THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

The Episcopal Church in South Carolina and The Episcopal Church . . . . . Petitioners,

v.

Edgar W. Dickson, in his official capacity as Judge of the First Judicial Circuit, *In re*: Civil Action No. 2013-CP-18-00013, on remittitur, following the final decision of this 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), *reh'g denied* (2017), *cert. denied* (2018) . . . . . Respondent,

and

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; 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; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's 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, S.C.; 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 Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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 Church Wardens of The Episcopal Church of the Parish of St. John's, Charleston County; and The Vestries and Churchwardens of The Parish of St. Andrews. . . . . Respondents.

PETITION FOR A WRIT OF PROHIBITION

INTRODUCTION

Petitioners respectfully request this Court to issue a Writ of Prohibition to prohibit Respondent Edgar W. Dickson ("Judge Dickson") from exceeding the Circuit Court's jurisdiction by ruling on a Motion for Clarification filed in Civil Action number 2013-CP-18-00013 (*see* Exhibit A hereto), a case that has been decided by this Court and is now before the Circuit Court on remittitur. The Motion for Clarification asks Judge Dickson to re-litigate issues decided by this Court, and to reach a different result than the one reached by this Court, in *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), *reh'g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018). Respondents other than Judge Dickson ("Other Respondents") are named as parties to this matter because they were the non-prevailing parties in that appeal, filed the Motion for Clarification, and have an interest in the resolution of this Petition.

After this Court issued its final decision and judgment in this case (August 2, 2017), and denied Other Respondents' Petition for Rehearing (Nov. 17, 2017), it remitted the case to the Circuit Court. Petitioners, who prevailed before this Court, sought to enforce this Court's judgment by filing in the Circuit Court petitions seeking enforcement, the appointment of a special master, and an accounting. Other Respondents, who had not prevailed, filed the "Motion for Clarification and Further Relief" that gives rise to this Petition. In the more than two years since this case was remitted to the trial court, Petitioners have consistently asked Judge Dickson to attend to their request that this Court's judgment be enforced, and urged Judge Dickson to refuse Other Respondents' invitation to exceed his jurisdiction on remittitur by reopening matters already decided by this Court. In March 2019, Petitioners filed a Petition for Writ of Mandamus asking this Court to direct Judge Dickson to enforce this Court's 2017 decision by effectuating the transfer

of possession and control of the property at issue. This Court denied that petition on June 28, 2019, stating that it was "confident that Respondent will resolve the petition to enforce the judgment, as well as any related matters that are pending, in an expeditious manner."

Instead, in July 2019, Judge Dickson ordered the parties into mediation. When that mediation failed, Judge Dickson held a hearing on November 26, 2019, where he asked for arguments on the clarification motion, and, at the end, required both sides to submit proposed orders on that motion. Consistent with their previous arguments to Judge Dickson, Petitioners' proposed order again contained the conclusion that the Circuit Court is bound by this Court's final decision and judgment and its jurisdiction on remittitur is merely to enforce that judgment.

Now, in aid of his efforts to prepare an order on the clarification motion, Judge Dickson has asked the parties to (1) identify the evidence from the previously appealed trial record that supports the conclusions reached by this Court in its disposition of the case, and (2) identify all issues that were preserved for that appeal,. Neither of these questions is properly before the Circuit Court, however, and Petitioners should not be subjected to them. More importantly, Judge Dickson's asking of them demonstrates a real danger that he is preparing to exceed the Circuit Court's jurisdiction in ruling on the clarification motion.

To prevent the Circuit Court from exceeding its limited jurisdiction and to avoid unnecessary appeals and the further protraction of this dispute – while Other Respondents maintain possession of the trust property, in contravention of this Court's decision over two years ago – this Court should prohibit Judge Dickson from taking any further action with respect to the Motion for Clarification other than to deny it as beyond the Circuit Court's jurisdiction. As discussed herein, there is widespread precedent for the issuance of a writ of prohibition under these circumstances.

This Court already reviewed the evidence from the trial record, considered the issues preserved for appeal, reached a final decision, and remitted this case to the Circuit Court for enforcement purposes. Petitioners (the prevailing parties before this Court) cannot be forced to re-litigate these issues nor can the Circuit Court re-adjudicate them. If it were allowed to do so, regardless of how he may rule, that action would usurp this Court's authority and greatly expand the Circuit Court's jurisdiction and power on remittitur.

STATEMENT OF FACTS

The Trial Court's Ruling

This case involves a dispute between Petitioners and Other Respondents regarding their rights to diocesan and parish property. Other Respondents prevailed at trial. Petitioners appealed.

This Court's Decision

On August 2, 2017, this Court issued a decision and mandate that is final and dispositive. Petitioners generally prevailed in this Court's decision except as to the property of several parishes that are not a party to this Petition. The non-prevailing parties (Other Respondents) consist of 29 parishes and an organization that considers itself to be a "disassociated diocese."

As to parish property, Justice Hearn – "join[ed]" by Justice Pleicones, 421 S.C. at 231, 806 S.E.2d at 93 (Pleicones, J.) – set out the majority's disposition, stating: "I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes." 421 S.C. at 248, n. 27, 806 S.E.2d at 102, n. 27 (Hearn, J.). She further explained that "Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes." *Id*. Chief Justice Beatty confirmed that "those parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property," 421 S.C. at 249, 806 S.E.2d at 102 (Beatty, C.J.), but "agree[d] with the majority as to the disposition of the

remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust [in favor of Petitioners]." 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J.).

As to diocesan property, this Court held that Petitioner The Episcopal Church in South Carolina (formed in the eighteenth century and known as the "Protestant Episcopal Church in the Diocese of South Carolina" and other variants) is the local historic diocese and is entitled to its identity and all of its property, including Camp St. Christopher and all other diocesan property held in trust by a trustee corporation for the historic diocese under an 1880 Act of the General Assembly, as amended by a 1902 Act. 1880 Act No. 222; 1902 Act No. 612.

Justices Hearn and Pleicones – who respectively "join[ed]," 421 S.C. at 231, 806 S.E.2d at 93 (Pleicones, J.), and "concur[red] fully," 421 S.C. at 231, 806 S.E.2d at 93 (Hearn, J.), in each other's opinions – found "the Associated Diocese [The Episcopal Church in South Carolina] to be the true Lower Diocese of South Carolina," 421 S.C. at 231, 806 S.E.2d at 92 (Pleicones, J.), "entitled to all property" of that historic diocese "including Camp Saint Christopher," 421 S.C. at 248, 806 S.E.2d at 101-2 (Hearn, J.), and all other property "controlled or owned" by Other Respondents, 421 S.C. at 230, 806 S.E.2d at 92 (Pleicones, J.).

Chief Justice Beatty likewise held that "'The Trustees of the Protestant Episcopal Church' in the Diocese of South Carolina should retain title to Camp St. Christopher as my decision in no way alters the clear language of the 1951 deed conveying ownership of this property. The conveyance of Camp St. Christopher was for the explicit purpose of furthering 'the welfare of the Protestant Episcopal Diocese of South Carolina.' 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." 421 S.C. at 251 n. 29, 806 S.E.2d at 103 n. 29 (Beatty, C.J.).

Further, the 1880 Act of the General Assembly of South Carolina, as amended by the 1902 Act, expressly states that the "Trustees of the Protestant Episcopal Church in South Carolina" hold all diocesan property in trust for "The Protestant Episcopal Church for the Diocese of South Carolina," which it further describes as the "Episcopal Church in the Diocese of South Carolina," "said church in said Diocese," "Diocese of the said Church," and "said Diocese of the said church." 1880 Act No. 222; 1902 Act No. 612.

Regarding trademark-related issues, this Court reversed the trial court and deferred to the federal court.[1] The United States District Court has since ruled on those issues. *See also vonRosenberg v. Lawrence*, Case No. 2:13-cv-00587-RMG (Order dated September 19, 2019) at page 7 ("The South Carolina Supreme Court's majority opinion, the result of three opinions by a majority consisting of former Chief Justice, and then-Acting Justice, Pleicones, Chief Justice Beatty, and Associate Justice Hearn, collectively reversed the lower state court's decision on service marks and deferred to this Court on all trademark-related issues.").

Petitions for Rehearing and Writ of Certiorari

The Other Respondents' Petition for Rehearing, which specifically included a request for "remand" (pp. 21-22)[2], was denied on November 17, 2017, and this Court issued the remittitur the

[1] Justice Pleicones stated: "I find the trial court erred in holding that the Respondents' state-registered trademarks prevail over TEC's federally-protected trademarks, and therefore would also reverse that portion of the order." 421 S.C. at 216, 806 S.E.2d at 84-85. Justice Hearn "concur[red] fully with Acting Justice Pleicones's thorough and well-reasoned lead opinion." 421 S.C. at 232, 806 S.E.2d at 93. Chief Justice Beatty noted: "I express no opinion concerning the rights to the service marks as I believe this determination should remain with the federal court." 421 S.C. at 249 n. 28, 806 S.E.2d at 102 n. 28. Similarly, Justice Toal "defer[red] to the federal court to answer any issues in this matter in which federal copyright and trademark law may be applicable." 421 S.C. at 261, 806 S.E.2d at 108-09. Justice Kittredge joined in Justice Toal's opinion, except a conclusion on an issue unrelated to trademarks. 421 S.C. at 251 n. 31, 806 S.E.2d at 103 n. 31.

[2] The Other Respondents made most of the same arguments in their Petition for Rehearing to this Court that they are now making in support of their Motion for Clarification.

same day. This Court's Order denying the non-prevailing parties' Petition for Rehearing and request for remand expressly stated: "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*." (emphasis added). There was no remand.

The Other Respondents sought a Writ of Certiorari from the United States Supreme Court and their petition was denied on June 11, 2018.[3]

Proceedings on Remittitur

The remittitur issued by this Court vested the Circuit Court with the jurisdiction and duty to enforce this Court's mandate – entitling Petitioners to the diocesan property and the property of 29 of the parishes named as Other Respondents.

Other Respondents filed their Motion for Clarification and Further Relief with the Circuit Court on March 23, 2018.[4] Petitioners, in turn, initiated enforcement proceedings with the Circuit Court, filing a "Petition for Execution and Further Relief on Declaratory Judgments of the South

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[3] In their post-decision filings, Other Respondents repeatedly acknowledged that this Court made a dispositive decision against them. Their Petition for Rehearing stated: "The decision to strip Petitioners of their property rights…" (Petition for Rehearing at 2); "Nevertheless, the effect of the majority of the opinions is to deprive them of their property retroactively." (*id*. at 4 n. 1); "[T]he Court's action constitutes a deprivation and a taking of the private property of respondents…" (*id*. at 16); "As a result, the majority would transfer the real and personal property of South Carolina religious organizations, many of which preexisted The Episcopal Church and the United States, to a New York religious organization" (*id*. at 36). Likewise, their Petition for a Writ of Certiorari to the United States Supreme Court acknowledged: "This case involves a dispute over property…"; "Petitioners lost below…"; and "the state court's resolution of the First Amendment question was dispositive…" (Petition for Writ of Certiorari at 8, 18, and 38).

[4] The Motion for Clarification has evolved since its initial filing. This is evident from a review of the motion, the Memorandum in Support, Supplement to the Motion for Clarification, Reply to Defendant's Brief in Opposition to the motion, and Supplemental Memorandum in Support (copies of which are collectively attached hereto as Exhibit A), as well as Other Respondents' proposed order to Judge Dickson (a copy of which is attached hereto as Exhibit C). When using the term "Motion for Clarification" herein, Petitioners are collectively referring to Exhibits A and C.

Carolina Supreme Court and for the Appointment of a Special Master" on May 8, 2018 (amended on May 16, 2018) and a Petition for an Accounting on July 7, 2018.[5]

The Circuit Court held a hearing on November 19, 2018. At that hearing, Judge Dickson chose to hear the Motion for Clarification and not the enforcement petitions. (Tr. at 3). Judge Dickson further voiced his belief that this Court's decision and mandate are not "clear" or "final" and thus it is within his jurisdiction to make his own dispositive "decision" about the property, which will inevitably lead to a further appeal to this Court by "which ever side loses."[6] At the end of the hearing, Judge Dickson informed the parties that he would be asking "follow up questions by email."[7]

On January 8, 2019, Judge Dickson asked the parties provide him with an analysis of this Court's decision, as follows:

> There was a chart prepared in the PowerPoint presentation that was shown [by Other Respondents] in Court on November 19, 2018. That chart purported to indicate the issues of agreement among the various justices [standard of review for facts, legal rationale, parish

[5] On March 1, 2018, Petitioners initially sought enforcement of this Court's mandate in the related federal action pending in the United States District Court by asking that court to remove and replace those acting as trustees over the diocesan and parish property at issue. *vonRosenberg v. Lawrence*, 2:13-587-RMG (D.S.C.) (Dkt. 124). In an order dated April 16, 2018, the district court recognized this Court's mandate but declined to exercise supplemental jurisdiction, recommending instead that Petitioners take possession of the property to which they are entitled by enforcing this Court's mandate in the Circuit Court that received the remittitur. *Id.* (Dkt. 140).

[6] Tr. at 24 ("THE COURT: Yes, we wouldn't be here if it was clear."); Tr. at 40-41 ("THE COURT: You know, I know your argument is that it's final and I think that – well, I don't know if it will be their final ruling on it or not. Somehow I don't believe that if anybody has agreed to my decision that they're going to let it stand here . . . I'm just thinking which ever side loses when I decide here they're going to appeal it . . . the issue that that is a two-two split on whether there was going to be a remand. That's why I think they punted it here . . . So I can be wrong.").

[7] Tr. at 47 ("Now, as I mentioned I'm going to ask y'all follow up questions by email. Those emails and your responses are going to be part of the record in this case, because I'm going to need a little bit of clarification about, okay, if you say this – because y'all are much more familiar with the record.").

> property, Trustees' beneficiary, and service marks]. The Court would appreciate a compilation, with appropriate page citations, quoting from the five opinions, the areas where two or more justices are in agreement and their agreement either supports or does not support your side.

(E-mail dated January 8, 2019).[8]

Subsequently, on January 14, 2019, Judge Dickson requested that the parties provide him with evidence pertaining to the merits of the case on the issue of whether and which of the parishes hold their property in trust pursuant to their accession to the "Dennis Canon," a provision adopted by The Episcopal Church in 1979 into its governing documents, as follows:

> The Court would like documents supporting that there was a vote on the Dennis Cannon *[sic]* on or before September 1979. Also, please provide any accompanying documents which indicate what churches voted and what churches did not vote (i.e. messages [specifically numbers 75 and 76], voting sheets, if presented anywhere previously, please provide this information to the Court (transcript and/or otherwise).

(E-mail dated January 14, 2019).[9]

Petitioners responded to these requests on January 22, 2019, January 25, 2019, and February 1, 2019. In their submissions, Petitioners additionally stressed, as they have done throughout the proceedings on remittitur, that these issues have been finally decided by this Court and that revisiting them is beyond the Circuit Court's jurisdiction on remittitur.

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[8] An analysis of this Court's decision, particularly as to the underlying standard of review and legal rationale applied by this Court, has no relevance to enforcing this Court's mandate; rather, the mandate is what the decision says and the decision speaks for itself.

[9] This request for documents likewise has no relevance to enforcing this Court's mandate. The passage and adoption of the Dennis Canon by The Episcopal Church in 1979 according to its hierarchical governance is not at issue and is beyond review. This Court found that trusts were created by the parishes under South Carolina law because of accession by the parishes to the Dennis Canon after its adoption.

In response to Judge Dickson's continued inaction on enforcement, on March 20, 2019, Petitioners filed a Petition for Writ of Mandamus asking this Court to direct Judge Dickson to enforce this Court's decision by effectuating the transfer of possession and control of the property at issue. This Court denied that petition on June 28, 2019, stating that it was "confident that Respondent will resolve the petition to enforce the judgment, as well as any related matters that are pending, in an expeditious manner."

Instead of then holding a hearing on the enforcement petitions, Judge Dickson scheduled a hearing on a motion to dismiss a separate action filed by Other Respondents under the Betterment Act, in which they seek to recover payment from Petitioners for improvements Other Respondents have made over the centuries to the properties that are the subject of this lawsuit – an action that is an attempted end-run around this Court's decision in this case and that is based on the preposterous notion that trustees can recover for improvements they make to the trust *res* from the very persons whose interests the trustees are assigned to protect – the trust beneficiaries.. At the conclusion of that hearing on July 23, 2019, Judge Dickson announced his view that this Court did not decide the property dispute, that it was "remanded" to him to decide, and that because it involves churches, it should be resolved by agreement of the parties rather than through enforcement proceedings.[10] Based on this view, he ordered the parties to mediate the underlying property dispute that had already been decided by this Court (and had previously been mediated).

[10] Tr. at 69 ("THE COURT: This case has been remanded to the circuit court. Okay. And my take on this is regardless of what I do in the original case or this case, this betterments case and like that; whichever side is unimpressed with my decision, is going to ask for clarification from the Supreme Court. So this case is going to continue for a long period of time. I would hope that mediation particularly after there's been a decision by the circuit court and another decision by the Supreme Court would make all parties aware of the problems of having a court decide church issues and so I'm ordering mediation. I think y'all need to do it again. Now I don't know how often but I think y'all are better served through mediation than continued appearances in court. The only way y'all can be satisfied with this thing is for y'all to reach an agreement.").

Then, with the commencement of the court-ordered mediation approaching, on September 9, 2019, Judge Dickson issued an order (proposed by the Other Respondents; copy attached hereto as Exhibit B) denying the motion to dismiss the betterment action based in part upon findings (reiterating and expanding upon his view expressed at the hearing) that this Court did not decide the property dispute and that it remains for him to decide.[11]

Next, after the unsuccessful court-ordered mediation, Judge Dickson held a hearing on November 26, 2019. Once more, he chose to entertain the clarification motion and not the enforcement petitions. At the end of the hearing, Judge Dickson asked both sides to submit proposed orders on the clarification motion, which they provided on December 23, 2019.

Petitioners' proposed order would have Judge Dickson deny the clarification motion as beyond his jurisdiction on remittitur. The Other Respondents' proposed order (copy attached hereto as Exhibit C) would have Judge Dickson conduct his own review of the record and legal analysis and conclude that all of the property at issue should be awarded to them.[12]

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[11] Order at p. 4 ("The Amended Complaint also alleges that the issues of ownership depend on this Court's determination of the South Carolina Supreme Court's intent in the Collective Opinions and ask that the resolution of the issues in this case await this Court's decision on motions filed in that remitted case concerning the parish plaintiffs' "accession" (agreement) to the Dennis Canon and the Plaintiff Diocese's property interests."); *id*. at 6 ("If the Defendants [here, Petitioners], as they claim, were successful in the Supreme Court…"); *id*. at 7 ("Finally, Defendants' argument that the Collective Opinions gave them a trust interest in Plaintiffs' property not possessory rights is also in conflict with Defendants' argument in their Petition for Enforcement, which maintains that upon Plaintiffs' disaffiliation from TEC, 'title to their property belonged to TEC and its Associated Diocese.' These contradictory positions do not meet the standard required to dismiss this action…").

[12] Other Respondents' Proposed Order at 24 (concluding that they are entitled to all parish property: "Based on this Court's review of the record, there has been no 'accession' to the Dennis Canon such that the Plaintiffs' agreed that their property should be in trust for the benefit of TEC."); *id*. at 16 (concluding that they are entitled to all diocesan property: "This Court's view is that Chief Justice Beatty's intent cannot be that the act of disassociation alone caused the loss of beneficiary status because that would be inconsistent with *All Saints* upon which he relied . . . Having considered the arguments, I find because the argument and issue regarding the language of the deed was never presented by TEC to the trial court for a decision nor was it ruled on by the

Since that time, it has become apparent that Judge Dickson intends to rule in a manner that would exceed his duties, authority, and jurisdiction on remittitur. While considering the proposed orders, on February 6, 2020, Judge Dickson asked the parties to submit evidence from the trial record regarding accession by the 29 parishes represented by Other Respondents and to identify all issues preserved for appeal with respect to the trial court's order issued by Judge Goodstein, as follows:

> Judge Dickson is currently finalizing the order and requests that you provide exact citations in the trial record where each parish expressly acceded to the 1979 Dennis Canon that is the subject of this lawsuit. The Court asks that you provide a non-argumentative, direct, concise response in a word document with page numbers, exhibit numbers, and exact quotations from the trial court record. ...
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> Additionally, the Court requests that you provide exactly what was appealed from the trial court order. Judge Dickson would like you to go through each finding of fact and conclusion of law from Judge Goodstein's order and say whether it was appealed or not appealed.

In response to Judge Dickson's request, Petitioners are gathering and organizing such information and preparing a response but believe this request is inconsistent with the Circuit Court's jurisdiction on remittitur.

Most recently, on February 17, 2020, Judge Dickson noticed a hearing to be held on February 27, 2020 "to hear the petition for execution, motion to appoint a special master, and petition for accounting [as well as] any other issues or outstanding motions by any party that need to be placed on the record."

Meanwhile, as Judge Dickson has entertained the non-prevailing parties' clarification motion for nearly two years, a significant amount of real and personal property that is supposed to

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trial court, the language of the deed cannot now be used as a basis for reversal of the trial court's order."); *id.* at 6 (concluding that they are entitled to all trademarks and names: "With all due respect, and for the reasons that follow, this Court disagrees with the federal district court.").

be held in trust for Petitioners, as confirmed by this Court in its final decision of August 2, 2017, is being possessed, controlled, misused, and wasted by the Other Respondents contrary to this Court's holding.

LEGAL STANDARD

This Court has the power to issue a writ of prohibition pursuant to Article V, Section 5, of the State Constitution as well as S.C. CODE ANN. § 14-3-310 (1976, as amended). *See New South Life Ins. Co. v. Lindsay*, 187 S.E.2d 794, 795, 258 S.C. 198, 199 (1972). In *New South*, this Court summarized the legal standard for a writ of prohibition as follows:

> The grounds and occasions for the granting of a writ of prohibition were recently stated in the case of *Berry v. Lindsay*, 256 S.C. 282, 182 S.E.2d 78, by quoting from *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, the following: "The ancient prerogative writ of prohibition has been recognized and employed in the common-law system of jurisprudence for more than seven centuries, and like all prerogative writs should be used with forebearance and caution, and only is cases of necessity. With regard to the function and scope of the writ, it has been settled in this state from an early period that it will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure….

New South, 187 S.E.2d at 795-96, 258 S.C. at 199-200.

"[E]ncroachment, excess, usurpation, or improper assumption of jurisdiction" in the context of a writ of prohibition means an attempt by an inferior court to exceed its power to act (which may be restricted in a particular manner), despite the fact it may have subject matter jurisdiction and jurisdiction over the parties. 72A C.J.S., *Prohibition*, § 27 n. 2 (Feb. 2020 update).

In deciding whether to grant a writ of prohibition, it is proper for the Court to consider whether time is of the essence, the adequacy of an alternate remedy of appeal, the importance of

the case, and whether issuance of the writ would promote a speedy determination of the case. *Woodworth v. Gallman,* 195 S.C. 157, 10 S.E.2d 316, 319 (1940).

ARGUMENT

"The trial court has a duty to follow the appellate court's directions." *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011). "Once the remittitur is sent down from this Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling." *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993). But general adjudicative jurisdiction does not "re-vest in the Circuit Court except by order of the Supreme Court, such as, for example, by granting a new trial." *Hampton Building Supply, Inc. v. Wilson*, 285 S.C. 135, 138, 328 S.E.2d 635, 637 (1985). "The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court." *Christy v. Christy*, 317 S.C. 145, 151, 452 S.E.2d 1, 4 (Ct. App. 1995).

"[M]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." JEAN HOEFER TOAL, AMELIA WARING WALKER & MARGARET E. BAKER, APPELLATE PRACTICE IN SOUTH CAROLINA 386 (3d ed. 2016). Moreover, under the "law of the case" doctrine, both "issues explicitly decided" as well as "issues which were necessarily decided" are binding on the parties. *Id.* at 215, *citing Ross v. Medical Univ. of S.C.,* 328 S.C. 51, 492 S.E.2d 62 (1997). Thus, an appellate court's decision in a previous appeal is the law of the case in a subsequent appeal of the same case. TOAL, *supra*, at 215, *citing Huggins v. Winn-Dixie Greenville*, 252 S.C. 353, 166 S.E.2d 297 (1969) and *Robert E. Lee & Co. v. Commission of Pub. Works*, 250 S.C. 394, 158 S.E.2d 185 (1967).

The doctrine of *res judicata* – although technically inapplicable here because this Court's decision is in the same action as that pending before the Circuit Court – is based upon principles of finality similar to those which undergird the law of the case doctrine. Those principles support the issuance of a writ of prohibition in this case. The "doctrine of *res judicata* serves vital public interests beyond any individual judge's *ad hoc* determination of the equities in a particular case." *Federated Department Stores v. Moitie*, 69 L.Ed.2d 103, 101 S.Ct. 2424, 452 U.S. 394, 401 (1981), *abrogated on other grounds by Rivet v. Regions Bank of La.*, 522 U.S. 470 (1988). As explained by the United States Supreme Court (summarizing legal principles and collecting cases):

> This Court has long recognized that "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." *Baldwin v. Traveling Men's Assn.*, 283 U.S. 522, 525, 51 S.Ct. 517, 518, 75 L.Ed. 1244 (1931). We have stressed that '[the] doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts…". *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 37 S.Ct. 506, 507, 61 L.Ed. 1148 (1917). The language used by this Court half a century ago is even more compelling in view of today's crowded dockets: "The predicament in which respondent finds himself is of his own making . . . . [W]e cannot be expected, for his sole relief, to upset the general and well-established doctrine of res judicata, conceived in the light of the maxim that the interest of the state requires that there be an end to litigation—a maxim which comports with common sense as well as public policy. And the mischief which would follow the establishment of precedent for so disregarding this salutary doctrine against prolonging strife would be greater than the benefit which would result from relieving some case of individual hardship." *Reed v. Allen*, 286 U.S., at 198-199, 52 S.Ct., at 533.

Federated Department Stores, 452 U.S. at 401-2.

Here, as described above, Judge Dickson has begun rehearing, reconsidering, and relitigating matters previously decided by this Court with finality in the context of considering a

clarification motion that is beyond the Circuit Court's jurisdiction on remittitur. The only appropriate disposition of the motion would be a denial by the Circuit Court for lack of jurisdiction. Ruling on the Motion for Clarification in any other way would both exceed the Circuit Court's jurisdiction and violate the law of the case doctrine. To avoid this improper exercise of jurisdiction, inevitable unnecessary appeals, and further protraction of this dispute while the Other Respondents maintain possession of the trust property at issue, this Court should accordingly prohibit Judge Dickson from taking any further action with respect to the Motion for Clarification other than to deny it as beyond his jurisdiction.

A writ of prohibition is necessary at this juncture because "it is far better to prevent the exercise of an unauthorized power than to be driven to the necessity of correcting the error after it is committed." *Appo v. People*, 20 N.Y. 531, 542 (1860). Indeed, such a remedy is widely supported by precedent. *See, e.g., New South*, 187 S.E.2d at 795, 258 S.C. at 199 (granting a writ "prohibiting the said Court from further proceedings in above entitled action on the ground that the Richland County Court lacks jurisdiction of the subject matter therein."); *Butler v. Superior Court*, 128 Cal.Rptr.2d 403, 405, 104 Cal.App.4th 979, 982 (Cal. App. 2002) ("A failure to follow appellate directions can be challenged by an immediate petition for writ of prohibition"); *State v. Bynes*, 121 So.3d 619, 621 (Fla. App. 2013) ("Prohibition is appropriate to prevent a trial court from proceeding contrary to an appellate court's mandate."); *Dixie Gas & Fuel Co. v. Jacobs*, 66 S.W.2d 446 (Tex. App. 1933) ("It is our duty, we think, to enforce the orderly rules of procedure provided by statute governing the retrial of cases on remand from appellate courts. The writ of prohibition is awarded as prayed for."); *State ex rel Family Support v. Stovall-Reid*, 163 S.W.3d 519, 521 (Mo. 2005) ("We may restrain an attempt to exercise jurisdiction in a matter barred by res judicata by writ of prohibition."); *Reed v. Caton*, 375 S.W.2d 567 (Tex. Ct. App. 1964)

(granting a writ of prohibition against a lower court judge, "prohibiting him from taking any further action" to relitigate an issue that, in "effect," had already been "adjudicated" by the appellate court, "except to dismiss the same"); *Burgermeister Brewing Corp. v. Superior Court*, 195 Cal.App.2d 368 (1961) (granting a "petition for prohibition or other writ to restrain respondent court from proceeding to try issues claimed by petitioner . . . to have been finally determined in former proceedings before the same court.").

CONCLUSION

The Other Respondents have been misusing trust property since this litigation began over seven years ago. In 2017, this Court made a final ruling against them that cannot be "clarified" by Judge Dickson by reviewing the trial record and considering the issues preserved for appeal as this Court has previously done. A writ of prohibition is required to ensure that the authority of this Court's ruling is preserved, that this litigation be brought to an end without further, unnecessary delay, and that the property rights this Court awarded to Petitioners be respected.

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Respectfully submitted,

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