

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Calvary Episcopal Church, Pittsburgh, :
Pennsylvania, a Pennsylvania :
Non-profit Corporation; Saint Stephen's :
Protestant Episcopal Church of :
Wilkinsburg, Pennsylvania, a :
Pennsylvania Non-profit Corporation :

The Reverend Dr. Harold T. Lewis, :
Rector, Calvary Episcopal Church, :
Pittsburgh, Pennsylvania; and Philip :
Richard Roberts, Senior Warden, :
Calvary Episcopal Church, Pittsburgh, :
Pennsylvania, and Herman S. Harvey :

v.

No. 293 C.D. 2010

The Right Reverend Robert William :
Duncan, Bishop of The Episcopal :
Diocese of Pittsburgh; The Right :
Reverend Henry Scriven, Assistant :
Bishop of The Episcopal Diocese :
of Pittsburgh :

Argued: November 9, 2010

Babatunde Fapohunda, Robert :
Manson, James Moore, John Morgan, :
Lynn Patterson, Donald Pepler, :
Thomas Rampy, Bruce G. Seiling, John :
Stevenson, Richard Thomas, and :
Douglas Wicker, all of whom are :
members of the Board of Trustees of :
The Episcopal Diocese of Pittsburgh :

The Rev. Catherine Brall, Kathleen :
Marks, The Rev. J. Douglas McGlynn, :
The Rev. Scott T. Quinn, and William :
Roemer, all of whom are members of :
the Standing Committee of the :
Episcopal Diocese of Pittsburgh, and :
The Episcopal Diocese of Pittsburgh, :

an unincorporated association and The :
Episcopal Church, an unincorporated :
association, by The Right Reverend :
John C. Buchanan, as Trustee Ad Litem :
:
Appeal of: The Episcopal Diocese of :
Pittsburgh, The Right Reverend Robert :
William Duncan, The Right Reverend :
Henry Scriven, Babatunde Fapohunda, :
Robert Manson, Kathleen Marks, The :
Rev. J. Douglas McGlynn, James :
Moore, John Morgan, Lynn Patterson, :
Donald Pepler, Thomas Rampy, :
William Roemer, Bruce G. Seiling, :
John Stevenson, Richard Thomas and :
Douglas Wicker :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: February 2, 2011

The Right Reverend Robert William Duncan (Reverend Duncan), the Episcopal Diocese of Pittsburgh and a number of individuals named as current or former members of the Board of Trustees of the Episcopal Diocese of Pittsburgh (together, Anglican Diocese) appeal from the Order of the Court of Common Pleas of Allegheny County (trial court) dated January 29, 2010, which implemented the trial court's previous order dated October 6, 2009 and held that financial institutions holding certain real and personal property in trust, as identified by a

Special Master's Report issued pursuant to the October 6, 2009 order, take instructions regarding the disposition of those properties only from representatives of the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (Episcopal Diocese) as identified by Bishop Kenneth L. Price, Jr. The Anglican Diocese argues that the trial court violated the Anglican Diocese's due process rights by allowing evidence on the validity of the Episcopal Diocese of Pittsburgh's (Diocese)¹ withdrawal from The Episcopal Church of the United States (TEC USA). The Anglican Diocese also argues that the trial court erred in determining that the Anglican Diocese violated a stipulation between Calvary Episcopal Church (Calvary) (which had been a member of the Diocese and is now a member of the Episcopal Diocese) and the Diocese and in enforcing this determination.

On October 24, 2003, Calvary, in its own name and as trustee *ad litem* for the Diocese, filed a complaint in equity against Reverend Duncan, the Bishop of the Diocese; the Assistant Bishop of the Diocese; individual members of the Board of Trustees of the Diocese; and members of the Standing Committee of the Diocese (Defendants). The complaint alleged that the Defendants intended to extinguish the property rights and interests of TEC USA. Calvary's Complaint further alleged that certain actions of the Defendants had jeopardized its property

¹ It should be noted that parties on both sides of this action title themselves "The Episcopal Diocese of Pittsburgh." In this opinion, the term "Diocese" will be used to refer to the Episcopal Diocese of Pittsburgh before it withdrew from the Episcopal Church of the United States of America. "Anglican Diocese" will be used to refer to the Episcopal Diocese of Pittsburgh affiliated with the Anglican Province of the Southern Cone after the Diocese's withdrawal from the Episcopal Church of the United States of America, and "Episcopal Diocese" will be used to refer to the Episcopal Diocese of Pittsburgh affiliated with the Episcopal Church of the United States of America after the Diocese's withdrawal.

rights, the property rights and interests of TEC USA, and the property rights and interests of the Diocese.

After the filing of an answer and a number of other pleadings, on March 17, 2004, the trial court denied the Defendants' Motion to Dismiss and ordered the parties to proceed with discovery. The parties conducted discovery and subsequently entered into settlement negotiations. On October 14, 2005, the parties submitted a Stipulation By Counsel (Stipulation) to the trial court, which the trial court approved and signed on that date. Paragraph One of the Stipulation, which is at issue in this case, provides as follows:

1. Property, whether real or personal (hereinafter "Property"), held or administered by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter "Diocese") for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in the Episcopal Church of the United States of America. For purposes of this paragraph, Property as to which title is legitimately held in the name of a parish of the Diocese shall not be deemed Property held or administered by the Diocese.

(Stipulation ¶ 1, R.R. at 166a.)

On December 19, 2006, Calvary filed a Petition for Enforcement of Settlement and Order (Petition for Enforcement) alleging that the Diocese had separated itself, and had acted to separate the property subject to the Stipulation from TEC USA. (Petition for Enforcement, R.R. at 169a-85a.) On January 9, 2007, Defendants filed their answer to the Petition for Enforcement and pleaded that "[t]he Diocese is a constituent member of The Episcopal Church of the United

States . . . has not withdrawn from [TEC USA], and continues to be a constituent member of [TEC USA.]” (Answer ¶ 2, R.R. at 244a.) Several other answers and new matter were filed by the parties and, on July 7, 2008, Calvary filed a Supplement to the Petition for Enforcement (Supplement), in which they requested a court-appointed monitor to inventory and oversee the property at issue. (Supplement ¶¶ 25, 27, R.R. at 425a-26a.)

The Petition for Enforcement was filed when:

defendant Duncan and others had taken the first steps to amend the Canon Laws and withdraw the Pittsburgh Diocese from [TEC USA]. In fact, at the Diocesan Convention of October 4, 2008, a resolution to withdraw the Diocese from [TEC USA] and align it with the Anglican Province of the Southern Cone received a majority of the votes cast.

(Trial Ct. Op. at 3, October 6, 2009.) Following the Anglican Diocese’s action, whereby it withdrew from TEC USA, TEC USA removed Bishop Duncan as Bishop of Pittsburgh and named new members to the standing committee of the Episcopal Diocese.

On February 13, 2009, a Petition to Intervene was filed on behalf of TEC USA by the Right Reverend John C. Buchanan, as trustee *ad litem*. (Petition to Intervene, R.R. at 1624a.) Subsequently, upon completion of discovery, the trial court held a hearing on May 27, 2009, at which time the trial court agreed that the narrow issue for it to decide was, *assuming that the Anglican Diocese validly withdrew from TEC USA*, whether the Anglican Diocese could take or retain control of the property referenced in Paragraph One of the Stipulation without violating the Stipulation.

The trial court ultimately concluded that the Anglican Diocese could not retain control of the property. The trial court explained that the faction that withdrew from TEC USA to align with The Anglican Province of the Southern Cone, *i.e.*, the Anglican Diocese, admitted that it had no affiliation with TEC USA. The trial court explained that the “parishes that remained loyal to [TEC USA],” *i.e.*, the Episcopal Diocese, “are now recognized as [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church *of the United States of America*.” (Trial Ct. Op. at 3 (emphasis added).) The trial court then reasoned as follows:

I find that the language is clear and unambiguous and, therefore, requires no further explanation. The property is to be held or administered by [T]he Episcopal Diocese of Pittsburgh *of the Episcopal Church of the United States of America*. Regardless of what name [the Anglican Diocese] now call themselves, they are not [T]he Episcopal Diocese of Pittsburgh *of the Episcopal Church of the United States of America*.

Credible evidence establishes that the entity now represented by Attorney Andrew Roman has been recognized as [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America. [The Anglican Diocese] contend that this designation is invalid and that they are entitled to continue to hold and administer the subject property. There is no basis in law or fact for their position. The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America did not cease to exist when [the Anglican Diocese] chose to withdraw. [The Anglican Diocese] could not extinguish an entity that was created and recognized by the intervenors [TEC USA]. The action to designate a subsequent board of governance and appoint a successor to Bishop Duncan is further evidence that [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America never ceased to exist.

The Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America is the rightful trustee of the Paragraph One property, subject to the terms of the Stipulation of October 14, 2005. The Episcopal Diocese of Pittsburgh, affiliated with [T]he Anglican Province of the Southern Cone, led by Bishop Duncan [*i.e.*, the Anglican Diocese], cannot continue to be the trustee of the Paragraph One property.

(Trial Ct. Op. at 4-5 (emphasis added).) The trial court’s Order of October 6, 2009, specifically ordered that:

1. The authorized representatives of [the Episcopal Diocese] shall hold and administer the real and personal property that is subject to Paragraph One of the Stipulation of October 14, 2005, subject to the terms of that Stipulation.
2. Counsel for all parties shall meet with the Special Master (Stanley E. Levine, Esquire) within 30 days of this Order.
3. The Special Master will report to the court within 20 days of that meeting and said report shall identify the real and personal property that is subject to Paragraph One of the Stipulation.
4. The court will review the report and enter an appropriate order for the orderly transition of possession, custody, and control over said property.
5. This court retains jurisdiction over the parties and the subject matter to enforce the Stipulation and Order of October 14, 2005 and the provisions of this Order.

(Trial Ct. Order at 1-2, October 6, 2009.)² The Anglican Diocese now appeals to this Court.³

² By a prior single-judge decision, this Court determined that the trial court’s October 6, 2009 Order was not a final, appealable order, but that the trial court’s Order of January 29, 2010, which implemented this Court’s October 6, 2009 Order, was a final, appealable order. Calvary Episcopal Church v. Duncan, No. 293 C.D. 2007 (Pa. Cmwlth. August 4, 2010).

³ This Court’s “review in an appeal from a declaratory judgment action” is limited to “whether the trial court's findings are supported by substantial evidence, whether the trial court committed an error of law or whether the trial court abused its discretion.” HYK Construction Company, Inc. v. Smithfield Township, 8 A.3d 1009, 1014 n.5 (Pa. Cmwlth. 2010).

Before this Court, the Anglican Diocese argues that the trial court erred by: (1) allowing Calvary to enforce the Stipulation by petition rather than by initiating a new action through a separate complaint; (2) holding that the Anglican Diocese violated the Stipulation by continuing to hold and control the property described in Paragraph One after withdrawing from TEC USA; (3) allowing evidence on the legitimacy of the Episcopal Diocese, thereby violating the parties' agreement that the hearing would be prefaced on the presumption of the Anglican Diocese's valid withdrawal from TEC USA and violating the Anglican Diocese's right to due process; and (4) ordering the Board of Trustees of the Anglican Diocese, a non-party, to transfer the Paragraph One property to the Episcopal Diocese, another non-party.

We first address the Anglican Diocese's argument that the trial court erred by allowing Calvary to enforce the Stipulation by petition rather than by initiating a new action through a separate complaint. The Anglican Diocese argues that, where a party believes a stipulation or settlement agreement has been violated, the proper course is to file a complaint setting forth the allegations of breach. In support, the Anglican Diocese argues that the Superior Court's holding in Curti v. Ochodski, 521 A.2d 954 (Pa. Super. 1987) should control. In Curti, the Superior Court stated:

Our decision is underlined by the fact that the settlement agreement was not incorporated directly or by reference into the consent decree. The trial judge himself stated he had no familiarity with the settlement agreement, the terms of which had been negotiated by the parties and presented to him for approval of a settlement. Thus, the consent decree in the case before us is clearly distinguishable from Pennypack Woods Home Ownership Ass'n. v. Regan, . . . 444 A.2d 715 (1982) where we found the trial court fully

participated in the settlement, set forth rights and obligations of the parties in the consent decree and specifically stated it would use its powers against a party who failed to carry out the decree.

Id. at 955 (internal citations omitted).

Generally, in accordance with Pa. R.C.P. No. 206.1(a), only applications to open default judgments and applications designated by local rule may be initiated by petitions. The trial court's local rules do not designate the enforcement of a stipulation as a matter that may be initiated by a petition. In Advanced Management Research, Inc. v. Emanuel, 439 Pa. 385, 391-92, 266 A.2d 673, 676 (1970), the Supreme Court affirmed the ability of a trial court to retain jurisdiction to enforce its orders. The trial court adopted the parties' Stipulation as its order and, so, retained jurisdiction to ensure compliance with its order. Therefore, per Advanced Management Research, the trial court retained jurisdiction to enforce the Stipulation, and Calvary did not need to initiate a new action through a separate complaint. Unlike the trial court in Curti, the trial court in this case was familiar with the Stipulation and the Stipulation did not involve monetary damages, but the ongoing conduct of the parties. Therefore, we reject the Anglican Diocese's argument and hold that the trial court properly allowed Calvary to enforce the Stipulation through a petition.

We next address the Anglican Diocese's argument that the trial court erred in holding that the Anglican Diocese violated the Stipulation by continuing to hold and control the property described in Paragraph One after withdrawing from TEC USA. As discussed above, Paragraph One of the Stipulation provides:

1. Property, whether real or personal (hereinafter “Property”), held or administered by [T]he Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America (hereinafter “Diocese”) for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in the Episcopal Church of the United States of America. For purposes of this paragraph, Property as to which title is legitimately held in the name of a parish of the Diocese shall not be deemed Property held or administered by the Diocese.

(Stipulation ¶ 1, R.R. at 166a.). At the heart of this issue is the parties’ dispute over the meaning of the term “the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America” in Paragraph One. The trial court held that this term indisputably referred to the Episcopal Diocese. The Anglican Diocese argues that this term is a single identifier that identified the legal entity, the Episcopal Diocese of Pittsburgh, referred to in this opinion as the Anglican Diocese, *which is still the same legal entity* although it is no longer affiliated with TEC USA. The Episcopal Diocese, on the other hand, argues that the phrase “of the Episcopal Church of the United States of America” in the Stipulation has independent meaning, requiring that the diocese continuing to hold the Paragraph One property be affiliated with TEC USA.

Where a term of a settlement agreement is subject to more than one reasonable interpretation, that term is ambiguous and the court may look to extrinsic evidence to determine the intent of the parties in drafting the agreement. Amerikohl Mining, Inc. v. Mount Pleasant Township, 727 A.2d 1179, 1181-82 (Pa. Cmwlth. 1999). After examination of the language of the Stipulation, we agree with the trial court that the Stipulation’s meaning is clear, and we do not

believe the Stipulation is reasonably susceptible to the interpretation proffered by the Anglican Diocese. The interpretation suggested by the Anglican Diocese does not explain the inclusion of the language “of the Episcopal Church of the United States of America.” If the term “the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America” was intended, as the Anglican Diocese argues, to merely identify the Diocese as it existed at the time the Stipulation was executed, then the language “of the Episcopal Church of the United States of America” would have been surplusage and “the Episcopal Diocese of Pittsburgh” would have sufficiently described the Diocese. We agree with the trial court that the language of the Stipulation is clear and that the only reasonable interpretation of the inclusion of the language “of the Episcopal Church of the United States of America” is that the parties intended that the Paragraph One property would be retained by the Episcopal Diocese of Pittsburgh that remained affiliated with TEC USA.

However, even if that language was ambiguous, we note that this interpretation is consistent with the extrinsic evidence of the parties’ intent. Attorney DeForest, who represented Calvary in drafting the Stipulation, testified that he told opposing counsel that he “would not settle the case unless the diocesan property stayed within [TEC USA].” (Hr’g Tr. at 16, May 27, 2009, R.R. at 2021a.) “As I told [the Diocese] before, that I was adamant that this had to be defined as the Diocese that was going to be part of [TEC USA]. That is what that indicates. That is what I told them at the meeting and that is what I wrote here.” (Hr’g Tr. at 53, R.R. at 2058a.) Attorney DeForest generally testified that the entire thrust of his position in the negotiation was that diocesan property had to

remain with TEC USA. (see generally, Hr'g Tr. at 10-70, R.R. at 2015a-75a.) In addition, documentary evidence of the negotiations between Calvary and the Diocese indicates that counsel for the Diocese, Joe Otto, was aware of this intention. For example, Attorney Otto sent a draft of Paragraph One to Attorney DeForest which read:

Property, whether real or personal (hereinafter "Property), held or administered by the Diocese of Pittsburgh (hereinafter "Diocese") for the beneficial use of the parishes and institutions of the Diocese, shall continue to be so held or administered by the Diocese regardless of whether some or even a majority of the parishes in the Diocese might decide not to remain in [TEC USA].

(Memo from Otto to DeForest (July 26, 2005), DeForest Dep. Ex. 8, R.R. at 2174a.) Notably, in contrast, the words "of the Episcopal Church of the United States of America" are appended to the term "Diocese of Pittsburgh" in the version of Paragraph One agreed upon by the parties. Had the phrase "of the Episcopal Church of the United States of America" not been inserted to modify "the Diocese of Pittsburgh," this would have supported the Anglican Diocese's argument that "Diocese of Pittsburgh" was merely meant to denote the Diocese as a legal entity, no matter what its affiliation. That "of the Episcopal Church of the United States of America" was inserted into the final version supports Calvary's position that the phrase "the Diocese of Pittsburgh of the Episcopal Church of the United States of America" was intended to refer to that Diocese of Pittsburgh which is affiliated with TEC USA. Thus, the extrinsic evidence also supports the trial court's interpretation.

We next address the Anglican Diocese's argument that the trial court erred by allowing evidence on the legitimacy of the Episcopal Diocese, thereby violating

the Anglican Diocese's right to due process and the parties' agreement that the hearing would be prefaced on the presumption of the Anglican Diocese's valid withdrawal from TEC USA. The "validity agreement" was that the parties would agree to assume, for purposes of the hearing, that the withdrawal of the Anglican Diocese from TEC USA was "valid."⁴ (Hr'g Tr. at 18, 31-34, 40-41, April 17,

⁴ The validity agreement was most succinctly summarized as follows:

MR. LEWIS [counsel for Anglican Diocese]: Well, what we had said is we're entitled to our day in court on validity; and so let's put that aside. Let's assume validity, and let's have a short trial on the stipulation.

Mr. DeForest [counsel for Calvary] agrees, except he changed the word. He said "regardless of." In other words, if we're going to have a short trial, then let's just assume validity. Don't put all this stuff about the Constitution of the Episcopal Church and all that stuff. That is for another day.

THE COURT: What is the difference if we say let's assume validity or regardless of validity? I understand there [are] different words, but by the same token they reserve their rights, as you reserve your rights, to argue the fact that you've reserved the right to argue the fact that you have validly withdrawn, the diocese in toto has withdrawn from the Church of the United States and it's valid and you have the right to argue that in court and the stipulation doesn't control you, if it's valid. So they have the right to argue that it was invalid.

MR. LEWIS: Right.

THE COURT: So why are we concerned with whether it's regardless or whether it's presumptive?

MR. LEWIS: Maybe we're not. I'm just being as careful as I can be. All I'm saying is if we have this short hearing, we are entitled to argue, based on our assumption of validity. And if the Court agrees that if there was a valid withdrawal, that there is no violation of the stipulation, that the stuff about invalidity doesn't matter at that point. That's all I'm asking, Your Honor. I'm not asking them to give anything up. But I don't want to enter a hearing and then offer invalidity evidence.

THE COURT: There will be none, because whether it's regardless or whether it's presumed that it was valid, there would be testimony as to the validity. And testimony as to canon law would be irrelevant and would not be admissible.

MR. LEWIS: Right. *So in order for them to win, it seems to me, they would have to show that the stipulation is valid, even if there was a valid withdrawal.* That's all I'm trying to get to.

THE COURT: That's what Mr. DeForest said.

2009, R.R. at 1812a, 1825a-28a, 1834a-35a.) An assumption that the Anglican Diocese’s withdrawal from TEC USA was valid would not appear to mean, per se, that the Episcopal Diocese could not also validly exist. The Anglican Diocese’s position, that the Episcopal Diocese’s evidence that it was legitimately a diocese recognized by TEC USA was, in fact, evidence on the “validity issue,” would appear to make the May 27, 2009 hearing unnecessary. Under this theory, there could be no proof of any diocese besides the Anglican Diocese. The Anglican Diocese does not point to any language or agreement that would prevent TEC USA from proving that once the Diocese validly withdrew, becoming the Anglican Diocese, the Episcopal Diocese did not remain.

In addition, it is the Anglican Diocese that raised the issue of validity of the Episcopal Diocese in its pre-hearing brief, arguing that “[g]iven the assumption of valid withdrawal, however, the [Episcopal Diocese] cannot be considered as anything more than a collection of parishes within the realigned [Anglican Diocese] (and a minority group at that). If valid withdrawal is assumed, then immediately after withdrawal, there was only one [Diocese]—the [Anglican Diocese].” (Defendants’ Pre-Hearing Brief at 14 n.5, May 22, 2009, R.R. at 1990a n.5.) Therefore, as the trial court recognized, the evidence introduced by the Episcopal Diocese was necessary to show that the Episcopal Diocese was, in fact, a diocese and could be the diocese referred to in the Stipulation. The trial court recognized this and allowed “this evidence for ‘the limited purpose that they [the

MR. LEWIS: All right.

THE COURT: And Mr. Roman [counsel for the Episcopal Diocese and TEC USA] said, I think.
(Hr’g Tr. at 39-41, April 17, 2009, R.R. at 1833a-35a (emphasis added).)

Episcopal Diocese] continue to be recognized . . . but not for the question of whether they [the Anglican Diocese] have been validly withdrawn . . .” (Episcopal Diocese Br. at 37 (quoting Hr’g Tr. at 128, May 27, 2009, R.R. at 2133a (alterations and omissions in original)).) Thus, the trial court did not err or violate the Anglican Diocese’s due process rights in accepting evidence on the validity of the *Episcopal* Diocese and its affiliation with TEC USA.

Finally, we address the Anglican Diocese’s argument that the trial court erred by ordering the Board of Trustees of the Anglican Diocese, a non-party, to transfer the Paragraph One property to the Episcopal Diocese, another non-party. The Anglican Diocese argues that 45 parcels of real property affected by the trial court’s order are titled in the name of the Board of Directors of the Episcopal Diocese of Pittsburgh (Board of Directors), which, the Anglican Diocese argues, was not a party to the matter before the trial court. Rather, Calvary named individual members of the Board of Directors as defendants, but never named the Board of Directors itself, which is a Pennsylvania non-profit corporation, as a defendant. The Anglican Diocese argues that, because the trial court’s order affects the property rights of the Board of Directors, the Board of Directors is an indispensable party and the trial court erred in awarding relief against it. See Guthrie Clinic, Ltd. v. Meyer, 638 A.2d 400, 405 (Pa. Cmwlth. 1994) (holding that, although the individual members of a corporation’s board were parties before the trial court, the corporation itself wasn’t and, therefore, relief could not be granted against the corporation). However, as Calvary points out in its brief, the Anglican Diocese, i.e., the Episcopal Diocese of Pittsburgh that is affiliated with the Anglican Province of the Southern Cone, intervened as a defendant before the

trial court and never argued that it was a separate entity from its Board of Directors. It would, therefore, now be disingenuous for the Anglican Diocese to argue that the trial court cannot order relief against it after appearing, arguing before the trial court, and representing its interests, as well as the interests of its Board of Directors. We, therefore, reject the Anglican Diocese's argument on this point.

The Anglican Diocese also argues that the trial court erred in ordering the transfer of property to the Episcopal Diocese, which was not a party before the trial court. We find this argument unavailing. The Anglican Diocese does not cite any authority to support its assertion that the trial court may not grant Calvary declaratory judgment that the Episcopal Diocese is the proper party to administer Paragraph One property. In addition, while the Episcopal Diocese did not intervene in the proceeding below, counsel did enter an appearance on its behalf.⁵ Therefore, the Episcopal Diocese's interests were adequately represented, such that it cannot be said to be an indispensable party over which the trial court lacked jurisdiction. In addition, TEC USA intervened in the proceeding below. Given that Calvary and TEC USA argue that the Episcopal Diocese is the entity that should hold the Paragraph One property in trust for TEC USA, it was not improper for the trial court to declare that the Episcopal Diocese is the body that should hold and administer that property.

⁵ The irregularity of this circumstance is due to the fact that both the Anglican Diocese and the Episcopal Diocese style themselves "The Episcopal Diocese of Pittsburgh." For further discussion of this point, refer to footnote 1, *supra*. Due to this fact, the Episcopal Diocese and the Anglican Diocese retained counsel to enter appearances on behalf of The Episcopal Diocese of Pittsburgh because, due to the validity question which they agreed to set aside for purposes of the issue now before us, both claimed to be that entity.

For these reasons, we affirm the order of the trial court.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Calvary Episcopal Church, Pittsburgh, :
Pennsylvania, a Pennsylvania :
Non-profit Corporation; Saint Stephen's :
Protestant Episcopal Church of :
Wilkinsburg, Pennsylvania, a :
Pennsylvania Non-profit Corporation :

The Reverend Dr. Harold T. Lewis, :
Rector, Calvary Episcopal Church, :
Pittsburgh, Pennsylvania; and Philip :
Richard Roberts, Senior Warden, :
Calvary Episcopal Church, Pittsburgh, :
Pennsylvania, and Herman S. Harvey :

v. :

No. 293 C.D. 2010

The Right Reverend Robert William :
Duncan, Bishop of The Episcopal :
Diocese of Pittsburgh; The Right :
Reverend Henry Scriven, Assistant :
Bishop of The Episcopal Diocese :
of Pittsburgh :

Babatunde Fapohunda, Robert :
Manson, James Moore, John Morgan, :
Lynn Patterson, Donald Pepler, :
Thomas Rampy, Bruce G. Seiling, John :
Stevenson, Richard Thomas, and :
Douglas Wicker, all of whom are :
members of the Board of Trustees of :
The Episcopal Diocese of Pittsburgh :

The Rev. Catherine Brall, Kathleen :
Marks, The Rev. J. Douglas McGlynn, :
The Rev. Scott T. Quinn, and William :
Roemer, all of whom are members of :
the Standing Committee of the :
Episcopal Diocese of Pittsburgh, and :
The Episcopal Diocese of Pittsburgh, :

an unincorporated association and The :
Episcopal Church, an unincorporated :
association, by The Right Reverend :
John C. Buchanan, as Trustee Ad Litem :
:
Appeal of: The Episcopal Diocese of :
Pittsburgh, The Right Reverend Robert :
William Duncan, The Right Reverend :
Henry Scriven, Babatunde Fapohunda, :
Robert Manson, Kathleen Marks, The :
Rev. J. Douglas McGlynn, James :
Moore, John Morgan, Lynn Patterson, :
Donald Pepler, Thomas Rampy, :
William Roemer, Bruce G. Seiling, :
John Stevenson, Richard Thomas and :
Douglas Wicker :

ORDER

NOW, February 2, 2011, the order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge