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ANGELES

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8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11
12 SAVE ST. JAMES THE GREAT, a
California corporation,

13 Plaintiff,

14 v.

15 THE BISHOP OF THE PROTESTANT
16 EPISCOPAL CHURCH IN THE DIOCESE
OF LOS ANGELES, a corporation sole,
17 LEGACY PARTNERS RESIDENTIAL,
INC., a corporation; and DOES 1-20,

18 Defendants.
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Case No. 30-2015-00794789-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO
Judge David T. McEachen
Dept: C21

Date: November 24, 2015
Time: 1:30 p.m.
Ctrm: C21
Reservation No. 72236426

**NOTICE OF DEMURRER AND
DEMURRER OF DEFENDANT THE
BISHOP OF THE PROTESTANT
EPISCOPAL CHURCH IN LOS
ANGELES TO PLAINTIFF'S FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

*[Filed concurrently with Request for Judicial
Notice in Support of Demurrer]*

Complaint Filed: June 24, 2015
Trial Date: Not Set

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on November 24, 2015, at 1:30 p.m., or as
3 soon thereafter as the matter may be heard in Department C21 of the above-entitled Court,
4 located at 700 Civic Center Drive West, Santa Ana, California 92701, a hearing will be
5 held on the demurrer of defendant The Bishop of the Protestant Episcopal Church in Los
6 Angeles ("Church") to the verified first amended complaint filed by plaintiff Save St. James
7 The Great ("Save").

8 The demurrer is made upon the grounds that Save, a newly formed corporation,
9 (1) has no standing to enforce the 1945 church-use restriction and (2) the *use* restriction (if
10 it had not been quitclaimed away more than 30 years ago) could only restrict the property's
11 *use*, not its *transfer*, as Save seeks. These grounds are as specified in the following
12 demurrer. And the demurrer will be based on this notice, the demurrer, the attached
13 memorandum of points and authorities, the request for judicial notice filed concurrently
14 herewith, and upon all pleadings and documents on file in this action as well as oral
15 argument at the time of hearing.

16

17 Dated: September 18, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS
BRIAN R. BAUER

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By: 

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BRIAN R. BAUER
Attorneys for Defendant THE BISHOP
OF THE PROTESTANT EPISCOPAL
CHURCH IN LOS ANGELES

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1 **DEMURRER**

2 **Demurrer To The First Cause of Action Alleged Against The Church**

3 1. The First Cause of Action for Declaratory Relief does not state facts
4 sufficient to constitute a cause of action (Code Civ. Proc., § 430.10, subd. (e)) against the
5 Church. In this claim, Save, a newly formed corporation, seeks to enforce a *use* restriction
6 contained in a private, 1945 deed between *nonparty* Griffith Company and the Church by
7 stopping the *transfer* of the Church's property. But as this Court already determined in
8 ruling on Save's prior effort to obtain an injunction, Save, which has no interest in the
9 Church's property, lacks the requisite standing to enforce the deed restriction or to other-
10 wise prevent the sale of the property. (See, e.g., *Kent v. Koch* (1958) 166 Cal.App.2d 579.)
11 In fact, Save is twice removed from standing: as a corporation (a "person" under the law),
12 Save has no independent standing since it can claim no independent interest in the Church
13 property; and those it has self-appointed to represent – neighbors, parishioners, and
14 tenants – themselves have no interest in the Church property that would provide them with
15 standing. Moreover, the 1945 church-*use* restriction (had it not been quitclaimed by
16 Griffith to the Church in 1984) could only restrict the *use* of the Church's property; it could
17 *not* restrict the *transfer* of the property as Save seeks.

18 **Demurrer To The Second Cause of Action Alleged Against The Church**

19 1. The Second Cause of Action for Specific Enforcement of Deed Restriction
20 does not state facts sufficient to constitute a cause of action (Code Civ. Proc., § 430.10,
21 subd. (e)) against the Church. In this claim, Save, a newly formed corporation, seeks to
22 enforce a *use* restriction contained in a private, 1945 deed between *nonparty* Griffith
23 Company and the Church by stopping the *transfer* of the Church's property. But as this
24 Court already determined in ruling on Save's prior effort to obtain an injunction, Save,
25 which has no interest in the Church's property, lacks the requisite standing to enforce the
26 deed restriction or to otherwise prevent the sale of the property. (See, e.g., *Kent v. Koch*
27 (1958) 166 Cal.App.2d 579.) In fact, Save is twice removed from standing: as a
28 corporation (a "person" under the law), Save has no independent standing since it can claim

1 no independent interest in the Church property; and those it has self-appointed to
2 represent – neighbors, parishioners, and tenants – themselves have no interest in the Church
3 property that would provide them with standing. Moreover, the 1945 church-*use* restriction
4 (had it not been quitclaimed by Griffith to the Church in 1984) could only restrict the *use* of
5 the Church's property; it could *not* restrict the *transfer* of the property as Save seeks.

6 **Demurrer To The Third Cause of Action Alleged Against The Church**

7 1. The Third Cause of Action for Injunctive Relief does not state facts sufficient
8 to constitute a cause of action (Code Civ. Proc., § 430.10, subd. (e)) against the Church. In
9 this claim, Save, a newly formed corporation, seeks to enforce a *use* restriction contained in
10 a private, 1945 deed between *nonparty* Griffith Company and the Church by stopping the
11 *transfer* of the Church's property. But as this Court already determined in ruling on Save's
12 prior effort to obtain an injunction, Save, which has no interest in the Church's property,
13 lacks the requisite standing to enforce the deed restriction or to otherwise prevent the sale
14 of the property. (See, e.g., *Kent v. Koch* (1958) 166 Cal.App.2d 579.) In fact, Save is twice
15 removed from standing: as a corporation (a "person" under the law), Save has no
16 independent standing since it can claim no independent interest in the Church property; and
17 those it has self-appointed to represent – neighbors, parishioners, and tenants – themselves
18 have no interest in the Church property that would provide them with standing. Moreover,
19 the 1945 church-*use* restriction (had it not been quitclaimed by Griffith to the Church in
20 1984) could only restrict the *use* of the Church's property; it could *not* restrict the *transfer*
21 of the property as Save seeks.

22 WHEREFORE, based on the grounds stated above in the demurrer and in the
23 accompanying memorandum of points and authorities, the Church prays as follows:

24 1. That its demurrer be sustained on each and every ground thereof, without
25 leave to amend; and

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2. For such other and further relief as the Court deems just and proper.

Dated: September 18, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS
BRIAN R. BAUER

By: 

BRIAN R. BAUER
Attorneys for Defendant THE BISHOP
OF THE PROTESTANT EPISCOPAL
CHURCH IN LOS ANGELES

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION.**

3 Plaintiff Save St. James the Great ("Save"), a just-formed corporation, has appointed
4 itself to enforce a church-use restriction contained in a 1945 deed, a deed to which Save
5 was not a party. In fact, the deed was recorded 70 years before Save even came into
6 existence. And Save has not alleged, and cannot allege, that it has acquired any interest in
7 the deeded property. So Save has no standing to bring this suit. Moreover, even those
8 people Save appointed itself to represent – neighbors, parishioners, and tenants – have no
9 standing (*if* they had sued rather than Save) because they also lack any interest in the
10 property. So Save is twice removed from standing, a fatal defect in its amended complaint.
11 On top of this, the 1945 deed contains a church-*use* restriction – not a *transfer* restriction.
12 So even if Save had standing, its effort to have the Court stop a *transfer* based on the *use*
13 restriction is fatally defective. Accordingly, the Court can and should sustain defendant
14 The Bishop of the Protestant Episcopal Church in Los Angeles' ("Church") demurrer to the
15 amended complaint without further leave to amend.

16 More specifically, Save, which alleges it was incorporated in June 2015, has sued to
17 stop the Church from transferring property the Church owns in Newport Beach. Save bases
18 its suit on a church-use restriction found in a 1945 deed from *nonparty* Griffith Company to
19 the Church. Save does *not* pretend it represents the interests of the grantor, Griffith, the
20 only party with color of authority to enforce the church-use restriction (had Griffith not
21 quitclaimed that restriction to the Church in 1984). (See, e.g., *Kent v. Koch* (1958) 166
22 Cal.App.2d 579.) So Save has an obvious standing problem. The Church called out this
23 standing problem in a demurrer. And after milking every bit of delay the required notice
24 for the demurrer provided, Save amended its complaint on the day its opposition was due.
25 But Save's added allegations in its amended complaint do nothing to give it standing.

26 Save has tried to cure its standing defect by adding (1) allegations regarding its
27 status as a newly formed "California nonprofit benefit corporation" and (2) details
28

1 regarding some of the people Save has appointed itself to represent. But neither of these
2 new sets of allegations can revive Save's complaint from its fatal standing defect.

3 First, as a corporation, Save is an independent entity, a "person" in the eyes of the
4 law. But nowhere does Save claim that it independently has an interest in the Church's
5 property. Nor does Save claim that in 1945, Griffith intended to benefit Save, a corporation
6 that would not even come into existence for another 70 years. So Save simply cannot meet
7 the necessary requirement that "[e]very action must be prosecuted in the name of the real
8 party in interest" (Code Civ. Proc., § 367.)

9 Second, Save's claim to some type of derivative standing from individuals it calls
10 "members" – neighbors, parishioners, and tenants – falls apart in several ways. To begin,
11 Save's purported derivative standing fails because nothing in the law allows such derivative
12 standing. Instead, "[s]tanding is a threshold issue, because without it no justiciable
13 controversy exists." (*CashCall, Inc. v. Superior Court* (2008) 159 Cal.App.4th 273, 286.)
14 And, again, "[e]very action must be prosecuted in the name of the real party in interest"
15 (Code Civ. Proc., § 367.)

16 Next, none of Save's "members" have an interest in the Church's property that would
17 give them standing to enforce the 1945 church-use restriction. The law is settled that
18 restrictions in a deed can only be enforced by someone in privity of contract or privity of
19 estate. (*Kent v. Koch* (1958) 166 Cal.App.2d 579, 586.) Yet Save makes no allegation that
20 any of its "members" have privity of contract in the 1945 deed or privity of estate in the
21 Church property. It can't; Save's own verified complaint identifies *the Church* as both the
22 party to the 1945 deed and as the owner of the Church's property. Instead, Save alleges that
23 its "members" are third-party beneficiaries of the 1945 deed. But as a matter of law, they
24 cannot be. For a third party to have any rights under a contract, the law requires that "the
25 contracting parties must have intended to benefit that third party, and their intent must
26 appear from the terms of the contract." (*Kirst v. Silva* (1980) 103 Cal.App.3d 759, 763.)
27 Here, none of the "members" appear in the terms of the 1945 deed:
28

- 1 • "Congregants of the St. James the Great Episcopal Church" are *not* mentioned
2 in the 1945 deed. Indeed, Save admits that the current congregation did not
3 even exist until October 6, 2013 – 68 years after the execution of the 1945
4 deed;
- 5 • "Two individuals who are principals of tenants of the Property" are *not*
6 mentioned in the 1945 deed. And those leases were allegedly entered into "in
7 or about October 2014" and "in or about November 2013" – again almost 70
8 years after the execution of the 1945 deed;
- 9 • "Residents of Lido Isle . . . living near" the Church's property and "communi-
10 ty members" who formerly used the Church's property "for charitable
11 activities" are *not* named in the 1945 deed. And the law establishes that any
12 incidental benefit to neighbors arising from a deed restriction in which they
13 have no privity is wholly insufficient to create any rights. (See, e.g., *Walters*
14 *v. Calderon* (1972) 25 Cal.App.3d 863, 871); and
- 15 • "Relatives of former congregants whose remains are interred at the Property"
16 are likewise *not* named in the 1945 deed. And they can claim no property
17 interest the Church's property whatsoever.

18 Thus, even if the law provided for derivative standing, Save's "members" have no standing
19 to lend to Save.

20 In likely recognition of this core defect, Save tosses in a hail-Mary-pass allegation
21 near the end of its amended complaint: a contention that the Church failed to obtain the
22 "consent" of the "General Convention of the Episcopal Church," which Save claims is a
23 precondition to the sale of the Church's property. But this also fails to revive Save's
24 complaint. Nowhere does Save allege that the General Convention appointed Save to
25 represent the General Convention's interests, if any, with respect to the Church's property.
26 And, in any event, the General Convention, as the real party in interest, would need to be
27 the party to bring suit if it wanted to make this claim. (Code Civ. Proc., § 367.) So Save
28 has no standing to make this claim in place of the General Convention. Added to this, the

1 California Supreme Court has ruled that the Constitution prohibits courts from weighing in
2 on issues of church administration like this. (See *New v. Kroeger* (2008) 167 Cal.App.4th
3 800, 808.)

4 Putting aside Save's fatal standing problem, even if the church-use restriction were
5 enforceable (in reality, Griffith released the restriction long ago via a 1984 quitclaim deed),
6 nothing in the church-use restriction prohibits the *transfer* of the Church's property. In fact,
7 Save's own verified complaint states that the property has been transferred a number of
8 times since 1945. So Save's suit to stop the Church's sale fails for this stand-alone reason.

9 **2. STATEMENT OF FACTS.**

10 The Church is the owner of the Newport Beach property. (Compl., ¶ 2.) The prop-
11 erty was conveyed to the Church by a deed, dated July 10, 1945, from nonparty Griffith
12 Company. (Compl., ¶ 5; Church's Request for Judicial Notice ("RFJN"), Exh. 1.) The
13 1945 deed contains the following language:

14 The property conveyed shall be used for church purposes
15 exclusively and no building other than a church and
appurtenances may be erected, placed or maintained thereon.
16 The foregoing restriction shall be binding upon the grantee, his
17 successors and assigns. Upon the breach of the foregoing
condition, the title to said property hereby conveyed and to the
18 whole thereof shall become at once divested from the grantee
herein, his successors or assigns, and shall revert and revest in
the grantor, its successors or assigns. (*Id.*)

19 On January 18, 1984, Griffith Company executed and recorded a quitclaim deed.
20 (Compl., ¶ 10; RFJN, Exh. 2.) The 1984 quitclaim deed quitclaims as to "Lots 1197, 1198
21 and 1200 of Tract No. 907" of the Church's property and "specifically releases the Reverter
22 interest" stated in the 1945 deed. (*Id.*)

23 Recently, the Church entered into an agreement to sell the Church's property.
24 (Compl., ¶ 15).

25 On June 22, 2015, Save, filed its first amended complaint. The next day, Save filed
26 an ex parte application for a temporary restraining order and orders to show cause re:
27 preliminary injunction seeking to prevent the Church's sale of the property. At the June 24,
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1 2015, hearing on that application, this Court denied Save's application in its entirety
2 because of Save's lack of standing. (See Court's Minute Order dated June 24, 2015.)

3 Thereafter, the Church demurred on the ground that, as already determined by this
4 Court in denying Save's injunction effort, Save has no standing to enforce the church-use
5 restriction or otherwise "stop the sale" of the Church's property. Rather than face this
6 demurrer, and its certain success, Save delayed and then – on the day its opposition was
7 due – filed its first amended complaint.

8 Save now alleges in its first amended complaint that it is a California corporation
9 "which represents (1) congregants of the St. James the Great Episcopal Church . . . ,
10 (2) residents of Lido Isle and environs, living near the Church, (3) two individuals who are
11 the principals of tenants of the Property which were summarily removed from the Property
12 contrary to their leases and California law, (4) relatives of former congregants whose re-
13 mains are interred at the Property and who are currently being denied access to the Property
14 to visit the deceased and (5) community members, including the leader of Brownie Troop
15 3094, who used the Property for charitable activities and have now been prevented from
16 doing so. These and other members of Plaintiff have suffered harm as the direct result of
17 the Bishop's actions and have standing to bring this Action." (*Id.* at ¶ 1.)

18 Save also claims the Church is precluded from selling the Church's property based
19 on an alleged need for the Church to first obtain the consent of the General Convention of
20 the Episcopal Church. (*Id.* at ¶ 55.)

21 Based on these allegations, Save now asserts claims for declaratory relief, specific
22 enforcement of deed restriction, and injunctive relief, all of which seek "to stop the sale" of
23 the Church's property based on an anticipated breach of the alleged church-use restriction
24 from the 1945 deed. (*Id.*, ¶¶ 33-54.)

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1 **3. ALL OF THE CLAIMS ASSERTED AGAINST THE CHURCH IN SAVE'S**
2 **FIRST AMENDED COMPLAINT FAIL BECAUSE SAVE LACKS**
3 **STANDING.**

4 "Standing is a threshold issue, because without it no justiciable controversy exists."
5 (*CashCall, Inc. v. Superior Court* (2008) 159 Cal.App.4th 273, 286; see also *People v.*
6 *Superior Court* (2002) 103 Cal.App.4th 409, 420.) "Every action must be prosecuted in the
7 name of the real party in interest, except as otherwise provided by statute." (Code Civ.
8 Proc., § 367; see also *Del Mar Beach Club Owners Assn. v. Imperial Contracting Co.*
9 (1981) 123 Cal.App.3d 898, 906.) The real party in interest is the person who owns or
10 holds title to the claim or property involved, as opposed to others who may be interested or
11 benefited by the litigation. (*Jasmine Networks, Inc. v. Superior Court (Marvell*
12 *Semiconductor, Inc.)* (2009) 180 Cal.App.4th 980, 991; *Gantman v. United Pac. Ins. Co.*
13 (1991) 232 Cal.App.3d 1560, 1566.) Finally, the party must have an interest concrete and
14 actual, and not conjectural or hypothetical. (*Holmes v. California Nat. Guard* (2001) 90
15 Cal.App.4th 297, 315.)

16 **A. Just-Formed Save Lacks Standing To Enforce The Church-Use**
17 **Restriction.**

18 Deed restrictions are strictly construed. (*Wing v. Forest Lawn Cemetery Asso.*
19 (1940) 15 Cal.2d 472, 479.) Consistent with this, "[r]estrictions in a deed cannot be
20 enforced by one lot owner in a tract against another lot owner between whom there is
21 neither privity of contract nor privity of estate." (*Kent v. Koch, supra*, 166 Cal.App.2d 579,
22 586.) "In other words *unless specifically stated* to be for the benefit of other lot owners,
23 such covenants or restrictions are *enforceable only as between the original parties to the*
24 *deed, or their heirs or assigns.*" (*Id.*, emphasis added; see also *Townsend v. Allen* (1952)
25 114 Cal.App.2d 291, 297 [deed restrictions "are valid and enforceable at the suit of the
26 grantor so long as he continues to own any part of the tract for the benefit of which the
27 restrictions were exacted"; emphasis added]; *Bramwell v. Kuhle* (1960) 183 Cal.App.2d
28 767, 775-776 [same].)

1 Here, *nothing* in the 1945 deed generally, or the church-use restriction specifically,
2 creates any type of property interest by the newly formed Save. Save is not a party to the
3 1945 deed. (In fact, Save would not come into existence for another 70 years). Instead, the
4 church-use restriction is contained in a *private deed*, between two *private parties*: the
5 Church and Griffith (which is not a party to this lawsuit). Accordingly, as Save does not
6 purport to represent grantor Griffith, it has no standing to enforce the church-use restriction.

7 Save's amended complaint seeks to plead around this fatal defect by asserting that it
8 represents "the intended beneficiaries" of the church-use restriction. Specifically, Save
9 claims to represent the following groups of individuals, none of which are named plaintiffs
10 in this lawsuit: (1) "congregants of the St James the Great Episcopal Church," (2) "resi-
11 dents of Lido Isle and environs, living near" the Church's property, (3) "two individuals
12 who are principals of tenants of the Property," (4) "relatives of former congregants whose
13 remains are interred at the Property," and (5) "community members" who formerly used the
14 Church's property "for charitable activities." (Compl., ¶ 1.)

15 However, under California law, a person is *not* a third-party beneficiary unless the
16 contract is expressly for the benefit of that third party. "For a third party to qualify as a
17 beneficiary under a contract, the contracting parties must have intended to benefit that third
18 party, and their intent must appear from the terms of the contract." (*Kirst v. Silva* (1980)
19 103 Cal.App.3d 759, 763.) The fact that a contract, "if carried out to its terms, would inure
20 to [the benefit of a third party], is not sufficient to enable him to demand its fulfillment."
21 (*Walters v. Calderon* (1972) 25 Cal.App.3d 863, 871.)

22 Here, *nothing* in the 1945 deed purports to vest any interest in any party other than
23 the grantor (Griffith) and the grantee (the Church), nor does it purport to name or create any
24 third-party beneficiaries (let alone *specifically identify* Save or its alleged "members" as
25 those third-party beneficiaries). Indeed, the alleged interests in the Church's property of the
26 Save "members," who are *not* parties to this action, do not survive the barest of scrutiny:

- 27 • **Congregants.** Nothing in the 1945 deed identifies a particular congregation, let
28 alone individual congregants, as a beneficiaries under the 1945 deed. (In fact, no

1 particular domination of church is even mentioned.) But even if the 1945 deed
2 did this, Save's own complaint makes clear that the congregation Save purports
3 to represents did *not* even exist in 1945. Instead, Save alleges that the congrega-
4 tion was newly formed on October 6, 2013 – 68 years after the 1945 deed.
5 (Compl., ¶ 14.)

- 6 • **Principals of Former Tenants.** Again, nothing in the 1945 deed creates any
7 rights in future tenants at the Church's property. By Save's own admission, such
8 leases were entered into "in or about October 2014" and "in or about November
9 2013" – again almost 70 years after the 1945 deed. (Compl., ¶¶ 23-24.) More-
10 over, this is *not* an action to enforce the purported leases (e.g., a forcible-detainer
11 or breach-of-lease action). And in any event, property is routinely transferred
12 subject to existing leases. So if such leases existed, the buyer would simply
13 acquire the property subject to them. The leases would provide *no* basis to stop
14 the sale of the Church's property.
- 15 • **Residents and Community Members.** Again, nothing in the 1945 deed names
16 general residents or community members as beneficiaries. Simply because these
17 residents and community members may benefit from a church-use restriction,
18 such benefit "is not sufficient to enable [them] to demand" fulfillment of the
19 alleged restriction. (*Walters, supra*, 25 Cal.App.3d at p. 871.)
- 20 • **Relatives of Former Congregants.** Again, nothing in the 1945 deed names
21 *relatives* of former congregants as intended beneficiaries. Nor do these relatives
22 allegedly have any real property interest in the Church's property.

23 Since just-formed Save has no legal interest in the Church's property, Save lacks
24 standing as a matter of law. As such, Save's claims against the Church are meritless. And
25 the Court should dismiss them by sustaining the Church's demurrer in its entirety.

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1 **B. Save Is Not "The General Convention Of The Episcopal Church" And**
2 **Has No Standing To Act On Its Behalf.**

3 Buried at the end of its third cause of action (its injunctive relief "cause of action"),
4 Save also seeks to halt the sale of the Church's property based on an allegation that the
5 Church "has no authority to enter into or consummate the sale" of its property because it
6 "has not obtained the consent of the General Convention of the Episcopal Church."
7 (Compl., ¶ 55.) This claim also fails as a matter of law.

8 *First*, "injunctive relief" is a remedy – not an independent cause of action. (*Shell Oil*
9 *Co. v. Richter* (1942) 52 Cal.App.2d 164, 168.) A cause of action must exist before
10 injunctive relief may be granted. And Save has alleged no cause of action pertaining to the
11 supposed "lack of consent of the General Convention of the Episcopal Church" to support
12 such relief. (*Ibid.*)

13 *Second*, once again, Save has no standing to raise this claim. As shown above, Save,
14 a newly created corporation, has no ownership interest in the Church's property. Nor does
15 Save purport to have any authorization or authority from the General Convention of the
16 Episcopal Church to bring any such claims on behalf of the General Convention. Indeed,
17 Save is not even the "congregation" – the lowest level of the church – or its representative,
18 which is the congregation's "vestry." (See *New v. Kroeger, supra*, 167 Cal.App.4th 800,
19 808.) Rather, at most, Save has some "members" who might make up a subset of
20 churchgoers (to go with Save's "members" who are general community members and
21 persons merely living "near the church"). (Compl., ¶ 1.) There is no law that grants these
22 alleged congregants and noncongregants the ability to invoke the civil courts to interfere
23 with the internal, hierarchical structure and decision-making bodies of the Episcopal
24 Church, including the General Convention of the Episcopal Church. Moreover, if the
25 General Convention thought its rights had been impaired in connection with the sale of the
26 Church's property, it would have to be the General Convention that sued since it would be
27 the real party in interest. (Code Civ. Proc., § 367.)
28

1 *Third*, Save's entire claim is premised on a May 1, 2013, order from earlier litigation.
2 Save was not a party to that earlier litigation, so it would not have standing to enforce this
3 order. But even if Save had standing, the order does not do what Save claims. Save alleges
4 that the order precludes the transfer of the Church's property without obtaining the consent
5 of the General Convention of the Episcopal Church. (Compl., ¶ 55; see RFJN, Exh. 3.)
6 But on its face, the 2013 order simply confirms that "as a matter of law, the [Church's]
7 property now under the control of the Local Church [a group of former congregants and
8 some members of the church's former vestry] belongs to the Diocese and the Episcopal
9 Church." (*Ibid.*) So the 2013 order actually *confirms the Church's ownership* of the
10 property – as well as the complete lack of any interest in the local congregants and former
11 vestrymen in the property.

12 And contrary to Save's claim, there is nothing in the 2013 order that creates a trust
13 over the Church's property that "may not be amended or dissolved except by the General
14 Convention of the Episcopal Church"; the order says nothing like this. (RFJN, Exh. 3.)

15 *Fourth*, California courts have long recognized that it is manifestly *not* the province
16 of the courts to interfere with the internal procedural rules governing churches, particularly
17 hierarchical churches such as the Episcopal Church. (See, e.g., *New v. Kroger* (2008) 167
18 Cal.App.4th 800, 808, 818, 824-825.) Rather, "civil courts must accept as binding and
19 defer to decisions by religious tribunals with respect to religious doctrine, practice, faith,
20 ecclesiastical rule, discipline, *customs, law, and religious entity governance and*
21 *administration.*" (*Ibid.*, emphasis added.) This fundamental deference to churches, which
22 is rooted in the First Amendment to the United States Constitution's separation of church
23 and state, has limited civil courts' inquiry into property disputes only where there is an issue
24 as to *who* – i.e., what entity – owns the underlying property, and only then when the matter
25 can be decided without interpreting the instruments of ownership to resolve a religious
26 controversy. (*Id.* at p. 818.)

27 Here, there is no issue whatsoever that the Church owns the Church's property –
28 Save admits this. (Compl., ¶ 2.) The Church's policy decision to sell the property, and the

1 Church's compliance with the internal procedural rules the Church and the larger Episcopal
2 Church have implemented, are not justiciable issues to be resolved in the civil courts. (*New*
3 *v. Kroeger, supra*, 167 Cal.App.4th at pp. 818, 824-825 [civil courts are precluded from
4 delving into church matters of "entity governance and administration"]; *Maxwell v.*
5 *Brougher* (1950) 99 Cal.App.2d 824, 826 [court would not review whether congregation's
6 decision not to hear charges regarding alleged misconduct of pastor was in violation of
7 church rules]; *Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, 292–293 [court would
8 not review reaffiliation decision of voting membership to rejoin national church despite
9 claim that voting procedure in church regulations was not followed]; *Higgins v. Maher*
10 (1989) 210 Cal.App.3d 1168, 1173 [court would not review priest's termination by church
11 employer despite assumption that procedure by which plaintiff was terminated was contrary
12 to church law and regulations and termination was based on improper, false and fraudulent
13 motives].)

14 **4. THE CHURCH-USE RESTRICTION DOES NOT PROHIBIT THE**
15 **CONTEMPLATED TRANSFER OF THE PROPERTY.**

16 Save's action seeks "to stop the sale" of the Church's property on the grounds that
17 such contemplated sale "would violate specific language in the deed granting the property
18 solely for church purposes." (Compl., p. 1.) However, this claim also fails on the plain
19 language of the 1945 deed.

20 Under California law, deed restrictions are "strictly construed, any doubt being
21 resolved in favor of the free use of the land." (*Wing v. Forest Lawn Cemetery Assn., supra*,
22 15 Cal.2d at p. 479.) Here, even if Save had a right to enforce the church-use restriction,
23 *nothing* in the church-use restriction restricts the Church's ability to *transfer* the property.
24 Indeed, as alleged in Save's complaint, title to the property has been transferred numerous
25 times since 1945. (Compl., ¶ 11.) Accordingly, Save cannot stop the *transfer* of the
26 Church's property to Legacy, and Save's claims fail on this stand-alone basis.

27
28

1 **5. CONCLUSION.**

2 Save does not claim an interest in the Church's property. And Save, which was
3 created this June, did not exist in 1945. So it cannot be an intended beneficiary of the 1945
4 deed. And no law allows Save to coattail on the standing of its "members." But even if
5 such law existed, those "members" also lack standing. In short, Save's complaint is
6 irreparably defective. Save's suit has already delayed the Church's sale of the property for
7 months. This is wholly improper, and the Church respectfully requests that this Court
8 sustain its demurrer without further leave to amend.

9

10 Dated: September 18, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS
BRIAN R. BAUER

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12

13

By: 

14

BRIAN R. BAUER
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OF THE PROTESTANT EPISCOPAL
CHURCH IN LOS ANGELES

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1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of
3 eighteen (18) and am not a party to this action. My business address is 1900 Main Street,
4 Fifth Floor, Irvine, California 92614-7321.

5 On September 18, 2015, I served the within document described as NOTICE OF
6 DEMURRER AND DEMURRER OF DEFENDANT THE BISHOP OF THE
7 PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES TO PLAINTIFF'S FIRST
8 AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN
9 SUPPORT THEREOF on the interested parties in this action as stated below:

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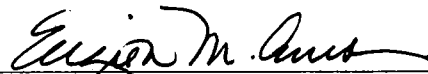
17 **BY MAIL:** I placed true copies of the document in sealed envelopes or packages
18 addressed as indicated above on the above-mentioned date in Irvine, California for
19 collection and mailing pursuant to the firm's ordinary business practice. I am
20 familiar with the firm's practice of collection and processing correspondence for
21 mailing. Under that practice they would be deposited with the U.S. Postal Service
22 on that same day in the ordinary course of business. I am aware that on motion of
23 party served, service is presumed invalid if postal cancellation date or postage meter
24 date is more than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on September 18, 2015, at Irvine, California.

28 ELIZABETH M. ANDERSON

(Type or print name)



(Signature of Declarant)