WONDERFUL NEWS!

Federal Judge Remands Diocese of SC Case to State Court

U.S. District Judge C. Weston Houck today remanded the case to the South Carolina Circuit Court. In informing the parties, Judge Houck said,

"If this Court determined that a case may be removed based on federal question jurisdiction whenever a defendant attributed a federal constitutional issue not alleged or advanced in a well-pleaded complaint, federal question jurisdiction could potentially be expanded to all cases containing tacit First Amendment issues."

Diocesan officials expressed their gratitude for the decision.
"We are very pleased that Judge Houck remanded the case to state court," said Jim Lewis, Canon to Bishop Lawrence. "The issues involved are essentially those of legal identity and are wholly determined by state law, so the most appropriate place to settle is clearly in state court, where we first took the matter."

With the case remanded, it returns to the court of South Carolina Circuit Judge Dianne S. Goodstein.

For more info, visit the Diocese's web site: ***dioceseofsc.org***

Go to the next page to read a 3-page article by A. S. Haley, the Anglican Curmudgeon…….

Anglican Curmudgeon

JUNE 10, 2013

Federal Judge Returns South Carolina Case to State Court

In a thoroughly researched and well-reasoned opinion released today, Senior District Judge C. Weston Houck of the United States District Court for the District of South Carolina, Charleston Division, ordered that the trademark infringement and declaratory relief action -- originally brought in State court by Bishop Mark Lawrence's Diocese and its parishes, but "removed" to federal court by the Episcopal Church in South Carolina -- be returned to State court for further adjudication. Judge Houck's order finds that there is no basis upon which any federal court could assert original jurisdiction over the claims asserted in the Lawrence complaint.

The order is a veritable model of how to proceed in analyzing and dissecting opposing arguments, and then applying the law to the facts so discerned. Judge Houck begins by describing the parties to the dispute: the plaintiff Episcopal Diocese of South Carolina, a non-profit religious corporation organized under South Carolina law in 1973; the plaintiff Trustees, also a non-profit corporation organized under South Carolina law in 1902 for the purpose of holding title to real property of the Diocese; and the thirty-five plaintiff parishes, each of which is a separate religious corporation under South Carolina law.

The defendants -- the ones who removed the suit to federal court -- are the Episcopal Church in South Carolina, an unincorporated association formed in 2013 out of the remnant parishes and congregations who wished to remain affiliated with the Episcopal Church (USA); and ECUSA (TEC) itself, an unincorporated association of member dioceses which is headquartered in New York. (Note that Judge Houck observes in his footnote number #2 that ECUSA is "hierarchical", as found in the case of *Dixon v. Edwards,* 290 F.3d 699, 716 (4th Cir. 2002).

Judge Houck is bound by that decision, delivered by the federal Circuit Court of Appeals to which his own court is subject. But the remark is irrelevant, because (1) *Dixon v. Edwards* involved a dispute between a bishop and a member of the clergy, not a dispute between a diocese and the national Church; (2) the case is being remanded to South Carolina State court, where the judges will follow the "neutral principles of law" approach adopted by the South Carolina Supreme Court in *All Saints Waccamaw Parish v. Protestant Episcopal Church,* 685 S.E.2d 163, 171 (S.C. 2009), under which the nature of the polity of ECUSA is irrelevant; and (3) Judge Houck himself recognizes in his own opinion that South Carolina courts are free so to proceed under the law as declared in *Jones v. Wolf,* 443 U.S. 595, 602 (1979). The *Dixon* case is not binding upon the South Carolina State courts, as it is upon Judge Houck; the State courts are bound by the decision of their own Supreme Court -- *i.e.,* by *All Saints Waccamaw*.

Having described the parties, Judge Houck then sets out the principal points in dispute between them, by citing to their own pleadings. The plaintiffs sought relief under State trademark law against the use by the defendants of the name "Episcopal Diocese of South Carolina", as well as declaratory relief that the Diocese and each of its parishes owned their respective properties free and clear of any claims by ECUSA.

The defendants counterclaimed that the plaintiff Diocese had no right to withdraw from ECUSA; that the national Church had made an "ecclesiastical determination" that its withdrawal was null and void, which determination was binding upon all civil courts; and that as a consequence of their taking part in the withdrawal, each of the persons holding office in the plaintiff diocese and parishes had forfeited their positions, which the remnant group, and only it, had the right to fill.

The defendants asserted that their claims depended on the "free exercise" clause of the First Amendment, which bars the civil courts from interfering with matters of ecclesiastical discipline, structure and polity, and so should be heard in federal court. More specifically, they argued that the *plaintiffs' own complaint* inevitably raised these First Amendment issues, so that it could have been brought originally in federal court.

In the next section of his order, Judge Houck sets out the law that is applicable to these various claims and assertions ("Standard of Review"). Citing another 4th Circuit case which is binding upon him, Judge Houck writes: "Thus, '[i]f a plaintiff can establish, without the resolution of an issue of federal law, all of the essential elements of his state law claim, then the claim does not necessarily depend on a question of federal law." To determine this question, the U.S. Supreme Court requires a federal court to which a state-law case has been removed to analyze whether or not the federal claim involved is "substantial", or is merely an incident to the dispute:
Under the substantial federal question doctrine, "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." ... If the defendant fails to demonstrate all four of these elements, removal is improper under this doctrine.
Now Judge Houck turns to a detailed analysis of the defendants' arguments to see how they fare under each of the four prongs of this test. He preliminarily disposes of the defendants' claims concerning the Lanham (federal trademark) Act, and observes that the plaintiffs had the absolute right to base their complaint upon State trademark law only. Thus the fact that there may be federal-law claims assertable in addition to the state-law ones pled in the complaint is irrelevant to the analysis.

And in a few thoroughly researched and well-written pages, Judge Houck now demonstrates how insubstantial are the defendants' federal-law arguments. He takes each of the four prongs one by one, and shows how the defendants' arguments fail to satisfy any of them. ((That is why Judge Houck's order would almost certainly be upheld if defendants were able to appeal from it (see below). Failing four out of four grounds of the test does not even make this a close case.)

In the end, Judge Houck says, defendants' arguments do turn upon the First Amendment, but only insofar as the First Amendment acts as a *limitation* upon the State courts. The First Amendment, in and of itself, does not enable any federal *lawsuits* based on the plaintiffs' or the defendants' allegations; no violations of its precepts have been alleged. Instead, the defendants were trying to use the First Amendment as a *defense* to advance their own cause, but that is not what creates federal-question jurisdiction in the federal courts:
ECSC relies on the First Amendment as a basis of its defense. In essence, ECSC claims the First Amendment prohibits a civil court from considering the underlying issue because it is purely ecclesiastical in nature. Similarly, in *Burcaw v. Allegheny Wesleyan Methodist Connection,* the defendants removed an action seeking a declaratory judgment regarding the control and disposition of church property. ... The defendants claimed the complaint raised purely ecclesiastical issues and, pursuant to the First Amendment, the court could not interfere in the dispute. ... Judge Gaughan of the Northern District of Ohio found the defendants' First Amendment argument "tantamount to a defense to the action." Id. The court held that it lacked jurisdiction because the "plaintiffs' complaint [did] not rest on any federal or constitutional claim ...." Id. Thus, the action was remanded.
In the present action, the defendant's First Amendment argument is similarly "tantamount to a defense." The First Amendment was not pled in the complaint nor was it addressed in the answers or counterclaims. The First Amendment was initially raised in ECSC's notice of removal as an anticipatory dispute between the parties. ... Thus, the Court lacks jurisdiction over this matter.
This is the way that all court decisions should proceed: describe the facts and the respective claims, state the applicable law, and then *follow that law* and apply it to the facts of the case. Based on just my cursory review of Judge Houck's order, I would venture to say that it is impeccable, and not likely at all to be overturned by any higher court. (Besides, a federal statute provides that decisions to remand are not subject to appellate review. The Supreme Court has recognized a limited exception to that statute, but it would not apply to Judge Houck's decision.)

So where does that leave the defendants? Back in State court, where there is already an injunction entered against them. Look for them now to bring a motion to try to lift that injunction, by raising all the First Amendment defenses they tried out before Judge Houck.

But once again, any judge may turn to what Judge Houck has already noted about the status of those arguments in the South Carolina state courts:
The United States Supreme Court has expressly approved two methods for these types of disputes, and has granted the states the power to choose the method it will apply. *All Saints Parish*, 685 S.E.2d at 171. The First Amendment provides guidance for methods of constitutionally consistent legal application, not a basis for a direct claim or a direct cause of action arising under federal law. ...
ECSC argues that whether the First Amendment permits the plaintiffs "to employ the power of the judiciary to abnegate the determinations of Church authorities on matters of Church governance and doctrine" is "a matter of immeasurable importance [n]ot merely to millions of Episcopalians across the country but to the free exercise of religion in general."
... The United States Supreme Court in *Jones*, 443 U.S. 595, and *Milivojevich*, 426 U.S. 696, has defined approaches that state courts may apply in determining religious disputes without violating the First Amendment. The argument that it is substantial to the federal system is undone by the United States Supreme Court yielding the right to choose an approved approach to church dispute resolution to the states. Courts have interpreted the First Amendment to serve as a safeguard or a limitation on a civil court's authority, to ensure the "free exercise of religion" is not violated by undue consideration of ecclesiastical matters. Therefore, the issue raised by ECSC is inapplicable as the "serious federal interests" have already been addressed by state and federal systems.
Or, in other words: not even a "hierarchical" Church may require a State to refrain from using the "neutral principles of law" approach, and to defer to it on every point just because of its "hierarchical" nature. The First Amendment may limit how far civil courts may go into questions involving ecclesiastical discipline and polity, but where they are able to proceed by using the same principles of civil law that apply to every other party in a property dispute, the United States Supreme Court has given State courts its blessing in so proceeding to decide church property cases, as well.

Look for Judge Houck shortly to enter another order holding Bishop vonRosenberg's individual Lanham Act case against Bishop Lawrence in abeyance, pending the outcome of the lawsuit in the State courts. It will take a few weeks for the federal court to return the files to the Circuit Court of Dorchester County. But as soon as that court has them, it can proceed to resolve the matter under the "neutral principles" approach laid down in the *All Saints Waccamaw* case.

from A.S. Haley's Anglican Curmudgeon website
http://accurmudgeon.blogspot.com/2013/06/federal-judge-returns-south-carolina.html