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Court Rules Against Local Parish in Schism With Episcopal Church From Staff and Wire Service Reports

The state's high court ruled yesterday that three Southern California parishes which left the Episcopal Church over its ordination of an openly-gay minister had lost ownership of their church buildings and property by disaffiliating themselves from the church.

The California Supreme Court affirmed the Fourth District Court of Appeal's conclusion that the St. James Church in Newport Beach, All Saints Church in Long Beach and St. David's Church in North Hollywood were bound by the Episcopal Church's rules, which included specific language about property ownership.

The 2.1 million-member national Protestant Episcopal Church is divided geographically into dioceses, and subdivided into parishes and missions.

In 1947, members of the St. James mission sought permission from the Los Angeles Diocese to organize as a parish. The members' handwritten

application vowed that the parish would "forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, and of his successor in office, the Constitution and Canons of the [Episcopal Church], and the Constitution and Canons of the Diocese of Los Angeles."

The governing canons imposed substantial limitations on the parish's use of the property and retained authority over the property in the church.

'Constituent Part'

The parish then filed its articles of incorporation stating that the corporate entity was formed "[t]o establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles."

Subsequently, the Bishop of the Protestant Episcopal Church in Los Angeles deeded the property on which the St. James Parish building stands to the

parish for consideration of “less than \$100.00.”

Four dioceses and about 100 individual churches split from the church following the ordination of an openly gay bishop in New Hampshire in 2003.

The Los Angeles Diocese and various individuals, including a dissenter from the decision by St. James Parish to disaffiliate, sued persons connected with St. James Parish over ownership of property deeded to St. James after the parish broke away. The church intervened in support of the diocese and filed its own complaint as well.

The parish moved to strike the suit as a strategic lawsuit against public participation, and Orange County Superior Court Judge David C. Velasquez granted the motion without leave to amend. Velasquez also sustained the parish’s demurrer to the church’s complaint in intervention and dismissed that action.

After the appellate court consolidated the church and diocese’s appeals and reversed, the Supreme Court granted review.

Property Dispute

Writing for the appellate court, Justice Ming W. Chin explained that the dispute between the parish and diocese did not arise from the parish’s protected activity of expressing disagreement which church authority, but rather was a property dispute.

“The additional fact that protected activity may lurk in the background—and may explain why the rift between the parties arose in the first place—does not transform a property dispute into a SLAPP suit,” Chin wrote.

Although secular courts cannot decide questions of religious doctrine, pursuant to *Jones v. Wolf* (1979) 443 U.S. 595, Chin reasoned that civil courts may resolve non-ecclesiastical disputes within a hierarchical church organization on the basis of “neutral principles of law,” such as property deeds, articles of incorporation, church constitutions, canons, and rules, and relevant statutes concerning church property.

Chin noted that the parish had agreed to be part of the church and be bound by the church’s governing instruments, and those

instruments were amended by the church after the parish was established to provide that any real and personal property held by any parish was held in trust for benefit of the church.

Since the First Amendment requires court to give effect to provisions and agreements of religious associations and the parish had bound itself to the constitution, laws, rules and regulations of the church, Chin concluded that when the parish disassociated itself from the church, the parish property reverted to the church.

Chief Justice Ronald M. George, joined by Justices Marvin R. Baxter, Kathryn Mickle Werdegar, Carlos R. Moreno and Carol A. Corrigan concurred, but Justice Joyce L. Kennard concurred in the result only.

Kennard suggested that the outcome reached by the majority was correct, not under “neutral principles of law,” but rather under Corporations Code Sec. 9142(c)(2), which permits the assets of a religious corporation to be made subject to a trust if the governing instruments of a superior religious body so expressly provide.

The statute, Kennard argued, does not state a “neutral principle of law,” because it applies only to religious corporations, and “[n]o principle of trust law exists that would allow the unilateral creation of a trust by the declaration of a nonowner of property that the owner of the property is holding it in trust for the nonowner.”

Because the church had declared that all property held by a parish was held in trust for a church, and civil courts must accept decisions made at the highest level of the church hierarchy, Kennard concluded that the church owned the parish property.

Bishop John Bruno, head of the 85,000-person Los Angeles Diocese, said he was “overjoyed” with the ruling and hoped it would prompt reconciliation talks with the three churches.

“I’m a Christian and I believe there is always the possibility of reconciliation,” Bruno said. “It has been devastating for both sides.”

But Eric Sohlgren of Payne & Fears, which represented St. James, promised to continue fighting for control of the parish’s

property despite yesterday's adverse ruling.

"St. James holds the deed free and clear," Sohlgren maintained. "The Episcopal Church hasn't contributed a dime to St. James in 50 years."

Similar legal battles are expected in Pittsburgh, Fort Worth, Texas, and Quincy, Ill., where dioceses recently voted to split from the national church.

On Dec. 19, a Virginia judge citing a Civil War-era state law there ruled in favor of 11 congregations in their split from the main church.

John R. Shiner and Brent E. Rychener of Holme Roberts & Owen, Frederic D. Cohen and

Jeremy B. Rosen of Horvitz & Levy represented the Los Angeles Diocese and affiliated plaintiffs.

Sohlgren, together with Benjamin A. Nix and Daniel F. Lula of Payne & Fears represented St. James Parish with Robert A. Olson of Greines, Martin, Stein & Richland.

David Booth Beers, Heather H. Anderson, Jeffrey David Skinner and Matthew J. Wilshire of the Washington D.C. firm Goodwin Procter represented the church.

The case is *Episcopal Church Cases*, 09 S.O.S. 35.

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