THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

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, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County, The Vestries And Churchwardens Of The Parish Of St. Andrew, Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina, Appellants.

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INTRODUCTION

As Appellants anticipated, Respondents have only cursorily addressed the issue presented by this appeal – whether the Circuit Court exceeded its jurisdiction and authority – but instead continue their effort to have a differently comprised panel of this Court relitigate the trial and prior appeal of this case. (*See* Brief of Appellants, p. 14).[1] There is no legal basis or authority for this Court to ignore its previous decision and to reconsider this matter anew, just as there was no legal basis or authority for the Circuit Court to do so.

The majority of Respondents' arguments are an attempt to redirect the Court from this core, fundamental question: Do the votes of the members of this Court in *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 282 (2017) dictate the result of that decision; or, can a lower court search for common legal rationales among the Justices' opinions, apply those rationales to the same record this Court already considered, and reach an opposite result?

This matter is much simpler than Respondents want it to appear. The Court must only enforce its own previous votes and holding; those votes undeniably add up to a majority of three Justices that found a trust in favor of Appellants on the Parish Property of Respondents and the Diocesan Property.[2] Whether the individual Justices' differing legal rationales affect the law applicable to future disputes is a question for another day. The Court already decided this case.

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[1] For example, for the record of this appeal, Respondents designated hundreds of pages from the trial before Judge Goodstein even though, in the prior appeal, this Court ordered the parties to "scour" and "cull" the record to "pare" it down to only "critical" materials. (Orders dated April 15, 2015 and July 30, 2015; R. pp. __). To expedite rather than prolong this case any further, Appellants did not move to strike these designations but maintain that they are irrelevant to the issue of whether the Circuit Court exceeded its authority on remittitur.

[2] Appellants continue the use of terms defined in the Brief of Appellants. (Brief of Appellants, p. 2).

The Circuit Court failed to follow this Court's decision. Now the Court must ensure that its decision is given proper legal effect and preserve the integrity and finality of that decision and all its decisions.

STANDARD OF REVIEW

The standard of review is *de novo*. (Brief of Appellants, p. 14).

That this Court did not articulate agreement on an applicable standard of review in the Supreme Court Ruling does not have the effect of affirming the factual findings in the Goodstein Order as urged by Respondents. (Brief of Respondents, pp. 23, 7). The majority of this Court voted to reverse the Goodstein Order[3] and found that the Respondent Parishes' property is held in trust for Appellants and that the Associated Diocese is the beneficiary of a trust with respect to all Diocesan Property. All factual findings inconsistent with that majority decision are necessarily reversed. *See Stewart-Jones Co. v. Shehan*, 127 S.C. 451, 458, 121 S.E. 374, 376 (1924).

As to alleged factual findings in the Dickson Order, the Circuit Court on remittitur had no authority to make them.[4] (Brief of Appellants, pp. 27-28). Further, the Dickson Order's accession findings are directly contrary to this Court's majority holding that accessions by the twenty-nine Respondent Parishes were adequate to find a trust. (*Compare* Dickson Order pp. 25-39; R. pp. _ (finding "no Parish expressly acceded to the 1979 Dennis Canon") *with* Argument section I, *infra*).

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[3] As in their primary brief, Appellants disregard the portions of the Supreme Court Ruling that affirmed the Goodstein Order as to the "non-acceding" parishes and held the trademark, service mark, and intellectual property issues should be heard in federal court because those matters are no longer at issue in this case. (Brief of Appellants, p. 6).

[4] Appellants appeal the entire Dickson Order as entered without authority, contrary to this Court's decision, and without legal or factual support. (*Contra* Brief of Respondents, p. 1).

ARGUMENT

Respondents' effort to have this Court reopen, reconsider, and reverse its prior holding in this case is contrary to law and this Court should reject it.

As we set out in our primary brief, the result reached by this Court in 2017 is clear: A majority voted to reverse the Goodstein Order as to the property of the twenty-nine Respondent Parishes and the Diocesan Property. (Brief of Appellant, pp. 4-5, 14-17.) As we describe more fully below, this court's recent explanation of the effect of its votes in a divided opinion, *see State v. Harrison*, Op. No. 28005 (S.C. Sup. Ct. filed Jan. 20, 2021) (Shearouse Adv. Sh. No. 2 at 8), drives the point home yet again: The result reached by a majority of this Court controls.

That majority result constitutes the law of the case – the law of *this* case – and, under South Carolina law, binds the courts and parties in this action. Respondents' argument that some sort of exception applies has no merit. South Carolina has never recognized exceptions to the law of the case doctrine. But, even if South Carolina were to recognize the exceptions Respondents argue for, none apply here. There is no new evidence in the case – Respondents' designation in this record of material from the 2014 trial that they failed to designate in the prior appeal is not the same as new evidence introduced at a new trial following the prior appeal. It is not "manifestly unjust" to enforce a majority holding because one of the three Justices in the majority set out his holding in concise, although clear, terms. And the notion that this Court should – or even may – abandon the law of the case doctrine as a discretionary matter is entirely unsupported by precedent and contrary to the notion of finality that is a cornerstone of our system of justice.

Moreover, this Court's 2-2 denial of Respondents' Petition for Rehearing did not deprive Respondents of due process. Respondents received a final judgment from five Justices of this Court, including a majority that reached a particular result, which was followed by a ruling on their

Petition for Rehearing that complied with the South Carolina Constitution, statutes, and Appellate Court Rules. There is no support for the view that this process was constitutionally insufficient.

Lastly, Appellants' characterization of this Court's decision as "fractured" and otherwise inappropriate for review by the United States Supreme Court is not in any way inconsistent with the fact that a majority of this Court agreed upon and reached a *result*.

Legal precedent and fundamental principles of judicial review require the Court to reject Respondents' arguments, reverse the Dickson Order, and remit this action to the Circuit Court to enforce the result this Court reached in 2017.

I. A three-Justice majority held that Appellants are entitled to the Parish Property of Respondents and the Diocesan Property, and that is the law of the case.

Respondents attempt to avoid the result of the Supreme Court Ruling by arguing that Chief Justice Beatty did not really mean what he said and by parsing the reasoning used by the Justices in their respective opinions. Neither is convincing.

First, all of the Justices agreed that at least twenty-eight parishes acceded to the Dennis Canon.[5] Respondents' attempt to find ambiguity in Chief Justice Beatty's use of the word "assuming" in his discussion about parish accession is meritless. (Brief of Respondents, pp. 17, 27). None of the other Justices regarded Chief Justice Beatty's opinion as ambiguous; rather, it is clear the entire Court understood him to have concluded that the twenty-nine Respondent Parishes who expressly acceded to the Dennis Canon hold their property in trust for Appellants:

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[5] *See* 421 S.C. at 248 n.27, 806 S.E.2d at 102 n.27 (Justice Hearn wrote: "I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church, but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes."); *Id.* at 252, 806 S.E.2d at 103-04 (Justice Kittredge wrote: "I first address the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon."); *Id.* at 291 n.72, 806 S.E.2d at 125 n.72 (Acting Justice Toal wrote: "[W]ith regard to the twenty-eight church organizations which acceded to the Dennis Canon, a majority consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones would hold that a trust in favor of the national church is imposed on the property.").

- Chief Justice Beatty plainly divided the parishes into two categories based on a finding of express accession. He wrote: "in contrast to the majority [of Justice Hearn and Acting Justice Pleicones], I would find the parishes that did not expressly accede to the Dennis Canon cannot be divested of their property." *Protestant Episcopal Church*, 421 S.C. at 251, 806 S.E.2d at 103. But he "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." *Id.*

- Justice Hearn wrote that Chief Justice Beatty voted to "revers[e] the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church." *Id.* at 248 n.27, 806 S.E.2d at 102 n.27.

- With regard to "the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon" Justice Kittredge acknowledged that Chief Justice Beatty held "the local churches' accession to the 1979 Dennis Canon was sufficient to create a trust in favor of the national church," *id.* at 252, 806 S.E.2d at 103-04, but voted to allow "the eight churches that were never subject to the 1979 Dennis Canon to keep their property," *id.* at 257-58, 806 S.E.2d at 107.

- Acting Justice Toal wrote that Chief Justice Beatty "believe[d] all but eight of the plaintiffs acceded to the Dennis Canon in a manner recognizable under South Carolina's trust law" and voted "with regard to the twenty-eight church organizations which acceded to the Dennis Canon . . . [to] hold that a trust in favor of the national church is imposed on the property." *Id.* at 291 n.72, 806 S.E.2d at 125 n.72.

There was and is no confusion about Chief Justice Beatty's deciding vote.

Second, Respondents argue that Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal "agreed that the controlling legal rationale" is the application of neutral principles of law and that is "the law *of this case* applicable to the facts." (Brief of Respondents, p. 12) (emphasis added). Their suggestion that the legal rationale of two Justices who dissented from the decision's result is somehow controlling ignores (and, if adopted, would nullify) the fact that each Justice cast a vote to affirm or reverse the Goodstein Order based upon the facts of this case. The Court did not issue a decision declaring the law and then remand for the Circuit Court to apply its holding to the facts. (Order Denying Pet. for Rehearing, p. 3; Remittitur p. 1; R. pp. _). It issued a final decision with each Justice casting a vote on the outcome by applying his or her view of the law to the facts. If the Justices of this Court could not agree among themselves on a common legal

rationale, then certainly they did not expect a Circuit Court to attempt to reconcile their "divergent views," *see State v. Harrison*, Op. No. 28005 at 9 n.2, and to divine a common rationale for them. In any event, the Justices' differing views on the applicable law did not nullify their votes on the outcome.

The Court's recent discussion in *State v. Harrison*, Op. No. 28005, demonstrates the effect of its Justices' votes in a divided opinion. Although the three opinions in that case differed on legal rationale, the Court applied the Justices' votes rather than their "divergent views" to declare the result of the case, even taking the time to list and to sort the votes. *Id.* at 9. Applying the Court's approach and explanatory language in *State v. Harrison*, one can characterize the Supreme Court Ruling in this case (except as to intellectual property) as follows:

> (1) three votes to reverse the trial court's rulings on the Parish Property of twenty-nine churches and the Diocesan Property (Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty); and
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> (2) three votes to affirm the trial court's rulings on the Parish Property of the remaining seven churches (Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal).
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> Acting Justice Toal would affirm all of the trial court's rulings. Justice Kittredge would reverse the trial court's ruling regarding the creation of a trust as to the Parish Property but would affirm its other rulings and the result in the trial court. Chief Justice Beatty would reverse the trial court's rulings as to the Parish Property of twenty-nine churches and the Diocesan Property but would affirm as to the Parish Property of the other seven churches. Despite the fact that both separate writings of Chief Justice Beatty and Justice Kittredge are concurrences and dissents, we will refer to Justice Kittredge's writing as the dissent and Chief Justice Beatty's writing as the concurrence, because Chief Justice Beatty's writing most closely resembles the lead opinion.

The Court established the law of this case with its votes for the result of the prior appeal. On remittitur, the Circuit Court was required to enforce this Court's ruling. *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993).

II. No exceptions to the law of the case doctrine apply.

In an effort to avoid the law of the case, Respondents argue that two exceptions apply: first, they contend the evidence is "substantially different" and, second, they complain the Supreme Court Ruling is "clearly erroneous and manifestly unjust." (Brief of Respondents, pp. 32-34, 43-46). Notably, by resorting to alleged exceptions to the law of the case doctrine, Respondents necessarily concede that the law of the case is, in fact, that the Parish Property of Respondents and the Diocesan Property is held in trust for Appellants.

Appellants could not find, nor do Respondents cite, any decision applying exceptions to the law of the case doctrine. Respondents, like the Circuit Court, rely on *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 776 S.E.2d 397 (Ct. App. 2015), as the source of these supposed exceptions. (Dickson Order, p. 7; Brief of Respondents, p. 33). *Flexon* did not adopt the exceptions (which it quoted from another jurisdiction) and no South Carolina court has cited *Flexon* for the so-called exceptions.[6]

Rather, *Flexon* cited *Nelson v. Charleston & W. Carolina Ry. Co.*, 231 S.C. 351, 98 S.E.2d 798 (1957), for the proposition that the South Carolina Supreme Court may opt not to apply the law of the case "when the evidence is substantially different on a second appeal." *Flexon*, 413 S.C. at 574, 776 S.E.2d at 404. However, unlike the present case, *Nelson* involved an appeal from a second trial; moreover, in *Nelson*, the Supreme Court ***still applied*** the law of the case. *Nelson*, 231 S.C. at 357, 98 S.E.2d at 799-800.

In short, there is no South Carolina precedent for any "exception" to the law of the case doctrine, particularly as applied to a case in the procedural posture of this case. Additionally, even

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[6] The Dickson Order did not hold that any of the supposed exceptions were satisfied in this case but, instead, "distill[ed]" its interpretation of the Court's "common ground" to declare the law of the case. (Dickson Order, pp. 6-13, 16; R. pp. __).

if this Court were to adopt exceptions for the first time in this case, it – not the Circuit Court – is the proper Court to address them.

Regardless, the exceptions Respondents advocate would not apply here.

First, the evidence in this appeal is not "substantially different." Indeed, the evidentiary record has not changed since the issuance of the Goodstein Order in 2015. Respondents' designation in this appeal of trial materials from the 2014 trial record that were not in the first record on appeal does not constitute a "material change in the evidence" that might avoid the law of the case.[7] *See id.* at 357, 98 S.E.2d at 800.

Second, Respondents' argument that adherence to the Supreme Court Ruling would be "clearly erroneous and manifestly unjust" also fails. They offer two bases for their argument: (1) as to Parish Property, "there was no evidence before this Court on the prior appeal [on the accession issue]" (Brief of Respondents, p. 44); and (2) as to Diocesan Property, Chief Justice Beatty's opinion in "the last sentence in footnote 29" is somehow insufficient as a holding (Brief of Respondents, p. 46).

As to Respondents' first claim: The record for the prior appeal, prepared in the light of this Court's admonition to limit it to "critical" materials, *see supra* n.1, contained accession

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[7] Respondents' insinuation that the record on appeal was inadequate to support the Supreme Court Ruling regarding the Parish Property (Brief of Respondents, p. 18) is belied by that record. During oral argument before this Court, Appellants cited to the record and discussed the evidence of twenty-nine parishes' express accession to the Dennis Canon. (September 23, 2015 Oral Argument at 9:55-10:35 and 11:50-12:16) (citing *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, Case No. 2015-000622, R. pp. 101-06). The evidence cited is a summary of trial evidence on accession that Appellants included in the prior record in response to this Court's directive that the parties pare down the size of the record on appeal as much as possible. (Orders dated April 15, 2015 and July 30, 2015; R. pp. __). In the prior appeal, Respondents did not dispute the existence of that evidence.

It is also worth noting that all of the evidence Respondents cite here in support of their argument on Diocesan Property (*see* Brief of Respondents, p. 45) was also in the record on the prior appeal.

evidence that ultimately formed the basis of the Court's decision. Respondents chose not to add to that record on appeal. Their distaste for the result reached by the Court on the record that was before it does not make that result "clearly erroneous" or "manifestly unjust."

As to their second claim: Chief Justice Beatty was brief but he was clear – Respondents "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. Respondents point to no precedent to support their contention that the brevity of a holding diminishes its effect or nullifies a Justice's vote.

Indeed, manifest injustice would occur if Respondents get a second appeal despite this Court's final decision.[8] *Therrell v. Jerry's Inc.*, 370 S.C. 22, 30, 633 S.E.2d 893, 897 (2006) (allowing a party a "second bite at the apple" by supplementing the record on appeal would be "a significant departure from our rules"); *Parker v. S.C. Pub. Serv. Comm.*, 288 S.C. 304, 307, 342 S.E.2d 403, 405 (1986) (in the absence of a remand wherein additional evidence may be considered, "no party may afford itself two bites at the apple."), *rev'd on other grounds Daufuskie Is. Utility Co. v. Ors*, 420 S.C. 305, 316 n.8, 803 S.E.2d 280, 286 n.8 (2017). If this Court were to allow a party to avoid the law of the case doctrine by arguing an adverse appellate decision ***in the same case*** is erroneous or manifestly unjust, then every losing party could continuously appeal. That result would defeat the doctrine's purpose to promote finality and an end to litigation.

[8] It is significant that the Other Parishes – the seven parishes that this Court found did not accede to the Dennis Canon – relied on this Court's majority ruling by foregoing any further participation in this action because they believed they won. If Respondents are correct that the Circuit Court and this Court can consider accession anew, then either court could decide the Other Parishes did accede but waived any further argument to the contrary by nonparticipation. This would be another example of injustice resulting from failing to abide by the law of the case.

III. The Court should decline to abandon the law of the case doctrine.

Respondents argue that this Court may exercise its discretion to choose not to apply the law of the case. (Brief of Respondents, pp. 32-34, 43, 46). They cite no South Carolina case in which a court refused to apply the doctrine based on discretion and no authority stands for that proposition.[9] This is not surprising: If courts are permitted to abandon the law of the case doctrine whenever they disagree with the result it produces, that would threaten not only the continued vitality of the doctrine but also the hierarchy of our State's court system. There is no basis for the Court to weaken the doctrine now.

In *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969), this Court held that it must follow its prior decision in the same case. (Brief of Appellants, p. 20). Respondents claim that *Huggins* is "inconsistent" with subsequent decisions of this Court. (Brief of Respondents, p. 35). However, the decisions Respondents rely upon are not inconsistent with *Huggins*, which remains the law.[10]

In the first case cited by Respondents, *Barth v. Barth*, 293 S.C. 305, 360 S.E.2d 309 (1987) (Brief of Respondents, p. 35), a family court entered an equitable distribution award for wife and ordered interest to run on the unpaid balance. Wife appealed but the Court of Appeals affirmed

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[9] Respondents misconstrue *State v. Hewins*, 409 S.C. 93, 760 S.E.2d 814 (2014), as holding that the law of the case is discretionary. (Brief of Respondents, p. 33). In *Hewins*, this Court reversed a holding that a municipal court conviction for an open container violation precluded a defendant from challenging the search of his vehicle that led to a separate drug charge. After ruling that collateral estoppel did not preclude the defendant from challenging the search in part because the issue "was not actually litigated or directly determined in municipal court," this Court noted, in passing, that the law of the case did not apply. *Id.* at 113 n.5, 760 S.E.2d at 824 n.5. As the issue was not actually decided, there was no law of the case to apply. Regardless, *Hewins* is nothing like the present situation where the Court spent two years ruling on the exact issues Respondents seek to relitigate.

[10] Respondents have not asked the Court to overrule *Huggins*.

her award amount. *Barth v. Barth*, 285 S.C. 316, 329 S.E.2d 446 (Ct. App. 1985). The Court of Appeals did not address the issue of interest.

Thereafter, the parties disputed whether husband owed interest that accrued during the appeal since wife filed the appeal. Husband filed a new action to resolve that dispute. *See Barth*, 293 S.C. at 307, 360 S.E.2d at 310. In that action, the family court entered an interest award for less than what wife sought. *Id.* at 307, 360 S.E.2d at 309-10.

Wife then appealed that order. In that appeal, this Court held that the statute providing for interest on judgments "did not [address] the running of interest on appeal by an unsuccessful judgment creditor." *Id.* at 309, 360 S.E.2d at 311. Accordingly, it concluded the family court's original order could not be understood as addressing the question of interest on appeal; only in the second action, when the precise issue of interest on appeal was raised, did the family court address it. *Id.* at 308, 360 S.E.2d at 310. Therefore, the Court reversed the family court, ruling that interest did not accrue during wife's first appeal. *Id.* at 310, 360 S.E.2d at 311.

Respondents claim *Barth* held that an appellate court may reexamine its prior opinion in the same case if it is convinced that its first decision was wrong. But *Barth* did not reexamine any appellate holding or find that a prior decision was wrong. Notably, the Court of Appeals decision in the first appeal did not address the issue of interest. Nothing in *Barth* is inconsistent with *Huggins*. The dicta in *Barth* that suggests an appellate court "on re-examination" could abandon a prior holding if "convinced that the first decision is wrong," *id.* at 308, 360 S.E.2d at 310, is based on the precondition of "another trial" that follows the initial appellate decision, which did not happen in this case.

In *Charleston Lumber Co. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000), this Court wrote in a footnote that, in a second appeal, the appellate court "[a]rguably ... could

have considered" whether its prior appellate decision was correct, citing the dicta in *Barth* as a "*cf.*" cite and noting a comparison with *Huggins*. *Id.* at 175 n.3, 525 S.E.2d at 872 n.3. As in *Barth*, the Court in *Charleston Lumber* did not in fact reconsider a prior decision; rather, in its holding, the Court stated: "*Charleston Lumber II* was bound by *Charleston Lumber I* as the law of the case." *Id.* at 175, 525 S.E.2d at 872. Thus, footnote 3 in *Charleston Lumber* is also dicta because the Court's actual ruling is consistent with *Huggins*.

Respondents argue two other cases are inconsistent with *Huggins* because they did not apply the law of the case when the facts of the second appeal were "substantially different" from the first appeal. (Brief of Respondents, p. 35). Both cases involved a new trial after the first appeal and, therefore, are distinguishable from *Huggins* and this case. *Nelson v. Charleston & W. Carolina Ry. Co.*, 231 S.C. 351, 355, 98 S.E.2d 798, 799 (1957); *Cohen v. Standard Accident Ins. Co.*, 203 S.C. 263, 269-70, 17 S.E.2d 230, 232 (1941). In both cases the Court still applied the law of the case because it found the facts were substantially similar. *Nelson*, 231 S.C. at 357, 98 S.E.2d at 800; *Cohen*, 203 S.C. at 274-75, 272 S.E.2d at 234. There are no substantially different or new facts in this appeal. (*Supra* Argument section II).

Finally, *Huggins*' reference to *res judicata* does not negate its holding as to the law of the case. (Brief of Respondents, pp. 35-36). *Huggins* factually addressed a second appeal in the same case, requiring application of the law of the case. 252 S.C. at 356-57, 166 S.E.2d at 298-99. Its holding remains the law, and Respondents cite no opinion in which this Court violated *Huggins* by reversing itself in a previously decided issue on an appeal in the same case.

IV. Appellants consistently argued a majority of this Court voted to reverse the Goodstein Order and to hold that the Respondent Parishes' property and Diocesan Property are held in trust for Appellants.

Respondents begin their brief with an attempt to characterize Appellants as taking inconsistent positions. Appellants did not take any inconsistent position in the United States

Supreme Court or any South Carolina court. (*Contra* Brief of Respondents, pp. 1, 24-25). Appellants argued to the United States Supreme Court that, if it granted certiorari and considered a Constitutional issue, it "would confront an incomplete record, with the court below fractured not only on rationale but even on facts that could be relevant to the disposition of the case on the merits." (Brief of Respondents in Opp. p. 2; R. p. _). That statement does not conflict with Appellants' consistent position that this Court's votes, rather than a lower court's interpretation of the various Justices' rationales, controls the result of the case.

Appellants correctly noted the record in the first appeal was incomplete because Judge Goodstein refused at trial to let them enter evidence regarding TEC's status as a hierarchical church. The Justices' five opinions are fractured on legal rationale. Their opinions are also fractured on facts that would have been relevant to a United States Supreme Court decision on Respondents' petition. *See, e.g.*, *Protestant Episcopal Church*, 421 S.C. at 230, 806 S.E.2d at 92 (holding Respondents "accepted that the property in dispute in this case was held in trust for [Appellants]"); *id.* at 281, 806 S.E.2d at 119 (Toal, A.J., dissenting) (rejecting arguments of accession and its creation of a trust). The point is that a decision consisting of five opinions from a state supreme court is not a good vehicle for review by the United States Supreme Court.

But the fractured nature in which this Court reached its holding is not what matters here. As discussed above, the controlling fact is that a majority of Justices ruled in Appellants' favor regarding the Parish Property and Diocesan Property at issue in this appeal.

Appellants argued to the United States Supreme Court that a majority of Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty voted to reverse the Goodstein Order as to the twenty-nine parishes that acceded to the Dennis Canon. (Brief of Respondents in Opp. p. 2; R. p. _). That is consistent with Appellants' arguments to the Circuit Court on remittitur and now to

this Court. There is no merit to Respondents' attempt to paint Appellants' positions as inconsistent.

Glaringly absent from Respondents' brief is any explanation for why they argued to this Court and the United States Supreme Court that they lost but then argued to the Circuit Court that they won. This is yet another example of the machinations necessary to entertain Respondents' efforts to deconstruct the Supreme Court Ruling and to relitigate the prior appeal in the context of the present appeal.

Finally, this Court's denials of the Petition for Writ of Mandamus and Writ of Prohibition are consistent with Appellants' arguments. (*Contra* Brief of Respondents, p. 26). Both orders merely allowed the Circuit Court to rule on the motion but affirmatively decided nothing.

V. The Circuit Court did not have jurisdiction or authority to find and resolve alleged ambiguities in the Supreme Court Ruling; Respondents received due process.

After spending the vast majority of their brief asking this Court to relitigate the prior appeal, Respondents devote two pages to the Circuit Court's jurisdiction or authority to clarify this Court's judgments (the basis for Appellants' appeal) and their receipt of due process. (Brief of Respondents, pp. 47-48). Nothing in those two pages refutes Appellants' arguments. (Brief of Appellants, pp. 20-34).

There is no jurisdiction for the Circuit Court to "resolve[]" alleged "ambiguity" in this Court's judgments "even if there is no remand." (Brief of Respondents, p. 47). The law is clear that, on remittitur, the Circuit Court must "enforce" and "follow" the judgment. *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993); *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996). Respondents' argument assumes this Court issues ambiguous judgments and that the Circuit Court has jurisdiction to make that threshold ambiguity determination. Respondents cite no authority for this proposition because

none exists. If this Court's *nil ultra* judgments are subject to the Circuit Court's subsequent review for ambiguity, our court system will face protracted litigation in every appeal.

As to due process, it is glaring that Respondents failed to respond to the fact that the South Carolina Constitution, statutes, and Appellate Court Rules expressly permit fewer than five Justices to conduct business and to rule on a petition and that this Court regularly rules on petitions for rehearing with fewer than five justices voting. (*Compare* Brief of Appellants, p. 33 *with* Brief of Respondents, pp. 47-48). Respondents received a final judgment from five justices of this Court and a ruling on the Petition for Rehearing that complied with the South Carolina Constitution, statutes, and Appellate Court Rules, none of which Respondents have asked this Court to overrule or to hold inapplicable.

CONCLUSION

Appellants ask this Court for finality. For over eight years, the parties have litigated this action. The Court spent almost two years working on its prior decision only to have Respondents ask the Circuit Court to undo it after they failed to obtain that relief from this Court on rehearing or from the United States Supreme Court via certiorari. The citizens of South Carolina rely on the finality of this Court's decisions.

To ensure the finality of this Court's decision in the prior appeal and to protect the integrity of its decisions in all cases, the Court should vacate the Dickson Order and remand with instructions for the Circuit Court to take actions consistent with the Supreme Court Ruling that issued a declaration of rights in Appellants' favor, including granting the specific relief requested in Appellants' Petition for Execution and Petition for Accounting.

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Respectfully submitted,

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