

DISTRICT COURT, EL PASO COUNTY, COLORADO
Court Address: 270 S. Tejon (80903), P.O. Box 2980
Colorado Springs, CO 80901
Phone Number: (719) 448-7577

Plaintiff and Counterclaim Defendant:

GRACE CHURCH & ST. STEPHEN'S, a Colorado nonprofit corporation,
v.

Defendants and Counterclaimants:

THE BISHOP AND DIOCESE OF COLORADO, a Colorado nonprofit corporation; and THE EPISCOPAL CHURCH,

and

Third Party Counterclaimants:

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,
v.

Counterclaim Defendants:

REV. DONALD ARMSTRONG III; CHARLES C. BROWN; DARELEEN SCHAFFER; JON WROBLEWSKI; MARGE GOSS; CRAIG WHITNEY; ROBERT C. BALINK; CHAD FRIESE; MICHAEL R. BARBER; KEITH STAMPHER; JASON HUNTLEY; EMILY KLINE; RIP HOLLISTER; JACK GLORIOD; EDWIN J. MONTGOMERY, JR.; KEVIN DIBBLE; SUSAN SPENCER; ALAN CRIPPEN II; ST. STEPHEN'S CLASSICAL ACADEMY, a Colorado nonprofit corporation; and GRACE CHURCH & ST. STEPHEN'S, a Colorado unincorporated nonprofit association.

Additional Counterclaim Defendant:

RT. REV. ROBERT J. O'NEILL

L. Martin Nussbaum #15370

• COURT USE ONLY •

Case No. 2007CV1971

Div.: COM5

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**EPISCOPAL CHURCH ENTITIES' STATUS REPORT FOR THE MAY 2 HEARING
 (Commercial Docket)**

The Most Rev. Robert J. O'Neill and the Episcopal Church Entities, through Rothgerber Johnson & Lyons LLP, provide this status report for the argument scheduled for May 2, 2008.

**I.
 MOTIONS AND BRIEFS BEFORE THE COURT**

The parties will provide argument as regards the following motions and briefs.

Group I:

LEXIS/NEXIS TRANSACTION ID NO.	DATE	PARTY FILING	DOCUMENT TITLE
18142899	1-21-08	Wright for ICD's (other than Armstrong)	Individual Defendants' Motion to Dismiss, Counterclaim, and Third Party Complaint (arguing statutory director immunity)
18597485	2-13-08	Nussbaum for ECE	Episcopal Church Entities' Response in Opposition to Individual Counterclaim Defendants' Motion to Dismiss & Episcopal Church Entities' Cross Motion for Partial Summary Judgment to Strike Individual Counterclaim Defendants' Director Immunity Defense
18502952	2-8-08	Hartley for Armstrong	Motion to Quash Service of Process
18780366	2-27-08	Nussbaum for ECE	Episcopal Church Entities' Response in Opposition to Motion to Quash Service of Process & Episcopal Church Entities' Motion for Partial Summary Judgment Regarding Secessionist Congregation's Civil Status as an Unincorporated Association

LEXIS/NEXIS TRANSACTION ID NO.	DATE	PARTY FILING	DOCUMENT TITLE
18197535	1-22-08	Hartley for Armstrong	Rev. Donald Armstrong, III's Motion to Dismiss Counterclaim and Third-Party Complaint (arguing "just following orders" defense)
18618574	2-14-08	Nussbaum for ECE	Episcopal Church Entities' Response in Opposition to Father Armstrong's Motion to Dismiss & Episcopal Church Entities' Cross Motion for Partial Summary Judgment to Strike Father Armstrong's Affirmative Defenses
18598369	2-13-08	Nussbaum for O'Neill and Diocesan Corporation	Bishop O'Neill's and the Diocese of Colorado in the Episcopal Church's Motion to Dismiss Abuse of Process Claim and to Drop Bishop O'Neill as a Party
18930214	3-10-08	Walta for Plaintiff, Wright for ICDs, Hartley for Armstrong	Joint Response of Grace Church and Individual Defendants to Pending Motions
19158507	3-26-08	Nussbaum for O'Neill & Episcopal Church Entities	Bishop O'Neill's and Episcopal Church Entities' Reply Related to Their Motions for Partial Summary Judgment, Their Motions to Dismiss the Abuse of Process Counterclaims, The Individual Counterclaim Defendants' Motions to Dismiss, and Father Armstrong's Motion to Quash

Group II:

18928365	3-10-08	Walta for Plaintiff	Motion to Strike Privileged Materials
19175345	3-27-08	Nussbaum for Episcopal Church Entities	Response to Motion to Strike Privileged Materials
19496857	4-21-08	Walta for Plaintiff	Reply on Motion to Strike Privileged Materials

**II.
SECESSIONIST CONGREGATION'S
CHANGING THEORIES REGARDING ITS OWN IDENTITY**

Several of the motions and briefs above raise issues regarding the identity of the plaintiff and its organizing documents. During the argument, the Episcopal Church Entities will contend that the plaintiff has repeatedly changed its theory of itself, most recently in its April 21, 2008 reply in support of its motion to strike privileged materials. This chart, along with a document of recent vintage (Ex. CW, attached hereto), will be referred to during the argument. The sub-headings in bold font paraphrase the Secessionist Congregation's assertions regarding its identity. The regular font statements provide evidentiary support for each sub-heading.

<i>Date</i>	<i>Exhibit #: Document</i>	<i>Description or Text</i>
I. Secessionist Congregation Was an Episcopal Parish, But It Left the Episcopal Church.		
3-25-07	C-4: Secessionist Congregation press release	"The Vestry of Grace Church and St. Stephen's Parish . . . , the largest Episcopal parish in the state . . . voted to leave the Episcopal Church today.
3-26-07	P-13: Secessionist vestry letter to parish	"Dear Parishioners . . . Over the last few months the parish's relationship with the Bishop and Diocese of Colorado has degenerated to a level . . . from which point the Vestry sees no hope of recovery."
3-26-07	Plaintiff Summary Judgment Ex. P-3: Declaration of Anglican Fidelity	Wroblewski Vestry "hereby resolve[s] that Grace Church and St. Stephen's Parish will leave the Episcopal Church"

Date	Exhibit #: Document	Description or Text
II. Because the Secessionist Congregation's 1923 Corporation Is Governed by 1974 Bylaws That Are Subject to Canon Law, the Secessionist Vestry Had to Amend Those Bylaws So They Would Permit Secession.		
3-26-07	BQ: Secessionist Congregation vestry minutes	On secession day, secessionist vestry, in an ultra vires act, voted to amend 1974 bylaws for the 1923 Corporation so that corporation is subject to Episcopal Church and Episcopal Diocese canon law "or any other Ecclesiastical Authority if approved by the Vestry." Other references in the bylaws to Episcopal Church canon law and Episcopal Church authority were left unchanged.
III. Secessionist Congregation Is the 1873 Corporation. This Corporation Merged into 1923 Corporation That Expressly Acceded to Canon Law.		
4-6-07	Secessionist Congregation Complaint	¶ 1: "Plaintiff Grace Church and St. Stephen's is a Colorado Nonprofit Corporation which was originally organized in 1873 . . . "
1923	K: Affidavit of Incorporation	Clause 5 "The parish hereby incorporated to be known and designated as Grace Church and St. Stephen's is formed, among other things for the purpose of merging the present parishes of Grace and St. Stephen's in the City of Colorado Springs, in accordance with Section 3 of Canon XII of the Canons of the Diocese of Colorado, and for the purpose of becoming their legal successor."
IV. Secessionist Congregation Was Never an Episcopal Parish Because Parishes Do Not Exist.¹		
5-29-07	Plaintiff's Response to Motion to Intervene	p. 3: "In short, the alleged intervenors [including the parish, Grace Church and St. Stephen's Episcopal Church] are fictional and imaginary entities created by Martin Nussbaum on behalf of the existing Defendant. Those entities have no separate existence or legal standing."

¹The Secessionist Congregation only argues in this Court's files that parishes do not exist. In its non-Court statements, it routinely refers to itself as a parish. *See, e.g., Ex. CW.*

<i>Date</i>	<i>Exhibit #: Document</i>	<i>Description or Text</i>
V. Secessionist Congregation "Declared Its Independence" from the Episcopal Church by Abandoning Its 1923 Corporation and Forming a New Corporation. Its 1973 Articles Reference Neither Canon Law Nor the Episcopal Church. The 1973 "Corporation" "Acceded" the 1923 Corporation's Property Without Documents of Conveyance.		
7-31-07	CN: Walta during Case Management Conference	"That 1973 document is essentially a Declaration of Independence by this local church."
9-11-07	Plaintiff's Brief in Opposition to Motion for Summary Judgment	p.16: Referencing Parish's "Declaration of Independence" p.25: "Grace Church's basic governing documents--its 1973 Articles of Incorporation--contain no 'accession language' and no reference to PECUSA, the Diocese or their canons."
10-11-07	Plaintiff's Motion to Amend Caption	¶ 2: "From the beginning the Plaintiff . . . has been the 1973 Non-profit Corporation . . ." Plaintiff's Motion to Amend Caption.
3-10-08	Secessionists' Joint Response to Defendants Pending Motions	p. 10: The "new nonprofit corporation acceded to the assets of the prior defunct entity."
VI. Secessionist Congregation Is the 1973 "Corporation," But It Had No Organizing Meeting and Has No Bylaws or Minutes of Directors Meetings.		
9-20-07 through 11-9-07	BS, BT, BU BY: Requests for documents from 9-20-07 through 10-19-07. CB: 11-8-07 Order to produce documents. BV, BZ, CC: plaintiff's responses failing to produce any responsive documents from 10-11-07 through 11-9-07.	The ECE repeatedly requested that plaintiff produce "[a]ll documents related to the 1973 "corporation" including: i. Minutes of its organizing meeting, ii. Minutes electing its vestry members or directors, iii. Minutes or resolutions approving the opening of bank or other financial accounts for it, iv. Documents effecting the transfer or conveyance of real or personal property to it, and v. Bylaws for the 1973 "corporation" and evidence that the board or vestry approved passage of such bylaws. Court ordered plaintiff to produce these evidence. Plaintiff neither produced nor identified any responsive documents.

<i>Date</i>	<i>Exhibit #: Document</i>	<i>Description or Text</i>
3-12-08	Armstrong & ICDs Response to Document Request	In response to request regarding the 1973 “corporation” for organizing meeting and minutes, for each version of the bylaws, and documents establishing parishioners, members, wardens, or rectors; Father Armstrong and the ICDs do not provide a single document.
VII. Secessionist Congregation Is the 1973 “Corporation.” It Has Bylaws, But They Are Not Identified.		
3-10-08	Joint Response of [Secessionist Congregation] Grace Church and ICDs	p.7: “. . . nor is a nonprofit corporation required to adopt bylaws, although it is uncontested Grace Church eventually did so.” Plaintiff provided no exhibit, citation, or other identification of these bylaws.
VIII. Secessionist Congregation Is the 1973 “Corporation” Loosely Affiliated with the Episcopal Church. The 1974 Bylaws Are for the 1973 “Corporation” Even Though They State That They Are for the 1923 “Corporation.” Even Though These Bylaws Are “Subject To” Canon Law, Canon Law Only Has Moral, and No Legal Effect.		
March - April 2008	CW: Secessionist Congregation Grace Tidings	“Dear Parishioners . . . Thank goodness our 1973 vestry saw the handwriting on the wall and gave us the flexibility as a corporation to make this move away from the Episcopal Church . . . /s/ The Rev. Donald Armstrong”
4-21-08	Secessionist Congregation Reply on Motion to Strike Privileged Materials	p.3: “Attached as Exhibit 4 hereto are minutes of the February 25, 1974 Vestry meeting . . . adopt[ing] bylaws for Grace Church . . . the initial bylaws quite appropriately made reference to the Canons of the Episcopal Church, which have ‘moral’ and not ‘legal’ effect since at the time (and up until 2007), Grace Church elected to remain loosely affiliated with the Diocese.”
1974	C-5: Bylaws	Ch. I: Bylaws “are . . . subject to the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado.”

III.
RELIEF SOUGHT BY
BISHOP O’NEILL AND THE EPISCOPAL CHURCH ENTITIES

The Episcopal Church Entities and Bishop O’Neill respectfully request that the Court:

1. Grant partial summary judgment, under the First Amendment Doctrine of Judicial Deference to Hierarchical Ecclesiastical Authority as required by Levitt v. Calvary Temple of Denver, 33 P.3d 1227, 1230 (Colo. App. 2001) and Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) declaring that the Wroblewski Vestry and its successors do not serve as directors or in any other office of the 1973 Parish “corporation;” Father Armstrong does not serve as its rector; Jon Wroblewski and Chad Friese do not serve as its Wardens; Dareleen Schaffer does not serve as its Treasurer; and Susan Spencer does not serve as its Clerk (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Part I);
2. Grant partial summary judgment, consistent with Colo. Rev. Stat. §§ 7-23-101(1), 7-20-102(9) (1973), declaring that the 1973 “corporation” has no members (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts II(A) and V(A));
3. Grant partial summary judgment, consistent with Colo. Rev. Stat. §§ 7-23-101(1), 7-20-102(9), 7-124-101(3), 7-123-104(1) (1973), declaring that no directors succeeded the directors named in the 1973 “articles” (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts II(B) and V(A));
4. Grant partial summary judgment, consistent with Colo. Rev. Stat. § 7-124-107(1) (1973), declaring that the 1973 “corporation” has no officers (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts II(C) and V(A));
5. Grant partial summary judgment, consistent with Colo. Rev. Stat. § 7-124-107(3) (1973) declaring that the 1973 “corporation” has no wardens, rector, or clerk (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts II(D) and V(A));
6. Grant partial summary judgment declaring that the Secessionist Congregation is not the 1973 “corporation,” (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts I II, and V(A));
7. Grant partial summary judgment, consistent with Colo. Rev. Stat. § 7-30-101 *et seq.*, declaring that the Secessionist Congregation is an unincorporated nonprofit association that formed on March 26, 2007 (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Parts I-III, V);

8. Grant partial summary judgment declaring that the 1973 “corporation” and the Secessionist Congregation are not beneficiaries of the Taylor, Carpenter, Gates, Carlton, Koch, Giddings, Bowton, and Smith Trusts; that the 1973 “corporation” and the Secessionist Congregation have no lawful claim upon the property held in those trusts; and that the beneficiaries of those trusts are either the Episcopal Parish, its 1923 Parish Corporation, or, in the case of the Smith Trust, qualified members of those Episcopal entities according to the terms of the Smith Trust, or, in the case of the Bowton Trust, qualified persons according to the terms of the Bowton Trust (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Part IV);
10. Grant partial summary judgment declaring that the 1923 Parish Corporation (and not the alleged 1973 “corporation”) holds legal title to the Property (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Part IV(A));
11. Deny the Individual Defendants’ Motion to Dismiss;
12. Deny Father Armstrong’s Motion to Quash Service of Process;
13. Deny Rev. Donald Armstrong, III’s Motion to Dismiss Counterclaim and Third-Party Complaint;
14. Dismiss the Abuse of Process Counterclaims and to Drop Bishop O’Neill as a Party (*see* Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Part IX);
15. Strike inadmissible evidence as identified in Lexis/Nexis transaction no. 19158507, ECE Joint Reply, Part IX; and
16. Deny plaintiff’s motion to strike Exhibit C-1, the 12-8-06 Derry Adams’ memorandum.

Respectfully submitted,

ROTHGERBER JOHNSON & LYONS LLP

/s/

L. Martin Nussbaum Atty. Reg. # 15370
Attorneys for the Episcopal Church Entities

CERTIFICATE OF SERVICE AND MAILING

On April 25, 2008, I served, via LexisNexis File & Serve, a copy of the foregoing to:

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On April 25, 2008, I mailed a copy of the foregoing to:

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/s/

Karen Lutterschmidt