

El Paso County, CO <u> X </u> District ___ County Court address: 20 East Vermijo Ave. Colorado Springs, CO 80903 Phone Number: (719) 448-7650	
Plaintiff: GRACE CHURCH AND SAINT STEPHENS, ET. AL. Vs Defendant: THE BISHOP AND DIOCESE OF COLORADO, ET. AL.	Court Use Only
	Case Number: 07 CV 1971 Division 5 Courtroom 501
ORDER re: RIGHT TO JURY TRIAL	

When I entered the order in this case denying summary judgment, I indicated that I felt that the trial of the case had to be bifurcated. I also indicated that I would consider viable alternatives. Both parties have filed briefs and object to two trials. The Plaintiff argues that they are entitled to a single jury trial on all matters while the Defendants argue that we should create a single case-within-a-case procedure whereby we would select a jury, present all evidence to them, I would make legal determinations mid-trial regarding who has the right to the "Church property" and those determinations would then create the standard against which the tort claims would be determined by the jury.

Right to a Jury Trial

The Plaintiff did not demand a jury in the complaint. Rather, it complained that *"the Diocese has purposely and publicly attempted to cast clouds on the legal title to Grace Church and the title to its real and personal property, including the use of numerous press releases and communications with members of Grace Church... The actions of the Diocese have purposely caused doubt in the public as to who is the proper owner of church property and has needlessly impeded Grace Church's ability to provide a quiet and peaceful place of worship..."* In its demand for relief it asks for the **"Entry of a Declaratory Judgment that all real and personal property of the Parish belongs to the local church, free of any claims of ownership by the Bishop and Diocese of Colorado."**

The Defendants filed a counter-claim in which they likewise sought declaratory relief. They ultimately have amended counterclaims to include claims for damages against individuals within the Plaintiff organization. The Plaintiff then filed a jury demand in which it "demands a Jury trial on all factual issues that may form the basis of a damages claim". Some of those individuals have

also filed individual tort claims against members of Defendants' organizations. The individual counterclaim defendants have also demanded a jury. The Plaintiff relies on Rule 38(a), asserting that this is a claim for specific real and personal property.

The right to a jury trial in civil cases in this state exists only when specifically provided by constitution, statute, or by rule of the court. Kaitz v. District Court, 650 P.2d 553 (Colo. 1982). "To determine when a party is entitled to a jury trial, the original complaint fixes the nature of the suit. Citicorp Acceptance Co. Inc. v. Sittner, 772 P.2d 655, 657 (Colo. App. 1989). The fact that declaratory relief is sought is not determinative, in and of itself, of the type of action brought. Baumgartner v. Schey, 353 P.2d 375 (1960). If the plaintiff's complaint joins or commingles legal and equitable claims, the court must determine whether the **basic thrust** of the action is equitable or legal in nature. Miller v. Carnation Co., 516 P.2d 661 (1973).

This is not a case where the basic thrust of the complaint is for the recovery of specific real or personal property. On the contrary, the Plaintiff has remained in absolute possession and control of the property throughout this entire action. Rather, the Plaintiff seeks a declaration that it owns all Church property, free and clear of any adverse claims of ownership or other legal interest from the Diocese. The basic thrust of this action is that either the title to the property must be quieted, or by logical extension, if the Bishop has any ownership interest, that it be partitioned. The Plaintiff clearly complains that it is in possession of the property but that certain claims being made by the Bishop are interfering with its use and enjoyment of the property. This is a classic example of a situation where parties seek to "quiet" the adverse claims to the property. The basic thrust of the complaint is a Quiet Title Action and should be treated as such. As a Quiet Title action, the matter is one in equity and there is no entitlement to a jury trial. See e.g. Federal Deposit Ins. Co. v. Mars, 821 P.2d 826 (Colo. App. 1991). See also Beach v. Beach, 74 P.3d 1 (Colo. 2003) regarding the equitable nature of partition actions.

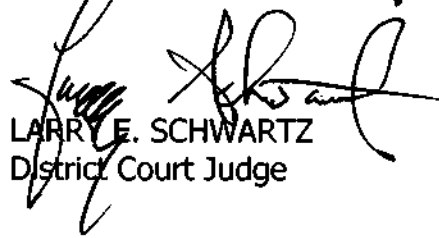
Of equal concern to the Court is that contrary to the Plaintiff's argument, there would be nothing simple about instructing the jury in this case if we attempted to submit this quiet title to a jury. Assuming that this case is to be resolved by use of the Mote decision, the prospect of properly instructing the jury on the principals of "neutral analysis", trust law, nonprofit corporations, bequests and the like and expecting them to reach a decision based upon those instructions is impossible to imagine.

I still conclude that the parties are entitled to a jury determination of the various claims for damages. Thus, a procedure involving bifurcation and a second trial is a necessity. I am not convinced by the Defendants' arguments

that bifurcation can occur in a single trial. Rather, I will enter a (Quiet Title or partition) decision that resolves the issue of who owns the church properties and then, if the parties still wish to prosecute damage claims against one another, a jury trial date can be selected. I will instruct the jury as to what my decision was and the parties will then be allowed to pursue their various tort theories as in any other "injury" trial.

Anticipating the next issue, I would generally suggest that the parties not pursue discovery on the individual tort issues until I have entered a decision on the ownership and control matters. It seems to me that waiting until after the initial trial would save clients time and money. On the other hand, if there is a compelling reason to pursue discovery now, I will permit it. We can resolve discovery at the next status conference. Likewise, if the parties are intent on pursuing individual damage claims they may set the second trial date now.

Done this 5 day of Jan, 2008



LARRY E. SCHWARTZ
District Court Judge

cc:
Dennis Hartley
Martin Nussbaum
Greg Walta
Bruce Wright
Brent Rychener