

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 The Protestant Episcopal Church In The)
 Diocese Of South Carolina; The Trustees of)
 The Protestant Episcopal Church in South)
 Carolina, a South Carolina Corporate Body;)
 All Saints Protestant Episcopal Church, Inc.;)
 Christ St. Paul's Episcopal Church; Christ)
 The King, Waccamaw; Church Of The)
 Cross, Inc. and Church Of The Cross)
 Declaration Of Trust; Church Of The)
 Holy Comforter;)
 Church Of The Redeemer;)
 Holy Trinity Episcopal Church; Saint)
 Luke's Church, Hilton Head; Saint)
 Matthews Church; St. Bartholomews)
 Episcopal Church; St. Davids Church;)
 St. James' Church, James Island, S.C.; St.)
 John's Episcopal Church of Florence, S.C.;)
 St. Matthias Episcopal Church, Inc.; St.)
 Paul's Episcopal Church of Bennettsville,)
 Inc.; St. Paul's Episcopal Church of Conway;))
 The Church Of St. Luke and St. Paul,)
 Radcliffeboro; The Church Of Our Saviour)
 Of The Diocese of South Carolina; The)
 Church Of The Epiphany (Episcopal); The)
 Church Of The Good Shepherd, Charleston,)
 SC; The Church Of The Resurrection,)
 Surfside; The Protestant Episcopal Church,)
 Of The Parish Of Saint Philip, In Charleston,))
 In The State Of South Carolina; The)
 Protestant Episcopal Church, The Parish Of)
 Saint Michael, In Charleston, In The State)
 Of South Carolina and St. Michael's Church)
 Declaration Of Trust; The Vestry and Church)
 Wardens Of The Episcopal Church Of The)
 Parish Of Prince George Winyah; The Vestry)
 And Church Wardens Of The Episcopal)
 Church Of The Parish Of St. Helena and The)
 Parish Church of St. Helena Trust; The)
 Vestry and Church Wardens Of The)
 Episcopal Church Of The Parish Of St.)
 Matthew; The Vestry and Church Wardens)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2013 JAN 23 PM 5:10
 CLERK OF COURT
 DORCHESTER COUNTY
 FILED-RECORDED

Case No. 2013-CP-18-00013

TEMPORARY RESTRAINING ORDER

ISSUED AT 5:11 PM

JANUARY 23, 2013

This court has considered the Amended Complaint in its relevant verified portions; the Affidavits of James B. Lewis, Greg Snyder, Beth Snyder, Nancy J. Armstrong, Andrew S. Platte and Milan R. Shuler; and the memorandum and argument of counsel. The Court finds the following relevant facts are amply supported by the affidavits and the relevant parts of the Verified Complaint.

The Diocese of South Carolina is the owner of three names and one mark registered with the South Carolina Secretary of State. All were registered on November 5, 2010. The registered names are: “The Protestant Episcopal Church in the Diocese of South Carolina”; “The Diocese of South Carolina”; and “The Episcopal Diocese of South Carolina”. The mark or seal of the Diocese of South Carolina was also registered with the South Carolina Secretary of State.

The Diocese of South Carolina withdrew its association with the Defendant. After that withdrawal, Plaintiffs through their affidavits allege that the Defendant, through its agents and those under its control or those acting in concert with it, began using these registered names and seal in a variety of ways, which have misled others as to the ownership of these registered names and seal. It is represented to the Court that a meeting is planned for January 26, 2013 in Charleston, South Carolina, and Plaintiffs contend that the intent of this meeting appears to be to make unauthorized corporate changes regarding Plaintiff.

This Court concludes as a matter of law that it has jurisdiction to hear and determine the issues raised by this motion and that this Court has authority under Rule 65(b), SCRCF, to issue a temporary restraining order. “Injunctive relief is equitable in nature,” *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010) issued to prevent irreparable injury upon the showing of a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). See also

Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 454-55, 626 S.E.2d 34, 36 (Ct. App. 2005) holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). While this is an action between parties whose business happens to be religious, it nevertheless involves civil law issues concerning corporate control and interests in property. The South Carolina Supreme Court has “explicitly reaffirmed that when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach,” *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South Carolina*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009). The wrongful assumption of an existing commercial or charitable corporation’s name by another entity is subject to injunctive relief. *Planters' Fertilizer & Phosphate Co. v. Planters' Fertilizer Co.*, 135 S.C. 282, 133 S.E. 706 (1926); *Purcell v. Summers*, 145 F.2d 979 (4th Cir. 1944). The statutes upon which part of this action is based and the cases clearly establish that existing South Carolina corporations are to be protected from those who seek to assume their identities. Injunctive relief is specified in the statutes as a remedy for that conduct. “When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present ‘a fair question to raise as to the existence of such a right.’” *Peek*, 367 S.C. at 456 (quoting *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912)). A *prima facie* showing has been made as to the likelihood of success on the merits.

This Court further finds that it “clearly appears from specific facts shown”, which have been submitted under oath that “immediate and irreparable injury, damage or loss” will result to the Diocese of South Carolina without an adequate legal remedy before notice can be served and a hearing had thereon. The reasons for this finding are as follows:

The Diocese of South Carolina has three registered names and one registered mark and, as shown by affidavit, the Defendant, or others appearing to act in its name or under its control,

have allegedly and repeatedly used these names and mark, including those so similar that they are perceived to be the Diocese of South Carolina. This use has the clear ability to cause extraordinary confusion over the identity of the corporate entity of The Diocese of South Carolina. The Diocese of South Carolina has been using these registered names and mark in the ordinary course of its business as the Diocese of South Carolina, both before and after its association with the Defendant. By affidavit Plaintiff states its concern that a meeting scheduled to be held January 26, 2013, by those purporting to be this corporate entity but who in reality are not the corporate entity of the Plaintiff, could intentionally affect the corporate status of those uninformed that the actors are not, in reality, the corporation. In order to avoid any confusion, this Order is issued.

The issue at bar is whether the taking of action by those not authorized with corporate authority will so infringe on the rights of the Diocese of South Carolina, that the Diocese of South Carolina will suffer immediate and irreparable harm for which the law cannot adequately remedy. The Court is convinced this burden has been met. The use of the names and marks of the Diocese of South Carolina can affect its good will, its third party relationships and create confusion among those with whom it deals in the ordinary course of its business. In short, the ongoing business of the Diocese of South Carolina could be irreparably injured if corporate changes occur in its name, implemented by those without actual corporate authority.

The Fourth Circuit Court of Appeals stated, in a case that involved the unlawful use of a church's name by another religious entity in South Carolina, that the "use by one organization of the name of another for the purpose of appropriating the standing and good will which the other has built up is a well recognized form of wrong" and courts "have not hesitated, in any jurisdiction, to use the full power of the injunctive process." *Purcell v. Summers*, 145 F.2d 979,

984 (4th Cir. 1944). “[T]he question is, not whether they have the right to use ... ‘Episcopal’ in a new name so constructed as to avoid confusion, but whether they have the right to use the old name in a way that amounts, as we think it does, to implied misrepresentation to the damage of plaintiffs.” *Id.* at 988.

Based upon the affidavits of Plaintiffs, this Court finds that the *ex parte* nature of this proceeding was necessary and proper.

IT IS THEREFORE ORDERED.

No individual, organization, association or entity, whether incorporated or not, may use, assume, or adopt in any way, directly or indirectly, the registered names and the seal or mark of The Protestant Episcopal Church in the Diocese of South Carolina as are set out below or any names or seal that may be perceived to be those names and seal or mark. The registered names and mark that are subject to this order are: the seal of the Diocese of South Carolina as described in its registration with the South Carolina Secretary of State; the name “The Protestant Episcopal Church in the Diocese of South Carolina”, as registered with the South Carolina Secretary of State; the name “The Diocese of South Carolina”, as registered with the South Carolina Secretary of State; and the name “The Episcopal Diocese of South Carolina”, as registered with the South Carolina Secretary of State. Again, this seal and these names are those registered by this Plaintiff corporation with the South Carolina Secretary of State.

The following persons employed by, or serving as the officers or directors of the Diocese of South Carolina or of the Trustees are not subject to this order:

- **Diocese of South Carolina:** Mark J. Lawrence, Chief Operating Officer; James B. Lewis, Registered Agent; John Wallace, Treasurer; Nancy J. Armstrong, Assistant Treasurer; Joy Hunter, Director of Communications; Paul C. Fuener,

President and Director; John M. Barr, III, Director; J. Reid Boylston, III, Director; Ann Hester Willis, Director and Secretary; Julian Jeffords, III, Director; William G. Lyles, III, Director; Ed Mitman, Director; Andrew O'Dell, Director; Elizabeth Pennewill, Director; Suzanne Schwank, Director; Gregory A. Snyder, Director; A. Kenneth Weldon, Director;

- **Trustees:** Mark J. Lawrence, President; Craige Borrett, Trustee and Secretary; Jeffrey Miller, Trustee; Robert Horn, Trustee; Robert Kilgo, Trustee; Robert Kunes, Trustee; Glynn Watson, Trustee; and Ivan Anderson, Trustee.

This Order is issued this 23rd day of January at 5:11 pm. A hearing to determine whether the present order should be extended or a temporary injunction should issue is set for February 1, 2013, at 9 am, in the Richland County courthouse.

I find that adequate security for the issuance of this Order under Rule 65(c), South Carolina Rules of Civil Procedure to be \$50,000.00 which sum, in cash or its equivalent, shall be deposited with the Dorchester County Clerk's Office prior to the filing of this Order.

AND IT IS SO ORDERED!



Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

January 23, 2013