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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

14 SAVE ST. JAMES THE GREAT, a  
California nonprofit public benefit  
15 corporation,

16 Plaintiff,

17 v.

18 THE BISHOP OF THE PROTESTANT  
EPISCOPAL CHURCH IN THE DIOCESE  
19 OF LOS ANGELES, a corporate sole,  
LEGACY PARTNERS RESIDENTIAL,  
20 INC., a corporation, and DOES 1-20,

21 Defendants.

CASE NO.: 30-2015-00794789-CU-OR-CJC

**SAVE ST. JAMES'S OPPOSITION TO  
DEMURRER OF DEFENDANT THE  
BISHOP OF THE PROTESTANT  
EPISCOPAL CHURCH IN LOS ANGELES  
TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Hearing

Date: November 10, 2015  
Time: 1:30 p.m.  
Judge: Hon. David T. McEachen  
Dept.: C21  
Reservation No.: 72236426

[Reassigned to Dept. C42, Hon. Walter  
Schwarm, effective as of November 2, 2015]

*[Filed concurrently with Save St. James's  
Request for Judicial Notice in Support of  
Opposition to Demurrer of Defendant the Bishop  
of the Protestant Episcopal Church in Los Angeles  
to Plaintiff's First Amended Complaint]*

Action Filed: June 24, 2015

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1 **I. INTRODUCTION**

2 This case arises out of the decision of the Bishop of the Protestant Episcopal Church in  
3 the Diocese of Los Angeles (the “Bishop”) to sell 3209 Via Lido in Newport Beach (the  
4 “Property”), the home of St. James the Great Episcopal Church, to Defendant Legacy Partners  
5 Residential, Inc. (“Legacy”). (First Amended Complaint (“FAC” or “Amended Complaint”) at  
6 ¶ 15.) Legacy has publicly announced plans to demolish the Church building and develop  
7 townhouses on the Property, in contravention of a restriction in the original Deed to the Property  
8 that limits the Property to “church purposes exclusively” and prohibits any buildings other than  
9 “a church” and related buildings. (*Id.* at ¶¶ 3, 6, 18.) Save St. James, on behalf of congregants  
10 of the St. James the Great Episcopal Church and the community of people concerned about the  
11 destruction, has brought this action against the Bishop and Legacy to prevent the sale and  
12 destruction of the Church. (*Id.* at ¶ 1.)

13 The Bishop demurs to Save St. James’s claims for declaratory relief, specific  
14 enforcement, and injunctive relief through a scattershot haze of arguments that ultimately center  
15 on the assertion that Save St. James lacks standing. Each of the Bishop’s arguments fails:

- 16 • *First*, the Bishop argues that Save St. James lacks standing because it is not a  
17 party to the Deed or an express beneficiary of the church-use restriction. But  
18 Save St. James has associational standing to bring claims on behalf of its  
19 members, the Church congregants, who are intended beneficiaries of the Deed’s  
20 church-use restriction.
- 21 • *Second*, the Bishop asserts that the congregant-members of Save St. James cannot  
22 be intended beneficiaries of the church-use restriction because they are not  
23 specifically named in the Deed. California law is clear, however, that a third  
24 person need not be expressly identified in a contract to be its intended beneficiary.  
25 Instead, it is sufficient that the contract—here, the Deed’s church-use  
26 restriction—was impliedly intended to benefit a third party.

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- *Third*, Save St. James’s members have standing as beneficiaries of the trust in which the Bishop holds the Property, and the “ecclesiastical abstention” doctrine does not and cannot deprive them of the right to enforce the trust.
- *Finally*, the Bishop argues that the Deed’s church-use restriction cannot be enforced by the Court because it does not prohibit transfer of the Property. But this argument conflates contractual restrictions with the available legal remedies. The use restriction is indisputably valid, and Save St. James may seek to enforce that restriction through specific enforcement and injunctive relief.

In essence, the Bishop would have this Court disregard the Deed’s use restriction in order to prohibit its intended beneficiaries from pursuing their claims and to prevent them from enforcing the use restriction against the Bishop. But the Bishop’s arguments and cited cases do not support that result. The Bishop’s demurrer accordingly should be overruled in its entirety.

## **II. ALLEGATIONS IN SAVE ST. JAMES’S FIRST AMENDED COMPLAINT**

Save St. James is a California nonprofit public benefit corporation composed of congregants of the St. James the Great Episcopal Church (the “Church”), as well as residents of Lido Isle and environs, principals of tenants of the Property, relatives of former congregants whose remains are interred at the Property, and community members. (FAC at ¶¶ 1, 21.) Save St. James was formed to express the united voice of these congregants and residents. (*Ibid.*) As representative of the Church congregants, the intended beneficiaries of the Deed restriction, and other concerned individuals, on June 24, 2015, Save St. James filed this action against the Bishop and Legacy, asserting claims for declaratory relief, specific enforcement of the Deed restriction, and injunctive relief. (*Ibid.*)

On or about July 10, 1945, the Griffith Company, through its president Stephen M. Griffith, granted the Property to the Bishop via a deed conveying Lots 1197, 1198, 1199, and 1200 of Tract No. 907. The Deed provides:

The property conveyed shall be used for church purposes exclusively and no building other than a church and appurtenances may be erected, placed or maintained thereon. The foregoing restriction shall be binding [upon] the grantee, his successors and assigns. Upon the breach of the foregoing condition, the title to

1           said property hereby conveyed and to the whole thereof shall  
2           become at once divested from the grantee herein, his successors or  
3           assigns, and shall revert and revest in the grantor, its successors or  
4           assigns.

4    (*Id.* at ¶ 6.)

5           The Property is located at the entrance to Lido Isle in Newport Beach, California. (FAC  
6    at ¶ 7.) It has been the site of St. James Episcopal Church for nearly seventy years. (*Ibid.*) By  
7    conveying the Property to the Bishop with the express provision that the Property be limited to  
8    church uses exclusively, the Griffith Company intended to benefit the congregants of the Church,  
9    including the wife of the President of the Griffith Company, who regularly worshipped at the  
10   Church Property donated by the family company. (*Id.* at ¶ 8–9.)

11          Although title is held by the Bishop, the Property is held in trust by the Bishop for the  
12   benefit of Church congregants, and that trust would be violated by the sale of the Property for  
13   development purposes. (FAC at ¶ 33; see also *id.* at ¶¶ 44, 55.) After examining the articles of  
14   incorporation and amended bylaws for St. James Parish and the Constitution of the Diocese, this  
15   Court confirmed in the *Episcopal Church Cases* that the Property is held “in trust for this Church  
16   and the diocese thereof,” and that the trust, once created, cannot be amended or dissolved except  
17   by the General Convention of the Episcopal Church. (Request for Judicial Notice in Support of  
18   Demurrer, Ex. C at pp. 6–7, 10–11; see FAC at ¶ 13, 55.)

19          In or about April 2015, the Bishop and Legacy entered into an agreement for the sale and  
20   purchase of the Property for approximately \$15,000,000. (FAC at ¶ 15.) The congregation  
21   learned of the sale agreement in mid-May 2015, when Bishop Jon Bruno announced that he had  
22   signed the agreement, and that the last services in the Church building would be in late June. (*Id.*  
23   at ¶ 16.) On June 15, 2015, Legacy publicly announced that it intends to build a mixed-use  
24   residential development on the Property, necessarily eliminating the Church use of the Property.  
25   (*Id.* at ¶ 18.) Following that announcement and without prior notice, the Bishop changed the  
26   locks at the Property, claimed that the Vicar, Rev. Cindy Voorhees, had resigned (although she  
27   had not), and ordered all Church employees to leave the Property. (*Id.* at ¶ 22.) Since then, the  
28



1 congregation has been forced to hold worship services outside, in a small park with no pews,  
2 sound amplification, or aisle. (*Id.* at ¶ 27.)

3 **III. ARGUMENT**

4 **A. California Has a Liberal Pleading Standard**

5 A demurrer may only raise questions of law. (*Del E. Webb Corp. v. Structural Materials*  
6 *Co.* (1981) 123 Cal.App.3d 593, 604.) It tests the pleadings alone, not evidence or other matters.  
7 The allegations in the complaint—as well as all facts that may be inferred from those expressly  
8 pleaded—must be accepted as true for the purposes of ruling on a demurrer. (*Berg & Berg*  
9 *Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.) Thus, even if facts exist which,  
10 if true, would defeat the plaintiff’s claims, a defendant may not raise them at the demurrer stage.  
11 (*Gould v. Maryland Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1144.)

12 Against a demurrer, a court gives the complaint “a reasonable interpretation, reading it as  
13 a whole and its parts in their context.” (*Quelimane Co., Inc. v. Stewart Tit. Guaranty Co.* (1998)  
14 19 Cal.4th 26, 38 (hereafter *Quelimane*.) The allegations of the complaint are to be “liberally  
15 construed with a view to attaining substantial justice among the parties.” (*Lopez v. Southern Cal.*  
16 *Rapid Transit Dist.* (1985) 40 Cal.3d 780, 797.) “[I]t is error for a trial court to sustain a  
17 demurrer when the plaintiff has stated a cause of action under any possible legal theory.” (*Aubry*  
18 *v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.)

19 Where viability of a cause of action centers on an issue of contract interpretation, as long  
20 as the allegations do not state a clearly erroneous interpretation, the Court must accept the  
21 plaintiff’s construction as correct. (See *Aragon-Haas v. Family Security Ins. Services,*  
22 *Inc.* (1991) 231 Cal.App.3d 232, 239 [demurrer admits the contents of the contract and “any  
23 pleaded meaning to which the instrument is reasonably susceptible.”]; *Marina Tenants Assn. v.*  
24 *Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 128 [same]; *Shaw v. Metro-*  
25 *Goldwyn-Mayer, Inc.* (1974) 37 Cal.App.3d 587, 598 [holding that it is reversible error to sustain  
26 a demurrer by resolving a contract interpretation issue against the pleader].)

27 Even if a complaint does not state a cause of action, if there is “a reasonable possibility  
28 that the defect can be cured by amendment, leave to amend must be

1 granted.” (*Quelimane, supra*, 19 Cal.4th at p. 39; see also *Metzger v. Bose* (1957) 155  
2 Cal.App.2nd 131, 133 [“It is, of course, the policy of the law that legal controversies be disposed  
3 of on their merits and not upon technical grounds of pleading.”]) In fact, the policy favoring  
4 leave to amend is so strong that denying amendment is an abuse of discretion unless the adverse  
5 party can show meaningful prejudice, such as the running of the statute of limitations, trial delay,  
6 the loss of critical evidence, or added preparation costs. (*Atkinson v. Elk Corp.* (2003) 109  
7 Cal.App.4th 739, 761).<sup>1</sup>

8 **B. Save St. James Has Standing to Sue on Behalf of Its Members**

9 The Bishop first argues that although Save St. James represents Church congregants who  
10 are intended beneficiaries of the church-use restriction in the 1945 Deed, Save St. James lacks  
11 standing to sue on their behalf. (See Demurrer at pp. 2, 7.) But in quoting the statutory  
12 requirement that every action be prosecuted in the name of the real party in interest (Demurrer at  
13 p. 2, 6 [citing Code Civ. Proc. § 367]), the Bishop ignores the clearly applicable exception that  
14 Save St. James has alleged: that Save St. James sues in a representative capacity on behalf of its  
15 individual members. (FAC at ¶¶ 1, 33, 39, 44, 49.)

16 An entity may pursue claims on behalf of the real parties in interest to a real estate  
17 contract if justified by “necessity, convenience, and justice.” (*Salton City Etc. Owners’ Assn. v.*  
18 *M. Penn Phillips Co.* (1977) 75 Cal.App.3d 184, 191.) An association has standing to bring suit  
19 on its members’ behalf when (1) the members would otherwise have standing to sue in their own  
20 right, (2) the interests that the association seeks to protect are germane to its purpose, and  
21 (3) neither the claim asserted nor the relief requested requires the members’ participation in the  
22 lawsuit. (See *Quail Lakes Owners Assn. v. Kozina* (2012) 204 Cal.App.4th 1132, 1138.) Courts  
23 have applied these associational standing principles to permit entities to pursue claims on behalf  
24 of real parties in interest to a real estate contract. (See, e.g., *ibid.*; cf. *Save the Welwood Murray*  
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26 <sup>1</sup> To the extent the Court determines that any cause of action should be dismissed, Save St.  
27 James respectfully requests that it do so without prejudice to give Save St. James the  
28 opportunity to amend. Plaintiff’s investigation has continued in the intervening months since  
the Amended Complaint was filed, and counsel should be able to amend the complaint to  
satisfy any defects that Court identifies, including issues of standing.

1 *Memorial Library Committee v. City Council of the City of Palm Springs* (1989) 215 Cal.App.3d  
2 1003, 1017 [upholding injunction in action brought by nonprofit association formed to prevent  
3 the sale of property to a commercial developer in violation of a deed restriction limiting the  
4 property to library uses].)

5 As further explained below, Save St. James has adequately alleged its members' status as  
6 intended beneficiaries of the Deed restriction. It seeks to protect the rights of the Church  
7 congregants to prevent the sale and destruction of the Church in violation of the Deed restriction  
8 and of the trust in which the Bishop holds the Property, a goal aligned with its purpose of  
9 expressing the united voice of the Church congregants and others in opposition to the sale of the  
10 Property. (FAC at ¶¶ 1, 21.) Through the claims in the Amended Complaint, Save St. James  
11 seeks for its members a declaration of the parties' rights and obligations under the Deed  
12 restriction and trust, and remedies to enforce those rights and obligations in light of the Bishop's  
13 sale of the Property to a residential developer. (FAC at p. 14 [Prayer for Relief].) These claims  
14 do not involve inquiry into individual members' circumstances or assessment of individual  
15 damages. (*Id.*; *id.* at ¶¶ 32–55.) Accordingly, Save St. James has standing to bring these claims  
16 and pursue relief on behalf of its members.

17 **C. Save St. James Has Standing Because Its Members Are Intended**  
18 **Beneficiaries of the Church-Use Restriction**

19 California law permits third parties to enforce the terms of a contract made for their  
20 benefit. This has long been the rule in California, repeatedly affirmed by the courts. (See, e.g.,  
21 *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004; *Garratt v.*  
22 *Baker* (1936) 5 Cal.2d 745.)<sup>2</sup> Privity of contract and the promisor's duty to the beneficiary are  
23 established by operation of law. (See *Johnson v. Holmes Tuttle Lincoln-Mercury, Inc.* (1958)  
24 160 Cal.App.2d 290, 297 (hereafter *Johnson*) ["The action by a third party beneficiary for the

25 \_\_\_\_\_  
26 <sup>2</sup> This rule is also codified in Civil Code section 1559, which states: "A contract, made  
27 expressly for the benefit of a third person, may be enforced by him at any time before the  
28 parties thereto rescind it." While this provision states that the contract must be "expressly for  
the benefit of the third party," the word "expressly," by judicial interpretation, has now come  
to mean merely the negative of "incidentally." (See *Gilbert Financial Corp. v. Steelform*  
*Contracting Co.* (1978) 82 Cal.App.3d 65, 70.)

1 breach of the promisor’s engagement does not rest on the ground of any actual or supposed  
2 relationship between the parties but on the broad and more satisfactory basis that the law,  
3 operating on the acts of the parties, creates the duty, establishes a privity, and implies the  
4 promise and obligation on which the action is founded.”.) As long as the contract has not been  
5 rescinded, “the relations of the parties are the same as though the promise had been made  
6 directly to the third party.” (*Prouty v. Gores Technology Group*, (2004) 121 Cal.App.4th 1225,  
7 1232 (hereafter *Prouty*).)

8 A third party may bring an action if he or she is more than incidentally benefitted by the  
9 contract. (*Shell v. Schmidt* (1954) 126 Cal.App.2d 279, 290.) “If the terms of the contract  
10 necessarily require the promisor to confer a benefit on a third person, then the contract, and  
11 hence the parties thereto, contemplate a benefit to the third person. The parties are presumed to  
12 intend the consequences of a performance of the contract.” (*Johnson, supra*, 160 Cal.App.2d at  
13 p. 297.) The third-party beneficiary doctrine “presupposes that the defendant made a promise  
14 which, if performed, would have benefitted the third party.” (*Souza v. Westlands Water Dist.*  
15 (2006) 135 CalApp.4th 879, 891.)<sup>3</sup>

16 Save St. James has properly plead the terms of the church-use restriction in the 1945  
17 Deed: “the Deed provides that “[t]he property conveyed shall be used for church purposes  
18 exclusively and no building other than a church and appurtenances may be erected, placed or  
19 maintained thereon.” (FAC at ¶ 6.) Save St. James has also alleged that the congregants of the

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21 <sup>3</sup> The Bishop’s cited cases do not establish otherwise. *Kirst v. Silva* affirms the rule that the  
22 contract must (as here) evince an intent to benefit a third party for that third-party to enforce  
23 it. (*Kirst v. Silva* (1980) 103 Cal.App.3d 759, 763.) *Kent v. Koch* and *Walters v. Calderon*  
24 are factually inapposite to the situation here. In *Kent*, the court held that uniform deed  
25 restrictions made as part of a general plan and expressly for the benefit of lot owners in one  
26 subdivision could not be enforced by lot owners in a different subdivision. (*Kent v. Koch*  
27 (1958) 166 Cal.App.2d 579, 586–88.) Unlike here, there was no indication that the  
28 restrictions were meant to benefit, or would necessarily benefit, the owners in the other  
subdivision. (*Id.* at 587.) In *Walters*, although the promisor intended to benefit the third  
party, the court emphasized that “the crucial factor is the intent of the promisee to confer a  
benefit on the third party.” (*Walters v. Calderon* (1972) 25 Cal.App.3d 863, 871.) This is  
because “in a normal situation, the promisor is interested only in obtaining whatever  
consideration the promisee will provide for entering into the contract rather than in benefiting  
a third party.” (*Ibid.*) Here, it was manifestly the intent of the promisee, the Griffith  
Company, to benefit church congregants in imposing the church-use restriction.

1 St. James the Great Episcopal Church, whom it represents, were the intended beneficiaries of  
2 that Deed restriction. (See, e.g., FAC at ¶ 33 [“Plaintiff is a nonprofit public benefit corporation,  
3 representing (and having as its members) Church congregants, as the intended beneficiaries of  
4 the Deed restriction, in opposition to the sale of the Property and the termination of Church uses  
5 at the Property in violation of the Deed.”].)<sup>4</sup> Contrary to the Bishop’s suggestion, (Demurrer at  
6 p. 7), the contract need not name or “specifically identify” a third-party beneficiary. (See *Kaiser*  
7 *Engineers, Inc. v. Grinnell Fire Protection Systems Co.* (1985) 173 Cal.App.3d 1050, 1055.) A  
8 third party may enforce a contract where—as here—that third party alleges membership in a  
9 class of persons for whose benefit it was made. (*Prouty, supra*, 121 Cal.App.4th at p. 1232.)

10 Save St. James’s allegations are more than sufficient to establish its standing at the  
11 pleading stage. That the Deed restriction was intended to benefit, and has in fact benefitted, the  
12 congregants of St. James Episcopal Church is manifest. The terms of the Deed state that the  
13 Property “shall be used for church purposes exclusively” and further clarify that “no building  
14 other than a church and appurtenances” may be placed on the Property. (FAC at ¶ 6.) As Save  
15 St. James has alleged, this language makes it clear that although the Griffith Company conveyed  
16 the Property to the Bishop, the restriction was not for the benefit of the Bishop (who may, as  
17 here, prefer to sell the land and use the profits for other purposes). (*Id.* at ¶ 44 [“While the Deed  
18 was made to the Bishop, the Deed restriction is designed to prevent the very action the Bishop is  
19 attempting to carry out—the sale and conversion of the Property to non-Church purposes. The  
20 beneficiary of the provision is thus obviously not the Bishop, who would prefer it not be  
21 enforced, but the congregants who are directly benefitted by its enforcement.”].) Instead, the  
22 only reasonable interpretation is that the church-use restriction was intended to benefit  
23 community members and the congregants who have worshipped at St. James Episcopal Church  
24 for the past seventy years. (*Id.* at ¶ 7, 16.) If performed as promised under the Deed, limiting the

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25 <sup>4</sup> (See also FAC ¶¶ 39 [“Plaintiff is a California nonprofit public benefit corporation made up  
26 of Church congregants, the intended beneficiaries of the Deed restriction, and many  
27 others . . . .”]; 44 [“Plaintiff is informed and believes and on that basis alleges that the  
28 congregants it represents were intended beneficiaries of the Deed.”]; 49 [“As hereinabove  
alleged, Plaintiff is a nonprofit public benefit corporation made up of Church congregants  
(and many others), as the intended beneficiaries of the Deed restriction . . . .”].)

1 Property to church uses would necessarily confer the Church congregants and community with  
2 the benefit of a permanent and local home for worship. (See *Johnson v. Holmes Tuttle Lincoln-*  
3 *Merc.*, at p. 297 [“If the terms of the contract necessarily require the promisor to confer a benefit  
4 on a third person, then the contract, and hence the parties thereto, contemplate a benefit to the  
5 third person.”]; compare FAC at ¶¶ 27–29 [having been locked out of the Church, the St. James  
6 the Great congregation has been forced to hold worship services in a small park with no pews,  
7 sound amplification, or aisle].)

8 The Bishop, misconstruing the allegations in the Amended Complaint, argues that the  
9 Deed restriction could not have been intended to benefit the Church congregants because “Save  
10 alleges that the congregation was newly formed . . . 68 years after the 1945 deed.” (Demurrer at  
11 p. 8 [citing FAC at ¶ 14].) To the contrary, Save St. James has alleged that St. James Episcopal  
12 Church has been located on the Property, and its congregation has worshipped there, for the past  
13 seventy years. (See FAC at ¶¶ 7 [“The Church, which was rebuilt in 2000, has been located on  
14 this site for almost 70 years.”], 16 [“Bishop Jon Bruno . . . announced to the St. James the Great  
15 congregation that its last service in the Church would be held on June 28, 2015 . . . ending [ ] 70  
16 years of worship on the site.”].) There is no allegation that the congregation was “newly  
17 formed,” rather, after the *Episcopal Church Cases* dispute over the Church Property ended in  
18 2013, the congregation returned to the Property. (*Id.* at ¶¶ 13–14.) The paragraph in the  
19 Amended Complaint cited by the Bishop states only that the “new” St. James the Great  
20 Episcopal church was dedicated by the Bishop in 2013. (*Id.* at ¶ 14.) Furthermore, it is  
21 unreasonable to conclude that the church-use restriction, which the Deed states “shall be binding  
22 [upon] the grantee, his successors and assigns,” (*id.* at ¶ 6), was intended to benefit only those  
23 who were congregants of the Church in 1945. A congregation changes over time as new  
24 members leave and join the Church. Both the language of the Deed and the extrinsic evidence  
25 demonstrate that the Griffith Company intended that the Property remain a church in perpetuity,  
26 and thus benefit the Church congregation then, now, and into the future. (See *id.* at ¶ 6, 8–9, 43.)  
27 In fact, this is the position that the Griffith Company has taken in pending litigation between the  
28 Bishop and the Griffith Company relating to the Property. (See Save St. James’s Request for

1 Judicial Notice, Ex. A (Ans. by Griffith Co. to the Bishop’s Compl.) at ¶¶ 1, 7 and B (Defendant  
2 Griffith Co.’s Anti-SLAPP Mot.) at p. 1, 4.)

3 Even if there were ambiguity in the contractual language or conflicting extrinsic evidence  
4 (which there is not), intended beneficiary status is a factual question that is not properly resolved  
5 by demurrer. (See *Kalmanovitz v. Bitting* (1996) 43 Cal.App.4th 311, 315.) “Whether the third  
6 party is an intended beneficiary or merely an incidental beneficiary involves construction of the  
7 intention of the parties, gathered from reading the contract as a whole in light of the  
8 circumstances under which it was entered.” (*Eastern Aviation Group, Inc. v. Airborne Express,*  
9 *Inc.* (1992) 6 Cal.App.4th 1448, 1452.) Thus, “it is a question of fact whether a particular third  
10 person is an intended beneficiary of a contract.” (*Prouty v. Gores Technology Group*, at p.  
11 1232.) Save St. James has adequately plead that the church-use restriction was intended to  
12 benefit its members, the congregation and community. These allegations are more than  
13 sufficient to establish its legal standing to pursue its claims at the pleading stage. The Bishop’s  
14 demurrer should be denied.

15 **D. Save St. James Has Standing Because Its Members Are Beneficiaries of the**  
16 **Trust in Which the Bishop Holds the Property**

17 Save St. James has standing not only because its members are intended beneficiaries of  
18 the church-use restriction in the 1945 Deed, but also for the additional reason that its members  
19 are beneficiaries of the trust in which the Bishop holds the Property. Save St. James does not  
20 contest that the Bishop possesses formal title to or otherwise owns the Property, but instead  
21 asserts that the Bishop is also trustee of the Property, held in trust to provide a home to St. James  
22 Episcopal Church and benefit the St. James Episcopal Church congregation. (Compare  
23 Demurrer at p. 10 with FAC at ¶¶ 33, 44, 55.) In California, “a gift to a charitable corporation is  
24 regarded as being in trust for the accomplishment of its charitable purpose or purposes and no  
25 technical words of trust need be used to accomplish this result.” (*Estate of Connolly* (1975) 48  
26 Cal.App.3d 129, 133; see Witkin, Summary of California Law, Trusts § 293.) As the Amended  
27 Complaint alleges, “the Property is held in trust by the Bishop for the benefit of Church  
28 congregants, and that trust would be violated by the sale of the Property for development

1 purposes.” (FAC at ¶ 33; see also *id.* at ¶¶ 44, 55.) After examining the articles of incorporation  
2 and amended bylaws for St. James Parish and the Constitution of the Diocese, this Court  
3 confirmed in the *Episcopal Church Cases* that the Property is held “in trust for this Church and  
4 the diocese thereof,” and that the trust, once created, cannot be amended or dissolved except by  
5 the General Convention of the Episcopal Church. (Request for Judicial Notice in Support of  
6 Demurrer, Ex. C at pp. 6–7, 10–11; see FAC at ¶ 13, 55.)

7 As discussed above, Save St. James’s members, as Church congregants, are manifestly  
8 beneficiaries of the trust. Trust beneficiaries unequivocally possess standing to sue to enforce a  
9 trust. (See *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, 753 [“In  
10 accord with the majority view, this court has stated that ‘the only person who can object to the  
11 disposition of the trust property is one having some definite interest in the property—he must be  
12 a trustee, or *a cestui*, or have some reversionary interest in the trust property.” (quoting *O’Hara*  
13 *v. Grand Lodge I.O.G.T.* (1931) 213 Cal. 131, 140, emphasis added)]; Rest.2d, Trusts § 391 [“A  
14 suit can be maintained for the enforcement of a charitable trust . . . by a person who has a special  
15 interest in the enforcement of the charitable trust . . .”]; *id.* at comment c [“[W]here a charitable  
16 trust is created for the members of a small class of persons, a member of the class can maintain a  
17 suit on behalf of himself and the other members of the class against the trustee for the  
18 enforcement of the trust. Thus, where a charitable trust is created for the poor members of a  
19 particular church, any such member of the church can maintain a suit against the trustees for the  
20 enforcement of the trust.”].) The Bishop does not—and cannot—identify any authority  
21 supporting its assertion that as trust beneficiaries, the Church congregants must have  
22 authorization from the General Convention of the Episcopal Church or represent the entire  
23 congregation in order to bring their claims. (See Demurrer at p. 9.)

24 Nor does the “ecclesiastical abstention” doctrine under *New v. Kroeger* (2008) 167 Cal.  
25 App. 4th 800 (hereafter *New*) restrict the courts from determining the rights of intended  
26 beneficiaries of such property held in trust. To the contrary, the *New* court specifically  
27 acknowledged that “a state has a legitimate interest in resolving property disputes in its civil  
28 courts and may do so even when incidental ecclesiastical matters are present, so long as the



1 matter can be resolved without the court becoming entangled in *religious* disputes.” (*Id.* at p.  
2 817 (emphasis added).) Quoting the U.S. Supreme Court, the *New* court specified that

3           The neutral-principles method . . . requires a civil court to examine  
4           certain religious documents, such as a church constitution, for  
5           language of trust in favor of the general church. In undertaking  
6           such an examination, a civil court must take special care to  
7           scrutinize the document in purely secular terms, and not to rely on  
8           religious precepts in determining whether the document indicates  
9           that the parties have intended to create a trust.

10 (*Id.* at p. 818 (quoting *Jones v. Wolf* (1979) 443 U.S. 595, 604) (ellipses in original)). It is,  
11 therefore, entirely proper for this Court to “consider sources such as the deeds to the property in  
12 dispute, the local church’s articles of incorporation, the general church’s constitution, canons,  
13 and rules, and relevant statutes, including statutes specifically concerning religious property” to  
14 determine the rights of the beneficiaries vis-à-vis the Property. (*Episcopal Church Cases* (2009)  
15 45 Cal. 4th 467, 473 [holding, in a case concerning the same St. James Episcopal Church  
16 property at issue here, that internal church property disputes should be resolved by the “neutral  
17 principles of law” approach].)

18           **E.     Save St. James Has Properly Plead Claims for Specific Enforcement and**  
19           **Injunctive Relief**

20           The Bishop asserts that Save St. James cannot seek specific enforcement of the church-  
21 use restriction or corresponding injunctive relief because the Deed does not specifically prohibit  
22 the transfer of the Property. (See Demurrer at p. 11.) This argument misses the mark—Save  
23 St. James’s claims are not based on the existence of an express transfer restriction, but on its  
24 right to enforce a use restriction. A plaintiff is not required to wait until it suffers actual harm,  
25 but may seek preventive relief against a threatened infringement of its rights. (See *Southern*  
26 *Christian Leadership Conf. v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 223;  
27 Civ. Code § 3384.) Here, Save St. James has alleged that the terms of the Deed restrict the  
28 Property to “church purposes exclusively,” and has further alleged facts demonstrating that the  
Bishop’s sale of the Property to Legacy will result in violation of the Deed restriction. (See FAC  
at ¶¶ 6, 18, 20.) For example, the Amended Complaint alleges that “Legacy representatives  
publicly announced on or about June 15, 2015, that if it acquires the Property it intends to cause

1 a mixed-use residential development to be built on the Property (necessar[il]y eliminating  
2 Church use of the Property).” (*Id.* at ¶ 18.) Under these circumstances where a violation is  
3 imminent, Save St. James may pursue claims to prevent the violation. (See, e.g., *Save the*  
4 *Welwood Murray Memorial Library Committee v. City Council of the City of Palm Springs*  
5 (1989) 215 Cal.App.3d 1003 [upholding injunction prohibiting non-library uses in violation of  
6 library-use deed restriction prior to defendant’s sale of library property to a commercial  
7 developer]; *City of Oceanside v. McKenna* (1989) 215 Cal.App.3d 1420, 1422–23 [upholding  
8 injunction on leasing or offering to lease property, where defendant owner attempted to lease  
9 (but had not yet leased) his property where such lease would violate a condominium restriction  
10 limiting use to owner occupancy].)

11 The Bishop’s argument that Save St. James cannot assert a claim for injunctive relief  
12 because it is a remedy, and not a “cause of action,” is also based on a misapplication of  
13 California law, and is similarly unavailing. “[T]he phrase ‘cause of action’ is also ‘commonly  
14 used in pleading as applying only to the relief sought, even though the separately pleaded claims  
15 have origin in the same right or obligation.’” (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155,  
16 1159–60.) All that is required is that the complaint state some cause of action or relief to which  
17 the plaintiff is entitled. (See *Faunce v. Cate* (2013) 222 Cal.App.4th 166, 173 [holding that a  
18 demurrer is appropriate in this circumstance only where the claims of injunctive relief are  
19 “wholly derivative of other nonviable causes of action.”].)

20 The Amended Complaint alleges sufficient facts to constitute viable causes of action,  
21 even if “injunctive relief” cannot be a standalone cause of action. Indeed, Save St. James’s claim  
22 for declaratory relief (FAC at ¶¶ 32–37), alone, can serve as a basis for seeking injunctive relief.  
23 (See *City of South Pasadena v. Dep’t of Transportation* (1994) 29 Cal.App.4th 1280, 1294  
24 [holding that declaratory relief may be an underlying cause of action upon which a party may  
25 seek an injunction].) Therefore, the Court should overrule the demurrer. If the Court decides to  
26 sustain the demurrer on this basis, however, Save St. James should be granted leave to amend its  
27 complaint. Save St. James can easily cure any defect by converting the cause of action for  
28 injunctive relief into a prayer for relief on an actionable claim.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Save St. James respectfully requests that the Court deny the  
3 Bishop's demurrer to the Amended Complaint in its entirety. In the alternative, should the Court  
4 find any cause to sustain the Bishop's demurrer, Save St. James respectfully requests leave to  
5 amend to remedy any perceived deficiencies.

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8 Dated: October 28, 2015

Respectfully submitted,

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