallas, Texas 75201-2975
214.220.7792
214.999.7792 (facsimile)
bsims@velaw.com
tleatherbury@velaw.com
dtobey@velaw.com

Kathleen Wells
State Bar No. 02317300
P.O. Box 101714
Fort Worth, Texas 76185
817.332.2580
817.332.4740 (facsimile)
chancellor@episcopaldiocesefortworth.org

Attorneys for Plaintiffs the Local Episcopal Parties

/s/ Frank Gilstrap w/permission
Frank Hill, Esq.
State Bar No. 09632000
Frank Gilstrap
State Bar No. 07964000
Hill Gilstrap
1400 W. Abram Street
Arlington, Texas 76013
817.261.2222
817.861.4685 (facsimile)
fh@hillgilstrap.com

Attorneys for Plaintiffs the Local Episcopal Congregations

CERTIFICATE OF CONFERENCE

I certify that counsel for Plaintiffs conferred with Scott Brister, counsel for Defendants, by email on April 21, 2014. Mr. Brister opposes the relief requested by this motion.

/s/ Thomas S. Leatherbury

Thomas S. Leatherbury

CERTIFICATE OF SERVICE

I certify that on April 21, 2014, the foregoing document was filed and served electronically on all counsel.

J. Shelby Sharpe, Esq.
Sharpe Tillman & Melton
6100 Western Place, Suite 1000
Fort Worth, TX 76107

Scott A. Brister, Esq.
Andrews Kurth L.L.P.
111 Congress Avenue, Suite 1700
Austin, TX 78701

R. David Weaver, Esq.
The Weaver Law Firm
1521 N. Cooper Street, Suite 710
Arlington, TX 76011

David Booth Beers
Goodwin Procter, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001

Sandra Liser
Naman Howell Smith & Lee, LLP
306 West 7th Street, Suite 405
Fort Worth, Texas 76102-4911

Mary E. Kostel
c/o Goodwin Procter, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001

/s/ Thomas S. Leatherbury

Thomas S. Leatherbury

US 2413558v.8