

IN THE CHANCERY COURT FOR THE DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED

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THE CONVENTION OF THE)
PROTESTANT EPISCOPAL CHURCH IN)
THE DIOCESE OF TENNESSEE d/b/a THE)
DIOCESE OF TENNESSEE, a Tennessee)
Corporation and THE RIGHT REVEREND)
JOHN C. BAUERSCHMIDT,)

Plaintiffs,

v.

FATHER JAMES M. GUILL, as Rector of St.)
Andrew's Episcopal Church, HENRY H.)
CARPENTER, JR., as the former Senior)
Warden of St. Andrew's Episcopal Church,)
and VICKY DAVIS, MICHAEL CLIMER,)
ANNE ROSS, CARTER PHILLIPS, MAC)
DAVIS, III, PAUL DOWNEY, and KEITH)
MOORMAN as former Vestry Members and)
members of the Board of Directors of St.)
Andrew's Episcopal Church, and THE)
RECTOR, WARDENS, AND VESTRYMEN)
OF ST. ANDREW'S PARISH, a Tennessee)
Corporation,)

Defendants.

No. 09-2092-III
JURY DEMANDED

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE
A CLAIM AGAINST DEFENDANTS, FATHER JAMES M. GUILL, HENRY H.
CARPENTER, JR., VICKY DAVIS, MICHAEL CLIMER, ANNE ROSS, CARTER
PHILLIPS, MAC DAVIS, III, PAUL DOWNEY, AND KEITH MOORMAN**

Come now Defendants, Father James M. Guill, Henry H. Carpenter, Jr., Vicky Davis, Michael Climer, Anne Ross, Carter Phillips, Mac Davis, III, Paul Downey, and Keith Moorman, ("Individual Defendants"), by and through counsel, and submit this Memorandum in Support of their Motion to Dismiss for Failure to State a Claim.

BACKGROUND

This lawsuit arises from a dispute as to the ownership and title of property located at 3500 Woodmont Boulevard Nashville, Tennessee ("Woodmont Property"). According to the Complaint, plaintiff, the Convention of the Protestant Episcopal Church in the Diocese of Tennessee d/b/a the Diocese of Tennessee ("Diocese"), acquired the Woodmont Property in 1960 by Warranty Deed from another Episcopal church, the Church of the Advent.¹ (Complaint at ¶ 57; Exhibit 6.) Thereafter, in 1966, the Diocese "transferred" the Woodmont Property to St. Andrew's. The transfer was achieved via a transaction between the Diocese and the Rector, Wardens, and Vestrymen of St. Andrew's Parish ("St. Andrew's Church"), a corporate entity.² (Id. at ¶ 60; Exhibit 7.)

According to the Complaint, the St. Andrew's Church occupied the Woodmont Property from 1966 through 2006 without incident. (Id. at ¶ 62.) However, on October 2, 2006, according to the plaintiffs' allegations, St. Andrew's Church indicated its intent to disaffiliate from the Diocese. (Id. at ¶ 65.) In addition, in 2006 St. Andrew's Church ceased filing the reports necessary to remain in good standing with the Diocese. (Complaint at ¶ 66.) In response to the decision of St. Andrew's Church to cease filing annual reports and its decision to sever its relationship with the Diocese, the Diocese has instituted the action at hand to reclaim the Woodmont Property. (Id. at ¶¶ 75-77.)

¹ The individual defendants assume the facts as alleged in the plaintiffs' Complaint for the purpose of this Motion only. See Bell ex rel. Snyder, v. Icard, Merrill, Cullis, Timm, Furen, and Ginsburg, P.A., 986 S.W.2d 550, 554 (Tenn. 1999).

² Notwithstanding the ambiguities of the Complaint and inaccurate reports of the news media, the "transfer" described in the Complaint was conducted at arms-length and valuable consideration was exchanged.

Although this lawsuit, as alleged, seeks a declaration of the property rights between the Diocese and St. Andrew's Church, the plaintiffs have named a number of individuals, both current and former members of the governing body of the corporation, as defendants. (See Complaint at ¶¶ 3, 79-82; Prayer for Relief ¶¶ A-D.) Other than naming the individuals and describing their actions on behalf of St. Andrew's Church, in nearly one hundred paragraphs of a twenty-three page Complaint the plaintiffs have not set forth a single allegation which would implicate the liability of individual members of St. Andrew's. Instead, plaintiffs have only alleged that the Individual Defendants, as members of the governing body of St. Andrew's Church, were responsible for the decision that St. Andrew's Church, a corporate entity, would sever its ties with the Diocese. (Id. at ¶¶ 65-67.) Therefore, for the reasons stated herein, the Complaint fails to state a claim against the Individual Defendants and should be dismissed.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint, not the strength of the proof to support the alleged claims. Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen and Ginsburg, P.A., 986 S.W.2d 550, 554 (Tenn. 1999); see also Tenn. R. Civ. P. 12.02(6) (2009). When considering such a motion, a court's determination is based solely on the complaint, and for the purposes of the motion, the court takes all of the allegations in the complaint as true. Bell, 986 S.W.2d at 554; see also, Cook v. Spinnaker's of Rivergate, 878 S.W.2d 934, 938 (Tenn. 1994).

A motion to dismiss should be granted if the plaintiff cannot prove any set of facts that would entitle him to relief under the theory alleged. Id. Although a complaint "need not contain in minute detail the facts that give rise to the claim," the complaint must at least "contain allegations from which an inference may fairly be drawn that evidence on these material points

will be introduced at trial." Trau-Med of America, Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 704 (Tenn. 2002)(citing Donaldson v. Donaldson, 557 S.W.2d 60, 61 (Tenn.1977)). Furthermore, this Court has no duty "to create a claim that the pleader does not spell out in his complaint." Id. (citing Clark v. National Travelers Life Ins. Co., 518 F.2d 1167 (6th Cir.1975)).

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF AGAINST THE INDIVIDUAL DEFENDANTS.

A corporation is able to act only through its agents. Allied Sound, Inc., v. Neely, 909 S.W.2d 815 (Tenn. Ct. App. 1995). Consequently, in the usual case a director or other officer "of a corporation is an agent of the corporation and is liable only to the corporation." Schlater v. Haynie, 833 S.W.2d 919, 924 (Tenn. Ct. App. 1991); see also Forrester v. Stockstill, 869 S.W.2d 328, 334 (Tenn. 1994). While a director may be personally liable for her tortious conduct regardless of her capacity as an agent, she cannot be held personally liable for the acts of her corporate principal except in only unusual circumstances. See Schlater, 833 S.W.2d at 924 (discussing the necessity of demonstrating facts which justify corporate veil piercing and that such relief is to be granted sparingly); see also, Allied Sound, 909 S.W.2d at 819 (acknowledging that agents of a corporation may be liable for their own torts). However, as a preliminary matter any such theory must at the very least be alleged in the Complaint. See Trau-Med, 71 S.W.3d at 704.

In this case, the plaintiffs have sued the Individual Defendants in their representative capacity only and for their undertakings on behalf of a corporate entity, St. Andrew's Church. Specifically, the Complaint alleges that St. Andrew's Church is a "religious corporation organized under the laws of Tennessee." (Complaint at ¶ 2.) With respect to the Individual Defendants, the Complaint alleges that they are "former elected leaders of St. Andrew's

Episcopal Church." (Id. at ¶ 3.) According to the plaintiffs, the Individual Defendants hold "de facto control" of St. Andrew's Church. (Id. at ¶ 4.)

Moreover, the only factual allegations involving any conduct of the Individual Defendants involves the "decision of the [Individual Defendants] to separate from the Diocese and Episcopal Church and thereby control the Woodmont Property...." (Id. at ¶¶ 8, 65-67.) According to the Complaint, the Individual Defendants' decision to cause St. Andrew's Church to disaffiliate occurred while "[individual defendants] while serving as members of the Vestry...." (Id.) The plaintiffs set forth no allegation which might implicate personal liability of the Individual Defendants to the plaintiffs while acting on behalf of St. Andrew's Church. Rather, every factual allegation in the Complaint regarding the Individual Defendants concerns decisions made by the Individual Defendants while acting as vestry members and in their representative capacity of St. Andrew's. (See Complaint, passim.)

Furthermore, the Complaint alleges a cause of action against only a corporate entity. (Complaint at ¶¶ 79-83.) The relief sought by plaintiffs' Complaint is against only St. Andrew's Church, and plaintiffs simply ask this Court to declare the rights and obligations with respect to property titled in the name of a corporation. (Prayer for Relief ¶¶ A-D.) The Individual Defendants do not claim any personal interest in any real or personal property belonging to St. Andrew's Church, and the plaintiffs certainly do not appear to contend that the Individual Defendants have somehow personally profited by their use of the Woodmont Property. Moreover, the Individual Defendants' occupancy and use of the Woodmont Property is part of their service as members of the governing body of the incorporated Parish and as members of St. Andrew's congregation.

Thus, because the Complaint fails to allege any conduct or special circumstance implicating the personal liability of the Individual Defendants, who acted on behalf of St. Andrew's Church, a corporation, and because the Complaint only seeks relief against St. Andrew's Church, the Complaint fails to state a claim against the Individual Defendants.

II. THE INDIVIDUAL MEMBERS OF THE GOVERNING BODY OF ST. ANDREW'S ARE STATUTORILY IMMUNE FROM SUIT.

Notwithstanding the foregoing, the Individual Defendants as members of the governing body of a nonprofit organization are immune from suit in Tennessee. Tenn. Code Ann. § 48-58-601(c) provides in part:

All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations.

The foregoing statute carves out a limited exception to this rule by removing immunity for only alleged conduct amounting to "willful, wanton, or gross negligence." Id. The proclaimed purpose of the foregoing statutory provision, is that members of nonprofit boards "must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers." Id. Thus, statutorily the Individual Defendants are immune from suits arising from the "conduct of the affairs" of St. Andrew's Church.


The entirety of the events giving rise to the instant action arise not from any act of the individuals on their personal endeavor, but, rather, the lawsuit stems from a decision of the members of the governing body of a nonprofit corporation. (Complaint at ¶¶ 65-67.) Specifically, the Individual Defendants in their capacity as members of the governing body of St. Andrew's Church made a decision that the church would sever ties with the Diocese. (Id.) The Complaint does not allege any conduct which would amount to "willful, wanton, or gross

negligence." (See Complaint, passim.) As such, the Individual Defendants are immune from any suit founded upon their actions as agents of a nonprofit corporation.

CONCLUSION

For the foregoing reasons, defendants, Father James M. Guill, Henry H. Carpenter, Jr., Vicky Davis, Michael Climer, Anne Ross, Carter Phillips, Mac Davis, III, Paul Downey, and Keith Moorman, respectfully request that this Court enter an Order dismissing this action with respect to all claims asserted against them.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via United States Mail, postage prepaid, on this 2nd day of December, 2009, to the following:

J. Richard Lodge
Anthony J. McFarland
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