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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE: § **CHAPTER 11**
§
ALL SAINTS EPISCOPAL CHURCH¹ § **CASE NO. 21-42461-elm11**
§
DEBTOR §

ALL SAINTS EPISCOPAL CHURCH, §
a Texas Non-Profit Corporation, §
§
Plaintiff, §
§
v. § **ADV. PRO. NO. 21-04082-ELM**
§
ALL SAINTS EPISCOPAL CHURCH, §
an Unincorporated Association in Union §
with the Episcopal Diocese of Fort §
Worth, and THE CORPORATION §
OF THE EPISCOPAL DIOCESE OF §
FORT WORTH, §
§
Defendants. §

**BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

¹ The last four digits of the Debtor's tax identification number are 5880.

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT1

II. STATEMENT OF UNDISPUTED FACTS3

A. Adoption and Incorporation of the Court’s Previous Findings and
Conclusions in the Memorandum Opinion and at the June 13, 2022
Hearing; Brief Overview.....3

B. The Debtor’s Use, Acquisition, and Ownership of Real Properties6

(i) Diocesan Trust Property Historically Used by Episcopalian All Saints...6

(ii) Real Properties Presently Owned by the Debtor.....7

C. The Debtor’s Acquisition and Ownership of Financial Assets.....9

D. Episcopalian All Saints’ Continued Control of the Debtor After the 2008
Schism.....13

E. Post-Schism Disputes Over Control of the Diocesan Corporation and
Diocesan Trust Property14

F. The Schism Leads to the Diocesan Trust Property Litigation16

G. Defendants Waived Any Claim to Control of the Debtor or Ownership of
the Debtor’s Real Properties and Financial Assets17

H. The State Court Enters Final Judgment Awarding Control of the Diocesan
Corporation and Certain Diocesan Trust Properties to the State Court
Defendants19

I. The Defendants’ Post-Judgment Enforcement Actions and the State
Court’s Post-Judgment Orders.....19

J. The Most Recent of Defendants’ Ever-Evolving Theories of Recovery
Against the Debtor and Developments During the Debtor’s Bankruptcy
Case.....22

III. ARGUMENT & AUTHORITIES24

A. Summary Judgment Standard24

B. The Members of Episcopalian All Saints Control the Debtor25

C. The Debtor is Entitled to a Declaration that the Debtor Owns the Real
Properties and that Such Properties are Property of the Debtor’s
Bankruptcy Estate26

- (i) The Summary Judgment Evidence Establishes that the Debtor Owns the Real Properties as a Matter of Law.....26
- (ii) Defendants’ Claims to the Real Properties are Barred by the Doctrines of Waiver and Judicial Estoppel.....28
- (iii) The Court Should Grant the Debtor’s Motion for Summary Judgment and Declare that the Debtor Owns the Real Properties30
- D. The Debtor is Entitled to a Declaration that the Debtor Owns the Financial Assets and that the Financial Assets are Property of the Debtor’s Bankruptcy Estate31
 - (i) The Summary Judgment Evidence Establishes that the Debtor Owns the Financial Assets as a Matter of Law31
 - (ii) Defendants’ Claims to the Financial Assets are Barred by the Doctrines of Waiver and Judicial Estoppel.....32
 - (iii) The State Court Judgment Does Not Address Ownership of the Financial Assets or Award the Financial Assets to Defendants and it Does Not Support Defendants’ Claims.....34
 - (iv) The Judgment Enforcement Order is Not Entitled to Preclusive Effect Against the Debtor36
 - (v) Defendants’ Efforts to Seek Turnover of Account Balances from April 2009 Long After Judgment is Procedurally and Substantively Improper.....38
 - (vi) The Court Should Grant the Debtor’s Motion for Summary Judgment and Declare that the Debtor Owns the Financial Assets39
- E. The Debtor is Entitled to Summary Judgment on the Parties’ Crossclaims to Use of the Name All Saints Episcopal Church.....40
- F. Defendants’ Proof of Claim Should be Disallowed.....41
 - (i) The State Court Judgment and Judgment Enforcement Order Provide No Basis for a Claim Against the Debtor42
 - (ii) Defendants’ Claimed Ownership Interest in the Real Properties and Financial Assets is Inconsistent with Defendants’ Proof of Claim.....44
 - (iii) There is no Basis for Defendants’ Claim Related to the Debtor’s Membership in All Saints Episcopal School44
 - (iv) There is no Basis for Defendants’ Assertion of a Secured Claim.....46
 - (v) Defendants Have No Allowable Claim for Deferred Maintenance or Damages to Property47

(vi) In the Alternative, any Liability on the Proof of Claim is Limited to Traceable Funds	48
G. The Debtor is Entitled to Summary Judgment on Defendants’ Counterclaims	49
IV. CONCLUSION.....	50

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re All Saints Episcopal Church</i> , 638 B.R. 359 (Bankr. N.D. Tex. Dec. 29, 2021)	<i>passim</i>
<i>Allen v. C&H Dist., L.L.C.</i> , 813 F.3d 566 (5th Cir. 2015)	29
<i>Amegy Bank of Tex. V. CGI Franchise Sys., Inc.</i> , 2021 WL 4310582 (N.D. Tex. Sep. 22, 2021).....	32
<i>Anderson, Clayton & Co. v. U.S.</i> , 562 F.2d 972 (5th Cir. 1977)	36
<i>Barr v. Reso. Trust Corp. ex rel. Sunbelt Fed. Sav.</i> , 837 S.W.2d 627 (Tex. 1992).....	43
<i>Beaumont Bank v. Buller</i> , 806 S.W.2d 223 (Tex. 1991).....	21, 37, 38
<i>In re Bicoastal Corp.</i> , 136 B.R. 290 (Bankr. M.D. Fla. 1992)	44, 49
<i>Bierscheid v. JPMorgan Chase Bank</i> , 606 S.W.3d 493 (Tex. App.—Houston [1st Dist.] 2020, pet. denied).....	36
<i>Brito v. Intex Aviation Servs., Inc.</i> , 879 F.Supp. 650 (N.D. Tex. 1995)	28, 33
<i>Browning Mfg. v. Mims (In re Coastal Plains, Inc.)</i> , 179 F.3d 197 (5th Cir. 1999)	34
<i>In re Cardwell</i> , 2020 WL 6877446 (Bankr. E.D. Tex. Sep. 29, 2020)	37
<i>Centre Strategic Invs. Holdings Ltd. v. The Off'l Comm. of Unsec. Creditors of SLP, L.L.C. (In re Senior Living Properties, LLC)</i> , 294 B.R. 698 (Bankr. N.D. Tex. 2003).....	31, 39
<i>Cont'l Ill. Nat. Bank and Trust Co. of Chicago v. Windham</i> , 668 F.Supp. 578 (E.D. Tex. 1987).....	34
<i>Cont'l Ins. Co. v. Cont'l Fire Ass'n</i> , 101 F. 255 (5th Cir. 1900)	40
<i>In re Cunningham</i> , 2008 WL 2746023 (Bankr. N.D. Ohio Jul. 11, 2008)	31

Davis v. Fort Bend Cty.,
765 F.3d 480 (5th Cir. 2014)27

In re Environmental Land Tech., Ltd.,
2007 WL 4287474 (Bankr. D.C. Dec. 3, 2007).....44, 45

Episcopal Diocese of Fort Worth v. Episcopal Church,
422 S.W.3d 646 (Tex. 2013).....4

Episcopal Diocese of Fort Worth v. Episcopal Church,
602 S.W.3d 417 (Tex. 2020), cert. denied, 141 S. Ct. 1373 (2021) *passim*

Frye v. Anadarko Petro. Corp.,
953 F.3d 285 (5th Cir. 2019)30, 39

Gordon v. West Houston Trees, Ltd.,
352 S.W.3d 32 (Tex. App.—Houston [1st Dist.] 2011, no pet.)26

Green v. Canon,
33 S.W.3d 855 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)26

In re Gulley,
400 B.R. 529 (Bankr. N.D. Tex. 2009).....42

Hall v. GE Plastic Pac. PTE Ltd.,
327 F.3d 391 (5th Cir. 2003)34

Hampton v. Equity Trust Co.,
607 S.W.3d 1 (Tex. App.—Austin 2020, pet. denied).....37

Harden v. Colonial Country Club,
634 S.W.2d 56 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.).....45

In re IFS Fin. Corp.,
669 F.3d 255 (5th Cir. 2012)32

In re Immerfall,
216 B.R. 269 (Bankr. D. Minn. 1998)46

Jones v. United States,
936 F.3d 318 (5th Cir. 2019)24

In re K & A Servicing, Inc.,
47 B.R. 807 (Bankr. N.D. Tex. 1985).....47

Langenkamp v. Culp,
498 U.S. 42 (1990).....25

Liquidating Trust of the Lovesac Corp. v. Cox (In re The Lovesac Corp.),
422 B.R. 478 (Bankr. D. Del. 2010)8

Lone Star Cement Corp. v. Fair,
467 S.W.2d 402 (Tex. 1971).....37

Long v. Knox,
291 S.W.2d 292 (Tex. 1956).....29

Masterson v. Diocese of N’west Tex.,
422 S.W.3d 594 (Tex. 213).....26

MedImmune, Inc. v. Genentech, Inc.,
549 U.S. 118 (2007).....30

Matter of Missionary Baptist Found. of Am., Inc.,
792 F.2d 502 (5th Cir. 1986)26

Montomery v. Goodwin,
2018 WL 1631699 (W.D. La. Apr. 2, 2018).....41

Nichols v. Glas,
1992 WL 442112 (N.D. Tex. Oct. 23, 1992).....47

Nunez v. Superior Oil Co.,
572 F.2d 1119 (5th Cir. 1978)25

Procter & Gamble Co. v. Amway Corp.,
376 F.3d 496 (5th Cir. 2004)43

Reed v. City of Arlington,
650 F.3d 571 (5th Cir. 2011)29, 30, 34

Richardson v. Wells Fargo Bank, N.A.,
839 F.3d 442 (5th Cir. 2016)36

Russell v. Harrison,
736 F.2d 283 (5th Cir. 1984)25

Tenneco Inc. v. Enter. Prods. Co.,
925 S.W.2d 640 (Tex. 1996).....29, 33

Thompson v. Thompson Air Cond. and Heating, Inc.,
884 S.W.2d 555 (Tex. App.—Texarkana 1994, no writ.)40

In re Twinton Properties P’ship,
44 B.R. 426 (Bankr. M.D. Tenn. 1984)44

U.S. v. Bollinger Mobile Home Sales, Inc.,
492 F.Supp. 493 (N.D. Tex. 1980)47

Unified Buddhist Church of Vietnam v. Unified Buddhist Church of Vietnam,
838 Fed. App’x 809 (5th Cir. 2020)40

United States v. McCaskey,
9 F.3d 368 (5th Cir. 1993)30

Van Dyke v. Littlemill Ltd.,
579 S.W.3d 639 (Tex. App.—Houston [14th Dist.] 2019, no pet.).....37, 38

Viacom Int’l v. IJR Cap. Inv., L.L.C.,
891 F.3d 178 (5th Cir. 208)41

In re Webb,
520 B.R. 748 (Bankr. E.D. Ark. 2014)46, 47

Wood v. Wood (In re Wood),
825 F.2d 90 (5th Cir. 1987)31, 39

Statutes

11 U.S.C. § 541.....31, 39, 44

11 U.S.C. § 544(a)(1).....47

28 U.S.C § 1334(b).....31, 39

28 U.S.C §§ 1334(b), 2201(a).....31, 39

TEX. BUS. ORG. CODE § 5.054(b).....26

TEX. BUS. ORG. CODE § 402.015(b).....4

TEX. BUS. & COMM. CODE § 9.317(a)(2)47

TEX. PROP. CODE § 5.02126

TEX. PROP. CODE § 52.00147

Other Authorities

1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 9:7.50 (5th ed.).....40

FED. R. BANKR. P. 3001(d).....46

FED. R. BANKR. P. 70561

FED. R. BANKR. P. 9015(a).....25

FED. R. CIV. P. 56(a)1, 24

All Saints Episcopal Church (the “Debtor”) files this brief in support of its motion (the “Motion”) under Rule 56 and Bankruptcy Rule 7056 requesting entry of summary judgment on certain of the claims and defenses asserted against, and counterclaims asserted by, All Saints Episcopal Church, an unincorporated non-profit religious association (“ACNA All Saints”)² affiliated with the Episcopal Diocese of Fort Worth (the “Fort Worth Diocese”), and the Corporation of the Episcopal Diocese of Fort Worth, a Texas non-profit corporation (the “Diocesan Corporation”) (collectively, “Defendants”), and in support states as follows:

I. PRELIMINARY STATEMENT

1. The Debtor seeks entry of summary judgment declaring that the Debtor is the legal and equitable owner of certain real properties and financial assets, that the Debtor has the continuing right to use its corporate name “All Saints Episcopal Church,” and that Defendants have no allowable claim against the Debtor’s bankruptcy estate. In summary, neutral principles of law dictate that (i) Episcopalian All Saints (as defined below) controls the Debtor, (ii) the Debtor owns its assets, and (iii) Defendants waived any claim against the Debtor or its assets and, in any event, there is no independent basis for Defendants’ claims against the Debtor. The factual and legal bases for the Debtor’s arguments are set forth below, but it is the underlying history of the parties’ dispute that ultimately demonstrates the Debtor’s entitlement to summary judgment.

2. Since 1953, the Debtor has been the corporate vehicle through which All Saints Episcopal Church in Fort Worth, Texas (“Episcopalian All Saints”) has held its assets and conducted its business operations as a parish church within the hierarchy of the Episcopal Church in North America (the “Episcopal Church”). In 2008, there was a schism within the Fort Worth Diocese that resulted in the departure of the Fort Worth Diocese and Diocesan

² “ACNA” stands for the Anglican Church in North America.

Corporation from the Episcopal Church. Despite these departures, the members of Episcopalian All Saints and the Debtor overwhelmingly chose to remain associated with the Episcopal Church. Following that decision, a small minority of the members of Episcopalian All Saints elected to follow the Fort Worth Diocese and left to establish a new parish within the Anglican Church in North America (“ACNA”), referred to herein as ACNA All Saints.

3. Following the schism, litigation ensued over control of the Diocesan Corporation and ownership of church properties and assets owned by the Diocesan Corporation for the benefit of parish churches. The Debtor was not a party to that litigation, no party in that litigation ever asserted a claim to the Debtor’s assets, and ownership of the Debtor’s assets was never at issue, litigated, or decided in that litigation. To the contrary, Defendants expressly waived any claims against the Debtor or its assets. Following an appeal, the Texas Supreme Court held that, under neutral principles of law, ACNA All Saints held equitable title to certain trust properties held by the Diocesan Corporation.

4. The Court has determined that, prior to the 2008 schism, the Debtor existed in affiliation with the Episcopal Church and, following the 2008 schism, continued its affiliation by virtue of the collective decision of the Debtor’s members. Nonetheless, Defendants contend that the small minority of former parishioners that disavowed any connection to the Episcopal Church and voluntarily left the Debtor’s membership are entitled to millions of dollars of assets that were inarguably donated to the mission of the Episcopal Church and, under neutral principles of law, are legally owned by Debtor. There is no legal or equitable principle that supports Defendants’ position.

5. Unable to articulate any neutral principle of law that supports their claims, Defendants have resorted to the farcical assertion that, despite their lack of association with the Episcopal Church, they “are” the continuation of Episcopalian All Saints and are thus entitled to

control the Debtor and all of its assets. Indeed, *all* of Defendants' claims in this proceeding are premised upon this one assertion. Because Defendants cannot identify any substantive basis for their assertion that they control the Debtor and its assets, have argued that control of the Debtor and ownership of the Debtor's assets was litigated and determined in state court, a contention this Court has flatly rejected on more than one occasion. The issue of control over the Debtor now *has* been litigated on the merits in this Court and conclusively decided against Defendants.

6. The reason for Defendants' actions in this case is obvious. The Debtor was, and still is, the largest and most well-resourced parish in its diocese, and the Debtor's election not to follow the Fort Worth Diocese in its departure from the Episcopal Church was undoubtedly a significant financial blow to Defendants. However, as the Court previously recognized, Defendants and their members are free to pursue any religious affiliation of their choice, but upon leaving the Debtor's membership they forfeited any right to control the Debtor and, under neutral principles of law, they are not entitled to take the Debtor's assets with them.

7. There is no evidentiary or legal basis for Defendants' claims against the Debtor. The Debtor is therefore entitled to summary judgment declaring that the Debtor continues to be the legal and equitable owner of its real properties and financial assets, declaring that the Debtor is entitled to continue to use its own name, and disallowing Defendants' claims against the Debtor in their entirety.

II. STATEMENT OF UNDISPUTED FACTS

A. Adoption and Incorporation of the Court's Previous Findings and Conclusions in the Memorandum Opinion and at the June 13, 2022 Hearing; Brief Overview

8. In the Court's Memorandum Opinion explaining the reasoning underlying the denial of the Defendants' first motion to dismiss this bankruptcy case, the Court extensively reviewed and analyzed the Debtor's history, corporate governance structure, and the facts and circumstances surrounding the schism within the Episcopal Church that gave rise to the property

dispute at the heart of this adversary proceeding.³ At a hearing on June 13, 2022, the Court adopted and incorporated these findings and made further findings in its oral ruling denying Defendants' second motion to dismiss this bankruptcy case.⁴ The Debtor incorporates the Court's findings and conclusions in the Memorandum Opinion and at the June 13, 2022 hearing as if set forth fully herein. In addition, the evidentiary support underlying the Court's findings and conclusions in the Memorandum Opinion is included in the Debtor's appendix in support of the Motion.

9. Episcopal All Saints was founded as an Episcopalian parish church in the 1940s.⁵ In 1953, the members of Episcopal All Saints incorporated the Debtor as a Texas non-profit corporation to facilitate church operations and hold title to church assets.⁶ At the time, Episcopal All Saints and the Debtor were associated with the Dallas Diocese, which was then a regional diocese within the Episcopal Church.⁷ In 1982, the Fort Worth Diocese was carved out of the Dallas Diocese, and from that date until 2008 Episcopal All Saints and the Debtor were associated with the Fort Worth Diocese, a regional diocese within the Episcopal

³ Docket No. 128, Case No. 21-42461-elm11 (the "Memorandum Opinion"); *see also In re All Saints Episcopal Church*, 638 B.R. 359 (Bankr. N.D. Tex. Dec. 29, 2021). A copy of the Memorandum Opinion is attached hereto as Exhibit A. The history of the parties' dispute is also summarized in two opinions of the Texas Supreme Court, attached hereto as Exhibits B and C. *See Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (Tex. 2013) ("Episcopal Church I") and *Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417 (Tex. 2020), cert. denied, 141 S. Ct. 1373 (2021) ("Episcopal Church II").

⁴ As of the date of this filing, the Debtor had requested the transcript of the June 13, 2022 hearing but such transcript was not yet available on the Court's docket. The Debtor makes reference to that transcript, which should be posted to the docket prior to the time the Motion is decided.

⁵ Ex. A, Memorandum Opinion at p. 5 (App. at 6); Ex. D, Jambor Decl. at ¶ 2 (App. at 66).

⁶ Ex. A, Memorandum Opinion at p. 5 (App. at 6); Ex. D, Jambor Decl. at ¶ 2 (App. at 66). In the Memorandum Opinion, the Court expressed concern that the Debtor's corporate existence, which was initially limited to 50 years under the Debtor's organizational documents, has expired. Ex. A, Memorandum Opinion at p. 5 n. 2 (App. at 6). However, after the Debtor's incorporation the Texas Business Organizations Code was amended to provide that, "[n]otwithstanding a provision in the articles of incorporation limiting the period of duration of a domestic nonprofit corporation formed before August 10, 1959, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the secretary of state on May 2, 1979." TEX. BUS. ORG. CODE § 402.015(b). The Debtor was incorporated in 1953 and in existence on May 2, 1979. Accordingly, duration of the Debtor's corporate existence became perpetual as of May 2, 1979. *Id.*

⁷ Ex. A, Memorandum Opinion at p. 6 (App. at 7); Ex. D, Jambor Decl. at ¶ 2 (App. at 66).

Church.⁸ The Diocesan Corporation was incorporated in 1983 to hold assets for the Fort Worth Diocese and local parishes.⁹

10. In 2008, the Fort Worth Diocese elected to terminate its affiliation with the Episcopal Church because of doctrinal differences between the leadership of the Fort Worth Diocese and the Episcopal Church.¹⁰ After leaving the Episcopal Church, the Fort Worth Diocese ultimately affiliated with ACNA.¹¹ In turn, this schism at the diocesan level of the Episcopal Church led to a splintering of leadership and membership at local parishes within the Fort Worth Diocese, including Episcopalian All Saints (whose members were the governing members of the Debtor).¹² The overwhelming majority of Episcopalian All Saints' leaders and members, which also comprised the majority of the Debtor's members and elected board of directors (the Debtor's "Vestry"), determined to reject the breakaway movement and remain in union with the Episcopal Church.¹³ A small minority of the parish's and Debtor's leadership and members elected to follow the breakaway group by terminating their membership and association with Episcopalian All Saints and reestablishing as a new unincorporated association in union with the ACNA-affiliated Fort Worth Diocese, which they also named All Saints' Episcopal Church despite their lack of association with the Episcopal Church (referred to herein as ACNA All Saints).¹⁴

11. As discussed more fully below and in the Court's Memorandum Opinion, the schism led to disputes over control of the Diocesan Corporation as well as certain assets owned by the Diocesan Corporation in trust ("Diocesan Trust Property") for the benefit of local parishes

⁸ Ex. A, Memorandum Opinion at p. 6 (App. at 7); Ex. D, Jambor Decl. at ¶ 2 (App. at 66).

⁹ Ex. A, Memorandum Opinion at pp. 6-7 (App. at 7-8); Ex. D, Jambor Decl. at ¶ 2 (App. at 66).

¹⁰ Ex. A, Memorandum Opinion at p. 5 (App. at 6); Ex. D, Jambor Decl. at ¶ 3 (App. at 67).

¹¹ Ex. A, Memorandum Opinion at pp. 1-2 (App. at 2-3); Ex. D, Jambor Decl. at ¶ 3 (App. at 67).

¹² Ex. A, Memorandum Opinion at pp. 1-2 (App. at 2-3); Ex. D, Jambor Decl. at ¶ 3 (App. at 67).

¹³ Ex. A, Memorandum Opinion at pp. 11-12 (App. at 12-13); Ex. D, Jambor Decl. at ¶ 3 (App. at 67).

¹⁴ Ex. A, Memorandum Opinion at pp. 11-14 (App. at 12-15); Ex. D, Jambor Decl. at ¶ 3 (App. at 67).

including Episcopalian All Saints.¹⁵ That dispute evolved to include a dispute over the assets of Episcopalian All Saints, which led to attempts by the Defendants to seize the Debtor's assets, which in turn led to the Debtor's bankruptcy filing and, ultimately, this adversary proceeding.¹⁶

B. The Debtor's Use, Acquisition, and Ownership of Real Properties

(i) Diocesan Trust Property Historically Used by Episcopalian All Saints

12. Historically, Episcopalian All Saints conducted its operations and held its religious services at Episcopalian church properties located at 5001 Crestline Road, Fort Worth, Texas 76107 ("5001 Crestline") and 5003 Dexter Avenue, Fort Worth, Texas 76107 ("5003 Dexter").¹⁷ The acquisition of these two properties for Episcopalian All Saints' use pre-dated the Debtor's incorporation in 1953.¹⁸ Consistent with the Episcopal Church's practice, legal title to 5001 Crestline and 5003 Dexter was held in the name of the bishop of the Dallas Diocese, with which Episcopalian All Saints was then affiliated, for the use and benefit of the Episcopalian All Saints parish church.¹⁹

13. In the early 1980s, the Fort Worth Diocese was carved out of the Dallas Diocese. Shortly after its formation, the Fort Worth Diocese incorporated the Diocesan Corporation to hold assets for the Fort Worth Diocese and its constituent parishes, including Episcopalian All Saints.²⁰ In 1984, the Dallas Diocese transferred legal title to 5001 Crestline and 5003 Dexter to the newly formed Diocesan Corporation, with which Episcopalian All Saints was then affiliated by virtue of its affiliation with the Fort Worth Diocese.²¹

14. Ownership of the 5001 Crestline and 5003 Dexter properties eventually became the subject of the litigation between Episcopalian All Saints, the Fort Worth Diocese, and ACNA

¹⁵ Ex. A, Memorandum Opinion at p. 2 (App. at 3); Ex. D, Jambor Decl. at ¶ 4 (App. at 67).

¹⁶ Ex. A, Memorandum Opinion at p. 3 (App. at 4); Ex. D, Jambor Decl. at ¶ 4 (App. at 67).

¹⁷ Ex. D, Jambor Decl. at ¶ 29 (App. at 77).

¹⁸ Ex. D, Jambor Decl. at ¶ 29 (App. at 77).

¹⁹ Ex. D, Jambor Decl. at ¶ 29 (App. at 77).

²⁰ Ex. D, Jambor Decl. at ¶ 30 (App. at 78).

²¹ Ex. D, Jambor Decl. at ¶ 30 (App. at 78).

All Saints.²² This litigation is discussed more fully below and in the Court’s Memorandum Opinion.²³ Neither Episcopalian All Saints nor the Debtor are currently conducting any operations at these properties, and these properties are not the subject of this adversary proceeding.²⁴ However, these properties are relevant to the present dispute because they illustrate the distinction between the Diocesan Trust Property at issue in prior state court litigation and the properties presently owned by the Debtor.

(ii) Real Properties Presently Owned by the Debtor

15. The members of Episcopalian All Saints elected to form and incorporate the Debtor in 1953 to facilitate church operations and to hold title to church assets.²⁵ Thereafter, all of Episcopalian All Saints’ operations were conducted through the Debtor, and all assets and all Episcopalian All Saints church property (other than 5001 Crestline and 5003 Dexter) were acquired and owned in the Debtor’s name.²⁶ Eventually, the Debtor acquired legal and equitable title to three parcels of real property and equitable title to one parcel of real property, each of which the Debtor continues to own (collectively, the “Real Properties”).²⁷ The Debtor acquired and now holds title to the Real Properties as follows:

- (i) On July 10, 1995, the Debtor acquired legal and equitable title to the real property located at 5001 Dexter Avenue, Fort Worth, Texas 76107 (“5001 Dexter”).²⁸ For many years, the Debtor has maintained and operated this property as a community garden in which members of the community could rent garden space. The property also included a swing, koi pond, and mobile chapel, and is maintained for the enjoyment of the

²² Ex. D, Jambor Decl. at ¶ 31 (App. at 78).

²³ Ex. A, Memorandum Opinion, *passim* (App. at 2); Ex. D, Jambor Decl. at ¶ 31 (App. at 78).

²⁴ Ex. D, Jambor Decl. at ¶ 31 (App. at 78). Other than serving as the collective association of the Debtor’s parishioners and members under the Debtor’s governance documents, Episcopalian All Saints presently owns no assets and has no business operations. As discussed below, all assets currently associated with Episcopalian All Saints are owned by the Debtor, which is consistent with the purpose of the Debtor’s incorporation.

²⁵ Ex. D, Jambor Decl. at ¶ 32 (App. at 78).

²⁶ Ex. D, Jambor Decl. at ¶ 32 (App. at 78).

²⁷ Ex. D, Jambor Decl. at ¶ 32 (App. at 78).

²⁸ For the avoidance of doubt, 5001 Dexter is a different property than 5001 Crestline, Episcopalian All Saints’ historical church property that was at issue in the state court litigation between the parties.

neighborhood. The Debtor refers to this property as the “Community Garden.”²⁹

- (ii) On August 20, 1997, the Debtor acquired legal and equitable title to the real property located at 4939 Dexter Avenue, Fort Worth, Texas 76107 (“4939 Dexter”). Historically, this property functioned primarily as housing for the Debtor’s clergy and lay staff. Going forward, the Debtor intends to use this property to house offices for support staff and meeting space for small groups and Wednesday night bible study. The Debtor refers to this property as the “White House.”³⁰
- (iii) On April 29, 1999, the *Diocesan Corporation* obtained legal title to the real property located at 5005 Dexter Avenue, Fort Worth, Texas 76107 (“5005 Dexter”), *to be held in trust for the use and benefit of the Debtor*. Accordingly, the Debtor has held equitable title to 5005 Dexter since April 29, 1999. The Debtor has been the beneficial owner in possession of this property since that time, and currently uses the property as housing for the Debtor’s clergy and as church storage.³¹ The Debtor refers to this property as the “Clements-Haddaway House.”³²
- (iv) On September 12, 2003, the Debtor acquired legal and equitable title to the real property located at 4936 Dexter Avenue, Fort Worth, Texas 76107 (“4936 Dexter”). This property was originally intended to serve as a center for youth ministry. However, this property now serves as the Debtor’s headquarters, housing offices for the Rector and his staff, along with a chapel for small weekday masses. The Debtor refers to this property as the “Gray House.”³³

16. Collectively, these Real Properties house the Debtor’s headquarters and offices, housing for use by the Debtor’s clergy, and a community garden.³⁴ The Debtor has continuously owned, occupied, and used each of the Real Properties since the dates of their acquisition.³⁵ In addition, the Debtor has physically maintained and insured the Real Properties.³⁶ The Debtor has also encumbered the Real Properties by granting liens against the Real Properties to secure

²⁹ Ex. D, Jambor Decl. at ¶ 32 (App. at 78); Ex. D-11, Deed to 5001 Dexter (App. at 187).

³⁰ Ex. D, Jambor Decl. at ¶ 32 (App. at 78); Ex. D12, Deed to 4939 Dexter (App. at 193).

³¹ “A ‘beneficial owner’ is ‘one recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else.’” *Liquidating Trust of the Lovesac Corp. v. Cox (In re The Lovesac Corp.)*, 422 B.R. 478, 484 (Bankr. D. Del. 2010) (quoting Black’s Law Dictionary 1137 (8th ed. 2004)).

³² Ex. D, Jambor Decl. at ¶ 32 (App. at 78); Ex. D-13 Deed to 5005 Dexter (App. at 197).

³³ Ex. D, Jambor Decl. at ¶ 32 (App. at 78); Ex. D-14, Deed to 4936 Dexter (App. at 201).

³⁴ Ex. D, Jambor Decl. at ¶ 33 (App. at 80).

³⁵ Ex. D, Jambor Decl. at ¶ 33 (App. at 80).

³⁶ Ex. D, Jambor Decl. at ¶ 33 (App. at 80).

the Debtor's indebtedness to National Bank of Texas and to secure the Debtor's indemnity obligations to certain indemnified parties.³⁷

17. As discussed in the disclosure statement accompanying the Debtor's plan of reorganization filed with the Court, the Real Properties constitute the Debtor's primary unrestricted assets, meaning that the Real Properties are among the few assets owned by the Debtor whose use is not restricted by charitable or donative intent.³⁸ The Debtor intends to liquidate the Real Properties to pay claims and fund its reorganization.³⁹

C. The Debtor's Acquisition and Ownership of Financial Assets

18. As set forth above, the Debtor was incorporated to facilitate Episcopalian All Saints' business operations, including its maintenance of assets and properties.⁴⁰ Accordingly, the Debtor's corporate structure was subsequently used to acquire and maintain the church's financial assets.⁴¹ As of October 20, 2021 (the "Petition Date"), the Debtor owned three categories of financial assets: (i) checking and money market accounts used in the Debtor's operations; (ii) certificates of deposit and brokerage accounts that hold donated funds; and (iii) two endowment funds that hold the Debtor's endowment assets (collectively, including the funds held in such accounts and trusts, the "Financial Assets").⁴² The Financial Assets can be summarized as follows:⁴³

³⁷ Ex. D, Jambor Decl. at ¶ 33 (App. at 80); Ex. D-15, National Bank of Texas Deed of Trust (App. at 205); Ex. D-16, Secured Indemnity Agreement (App. at 220).

³⁸ Ex. D, Jambor Decl. at ¶ 34 (App. at 80).

³⁹ Ex. D, Jambor Decl. at ¶ 34 (App. at 80).

⁴⁰ Ex. D, Jambor Decl. at ¶ 35 (App. at 80).

⁴¹ Ex. D, Jambor Decl. at ¶ 35 (App. at 80).

⁴² Ex. E, Waltman Decl. at ¶ 2 (App. at 300).

⁴³ Ex. E, Waltman Decl. at ¶ 2 (App. at 300). Accounts *7215, *1827, *8855 existed as of the Petition Date but have since been closed. The accounts are included in this list to avoid any uncertainty as to the ownership of the account as of the Petition Date. *Id.* Each of these accounts was held in the Debtor's name and under the Debtor's EIN number. *Id.*

Financial Institution	Account Type	Account Number	Approximate Balance as of Petition Date
Frost Bank	Checking	*4027	\$41,393.61
Frost Bank	Checking	*1898	\$84.30
Frost Bank	Checking	*7444	\$7,501.00
Frost Bank	Checking	*1815	\$57,093.52
Frost Bank	Checking	*8981	\$3,817.83
Frost Bank	Checking	*6625	\$118.63
Frost Bank	Checking	*5329	\$2,526.92
Frost Bank	Checking	*7647	\$2,686.88
Frost Brokerage	Money Market	*0053	\$146,784.55
Frost Bank	Certificate of Deposit	*0362	\$6,309.03
Bank of America	Checking	*7215	\$5,332.49
Pinnacle Bank	Checking	*1827	\$6,980.43
Pinnacle Bank	Certificate of Deposit	*0126	\$32,477.82
Pinnacle Bank	Certificate of Deposit	*0127	\$40,384.15
Wells Fargo Advisors	Brokerage	*0935	\$189,773.65
Wells Fargo Advisors	Brokerage	*8855	\$0.00
Frost Brokerage	Endowment Trust	*1900	\$652,253.30
Wells Fargo Advisors	Endowment Fund	*2724	\$679,767.41

19. The Debtor's bank accounts are maintained at Frost Bank.⁴⁴ Each of the Debtor's bank accounts are held in the Debtor's name, under the Debtor's federal employer identification number ("EIN"), and pursuant to a corporate resolution authorizing the Debtor to maintain such accounts.⁴⁵ Aside from the fact that all of the foregoing accounts are held in the Debtor's name and under the Debtor's EIN, 100% of the funds in each of these accounts as of the Debtor's bankruptcy filing were generated by the Debtor well after the 2008 schism that led to the departure of a minority of the Debtor's members as discussed below.⁴⁶ Likewise, the Debtor's certificates of deposit and brokerage accounts are held in the Debtor's name, under the Debtor's

⁴⁴ Ex. E, Waltman Decl. at ¶ 3 (App. at 301).

⁴⁵ Ex. E, Waltman Decl. at ¶ 3 (App. at 301); *see also* Ex. E-1, Signature Cards (App. at 306-55) (signature cards for Frost Bank account numbers *4027, *1898, *7444, *1815, *8981, *6625, *5329, *7647 and Pinnacle Bank Account number *1827 reflecting that each account is (i) a "corporation" account, (ii) held under the Debtor's federal employer identification number ending in *5880, and (iii) opened and held pursuant to a resolution of the Debtor's board of directors); Ex. E-2, Corporate Account Resolutions (App. at 357) (reflecting Frost account number *0053 was opened by the Debtor pursuant to corporate resolutions).

⁴⁶ Ex. E, Waltman Decl. at ¶ 3 (App. at 301).

federal employer identification number, and pursuant to a corporate resolution authorizing the Debtor to open and maintain such accounts.⁴⁷

20. The Debtor also maintains two separate charitable endowments that contain donated funds.⁴⁸ The first such fund, which the Debtor refers to internally as the “Permanent Fund,” is a trust in which the Debtor holds a beneficial interest and which was created pursuant to a Trust Agreement, dated as of November 30, 1993, by and among the Debtor and Overton Bank and Trust (n/k/a Frost Bank), as trustee.⁴⁹ As of March 31, 2009, shortly prior to the institution of the litigation over the Diocesan Trust Property, the balance of the Permanent Fund was \$184,825.41.⁵⁰ The Permanent Fund is held at Frost Bank and is maintained in accordance with the governing trust agreement.⁵¹

21. The Debtor’s second endowment fund, known as the “New Endowment,” was created pursuant to an agreement, dated as of April 1, 2004, and is now maintained and managed pursuant to the Agreement Creating the All Saints’ Episcopal Church of Fort Worth Endowment Fund, dated as of August 26, 2008.⁵² As of March 31, 2009, shortly prior to the institution of the litigation over the Diocesan Trust Property, the balance of the New Endowment was \$17,534.04.⁵³ The New Endowment account is maintained at Wells Fargo.⁵⁴

⁴⁷ Ex. E, Waltman Decl. at ¶ 4 (App. at 301); *see also* Ex. E-3, CD Signature Cards (App. at 360) (signature cards for CD account numbers *0362, *0126, and *0127 reflecting that each CD account is (i) a “corporation” account, (ii) held under the Debtor’s federal employer identification number ending in *5880, and (iii) with respect to account *0362, opened and held pursuant to a resolution of the Debtor’s board of directors. With respect to Pinnacle accounts *0126 and *0127, Pinnacle is the successor to Ridglea Bank. Ex. E, Waltman Decl. at ¶ 4 (App. at 301).

⁴⁸ Ex. E, Waltman Decl. at ¶ 5 (App. at 302).

⁴⁹ Ex. E, Waltman Decl. at ¶ 5 (App. at 302); Ex. E-4, Permanent Fund Endowment Agreement (App. at 371).

⁵⁰ Ex. E, Waltman Decl. at ¶ 5 (App. at 302); Ex. E-5, April 2009 Permanent Fund Statement (App. at 380).

⁵¹ Ex. E, Waltman Decl. at ¶ 5 (App. at 302).

⁵² Ex. E, Waltman Decl. at ¶ 6 (App. at 302); Ex. E-6, New Endowment Agreement (App. at 391).

⁵³ Ex. E, Waltman Decl. at ¶ 6 (App. at 302); Ex. E-7, April 2009 New Endowment Statement (App. at 434).

⁵⁴ Ex. E, Waltman Decl. at ¶ 6 (App. at 302).

22. The Debtor established and is the beneficiary of the Permanent Fund and created the New Endowment, which was funded with the Debtor's own assets.⁵⁵ Indeed, the New Endowment agreement expressly recognizes the Debtor's status as a non-profit corporation and expressly recognizes the Debtor as having previously established the Permanent Fund.⁵⁶ The interests in the two endowments are held by the Debtor and treated as assets of the Debtor.⁵⁷

23. The Debtor's officers and Vestry oversee and control the Financial Assets.⁵⁸ Under the Debtor's organizational and governance documents, the Debtor's elected Treasurer maintains "custody of all [the Debtor's] funds and securities" and is responsible for keeping the books and records relating to the Financial Assets.⁵⁹ The Treasurer is responsible for maintaining the Debtor's deposit accounts and disbursing funds subject to the oversight of the Debtor's Vestry.⁶⁰ In practice, Mthr. Waltman, the Debtor's Assisting Priest and Business Manager, oversees the day-to-day operations of the Debtor's bank accounts, subject to the oversight of the Vestry and the Treasurer, and the Debtor's Endowment Committee, which is appointed by the Vestry, oversees and controls the Debtor's two endowment funds.⁶¹ The Debtor's financial personnel and Vestry exercise control over the Financial Assets, and the Debtor's officers are the only signatories on the accounts related to the Financial Assets.⁶²

24. The overwhelming majority of the Debtor's Financial Assets constitute "restricted assets," meaning they are subject to legally enforceable restrictions requiring the use or

⁵⁵ Ex. E, Waltman Decl. at ¶ 7 (App. at 302); Ex. E-4, Permanent Fund Endowment Agreement (App. at 371); Ex. E-6, New Endowment Agreement (App. at 391-92).

⁵⁶ Ex. E-6, New Endowment Agreement (App. at 391).

⁵⁷ Ex. E, Waltman Decl. at ¶ 7 (App. at 302).

⁵⁸ Ex. E, Waltman Decl. at ¶ 8 (App. at 303); Ex. E-6, New Endowment Agreement at Art. IV (App. at 395).

⁵⁹ Ex. E, Waltman Decl. at ¶ 8 (App. at 303); Ex. D-9, Bylaws at Art. IV (App. at 157).

⁶⁰ Ex. E, Waltman Decl. at ¶ 8 (App. at 303); Ex. D-9, Bylaws at Art. IV (App. at 157).

⁶¹ Ex. E, Waltman Decl. at ¶ 8 (App. at 303); Ex. D-9, Bylaws at Art. IV (App. at 157); Ex. E-6, New Endowment Agreement at Art. IV (App. at 395-96).

⁶² Ex. E, Waltman Decl. at ¶ 8 (App. at 303).

disposition of such asset for a particular purpose.⁶³ In other words, most of the Debtor's assets and funds were donated or contributed to the Debtor for a particular charitable purpose.⁶⁴ Further, all of the Debtor's funds were donated to the Debtor for use in association with the Episcopal Church.⁶⁵ As of the Debtor's bankruptcy filing, Date, the Debtor's unrestricted assets consisted of the Real Properties, cash in the amount of \$119,839, and funds in the New Endowment in the amount of \$27,215.⁶⁶ The remainder of the Debtor's assets, including the remainder of the Financial Assets, constitute restricted funds.⁶⁷

D. Episcopal All Saints' Continued Control of the Debtor After the 2008 Schism

25. As the Court discussed in detail in the Memorandum Opinion, the dispute that ultimately gave rise to this adversary proceeding stems from a doctrinal and hierarchical schism that led to the departure of the Fort Worth Diocese, Diocesan Corporation, and a minority of the members of Episcopal All Saints, from the Episcopal Church.⁶⁸ This Court has already concluded that the members of Episcopal All Saints retained control of the Debtor after the departure of this minority breakaway faction.⁶⁹

26. In summary, Debtor is governed by its 15-member Vestry.⁷⁰ Since the Debtor's incorporation, the Vestry has been elected by eligible voting members of Debtor, which are generally members of Episcopal All Saints in good standing and at least 16 years of age.⁷¹ Vestry elections are held at Episcopal All Saints' annual parish meeting, with 5 members

⁶³ Ex. D, Jambor Decl. at ¶ 36 (App. at 81); Ex. E, Waltman Decl. at ¶ 9 (App. at 303).

⁶⁴ Ex. D, Jambor Decl. at ¶ 36 (App. at 81); Ex. E, Waltman Decl. at ¶ 9 (App. at 303).

⁶⁵ Ex. D, Jambor Decl. at ¶ 36 (App. at 81); Ex. E, Waltman Decl. at ¶ 9 (App. at 303).

⁶⁶ Ex. E, Waltman Decl. at ¶ 9 (App. at 303).

⁶⁷ Ex. E, Waltman Decl. at ¶ 9 (App. at 303).

⁶⁸ Ex. A, Memorandum Opinion at pp. 1-3 (App. at 2-4); Ex. D, Jambor Decl. at ¶ 37 (App. at 81).

⁶⁹ Ex. A, Memorandum Opinion at pp. 11-13, 25-27 (App. at 12-14, 26-28); Ex. D, Jambor Decl. at ¶ 37 (App. at 81).

⁷⁰ Ex. A, Memorandum Opinion at pp. 7-9, 11-13 (App. at 8-10, 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

⁷¹ Ex. A, Memorandum Opinion at pp. 7-9, 11-13 (App. at 8-10, 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

elected each year to 3-year terms, elected to serve on a staggered basis.⁷² In response to the schism, the vast majority of Episcopalian All Saints' approximately 2,000 members elected to continue their membership Episcopalian All Saints under the leadership of its existing Rector, Reverend Christopher Jambor, and to cause Episcopalian All Saints to remain in union with the Episcopal Church.⁷³ Likewise, the vast majority of the Debtor's vestry elected to remain with the Debtor, with only 5 of the Debtor's 15 Vestry members ultimately resigning as a result of the schism.⁷⁴ Thereafter, through the date of the Debtor's bankruptcy filing, the members of the Debtor's Vestry were elected and served in accordance with the Bylaws.⁷⁵

27. Accordingly, and as this Court has already held, the members of Episcopalian All Saints retained control of the Debtor after the departure of the breakaway faction that eventually formed ACNA All Saints, and the Debtor is currently governed and controlled by its duly and lawfully elected Vestry.⁷⁶

E. Post-Schism Disputes Over Control of the Diocesan Corporation and Diocesan Trust Property

28. Shortly after the Fort Worth Diocese's and Diocesan Corporation's departure from the Episcopal Church, disputes arose among, *inter alia*, the Episcopal Church, the Fort Worth Diocese, and the local parishes concerning the continuing right to use Diocesan Trust Property historically committed to the local parishes' use.⁷⁷ With respect to Episcopalian All Saints, this dispute involved the right to use the 5001 Crestline and 5003 Dexter properties where Episcopalian All Saints historically conducted its operations and held its religious services.⁷⁸ As noted above, the Diocesan Corporation held legal title to those properties in in trust for the use

⁷² Ex. A, Memorandum Opinion at pp. 7-9, 11-13 (App. at 8-10, 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

⁷³ Ex. A, Memorandum Opinion at pp. 11-13 (App. at 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

⁷⁴ Ex. A, Memorandum Opinion at pp. 11-13 (App. at 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

⁷⁵ Ex. A, Memorandum Opinion at pp. 11-13 (App. at 12-14); Ex. D, Jambor Decl. at ¶ 38 (App. at 81).

⁷⁶ Ex. A, Memorandum Opinion at p. 28 (App. at 29); Ex. D, Jambor Decl. at ¶ 39 (App. at 82).

⁷⁷ Ex. D, Jambor Decl. at ¶ 40 (App. at 82).

⁷⁸ Ex. D, Jambor Decl. at ¶ 40 (App. at 82).

and benefit of the local parish in union with the Fort Worth Diocese (which, until 2008, was Episcopalian All Saints).⁷⁹

29. Before the November 2008 vote to sever ties with the Episcopal Church, Bishop Jack Iker, then the leader of the Fort Worth Diocese, had anticipated this property dispute and had taken steps to fortify the Diocesan Corporation's claims to the local parishes' property.⁸⁰ For example, in 2008 Bishop Iker commissioned a study to determine if all real properties used by parishes within the Fort Worth Diocese were held in accordance with diocesan rules, which required legal title to all real properties used by local parishes and missions to be held by the Diocesan Corporation.⁸¹ Having found that certain of the properties used by Episcopalian All Saints (specifically, 4936 Dexter and 5001 Dexter) were not in conformity with this requirement, the Fort Worth Diocese sent the Debtor a letter, dated September 2, 2008, demanding that the two properties be deeded to the Diocesan Corporation within 30 days, a deadline that conspicuously fell just before the November 2008 Diocesan Convention at which the Fort Worth Diocese and Diocesan Corporation elected to depart from the Episcopal Church.⁸² Episcopalian All Saints and the Debtor refused to comply with Iker's demand, so there was no change in the ownership of the properties in question.⁸³

30. The breakaway faction's attempts to lay claim to church property occurred at the parish level as well. After their departure from the Episcopal Church and the termination of their association with Episcopalian All Saints and the Debtor, the members of ACNA All Saints made what this Court characterized as a "strategic decision . . . to have the ex-members of Episcopalian All Saints simply reorganize as a new unincorporated religious association that

⁷⁹ Ex. D, Jambor Decl. at ¶ 40 (App. at 82).

⁸⁰ Ex. D, Jambor Decl. at ¶ 41 (App. at 82).

⁸¹ Ex. D, Jambor Decl. at ¶ 41 (App. at 82); Ex. D-17, Sep. 2, 2008 Letter (App. at 241).

⁸² Ex. D, Jambor Decl. at ¶ 41 (App. at 82); Ex. D-17, Sep. 2, 2008 Letter (App. at 241).

⁸³ Ex. D, Jambor Decl. at ¶ 41 (App. at 82).

would also be named ‘All Saints’ Episcopal Church” in an effort to bolster their claim to the disputed Diocesan Trust Property.⁸⁴ “That way, the argument could be made that ACNA All Saints constituted the only beneficiary of the Diocesan Trust Property designated for use by the ‘All Saints’ Episcopal Church’ parish *in union with the Fort Worth Diocese.*”⁸⁵

F. The Schism Leads to the Diocesan Trust Property Litigation

31. The disputes over the use and control of the Diocesan Trust Property, which, as it relates to Episcopalian All Saints, was the 5001 Crestline and 5003 Dexter properties, that resulted from the schism ultimately led to multiparty litigation in the 141st District Court in Tarrant County, Texas (the “State Court”).⁸⁶ The parties to this litigation would eventually include, among others, the Fort Worth Diocese, the Diocesan Corporation, Episcopalian All Saints, and ACNA All Saints.⁸⁷ As finally aligned, the plaintiffs to the litigation were the Episcopal Church and certain other parties aligned with the Episcopal Church, including Episcopalian All Saints (collectively, the “State Court Plaintiffs”), and the defendants to the litigation were the Fort Worth Diocese, the Diocesan Corporation, Bishop Iker and the breakaway leadership led by him, and certain other parties aligned with them, including ACNA All Saints (collectively, the “State Court Defendants”).⁸⁸ The Debtor was never a party to this litigation.⁸⁹

32. As this Court previously explained, “[t]he issues in dispute in the litigation were whether the Fort Worth Diocese and Diocesan Corporation ever permissibly terminated their relationship with the Episcopal Church, who rightfully controlled the Fort Worth Diocese and the Diocesan Corporation, and which parishes were the beneficial owners of the Diocesan Trust

⁸⁴ Ex. A, Memorandum Opinion at pp. 13-14 (App. at 14-15); Ex. D, Jambor Decl. at ¶ 42 (App. at 83).

⁸⁵ Ex. A, Memorandum Opinion at pp. 13-14 (App. at 14-15); Ex. D, Jambor Decl. at ¶ 42 (App. at 83).

⁸⁶ Ex. A, Memorandum Opinion at pp. 15-16 (App. at 16-17); Ex. D, Jambor Decl. at ¶ 43 (App. at 83).

⁸⁷ Ex. A, Memorandum Opinion at p. 15 (App. at 16); Ex. D, Jambor Decl. at ¶ 43 (App. at 83).

⁸⁸ Ex. A, Memorandum Opinion at p. 15 (App. at 16); Ex. D, Jambor Decl. at ¶ 43 (App. at 83).

⁸⁹ Ex. A, Memorandum Opinion at p. 15 (App. at 16); Ex. D, Jambor Decl. at ¶ 43 (App. at 83).

Property.”⁹⁰ As it relates to Episcopal All Saints, the 5001 Crestline and 5003 Dexter properties, which were legally owned by the Diocesan Corporation but in the possession of Episcopal All Saints, were the only properties at issue the litigation.⁹¹ The dispute centered on which party – Episcopal All Saints or ACNA All Saints – held beneficial title to those properties under the Diocesan Trust.⁹²

G. Defendants Waived Any Claim to Control of the Debtor or Ownership of the Debtor’s Real Properties and Financial Assets

33. During the litigation in the State Court, ACNA All Saints and the Diocesan Corporation repeatedly acknowledged the existence of the Debtor and waived any claim to control of the Debtor or ownership of its assets.⁹³ Specifically, the designated representative of ACNA All Saints gave the following testimony when questioned about the Debtor and its assets:

Q: . . . Does [ACNA] All Saints’ make any claim in this lawsuit to control a corporation in Texas named All Saints’ Episcopal Church?

A: **No, we do not.**⁹⁴

Q: [ACNA] All Saints is not making any claims to property owned by . . . a corporation in Texas called All Saints Episcopal Church, correct?

A: **That’s correct, yes.**

Q: Okay. So if the court determines that any property in this case legally belongs to [the Debtor], [the State Court Defendants] agree they don’t have a claim or right to that?

A: **I would say yes.**⁹⁵

Q: And – and not to beat a dead horse, but [ACNA All Saints] has disclaimed any right to [the Debtor corporation] or its property, correct?

A: **That’s correct.**⁹⁶

⁹⁰ Ex. A, Memorandum Opinion at p. 16 (App. at 17); Ex. D, Jambor Decl. at ¶ 44 (App. at 84).

⁹¹ Ex. D, Jambor Decl. at ¶ 44 (App. at 84).

⁹² Ex. D, Jambor Decl. at ¶ 44 (App. at 84).

⁹³ Ex. D, Jambor Decl. at ¶ 45 (App. at 84).

⁹⁴ Ex. F, Brackett Depo. at 56:3 – 56:6 (emphasis added) (App. at 466).

⁹⁵ Ex. F, Brackett Depo. at 57:22 – 58:6 (emphasis added) (App. at 467-68).

34. ACNA All Saints and the Diocesan Corporation also expressly, and unequivocally, waived any claim to the Real Properties during the litigation. In a motion for summary judgment filed in the State Court, ACNA All Saints and the Diocesan Corporation recognized that Episcopalian All Saints “use[d] six properties”, including 5001 Crestline and 5003 Dexter, both of which were Diocesan Trust Property legally owned by the Diocesan Corporation, and the four Real Properties (4939 Dexter, 5001 Dexter, 4936 Dexter, and 5005 Dexter).⁹⁷ In the motion, ACNA All Saints and the Diocesan Corporation specifically identified the four Real Properties, acknowledged the distinction between Episcopalian All Saints and the Debtor, acknowledged that either entity had the power to hold legal title to property, expressly “waive[d] any claim to the [Real Properties],” and consented to a “judgment awarding legal and beneficial title” to the State Court Plaintiffs, including Episcopalian All Saints.⁹⁸ In other words, in pleadings filed in the State Court ACNA All Saints and the Diocesan Corporation expressly and unequivocally disclaimed and waived any claim to ownership of the Real Properties.

35. Defendants’ waiver of any claim to the Debtor’s assets was expressly discussed with the State Court on the record at the June 10, 2015 hearing that led to entry of the State Court Judgment (defined below). At that hearing, counsel for Episcopalian All Saints indicated that Defendants had waived any claim other than claims to 5001 Crestline and 5003 Dexter and, in response, Defendants’ counsel confirmed that Defendants had in fact waived all such claims.⁹⁹

⁹⁶ Ex. F, Brackett Depo. at 104:23 – 105:2 (emphasis added) (App. at 474-75); *see also* Ex. F, Brackett Depo. at 105:21 – 105:24 (“[W]e make no claim, again, to the [Debtor] nonprofit corporation.”) (App. at 475).

⁹⁷ Ex. G, State Court Defendants’ Third MSJ at pp. 1, 5-7 (App. at 477, 481-83).

⁹⁸ Ex. G, State Court Defendants’ Third MSJ at pp. 1, 5-7 (App. at 477, 481-83).

⁹⁹ Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627).

H. The State Court Enters Final Judgment Awarding Control of the Diocesan Corporation and Certain Diocesan Trust Properties to the State Court Defendants

36. Ultimately, the State Court ruled that, in accordance with the governing trust provisions of the Diocesan Corporation's organizational documents, the Diocesan Trust Property (including 5001 Crestline and 5003 Dexter) was held in trust by the Diocesan Corporation for the benefit of parishes in union with the Fort Worth Diocese, including ACNA All Saints (but not Episcopalian All Saints). On July 24, 2015, the State Court entered a final judgment to that effect (the "State Court Judgment"), which was upheld on appeal by the Texas Supreme Court.¹⁰⁰

37. The State Court Judgment awarded the properties listed on Exhibit 1 to the State Court Judgment and the funds and endowments listed on Exhibit 2 to the State Court Judgment to the State Court Defendants, including the Diocesan Corporation.¹⁰¹ As it relates to Episcopalian All Saints, and thus the Debtor, the State Court Judgment only addresses two properties: 5001 Crestline and 5003 Dexter.¹⁰² The Debtor was not a party to the litigation or the State Court Judgment, and none of the Debtor's assets, including the Real Properties or Financial Assets, were mentioned or at issue in the State Court Judgment.¹⁰³

I. The Defendants' Post-Judgment Enforcement Actions and the State Court's Post-Judgment Orders

38. The events following entry of the State Court Judgment were thoroughly recited by the Court in the Memorandum Opinion.¹⁰⁴ During the pendency of the State Court Plaintiffs'

¹⁰⁰ Ex. D, Jambor Decl. at ¶ 47 (App. at 85); Ex. D-18, State Court Judgment (App. at 244); Ex. C, *Episcopal Church II* (App. at 47); *see also* Ex. G, State Court Defendants' Third MSJ (App. at 477, 481-83) (identifying claims on which State Court Defendants moved for summary judgment); Ex. O, Transcript of June 10, 2015 MSJ Hearing (App. at 610-68) (transcript of summary judgment hearing identifying claims ruled on by State Court).

¹⁰¹ Ex. D-18, State Court Judgment (App. at 246-47).

¹⁰² Ex. D, Jambor Decl. at ¶ 47 (App. at 85); Ex. D-18, State Court Judgment (App. at 246); Ex. G, State Court Defendants' Third MSJ (App. at 477, 481-83) (identifying claims on which State Court Defendants moved for summary judgment); Ex. O, Transcript of June 10, 2015 MSJ Hearing (App. at 610-68) (transcript of summary judgment hearing identifying claims ruled on by State Court).

¹⁰³ Ex. D, Jambor Decl. at ¶ 47 (App. at 85); Ex. D-18, State Court Judgment (App. at 245).

¹⁰⁴ Ex. A, Memorandum Opinion at pp. 16-19 (App. at 17-20).

appeal from the State Court Judgment, the State Court entered an agreed supersedeas order, which purported to identify certain property at issue in the litigation and provided, in relevant part:

The property made subject of this lawsuit that is in [the State Court Plaintiffs'] possession (the "Property") is hereby defined to mean only the parcels identified at the following entries to the list of properties labeled "Exhibit 1" in the July 24, 2015 [State Court Judgment], the endowments and funds listed in "Exhibit 2" of the [State Court Judgment], any real or personal property obtained with proceeds from the properties/endowments/funds listed in "Exhibits 1 and 2" of the [State Court Judgment], and personal property necessary for the operation of the Episcopal Parish or Mission associated with that parcel (i.e. chalices, vestments, bibles, etc.):

...

- Entries 13 and 14 (All Saints' Episcopal Church (Fort Worth)).

In no event shall the Property be defined to include the four properties to which [the State Court Defendants] waived any claim in Defendants' Third Motion for Partial Summary Judgment Relating to All Saints' Episcopal Church, filed May 6, 2015. [The State Court Defendants] waived all claim to the property of All Saints' Episcopal Church (Fort Worth) at 4939 Dexter Ave. (JA02535), 5001 Dexter Ave. (JA02540), 4936 Dexter Ave. (JA02537), and 5005 Dexter (JA02532). In no event shall the Property be defined to include any property over which [the State Court Defendants] have never asserted a claim in this action....¹⁰⁵

39. However, the State Court Judgment was never amended and, after the State Court Judgment became final and non-appealable, a dispute arose between the State Court Plaintiffs and the State Court Defendants with respect to whether the State Court Judgment required the State Court Plaintiffs to turn over any personal property other than the specifically described endowments and pledged funds listed on Exhibit 2 to the State Court Judgment.¹⁰⁶ Successfully convincing the State Court that it did, the State Court Defendants obtained entry of an order (the "Judgment Enforcement Order") requiring the State Court Plaintiffs "to immediately deliver, as required by the [State Court Judgment], possession of all real and personal property, in existence

¹⁰⁵ Ex. A, Memorandum Opinion at p. 17 (App. at 18); Ex. D, Jambor Decl. at ¶ 48 (App. at 85); Ex. D-19, Agreed Supersedeas Order (App. at 270).

¹⁰⁶ Ex. A, Memorandum Opinion at p. 17 (App. at 18); Ex. D, Jambor Decl. at ¶ 49 (App. at 86).

at the time the [litigation] was filed on April 14, 2009, including all personal property necessary for the operations of the properties listed in the [State Court Judgment] ... as well as all financial assets that supported or enabled the operations....”¹⁰⁷

40. Armed with the State Court Enforcement Order, the State Court Defendants proceeded to lay claim to *all* property owned by the State Court Plaintiffs.¹⁰⁸ Because the Debtor was not a party to the state court litigation, however, the State Court had no ability to order the Debtor to turnover any of its property.¹⁰⁹ Nonetheless, the State Court Defendants attempted to seize assets of the Debtor, even though the Debtor was never a party to the litigation.¹¹⁰ As the Court has observed, the Defendants have attacked the Debtor on multiple fronts:¹¹¹

- (i) On September 29, 2021, Defendants filed suit against Episcopalian All Saints and the Debtor in the 17th Judicial District Court of Tarrant County, Texas, to, among other things, pursue the recovery of property of the Debtor (including the Real Properties to which the State Court Defendants expressly waived any claim to in the State Court litigation) on the alleged basis of the State Court Judgment and Judgment Enforcement Order, an express recognition by the State Court Defendants that they had a defect of parties in the prior lawsuit, because the Debtor had never been named to the lawsuit in the 141st Judicial District Court.¹¹²
- (ii) On September 30, 2021, Defendants filed *lis pendens* against each of the Real Properties in the Tarrant County deed records. The *lis pendens* interfered with the Debtor’s ongoing attempts to market and sell the Real Properties and caused a prospective purchaser of the Real Properties to withdraw his purchase offer.
- (iii) On October 7, 2021, the Diocesan Corporation sent a letter to Frost Bank, the Debtor’s bank, in an effort to seize control of the Debtor’s Financial Assets, despite having affirmatively represented in the State Court litigation that they were making no such claim to those assets. In the letter, the Diocesan Corporation represented that, per the State Court Judgment

¹⁰⁷ Ex. A, Memorandum Opinion at p. 18 (App. at 19); Ex. D, Jambor Decl. at ¶ 49 (App. at 86); Ex. D-20, Judgment Enforcement Order (App. at 275).

¹⁰⁸ Ex. A, Memorandum Opinion at p. 18 (App. at 19); Ex. D, Jambor Decl. at ¶ 50 (App. at 86).

¹⁰⁹ See, e.g., *Beaumont Bank v. Buller*, 806 S.W.2d 223, 227 (Tex. 1991).

¹¹⁰ Ex. A, Memorandum Opinion at p. 18 (App. at 19); Ex. D, Jambor Decl. at ¶ 50 (App. at 86).

¹¹¹ Ex. A, Memorandum Opinion at p. 18 (App. at 19); Ex. D, Jambor Decl. at ¶ 50 (App. at 86).

¹¹² Ex. D-22, Plaintiff’s Original Petition (App. at 287).

and Judgment Enforcement Order, it “has been awarded control of all property; real, personal and financial for the following DBA entities: ... All Saints, Fort Worth.” Based upon the Diocesan Corporation’s representations and demand, Frost Bank placed an indefinite hold/freeze on all of the Debtor’s accounts on October 15, 2021.

- (iv) On October 15, 2021, the State Court Defendants filed a new motion with the State Court to seek, among other things, the entry of an order (a) requiring Episcopalian All Saints and certain other State Court Plaintiffs to deliver to the Diocesan Corporation “all financial statements and audits and bank statements from January of 2009 to the latest record” and (b) directing the same State Court Plaintiffs to “authorize each financial institution holding funds in the accounts identified in [the requested] order to deliver those funds by cashier's check payable to [the Diocesan Corporation].” Per the motion, only if the Diocesan Corporation should thereafter determine that any of the funds received belong to a State Court Plaintiff will the funds be delivered back to the State Court Plaintiff.

41. Given the inability of the Debtor to access any of its accounts, facing the prospect of having certain Episcopalian All Saints donor funds seized, and being confronted with the barrage of litigation attacks (including an attempt to hold Fr. Jambor in contempt personally), the Vestry of the Debtor elected by Episcopalian All Saints voted on October 19, 2021 to authorize the Debtor's filing of a petition for relief under chapter 11 of the Bankruptcy Code.¹¹³ On October 20, 2021, a petition for chapter 11 relief was filed on behalf of the Debtor in accordance with such authorization.¹¹⁴

J. The Most Recent of Defendants’ Ever-Evolving Theories of Recovery Against the Debtor and Developments During the Debtor’s Bankruptcy Case

42. After the Debtor’s bankruptcy filing, Defendants asserted, for the first time, that ACNA All Saints lawfully controls the Debtor under the Bylaws by virtue of the State Court Judgment and the Texas Supreme Court’s holding in *Episcopal Church II*.¹¹⁵ As the Court has recognized, Defendants’ new assertion regarding control of the Debtor via its Vestry directly contradicts ACNA All Saints’ prior assertion in the State Court litigation that it was making no

¹¹³ Ex. A, Memorandum Opinion at pp. 18-19 (App. at 19-20); Ex. D, Jambor Decl. at ¶ 51 (App. at 87).

¹¹⁴ Ex. A, Memorandum Opinion at p. 19 (App. at 20); Ex. D, Jambor Decl. at ¶ 51 (App. at 87).

¹¹⁵ See, e.g., Ex. A, Memorandum Opinion at p. 3 (App. at 4).

claim to control over the Debtor or its assets, as well as ACNA All Saints' acknowledgment that it never took any action to assume control over the Debtor's Vestry.¹¹⁶ Nonetheless, Defendants twice sought dismissal of the Debtor's bankruptcy case under Section 1112(b) of the Bankruptcy Code on the basis that the filing was purportedly not properly authorized by the Debtor's Vestry.¹¹⁷ The Court denied Defendants' dismissal request by order dated December 15, 2021, and, on December 29, 2021, issued the Memorandum Opinion explaining its reasoning.¹¹⁸ At a hearing held on June 13, 2022, the Court denied Defendants' second request for dismissal, which was premised upon the same underlying arguments the Court rejected in the Memorandum Opinion.¹¹⁹

43. Even though the Debtor was not a party, and neither the Real Properties nor the Financial Assets were at issue in the State Court Judgment, Defendants have asserted both an ownership interest in and claims against those assets. In addition to the prepetition actions described above, the Defendants filed a proof of claim (the "Proof of Claim") against the Debtor asserting a partially secured claim in the total amount of \$7,697,549.80, allegedly based on, among other things, the State Court Judgment.¹²⁰ Of this amount, Defendants assert that \$5,158,749.80 is secured but fail to provide any evidence of a validly perfected lien or identify the assets that are subject to the alleged lien.¹²¹ Defendants' assertion of the Proof of Claim based on the State Court Judgment ignores that the Debtor was not a party to the State Court litigation and that the State Court Judgment contains no monetary award in favor of Defendants.

44. Further, the Proof of Claim contradicts Defendants' earlier theories of recovery against the Debtor in that Defendants originally claimed to be owners of the Debtor's property

¹¹⁶ Ex. A, Memorandum Opinion at p 20 (App. at 21).

¹¹⁷ Ex. A, Memorandum Opinion at p. 3 (App. at 4); *see also* Case No. 21-42461-elm11 at Docket No. 152.

¹¹⁸ Ex. A, Memorandum Opinion at p. 3 (App. at 4).

¹¹⁹ Case No. 21-42461-elm11 at Docket No. 160.

¹²⁰ Ex. H, Proof of Claim No. 7 (App. at 492).

¹²¹ Ex. H, Proof of Claim No. 7 (App. at 492).

under the State Court Judgment as opposed to creditors. The Defendants claim to control the Debtor, and thus its assets, via the Debtor's Vestry. Yet, the Defendants also contend that they are creditors of the Debtor with a right to payment under the State Court Judgment. These two claims are inconsistent with one another. Defendants' ever-changing theories of recovery and relentless attempts to seize all of the Debtor's assets through multiple avenues make it abundantly clear that the parties – and courts – will benefit from a final judgment determining ownership of the Debtor's assets and liquidating the Proof of Claim. The Debtor filed this adversary proceeding to obtain those rulings to fully, and finally, resolve the parties' years-long property disputes.

III. ARGUMENT & AUTHORITIES

A. Summary Judgment Standard

45. Summary judgment is proper if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹²² The party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact.¹²³ “Once the moving party does so, the nonmoving party must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial.”¹²⁴ “An issue is ‘genuine’ if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party.”¹²⁵ “A non-movant will not avoid summary judgment by presenting speculation, improbable inferences, or unsubstantiated assertions.”¹²⁶ “Rule 56 mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish

¹²² FED. R. CIV. P. 56(a); *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019).

¹²³ *Jones*, 936 F.3d at 321.

¹²⁴ *Id.* (internal quotations omitted).

¹²⁵ *Id.* (internal quotations omitted).

¹²⁶ *Id.* (internal quotations omitted).

the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."¹²⁷

46. Summary judgment is appropriate unless the non-moving party "can produce *significant evidence* demonstrating the existence of a genuine fact issue."¹²⁸ In non-jury cases, like this case,¹²⁹ courts have "greater discretion to consider what weight [to] accord the evidence."¹³⁰ "When deciding a motion for summary judgment prior to a bench trial, the district court has the limited discretion to decide that the same evidence, presented to him or her as a trier of fact in a plenary trial, could not possibly lead to a different result."¹³¹ Stated differently, summary judgment may be granted in a non-jury case where the evidentiary facts are not disputed and a trial would not enhance the court's ability to draw inferences and conclusions.¹³²

B. The Members of Episcopalian All Saints Control the Debtor

47. This Court has already ruled that the Debtor's Vestry was duly and lawfully elected by the voting members of Episcopalian All Saints, and that Defendants have no rights to control over the Debtor.¹³³ The Court should adopt and incorporate its prior holdings in deciding the Motion. Further, the evidence necessary for the Court to rule consistently with the Memorandum Opinion is included in the appendix in support of this brief,¹³⁴ and the Debtor incorporates by reference the arguments and authorities set forth in its response to the Defendants' first motion to dismiss the Debtor's bankruptcy case.¹³⁵ To the extent that Defendants' claims to ownership of the Debtor's assets, or the claims asserted in the Proof of

¹²⁷ *Id.* (internal quotations omitted).

¹²⁸ *Russell v. Harrison*, 736 F.2d 283, 287 (5th Cir. 1984) (citation omitted) (emphasis in original).

¹²⁹ Defendants waived any right to a jury trial on the issues in this case by filing the Proof of Claim, *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990), and failing to timely demand a jury. FED. R. BANKR. P. 9015(a).

¹³⁰ *Id.* (internal quotations omitted).

¹³¹ *Id.* (internal quotations omitted).

¹³² *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1124 (5th Cir. 1978).

¹³³ Ex. A, Memorandum Opinion at pp. 27-28 (App. at 28-29).

¹³⁴ *See, e.g.*, Ex. D, Jambor Decl. at ¶¶ 7-28 (App. at 68-77).

¹³⁵ Case No. 21-42461-elm11 at Docket No. 76.

Claim, derive from Defendants' assertion that they rightfully control the Debtor, those claims fail for the reasons articulated by the Court in the Memorandum Opinion. Further, because Defendants claims are all ultimately premised upon their assertion that they control the Debtor, the Court's findings and conclusions in the Memorandum Opinion undergird all of the arguments and requested relief set forth below.

C. The Debtor is Entitled to a Declaration that the Debtor Owns the Real Properties and that Such Properties are Property of the Debtor's Bankruptcy Estate

(i) The Summary Judgment Evidence Establishes that the Debtor Owns the Real Properties as a Matter of Law

48. The undisputed summary judgment evidence establishes, as a matter of law, that the Debtor is the rightful and lawful owner of the Real Properties. The Debtor is therefore entitled to summary judgment on its request for declaratory relief against Defendants under the Declaratory Judgment Act concerning ownership of the Real Properties.¹³⁶

49. The nature and extent of the Debtor's interest in the Real Properties is determined by reference to applicable state law, which in this case is Texas law.¹³⁷ The construction of unambiguous deeds is a question of law that can be decided on summary judgment.¹³⁸ The deeds for each of the Real Properties establish that the Debtor owns legal and equitable title to 5001 Dexter, 4939 Dexter, and 4936 Dexter and equitable title to 5005 Dexter.¹³⁹ The fact that the deeds for 5001 Dexter and 4936 Dexter do not expressly identify the grantee as a Texas non-profit corporation is irrelevant. Under the Debtor's bylaws, the Debtor's corporate name is "All

¹³⁶ Plaintiff's Second Amended Complaint ("Complaint") at ¶ 34 (Count 1).

¹³⁷ *Matter of Missionary Baptist Found. of Am., Inc.*, 792 F.2d 502, 504 (5th Cir. 1986); *see also Masterson v. Diocese of N'west Tex.*, 422 S.W.3d 594, 60 (Tex. 213) (courts must apply neutral principles of law in deciding religious property disputes).

¹³⁸ *Gordon v. West Houston Trees, Ltd.*, 352 S.W.3d 32, 43 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

¹³⁹ *See Masterson*, 422 S.W.3d at 610 (holding that, under neutral principles of law, religious non-profit corporation identified on deed owns the real property); *see also* Ex. D, Jambor Decl. at ¶ 32 (App. at 78); Exs. D-11 to D-14, Deeds to the Real Properties (App. at 186-203). There is no dispute that the deeds conveying the real properties to the Debtor are valid and effective. Nonetheless, the deeds satisfy the requirements of the Texas Property Code. TEX. PROP. CODE § 5.021; *Green v. Canon*, 33 S.W.3d 855, 858 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Defendants admit that the Debtor is identified as the owner on the deed to 4939 Dexter. Defendants' Amended Answer and Counterclaims (the "Answer") [Docket No. 20] at ¶ 12.

Saints Episcopal Church,” which is the grantee reflected on the deeds. Further, Texas law does not require non-profit corporations like the Debtor to identify themselves as corporations.¹⁴⁰

50. Second, the summary judgment evidence establishes that, since the acquisition of each of the Real Properties, the Debtor has owned and occupied the Real Properties and physically maintained and insured the Real Properties.¹⁴¹ The undisputed evidence also reflects that the Debtor has encumbered the Real Properties by granting liens against the Real Properties to secure the Debtor’s indebtedness to National Bank of Texas and to secure the Debtor’s indemnity obligations to certain indemnified parties.¹⁴² Each of these facts further demonstrates that, as reflected on the relevant deeds, the Debtor is the titleholder to the Real Properties and that third parties have acknowledged the Debtor’s ownership of the Real Properties in transactions.

51. Defendants cannot present any evidence that raises a genuine issue of material fact that they have any right, title, or claim to, or interest in, the Real Properties under Texas law, other than the Diocesan Corporation holding legal title to 5005 Dexter. Instead, Defendants will undoubtedly argue that ACNA All Saints “is” the All Saints Episcopal Church identified on the deeds to the Real Properties under the State Court Judgment and *Episcopal Church II*. However, as the Court has already determined, there is nothing in the State Court Judgment or *Episcopal Church II* that so holds,¹⁴³ and Defendants’ “unsubstantiated assertions” are insufficient to defeat summary judgment.¹⁴⁴ Accordingly, Defendants can present no evidence or argument that precludes entry of summary judgment regarding ownership of the Real Properties.

¹⁴⁰ TEX. BUS. ORG. CODE § 5.054(b).

¹⁴¹ Ex. D, Jambor Decl. at ¶ 33 (App. at 80).

¹⁴² Ex. D, Jambor Decl. at ¶ 33 (App. at 80); Ex. D-15, National Bank of Texas Deed of Trust (App. at 205); Ex. D-16, Secured Indemnity Agreement (App. at 220).

¹⁴³ Ex. A, Memorandum Opinion at pp. 25-27 (App. at 26-28).

¹⁴⁴ *Davis v. Fort Bend Cty.*, 765 F.3d 480, 484 (5th Cir. 2014).

(ii) Defendants' Claims to the Real Properties are Barred by the Doctrines of Waiver and Judicial Estoppel

52. In addition to the fact that the summary judgment evidence establishes that the Debtor owns the Real Properties as set forth above, Defendants waived any claim to ownership of the Real Properties in the State Court and are now barred from asserting such claims by principles of waiver and judicial estoppel. In a motion for summary judgment filed in the State Court, Defendants acknowledged the Debtor's potential ownership interest in the Real Properties, expressly and unequivocally waived any claim to those properties, and consented to entry of judgment awarding ownership of the properties to the State Court Plaintiffs.¹⁴⁵ That motion resulted in the entry of the State Court Judgment.¹⁴⁶

53. As the Court recognized in the Memorandum Opinion, Defendants waived any claim to the Real Properties in the State Court.¹⁴⁷ The elements of waiver are: "(1) the existence of a right held by the waiving party; (2) knowledge, actual or constructive, by that party of its existence; and (3) an actual intent by that party to relinquish the right, which can be inferred from conduct."¹⁴⁸ Defendants' assertion of claims to the Real Properties and subsequent waiver of any claim to ownership of the Real Properties satisfies each of these elements.

54. Although Defendants' affirmative waiver and consent to entry of summary judgment awarding ownership of the Real Properties to another party is sufficient to establish Defendants' unequivocal intent to waive any claim to those properties,¹⁴⁹ Defendants' intent can also be inferred by their conduct after entry of the State Court Judgment. Defendants' waiver of any claim to the Real Properties was incorporated into the Agreed Supersedeas Order entered

¹⁴⁵ Ex. G, State Court Defendants' Third MSJ at pp. 1, 6-7 (App. at 477, 482-83); *see also* Ex. F, Brackett Depo. at 56:3 – 56:6, 57:22 – 58:6, 104:23 – 105:2, 105:21 – 105:24 (App. at 466-68, 474-75) (waiving any claim to Debtor's property); Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627) (confirming waiver).

¹⁴⁶ Ex. D-18, State Court Judgment (App. at 245).

¹⁴⁷ Ex. A, Memorandum Opinion at p. 18 (App. at 19).

¹⁴⁸ *Brito v. Intex Aviation Servs., Inc.*, 879 F.Supp. 650, 653 (N.D. Tex. 1995).

¹⁴⁹ The fact that the State Court Judgment did not ultimately address ownership of the Real Properties is of no moment, as that is not a required element of waiver.

after the State Court Judgment.¹⁵⁰ Moreover, after the State Court entered the State Court Judgment in 2015, Defendants made no claim to ownership of the Real Properties and took no other action with respect to the Real Properties for more than six years, during which time the Debtor continuously occupied and used the Real Properties.¹⁵¹ “Silence or inaction, for so long a period as to show an intention to yield the known right, is also enough to prove waiver.”¹⁵² Defendants’ inaction during this time further demonstrates their intentional waiver of any claim to ownership of the Real Properties during the litigation. Defendants’ claims to the Real Properties are therefore barred by waiver, and the Debtor is entitled to summary judgment that Defendants waived any claim to the Real Properties.

55. Having waived any claim to the Real Properties, Defendants are now judicially estopped from asserting a claim to ownership of those properties. Under the doctrine of judicial estoppel, a party that alleges or admits a matter in his pleadings in a former proceeding is estopped from making the contrary assertion in a subsequent proceeding.¹⁵³ The party invoking the doctrine need not have been a party to the prior proceeding.¹⁵⁴ The elements of judicial estoppel are (i) the party against whom judicial estoppel is sought has asserted a legal position which is plainly inconsistent with a prior position, (ii) a court accepted the prior position, and (iii) the party did not act inadvertently.¹⁵⁵

56. As with waiver, each of these elements is satisfied here. Defendants’ assertion of ownership of the Real Properties in this proceeding is clearly inconsistent with their previous unequivocal waiver of any claim to ownership in the State Court. The State Court accepted the Defendants’ prior position by entering the State Court Judgment disposing of all claims between

¹⁵⁰ Ex. D-19, Agreed Supersedeas Order (App. at 270).

¹⁵¹ Ex. D, Jambor Decl. at ¶ 46 (App. at 84).

¹⁵² *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 643 (Tex. 1996).

¹⁵³ *Long v. Knox*, 291 S.W.2d 292, 295 (Tex. 1956).

¹⁵⁴ *Id.*

¹⁵⁵ *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011).

the parties, including the Defendants' claim for ownership of the Real Properties.¹⁵⁶ Finally, Defendants acted intentionally and not inadvertently; indeed, their intentional waiver could not be clearer. Applying judicial estoppel in this instance is also consistent with the doctrine's underlying policies, which include preventing litigants from "playing fast and loose with the courts" and "deliberately changing positions according to the exigencies of the moment," each of which Defendants have done here.¹⁵⁷

(iii) The Court Should Grant the Debtor's Motion for Summary Judgment and Declare that the Debtor Owns the Real Properties

57. Based on the foregoing, the Debtor is entitled to summary judgment on its request for a declaration that it is the rightful owner of the Real Properties and that such properties are property of the Debtor's estate.¹⁵⁸ "The Declaratory Judgment Act provides that, '[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.'"¹⁵⁹ "When considering a declaratory judgment action, a district court must engage in a three-step inquiry."¹⁶⁰ "The court must ask (1) whether an actual controversy exists between the parties in the case; (2) whether it has authority to grant declaratory relief; and (3) whether to exercise its broad discretion to decide or dismiss a declaratory judgment action."¹⁶¹

58. Each of these elements are easily met in this case. Both the Debtor and Defendants agree that there exists an actual controversy over ownership of the Real Properties,

¹⁵⁶ See *Allen v. C&H Dist., L.L.C.*, 813 F.3d 566, 573 (5th Cir. 2015) (noting that judicial acceptance can be shown "as part of a final disposition"); see also Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627) (demonstrating State Court's acceptance of waiver).

¹⁵⁷ *United States v. McCaskey*, 9 F.3d 368, 378 (5th Cir. 1993); see also *Reed*, 650 F.3d at 576 (5th ("[J]udicial estoppel is an equitable doctrine" that may be applied "flexibly to achieve substantial justice.")).

¹⁵⁸ Complaint at ¶ 34 (Count 1).

¹⁵⁹ *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) (quoting 28 U.S.C § 2201(a)).

¹⁶⁰ *Frye v. Anadarko Petro. Corp.*, 953 F.3d 285, 295 (5th Cir. 2019) (quoting *Orix Credit All., Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000)).

¹⁶¹ *Id.* (internal quotations omitted).

and each party has requested a declaration from this Court that they are the rightful owners of the Real Properties.¹⁶² The Court has authority to issue a declaration regarding the ownership of the Real Properties under 11 U.S.C. § 541 and 28 U.S.C §§ 1334(b), 2201(a).¹⁶³ The Court should exercise its discretion to decide this case to resolve the long-standing disputes over ownership of the Real Properties, to preclude further redundant, piecemeal litigation, and to identify the property available for the Debtor's reorganization.

59. Because there is no triable issue of fact as to the Debtor's ownership of the Real Properties, and because Defendants' claims to the Real Properties fail as a matter of law, the Debtor is entitled to summary judgment declaring that it owns the Real Properties and that the Real Properties are property of the Debtor's bankruptcy estate. Accordingly, the Debtor requests entry of judgment declaring that the Debtor holds legal and equitable title to 5001 Dexter, 4939 Dexter, and 4969 Dexter and equitable title to 5005 Dexter, and that each of the foregoing Real Properties is property of the Debtor's bankruptcy estate under 11 U.S.C. § 541.¹⁶⁴

D. The Debtor is Entitled to a Declaration that the Debtor Owns the Financial Assets and that the Financial Assets are Property of the Debtor's Bankruptcy Estate

(i) The Summary Judgment Evidence Establishes that the Debtor Owns the Financial Assets as a Matter of Law

60. The undisputed summary judgment evidence also establishes that the Debtor is the rightful and lawful owner of the Financial Assets. The Debtor is therefore entitled to summary judgment on its request for declaratory relief against the Defendants under the Declaratory Judgment Act concerning ownership of the Financial Assets.¹⁶⁵

¹⁶² Complaint at ¶ 34; Answer at ¶¶ 65-67, 75-77.

¹⁶³ *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987); *Centre Strategic Invs. Holdings Ltd. v. The Off'l Comm. of Unsec. Creditors of SLP, L.L.C. (In re Senior Living Properties, LLC)*, 294 B.R. 698, 700 (Bankr. N.D. Tex. 2003).

¹⁶⁴ With respect to 5005 Dexter, real property in which the Debtor holds equitable title is property of the estate and subject to administration by a trustee (here, the Debtor). See, e.g., *In re Cunningham*, 2008 WL 2746023, at *7 (Bankr. N.D. Ohio Jul. 11, 2008).

¹⁶⁵ Complaint at ¶ 35 (Count 2).

61. As set forth above, the Financial Assets are held in the Debtor's name under the Debtor's federal EIN.¹⁶⁶ The Debtor's bylaws provide that the Financial Assets are to be overseen and controlled by the Debtor's officers and Vestry, and the undisputed evidence demonstrates that is what happens in practice.¹⁶⁷ Conversely, there is no evidence that the Financial Assets are owned or controlled by any entity other than the Debtor. The summary judgment evidence establishes that the Debtor has both legal title to the accounts holding the Financial Assets and actual control over the funds in those accounts. Therefore, the summary judgment evidence establishes that the Debtor owns the Financial Assets under Texas law.¹⁶⁸

62. Because Defendants cannot present any summary judgment evidence that they are the legal owners of the Financial Assets or exercise any control over the Financial Assets, Defendants will likely resort to the familiar assertion that, under the State Court Judgment and *Episcopal Church II*, they "are" the All Saints Episcopal Church identified on the various account documents, meaning they are either the legal owner of the accounts or are the party entitled to control the Debtor and therefore are entitled to control the Financial Assets the Debtor owns. Each argument fails as a matter of both fact and law for the reasons set forth above and articulated by the Court in the Memorandum Opinion and on the record at the June 13, 2022 hearing.

(ii) Defendants' Claims to the Financial Assets are Barred by the Doctrines of Waiver and Judicial Estoppel

63. Like Defendants' claims to the Real Properties, Defendants' claims to the Financial Assets are also barred by the doctrine of waiver and judicial estoppel. As set forth

¹⁶⁶ Ex. E, Waltman Decl. at ¶¶ 3-7 (App. at 301-03). The sole exception is the Permanent Fund, which has its own EIN because it is a trust. The Debtor holds the beneficial interest in the Permanent Fund under its EIN. *Id.* at ¶ 5.

¹⁶⁷ Ex. E, Waltman Decl. at ¶ 8 (App. at 303); Ex. D-9, Bylaws at Art. IV (App. at 157).

¹⁶⁸ See *In re IFS Fin. Corp.*, 669 F.3d 255, 262-63 (5th Cir. 2012) (identifying legal title and control as the primary factors in determining ownership of accounts under Texas law); see also *Amegy Bank of Tex. V. CGI Franchise Sys., Inc.*, 2021 WL 4310582, at *2 (N.D. Tex. Sep. 22, 2021) (granting summary judgment declaring account was owned by legal owner and titleholder under Texas law in absence of evidence that any other party exercised control over the account or its funds).

above, Defendants affirmatively and unequivocally “disclaimed any right to [the Debtor’s] property” in the underlying litigation.¹⁶⁹ There can be no doubt that Defendants were aware of the Debtor’s existence and that it held assets before Defendants affirmatively waived any claim to the Debtor’s assets. For example, Iker admitted that he was aware of the Debtor’s existence as of 2007 or 2008.¹⁷⁰ Further, the deed to 5005 Dexter expressly recognizes the Debtor’s existence and status as a non-profit corporation.¹⁷¹ As the legal titleholder, the Diocesan Corporation was therefore on notice that the Debtor existed and held assets.

64. Defendants’ conduct in the State Court satisfies each of the required elements of waiver.¹⁷² And as with Defendants’ claims to the Real Properties, Defendants’ intentional waiver of claims to the Financial Assets can also be inferred from their conduct. Defendants never asserted a claim to the Financial Assets prior to obtaining a judgment in the State Court and, after entry of the State Court Judgment in 2015, Defendants took no action with respect to the Financial Assets for the next six years.¹⁷³ During this time, the Debtor was in control of and using the Financial Assets Defendants now claim to have owned since 2009.¹⁷⁴ Defendants’ conduct is clearly inconsistent with their claimed right to ownership of the Financial Assets and further supports a finding of waiver.¹⁷⁵

65. For the same reasons, Defendants’ claims to the Financial Assets are barred by judicial estoppel. Defendants’ sworn assertion during depositions in the State Court litigation that they disclaimed any claim to the Debtor’s assets satisfies each of the required elements of

¹⁶⁹ Ex. F, Brackett Depo. at 56:3 – 56:6, 57:22 – 58:6, 104:23 – 105:2, 105:21 – 105:24 (App. at 466-68, 474-75); Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627) (confirming waiver).

¹⁷⁰ Ex. I, Iker Depo. at 216:25 – 217:6 (App. at 521).

¹⁷¹ Ex. D-13, Deed to 5005 Dexter (App. at 197).

¹⁷² See *Brito*, 879 F.Supp. at 653.

¹⁷³ Ex. D, Jambor Decl. at ¶ 46 (App. at 84).

¹⁷⁴ Ex. D, Jambor Decl. at ¶ 46 (App. at 84).

¹⁷⁵ *Tenneco*, 925 S.W.2d at 643.

judicial estoppel.¹⁷⁶ Application of judicial estoppel is appropriate where “intentional self-contradiction is being used as a means of obtaining unfair advantage”¹⁷⁷ The doctrine is particularly apt here, where Defendants waived any claim to the Debtor’s assets in the underlying litigation and yet are now seeking to use the State Court Judgment entered in that litigation as the basis for a claim to ownership of the Debtor’s assets. This is precisely the type of gamesmanship the doctrine of judicial estoppel is designed to prevent.¹⁷⁸

(iii) The State Court Judgment Does Not Address Ownership of the Financial Assets or Award the Financial Assets to Defendants and it Does Not Support Defendants’ Claims

66. The State Court Judgment provides no basis for Defendants’ claims to the Debtor’s Financial Assets. As an initial matter, it is undisputed that the Debtor was not a party to the judgment.¹⁷⁹ Moreover, the State Court Judgment does not address the Financial Assets. As the Court recognized in the Memorandum Opinion and at the June 13, 2022 hearing, the State Court Judgment only addresses the Diocesan Trust Property listed on Exhibits 1 and 2 thereto.¹⁸⁰ The Financial Assets were not at issue in the underlying litigation and the State Court Judgment did not award ownership, or require turnover, of those assets to Defendants. To paraphrase the Court, “a simple review of the State Court Judgment” reveals that it contains no reference to the Financial Assets.¹⁸¹ Because the State Court Judgment is silent regarding the Financial Assets, it provides no basis for Defendants’ claim to ownership of the Financial Assets

67. In addition, Defendants have admitted that the Debtor is not bound by the State Court Judgment. According to Defendants, their position “has NEVER [sic] been that Debtor

¹⁷⁶ See *Reed v.*, 650 F.3d at 574 (listing elements of judicial estoppel); see also *Cont’l Ill. Nat. Bank and Trust Co. of Chicago v. Windham*, 668 F.Supp. 578, 581 (E.D. Tex. 1987) (“[T]he sworn statement giving rise to judicial estoppel can occur in a deposition.”).

¹⁷⁷ *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 206 (5th Cir. 1999) (internal quotations omitted).

¹⁷⁸ *Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 397 (5th Cir. 2003).

¹⁷⁹ See, e.g., Answer at ¶ 32.

¹⁸⁰ Ex. A, Memorandum Opinion at p. 16 (App. at 17); Ex. D-18, State Court Judgment (App. at 246-47).

¹⁸¹ Ex. A, Memorandum Opinion at p. 26 (App. at 27).

All Saints is bound by the state court judgments.”¹⁸² Instead, their position “HAS ALWAYS BEEN [sic] that [Episcopalian All Saints] is not the continuing All Saints Episcopal Church”¹⁸³ Defendants’ characterization of their position in this case is consistent with their arguments and actions to date. Rather than arguing that the Debtor itself is bound by the State Court Judgment, Defendants have steadfastly argued that they “are” the continuing All Saints Episcopal Church and thus are entitled to own and control all assets historically associated with the church’s operations, either directly or by virtue of their alleged right to control the Debtor.

68. It is evident that Defendants made a tactical decision to pursue ownership of *all* the Debtor’s assets by claiming that ACNA All Saints “is” the continuing All Saints Episcopal Church rather than pursuing *some* of the Debtor’s assets by claiming the Debtor is bound by the State Court Judgment.¹⁸⁴ The Court itself recognized Defendants’ “strategic decision” and use of the name All Saints’ Episcopal Church, “an obvious misnomer” given Defendants’ lack of affiliation with the Episcopal Church, as a transparent attempt to lay claim to the Debtor’s assets. Having made this strategic decision and forcefully argued to the District Court that the Debtor is not bound by the State Court Judgment, Defendants cannot now reverse course and argue that the State Court Judgment awards them control over the Debtor’s Financial Assets.¹⁸⁵

¹⁸² Ex. J, Defendants’ Reply in Support of Motion to Reconsider (Case No. 4:21-cv-013366-O, Docket No. 15) at ¶ 21 (App. at 532).

¹⁸³ *Id.* at ¶ 22 (App. at 532).

¹⁸⁴ In fact, Defendants’ continued assertion that they “are” the continuing All Saints Episcopal Church, and are thus entitled to control the Debtor, renders any argument that the Debtor is bound by the State Court Judgment nonsensical, as it would lead to Defendants being bound by a judgment against themselves.

¹⁸⁵ Notably, Defendants previously represented to the State Court that (i) the Debtor was not a party to the State Court litigation, (ii) “[t]he issue of those who have a right to control of the [Debtor]” was not litigated in the State Court but was instead the subject of a pending proceeding in the 17th District Court in which no judgment has been entered, and (iii) the Real Properties were excluded from the State Court judgment because Defendants believed they were owned by the Debtor. Ex. K, Oct. 20, 2021 Letter (App. at 539). These representations to the State Court provide a further basis for the application of judicial estoppel to Defendants’ claims that they control the Debtor and own the Real Properties.

(iv) The Judgment Enforcement Order is Not Entitled to Preclusive Effect Against the Debtor

69. Given Defendants’ waiver of any claim against the Debtor’s assets and express admission that the Debtor is not bound by the State Court Judgment, it necessarily follows that the Debtor is not bound by the Judgment Enforcement Order that enforces the State Court Judgment. Regardless, the Debtor is not a party to the Judgment Enforcement Order. Defendants cannot meet their burden to demonstrate that the Debtor is bound by the Judgment Enforcement Order under either principles of *res judicata* or collateral estoppel.¹⁸⁶

70. Further, the issue of ownership of the Financial Assets was not at issue in state court litigation and was thus not fully and fairly litigated. As noted above, Defendants repeatedly waived any claim to the Debtor’s assets in the State Court.¹⁸⁷ Because the question of ownership of the Financial Assets “was not a question that any party raised in [the litigation]” and “is not a question that [the State C]ourt answered,” ownership of the Financial Assets was not fully a fairly litigated, which is a necessary element of both *res judicata* and collateral estoppel.¹⁸⁸ As a result, the Judgment Enforcement Order is not entitled to preclusive effect on the issue of ownership of the Financial Assets.¹⁸⁹

71. Whatever relief the Judgment Enforcement Order awards against the parties to the State Court Judgment, it is not entitled to preclusive effect with respect to *the Debtor’s* Financial Assets, for which Defendants asserted no claim and over which the State Court had no jurisdiction. After the State Court Judgment became a final order, the State Court lacked plenary

¹⁸⁶ See *Richardson v. Wells Fargo Bank, N.A.*, 839 F.3d 442, 448 (5th Cir. 2016) (party asserting *res judicata* has burden of establishing its applicability); *Anderson, Clayton & Co. v. U.S.*, 562 F.2d 972, 992 (5th Cir. 1977) (same with respect to collateral estoppel).

¹⁸⁷ Ex. F, Brackett Depo. at 56:3 – 56:6, 57:22 – 58:6, 104:23 – 105:2, 105:21 – 105:24 (App. at 466-68, 474-75); Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627) (confirming waiver).

¹⁸⁸ *Bierscheid v. JPMorgan Chase Bank*, 606 S.W.3d 493, 535 (Tex. App.—Houston [1st Dist.] 2020, pet. denied).

¹⁸⁹ *Id.*

jurisdiction to award substantive relief against a third party such as the Debtor.¹⁹⁰ Because the Debtor was not a party to the State Court Judgment, the State Court could not adjudicate the question of ownership of the Debtor's assets or impose liability on the Debtor in the context of a post-judgment enforcement proceeding.¹⁹¹ Because the State Court had no authority to order relief against the Debtor in the Judgment Enforcement Order, that order is not entitled to preclusive effect against the Debtor with respect to ownership of the Financial Assets.

72. Further, giving the Judgment Enforcement Order preclusive effect as to the Financial Assets would also contradict the express terms of the Agreed Supersedeas Order, in which the parties agreed that “[i]n no event” shall the property at issue in the lawsuit “include any property over which [the State Court Defendants] never asserted a claim”¹⁹² The State Court's orders and judgments must be interpreted using the same rules of interpretation that apply to contracts.¹⁹³ That analysis begins “with the text of the judgment as written and, if it is unambiguous, [the court] must give effect to the literal language used.”¹⁹⁴ The parties unambiguously agreed that the State Court Judgment did not include any property for which no claim was made, and it is beyond dispute that Defendants never asserted a claim for the Debtor's Financial Assets prior to entry of the State Court Judgment. Refusing to give preclusive effect to the Judgment Enforcement Order as to the Debtor's Financial Assets is consistent with the parties' agreement and the rules of judicial interpretation.

73. Finally, the equitable principles underlying the doctrine of judicial estoppel dictate that the Judgment Enforcement Order cannot apply to the Debtor's assets. It would be fundamentally unfair to permit Defendants to expressly assert in discovery that they were not

¹⁹⁰ *In re Cardwell*, 2020 WL 6877446, *9 (Bankr. E.D. Tex. Sep. 29, 2020).

¹⁹¹ *Beaumont Bank*, 806 S.W.2d at 227; *Van Dyke v. Littlemill Ltd.*, 579 S.W.3d 639, 650 (Tex. App.—Houston [14th Dist.] 2019, no pet.); *see also Maiz v. Virani*, 311 F.3d 334, 345 (5th Cir. 2002).

¹⁹² Ex. D-19, Agreed Supersedeas Order (App. at 270).

¹⁹³ *Lone Star Cement Corp. v. Fair*, 467 S.W.2d 402, 404-05 (Tex. 1971).

¹⁹⁴ *Hampton v. Equity Trust Co.*, 607 S.W.3d 1, 6 (Tex. App.—Austin 2020, pet. denied).

seeking recovery of the Debtor's assets only to then give the State Court Judgment and the subsequent Judgment Enforcement Order preclusive effect against the Debtor and its assets. To do so would punish the Debtor for relying on Defendants' waiver and incentivize future litigants to engage in similar disingenuous conduct.

(v) Defendants' Efforts to Seek Turnover of Account Balances from April 2009, Long After Judgment, is Procedurally and Substantively Improper

74. Defendants' efforts to require the Debtor to turn over account balance from April 2009, long after the State Court Judgment was entered, based upon post-judgment enforcement motions and orders, is procedurally and substantively improper. As noted above, the State Court had no authority to adjudicate ownership of the Financial Assets or impose liability on the Debtor in the context of a post-judgment enforcement proceeding.¹⁹⁵ Aside from the fact the Debtor was not a party to the State Court litigation, Defendants never asserted any claim to the Financial Assets or sought any pre-judgment remedy against the Financial Assets, such as an attachment, garnishment, or temporary injunction.¹⁹⁶ Therefore, throughout the 12-year history of the State Court litigation, there were no restrictions or court orders that prohibited Episcopalians All Saints or the Debtor from using the Financial Assets in the ordinary course of business. Defendants' efforts to obtain turnover of account balances as of April 2009 is tantamount to awarding them a pre-judgment remedy that they never sought.

75. Defendants have no monetary judgment against Episcopalians All Saints or the Debtor, and, even if they did, their efforts to seek a post-judgment turnover of the Financial Assets would be analogous to a bank suing a debtor on a note, obtaining a judgment years later, then asking the court in a post-judgment enforcement proceeding to order a non-party to turnover

¹⁹⁵ See *Beaumont Bank*, 806 S.W.2d at 227; *Van Dyke*, 579 S.W.3d at 650; *Maiz*, 311 F.35 at 345.

¹⁹⁶ Ex. D, Jambor Decl. at ¶ 46 (App. at 84).

assets it spent during the pendency of the litigation. This is not allowed under the law.¹⁹⁷ A creditor that obtains no pre-judgment remedy restricting the judgment debtor's use of assets can only collect from whatever assets judgment debtor has after the creditor obtains a judgment.¹⁹⁸ These are fatal flaws to Defendants' effort to require a post-judgment turnover of account balances from April 2009.

(vi) The Court Should Grant the Debtor's Motion for Summary Judgment and Declare that the Debtor Owns the Financial Assets

76. Based on the foregoing, the Debtor is entitled to summary judgment on its request for a declaration that it is the rightful owner of the Financial Assets and that such assets are property of the Debtor's estate. The elements necessary for declaratory relief are present in this case.¹⁹⁹ The Debtor and Defendants agree that there exists an actual controversy over ownership of the Financial Assets, and each party has requested a declaration from this Court that they are the rightful owners of the Financial Assets.²⁰⁰ The Court has authority to issue a declaration regarding the ownership of the Financial Assets under 11 U.S.C. § 541 and 28 U.S.C §§ 1334(b), 2201(a).²⁰¹ As with the Real Properties, the Court should exercise its discretion to decide this case because it will finally resolve the dispute over ownership of the Financial Assets, prevent further redundant, piecemeal litigation, and identify the property available for the Debtor's reorganization.

¹⁹⁷ See TEX. CIV. PRAC. & REM CODE § 31.002(a) (nothing that court may only order post-judgment relief against property owned by judgment debtor); *Beaumont*, 806 S.W.2d at 227 (“The purpose of the turnover proceeding is merely to ascertain whether or not an asset is in the possession of the judgment debtor or subject to the debtor's control. If the asset sought is a cash sum, then the turnover proceeding can only order the debtor to turn over as much of the cash amount as is in the possession or control of the debtor.”); *Maiz*, 311 F.3d at 345 (“[A] party not even before the court cannot have its rights determined via the turnover proceeding.”) (quoting *Res. Trust Corp. v. Smith*, 53 F.3d 72, 80 (5th Cir. 1995)).

¹⁹⁸ *Id.*

¹⁹⁹ *Frye*, 953 F.3d at 295 (5th Cir. 2019).

²⁰⁰ Complaint at ¶ 34; Answer at ¶¶ 68-69.

²⁰¹ *Wood*, 825 F.2d at 93; *Senior Living*, 294 B.R. at 700.

77. Because there is no triable issue of fact as to the Debtor's ownership of the Financial Assets, and because Defendants' claims to the Financial Assets fail as a matter of law, the Debtor is entitled to summary judgment declaring that it owns the Financial Assets and that the Financial Assets are property of the Debtor's bankruptcy estate.

E. The Debtor is Entitled to Summary Judgment on the Parties' Crossclaims to Use of the Name All Saints Episcopal Church

78. The Debtor is also entitled to summary judgment on its request for a declaration that the Debtor is entitled to use the name All Saints Episcopal Church and that the Debtor's name is property of the estate.²⁰² The parties agree that a dispute exists as to the use of the name All Saints Episcopal Church and that such dispute results in confusion to the public.²⁰³ It is undisputed that All Saints Episcopal Church is the Debtor's registered legal name in Texas and that the Debtor has used that name consistently, and without interruption, since 1953.²⁰⁴ There is no evidence that the Debtor is *not* entitled to continue to use its own name, and thus the summary judgment evidence establishes the Debtor's right to use of the name All Saints Episcopal Church.²⁰⁵ The Debtor is therefore entitled to a declaration that it is entitled to continue to use the name All Saints Episcopal Church, and that such name is property of the Debtor's estate.²⁰⁶

²⁰² Complaint at ¶ 37. The Debtor has also requested a declaration that it is entitled to the exclusive use of the name All Saints Episcopal Church and requested injunctive relief prohibiting Defendants from using the name All Saints Episcopal Church. Complaint at ¶¶ 37-38. The Debtor is not seeking summary judgment on those claims. The Debtor seeks entry of a judgment (i) declaring that the Debtor is entitled to use the name All Saints Episcopal Church, which is the Debtor's corporate name and an asset of the bankruptcy estate, and (ii) denying Defendants' requests for declaratory and injunctive relief in their entirety. The Debtor will pursue its affirmative claims for injunctive relief prohibiting Defendants' use of the Debtor's name at trial or, with leave of court, via separate motion. Complaint at ¶ 38.

²⁰³ Complaint at ¶¶ 37-38; Answer at ¶¶ 62-63.

²⁰⁴ Complaint at ¶ 32; Answer at ¶ 33; Ex. D, Jambor Declaration at ¶ 7 (App. at 68); Ex. D-1, Certificate of Formation at Art. I (App. at 90).

²⁰⁵ See *Cont'l Ins. Co. v. Cont'l Fire Ass'n*, 101 F. 255, 255 (5th Cir. 1900) (Texas corporation has *prima facie* right to use its own registered name). Disputes over ownership and use of names and marks by religious organizations can be decided under neutral principles of law. See, e.g., *Unified Buddhist Church of Vietnam v. Unified Buddhist Church of Vietnam*, 838 Fed. App'x 809 (5th Cir. 2020); see also 1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 9:7.50 (5th ed.). Here, the Debtor simply seeks a declaration that it is entitled to use its own name under Texas law.

²⁰⁶ See *Thompson v. Thompson Air Cond. and Heating, Inc.*, 884 S.W.2d 555, 558 (Tex. App.—Texarkana 1994, no writ.) (recognizing that a trade name is property).

79. For the same reasons, the Debtor is entitled to summary judgment on Defendants' request for a declaration regarding the right to use of the name All Saints Episcopal Church, as well as Defendants' request for an injunction to prohibit Episcopalian All Saints and/or the Debtor from using that name.²⁰⁷ Although the exact cause of action asserted by Defendants is not clear, the relief they seek necessarily requires Defendants to establish an interest in the name All Saints Episcopal Church and a right to use that name to the exclusion of the Debtor.²⁰⁸ Defendants cannot present any factual or legal basis for their claimed exclusive right to use of the name All Saints Episcopal Church, and the Debtor is entitled to judgment as a matter of law on Defendants' requests for declaratory and injunctive relief regarding the use of the name.

80. Further, Defendants request issuance of an injunction prohibiting Episcopalian All Saints, rather than the Debtor, from using the name All Saints Episcopal Church.²⁰⁹ Episcopalian All Saints is not a party to this adversary proceeding and the Court lacks jurisdiction to award injunctive relief against a non-party.²¹⁰ The Court should enter summary judgment denying Defendants' request for injunctive relief for this reason as well.

F. Defendants' Proof of Claim Should be Disallowed

81. The same reasons that support entry of summary judgment declaring that the Debtor owns the Real Properties and Financial Assets also support entry of summary judgment denying Defendants' Proof of Claim in its entirety.²¹¹ According to Defendants, the claims asserted in the Proof of Claim are based on (i) the State Court Judgment and Judgment Enforcement Order, (ii) the claims asserted in Cause No. 17-329379-21 in the 17th Judicial District Court of Tarrant County, Texas, which include Defendants' claims to ownership of the

²⁰⁷ Answer at ¶¶ 61-64.

²⁰⁸ See, e.g., *Viacom Int'l v. IJR Cap. Inv., L.L.C.*, 891 F.3d 178, 186 (5th Cir. 208) (listing elements of common law trademark infringement claim).

²⁰⁹ Answer ¶ 64.

²¹⁰ *Montgomery v. Goodwin*, 2018 WL 1631699, at *1 (W.D. La. Apr. 2, 2018).

²¹¹ Complaint at ¶ 39-42 (Count 6).

Real Properties, and (iii) “vestry and membership in All Saints’ Episcopal School of Fort Worth, a non-profit corporation.”²¹² None of these provide any basis for a claim against the Debtor, and the Debtor is therefore entitled to summary judgment disallowing the Proof of Claim in its entirety.

(i) The State Court Judgment and Judgment Enforcement Order Provide No Basis for a Claim Against the Debtor

82. Neither the State Court Judgment nor the Judgment Enforcement Order provide any basis for the claims asserted in the Proof of Claim. Defendants have no monetary judgment in State Court that would form the basis of a claim against either Episcopalian All Saints or the Debtor. Moreover, the Debtor is not a party to the State Court Judgment and Judgment Enforcement Order and neither provides any basis for a claim against the Debtor. Because the Proof of Claim on its face does not establish any *prima facie* claim against the Debtor, Defendants bear the burden of proving that the Debtor is bound by the State Court Judgment and Judgment Enforcement Order.²¹³ Defendants cannot meet their burden to establish that the State Court Judgment and Judgment Enforcement Order provide any basis for recovery against the Debtor, whether under principles of *res judicata*, collateral estoppel, or otherwise.

83. While the Debtor disputes that it is bound by the State Court Judgment and Judgment Enforcement Order, if the Court were to give the State Court Judgment and Judgment Enforcement Order preclusive effect against the Debtor under the doctrines of *res judicata* or collateral estoppel, those same doctrines would preclude the very claims Defendants assert. Defendants never asserted any claims to the Debtor’s assets in the State Court. Because Defendants’ claims against the Debtor arise from the same nucleus of operative fact as the claims that were adjudicated in the State Court, those claims were merged into the State Court Judgment

²¹² Ex. H, Proof of Claim No. 7 (App. at 492).

²¹³ *In re Gulley*, 400 B.R. 529, 540 (Bankr. N.D. Tex. 2009).

and extinguished.²¹⁴ Thus, Defendants cannot now argue that the Debtor is bound by the State Court Judgment and Judgment Enforcement Order under principles of *res judicata* because, if their argument succeeded, their claims against the Debtor in this proceeding would be barred.²¹⁵

84. Moreover, as demonstrated above, Defendants affirmatively waived any claim against the Debtor or its assets in the State Court.²¹⁶ Yet, in the Proof of Claim Defendants now seek a recovery of more than \$7.6 million against the Debtor based on the State Court Judgment and Judgment Enforcement Order. As with Defendants' claims to ownership of the Real Properties and Financial Assets, the claims asserted in the Proof of Claim are barred by the doctrines of waiver and judicial estoppel.

85. Finally, Defendants cannot articulate or establish any independent basis for recovery against the Debtor. As the Court explained in the Memorandum Opinion, the litigation in the State Court only addressed the Diocesan Trust Property. The Real Properties and Financial Assets are not Diocesan Trust Property, and the State Court Judgment contains no monetary award against the Debtor or otherwise. The State Court Judgment therefore cannot serve as a basis for imposing liability on the Debtor, and the Defendants cannot establish any underlying or independent basis for an allowable claim against the Debtor.

²¹⁴ *Procter & Gamble Co. v. Amway Corp.*, 376 F.3d 496, 499 (5th Cir. 2004); *Barr v. Reso. Trust Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 628 n. 2 (Tex. 1992).

²¹⁵ The same would be true of Defendants' claims to ownership of the Real Properties and Financial Assets. The Debtor disputes the application of *res judicata* and collateral estoppel to the State Court Judgment and Judgment Enforcement Order and will address the reasons those doctrines do not apply if and when Defendants raise them.

²¹⁶ Ex. F, Brackett Depo. at 56:3 – 56:6, 57:22 – 58:6, 104:23 – 105:2, 105:21 – 105:24 (App. at 466-68, 474-75); Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8, 18 (App. at 616-17, 627) (confirming waiver)

(ii) Defendants' Claimed Ownership Interest in the Real Properties and Financial Assets is Inconsistent with Defendants' Proof of Claim

86. The Proof of Claim also provides no basis for a claim against the Debtor based on Defendants' asserted ownership interest in the Real Properties and Financial Assets. As discussed above, Defendants waived any claim to the Real Properties and Financial Assets and those claims are now barred by the doctrines of waiver and judicial estoppel. Moreover, Defendants' assertion of a right to payment in the Proof of Claim is inconsistent with their claimed ownership of the assets in question.²¹⁷ Ownership of property is determined by Section 541 of the Bankruptcy Code.²¹⁸

87. As a result, the Proof of Claim is not a proper procedural vehicle for asserting a claim to ownership of property.²¹⁹ Such claims must be brought as an adversary proceeding.²²⁰ The Debtor has established in this adversary proceeding that it owns the Real Properties and Financial Assets as a matter of law, and entry of judgment in the Debtor's favor on those issues also require denial of the Proof of Claim to the extent it is based on a claimed ownership interest in the same assets.²²¹

(iii) There is no Basis for Defendants' Claim Related to the Debtor's Membership in All Saints Episcopal School

88. Defendants also assert in the Proof of Claim that it is partially based on "vestry and membership in All Saints' Episcopal School of Fort Worth, a non-profit corporation ("ASES")." ASES is a parochial school in Fort Worth affiliated with the Debtor.²²² Under both ASES's Articles of Incorporation and the Debtor's Bylaws, the Debtor is the sole member of

²¹⁷ *In re Bicoastal Corp.*, 136 B.R. 290, 294 (Bankr. M.D. Fla. 1992).

²¹⁸ *Id.*

²¹⁹ *In re Environmental Land Tech., Ltd.*, 2007 WL 4287474, at *2 (Bankr. D.C. Dec. 3, 2007).

²²⁰ *Id.*

²²¹ *In re Twinton Properties P'ship*, 44 B.R. 426, 428 (Bankr. M.D. Tenn. 1984).

²²² Ex. D, Jambor Decl. at ¶ 52 (App. at 87).

ASES and the Debtor's Vestry participates in the governance of ASES.²²³ The exact nature and basis of Defendants' claim regarding ASES is unclear, but the claim is most likely based upon Defendants' continued assertion that ACNA All Saints "is" the continuing Episcopal All Saints that is entitled to control the Debtor and thus entitled to control the Debtor's membership interest in ASES. The Court has already rejected this argument and Defendants cannot meet their burden to establish any allowable claim against the Debtor related to ASES.

89. In discovery, Defendants asserted that "the vestry of [ACNA All Saints] is entitled to control [ASES]."²²⁴ As set forth above, the Debtor's and ASES's organizational documents each provide governance procedures for ASES, none of which involve ACNA All Saints or its vestry. Defendants bear the burden of proving their right to "control" ASES insofar as it is part of their Proof of Claim, and they cannot meet their burden to establish any allowable claim against the Debtor related to ASES or the right to control ASES.

90. To the extent Defendants are asserting an ownership interest in ASES, or asserting ownership of the Debtor's interest in ASES, the Proof of Claim is procedurally and substantively improper and should be denied.²²⁵ ASES is not a party to this proceeding, and the Debtor's interest in ASES, which is itself a member-managed non-profit organization, is not the type of valuable property right control and ownership of which can be dictated by courts.²²⁶ Accordingly, Defendants are not entitled to any recover against the Debtor with respect to the membership interest in ASES.

²²³ Ex. D, Jambor Decl. at ¶ 52 (App. at 87); Ex. D-21, ASES Articles of Incorporation at Art. VI (App. at 279); Ex. D-9, Bylaws at Art. XIV (App. at 165).

²²⁴ Ex. L, Def. Discovery Responses at p. 8 (App. at 556, 564).

²²⁵ *Env. Land Tech.*, 2007 WL 4287474, at *1 ("[T]o the extent the proof of claim asserts a claim for the recovery of property or to establish ownership of property, the proof of claim must be dismissed because a claim to recover or establish title to property must be brought as an adversary proceeding.").

²²⁶ *Williams v. Smith*, 202 WL 7332674, at *3 (Tex. App.—Dallas 2020, pet. denied); *Harden v. Colonial Country Club*, 634 S.W.2d 56, 59 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.).

91. Finally, Defendants waived any claim related to ASES in the State Court and, as with the Real Properties and Financial Assets, any such claims are now barred by the doctrines of waiver and judicial estoppel. First, the Debtor's membership interest in ASES is held by the Debtor and is an asset of the bankruptcy estate, and Defendants waived any claim to the Debtor's assets in the State Court.²²⁷ In addition, Jack Iker expressly testified in the litigation that the Diocesan Corporation made no claim to ASES's assets.²²⁸ Given these admissions, the State Court Judgment cannot now serve as the basis for Defendants' asserted claim to the membership interest in ASES.

(iv) There is no Basis for Defendants' Assertion of a Secured Claim

92. Defendants also erroneously contend that a portion of their claim is secured by the State Court Judgment. Defendants did not attach any evidence of a validly perfected lien or security interest to the Proof of Claim as required by Bankruptcy Rules 3001(d) and they cannot meet their burden to establish that they held a validly perfected lien on any of the Debtor's assets as of the Petition Date.²²⁹ Thus, to the extent Defendants have any allowed claim in this case, it is not entitled to secured status.

93. Defendants contend that their claims are secured by a judgment lien based on the State Court Judgment.²³⁰ Because the Debtor is not a party to the State Court Judgment and is not bound by the judgment, the State Court Judgment cannot serve as the basis of a secured claim against the Debtor. Even if the Debtor were bound by the State Court Judgment, however, Defendants cannot present any evidence of a validly perfected lien or security interest against the Debtor's assets.

²²⁷ Ex. F, Brackett Depo. at 56:3 – 56:6, 57:22 – 58:6, 104:23 – 105:2, 105:21 – 105:24 (App. at 466-68, 474-75).

²²⁸ Ex. I, Iker Depo. at p. 218 (App. at 522); *see also* Ex. O, June 10, 2015 MSJ Hearing Transcript at pp. 7-8 (App. at 616-17).

²²⁹ *See In re Webb*, 520 B.R. 748, 775 (Bankr. E.D. Ark. 2014); *In re Immerfall*, 216 B.R. 269, 272 (Bankr. D. Minn. 1998).

²³⁰ Ex. H, Proof of Claim No. 7 (App. at 492).

94. Under Texas law, a judgment lien on real property is perfected by filing an abstract of judgment in the deed records in the county where the real property is located.²³¹ Defendants did not file an abstract of the State Court Judgment in Tarrant County, where the Real Properties are located, and cannot present any evidence of a validly perfected lien on the Real Properties. Likewise, a judgment lien on personal property may only be perfected by a form of execution on the judgment, such as a garnishment.²³² Defendants cannot present any evidence that they executed on the State Court Judgment prior to the Petition Date. Thus, any alleged security interest or lien related to the State Court Judgment is therefore subject to avoidance under the “strong arm” provisions of the Bankruptcy Code.²³³ Defendants’ assertion of a secured claim must therefore be disallowed.²³⁴

(v) Defendants Have No Allowable Claim for Deferred Maintenance or Damages to Property

95. Although the Proof of Claim contains no allegations or information regarding deferred maintenance or property damage, Defendants asserted in discovery that they hold a claim “for the deferred maintenance to property already surrendered and the property not yet surrendered as well as damages to the rectory and sanctuary, parish hall and Christian education building.”²³⁵ To the extent such alleged claim relates to the Real Properties, the Debtor has established its ownership of the Real Properties and thus there is no basis for Defendants’ assertion of a claim related to those properties. To the extent Defendants’ claim relates to Diocesan Trust Property that has been surrendered, Defendants cannot meet their burden to

²³¹ TEX. PROP. CODE § 52.001; *Nichols v. Glas*, 1992 WL 442112, at *2 (N.D. Tex. Oct. 23, 1992).

²³² *Nichols*, 1992 WL 442112, at *2; *U.S. v. Bollinger Mobile Home Sales, Inc.*, 492 F.Supp. 493, 497 (N.D. Tex. 1980).

²³³ 11 U.S.C. § 544(a)(1); TEX. BUS. & COMM. CODE § 9.317(a)(2); *In re K & A Servicing, Inc.*, 47 B.R. 807, 813 (Bankr. N.D. Tex. 1985).

²³⁴ *Webb*, 520 B.R. at 775.

²³⁵ Ex. L, Def. Discovery Responses at p. 8 (App. at 556, 564).

establish that the Debtor has any liability to Defendants for deferred maintenance or property damage and cannot establish that the Debtor's conduct caused any damage to the properties.

(vi) In the Alternative, any Liability on the Proof of Claim is Limited to Traceable Funds

96. For the reasons set forth above, the Debtor disputes that it has any liability on the Proof of Claim. However, in the alternative, and solely to the extent that the Court determines that the State Court Judgment and Judgment Enforcement Order may properly serve as the basis for an allowable claim against the Debtor, then the amount of such claim must necessarily be limited to funds that remain in the Debtor's possession that can be traced to April 14, 2009, the date identified in the Judgment Enforcement Order. As discussed above, Defendants never sought any pre-judgment remedies such as garnishment, attachment, or a temporary injunction in the State Court to prohibit Episcopalian All Saints or the Debtor from using the Financial Assets during the pendency of the litigation. A post-judgment turnover order cannot order a judgment debtor to turnover something that existed 12 years ago that no longer exists.²³⁶

97. On their faces, neither the State Court Judgment nor the Judgment Enforcement Order contain a monetary judgment or award. At most, the State Court Judgment and Judgment Enforcement Order are an adjudication of ownership of specified property and require turnover of certain assets to Defendants. In the Proof of Claim, Defendants attempt to transform the State Court Judgment and Judgment Enforcement Order into a monetary judgment dated as of April 20, 2021. Construing the State Court Judgment and Judgment Enforcement Award in this manner is inconsistent with what was actually litigated in the State Court and would be tantamount to imposing a prejudgment attachment, garnishment or injunction on Financial Assets that was never sought or awarded until long after the State Court Judgment was entered. To the extent that the Judgment Enforcement Award is enforceable against the Debtor (which the

²³⁶ TEX. CIV. PRAC. & REM CODE § 31.002(a); *Beaumont*, 806 S.W.2d at 227.

Debtor disputes), the relief provided in that order is limited to the assets that remain in the Debtor's possession.²³⁷ Stated differently, any claim based on the Judgment Enforcement Order must be reduced by the amount the Debtor spent prior to entry of the order.²³⁸

98. In summary, Defendants have continuously asserted in this proceeding that they are the owner of certain assets of the Debtor's estate by virtue of the rulings in the State Court, a position that is inconsistent with the concurrent assertion in the Proof of Claim that they have a right to payment against the Debtor based on the State Court Judgment.²³⁹ There is no independent basis for any allowable claim by Defendants against the Debtor. Accordingly, Defendants' Proof of Claim should be disallowed.

G. The Debtor is Entitled to Summary Judgment on Defendants' Counterclaims

99. In the Answer, Defendants assert counterclaims seeking (i) a declaration regarding their right to use the name All Saints Episcopal Church and an injunction prohibiting Episcopalian All Saints from using the name All Saints' Episcopal Church; (ii) a declaration that ACNA All Saints is the equitable owner of 4936 Dexter, 4939 Dexter, and 5001 Dexter and an injunction prohibiting the sale of such properties and requiring the turnover of the properties to ACNA All Saints; (iii) a declaration that ACNA All Saints is the owner of the Financial Assets; (iv) a declaration that ACNA All Saints is the owner of "personal property in existence on April 14, 2009" and an injunction requiring the turnover of such property to ACNA All Saints; and (v) a declaration that the Diocesan Corporation holds legal and equitable title to 5005 Dexter and an injunction requiring the turnover of such property to the Diocesan Corporation.²⁴⁰

²³⁷ *Id.*

²³⁸ *Beaumont*, 806 S.W.2d at 227.

²³⁹ *Bicoastal Corp.*, 136 B.R. at 294 ("[A] right to payment, or a claim, is inconsistent with the concept of ownership.").

²⁴⁰ Answer at ¶¶ 61-77.

100. Granting summary judgment on the Debtor's affirmative claims as requested in this Motion will adjudicate the rights and claims raised in each of Defendants' counterclaims. Accordingly, the Debtor is entitled to summary judgment on Defendants' counterclaims for the same reasons that the Debtor is entitled to summary judgment on its affirmative claims. The Debtor therefore requests that, in addition to granting summary judgment for the Debtor as requested in this Motion, the Court enter summary judgment in the Debtor's favor on each of Defendants' counterclaims.

IV. CONCLUSION

101. In 2008, Defendants left the Episcopal Church and the Debtor's parish. During the next twelve years, Defendants never asserted any claim against the Debtor or the Debtor's assets. To the contrary, Defendants expressly waived any such claims and stood by while the Debtor continued managing its affairs and assets, without seeking any pre-judgment remedy to prohibit Episcopalian All Saints or the Debtor from using the Real Properties and or spending the Financial Assets. It was only after the Texas Supreme Court issued *Episcopal Church II* that Defendants changed tack and began arguing that they "are" the Debtor's parish and are entitled to ownership and control all of the Debtor's assets. Defendants' position has no basis in fact or law. Under neutral principles of law, Episcopalian All Saints controls the Debtor, and the Debtor owns its assets.

102. As demonstrated above, there are no genuine issues of material fact on any of the claims raised in the Motion and the Debtor is therefore entitled to judgment as a matter of law. The Court should therefore enter an order, substantially in the form attached to the Motion, granting the Motion and awarding the Debtor any further relief the Court deems appropriate.

Dated: June 17, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 17, 2022, a true and correct copy of the foregoing was served on all counsel of record in this proceeding via the Court's ECF system.

/s/ John D. Gaither

John D. Gaither