

DISTRICT COURT, EL PASO COUNTY, COLORADO Address: 270 S. Tejon P.O. Box 2980 Colorado Springs, CO 80901-2980 Phone: (719) 448-7700	· COURT USE ONLY ·  Case No.: 2007cv1971	
<p><b>Plaintiff and Counterclaim Defendant:</b>          GRACE CHURCH &amp; ST. STEPHEN'S, a Colorado non-profit corporation</p> <p><b>Defendant and Counterclaimant:</b>          THE BISHOP AND DIOCESE OF COLORADO, a Colorado non-profit corporation</p> <p><b>Third-Party Counterclaimants:</b>          THE DIOCESE OF COLORADO IN THE EPISCOPAL CHURCH; GRACE AND ST. STEPHEN'S EPISCOPAL CHURCH; and GRACE CHURCH AND ST. STEPHEN'S, a Colorado religious society and corporation</p> <p><b>Counterclaim Defendants:</b>          REV. DONALD ARMSTRONG III; CHARLES C. BROWN; DARELEEN SCHAFFER; JON WROBLEWSKI; MARGE GOSS; CRAIG WHITNEY; ROBERT C. BALINK; CHAD FRIESE; MICHAEL BARBER; KEITH STAMPHER; JASON HUNTLEY; EMILY KLINE; RIP HOLLISTER; JACK GLORIOD; EDWIN J. MONTGOMERY, JR.; KEVIN DIBBLE; SUSAN SPENCER; and ALAN CRIPPEN II</p>		
Attorney for Counterclaim Defendant, Rev. Donald Armstrong, III LAW OFFICE OF DENNIS W. HARTLEY, P.C. Dennis W. Hartley, #788 1749 S. Eighth St., Ste. 5 Colorado Springs, CO 80906 Phone: (719) 635-5521 Fax: (719) 635-5760		
<b>REV. DONALD ARMSTRONG, III'S MOTION TO DISMISS COUNTERCLAIM AND THIRD-PARTY COMPLAINT</b>		

The Rev. Donald Armstrong, III, ("Rev. Armstrong") by and through undersigned counsel, hereby moves this Honorable Court to dismiss the Counterclaim and Third-Party

Complaint against him pursuant to COLO.R.CIV.P. 12(b), and as grounds therefor states as follows:

1. The Third-Party Complaint asserted against Rev. Armstrong asserted by the Counterclaim Plaintiffs (as that term is used in the First Amended Answer, Counterclaims, Third-Party Complaint in Intervention and Jury Demand) fails to state a claim upon which relief can be granted. Rev. Armstrong is, or at all times pertinent hereto, has been an employee of Grace Church & St. Stephen's and a non-voting member of the church Vestry and congregation of Grace Church & St. Stephen's (the "Church"), a Colorado nonprofit corporation on good standing. (See Joint Affidavit attached to Motion to Dismiss filed by individual Counterclaim Defendants which is incorporated in this Motion as it may be applicable.) Further, Rev. Armstrong is entrusted with the pastoral and spiritual care of the congregation. He neither has any authority or control over the physical Church property. (See Affidavit of Rev. Armstrong, attached hereto as Exhibit A and incorporated herein by reference.) As such, Rev. Armstrong has no civil liability pursuant to C.R.S. 13-21-115.7 and C.R.S. 13-21-116(b)(1) or as a paid employee who serves at the discretion of the Vestry and is duty bound to obey the directives of the Vestry and congregation. (See Exhibit A.) As a non-voting member of both the congregation and the Vestry, Rev. Armstrong took no part in the decision making of the Vestry or the Church including decisions involving the disposition of Church property and therefore, as stated in the Third-Party Complaint, has no basis of liability.

2. Here the Affidavit clearly establishes the actions of Rev. Armstrong as actions that were taken in good faith in carrying out the directions of the Vestry and congregation. These directives included the actions taken by the Vestry that were overwhelmingly ratified by over 90% of the membership of the Church.

WHEREFORE, Rev. Armstrong prays that this Court enter an Order dismissing the Third-Party Complaint and Counterclaim against him, for his costs, attorneys' fees, and such other and further relief as to this Court may seem appropriate.

Dated this 22<sup>nd</sup> day of January, 2008.

Respectfully submitted,

LAW OFFICE OF DENNIS W. HARTLEY, P.C.

By:                   /s/ Dennis W. Hartley                  .

Dennis W. Hartley (#788)  
Attorneys for Counterclaim Defendant,  
The Rev. Donald Armstrong, III  
1749 S. Eighth St., Ste. 5  
Colorado Springs, CO 80906  
(719) 635-5521  
Fax: (719) 635-5760



