IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

The Right Reverend Charles G. vonRosenberg et al.,	)	
Plaintiffs,	)	
The Episcopal Church,	)	Case No. 2:13-cv-00587-RMG
Plaintiff-in-Intervention,	)	**MEMORANDUM IN SUPPORT OF THE EPISCOPAL CHURCH'S MOTION TO AMEND ITS AMENDED COMPLAINT-IN-INTERVENTION TO JOIN PARTIES AND CLAIMS**
v.	)	
The Right Reverend Mark J. Lawrence et al.,	)	
Defendants.	)	

The Episcopal Church (the "Church") intervened in this action by leave of Court on August 23, 2017 and filed an Amended Complaint-in-Intervention on September 1, 2017. Its Amended Complaint-in-Intervention asserts claims under the Lanham Act against defendant the Rt. Rev. Mark Lawrence and "defendants John Does 1-10" who "are individuals who are using marks that infringe upon and dilute marks owned by The Episcopal Church and whose identities are presently unknown to The Episcopal Church" (the "Individual Does").[1] Amended Complaint-in-Intervention ¶¶ 3, 4.

The Church now seeks to amend its Amended Complaint-in-Intervention in two respects. First, it seeks to add parties to the existing Lanham Act claims in order to ensure that the Church can get "complete relief" on those claims in this action. Specifically, the Church seeks to add the diocese led by defendant Lawrence (the "Lawrence Diocese"), the Trustees of The Protestant Episcopal Church in the Diocese of South Carolina (the "Trustees Corporation"), and the 54

[1] The Church is not yet in a position to identify the Individual Does, but expects to be able to after minimal discovery.

parishes that are affiliated with the Lawrence Diocese (the "Lawrence Parishes").[2] The Church believes that each, in concert with or under the direction of defendant Lawrence, is committing violations of the Church's trademark rights under the Lanham Act that are similar, if not identical, to those defendant Lawrence is committing.

Second, the Church seeks to add to this action an additional claim, which it would assert against twenty-eight (28) of the Lawrence Parishes described above, each of which has been found by the Supreme Court of South Carolina to hold their real and personal property in trust for the Church and its local diocese (the "28 Trustee Parishes").[3] This claim asserts that each of the 28 Trustee Parishes, under the direction of their governing boards, or "vestries," has breached its fiduciary duties to the Church, by using the assets it holds in trust, including historic buildings, in affiliation with a denomination other than the Church and in ways that create confusion in violation of the Lanham Act. It requests that this Court, pursuant to S.C. Code § 62-7-706, order the 28 Trustee Parishes to remove from their vestries all persons who cannot, going forward, fulfill their fiduciary obligations to the Church.

As explained below, the Church's motion should be granted under Rules 15, 18, 19, and 20 of the Federal Rules of Civil Procedure, governing amendments to pleadings and the joinder of parties and claims, and 28 U.S.C. § 1367(a), governing this Court's supplemental jurisdiction.

BACKGROUND

The Episcopal Church's Amended Complaint-in-Intervention asserts claims against defendant Lawrence and the Individual Does for trademark infringement (15 U.S.C. § 1114) and trademark dilution (15 U.S.C. § 1125(c)), arising out of their "represent[ing] to the public that

[2] The Lawrence Parishes are listed in the Motion of The Episcopal Church to Amend its Amended Complaint-in-Intervention to Join Claims and Parties at ¶ 1.c.

[3] The 28 Trustee Parishes are listed in the Motion of The Episcopal Church to Amend its Amended Complaint-in-Intervention to Join Claims and Parties at ¶ 2.

[Lawrence] serves as a "Bishop" of an "Episcopal" "Diocese,"" Amended Complaint-in-Intervention ¶ 22; their use of the marks THE EPISCOPAL DIOCESE OF SOUTH CAROLINA and THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, *id.* ¶¶ 22-24; and Lawrence's "refer[ring] to many of the churches acting under his direction or control as "Episcopal" churches" and his "fail[ure] to instruct those churches to discontinue referring to themselves as "Episcopal" churches." *Id.* ¶ 25.

The Church has now identified other parties, in addition to defendant Lawrence and the Individual Does, that are related to or under the control of defendant Lawrence, and that the Church believes are committing similar, if not identical, violations of the Church's trademark rights under the Lanham Act. As the Church alleges in its Proposed Second Amended Complaint-in-Intervention, the following entities are also infringing and diluting the Church's marks: (1) the Lawrence Diocese, which holds itself out as an "Episcopal" "Diocese," including at times under the names THE EPISCOPAL DIOCESE OF SOUTH CAROLINA and THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, *see* Proposed Second Amended Complaint-in-Intervention at ¶¶ 28, 29, 31, 32; (2) the Trustees Corporation, which owns the assets historically held for the Episcopal Diocese in this region, and is making those assets available for use by defendant Lawrence, the Individual Does, and the Lawrence Diocese, including the use of historic buildings traditionally identified as "Episcopal Church" buildings, in ways that create confusion in violation of the Lanham Act, while holding itself out as a corporation serving the interests of an "Episcopal" "Diocese," *see* Proposed Second Amended Complaint-in-Intervention at ¶ 30; and (3) the Lawrence Parishes, which hold themselves out as "Episcopal" parishes belonging to an "Episcopal" "Diocese," including by using in those contexts the infringing marks THE EPISCOPAL DIOCESE OF SOUTH

CAROLINA and THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA and by conducting their operations in historic buildings traditionally identified as "Episcopal Church" buildings, in ways that create confusion in violation of the Lanham Act, *see* Proposed Second Amended Complaint-in-Intervention at ¶ 34. As set forth more fully below, the Church believes that it cannot get complete relief in this action under the Lanham Act without the inclusion of all of these entities in this lawsuit.

In addition to seeking to add parties to this action, the Church requests that it be allowed to add claims against the 28 Trustee Parishes seeking their removal as trustees in the light of their failure to faithfully execute fiduciary obligations they owe to the Church and its diocese. In August 2017, the Supreme Court of South Carolina held, in *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 412 S.C. 211, 806 S.E.2d 82 (2017), that, as a result of having acceded in writing to the governance of The Episcopal Church and its diocese, the 28 Trustee Parishes hold their property in trust for the Church and its diocese, The Episcopal Church in South Carolina. *See* 412 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting) (summarizing the outcome of the case, including that "with regard to twenty-eight church organizations which acceded to the Dennis Canon, a majority … would hold that a trust in favor of the national church is imposed on the property"); *see also* 412 S.C. at 248, n.27, 806 S.E.2d at 102, n.27 (Hearn, J., concurring) (counting twenty-nine parishes as having "documented their reaffirmation to" the Church);[4] the Court denied motions to rehear the case on November 17, 2017. Under that precedent, the 28 Trustee Parishes are trustees with fiduciary obligations to the Church and its diocese, requiring them to hold their real and personal property in trust for the Church and its diocese as beneficiaries.

[4] The Episcopal Church agrees with Justice Toal's count of twenty-eight parishes as having written accessions to the Dennis Canon, and seeks to assert trust-related claims against only those twenty-eight parishes (the 28 Trustee Parishes) here.

It is undisputed and was established in the state court case that since late 2012, when they purported to disaffiliate from The Episcopal Church with defendant Lawrence, the 28 Trustee Parishes have remained in possession and control of the real and personal property they hold in trust for the Church and its diocese, and have used that property in connection with a denomination other than The Episcopal Church without the consent of the Church or its diocese, in direct violation of the rules of the Church and its diocese. By these actions, the 28 Trustee Parishes have violated their fiduciary duties to the Church and its diocese. Those violations form the basis for the Church's request that the 28 Trustee Parishes be removed as trustees. Moreover, although the 28 Trustee Parishes clearly regard themselves as no longer affiliated with the Church or its diocese, they nevertheless have conducted their operations in buildings they hold in trust and that have been historically identified as "Episcopal" churches connected to the Church and its diocese, adding to the confusion that gives rise to the Lanham Act claims described above.

ARGUMENT

I. THE CHURCH'S MOTION SATISFIES THE LIBERAL STANDARD FOR AMENDMENTS TO PLEADINGS SET OUT IN RULE 15.

Federal Rule of Civil Procedure 15(a)(2) requires that courts "freely give leave" to requests to amend pleadings "when justice so requires." F.R.C.P. 15(a)(2). The Fourth Circuit "ha[s] interpreted Rule 15(a) to provide that 'leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.'" *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (following citation omitted).

None of the circumstances that require denial of such a motion exist here. First, allowing the proposed amendments will not prejudice defendant Lawrence. The case is still in its early

stages – largely due to delays stemming from Lawrence's own efforts to have this Court abstain from the case and the appeals that followed – and any new factual discovery that may result from adding new parties to the existing Lanham Act claims will not be unduly burdensome. The Church anticipates that such discovery would seek to ascertain evidence showing the Lawrence Parishes' use of the same or similar names as those that Lawrence has used.

Separately, adding new claims against the 28 Trustee Parishes for breach of fiduciary duty, although new to the instant case, would present no burden to Lawrence, nor would it present surprise, or the specter of unexplored facts or issues, to any of the proposed additional defendants. The subject of the trust obligations owed by each of them to the Church was fully contemplated, litigated, and decided in the state court proceeding.

Second, the Church is not acting in bad faith, nor is it aware of any evidence that would suggest the contrary.

Third, the proposed amendments would not be futile. A proposed amendment is futile if it fails on its face to state a claim. *See, e.g. Laber,* 438 F.3d at 429 (amendment not futile because "it does allege a cause of action" and a timeliness objection was waived). The Church's existing Amended Complaint-in-Intervention already states claims of infringement and dilution under the Lanham Act, and the addition of new parties would not change that.[5] The Church's

[5] "To establish trademark infringement under the Lanham Act, a plaintiff must prove: (1) that it owns a valid mark; (2) that the defendant used the mark 'in commerce' and without plaintiff's authorization; (3) that the defendant used the mark (or an imitation of it) 'in connection with the sale, offering for sale, distribution, or advertising' of goods or services; and (4) that the defendant's use of the mark is likely to confuse consumers." *Rosetta Stone, Ltd. v. Google, Inc.,* 676 F.3d 144, 152 (4th Cir. 2012).

"To state a prima facie dilution claim under the [Federal Trademark Dilution Act], the plaintiff must show the following: (1) that the plaintiff owns a famous mark that is distinctive; (2) that the defendant has commenced using a mark in commerce that allegedly is diluting the mark; (3) that a similarity between the defendant's mark and the famous mark give rise to an

Proposed Second Amended Complaint-in-Intervention also pleads a claim for removal of trustees. S.C. Code § 62-7-706 provides that "a beneficiary" of a trust "may request the court to remove a trustee" (subsection (a)) and that a trustee may be removed if the he or she "has committed a serious breach of trust" (subsection (b)) or "because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiar[y]" (subsection (c)). The Church's Proposed Second Amended Complaint-in-Intervention contains all the required allegations to state a claim under this statute: It includes a request by a beneficiary of a trust (the Church) for removal of trustees (the 28 Trustee Parishes) on the grounds that they have both committed serious breaches of trust and have demonstrated unfitness, unwillingness, or persistent failure to administer the trust effectively. *See* Proposed Second Amended Complaint-in-Intervention at ¶¶ 48, 49, Prayer for Relief at d., e.

Because none of the circumstances requiring denial of a motion to amend exist here, the Court should "freely give leave" to the Church to amend its Amended Complaint-in-Intervention, provided, of course, that the Church's motion also satisfies the requirements for the joinder of parties and claims. As we now show, it does.

II. THE COURT SHOULD PERMIT THE CHURCH TO JOIN THE LAWRENCE DIOCESE, THE TRUSTEES CORPORATION, AND THE LAWRENCE PARISHES AS PARTIES UNDER RULE 19 BECAUSE THE CHURCH CANNOT GET "COMPLETE RELIEF" WITHOUT THEM.

Federal Rule of Civil Procedure 19 provides that a person or entity "must be joined as a party if … in that person's absence, the court cannot accord complete relief among existing parties." F.R.C.P. 19(1)(A). The Fourth Circuit has said that a party is "necessary" to a dispute under this rule and must be joined to it if the core of the dispute cannot be "fully resolve[d]"

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association between the marks; and (4) that the association is likely to impair the distinctiveness of the famous mark or likely to harm the reputation of the famous mark." *Id.* at 168.

without him or her. *Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 435 (4th Cir. 2014) (deeming it "crucial" that builder be joined to homeowner's dispute with issuer of home warranty because otherwise homeowner could not receive "full recovery on the defects in her house").

The Church cannot receive "complete relief" on its existing Lanham Act claims without the inclusion of the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes as parties in this case. As the Church's Proposed Second Amended Complaint-in-Intervention sets out, defendant Lawrence and the Individual Does are not alone in the misuse of the Church's marks or in holding themselves out in a way that infringes and dilutes the Church's marks. Rather, in concert with Lawrence and the Individual Does, the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes are taking the same or similar actions that violate the Church's rights under the Lanham Act. Any remedy for the confusion and dilution that the Church addresses with this action therefore will be sorely incomplete if these other parties are not added, as they otherwise will not be bound by this Court's resolution of the case and therefore will be free to continue their confusing and diluting activities. *See, e.g.*, *Monaco v. South Carolina Workers' Compensation Commission,* 2008 WL 163059 (D.S.C. 2008) (Governor was "necessary party" and therefore joined in the action because "[e]ven if this Court enjoined the Commission from enforcing the current executive orders, without adding the Governor as a party, the Governor is free to issue a subsequent executive order").

III. IN THE ALTERNATIVE, THE COURT SHOULD PERMIT THE CHURCH TO JOIN THE LAWRENCE DIOCESE, THE TRUSTEES CORPORATION, AND THE LAWRENCE PARISHES AS PARTIES UNDER RULE 20 BECAUSE COMMON QUESTIONS OF LAW OR FACT EXIST AND JOINING THEM WILL CONSERVE JUDICIAL RESOURCES.

Even if joinder of parties were not required under Rule 19, it is both permitted and highly desirable under the circumstances here. Federal Rule of Civil Procedure 20(a)(2) provides that "[p]ersons … may be joined in one action as defendants if: (A) any right to relief is asserted against them … with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." F.R.C.P. 20(a)(2). As we show below, the requirements of subsections (A) and (B) of Rule 20 are easily met here. Equally important, the policy goals of the rule would be advanced by allowing joinder. The Fourth Circuit has said that Rule 20 "should be construed in light of its purpose, which is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." *Saval v. BL Ltd.,* 710 F.2d 1027, 1031 (4th Cir. 1983) (internal citations omitted). According to the U.S. Supreme Court, "the impulse is toward the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs,* 383 U.S. 715, 724 (1966). Here, where the parties and proposed additional parties have labored in this and related litigation for nearly five years, the parties' need for closure and the equally important need to conserve judicial resources both weigh heavily in favor of allowing joinder of all proposed parties in this action.

The Church's request to join the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes satisfies the requirements of both subsections (A) and (B) of Rule 20(a)(2). Taking (B) first: Where infringement of the same trademarks is at issue, common questions of

law and fact are found to exist. *See Golden Scorpio Corp. v. Steel Horse Bar & Grill*, 596 F.Supp.2d 1282, 1284 (D.Ariz. 2009) ("there are common questions of law and fact because all defendants are alleged to have infringed the same trademarks."). Here, the Church seeks to join these new defendants to protect the same trademarks that it seeks to protect in the existing suit. Subsection (B) is therefore satisfied.

As for (A): The Church's existing Lanham Act claims against Defendant Lawrence and the Individual Does clearly arise out of the same series of transactions or occurrences as its proposed Lanham Act claims against the Lawrence Diocese, the Trustees Corporation, and the Lawrence Parishes. First, although "[a]bsolute identity of all events is unnecessary" to satisfy the "same transaction or occurrence" standard, *Saval*¸710 F.2d at 1031 (internal citation omitted), the allegations underlying the claims being proposed against the Lawrence Diocese and the Trustees Corporation are in fact nearly identical to the allegations underlying the existing claims. *Compare* Amended Complaint-in-Intervention at ¶¶ 22-24 (alleging that Defendant Lawrence holds himself out as a "Bishop" of an "Episcopal" "Diocese," including at times under the names THE EPISCOPAL DIOCESE OF SOUTH CAROLINA and THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA) *with* Proposed Second Amended Complaint-in-Intervention at ¶¶ 28, 29, 31, 32 (alleging that the Lawrence Diocese holds defendant Lawrence out as a "Bishop" of an "Episcopal" "Diocese" and itself out as an "Episcopal" "Diocese" including at times under the names THE EPISCOPAL DIOCESE OF SOUTH CAROLINA and THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA); *compare* Amended Complaint-in-Intervention at ¶ 22 (alleging that Defendant Lawrence holds himself out as a "Bishop" of an "Episcopal" "Diocese") *with* Proposed Second Amended Complaint-in-Intervention at ¶ 30 (alleging that the Trustees

Corporation provides assets to defendant Lawrence, the Lawrence Diocese, and the Individual Does for use in representing that Lawrence is the "Bishop" of an "Episcopal" "Diocese" and that the Lawrence Diocese is an "Episcopal" "Diocese," including the use of historic buildings traditionally identified as "Episcopal Church" buildings).

As for the Lawrence Parishes, the existing Amended Complaint-in-Intervention alleges that defendant Lawrence has "failed to instruct" churches "acting under his direction" "to discontinue referring to themselves as "Episcopal" churches," Amended Complaint-in-Intervention ¶ 25, while the Proposed Second Amended Complaint-in-Intervention alleges that those parishes in fact refer to themselves as "Episcopal" churches belonging to an "Episcopal" "Diocese." Proposed Second Amended-Complaint-in-Intervention at ¶ 34. There is sufficient overlap in those allegations to qualify as the same series of transactions or occurrences under Rule 20. *See, e.g., Triangle Software, LLC v. Garmin International, Inc.,* 2011 WL 10618731 *1 (E.D.Va. 2011) (in patent infringement action, where there was a "business relationship" between the existing defendant and the entities the plaintiff proposed to add as defendants, and where the defendant allegedly "induced" those entities to infringe the plaintiff's patent, the plaintiff's claims against the new entities "[arose] out of the same transaction or occurrence" as the existing claims). Subsection (A) is satisfied, as well.

IV. THE COURT SHOULD PERMIT THE CHURCH TO JOIN CLAIMS UNDER RULE 18 FOR REMOVAL OF TRUSTEES UNDER S.C. CODE § 62-7-706.

Federal Rule of Civil Procedure 18(a) provides that "[a] party asserting a claim … may join, as independent or alternative claims, as many claims as it has against an opposing party." F.R.C.P. 18(a). Under this rule, a party generally "should be permitted to join all claims against an opponent as a matter of right," 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1582 (2010), however, federal courts may entertain such claims

only if they independently satisfy jurisdiction requirements. *E.g., King Fisher Mar. Serv. V. 21st Phoenix Corp.*, 893 F.2d 1155, 1158 n.2 (10th Cir. 1990).

28 U.S.C § 1367 governs the supplemental jurisdiction of federal courts. Subsection (a) of Section 1367 provides that, except when certain exceptions apply (none of which apply here), "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article II of the United States Constitution." 28 U.S.C. § 1367(a). The Fourth Circuit has held that Section 1367 codifies the standard set out by the U.S. Supreme Court in *United Mine Workers of America v. Gibbs*, 86 S.Ct. 1130 (1966). *See Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 842 (4th Cir. 1999). The *Gibbs* Court held that federal courts have supplemental jurisdiction over state law claims where "[t]he state and federal claims … derive from a common nucleus of operative fact." *Gibbs*, 86 S.Ct. at 1138. "In practice, § 1367(a) requires only that the jurisdiction-invoking claim and the supplemental claim have some loose factual connection." 13D Charles Alan Wright, Arthur R. Miller, Edward H. Cooper & Richard D. Freer, Federal Practice and Procedure § 3567.1 (2008).

Here, the Church's Lanham Act claims against the 28 Trustee Parishes and the Church's removal-of-trustee claims against those same parishes have much more than a "loose factual connection" and can easily be said to derive from a "common nucleus of operative fact." Indeed, some of the facts supporting the Church's Lanham Act claims are identical to those supporting its removal-of-trustee request – specifically, the repeated use by the 28 Trustee Parishes of the church buildings they hold in trust for the Church in affiliation with another denomination. That

repeated use both causes confusion in violation of the Church's rights under the Lanham Act and violates the 28 Trustee Parishes' fiduciary duties to the Church.

The Fourth Circuit has "articulated at least nine factors that generally are relevant to the 'likelihood of confusion' inquiry" that is the heart of a trademark infringement claim. *Rosetta Stone, Ltd. v. Google, Inc.*, 676 F.3d 144, 153 (4th Cir. 2012). One of those factors is "the similarity of the facilities used by the markholders." *Id.* (internal quotations and citations omitted). Courts routinely hold that when a particular building has historically been associated with a specific entity, its mere occupancy later by a competitor can be relevant to the analysis of a Lanham Act claim between the parties. Thus, when the competitor later occupies the same building and fails to adequately distinguish itself from the prior occupant, that action weighs in favor of finding a Lanham Act violation. *See, e.g., Putt-Putt, LLC v. 416 Constant Friendship, LLC*, 936 F.Supp.2d 648, 658 (D.Md. 2013) ("Defandant 416 CF's use of the same building that once housed a former authorized Putt-Putt franchise" weighed in favor of finding a Lanham Act violation); *Blue Mako Incorp. v. Minidis*, 2008 WL 11334205 *9 (C.D.Cal. 2008) (giving similar weight to the fact that "[e]ach Hot Rocks restaurant was located in the same building … as the Red Brick restaurant it replaced"); *IHOP Corp. v. Langley*, 2008 WL 1859340 *1 (E.D.N.C. 2008) (giving similar weight to fact that "Defendant's restaurant" operated in "the building once occupied by an IHOP restaurant"). In the light of these precedents, the 28 Trustee Parishes' repeated use of buildings that are historically recognized as "Episcopal Church" buildings, even while they are worshipping in affiliation with another denomination and have disavowed the Church, is one factor that supports a finding that they have violated the Lanham Act.

That same use of the buildings by the 28 Trustee Parishes also violates the 28 Trustee Parishes' fiduciary obligations to the Church. As shown above, the Supreme Court of South

Carolina has concluded that "the twenty-eight church organizations which acceded to the Dennis Canon" – a rule set out in the Church's governing documents – hold their property in "trust in favor of the national church." *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting). Use by the 28 Trustee Parishes of the property they hold in trust for the Church – including the historic buildings traditionally identified as "Episcopal Churches" – to carry out their operations in affiliation with another denomination clearly violates their fiduciary duties to the Church.

For these reasons, the Church's Lanham Act claims against the 28 Trustee Parishes and its claims for removal of trustees under S.C. Code § 62-7-706 derive from a common nucleus of operative fact, so that this Court has jurisdiction over the state law claims.[6]

CONCLUSION

For the reasons stated herein, this Court should grant the Church's motion to amend its complaint to join parties and claims.

Respectfully submitted,

GIBBS & HOLMES

By**:** S/Allan R. Holmes
Allan R. Holmes (Fed. ID# 1925)
Cheryl H. Ledbetter (Fed. ID# 11446)
Timothy O. Lewis (Fed. ID# 9864)
171 Church Street, Suite 110
Charleston, SC 29401
(843) 722-0033 (telephone)
(843) 722-0114 (facsimile)

[6] The "probate exception" to federal court jurisdiction has no application to the present case. "[T]he probate exception is limited to two categories of cases: (1) those that require the court to probate or annul a will or to administer a decedent's estate, and (2) those that require the court to dispose of property in the custody of a state probate court." *Lee Graham Shopping Center, LLC v. Estate of Kirsch*, 777 F3d 678, 689-81 (4th Cir. 2015); *see also Wellin v. Wellin*, No. 2-14-cv-4067-DCN, 2015 WL 628071, at *4 (D.S.C. Feb. 12, 2015) (same) (citing *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006)). Neither category of circumstances exists here.

Mary E. Kostel
Admitted *Pro Hac Vice*
Special Counsel
The Episcopal Church
c/o Goodwin Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001
Tel.: 202-346-4184
Fax: 202-346-4444
mkostel@goodwinlaw.com

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ATTORNEYS FOR THE PLAINTIFF-IN-INTERVENTION