

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  
BARBER; KEITH STAMPER; 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

Attorneys for The Episcopal Church  
Brent E. Rychener, Atty. Reg. # 15372

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Case No. 2007CV1971

Div.: COM5

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**SUR-REPLY BRIEF OF THE EPISCOPAL CHURCH IN OPPOSITION TO  
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

The fundamental issue raised by the Episcopal Church's motion for summary judgment, and plaintiff's cross-motion, is whether property held by Grace Episcopal Church is held for the mission of the Episcopal Church and the Diocese under the neutral principles analysis adopted by the Colorado Supreme Court in *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986). Here, at all relevant times until the recent dispute arose, Grace Episcopal Church agreed to be governed by "the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado" (Diocese Exh. C-5), and was an active participant in the life of the Church. When Grace Episcopal Church agreed to be a constituent part of the Episcopal Church, it became bound by the Episcopal Church's rules governing property, and could not thereafter unilaterally disaffiliate from the Church and retain parish property for some other purpose. As we have explained in earlier submissions with the Court, this conclusion is compelled by *Mote*, by Colorado law governing voluntary associations and charitable trusts, and by the First Amendment.

None of the arguments raised in plaintiff's reply brief undermine this conclusion.

**1. Colorado Non-Profit Law Does Not Require the Court to Ignore the Church's Property Rules.**

Plaintiff argues (at 2-3) that Colorado statutes permit the Court to ignore the Church's property rules. As we show below, neither statute that plaintiff cites so provides. Preliminarily, however, we note that plaintiff ignores and does not dispute the fact that while state law permits local churches to incorporate as a way to facilitate their temporal affairs, the corporate form does not shield the local church from the requirements of its denominational structure. See Episcopal Church's Opposition to Plaintiff's Cross-Motion for Summary Judgment at 4 n.2.<sup>1</sup> The Court should reject plaintiff's argument that the Colorado statutes do just that.

First, plaintiff cites Colo. Rev. Stat. § 7-128-101(2) for the proposition that the Episcopal Church's Canons are relevant only if the religious corporation "specifically accedes to them or otherwise adopts them in its Articles of Incorporation." In fact, the statute says only that unless the corporation's articles provide for a contrary structure, all corporate powers are exercised by the corporation's board of directors. That provision does not remotely say that an incorporated Episcopal parish is exempt from the Constitution and Canons of the Episcopal Church if its articles do not specifically accede to them.

Plaintiff also cites § 7-127-106 for the proposition that a corporation's board of directors can change its by-laws at any time. But that statute does not so state; instead, it merely identifies certain items that may be included in a corporation's by-laws. Even so, whether or not a corporation's board can change its by-laws is irrelevant here. The question under *Mote* is whether property held by Grace Episcopal Church is held in trust for the Episcopal Church and

the Diocese. For all of the reasons that the Episcopal Church has previously discussed, once it became an Episcopal parish and agreed to be bound by the Canons of the Church and the Diocese, Grace Episcopal Church could not unilaterally disaffiliate from the Episcopal Church and divert property held in trust for the Church and the Diocese to be used for another purpose. See Brief of the Episcopal Church in Support of its Motion for Summary Judgment at 14-24.

For all of these reasons, the Colorado statutes do not permit Grace Episcopal Church to avoid the rules of the Episcopal Church and the Diocese.

**2. *Barker* Is Inapposite.**

Plaintiff argues (at 3) that *Mote* cites with approval *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker*, 115 Cal. App. 3d 599 (1981). In fact, *Mote* rejects *Barker*, and states that “we find the holding in *Barker* inapplicable and decline to follow it.” *Mote*, 716 P.2d at 109 n.17. The Episcopal Church has also identified other reasons why *Barker* is inapplicable, which reasons plaintiff does not dispute. See Episcopal Church’s Opening Brief on Summary Judgment at 22 (the dispute in *Barker* arose prior to the adoption of Episcopal Church Canon I.7(4); the court in *Barker* does not appear to have been aware of the various other property Canons on which *Mote* relied; and recent California case law shows that California courts do respect internal church rules).

**3. The Diocesan Vice-Chancellor’s Letter is Irrelevant.**

Plaintiff also cites a 2004 letter from a Vice-Chancellor of the Diocese which discusses the difference between a parish’s articles and its by-laws. Even if the letter concerned Grace Episcopal Church (which it does not), the letter is of no consequence here. There is no dispute

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<sup>1</sup> It would also raise serious constitutional concerns if Colorado statutes were used to override the rules of a religious denomination, as noted in the Episcopal Church’s opening brief. *Id.* at 12-14.

that a corporation's articles set forth the corporation's legal form, and the by-laws "state the manner in which the parish will govern itself." Here, at all relevant times the parish's by-laws provided that the parish was "subject to the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado." As discussed above, once Grace Episcopal Church became an Episcopal parish subject to the rules of the Episcopal Church and the Diocese, it could not unilaterally disaffiliate from the Church and divert for some other use the property that it holds in trust for the Church and the Diocese.

**4. *St. James Church Supports the Entry of Summary Judgment in Favor of the Episcopal Church Here.***

Plaintiff argues (at 5) that *St. James Church v. Episcopal Diocese of Long Island*, No. 22564/05 (Mar. 12, 2008) – where the court granted summary judgment in favor of the Episcopal Church and the Diocese of Long Island in a similar property dispute – favors the plaintiff here because that court stated that church property disputes hinge on "how the religious corporation is organized." But immediately after that quote, the court explained that the "two classes of organization which determine religious corporations' control over their affairs" are "congregational and hierarchical." Because the parish involved in *St. James*, like Grace Episcopal Church, was "organized" as a part of the hierarchical Episcopal Church, the court agreed that the Church's property Canons controlled. This holding in *St. James Church* applies with full force here.<sup>2</sup>

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<sup>2</sup> Plaintiff also argues that Colorado has not adopted a statute similar to Section 42-a of New York's Religious Corporations Law, which distinguishes *St. James Church*. In fact, that court found (at 30) that the New York statute "does not conclusively establish the ownership of property," and that instead the Church's Canons were dispositive of that property dispute.

**5. The Initial Decision in *In re Multidistrict Episcopal Church Litigation* is Irrelevant.**

Plaintiff also cites (at 6) *In re Multidistrict Episcopal Church Litigation*, No. CL-2007 024874 (Cir. Ct. Fairfax County, Virginia Apr. 3, 2008), for the proposition that the Episcopal Church is “not hierarchical.” To the contrary, that court – like every court nationwide that has considered this issue – found that the Church *is* hierarchical. See Opinion at 56 n.51 (discussing “the hierarchical form of government in the Episcopal Church”); *id.* at 74 (distinguishing case that “deals with a dispute within a congregational church, as opposed to a hierarchical one”). See also Episcopal Church’s Opposition to Plaintiff’s Cross-Motion for Summary Judgment at 6-9 (explaining hierarchical structure and citing cases).<sup>3</sup>

**CONCLUSION**

The Court should grant the Episcopal Church’s motion for summary judgment and deny plaintiff’s cross-motion for summary judgment.

Respectfully submitted this 30<sup>th</sup> day of April, 2008.

  
s/ Signature on file

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<sup>3</sup> Plaintiff also argues that this decision shows that “the hierarchical approach [is] inapplicable.” Plaintiff does not explain what the “hierarchical approach” is, or why that decision renders it inapplicable. The Virginia court merely found that a party had properly invoked a unique Virginia statute that purports to apply if there is a “division” in a church. Colorado has no similar statute. Further, the Virginia court has yet to decide whether the statute is even constitutional, nor has it resolved the property ownership issues in that case.

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*\* Document was filed electronically. See C.R.C.P. 121, §1-26. Original document in file.*

**CERTIFICATE OF SERVICE**

I certify that on this 30<sup>th</sup> day of April, 2008, a true and correct copy of the foregoing **SUR-REPLY BRIEF OF THE EPISCOPAL CHURCH IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was served, via LexisNexis file and serve as follows:

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