

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

CALVARY EPISCOPAL CHURCH,
PITTSBURGH, PENNSYLVANIA, a
Pennsylvania Non-Profit Corporation, et al.

CIVIL DIVISION

No. GD-03-020941

Plaintiffs,

REQUEST TO SPECIAL MASTER

v.

THE RIGHT REVEREND ROBERT
WILLIAM DUNCAN, Bishop of The Episcopal
Diocese of Pittsburgh, et al.

FILED ON BEHALF OF:

Calvary Episcopal Church,
Pittsburgh, Pennsylvania; The Reverend Dr.
Harold T. Lewis; Philip Richard Roberts; and
Herman S. Harvey

Defendants.

Counsel for these Parties:

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ALSO FILED ON BEHALF OF:

The Episcopal Diocese of Pittsburgh of the
Episcopal Church of the United States of
America

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CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

REQUEST TO SPECIAL MASTER

AND NOW come Calvary Episcopal Church, The Reverend Dr. Harold T. Lewis, Philip Richard Roberts and Herman S. Harvey, and the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America, by their undersigned counsel, and state as follows:

1. In accordance with the Court's Order of September 17, 2008, one of the roles of the Special Master is to "file periodic reports to the Court and advise the Court as to any alleged violations of the Stipulation and Order of October 14, 2005."

2. On October 14, 2005, this Court entered, pursuant to Stipulation of the Parties, an Order (the "Order") prohibiting Robert Duncan and the other defendants from taking real and personal property ("Property") held, or administered, by the Diocese with them outside the jurisdiction and authority of the Episcopal Church in the United States of America ("The Episcopal Church"). As reflected in Paragraph 1 of the Stipulation and Court Order of October 14, 2005 ("Paragraph 1").

"1. Property, whether real or personal (hereinafter "Property"), held or administered by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter "Diocese") for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in the Episcopal Church of the United States of America. For purposes of this paragraph, Property as to which title is legitimately held in the name of a parish of the Diocese shall not be deemed Property held or administered by the Diocese." (Exhibit 1).

3. The plain language of Paragraph 1 makes clear that the only Diocese authorized to hold and administer the funds subject to Paragraph 1 is “the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.”

4. On October 4, 2008, Robert Duncan and his followers formally voted to separate themselves from the Episcopal Church of the United States of America and to join a foreign organization called the Anglican Province of the Southern Cone. *See* Exhibit 2 (Press releases declaring separation from the Episcopal Church of the United States of America).

5. Whatever Robert Duncan and his followers may claim to be, they cannot claim to be “the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America.”

6. Accordingly, arrangements must be promptly made to assure that funds subject to Paragraph 1 are preserved for the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America and are not used for the benefit of Robert Duncan and his new organization. Based on the most recent information provided to Plaintiffs, we believe that funds totaling approximately \$20 million are subject to Paragraph 1.

7. As shown by undisputable facts, the Order entered on October 14, 2005, contemplated that Robert Duncan and various followers, including members of various parishes, might seek to separate from the Episcopal Church of the United States of America, and it expressly prohibited them from continuing to hold or use funds and property subject to the Order upon such separation.

8. First, newspaper reports prior to the Stipulation and Court Order, attached as Exhibit 3, established that Robert Duncan might attempt to separate the entire membership of the Diocese from the Episcopal Church of the United States of America.

9. Second, the separation of Robert Duncan from the Episcopal Church of the United States of America was clearly contemplated in the original litigation prior to entry of the October 14, 2005 Court Order. *See also* Exhibit 4, Transcript of Hearing of March 17, 2004, pp. 60-63, where this Court discussed this eventuality wherein Robert Duncan has abandoned The Episcopal Church but continues to use the assets.) As reflected at the December 22, 2006 Hearing on Plaintiffs' Request for Expedited Discovery, the continued use of Diocesan Property by a parallel organization which was no longer part of the Episcopal Church of the United States of America would violate the October 14, 2005 Court Order. (*See* Transcript of December 22, 2006 Hearing on Request for Expedited Discovery, pp. 16-17, attached as Exhibit 5.)

10. Third, the record of negotiations leading to the Order conclusively demonstrates that Defendants not only knew that the Order would prohibit them from continuing to use Diocesan property upon separation from the Episcopal Church of the United States of America, but also that Defendants specifically agreed to this prohibition. Thus, on July 26, 2005, then counsel for Robert Duncan and the other defendants, who proposed the language that became part of Paragraph 1, unambiguously stated in a memorandum (Exhibit 6):

“It is my interpretation and understanding that the above language would prohibit the transfer or diversion of any Diocesan assets or property out of the Diocese or for any purpose not presently dedicated regardless of what circumstances might arise – including, by way of example:

- all parishes leaving the Diocese [or all excepting Calvary];
- a change in the National Church landscape giving rise to a competing entity to ECUSA, with which entity all of the Diocese Parishes [or all except Calvary] would align themselves, etc.”

Exhibit 7 is a document with handwriting by plaintiffs' counsel which modified defendants' proposed language by adding the phrase “the Episcopal Church of the United States of America” as part of the definition of the Diocese that would hold the real and personal property in question,

regardless of the separation of Robert Duncan or others from the Episcopal Church of the United States of America. This modification was made so that there could be no doubt as to which “diocese” would hold the real and personal property in question in the event Robert Duncan and his followers became part of an organization other than the Episcopal Church of the United States of America. Plaintiffs’ counsel’s modification was accepted and became the language that was used in Paragraph 1 of the Stipulation and Court Order of October 14, 2005. Subsequently, the word “Episcopal” was even added before the word “Diocese” so the entity entitled to hold the property subject to Paragraph 1 is “the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter ‘Diocese’).” There can be no dispute that there is only one such diocese. There also can be no dispute that “the National Church landscape” has now changed so that Robert Duncan has not only left the Episcopal Church of the United States of America but is seeking to establish a competing church entity. Exhibit 2.

11. Fourth, Defendants’ pleading in this action subsequent to entry of the Order confirms the understanding of those who negotiated the Stipulation and Court Order that Paragraph 1 precluded continued use of the subject funds and property upon separation from the Episcopal Church of the United States of America. Thus, in Defendants’ Answer and New Matter to Plaintiffs’ Petition for Enforcement of Settlement, dated January 9, 2007, Defendants (via counsel who had negotiated the Order on their behalf) alleged that there had been no violation of the Order because “[t]he Diocese is a constituent member of The Episcopal Church of the United States (hereinafter “TEC”), has not withdrawn from TEC, and continues to be a constituent member of TEC.” Answer and New Matter to Plaintiffs’ Petition, ¶ 2.

12. In short, it is hard to imagine a case where the meaning and intent of the Order was more thoroughly documented and where its intended application was more clear than in the present situation. The Order, which was negotiated by the parties and approved by the Court, unquestionably intended to protect the subject property and funds from separation from the Episcopal Church of the United States of America. (On the other hand, and in hopes of avoiding the continued expense of litigation, the Order allowed Robert Duncan to use for a number of years — until his separation from the Episcopal Church of the United States of America — assets of the Diocese, including his own salary, for his efforts to oppose the Episcopal Church of the United States of America.)

13. Robert Duncan was deposed (that is, removed) as a bishop of the Episcopal Church on September 19, 2008, by the Presiding Bishop of the Episcopal Church, following a vote of the House of Bishops consenting to the deposition. *See* Exhibit 8. Mr. Duncan and his followers claim he was "re-elected" on November 7, 2008 as bishop of a diocese that is not part of the Episcopal Church. (*See* article from publication controlled by Mr. Duncan, attached as Exhibit 9.)

14. Shortly after Mr. Duncan's followers voted on October 4, 2008 to separate themselves from the Episcopal Church, the Presiding Bishop of the Episcopal Church recognized those in leadership of the Diocese who had not voted to separate themselves from the Episcopal Church as being the rightful Standing Committee and Ecclesiastical Authority of the Diocese. This Standing Committee presented their recognition documentation to the attorney for Mr. Duncan and his followers, and requested that they "take no action that is inconsistent with this determination," that they "preserve and protect all assets and property of the Episcopal Diocese

of Pittsburgh," and that they begin "an orderly transition of control to the rightful Standing Committee or their designees." Exhibit 10.

15. It is now time for the Order to be enforced and any use by Robert Duncan and his followers of the Property of The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America must be terminated. Defendants' use of the Property, to the full extent it is occurring, violates Paragraph 1 and threatens substantial and irreparable harm.

16. Further, the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America must be granted access to, and control over, the assets in question so that it can move forward with its efforts.

17. We believe that the Special Master has been provided with a description of the Property which is subject to Paragraph 1 of the Stipulation and Court Order of October 14, 2005. The substantial amounts in the endowment fund and checking account are, we submit, most vulnerable to use in violation of Paragraph 1 of the Stipulation and Court Order of October 14, 2005. To date, Robert Duncan and his followers have not turned over to the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America control of such Property subject to Paragraph 1 of the Stipulation and Court Order, which failure to turn over control violates Paragraph 1 of the Stipulation and Court Order. Frankly, Robert Duncan and his followers have not even been willing to provide mailing lists for the entire Diocese.


18. At this time, we are only addressing the violations of Paragraph 1 of the Stipulation and Court Order because of the immediacy of the need to deal with those. Submission of this Request does not in any way suggest or concede that other portions of the Stipulation and Court Order are not being violated.

19. We reserve the right to support this request for relief with additional facts and argument.


WHEREFORE, absent agreement by Robert Duncan and his followers to turn over control of the Property subject to Paragraph 1 of the Stipulation and Court Order, we respectfully request that the Special Master report to the Court the violations of Paragraph 1 set forth hereinabove, and recommend:

1. The immediate termination of any use by Robert Duncan and his followers of the Property subject to Paragraph 1 of the Stipulation and Court Order of October 14, 2005; and
2. The provision of immediate access to and control by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America of the endowments, checking accounts, and other Property subject to Paragraph 1 of the Stipulation and Court Order of October 14, 2005.

Respectfully submitted,

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Pittsburgh, The Reverend Dr.
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Roberts, and Herman S. Harvey

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CALVARY EPISCOPAL CHURCH, PITTSBURGH,
PENNSYLVANIA, a Pennsylvania Non-Profit
Corporation; ST. STEPHEN'S PROTESTANT
EPISCOPAL CHURCH OF WILKINSBURG,
PENNSYLVANIA, a Pennsylvania Non-Profit
Corporation

THE EPISCOPAL DIOCESE OF PITTSBURGH, an
unincorporated association, by Calvary Episcopal Church,
Pittsburgh, Pennsylvania, as Trustee Ad Litem;

THE REVEREND DR. HAROLD T. LEWIS, Rector,
Calvary Episcopal Church, Pittsburgh, Pennsylvania;
PHILIP RICHARD ROBERTS, Senior Warden, Calvary
Episcopal Church, Pittsburgh, Pennsylvania; and
HERMAN S. HARVEY;

Plaintiffs,

v.

THE RIGHT REVEREND ROBERT WILLIAM
DUNCAN, Bishop of The Episcopal Diocese of
Pittsburgh; THE RIGHT REVEREND HENRY
SCRIVEN, Assistant Bishop of The Episcopal Diocese
Pittsburgh;

BABATUNDE FAPOHUNDA, ROBERT MANSON,
JAMES MOORE, JOHN MORGAN, LYNN
PATTERSON, DONALD PEPLER, THOMAS RAMPY,
BRUCE G. SEILING, JOHN STEVENSON, RICHARD
THOMAS, and DOUGLAS WICKER, all of whom are
members of the Board of Trustees of The Episcopal
Diocese of Pittsburgh;

THE REV. CATHERINE BRALL, KATHLEEN
MARKS, THE REV. J. DOUGLAS McGLYNN, THE
REV. SCOTT T. QUINN, and WILLIAM ROEMER, all
of whom are members of the Standing Committee of The
Episcopal Diocese of Pittsburgh; and THE EPISCOPAL
DIOCESE OF PITTSBURGH, an unincorporated
association;

Defendants.

CIVIL DIVISION

No. GD-03-020941

STIPULATION BY COUNSEL

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Pennsylvania, et al., Plaintiffs

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