

MEMORANDUM

SUPREME COURT: QUEENS COUNTY  
IA PART 17

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ST. JAMES CHURCH, ELMHURST

x

INDEX NO. 22564/05

MOTION DATE: JANUARY 2, 2008

- against -

MOTION CAL. NO. 24

MOTION SEQ. NO. 2

EPISCOPAL DIOCESE OF LONG ISLAND,  
et al.

DATED: MARCH 12, 2008

- and -

CARLO J. SAAVEDRA, et al.

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x

In this action for declaratory judgment, and for injunctive relief, defendants Episcopal Diocese of Long Island, Trustees of the Estate Belonging to the Diocese of Long Island, sued herein as Trustees of the Estate Belonging to the Diocese of Long Island, Inc., and the Right Reverend Orris G. Walker, Jr. seek an order granting summary judgment dismissing the complaint and granting summary judgment on their counterclaims and seek a declaration to the effect that all real and personal property held by St. James Church, Elmhurst is held in trust for the Episcopal Church and the Episcopal Diocese of Long Island, and that these defendants' interest in the proceeds of the sale of such property are superior to any interests that the plaintiff and individual additional defendants may have in said property and setting down for trial on the issue of damages resulting from the

plaintiff's wrongful possession of said property. Defendant Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America separately moves for an order granting summary judgment dismissing the complaint and granting summary judgment on its counterclaims and declaring that the vestry and/or membership of St. James Church, Elmhurst may not unilaterally alter the status of St. James Church as a parish of the Episcopal Church and Diocese of Long Island; that the real and personal property held by St. James Church, Elmhurst is held in trust for the Episcopal Church and the Diocese of Long Island; that the additional defendants to the counterclaim may not divert, alienate or use the real and personal property of St. James Church, Elmhurst except as provided by the Constitutions and canons of the Episcopal Church and the Diocese of Long Island; to enjoin the additional defendants from diverting, alienating or using the real or personal property of St. James Church, Elmhurst except as provided by the Constitutions and canons of the Episcopal Church and the Diocese of Long Island; and directing that possession and control of the property held by St. James Church, Elmhurst be given to the parish's current priest-on-charge, the Rev. William DeCharme, for use in furtherance of the parish's ministry and mission pursuant to the Constitutions and canons of the Episcopal Church and the Diocese of Long Island. Plaintiff St. James Church, Elmhurst and the additional counterclaim defendants Carlo J. Saavedra, Lorraine King and Does 1-11

cross-move for an order granting summary judgment in their favor, declaring that it holds unencumbered legal title to all property it presently holds and that the defendants have no right, interest or claim to said property; enjoining defendants from asserting any claim in or interest in any property that St. James now owns, holds or might acquire; and granting its claim to quiet title to any and all real property titled in its name, and dismissing the defendants' counterclaims.

This action was commenced on October 18, 2005, and arises out of a property dispute in Elmhurst, New York between a local parish, St. James Church, Elmhurst (St. James) on one side, and the diocese and a national church on the other. All of the defendants have served their answers and interposed counterclaims, and plaintiff and the additional defendants have served their replies to the counterclaims.

Defendant Diocese of Long Island (Diocese), is an unincorporated association that was formed in 1871, when Richmond County, Queens County and other counties on Long Island were carved out of Episcopal Diocese of New York. Defendant, the Right Reverend Orris G. Walker, Jr., is the Bishop of the Diocese of Long Island. Defendant Trustees of the Estate Belonging to the Diocese of Long Island (Trustees) was incorporated in 1871 under a special New York law for the express purpose of holding title to real and personal property for the Diocese of Long Island (Diocese). Defendant Domestic and Foreign Missionary Society

(DFMS) is a New York not-for-profit corporation, which is empowered, among other things, to hold title to real and personal property for the use of the Episcopal Church.

Additional defendants Carlo J. Saavedra and Lorraine King named in the counterclaims are wardens and vestry members of the plaintiff church.

### **Historical Background**

St. James parish was first established in New Town (now Elmhurst, Queens, New York), in 1704, under the authority of the Church of England. However, it was not until 1761 that a corporate charter was granted to St. James parish by the colonial Lt. Governor of New York on behalf of King George III, which described the church as "forever hereafter a Body Corporate and Politic in Deed Fact and Name and by the Name and Stile (sic) of the Inhabitants of New Town in Queens County in Communion of the Church of England and by law established...". The charter gave said church, which became known as St. James, the authority to buy, hold and sell real and personal property.

After the Revolutionary War, members of the clergy, church officers and parishioners could no longer offer an oath of loyalty to the English Crown. Therefore, in 1785 the Protestant Episcopal Church in the United States of America, (Episcopal Church), was organized with the purpose, among other things, of retaining the theological doctrine and form of worship of the Church of England. The Episcopal Church adopted a

Constitution in 1789, and its governing body, the General Convention, has adopted and amended said Constitution, as well as Canons, for the governance of the church. The Episcopal Church is a member of the Anglican Communion, a group of churches that have their roots in the discipline, doctrine and worship of the Church of England's Book of Common Prayer. The Diocese, a member of the national Episcopal Church, is governed by the Annual Conventions or Councils and has adopted its own Diocesan Canons.

St. James, along with Grace Church in Jamaica and St. George's Church in Flushing, as former members of the Church of England and as members of the Episcopal Church, petitioned the New York State Legislature to permit these churches to exist in corporate form "in communion of the Protestant Episcopal Church in New York." On March 12, 1793, the New York State Legislature enacted Chapter 60 of the Laws of New York, entitled "An Act to alter the Stile (sic) of the respective Religious Corporations therein mentioned," which provided in pertinent part that:

"...whereas the corporation of St. James's Church in the town of Newtown, in Queens county, by letters patent under the great seal of the late colony, now State of New York, bearing date the ninth day of September, one thousand seven hundred and sixty-one, were enabled to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, by the name of, The inhabitants of the township of Newtown in Queen's county in communion with the Church of England, by law established. And be it further enacted That the said corporation of St. James church in the town of Newtown, in Queen's county shall and may, from and after the passing of this act, take and use the name of, The

Rector and Inhabitants of the town of Newtown, in Queens county in communion of the Protestant Episcopal church, in the State of New-York; and by the said several and respective names shall be capable, severally and respectively, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in as full and ample manner, to all intents and purposes, as they were severally enabled to do, in and by the said several and respective letters patent herein before recited; and that all bonds, all bills, grants, contracts, deeds and conveyances, made to or by said corporations, between the dates of the said several letters patent and the passing of this act wherein they are named or mentioned by the stiles (sic) and names of their several letters patents, or any or either of them, or by any other name or names, shall be good, valid and effectual in law, in like manner as they would have been if the names or stiles of the said several and respective corporations, or any of them, had been named in manner as herein directed in such bonds, bills, grants, contracts, deeds and conveyances; any law usage or custom, to the contrary thereof, in any wise notwithstanding."

#### **St. James' Real Property**

On September 6, 1951, the Supreme Court, Queens County issued an order pursuant to Religious Corporations Law § 12(2), approving the sale of certain real property located in Queens County to a third party by the "Rector, Wardens and Vestrymen of St. James' Church, Elmhurst, New York (Protestant Episcopal Church), a religious corporation." Said order stated that the sale of the property had been consented to by the Bishop of Long Island, the Standing Committee of the Protestant Episcopal Church of Long Island, and by a resolution of the Rector, Wardens, Vestrymen, who constituted the trustees of the church. The Church's Rector, in his petition, listed the following properties which St. James would continue to hold title

to after the sale was completed: a church building at the corner of Corona Avenue and Broadway (Block 1582, Lot 9SE); the parish house at the corner of Broadway and St. James Avenue (Block 1582, Lot 9SE); a cemetery (Block 1582, Lot 20); the parish hall at the corner of Broadway and Maurice Avenue (51st Avenue) (Block 1549, Lot 1SW); and the rectory at 46-19 88<sup>th</sup> Street (Block 1584, Lot 7).

The Diocese and Trustee records, and documents supplied by the plaintiff establish that these five parcels were acquired as follows: Jacob Ogden, pursuant to a deed dated September 28, 1761, conveyed real property to the "Inhabitants of Town of New Town in Queens County in Communion of the Church of England"; on April 19, 1773, an unidentified grantor conveyed real property to the "people or society of ye Church of England"; John J. Moore, pursuant to a deed dated May 1, 1864, conveyed real property to "the Rector and Inhabitants of the Town of Newtown in Queens County in Communion of the Protestant Episcopal Church of the State of New York"; and Kate Louise Fineout, pursuant to a deed dated May 24, 1934, conveyed real property to the "Rector, Wardens and Vestrymen of St. James Protestant Episcopal Church of Elmhurst, Long Island, New York."

The original church was built in 1736, on the property that is the subject of the 1773 deed, and is presently used as the parish hall. The cemetery is still owned by St. James Church. A successor church edifice, located at the corner of Corona Avenue and Broadway, was constructed and dedicated in 1849, and was

destroyed by a fire in 1975. The present church edifice was constructed on said property. At the time the 1849 church was consecrated as an Episcopal church, St. James' representatives signed an Instrument of Donation in which they pledged that the building would be used solely for the purposes of conducting religious services "according to the provisions of the Protestant Episcopal Church in the United States of America" and further pledged that the property would not be put to any use inconsistent with the Instrument of Donation.

In 1964, an action was commenced in Supreme Court, New York County, by "The Rector, Wardens, Vestrymen of St. James Parish of Elmhurst, Diocese of Long Island." The petition therein stated that the religious corporation was incorporated in 1934 and that a certificate of incorporation was filed in the Office of the Clerk of the County of Queens on April 29, 1937. The petition stated that the religious corporation was the same church as "The Rector, Wardens, Vestrymen of St. James Church in the Town of Newtown, County of Queens, State of New York," and that title to the real property in question, known as 56 Reade Street, in New York County had been acquired by deed on April 18, 1810, that The Rector, Church Wardens and Vestrymen of Trinity Church in the City of New York was the owner of a reversionary interest in the property who had agreed, as regards the reversionary interest, to execute a quitclaim deed upon condition that the proceeds of the sale be held in trust for the benefit of Trinity Church. The



petition further stated that the "proceeds of sale would be placed with the trustee of the estate belonging to Diocese of Long Island for the benefit of St. James Parish of Elmhurst upon condition, however, that the principal shall revert to Trinity Church in the event said St. James Parish shall cease to be an Episcopal Church." The petition also stated that the sale of the premises had been approved by the Bishop of Long Island and the Standing Committee of the Diocese of Long Island, and by the Rector, Wardens, and Vestrymen of the Church, in compliance with Religious Corporations Law § 12.

At issue here is the following real property: the current church building constructed in the 1970s, at the corner of Corona Avenue and Broadway (Block 1582, Lot 9SE); the parish house at the corner of Broadway and St. James Avenue (Block 1582, Lot 9SE); a cemetery (Block 1582, Lot 20); and the original church, constructed in 1763 and presently used as the parish hall, at the corner of Broadway and Maurice Avenue (51st Avenue) (Block 1549, Lot 1SW). The real property improved by the rectory, known as 46-19 88<sup>th</sup> Street (Block 1584, Lot 7), was sold to a third party in September 2000. The net proceeds of that sale currently held by the plaintiff is also at issue here, as well as all personal property held by St. James.

### **The Present Controversy**

In a letter dated December 18, 1987 the Diocesan Bishop formally approved the appointment of Father William Galer as the

Rector of St. James, and he assumed his duties on January 1, 1988. In a letter dated March 15, 1991, Father Galer informed Bishop Walker that at a vestry meeting it was decided that St. James would discontinue paying its Diocesan assessment as long as the Bishop maintained his "publically affirmed openness regarding the blessing of some (sic) sex relationships and gay unions." In 1992, St. James, however, agreed to pay the Diocesan assessment in full.

In September 2000, St. James, without notice to Bishop Walker, or the Standing Committee of the Diocese, and without obtaining the consent of the court, sold the real property which was improved by the rectory to a third party, and a new building was subsequently erected on that site. The net proceeds of the sale, after deducting brokerage expenses and title company charges were \$396,679.25, and are currently held by St. James in a segregated account at a financial institution, pursuant to a stipulation entered into by the parties. The Bishop, the Diocese, the Trustees, and DFMS apparently were unaware of the sale of the said real property until after the commencement of this action.

In a letter dated March 31, 2005, wardens and vestry members Carlo Saavedra and Lorraine King stated that on behalf of the Vestry and the people of St. James Church, at a special parish meeting the members of St. James had "voted overwhelmingly to approve a resolution to disassociate from the Diocese and the Episcopal Church in the United States of America (ECUSA) and to

affiliate with the Anglican Church of America, which is part of the Traditional Anglican Communion." The letter's authors further stated that "[w]e have sought counsel, and have been advised that our claim to ownership of our real and real and personal property is strong, canonical provisions purporting to establish a trust over that property notwithstanding." The resolution adopted at said parish meeting provided, among other things, "that the name of the church be changed effective April 1, 2005 to St. James Anglican Church."

Bishop Walker, in a letter dated April 22, 2005, advised the St. James parishioners, as follows: "You should know that all property in the Episcopal Church is held in trust for the ministry and the mission of this church. As bishop I am not in the position to give the assets of this church away. You should further know that when there is a proposal for the sale of Episcopal Church property, there are several authorities that must agree on the purpose of the sale and its effect on the ministry and mission of the church." The Bishop stated that while individuals were free to associate with any church that they chose, they are not entitled to take property that is held in trust, and requested that the parishioners respond to a questionnaire so that he could determine how many members of the parish wished to remain members of the Episcopal Church. He also stated that he was appointing a priest-in-charge to provide pastoral oversight as of May 1, 2005.

Bishop Walker, in letter addressed to Mr. Saavedra and dated May 9, 2005, stated in part that:

"I reject entirely your right to withdraw St. James Episcopal Church from this Diocese or to remove it from my jurisdiction. While I am sure that your position is genuinely felt, and while I do not deny your right individually to worship as you choose, I do deny your right to take St. James Episcopal Church with you".... As Diocesan Bishop, I have an obligation to all of people of this Diocese and of the National Church to resist your efforts to remove St. James Parish from the Episcopal Church."

On April 25, 2007 the Diocesan Council passed a resolution declaring St. James parish an "extinct" parish, pursuant to the Diocesan Canons and Religious Corporations Law § 16, as the parish had failed for two years "to maintain religious services according to the discipline, customs and usage of the Episcopal Church" and ceased for two years to have a sufficient number of persons qualified to elect and serve as wardens and members of its vestry.

**Defendants Bishop Walker, the Diocese, Trustees' Motion**

Defendants Diocese and the Right Reverend Walker now move for an order dismissing the complaint and granting summary judgment (1) on its first counterclaim declaring (a) that the vestry and/or membership of St. James Church, Elmhurst may not unilaterally alter the status of St. James Church, Elmhurst as a parish of the Episcopal Church and the Diocese of Long Island; (b) that the real and personal property held by St. James Church, Elmhurst is held in trust for the Episcopal Church and Diocese of Long Island; (c) that

the additional defendants Saavedra and King may not divert, alienate or use the real and personal property of St. James Church, Elmhurst except as provided by the Constitution and Canons of the Episcopal Church and Diocese; (d) that the defendants are entitled to the sums presently held by the plaintiff arising out of the September 2000 sale of the rectory; (2) on the second counterclaim granting possession and control of the property held by St. James Church, Elmhurst to the parish's current priest-in-charge, the Rev. William DeCharme for furtherance of parish's ministry and mission and enjoining the additional defendants from exercising any possession and control over that property; and (3) setting the matter down for a trial on the issue of damages arising out of the plaintiff's wrongful possession of said property.

Defendants assert that when New York's status changed from that of a British colony to a sovereign state, St. James Church became subject to New York's statutory law, and upon its adoption in 1909, the Religious Corporations Law. Defendants assert that the 1761 royal charter is an anachronistic document, as the Church of England no longer has any presence in this country, and that a specific statute was enacted by the state legislature in 1793 which incorporated the plaintiff and two other royal chartered Church of England parishes. It is further asserted that as the Religious Corporations Law § 2-a provides that it applies, among other things, to "every corporation formed under any other statute or special act of this state which would, if it were to be formed

currently under the laws of this state, be formed under this chapter," and as St. James was reincorporated in 1793 under a New York state statute or special law, and as it is a Protestant Episcopal Parish that would now be incorporated under Article 3 of the Religious Corporations Law, that statute is applicable to plaintiff.

Defendants further assert that until the September 2000 sale of the rectory property, St. James' rectors, vestrymen and parishioners recognized that the provisions of the Religious Corporations Law governed their actions concerning corporate actions. In support of this claim, defendants have submitted the 1951 and 1964 petitions by the then rector, which sought the court's permission for the sale of certain real property, in which it was specifically acknowledged that the sale was being made pursuant to Religious Corporations Law § 12, and that the petitioner's corporate name had been changed to "The Rector, Wardens and Vestrymen of St. James' Church, Elmhurst, New York." In addition, defendants have submitted certificates filed with the Queens County Clerk in 1941 and 1951, to increase the number of vestrymen, pursuant to the Not-For-Profit Corporation Law § 104 and Religious Corporations Law § 2-b(1)(d).

Defendants assert that the Trustees and the Diocese are trust beneficiaries of the real and personal property held in the name of the plaintiff. In support of this claim, defendants rely upon the affidavits of Dr. Robert Bruce Mullin, the

Rev. Dr. J. Robert Wright, and Robert Fardella, as well as a series of cases involving property disputes between the Episcopal Church and a local parish, which almost uniformly held in favor of the Episcopal Church, and found that even absent express statutory language, the real and personal property acquired by local parish corporations has always been acquired for the ultimate purposes of the Episcopal Church, and that the enactment of the Dennis Cannons in 1979 codified a trust relationship that had existed between the local parishes and their dioceses throughout the history of the Episcopal Church.<sup>1</sup>

Defendants assert that once Mr. Saavedra and Ms. King advised Bishop Walker on March 30, 2005 that the vestry and "people of St. James Elmhurst" that they had voted to "disassociate" from the Diocese and the Episcopal Church, their association and

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(See Trustees of the Diocese of Albany v Trinity Episcopal Church of Gloversville, 250 AD2d 282 [1999]; Episcopal Diocese of Rochester v Harnish, 2006 NY Misc LEXIS 9190 [2006], affd 43 AD3d 1406 [2007], motion to renew denied 17 Misc 3d 1105A [2007]; cf. Board of Managers of the Diocesan Missionary and Church Extension Society v Church of the Holy Comforter, 164 Misc 2d 661 [1993]; see also The Rector, Wardens and Vestrymen of Trinity-St. Michael's Parish, Inc. v The Episcopal Church in the Diocese of Connecticut, 224 Conn 797 [1993]; Matter of Church of St. James the Less, 585 Pa 428 [2005]; Protestant Episcopal Church in the Diocese of New Jersey v Graves, 83 NJ 572 [1980]; Episcopal Diocese of Massachusetts v DeVine, 59 Mass App Ct 722 [2003]; Bishop & Diocese of Colorado v Mote, 716 P2d 85 [Colo 1986], cert den 479 US 826 [1986]; Tea v Protestant Episcopal Church in the Diocese of Nevada, 610 P2d 182 [Nev 1980]; Daniel v Wray, 580 SE2d 711 [NC 2003]; Bennison v Sharp, 329 NW2d 466 [Mich 1982]; Church Cases, 2007 Cal App LEXIS 1041 [2007]; cf. Protestant Episcopal Church in Diocese of Los Angeles v Barker, 171 Cal Rptr 541 [1981], cert den 454 US 864 [1981]; Bjorkman v The Protestant Episcopal Church, 759 SW2d 583 [Ky 1988]).

communion with the Episcopal Church ended, and were no longer eligible to hold the corporate offices of wardens and vestry members in St. James Church, as St. James was incorporated in 1793 only for those "in communion of the Protestant-Episcopal Church, in the State of New York". It is, therefore, asserted that Mr. Saavedra and Ms. King no longer meet the definition of a Protestant Episcopal Church vestry member, as set forth in Religious Corporations Law § 43, and Canon I.14.1 of the National Canons of the Protestant Episcopal Church.

Defendants further assert that plaintiff's current effort to devote St. James' real and personal property to the use of a religious association not in communion with the Episcopal Church, is an ultra vires use of that property, and is inconsistent with St. James' corporate purposes. It is asserted that for over 250 years, generations of parishioners worshiped at and raised money for the corporate plaintiff, which as the colonial charter and later state statute recognized was organized for "the express purpose of the administration of the property and temporalities," dedicated by the parishioners to the denomination to which the parish was expressly "connected." It is asserted that the colonial charter demonstrates that the parish was "connected" to the Church of England and that the post War of Independence statute demonstrates that the parish was "connected" to the Episcopal Church. In both instances the corporation consisted of the New Town Rector and "Inhabitants" who were members of these



denominations. Defendants assert that while the parishioners are free to disassociate from St. James and the Episcopal Church, and are free to associate with other denominations, they have no right to transfer the real and personal property of St. James to another church not affiliated with the Episcopal Church.

Finally defendants assert that as an "extinct" church, St. James is subject to Religious Corporations Law § 16, which authorizes the Diocese and the Episcopal Church to take possession of and manage its real and personal property.

**Defendant DMFS's Motion**

Defendant DMFS separately moves for an order granting summary judgment dismissing the complaint and granting summary judgment (1) on its first counterclaim (a) declaring that the vestry and/or membership of St. James Church, Elmhurst may not unilaterally alter the status of St. James Church as a parish of the Episcopal Church and Diocese of Long Island; (b) that the real and personal property held by St. James Church, Elmhurst is held in trust for the Episcopal Church and the Diocese of Long Island; (c) that the additional defendants to the counterclaim may not divert, alienate or use the real and personal property of St. James Church, Elmhurst except as provided by the Constitutions and canons of the Episcopal Church and the Diocese of Long Island; and (2) on its second counterclaim to enjoin the additional defendants from diverting, alienating or using the real or personal property of St. James Church, Elmhurst except as provided by the Constitutions

and canons of the Episcopal Church and the Diocese of Long Island; and ordering that the possession and control of the property held by St. James Church, Elmhurst be given to the parish's current priest-on-charge, the Rev. William DeCharme, for use in furtherance of the parish's ministry and mission pursuant to the Constitutions and canons of the Episcopal Church and the Diocese of Long Island.

Defendant DFMS relies upon the church's Constitution and Canons and the affidavit Dr. Robert Bruce Mullin, and asserts that the Episcopal Church is a hierarchical religious denomination and that the Episcopal Church's and the Diocese's Canons are enforceable and preclude a majority of the current members of a local congregation from diverting property donated to further the mission of the Church to another purpose. It is further asserted that St. James has been a subordinate, constituent part of the Episcopal Church and its diocese since the church's founding, and has repeatedly and consistently acceded to the Episcopal Church and the Diocese's doctrines and discipline, including their Constitutions and Canons, and is bound by them. DFMS, in reliance upon the deeds to St. James' real property, the legislation of 1793, the applicable provisions of the Religious Corporations Law, and the applicable Canons of the Episcopal Church and the Diocese concerning church property, asserts that it holds St. James real and personal property in trust. Finally, DFMS asserts that New York law governing voluntary associations require that the

Constitution and Canons of the Episcopal Church and the Diocese be enforced against St. James and the additional defendants.

**Plaintiff St. James' Cross Motion**

Plaintiff St. James cross-moves in opposition and seeks an order dismissing the counterclaims and granting summary judgment (1) on its first cause of action for declaratory judgment to the effect that it holds unencumbered legal title to all property it presently holds and that the defendants have no right, interest or claim to said property; (2) on its second cause of action for a permanent injunction, enjoining defendants from asserting any claim in or interest in any property that St. James now owns, holds or might acquire; and (3) on its third cause of action to quiet title to any and all real property titled in its name.

Plaintiff St. James Church, Elmhurst states in its complaint that it is a corporation formed by a royal charter issued by King George III, and that it was never reincorporated although its corporate existence was ratified by an act of the state legislature after the Revolutionary War. Plaintiff states that on March 30, 2005, its vestry members and congregants expressly disaffiliated with the Diocese and the Episcopal Church. Plaintiff asserts that the Religious Corporations Law is inapplicable here, and that even if it were to apply, this is insufficient to establish a trust over St. James' real and personal property. Plaintiff next asserts that it was free to withdraw from the Episcopal Church and the Diocese, and to claim ownership of the

real and personal property, unless it had voluntarily ceded its property to the Episcopal Church and the Diocese. Plaintiff asserts that it never ceded its real and personal property to the Episcopal Church and Diocese; that the funds used to acquire the real property which is improved by the church came from sources other than the Episcopal Church and the Diocese which were not then in existence; that there is no evidence that these defendants made any contribution, financial or otherwise, to the construction or maintenance of a new church building erected in 1849, or to the present church building, erected in 1978; that St. James currently holds title to three parcels of real property, and none of these deeds contain any language which restricts the use of the property; and that there is no evidence that St. James ever consented to the imposition of a trust, whether implied or express, over any of its real or personal property, or that it conveyed an interest in said property to the Episcopal Church or the Diocese. Plaintiff, in support of its claims that the Episcopal Church is not a hierarchical church and that the Dennis Canons do not represent a codification of pre-existing Episcopal Church policy with regard to property ownership, rely upon an affidavit from the Reverend Charles Nalls. Plaintiff further asserts that parish churches are independent entities and, therefore, are free to withdraw from the national church and its diocese, if they so desire, and to depart with its real and personal property, and asserts that St. James, as a corporate entity, rather than as

individual parishioners, took the decision to withdraw from the Episcopal Church and Diocese. It is asserted that as the Episcopal Church and the Diocese are both unincorporated associations, plaintiff was free, as a matter of law, to terminate its membership in those associations. Finally, plaintiff asserts that the Diocese's declaration the St. James is an extinct parish, some two years after the March 30, 2005 withdrawal, is of no force and effect, as the Diocese is an unincorporated association and lacks the authority to make such a declaration.

### **Legal Analysis**

It is well settled that the court may decide a property dispute between a local church and a national church (see Presbyterian Church in U.S. v Mary Elizabeth Blue Hull Mem. Presbyt. Church, 393 US 440, 449 [1969]; North Central New York Annual Conference v Felker, 28 AD3d 1130 [2006]; see also Jones v Wolf, 443 US 595, 602-604 [1979]; First Presbyt. Church of Schenectady v United Presbyt. Church in U.S., 62 NY2d 110, 120 [1984], rearg denied 63 NY2d 676 [1984], cert denied 469 US 1037 [1984]; The Episcopal Diocese of Rochester v Harnish, 17 Misc 3d 1105A [2006], affirmed 43 AD3d 1406 [2007]). States are free to adopt any approach to resolving church property disputes "so long as it involves no consideration of doctrinal matters" (Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, 250 AD2d 282, 285 [1999], citing Jones v Wolf, supra, at 602).

"New York has adopted the neutral principles of law analysis, crafted by the United States Supreme Court, for use in resolving church property disputes" (Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, supra, at 285-286, citing First Presbyt. Church of Schenectady v United Presbyt. Church in U.S., supra, at 120-121; see also Park Slope Jewish Ctr. v Congregation B'nai Jacob, 90 NY2d 517, 521 [1997])). "Under this analysis, courts should focus on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." (Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, supra, at 286, quoting First Presbyt. Church of Schenectady v United Presbyt. Church in U.S., supra, at 122; see also Park Slope Jewish Ctr. v Congregation B'nai Jacob, supra, at 521-522). "The court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, taking special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties have intended to create a trust or restriction" (First Presbyt. Church of Schenectady v United Presbyt. Church in U.S., supra, at 122).

"Courts, however, should also take special care not to become involved in internal religious disputes or implicate secular

interests in matters of purely ecclesiastical or religious concerns such as church governance or polity" (Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, *supra*, at 286; see Presbyterian Church v Hull Church, *supra*, at 449; Archdiocese of Ethiopian Orthodox Church v Yesehaq, 232 AD2d 332, 333 [1996]; Upstate NY Synod of Evangelical Lutheran Church v Christ Evangelical Lutheran Church, 185 AD2d 693, 694 [1992]).

Whether the affairs of an incorporated church are controlled by the church itself or by a national organization depends on how the religious corporation is organized (St. Matthew Church of Christ v Creech, 196 Misc 2d 843, 851 [2003]). New York State recognizes two classes of organization which determine religious corporations' control over their affairs: congregational and hierarchical (see New York Dist. of Assemblies of God v Calvary Assembly of God, 64 AD2d 311, 313 [1978]). A hierarchical religious society is one which was organized "as a body" in conjunction with other churches of the same religion and which is directed by "'a common ruling convocation or ecclesiastic head'" (*id.* quoting Kedroff v St. Nicholas Cathedral, 344 US 94, 110 [1952]). Congregationally organized religious societies, however, are "independent," self-governing organizations controlled "'by a majority of its members or by other such local organism as it may have instituted for the purpose of ecclesiastical government'" (*id.* [citation omitted]). To determine the organization of a church, a court must examine any constitution or regulations of the

corporation as well as "the history of the relationship between the...church and its alleged overseer in the scheme of the protestant hierarchy" (id. at 313). Here, it is undisputed that St. James does not have its own constitution or canons, separate and apart from those of the Episcopal Church and the Diocese. The court has examined the affidavits and documentary evidence submitted by the parties, and finds defendants' claims regarding the hierarchical nature of the Episcopal Church to be persuasive. The court, thus, finds that the Episcopal Church has a hierarchical form of church government in which local parishes are subject to the constitution, canons, rules and decisions of their dioceses which, in turn, are presided over by a bishop who receives advice and counsel from a diocesan standing committee (see also Watson v Jones, 80 US 679 [1872]; Trustees of the Diocese of Albany v Trinity Episcopal Church of Gloversville, 250 AD2d 282 [1999]; Rector of Church of Holy Trinity v Melish, 4 AD2d 256, 261 [1957], affd 3 NY2d 476 [1957]; The Episcopal Diocese of Rochester v Harnish, 17 Misc 3d 1105A [2006], affd 841 NYS2d 817 [2007]). However, it is settled law that "even though members of a local [church] belong to a hierarchical church, they may withdraw from the church and claim title to real and personal property [held in the name of the local church], provided that they have not previously ceded the property to the denominational church" (First Presbyt. Church v United Presbyt. Church, supra, at 120; see The Episcopal Diocese of Rochester v Harnish, supra; Board of Mgrs.



of Diocesan Missionary & Church Extension Socy. v Church of Holy Comforter, 164 Misc 2d 661, 665 [1993]).

### **The Neutral Principal of Law Analysis**

#### **A. The relevant deeds and other documents**

Defendants are unable to point to any language on the face of the deeds, or other documents pertaining to the four parcels of land at issue here, which indicates that St. James or its predecessors acquired the property with the intention to hold it in trust for defendants (see Trustees of the Diocese of Albany, et al., Respondents v Trinity Episcopal Church of Gloversville, 250 AD2d 282 [1999]; Board of Mgrs. of Diocesan Missionary & Church Extension Socy. v Church of Holy Comforter, supra, at 666). Moreover, none of the deeds involved includes a trust restriction or forfeiture clause in favor of the plaintiffs (see First Presbyt. Church v United Presbyt. Church, supra, at 122).

It is undisputed that at the time the 1849 church was consecrated as an Episcopal church on the property that was conveyed in 1761, St. James' representatives signed an Instrument of Donation in which they pledged that the building would be used solely for the purposes of conducting religious services "according to the provisions of the Protestant Episcopal Church in the United States of America" and further pledged that the property would not be put to any use inconsistent with the Instrument of Donation. The 1849 church was destroyed by a fire in 1979 and the

present church edifice stands on the same property. Therefore, although ownership of this property was not specifically ceded to the Episcopal Church or the Diocese, the use of this property as Anglican Church is clearly inconsistent with the Instrument of Donation.

In the 1964 proceeding, the petition stated that the petitioner "The Rector, Wardens, Vestrymen of St. James Parish of Elmhurst, Diocese of Long Island" was a religious corporation that was incorporated in 1934, and that a certificate of incorporation was filed in the Office of the Clerk of the County of Queens on April 29, 1937. The petition stated that the religious corporation was the same church as "The Rector, Wardens, Vestrymen of St. James Church in the Town of Newtown, County of Queens, State of New York," and that title to the real property in question, known as 56 Reade Street, in New York County, had been acquired by deed on April 18, 1810 and that The Rector, Church Wardens and Vestrymen of Trinity Church in the City of New York was the owner of a reversionary interest in the property. The petition recited that as regards the reversionary interest, Trinity Church had agreed to execute a quitclaim deed upon condition that the proceeds of the sale be held in trust for the benefit of Trinity Church. The petition further stated that the "proceeds of sale would be placed with the trustee of the estate belonging to Diocese of Long Island for the benefit of St. James Parish of Elmhurst upon condition, however, that the principal shall revert to Trinity Church in the

event said St. James Parish shall cease to be an Episcopal Church." Clearly, as St. James ceded these funds, held in trust to the Diocese, plaintiff has no claim to said funds.

### **B. The Royal Charter and St. James's Incorporation**

The royal charter of 1761 expressly acknowledges that the church that later became known as St. James was affiliated with the Church of England, and authorized said "Church of England" to buy, hold and sell real and personal property. Contrary to plaintiff's claims, St. James' corporate existence pursuant to the royal charter has not been continuous, as its affiliation with the Church of England ended at the conclusion of the Revolutionary War, or shortly thereafter. Following the formation of the national Episcopal Church, St. James was expressly reincorporated, "in communion with the Protestant Episcopal Church," pursuant to a special act of the New York State legislature in 1793. The court further notes that both the 1951 and 1964 petitions for the sale of real property recite that the religious corporation known as "The Rector, Wardens and Vestry of St. James' Parish of Elmhurst, Diocese of Long Island" had changed its corporate name, or was incorporated in 1934, and that the certificate of a name change or incorporation was filed in the Office of the Clerk of the County of Queens on April 29, 1937. However, there is nothing in the 1793 act of reincorporation which indicates how the church's property is to be owned.

Religious Corporations Law § 2-a provides that the statute applies, among other things, to "every corporation formed under any other statute or special act of this state which would, if it were to be formed currently under the laws of this state, be formed under this chapter." Accordingly, as St. James was reincorporated in 1793 under a special act, or statute, of the legislature, and thereafter existed as a Protestant Episcopal Parish which would currently be incorporated under Article 3 of the Religious Corporations Law, the provisions of the Religious Corporations Law are applicable to St. James.

**C. St. James' relationship with the Diocese**

Additional defendant Carlo Saavedra asserts in his affidavit that St. James ceased being part of the polity of the Episcopal Church and Diocese as early as 1991, when it ceased paying an annual assessment. This claim, however, is refuted by the defendants' documentary evidence which establishes that St. James paid the full amount of the diocesan assessment in 1992; that St. James sent the Spring 1993 confirmation class offering to the Diocese; that on November 21, 1995, St. James' vestry agreed to remit half of an undisclosed sum to the Diocese; that St. James submitted parochial reports to the Diocese in 2000 and 2003; that St. James remained current in its payment to a medical trust maintained by the Diocese, which provides health benefits for parish clergy and employees, through at least July 2004; and that in September 2004 Father Galer and Bishop Walker exchanged letters

regarding an Eucharist Minister license for one of St. James' parishioners. In addition, Father Galer, at his deposition, stated that prior to March 2005, St. James parish was in communion with the Episcopal Church. The court, therefore, finds that up until the events of March 30, 2005, St. James remained an integral part of the Episcopal Church and the Diocese (see generally Board of Mgrs. of Diocesan Missionary & Church Extension Socy. v Church of Holy Comforter, supra, at 667).

#### **D. Statutes Governing the Holding of Church Property**

Article II of the Religious Corporations Law, entitled "General Provisions" applies to all religious denominations, including the Protestant Episcopal Church. Although certain provisions contained in Article II relate to church property, they are silent on the issue of whether the local church's property is held in trust for the national church or a diocese (see Religious Corporations Law §§ 5 and 12).

Religious Corporations Law § 12(2) requires approval by the bishop and standing committee of the diocese to which the local parish belongs before the trustees of a local Protestant Episcopal Church parish can sell, mortgage or lease its real property. It is undisputed that in 1951 and 1964, the rector, wardens and vestry members, obtained the permission of the Bishop, the Standing Committee and the court, prior to selling its real property, in conformity with Religious Corporations Law § 12(2), and that prior to the sale of real property in September 2000,

plaintiff did not inform the Diocese, the Standing Committee, Bishop Walker or the court of said sale. The evidence presented does not establish that at the time of the September 2000 conveyance, St. James, its wardens and vestry members deliberately failed to comply with the provisions of Religious Corporations Law § 12(2). Rather, the evidence establishes that Father Galer and Ms. King were unaware of the provisions of Religious Corporations Law § 12(2), and were also unaware of the fact that St. James had previously acted in compliance with this section in 1951 and 1964.

Article III of the Religious Corporations Law, entitled "Protestant Episcopal Parishes or Churches" applies only to Protestant Episcopal Churches. Section 42-a of Article III, enacted in 1991, sets forth the powers of the corporate trustees and vestry in administering the temporalities and real and personal property that belong to the corporation. It also acknowledges a trust relationship between the local church and the Diocese and National Church. It states:

"Notwithstanding and in addition to the provisions of section five of this chapter, and subject always to the trust in which all real and personal property is held for the Protestant Episcopal Church and the Diocese thereof in which the parish, mission or congregation is located, the vestry or trustees of any incorporated Protestant Episcopal parish or church, the trustees of every incorporated governing body of the Protestant Episcopal Church and each diocese are authorized to administer the temporalities and property, real and personal, belonging to the corporation, for the support and maintenance of the corporation and, provided it is in accordance with the discipline, rules and usages of the Protestant Episcopal Church and with the provisions of law relating thereto, for the support and

maintenance of other religious, charitable, benevolent or educational objects whether or not conducted by the corporation or in connection with it or with the Protestant Episcopal Church."

Section 42-a, however, does not conclusively establish the ownership of property as between the local church and its diocese and national church, and the remaining sections of Article III are silent on this matter.

**E. The Episcopal Church's Constitution and Canons Regarding Church Property**

In examining the constitution of the Episcopal Church concerning the ownership and control of church property, a "court may look only to provisions relating to property and it must interpret them in a secular light" (First Presbyt. Church v United Presbyt. Church, supra, at 122). Significantly, Title I, Canon 7 of the National Canons of the Protestant Episcopal Church, commonly known as the Dennis Canons, was amended in 1979 to reflect an express trust provision as follows:

"Sec. 4-All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Sec. 5-The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust."

Dr. Robert Bruce Mullin, a historian and professor at the General Theological Seminary in New York City, (an accredited seminary of the Episcopal Church), and Rev. Dr. J. Robert Wright, a historian, Episcopal priest and professor at the General Theological Seminary in New York City each state in sworn affidavits, the Dennis Canons were adopted by the General Convention in 1979 in response to the U.S. Supreme Court's decision in Jones v Wolf (443 US 595 [1979]), [{"which held that the constitution of a hierarchical church can be crafted to recite an express trust in its favor concerning the ownership and control of local church property"}]; Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville, supra, at 285], that the essential purpose of the Dennis Canons was to impress an express trust in favor of the national Protestant Episcopal Church and the dioceses of which each local parish is a member. Both Dr. Mullin and Rev. Wright state that the intent and purpose of adopting this amendment to the Canons was to affirm and make clear existing canonical church law and not to effect a change in said law. In support of this claim, Dr. Mullin and Rev. Wright cite several other national Canons that pre-date the Dennis Canons, which govern a parish's use of property for the mission of the Episcopal Church, including Canon I.14(2) which provides that vestry members are to "be agents and legal representatives of the Parish in all matters concerning its corporate property and the relations of the Parish to its Clergy"; Canon III.9(5) (a) (2), adopted in 1904, which grants



the parish's rector the right to use and control parish building and furnishings in the aid of his or her ministry; Canon II.6 (sections 2 and 3 adopted in 1868, section 1 added in 1871) which provides that no parish may encumber, alienate or destroy any consecrated real property, without the consent of the leadership of the diocese, and further provides that such consecrated property must be "secured for ownership and use" by a parish or congregation "affiliated with the Episcopal Church and subject to its Constitution and Canons"; and Canon I.7 which similarly prohibits the encumbrance or alienation of all other (non-consecrated) parish property without the consent of the Bishop and Standing Committee of the Diocese (adopted in 1940 and modified in 1941).

Robert Fardella, the Chancellor of the Diocese, states in his affidavit that after the adoption of the Dennis Canons, the Diocese confirmed the trust declared in the Dennis Canons, and enacted Title V, Canon 3, Section IV, which provides that: "All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for the Church and this Diocese. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission, or Congregation otherwise existing over such property so long as the particular Parish, Mission, or Congregation remains a part of, and subject, to the Church, this Diocese, and their respective Constitution and Canons."

Plaintiff, in opposition, has submitted the affidavit of the Reverend Charles H. Nalls, an Anglican priest, military chaplain, and a member of the Standing Committee of the Diocese of the Eastern United States, Anglican Church of America. Reverend Nalls, a former member of the Protestant Episcopal Church, is also an attorney, but is not admitted to practice in New York State. Reverend Nalls rejects the defendants' claim that the Episcopal Church is a hierarchical church and argues that the Dennis Canons was a departure from, or at the very least an effort by one party within the Church to impose its will on all others. , He opines that until the attempted revisions represented in the Dennis Canons, church property was owned at the parish level and held solely for the benefit and mission of the parish church, free of any purported trust interest of the national church or the respective dioceses. He further opines that St. James is an independent corporate entity, that it is free to end its affiliation with the Episcopal Church and that its property continues to belong to the parish and its members.

The court notes that in the 26 years following the adoption of the Dennis Canons and the corresponding amendment of the Diocesan Canons, St. James raised no objections to these Canons, until after the March 30, 2005 schism. The court finds that although Reverend Nalls' discussion of the predecessors of the Episcopal Church and the circumstances of the adoption of the Dennis Canons may be of historical interest, his claims regarding

the Dennis Canons and the relationships between the Episcopal Church, its dioceses and parishes, including parish churches, are not persuasive. Notably, as regards the Canons of the Episcopal Church relating to property, plaintiff and Reverend Nalls rely heavily upon a 1954 edition of a commentary on the Canons, without providing the actual text, including later revisions, which pertain to the Dennis Canons.

Although the express trust provision was absent from the national canons at the time St. James acquired the subject real property, the court in Trustees of the Diocese of Albany v Trinity Episcopal Church of Gloversville (*supra*, at 288), determined that the "retroactive application of such trust provisions would not,....extinguish the real property rights of every local church or parish throughout New York, so long as a court finds that the trust provisions were declaratory of existing church policy." The evidence presented here "supports the conclusion that the 'Dennis Canon' amendment expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church" (The Episcopal Diocese of Rochester v Harnish, *supra*, quoting Trustees of the Diocese of Albany v Trinity Episcopal Church of Gloversville, *id.* at 288). The court further finds that there is sufficient evidence of an intent to create an implied trust to hold church property for the benefit of the Episcopal Church and Diocese, based on the St. James' actions,

in conformity with the tenets and canons of the Episcopal Church, and on the National Church's establishment of an express trust by way of the Dennis Canons (id. at 289-290). Accordingly, defendants have established that the real and personal property at issue here that is currently held by the plaintiff St. James, is held for the benefit of the Diocese and Episcopal Church.

### **The Effect of the March 30, 2005 Declaration**

Plaintiff claims that as the Episcopal Church and the Diocese are unincorporated associations, it is free to withdraw from these associations, affiliate with another religious denomination, and retain the subject real and personal. Plaintiff, in support of this claim, relies upon Communications Workers v N.L.R.B., (215 F2d 835, 838 [1954]), in which the court held that a union member has a right to resign from a union, although the union constitution and bylaws may impose reasonable sanctions and limitations on this right. Such reliance is misplaced, as St. James was not incorporated by its individual members, and is not merely a voluntary member of an unincorporated association. Rather, St. James was incorporated by statute for the express purposes of being "in communion of the Protestant Episcopal Church, in the State of New York." This act of incorporation, as well as St. James' conduct and interaction with the Diocese and Episcopal Church until March 30, 2005, establishes the parish's membership in the Protestant Episcopal Church and its acceptance of the hierarchical church's principles and policies including its

Constitution, Canons, and Diocesan Canons. Absent a statutory amendment, the vestry members of St. James lack the authority to affiliate St. James Church, Elmhurst with any religious body, other than the Protestant Episcopal Church.

Although the individual members of St. James, including its vestry members, are free to disassociate themselves from St. James and the Protestant Episcopal Church and to affiliate with another religious denomination, they can neither remove St. James from the parish and Diocese, nor appropriate, nor take St. James' real and personal property with them. Mr. Saavedra and Ms. King, upon announcing their disaffiliation with the Episcopal Church, automatically terminated their eligibility to hold offices as Wardens and Vestry Members of St. James, and, therefore, lack authority to act on behalf of St. James and may not challenge, on behalf of St. James, defendants' assertion of control over the subject property (see Religious Corporations Law § 43).

### **Conclusion**

The parties' requests for summary judgment on their respective cause of action and counterclaims for declaratory judgment are granted to the extent that it is the declaration of the court that St. James Church, Elmhurst, is an Episcopal church and a parish of the Diocese, and that the vestry and membership of St. James may not unilaterally alter the status of St. James as an Episcopal church and parish of the Diocese; that all real and personal property held by St. James Church, Elmhurst is held in

trust for the Episcopal Church and the Episcopal Diocese of Long Island, and that these defendants' interest in the proceeds of the sale of such property, including the net proceeds of the September 2000 sale of the real property improved by the rectory, are superior to any interests that the plaintiff and individual additional defendants may have in said property. The court further declares that the individual defendants Carlo Saavedra and Lorraine King may not divert, alienate or use the real and personal property of St. James Church, Elmhurst, except as provided by the Constitutions and Canons of the Episcopal Church and the Diocese.

Further, it is the declaration of the court that defendants Trustees and Diocese are entitled to the payment of the sums presently held by the plaintiff in an account or accounts, arising out the September 2000 sale of the real property improved by the rectory. Plaintiffs are directed to turn over all said sums to these defendants within 20 days of notice of entry and service of the order to be entered hereon.

Defendants Diocese and Trustees' request for summary judgment on their second counterclaim for a permanent injunction, and defendant DFMS' request for summary judgment on its second counterclaim for a permanent injunction is granted to the extent that plaintiff and the additional defendants Mr. Saavedra and Ms. King are enjoined from the continued use, control and diversion of said real and personal property for purposes other than the mission of the Episcopal Church and the Diocese.

Furthermore, as the additional defendants are no longer affiliated with the Episcopal Church, they may not serve as wardens, junior wardens or vestry members of St. James, Elmhurst, and are directed to turn over the control and possession of property held by St. James to the priest-in-charge, the Reverend William DeCharme, for use in furtherance of the parish's ministry and mission pursuant to the Constitution and Canons of the Episcopal Church and the Diocese, upon service of the order to be entered hereon with notice of entry.

Defendants Diocese and Trustees' request for summary judgment on their third counterclaim for trespass and to set the matter down for a trial as to damages is denied, and this counterclaim is dismissed. Trespass is an intentional entry onto the land of another without justification or permission (see Long Is. Gynecological Servs. v Murphy, 298 AD2d 504 [2002]). "Liability for civil trespass requires the factfinder to consider whether the person, without justification or permission, either intentionally entered upon another's property, or, if entry was permitted, that the person refused 'to leave after permission to remain ha[d] been withdrawn'" (298 AD2d 504, 504 [2002], quoting Rager v McCloskey, 305 NY 75, 79 [1953]). It is well settled that "[t]he essence of trespass is the invasion of a person's interest in the exclusive possession of the land," (Zimmerman v Carmack, 292 AD2d 601, 602 [2002]). Here, St. James is in possession of the real property on behalf of the Diocese and Episcopal Church, or

worship and other related uses by its parishioners. Since the parishioners all have access to the church and the other real property utilized by the church, possession can hardly be characterized as exclusive. The fact that the individual defendants and others have affiliated with the Anglican Church and wish to worship according to that discipline, does not constitute a trespass on the real property. Accordingly, due to the ambiguities surrounding the ownership and control of St. James and its property, defendants are unable to establish that plaintiff and the individual defendants are trespassers.

Defendants Diocese and Trustees' request for summary judgment on their fourth counterclaim to take possession and manage St. James' real and personal property, pursuant to the provisions of Religious Corporations Law § 16 is denied, and this counterclaim is dismissed. Religious Corporations Law § 16 only authorizes incorporated governing bodies to declare a church or parish over which it has ecclesiastical control extinct. Although the Diocese may declare St. James parish to be extinct pursuant to its Diocesan Canons, the provisions of Religious Corporations Law § 16 are inapplicable as it is undisputed that the Diocese is an unincorporated association and not an incorporated governing body.

Settle order.

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J.S.C.