ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT

The Protestant Episcopal Church In The Diocese of South Carolina; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church Of The Redeemer; Holy Trinity Episcopal Church; St. Luke's Church, Hilton Head Island; St. Bartholomews Episcopal Church; St. Davids Church; St. James' Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of The Diocese of South Carolina; The Church of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church of Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and the Parish Church of St. Helena Trust; The Vestry and Church of Wardens of The Episcopal Church of the Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church-Wardens of The Episcopal Church of the Parish of Christ Church; Vestry and

Civil Action No. 2017-CP-18-1909

ORDER DENYING DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

Church Wardens of The Episcopal Church of the Parish St. John's Charleston County; The Vestries and Churchwardens of the Parish of Old St. Andrew's Parish Church,	)
Plaintiffs,	)
vs.	)
The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina,	)
Defendants.	)

This action was commenced on November 19, 2017. Defendants filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP on December 15, 2017. A hearing was held on Defendants' Motion to Dismiss on July 23, 2019.

The issues upon which this action is based arise out of a separate action commenced on January 4, 2013 that ultimately resulted in a South Carolina Supreme Court decision consisting of five separate opinions. *The Protestant Episcopal Church in the Diocese of South Carolina, et al. v. The Episcopal Church, et al*., 421 S.C. 201, 806 S.E.2d 802 (2017) ("Collective Opinions"). That action has had a lengthy procedural history including a three week bench trial and two appeals to the South Carolina Supreme Court. That action also is once again before this Court having been remitted to it on November 17, 2017.

The Court has yet to rule on other motions filed in the remitted action and recognizes that were it to rule against the Defendants on some or all of those motions, this betterments action could become moot as to some or all the Plaintiffs. Nevertheless, the Defendants seek a ruling on their motion to

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

dismiss and hence the Court will consider, for purposes of ruling on the motion to dismiss only, that this betterments action is ripe. For the reasons that follow, Defendants' Motion to Dismiss is denied.

Rule 12(b)(6) motions challenge the legal sufficiency of a complaint. For that reason, the allegations of the challenged complaint are accepted as true for the purposes of assessing its legal sufficiency. *Fabian v. Lindsay*, 410, S.C. 475, 481, 765 S.E. 2d 132, 136 (2014). Dismissal is appropriate only when the factual allegations, and the inferences reasonably deductible from them viewed in the light most favorable to the Plaintiffs, would not entitle Plaintiffs to relief on any theory. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*. 407 S.C. 67, 74-75, 753 S.E. 2d 846, 850 (2014). The complaint at issue is Plaintiffs' Amended Complaint filed on November 20, 2017. It alleges that this action is brought pursuant to §§27-27-10 et seq. of the South Carolina Code of Laws ("Betterment"). Those sections create a cause of action for the recovery of good faith improvements to real property, termed "betterments" in the statute, when certain conditions have been met.

There are 3 conditions precedent to recovery. First, there must be a final judgment in favor of a plaintiff in a preceding action (the defendant in the betterment's action) to recover lands and tenements, §27-70-10. Second, the defendant(s) in the preceding action (the plaintiffs in the betterment action) must have acquired title to the real property "supposing… such title to be good" and in good faith have made improvements Id., §27-27-40. Third, the action for betterments must be filed within 48 hours after the judgment in the preceding action. §27-27-30. The question before the Court is whether the allegations of the Amended Complaint taken as true meet these conditions precedent.

I. Plaintiffs' Amended Complaint

Plaintiffs are twenty-nine parishes (the "Plaintiff parishes"), which are individual local churches (all being nonprofit corporations) and their congregations; and the Protestant Episcopal Church in the Diocese of South Carolina (the "Diocese of South Carolina"). As alleged in the

Amended Complaint, each Plaintiff parish possesses a distinct history and many of the parishes can trace a continuous existence back to the colonial era. (Am. Compl. ¶¶ 20-284.) The Diocese of South Carolina was created in 1785. It has continually operated since then, first as an unincorporated association from 1785 and then as a non-profit corporation after it was incorporated in 1973. (*Id.* ¶ 12.)

Since their founding, the Plaintiff parish congregations have had donated to them or have obtained funds to pay for the construction, upkeep, and expansion of their churches. (*Id.* ¶¶ 24, 31, 39, 47, 64, 71, 80, 88, 97, 92, 100, 108, 113, 120, 132, 141, 152, 160, 169, 182, 192, 202, 210, 220, 234, 244, 255, 265, 279.) TEC and ECSC have not contributed. (*See id.*) All of the Plaintiff parishes' buildings have been built, rebuilt, repaired, and improved by their congregations over generations. (*See id.* ¶¶ 20-284.)

The Amended Complaint alleges as to all Plaintiffs that they acquired or leased real property in the good faith belief that they had good title, that they improved that real property in the good faith belief of their ownership, and that the present value of those improvements exceeds the present value of the unimproved real property. The Amended Complaint also alleges that the issues of ownership depend on this Court's determination of remaining issues from the Collective Opinions. The Amended Complaint prays that the resolution of the issues in this case await this Court's decision on motions filed in the remitted case concerning the parish plaintiffs' "accession" (agreement) to the Dennis Canon as well as the Plaintiff Diocese's property interests.

II. Motion to Dismiss

Defendants Motion to Dismiss makes three arguments: The Collective Opinions are dispositive, the Betterments Act does not apply and the complaint was filed too late.

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

This action was filed on November 19, 2017. It is uncontested that this was within 48 hours of the Supreme Court's denial of Plaintiffs' Petition for Rehearing in the remitted case and the simultaneous remittal of that case to this Court on November 17, 2017. Defendants' contend that the August 2, 2017 Supreme Court decision was the "final judgment" for purposes of the 48 hour filing requirement, not the remittitur. However, an opinion of the South Carolina Supreme Court is not final until the remittitur is sent and the timely filing of a petition for rehearing stays the sending of the remittitur depriving the decision of finality. *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 23, 736 S.E. 2d 651, 655, n. 2 (2012). Rule 221, SCACR. The cases Defendants rely upon for their timeliness arguments are equally unsupportive.

Defendants rely on *Garrison v. Daugherty*, 18 S.C. 486 (1883) for the proposition that a judgment remitted from the Supreme Court cannot be a "final judgment" because the statute states the judgment is that of the Circuit Court. *Garrison* is factually distinguishable because it involved a circuit court judgment that had already deprived the betterments act plaintiffs of their property. There has been no similar judgment here because the Plaintiffs won before the Circuit Court on all the property issues. Moreover, if the "final judgment" must be from the Circuit Court, then the Collective Opinions are not a final judgment either and this action would not be untimely; it would be premature. However, Defendants have not argued that this action is premature.

The second case on which Defendants rely, *Godfrey v. Fielding*, 21 S.C. 313 (1884), is equally unsupportive of the timeliness argument. *Godfrey* was a betterment action commenced four years after the adverse real property verdict but within 48 hours of the formal entry of judgment on that verdict by the clerk's office. The Supreme Court held that the statute's use of the term "final judgment" means either the verdict or it assumes the prompt entry of a formal judgment. It is "intended to express the idea of a final determination of the rights of the parties as

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

to the land." *Id.* at 317. Assuming for purposes of this motion that Defendants prevailed in the Supreme Court, that "verdict" was not final until the remittitur issued and this action was filed timely within 48 hours of its remittal.

Defendants remaining arguments are based on their interpretation of the meaning of the Collective Opinions which this Court has under advisement in post remittal motions pending in that action. The essence of those arguments is that the counterclaims Defendants made against these Plaintiffs in that action could not be considered actions to recover possession of real property. If the Defendants, as they claim, were successful in the State Supreme Court, it could only be based on their counterclaims. Defendants' submissions both in that action and in this action establish that the gravamen of their counterclaims was to recover possession of real property from the Plaintiffs. TEC's counterclaim sought an injunction to make Plaintiffs relinquish control of the Diocese and Parish corporations "and all property held by these corporations". Answer and Counterclaims of TEC to Second Amended Complaint at 97. TECSC's counterclaim sought restitution of Plaintiffs' property alleging its conversion. Answer, Affirmative Defenses and Counterclaims of TECSC to Second Amended Complaint at 75. Judge Goodstein, in her final order, states that the counterclaims "in effect seek to have the real and personal property rights placed at issue by Plaintiffs declared in their favor." Order at 2-3.

Moreover, in Defendants' post-remittal filings in the remitted action, they argue the right to recover possession of Plaintiffs' property based on the Collective Opinions. Defendants' Petition to Execute asks this Court to direct "the appropriate Plaintiffs to execute all necessary deeds or instruments of title…" and the Supreme Court quoted Defendants' Petition for a Writ of Mandamus in which they asked the Supreme Court to require this Court to "effectuate the transfer of possession and control of diocesan property and the property of 29 parishes…" Or. June 28,

2019. Finally, Defendants' argument that the Collective Opinions gave them a trust interest in Plaintiffs' property rather than possessory rights is also in conflict with Defendants' argument in their Petition for Execution which maintains that upon Plaintiffs' disaffiliation from TEC (2012), "title to their property belonged to TEC and its Associated Diocese…." Mem. in Sup. Am. Pet. Execution at p. 9.

These contradictory positions do not meet the standard required to dismiss this action: that there is no legal theory under which Plaintiffs could be entitled to relief based on the facts (and reasonable inferences) alleged in their Amended Complaint.

The Motion to Dismiss is Denied.

IT IS SO ORDERED.

_____
Judge Edgar W. Dickson
Circuit Court Judge

_____, South Carolina
_____, 2019

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

ELECTRONICALLY FILED - 2019 Sep 09 12:14 PM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801909

Dorchester Common Pleas

Case Caption: Protestant Episcopal Church Diocese Of South Carolina , plaintiff, et al VS Episcopal Church aka Protestant Episcopal Church United Stat , defendant, et al

Case Number: 2017CP1801909

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153