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, *et al.*	)	Case No. 2017-CP-18-1909
	)	
	)	**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT UNDER THE BETTERMENT ACT**
v.	)	
	)	
The Episcopal Church, *et al.*	)	
	)	
	)	

Defendants, The Episcopal Church ("TEC") and The Episcopal Church in South Carolina ("Associated Diocese"), hereby submit this memorandum of law in support of their motion to dismiss Plaintiffs' complaint under the Betterment Act for failure to state a claim upon which relief can be granted under Rule 12(b)(6), SCRCP.

I.

INTRODUCTION

Plaintiffs' complaint under the Betterment Act is an improper challenge to the finality of the decision of the South Carolina Supreme Court in Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 421 S.C. 211, 806 S.E.2d 82 (2017). The South Carolina Supreme Court decided the property dispute between the parties to that action by recognizing the existence of certain trusts and trustee-beneficiary relationships. Plaintiffs' complaint disregards the trust-based nature of that decision and seeks to undermine the South Carolina Supreme Court's mandate by alleging rights, under the Betterment Act, to the monetary value of property that the Supreme Court has determined is held in trust. The Betterment Act, however, is a complete misfit. It applies only against land owners following an antiquated action to recover lands; it does not defeat a trust or reverse the duties owed in a trustee-beneficiary relationship; it is not a mechanism to re-litigate claims and issues that have been finally decided;

and it was not timely raised in any event. As further detailed herein, Plaintiffs' complaint fails to state a cause of action as a matter of law and should be dismissed under Rule 12(b)(6), SCRCP.

II.

BACKGROUND

This betterment action is premised upon the action commenced in 2013 and decided by the South Carolina Supreme Court in 2017, Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. 211, 806 S.E.2d 82.

In that decided action, the South Carolina Supreme Court, by a majority vote, found that twenty-nine parishes hold their property in trust for the benefit of TEC and its Associated Diocese. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 230-31, 806 S.E.2d at 92-3 (Pleicones, A.J.); id. at 248 & n. 27, 806 S.E.2d at 101-02 & n. 27 (Hearn, J., concurring); id. at 250-51, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part).

The South Carolina Supreme Court, by a majority vote, also found that the diocesan property is held in trust by a trustee corporation (the "Trustee Corporation")[1] for the benefit of TEC's Associated Diocese. 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, A.J., dissenting and summarizing the majority decision on diocesan property) (" . . . title is in the trustee corporation for the benefit of the associated diocese…"); id. at 251, n.29 (Beatty, C.J., "In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South

[1] The full name of the Trustee Corporation is "The Trustees of The Protestant Episcopal Church in the Diocese of South Carolina." As described more fully below, it is governed by an 1880 Act, as amended by an 1902 Act, of the General Assembly of South Carolina, both of which expressly provide that the Trustee Corporation holds all property in trust for a diocese that the Supreme Court has determined is the Associated Diocese.

Carolina."); id. at 231 (Pleicones, A.J., "…the Associated Diocese as the true Lower Diocese of South Carolina…"); id. at 248 (Hearn, J., "…the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property…").

On September 1, 2017, the non-prevailing plaintiffs in the decided action petitioned for a rehearing and made a motion to recuse Justice Hearn.

On November 17, 2017, the South Carolina Supreme Court denied their petition for rehearing and their motion to recuse Justice Hearn and remitted the case. The South Carolina Supreme Court's order specifically provided as follows: "Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur." This order was signed by four of the five Justices: J. Beatty, J. Pleicones, J. Kittredge, and J. Toal (with J. Hearn not participating).

On November 19, 2017, this betterment action was filed by most of the same non-prevailing plaintiffs, including the twenty-nine parishes that were found to hold their property in trust for the benefit of TEC and its Associated Diocese, and the disassociated diocese, naming itself in this action as the "Protestant Episcopal Church in the Diocese of South Carolina." Not included as parties to this betterment action are the Trustee Corporation and the several parishes that were found not to have created express trusts in property titled in their names in favor of TEC and its Associated Diocese.

On February 9, 2018, the non-prevailing plaintiffs in the decided action petitioned for writ of certiorari to the United States Supreme Court.

On June 11, 2018, the United States Supreme Court denied that petition for writ of certiorari.

Accordingly, the August 2, 2017 opinion of the South Carolina Supreme Court is not subject to any further appeals in any court in this State or this Country.

Several months ago, on December 15, 2017, TEC and its Associated Diocese filed the instant motion to dismiss this betterment action.

III.

LEGAL STANDARD

"A trial judge may dismiss a claim when the defendant demonstrates the plaintiffs 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." FOC Lawshe Ltd. P'ship v. Int'l Paper Co., 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting Rule 12(b)(6), SCRCP). "The trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint." Brown v. Leverette, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." Id. "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." Int'l Paper, 352 S.C. at 413, 574 S.E.2d at 230.

IV.

LEGAL ARGUMENT

1. The Betterment Act does not apply.

The Betterment Act provides for an action against a land owner following an action to recover lands, as follows:

> After final judgment in favor of the plaintiff in an action to recover lands and tenements, if the defendant has purchased or acquired the lands and tenements recovered in such action or taken a lease thereof or those under whom he holds have purchased or acquired

> a title to such lands and tenements or taken a lease thereof, supposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter.

S.C. Code Ann. §27-27-10.

In the words of the South Carolina Supreme Court, the Betterment Act "permits one, who was in possession of lands under an honest but mistaken belief of ownership, to recover for improvements made by him only where an action at law has been brought by the owner to recover possession." Citizens & S. Nat. Bank, Atlanta, Ga. v. Homes Constr. Co., 248 S.C. 130, 134, 149 S.E.2d 326, 328 (1966). Accordingly, "the betterment statute affords no remedy" in a case where "[no] action for possession of the land has been brought by the owner." Id.

a. Plaintiffs' complaint is not against a landowner following an action to recover lands; instead, the South Carolina Supreme Court recognized Defendants' trust interests.

The Betterment Act does not provide relief to Plaintiffs here because Defendants, TEC and the Associated Diocese, did not own the land at issue and did not bring an action to recover land. This is manifest in two respects.

First, in the very first paragraph of their complaint, Plaintiffs allege that they are the land owners; not Defendants. This allegation alone is dispositive of Plaintiffs' failure to state a claim under the Betterment Act.

Second, the action decided by the South Carolina Supreme Court was not one to recover lands; instead, it was one to recognize Defendants' trust interests.

The South Carolina Supreme Court determined that the property of the parishes is owned by the Plaintiff parishes and held in trust for Defendants, TEC and its Associated Diocese, who are the beneficiaries of such trusts, in accord with the Dennis Canon. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 230-31, 806 S.E.2d at 92-3 (Pleicones, A.J.); id. at 248 & n. 27, 806 S.E.2d at 101-02 & n. 27 (Hearn, J., concurring); id. at 250-51, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part). The Dennis Canon, as recited by the South Carolina Supreme Court, provides as follows:

> 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 such 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.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221, 806 S.E.2d at 87 (reciting the Dennis Canon).

As for the property of the diocese, which is owned by the Trustee Corporation (which is not even named as a party in this action), the Court determined that it is held in trust for TEC's Associated Diocese. 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, A.J., dissenting and summarizing the majority decision on diocesan property) (" . . . title is in the trustee corporation for the benefit of the associated diocese…"); id. at 251, n.29 (Beatty, C.J., "In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina."); id. at 231 (Pleicones, J., "…the Associated Diocese as the true Lower Diocese of South Carolina…"); id. at 248 (Hearn, J., "…the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property…").

The Trustee Corporation's legislative charter, the 1880 Act, as amended by the 1902 Act of the General Assembly of South Carolina (the "1880 Act," as amended by the "1902 Act"), provides as follows:

> . . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .
>
> . . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

1880 Act.

> . . . Sec. 2. That a Board of Trustees is hereby incorporated to be known as 'The Trustees of the Protestant Episcopal Church in South Carolina,' which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted . . .
>
> . . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act.

The recognition of these trust interests by the South Carolina Supreme Court does not equate to an action by a land owner to recover lands. See Citizens, 248 S.C. at 134, 149 S.E.2d at 328 ("It does not appear in this case that any action for possession of the land has been brought by the owner and, therefore, the betterment statute affords no remedy.").

b. Defendants' trust interests include any improvements to the land.

Defendants' trust interests apply to all property, both real and personal, of the diocese and the twenty-nine parishes. As recited above, the Dennis Canon applies to "All real and personal property…" Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221, 806 S.E.2d at 87. Likewise, as recited above, the Trustee Corporation's legislative charter applies to "any property," "real and personal property," and "any and all property." 1880 Act, as amended by the 1902 Act.

All property, including real and personal property, includes land and buildings, along with funds and other personal property such as books, silver, historical archives, and trademarks, names, seals, logos, and other indicia. Necessarily, it also includes improvements to land. Accordingly, Defendants have trust interests in the improvements themselves, notwithstanding their trust interests in the land.

c. The Betterment Act is not a vehicle for trustees to sue trust beneficiaries.

The Betterment Act should not be construed as providing a vehicle for trustees to sue their beneficiaries. "The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) (citation omitted). Nothing in the Betterment Act suggests that it was intended by the General Assembly to undermine the rights and responsibilities set out in South Carolina's Trust Code. As we have shown above, the face of the Act is clearly limited to situations involving land ownership, not trusts.

The twenty-nine Plaintiff parishes, which individually serve as trustees by law, cannot seek the value of improvements from their own beneficiaries, Defendants, TEC and its Associated Diocese. Indeed, the filing of this betterment action is itself a breach of their fiduciary duties. Trustees cannot make claims against their own beneficiaries, causing them to

incur litigation expenses, while withholding and wasting trust property. S.C. Code Ann. §62-7-802(a) ("A trustee shall administer the trust solely in the interests of the beneficiaries."); *Michie v. People's Bank Of Darlington*, 167 S.C. 1, 165 S.E. 359 (1932) ("It is the universal rule that a trustee cannot deal with the trust estate for his own benefit.").

Likewise, though the Trustee Corporation was not named as a party to this action, it too would be unable to seek the value of improvements from its own beneficiary, Defendant, TEC's Associated Diocese.

2. Plaintiffs' attempt to re-litigate claims and issues that have been finally decided is barred by the doctrines of *res judicata* and collateral estoppel.

According to Justice Beatty, who cast the deciding vote for the South Carolina Supreme Court, the "disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina." Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 251, n. 29 (Beatty, C.J., "In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina."); id. at 251, n.29 id. at 231 (Pleicones, A.J., "…the Associated Diocese as the true Lower Diocese of South Carolina…"); id. at 248 (Hearn, J., "…the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property…"); n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority decision on diocesan property) (" . . . title is in the trustee corporation for the benefit of the associated diocese…").

Directly contradicting the South Carolina Supreme Court, the disassociated diocese filed this action as the Protestant Episcopal Church in the Diocese of South Carolina, claiming to be its successor and demanding the value of improvements made by it since its founding in the

eighteenth century. The Supreme Court, however, has held that the disassociated diocese is not, in fact, the successor entity.

The disassociated diocese cannot re-litigate this claim and issue of who is the successor to the Protestant Episcopal Church in the Diocese of South Carolina by filing an action in its name under the Betterment Act. It is barred from doing so under the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (citation omitted). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Id. (citation and quotation marks omitted). "Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." Yelsen Land Co. v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (citation and quotation marks omitted). "The doctrine [of res judicata] flows from the principle that public interest requires an end to litigation and no one should be sued twice for the same cause of action." Duckett v. Goforth, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007) (emphasis added) (citation omitted). "The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action." First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945).

Here, res judicata (claim preclusion) applies because the South Carolina Supreme Court's determination that the "disassociated diocese can make no claim to being the successor to the

Protestant Episcopal Church in the Diocese of South Carolina" bars the disassociated diocese from making any claim in such capacity, including but not limited to the instant claim it brought under the Betterment Act.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id. "'While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue.'" Id. (quoting Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008)).

Here, collateral estoppel (issue preclusion) applies because the South Carolina Supreme Court's determination that the "disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina" was litigated, determined, and necessary to support the August 2, 2017 decision of the South Carolina Supreme Court (in which C.J. Beatty's opinion is controlling).

3. Plaintiffs' complaint was not timely filed.

The Betterment Act, S.C. Code Ann. §27-27-10, *et seq.*, requires a complaint to be filed within forty-eight hours of the rendering of a final judgment.

> The defendant in such action shall, within forty-eight hours after such judgment or during the term of the court in which it shall be

> rendered, file in the office of the clerk of the court in which such judgment was rendered a complaint against the plaintiff for so much money as the lands and tenements are so made better. The filing of such complaint shall be sufficient notice to the defendant in such complaint to appear and defend against it. All subsequent proceedings shall be had in accordance with the practice prescribed in this Code for actions generally.

S.C. Code Ann. §27-27-30.

Here, a final judgment was rendered by the South Carolina Supreme Court on August 2, 2017. Plaintiffs therefore should have filed their betterment complaint by August 4, 2017. They did not do so, however, until more than three months later, on November 19, 2017.

Plaintiffs' petition for a rehearing, which was ultimately denied, did not toll the statutory time period to file a betterment action; nor did their petition for writ of certiorari to the United States Supreme Court. This strict statutory construction is well established under long-standing South Carolina jurisprudence that has been in place since shortly after the statute was adopted in 1870, as explained in Garrison v. Dougherty, 18 S.C. 486, 487 (1883) and Godfrey v. Fielding, 21 S. C. 313, 316-17 (1884):

> The proceedings are under chapter CXXI., sections 1-7, of the General Statutes (1872), which requires the complaint for betterments to be filed in forty-eight hours after the rendering of final judgment, or during the term of the court at which such judgment is rendered. The question presented is whether the final judgment contemplated in the statute is the judgment of the Circuit Court appealed from, or that judgment affirmed by the Supreme Court, as evidenced by the remittitur sent down and filed. A reading of all the sections of the chapter providing this summary and efficacious remedy, and the prompt steps requisite to obtain the relief, satisfies me that the final judgment contemplated is the judgment of the Circuit Court. Within forty-eight hours after the rendering of such judgment, or, at furthest, during the term at which it is rendered, this claim for betterments must be filed. Hence it is that no summons is required to be served, and no notice, except the filing of the complaint, is to be given. A prompt assertion of the claim and its speedy determination are evidently contemplated, and hence the stay of all further proceedings under

> the judgment for the recovery of the land. It is therefore ordered and adjudged, that the complaint in each of these cases be dismissed with costs.

Garrison v. Dougherty, 18 S.C. 486, 487 (1883)

> The nature of the proceeding as a cross-action, as well as the whole tenor of the act, shows that in the assertion of the claim great promptness is required . . . But it is urged that all these provisions, indicating the necessity for prompt action, must yield to those words in the act, 'after final judgment,' which it is insisted can only mean the entry of the formal judgment in the clerk's office, and fixes the time at which the cross-action must be commenced, without regard to the condition of things or of the parties at that time. We cannot accept this view.

Godfrey v. Fielding, 21 S. C. 313, 316-17 (1884).

Plaintiffs' untimely complaint did not allow for a prompt and speedy determination of their alleged betterment claim arising out of the final judgment of the South Carolina Supreme Court on August 2, 2017. Moreover, juxtaposed to the prompt and speedy determination required by the Betterment Act, Plaintiffs' untimely complaint furthermore requested, in its prayer for relief, that this Court suspend taking any action on its complaint while Plaintiffs pursued further appeals to the United States Supreme Court. Plaintiffs should not be permitted to misapply the Betterment Act to delay and prolong this litigation any further.

V.

CONCLUSION

For the foregoing reasons, Plaintiffs have failed to state a claim upon which relief can be granted under the Betterment Act. Wherefore, Plaintiffs' complaint should be dismissed under Rule 12(b)(6), SCRCP.

(Signature page to follow)

September 24, 2018

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