

El Paso _____ County, CO <u> X </u> District _____ County Court address: 20 East Vermijo Ave. Colorado Springs, CO 80903 Phone Number: (719) 448-7650	Court Use Only
Plaintiff: GRACE CHURCH & ST. STEVENS Vs Defendant: THE BISHOP AND DIOCESE OF COLORADO, ET. AL.	
	Case Number: 07 CV 1971 Division 5 Courtroom 501
ORDER re: MOTIONS ARGUED AT MAY 2, 2008 HEARING	

All parties have filed numerous motions. In total, over six volumes of affidavits, correspondence and documents have been filed over the last year in support of the various issues that will ultimately need to be addressed. I granted oral argument on several motions. The following order deals with those issues:

1. Individual Counterclaim Defendant's Motion to Dismiss

In the recent past, the Defendants ECE filed an amended counterclaim against individual vestry members of the Plaintiff, as well as Reverend Armstrong. The individuals filed a motion to dismiss the claims, arguing non-profit director immunity. The ECE's response is: 1) that there is no 1973 corporation; or 2) if there is, the Bishop fired them as vestry members and they no longer have immunity.

Since both parties have relied upon numerous documents to resolve the issue, it must be treated as one for summary judgment, rather than a strict motion under Rule 12(b). All parties recognize that in order prevail in a summary judgment motion, it must be first demonstrated that no material facts are in dispute. It must be clear that the moving party is entitled to judgment as a matter of law.

Having reviewed the hundreds of pages of documents relied upon by one party or the other, I conclude that there are very few, if any, material facts in this lawsuit that are NOT in dispute. I conclude that the 1973 corporation is recognized by the State of Colorado as a valid, non-profit corporation. Therefore, that incorporation gives rise to a new corporate identity. Nothing in the corporate documents indicates that it merely reactivated or reinstated the 1923 corporation. The documents and multiple briefs don't resolve factually, or legally,

what happened to the 1923 corporation. Nor do they resolve factually or legally whether the 1973 corporation was conveyed legal title to any property, whether it was the beneficiary of any trusts or whether any or all church "business" was conducted in that non-profit corporation. Nor, most importantly, do they necessarily resolve whether the members of the church continued to "accede" to the Canons of the Church, as was found to be the case in Mote. Each party has submitted affidavits from 1973 members and incorporators which merely contradict one another.

This case seems to have many factual similarities to Mote. Unlike Mote however, the ECE took no action against the local church when the 1973 articles were filed. That may be because the ECE wasn't aware at the time of the new filing. In Mote, the Court found that 1976 amendments to the articles of incorporation that purported to sever ties with PECUSA were of no legal affect, since they were created without the permission of PECUSA. However, that suit was filed roughly contemporaneously with the creation of the amended articles. In this case, the new corporation has been in effect and doing "business" for 35 years.

The 1973 Corporation articles do not mention PECUSA, but do indicate that all matters are vested in the Rector, "**subject to** the Rubrics of the Book of Common Prayer, or liturgical forms authorized by the Church, the **Canons of the Church**, and the godly counsel of the Bishop". The ECE argues that the creation of the new corporation action was either a nullity or a reinstatement of the 1923 Corporation. The Plaintiffs argue that the 1923 Corporation was allowed to expire and that the new Corporation never "acceded" to the Canons. One factual question, never addressed, is whether Grace Church and St. Stevens, by acceding to the "general church" in 1923 agreed that it would not form a new corporation or allow the old one to lapse, without the consent of the Bishop.

Neither party is entitled to judgment as a matter of law under summary judgment analysis. Material facts regarding the conduct of church business, the creation of non-profit entities, the relation of the 1923 organization to the 1973 organization, the manner in which property was conveyed and used by the church and numerous others are clearly in dispute. The potential liability of individual vestry members (directors) hinges on whether the Bishop had the authority to terminate them in April 2007. If so, they don't have the benefit of non-profit director immunity. Since the counterclaims otherwise state claims upon which relief could be granted, the motion to dismiss the claims against individual vestry members is DENIED. Likewise, the ECE's cross-motion to strike the director immunity defense, is DENIED.

2. Rev. Armstrong Motion to Quash service:

The ECE argues that the Plaintiffs are merely an association that no longer has anything to do with the corporate entity "Grace Church and St. Stevens". They therefore have purported to serve Rev. Armstrong as the representative of an unincorporated organization. Rev. Armstrong has moved to quash the service of process. I conclude that is unnecessary and premature until after all evidence has been presented. However, no responsive pleadings need be filed on behalf of an "unincorporated association", until further order.

3. Rev. Armstrong Motion to Dismiss Counter-Claim and Third-party Defense

This motion is denied under summary judgment standards. Facts related to these claims are clearly in dispute.

4. ECE's motions for determination of status of Plaintiffs:

This motion must also be denied because all material facts related to those determinations are in dispute.

5. Suppression of Derry Adams opinion:

The question of who owns the legal privilege will be decided along with the other facts in this case. Her legal opinion only becomes relevant, if at all, in the trial of individual liability and damages.

CONCLUSION:

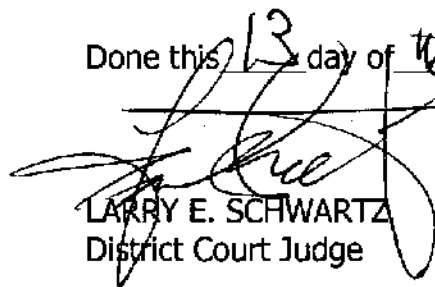
This dispute cannot be resolved by summary judgment. There is virtually no agreement as to the facts that would make resolution as a matter of law possible. While it is similar to Mote, there are clearly factual differences that are significant. It is also significant that cases such as Mote, Serbian and Levitt were resolved only after trial. That is because each so-called church schism case is so factually specific.

The Mote Court created in Colorado a "neutral analysis" for property disputes such as this. No neutral analysis can be conducted until the relevant facts are known. It requires that a Court look first to documents of conveyance and other "relevant" documents to determine whether the "general church" has rights of ownership in the property. If that establishes vested rights of ownership or control, then there is no need to assess how property of the local church is controlled. Otherwise, a Court is to engage in a much broader analysis of how the church property is used and controlled. That analysis must take into account how legal title is held and how property has been historically controlled.

Likewise, the Plaintiffs factually dispute whether they are still under the control of the ECE. That can be determined only after a full evidentiary hearing.

The complaint in this case seeks declaratory judgment of the status of the parties to this case. The parties are now seeking damages against one another. It appears that there will have to be a bifurcation of issues. Unless I am convinced otherwise by counsel, the trial of issues relating to the status of the parties and property ownership will be to the Court. The result of that trial and the declaration of rights will give rise to whether one party or another is entitled to damages. Since the parties have requested a jury, the issues of liability to one another and damages will be submitted to a subsequent jury.

Done this 13 day of May, 2008



LARRY E. SCHWARTZ
District Court Judge

cc:
Greg Walta
Martin Nussbaum
Bruce Wright
Dennis Hartley