

THE EPISCOPAL CHURCH, et al.	)	IN THE DISTRICT COURT OF
	)	
VS.	)	TARRANT COUNTY, TEXAS
	)	
FRANKLIN SALAZAR, et al. <sup>1</sup>	)	141 <sup>ST</sup> DISTRICT COURT

FILED  
 TARRANT COUNTY  
 MAR 25 PM 3:21  
 CLERK

**LOCAL EPISCOPAL PARTIES' MOTION TO COMPEL**<sup>2</sup>

TO THE HONORABLE COURT:

Pursuant to Texas Rule of Civil Procedure 215.1, Plaintiffs the Local Episcopal Parties file this motion to compel Defendants to respond fully to the Local Episcopal Parties' First Set of Interrogatories and First Requests for Production of Documents<sup>3</sup> and would respectfully show the following:

**I. Introduction**

When Defendants left The Episcopal Church and its constituent Diocese of Fort Worth, Defendants took all Diocesan records with them. On February 8, 2011, this Court signed its Amended Order granting in part The Episcopal Church's Motion for Summary Judgment and the Local Episcopal Parties' Amended Motion for Partial Summary Judgment and denying Defendants' Motion for Partial Summary Judgment. The Court's order, in effect, means that the records and the information the Local Episcopal Parties are seeking belongs to the Local Episcopal Parties. At the February 8th hearing that led to the Court's summary judgment order, Defendants' counsel told the Court that Defendants were *"going to work out with [Plaintiffs]"*

<sup>1</sup> The style has been shortened at the request of the Clerk's office. It does not imply that any parties are omitted or dropped from the case.

<sup>2</sup> The "Local Episcopal Parties" are the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells.

<sup>3</sup> True and correct copies of the Local Episcopal Parties' requests and Defendants' responses are attached hereto as Exhibits 1A through 1D.

*presenting the documents and . . . the bank records, whatever they need to see . . . , that's for discovery.*"<sup>4</sup> Since that time, while Defendants produced certain real property and financial records, they have otherwise sought to avoid providing information about church property that, under this Court's summary-judgment order, belongs to the Local Episcopal Parties and their congregations. As the latest step in this strategy of evasion, Defendants have failed to adequately respond to and raised baseless objections to virtually all of the Local Episcopal Parties' requests for discovery.

Among other things, Defendants object to the Local Episcopal Parties' discovery requests on the grounds that the requests seek irrelevant information. However, Defendants have worked irreparable harm during this litigation, including purporting to encumber church property with a **\$3,500,000 lien** despite having no legal right to the property.<sup>5</sup> Accordingly, this discovery is relevant in that it will enable the Local Episcopal Parties to protect themselves from further misuse of church property. In sum, Defendants' objections represent their latest attempt to circumvent this Court's summary-judgment ruling in hopes that the Court will grant severance and stay the remainder of this action so that Defendants may continue to improperly use and dissipate church property for the mission of a church other than The Episcopal Church. The Local Episcopal Parties therefore respectfully request that the Court overrule Defendants' objections and compel Defendants to respond to the Local Episcopal Parties' requests fully.

## **II. Local Episcopal Parties' First Set of Interrogatories**

Defendants' response to each of the Local Episcopal Parties' interrogatories is evasive and incomplete. In order to avoid providing information to which the Local Episcopal Parties

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<sup>4</sup> Tr. of Hr'g on Defs.' Objections to Form of Summ. J. Orders at 40:11-16 (2/8/11).

<sup>5</sup> Ex. 2, Jude Funding Transaction, Oct. 13, 2010 (purporting to convey deed of trust and a security interest in property owned by the Corporation of the Episcopal Diocese of Fort Worth to a creditor incorporated and controlled by one of the Defendants in order to secure a \$3,500,000 note).

are entitled under the Texas Rules of Civil Procedure, Defendants assert improper objections without sufficient detail or support. This Court should overrule each of these objections and compel Defendants to answer all of the Local Episcopal Parties' interrogatories fully.

**1. Defendants' Objection to Local Episcopal Parties' First Set of Interrogatories in Their Entirety**

Defendants object to the Local Episcopal Parties' First Set of Interrogatories in their entirety on the grounds that such interrogatories require more than twenty-five responses from Defendants. The Texas Rules of Civil Procedure impose a limit of twenty-five interrogatories and count each discrete subpart as a separate interrogatory.<sup>6</sup> However, the Local Episcopal Parties served only eleven interrogatories, and Defendants have not identified any discrete subparts that would cause the Local Episcopal Parties to exceed the limit. The mere fact that the interrogatories involve multiple parties and multiple pieces of property does not transform a single interrogatory into one involving discrete subparts. Indeed, "[a] 'discrete subpart' is one that calls for information that is not logically or factually related to the primary interrogatory."<sup>7</sup> Because each of the interrogatories here involves a single logical and factual inquiry, Defendants' objection should be overruled.

**2. Defendants' Relevance Objections**

Defendants object to Interrogatories Nos. 2, 6, 7, 8, and 9, asserting that they are "irrelevant to any material issue in this cause and [are] not calculated to lead to the discovery of evidence admissible upon the trial of this cause."<sup>8</sup> Rule 192.3 provides that a party may obtain discovery "regarding any matter that is not privileged and is relevant to the subject matter of the

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<sup>6</sup> TEX. R. CIV. P. 190.3(b)(3).

<sup>7</sup> *In re SWEPI L.P.*, 103 S.W.3d 578, 589 (Tex. App.—San Antonio 2003, orig. proceeding) (citing TEX. R. CIV. P. 190.3, cmt. 3).

<sup>8</sup> Ex. 1B, Defs.' Resp. to Local Episcopal Parties' First Set of Interrogs. at 2-4.

pending action.”<sup>9</sup> “The phrase ‘relevant to the subject matter’ is to be ‘liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial.’”<sup>10</sup> Additionally, “the burden of pleading and proving that the requested evidence is not relevant falls upon the party seeking to prevent discovery.”<sup>11</sup> Under the Texas Supreme Court’s deferential standard and especially since the records and information at issue belong to the Local Episcopal Parties, Defendants’ objections are unfounded and represent an effort to avoid producing information to which the Local Episcopal Parties are legally entitled.

Under the Court’s summary judgment ruling, the Local Episcopal Parties control the Episcopal Diocese of Fort Worth and the Corporation of the Episcopal Diocese of Fort Worth and therefore properly control all records, all information, and all real and personal property belonging to the Diocese and Corporation (including that of the Diocese’s parishes and missions). Accordingly, information about the use of Diocesan property and those who purported to control it—the very information requested by Interrogatories Nos. 2, 6, 7, 8, and 9—is clearly relevant. Indeed, this information is particularly relevant in light of the fact that Defendants have irreparably harmed church property by, for example, encumbering it with a **\$3,500,000 lien**.<sup>12</sup> Because Defendants cannot meet their burden of proving that the information sought is irrelevant, the Court should overrule these objections.

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<sup>9</sup> TEX. R. CIV. P. 192.3.

<sup>10</sup> *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009) (citing *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990)).

<sup>11</sup> *Tjernagel v. Roberts*, 928 S.W.2d 297, 302 (Tex. App.—Amarillo 1996, orig. proceeding) (citing *Valley Forge Ins. Co. v. Jones*, 733 S.W.2d 319, 321 (Tex. App.—Texarkana 1987, orig. proceeding)).

<sup>12</sup> Ex. 2, Jude Funding Transaction, Oct. 13, 2010 (purporting to convey deed of trust and a security interest in property owned by the Corporation of the Episcopal Diocese of Fort Worth to a creditor *incorporated and controlled by one of the Defendants* in order to secure a \$3,500,000 note).

### 3. Defendants' Objections that the Local Episcopal Parties' Requests are Overbroad and Burdensome

Defendants object to Interrogatories Nos. 2, 4, 5, 10, and 11 on the grounds that they are overly broad, burdensome, and oppressive. Breadth and burdensomeness alone are not proper grounds for objection to a discovery request. Defendants must prove that the Local Episcopal Parties' requests impose an *undue* burden.<sup>13</sup> Moreover, “[a] party resisting discovery . . . cannot simply make conclusory allegations that the requested discovery is unduly burdensome or unnecessarily harassing”; rather, the party must produce some evidence to support its assertion.<sup>14</sup> Here, Defendants' objections should be overruled because Defendants have provided no evidence that the Local Episcopal Parties' requests are unduly burdensome.<sup>15</sup>

Each of Defendants' objections merely asserts a conclusory allegation that the interrogatories are overly broad and burdensome. Defendants provide no evidence to demonstrate that the interrogatories impose any burden at all, let alone one that is unreasonable. Indeed, each of the interrogatories to which Defendants objected involves a narrowly tailored and reasonable request. For example, Defendants assert that Interrogatory No. 2 is burdensome because “literally thousands of individuals have used and have exercised control over the properties.”<sup>16</sup> However, the Local Episcopal Parties expressly requested only information about “each person *purporting to act on behalf of any of Defendants* who exercised control *and* use of the property.”<sup>17</sup> This important qualification, which Defendants ignore, limits the breadth of the

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<sup>13</sup> *ISK Biotech Corp. v. Lindsay*, 933 S.W.2d 565, 568-69 (Tex. App.—Houston [1st Dist.] 1996, orig. proceeding); *Indep. Insulating Glass/Sw., Inc. v. Street*, 722 S.W.2d 798, 802 (Tex. App.—Fort Worth 1987, writ dismissed).

<sup>14</sup> *In re Alford Chevrolet-Geo*, 997 S.W. 2d 173, 181 (Tex. 1999).

<sup>15</sup> To the extent any burdensomeness objection comes from the Defendant Congregations represented by Mr. Weaver, it is also worth remembering that those Defendant Congregations intervened and sued the Local Episcopal Parties first.

<sup>16</sup> Ex. 1B, Defs.' Resp. to Local Episcopal Parties' First Set of Interrogs. at 2.

<sup>17</sup> Ex. 1A, Local Episcopal Parties' First Set of Interrogs. at 2 (emphasis added).

Local Episcopal Parties' request and prevents the request from being unreasonably burdensome or oppressive. The language in Interrogatories Nos. 5, 10, and 11 is likewise narrowly tailored, and Defendants have not demonstrated that any of these requests are unduly burdensome.

**4. Defendants' Objection that the Local Episcopal Parties Seek to Abuse Rule 197**

Defendants object to Interrogatories Nos. 5, 10, and 11, claiming that those requests abuse Rule 197 because they seek an accounting, which is also a cause of action the Local Episcopal Parties have asserted. This objection directly contravenes the arguments Defendants' counsel made to this Court on February 8, 2011. Specifically, Defendants' counsel, in asking the Court not to order an accounting, made the following representation to the Court:

The equitable accounting, therefore-- you are not supposed to grant one of those unless discovery won't work. They can-- we can do all the stuff and . . . we can do discovery with them and work out the document production. . . .<sup>18</sup>

If they [Plaintiffs] want to know what-- you know, we're-- we're going to work out with them presenting the documents and, you know, the bank records, whatever they need to see, you know, where we have been paying things from and where the money has gone, *that's for discovery*. That's not a judgment.<sup>19</sup>

The Court amended its order to delete any accounting requirement at that time. Thus, Defendants initially argued that the Court should not order an accounting because the relevant information would be available via discovery and now argue that the information is not available via discovery because it must be ordered by the Court. In sum, Defendants are attempting to avoid providing records and documentation related to their use of the property at issue here by making conflicting and evasive arguments.

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<sup>18</sup> Tr. of Hr'g on Defs.' Objections to Form of Summ. J. Orders at 28:21-29:1 (2/8/11).

<sup>19</sup> *Id.* at 40:11-16

The Local Episcopal Parties' asserted a cause of action for an accounting because "[a]n equitable accounting is proper when the facts and accounts presented are so complex adequate relief may not be obtained at law."<sup>20</sup> However, before a court orders an accounting, the parties should attempt to obtain records and information through discovery.<sup>21</sup> Thus, the Local Episcopal Parties' discovery requests are proper notwithstanding the existence of a cause of action for an accounting,<sup>22</sup> and the Court should therefore overrule Defendants' objections.

## 5. Defendants' Other Objections

Defendants assert two additional objections to the Local Episcopal Parties' interrogatories. First, Defendants contend that Interrogatory No. 4 is vague and ambiguous because the meaning of the phrase "exercised control and/or used" is unclear.<sup>23</sup> As an initial matter, Defendants apparently construed the identical phrase in Interrogatory No. 2 such that they could object on the grounds that "literally thousands of individuals have *used and have exercised control* over the properties."<sup>24</sup> More importantly, the phrase is a simple one in which the meaning is clear from context and ordinary usage. Second, Defendants object that Interrogatory No. 7 "was propounded in bad faith in order to intimidate and harass persons who are neither parties nor potential parties to this cause of action."<sup>25</sup> However, Defendants provide

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<sup>20</sup> *T.F.W. Mgmt., Inc. v. Westwood Shores Prop. Owners Ass'n*, 79 S.W.3d 712, 717 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (Brister, C.J.) (citing *Hutchings v. Chevron U.S.A.*, 862 S.W.2d 752, 762 (Tex. App.—El Paso 1993, writ denied)).

<sup>21</sup> *T.F.W. Mgmt.*, 79 S.W.3d at 717-18 ("When a party can obtain adequate relief at law through the standard discovery procedures, such as requests for production and interrogatories, the trial court does not err in not ordering an accounting.") *See also* Tr. of Hr'g on Defs.' Objections to Form of Summ. J. Orders at 28:21-23 (2/8/11) ("The equitable accounting, therefore-- you are not supposed to grant one of those unless discovery won't work.").

<sup>22</sup> *See In re Rogers*, 200 S.W.3d 318, 322 (Tex. App.—Dallas 2006, orig. proceeding) (upholding the trial court's decision to compel discovery of relevant financial and other information where the plaintiff's cause of action sought, among other things, an accounting).

<sup>23</sup> Ex. 1B, Defs.' Resp. to Local Episcopal Parties' First Set of Interrogs. at 3.

<sup>24</sup> *Id.* at 2 (emphasis added).

<sup>25</sup> Ex. 1B, Defs.' Resp. to Local Episcopal Parties' First Set of Interrogs. at 4.

no support for this conclusory allegation. Additionally, Rule 192.3(c) expressly permits a party to obtain discovery of information about any person with knowledge of relevant facts—a goal to which this interrogatory is reasonably aimed.

### **III. Local Episcopal Parties' First Requests for Production of Documents**

Defendants assert unfounded objections to most of the Local Episcopal Parties' requests for production. Pursuant to a Rule 11 agreement, Defendant produced at least some real-estate related documents on or about March 10, 2011. On March 22, 2011, Defendants produced a small number of the requested financial documents. However, Defendants' response is inadequate, as the few documents they produced did not fully respond to the Local Episcopal Parties' requests. Again, these are records that, under the Court's order, belong to and should be controlled by the Local Episcopal Parties (and the Local Episcopal Congregations). As such, the Court should overrule Defendants' objections and require Defendants to produce all of the documents requested.

#### **1. Defendants' Objection to the Time Period of the Local Episcopal Parties' Requests**

Defendants object to Requests for Production Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, and 19 on the grounds that these requests are overly broad and irrelevant “in that [they are] not limited to a period of time relevant to this cause.”<sup>26</sup> Specifically, these requests seek documents dating back to January 1, 2006. Although Defendants did not leave The Episcopal Church until November 2008, they apparently began planning to do so at least as early as August 2006 when they secretly amended the articles and bylaws of the Corporation in anticipation of a potential controversy over who was the rightful bishop of the Diocese.<sup>27</sup> As such, documents

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<sup>26</sup> Ex. 1D, Defs.' Resp. to Local Episcopal Parties' First Reqs. for Produc. at 1-7.

<sup>27</sup> The Court has already declared that these changes were *ultra vires*.



from 2006 are clearly relevant to the Local Episcopal Parties' valuation of property and determination of whether property was improperly used by Defendants as part of their conspiracy. Documents from January 1, 2006 to November 2008 may also be relevant in order to compare the value and state of property prior to the dispute with the value and state of property after the dispute. Further, Defendants have the burden of demonstrating that the request is irrelevant, and "[a]bsent proof of irrelevancy, a request seeking matters relative to the cause is not overbroad merely because it may call for some information of doubtful relevance."<sup>28</sup> Because Defendants have not met their burden of proof, the Court should overrule these objections.

## **2. Defendants' Objection to Lack of Specificity Under Rule 196**

Defendants object to Requests for Production Nos. 1, 4, 8, 9, 10, 13, 22, 30, 35, and 38, asserting that "such request[s] fail[] to specify any document or category of documents with the specificity required by Rule 196."<sup>29</sup> Rule 196, however, merely requires a request for production to "describe with reasonable particularity" the document or category of documents requested.<sup>30</sup> Defendants' objection is baseless and is merely an attempt to improperly avoid production of relevant documents, as the Local Episcopal Parties' requests are sufficiently specific. Request for Production No. 4, for example, seeks

[i]nventories, agreements, bills of sale, trust instruments, wills, articles or certificates of incorporation or association, bylaws, documents creating foundations, and other related or similar documents that reflect the assets and terms of any entity (including funds, trusts, foundations, and accounts) that holds title or control

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<sup>28</sup> *Tjernagel*, 928 S.W.2d at 302 (citing *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995)).

<sup>29</sup> Ex. 1D, Defs.' Resp. to Local Episcopal Parties' First Reqs. for Produc. at 1-5, 7, 9-11.

<sup>30</sup> TEX. R. CIV. P. 196.1(b).

of any real or personal property owned, held, or used by each of the Relevant Entities since January 1, 2006.<sup>31</sup>

Similarly, Request for Production No. 9 seeks

Fee agreements, checks, invoices, and other documents that reflect the payments made to each attorney and/or law firm with which you contend that you or any of the Relevant Entities have or have had during the requested period an attorney-client relationship regarding the subject matter of this litigation, including, but not limited to, the attorneys whose fees you seek to recover from the Episcopal Parties in this litigation. Your response should also include documents that reflect any amount owed to such attorneys.<sup>32</sup>

Both of these requests, and all of the others to which Defendants objected, include sufficient detail to “describe with reasonable particularity” the category of documents that the Local Episcopal Parties are seeking.

### **3. Defendants’ Assertion of Attorney-Client Privilege**

Defendants object to Requests for Production Nos. 9, 10, 15, 17, 18, 19, 20, 29, 31, 32, 34, 36, 37, and 38 on the basis that these requests seek privileged information. However, the attorney-client privilege only protects “confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.”<sup>33</sup> None of the requested documents are privileged because they do not involve confidential communications and they were not created to facilitate the rendition of legal services. For example, the Local Episcopal Parties have requested fee arrangements, the names of persons with whom Defendants’ attorneys have formed an attorney-client relationship, notes and minutes from Diocesan meetings, annual reports, and the names of persons in leadership positions. Because these documents do not

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<sup>31</sup> Ex. 1C, Local Episcopal Parties’ First Reqs. for Produc. at 4.

<sup>32</sup> *Id.*

<sup>33</sup> Tex. R. Evid. 503(b)(1).

involve confidential communications facilitating the rendition of legal services, the Court should overrule Defendants' assertion of attorney-client privilege.<sup>34</sup>

#### **4. Defendants' Other Objections**

Defendants assert three additional objections that are duplicative of objections raised to the Local Episcopal Parties' Interrogatories. First, Defendants object that Requests for Production Nos. 1, 5, 6, 8, 9, 10, 13, 15, 17, 18, 19, 20, 22, 29, 30, 31, 32, 34, 36, 37, and 38 are burdensome, oppressive, or overly broad. For the reasons set forth in Section II(3), *supra*, these objections should be overruled. Second, Defendants assert that the Local Episcopal Parties are abusing Rule 196 with Requests for Production Nos. 1, 13, and 22 by seeking an accounting, which is also a pending cause of action. For the reasons set forth in Section II(4), *supra*, these objections should also be overruled. Third, Defendants contend that Request for Production No. 28 violates the privacy rights of persons who are not parties to this action. For the same reason that Interrogatory No. 7 was not propounded to harass nonparties (as discussed in Section II(5), *supra*), Request for Production No. 28 does not invade the privacy rights of nonparties. Because the Court has held that the Local Episcopal Parties' are entitled to control of local church property, the Local Episcopal Parties are entitled to discover documents showing the current occupants and uses of that property. As such, the Court should overrule all of Defendants' objections and compel Defendants to properly respond to the Local Episcopal Parties' requests.

#### **IV. Conclusion**

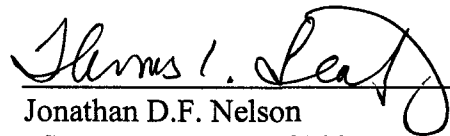
Based on the foregoing, Plaintiffs the Local Episcopal Parties respectfully pray:

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<sup>34</sup> Defendants have not produced a privilege log.

1. That the Court grant this Motion and compel Defendants to respond fully to the Local Episcopal Parties' First Set of Interrogatories and First Requests for Production of Documents and to produce the remaining requested documents;
2. For an award of reasonable attorneys' fees and costs for the preparation, filing, and presenting of this Motion; and
3. For all other relief to which the Local Episcopal Parties may be entitled.

Respectfully submitted,



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**CERTIFICATE OF CONFERENCE**

I certify that on March \_\_, 2011, I conferred with opposing counsel on the merits of this motion. A reasonable effort was made to resolve the dispute without the necessity of court intervention, and the effort failed. Therefore, it is presented to the Court for determination.

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served this 25th day of March, 2011, by hand delivery or facsimile, upon:

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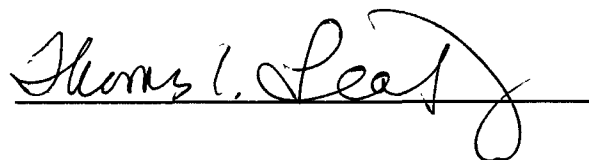
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