

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER  
MINUTE ORDER**

Date: 07/10/2009

Time: 12:13:24 AM

Dept: CX104

Judicial Officer Presiding: Judge Thierry Patrick Colaw  
Clerk: P. Rief

Bailiff/Court Attendant: None

Reporter: None

Case Init. Date: 02/06/2008

Case No: JCCP 4392

Case Title: Episcopal Church Cases

Case Category: Civil - Unlimited

Case Type: Other Real Property

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Event Type: Chambers Work

Causal Document & Date Filed:

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**Appearances:**

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1. DEMURRER BY CROSS-DEFENDANTS RASMUSSEN TO CROSS-COMPLAINT IN RASMUSSEN v. THE REV. PRAVEEN BUNYAN
2. MOTION BY PLAINTIFF IN INTERVENTION, THE EPISCOPAL CHURCH, FOR JUDGMENT ON THE PLEADINGS
3. JOINDER BY PLAINTIFFS JANE HYDE RASMUSSEN, THE RIGHT REV. ROBERT M. ANDERSON, THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, AND THE RIGHT REV. J. JON BRUNO, BISHOP DIOCESAN OF THE EPISCOPAL DIOCESE OF LOS ANGELES IN THE EPISCOPAL CHURCH'S MOTION FOR JUDGMENT ON THE PLEADINGS

*In re included action Rasmussen v. The Rev. Praveen Bunyan (Orange County case no. 04CC00647)*

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 07/02/2009 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

See attached Notice of Ruling.

Clerk to give notice to Holme, Roberts & Owen, LLP and Holme, Roberts & Owen, LLP to give notice to all other parties.

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Calendar No.:

Coordination Proceeding Special Title  
[California Rules of Court Rule 3.550]

**EPISCOPAL CHURCH CASES**

Included Actions:

*Rasmussen v. The Rev. Praveen Bunyan*  
[Orange County Case No. 04CC00647];

*Adair v. The Rev. Jose Poch*  
[Los Angeles County Case No. BC321101]; and

*O'Halloran v. The Rev. William A. Thompson*  
[Los Angeles County Case No. BC321102].

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THE RECTOR WARDENS AND  
VESTRYMEN OF ST. JAMES PARISH IN  
NEWPORT BEACH, CALIFORNIA, a  
California nonprofit religious corporation,

Cross-Complainant,

v.

THE PROTESTANT EPISCOPAL CHURCH  
IN THE DIOCESE OF LOS ANGELES, a  
California nonprofit religious corporation; THE  
BISHOP OF THE PROTESTANT  
EPISCOPAL CHURCH IN LOS ANGELES, a  
California corporation sole; etc., *et alia*,

Cross-Defendants.

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JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4392

**NOTICE OF RULING**

1. The Court has reviewed the points and authorities and taken argument on the Demurrer of Cross-Defendant Rasmussen ["Rasmussen"] to the Cross-Complaint of The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, California, Cross-Complainants ["St. James"]. What follows is the ruling on that demurrer.

A. The request by St James for Judicial Notice is granted. However, the Court cannot accept the documents for the truth of the contents thereof. [*Sosinky v. Grant* (1992) 6 Cal. App. 4th 1548, 1564-1569; *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal. App. 4th 97, 113.]

B. The request by Rasmussen for Judicial Notice is granted. However, the Court cannot accept the documents for the truth of the contents thereof. [*Sosinky v. Grant* (1992) 6 Cal. App. 4th 1548, 1564-1569; *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal. App. 4th 97, 113.]

C. The demurrer is overruled. In the decision of the California Supreme Court in *Episcopal Church Cases* [2009] 45 Cal.4th 467 as modified 25 February 2009, the Supreme Court clarified that it "granted review to decide whether this action is subject to the special motion to strike under *Code of Civil Procedure section 425.16* and to address the merits of the church property dispute." [*Episcopal Church Cases, supra*, at page 476.] The changes made to the opinion in the modified decision are consistent with due process principles and the record of the proceedings before the Supreme Court, the Court of Appeal, and the trial court. The Supreme Court's final decision makes clear that neither two lower courts decided the merits of the dispute, but only "addressed" them. It must be emphasized that the matter was on appeal from the grant of a preliminary motion under C.C.P. § 425.16.

(1) In the Court of Appeal opinion, that Court reviewed the granting by the trial court of an anti-SLAPP motion under C.C.P. § 425.16. The Court of Appeal held that the trial court erred in its analysis of the first prong of the requirements of 425.16 by finding that the plaintiffs' lawsuit qualified for anti-SLAPP treatment. The Court held that it did not. The Court then proceeded to analyze the second prong of the statute to determine whether or not the trial court erred in determining that the Plaintiffs had not established the probable validity of the claim. With C.C.P. § 425.16 and prong two as a backdrop, the Court of Appeal held that it was error also for the trial court to grant the motion based upon its determination that it was unlikely that Plaintiffs would prevail. The Court of Appeal held that

neither prong of the statute was satisfied. The Court of Appeal reversed the trial court's judgments of dismissal of Plaintiffs' complaint.

(2) The Supreme Court granted review. It held, as did the appellate court, that the first prong had not been satisfied. The Plaintiffs' lawsuit did not qualify for anti-SLAPP treatment. The Supreme Court then went on to address the case [under the second prong of 425.16] and held that on the record before them the Plaintiffs' case had merit. In other words, neither prong of C.C.P. § 425.16 was satisfied in the Supreme Court's analysis. The Supreme Court affirmed the judgment of the Court of Appeal which had previously ordered that the dismissals by the trial court were reversed and that "further proceedings shall be consistent with this opinion." This is not trial on the merits, and, in modifying its opinion, the Supreme Court underlined this by adding the words "on this record" [emphasis added] at several points in the opinion. It was the anti-SLAPP motion alone that provided the mechanism by which the case was appealed. The waiver issue was not before the Supreme Court or the Court of Appeal. The waiver issue was neither expressly nor impliedly decided by either court.

D. The Moving Party shall answer within 21 days. If they contend that the reasoning of the Supreme Court based upon its analysis of the "neutral principles of law" approach and the review and consideration of evidentiary sources such as deeds to the property in dispute, the articles of incorporation, the general church's constitution, canons, rules, and relevant statutes, including Corp. Code § 9142, merit judgment on those facts and law alone, they can move for summary judgment at the appropriate juncture in the proceedings.

2. The Court has reviewed the points and authorities and taken argument on the Motion by Plaintiff in Intervention for Judgment on the Pleadings on its Complaint as against the St. James defendants.

A. The Requests for Judicial Notice are granted, however, the Court cannot accept the documents for the truth of the contents thereof. [*Sosinky v. Grant* (1992) 6 Cal. App. 4th 1548, 1564-1569; *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal. App. 4th 97, 113.]

B. The Motion is Denied. The answer states sufficient facts to constitute a defense.

3. The request by the Rasmussen Plaintiffs for Joinder in the Motion by The Episcopal Church for Judgment on the Pleadings is granted. The Motion is denied for the same reasons set forth above in the underlying Motion for Judgment on the Pleadings.

4. The Clerk shall give Notice.