

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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ST. JAMES CHURCH, ELMHURST, EPISCOPAL
DIOCESE OF LONG ISLAND and TRUSTEES
OF THE ESTATE BELONGING TO THE
DIOCESE OF LONG ISLAND,

Index No.

Plaintiffs,

COMPLAINT

-against-

MARK JAKUBIK, THE JAKUBIK LAW FIRM,
MEYER SILBER and THE SILBER LAW FIRM, L.L.C.

Defendants.

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Plaintiffs, by their attorneys, Cullen and Dykman LLP, as and for their verified complaint,
allege:

1. Plaintiff St. James Church, Elmhurst is a worshipping congregation, known as a "parish," of the Episcopal Diocese of Long Island ("the Parish").
2. Plaintiff Episcopal Diocese of Long Island ("the Diocese") is, and at all times mentioned herein, was an unincorporated association, maintaining its principal place of business at 36 Cathedral Avenue, Garden City, New York.
3. At all times mentioned herein, the Diocese, as an ecclesiastical entity, was in full union with the Protestant Episcopal Church of the United States of America ("Episcopal Church") and was subordinate to and in conformity with the Constitutions, Canons and General Convention of the Episcopal Church. Pursuant to its own Constitution and Canons, the Diocese exercises ecclesiastical authority over parishes, missions and various ecclesiastical institutions of the Episcopal Church in Kings, Queens, Nassau and Suffolk Counties.

4. Plaintiff Trustees of the Estate Belonging to the Diocese of Long Island (“the Trustees”) was created by Chapter 750 of the laws of 1871, as amended, as a diocesan corporation, empowered, inter alia, to hold title to real and personal property for the use of the Diocese and maintained its principal place of business at 36 Cathedral Avenue, Garden City, New York.

5. Upon information and belief Mark Jakubik is a natural person residing at 7201 Boyer Street, Philadelphia, P.A. 19119 and is a principal of Jakubik Law Firm.

6. Upon information and belief Jakubik Law Firm is a partnership (“Jakubik Firm”) with its principal place of business at 7715 Crittenden Street, Philadelphia, P.A. 19118.

7. Upon information and belief Meyer Silber is a natural person residing at 2210 Avenue L, Brooklyn, N.Y. 11210 and is a principal of The Silber Law Firm, L.L.C.

8. Upon information and belief, The Silber Law Firm, L.L.C. (“Silber Firm”) is a limited liability corporation, with its principal place of business at 150 Broadway, 14th Floor, New York, New York 10038.

**ST. JAMES CHURCH AND THE ADMINISTRATION
OF ITS REAL AND PERSONAL PROPERTY**

9. The Episcopal Church is a “hierarchical” religious denomination.

10. The Episcopal Church has adopted and from time to time amends a Constitution and other rules, known as “canons,” that are binding upon all Episcopal dioceses and parishes; and dioceses similarly have adopted and from time to time amend Constitutions and canons that are binding upon their parishes.

11. By virtue of its voluntary admission into union with the Episcopal Church and the

Diocese of New York, the Parish became subject to the Constitution and canons of its diocese and the Constitution and canons of the Episcopal Church, as they are amended from time to time.

12. By virtue of the formation of the Diocese of Long Island from the division of the former Diocese of New York, pursuant to the rules of the Episcopal Church, the Parish became part of and subject to the Constitution and canons of the Diocese of Long Island (“the Diocese”).

13. Pursuant to the doctrine and discipline of the Episcopal Church, as reflected in various canons that have been adopted over the years, property held by the Parish, and every other Episcopal parish, is held for the mission of the Episcopal Church and the diocese thereof in which each is located, and may only be used or transferred to some other use as provided in the Church’s and the diocese’s canons or rules.

14. Canons I.7(4) and (5) of the Episcopal Church, which were adopted in 1979, provide:

“Sec. 4: All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

“Sec. 5: The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.”

15. Similarly, Title V, Canon 3 and Title VII, Canon 3 of the Canons of the Episcopal Diocese of Long Island provide respectively that:

All real and personal property held by or for the benefit of any Parish ... is held in trust for the Church and this Diocese

and

Whenever any Church or Parish in Union with the church in this Diocese shall have failed for two consecutive years prior thereto to maintain religious services according to the doctrine, discipline, and worship of the Church, or to make a parochial report or to have twenty-five (25) persons of full age belonging to the Parish who have been regular attendants at its worship and contributors to its support for at least twelve (12) months, or has ceased for two (2) consecutive years to have a sufficient number of persons qualified to elect or to serve as Wardens and Vestrymen therein, such Church or Parish, upon report of such act to the Convention by the Ecclesiastical Authority, may be declared extinct by a majority vote of the delegates present and voting, and thereupon the Trustees of the Estate shall proceed to take possession of and administer its property according to law.

**THE DISAFFILIATION OF PARISHIONERS
AND USE OF PARISH PROPERTY DURING THAT TIME**

16. Under the rules and canons of the Episcopal Church and its various dioceses, neither the Parish nor any other Episcopal parish may unilaterally disaffiliate from its diocese or the Episcopal Church upon a vote of its current vestry or membership.

17. Upon information and belief, on or about March 30, 2005, parishioners (hereinafter "the Dissidents") of the Parish, present at a congregational meeting, purported to vote to disaffiliate from the Diocese and from the Episcopal Church.

18. Upon information and belief, in or about March, 2005, the Dissidents retained defendant Mark Jakubik, Esq. from defendant The Jakubik Law Firm (collectively "The Jakubik Defendants"), and sometime thereafter defendant Meyer Silber, Esq. from defendant The Silber Law Firm, L.L.C. (collectively "The Silber Defendants") to represent its interests in disaffiliating

the Parish from the Diocese and in extinguishing plaintiffs' interests in the Parish's real and personal property.

19. On or about October 18, 2005, in the Supreme Court, Queens County, the Dissidents filed the lawsuit "St. James Church, Elmhurst v. Episcopal Diocese of Long Island, et al." (Index No. 22564/05) in the name of and purporting to act for the Parish seeking to extinguish plaintiffs' interests in the Parish's real and personal property.

20. Among others, the Diocese, the Trustees and the Episcopal Church were named defendants in that action.

21. That action concluded with an "order/judgment" from the Supreme Court, Queens County (Kitzes, J.) dated April 28, 2008, entered April 29, 2008, granting summary judgment dismissing the complaint and finding that the Diocese's and Trustees' right to real and personal property of the Parish was superior to that of the Dissidents.

22. Thus, during the three year time period in which the litigation ensued, the Parish's property was not property of the Dissidents and was always held in trust for the Diocese and the Trustees to be used by Episcopal parishioners for the mission of the Episcopal Church and the Diocese of Long Island.

23. In fact, during their departure from the Episcopal Church, the Dissidents and their unauthorized appointed priest held themselves out as the clergy and vestry of a congregation unrelated to the Episcopal Church known as "St. James Anglican Church," while possessing and controlling property held by the Parish.

24. Part of that property held by the Parish was its various bank and stock accounts from which, upon information and belief, checks were drawn by the Dissidents to pay the legal

fees of The Jakubik and The Silber Defendants with respect to legal advice given and/or litigation services provided related to the efforts by the Dissidents to disassociate the Parish from the Diocese and to control the Parish's real and personal property.

25. Upon information and belief, and without the knowledge or consent of the Diocese, the Dissidents conveyed \$163,446.92 of parish funds to The Jakubik Defendants and \$41,088.64 of parish funds to The Silber Defendants.

AS AND FOR A FIRST CAUSE OF ACTION
(Money Had and Received Against The Jakubik Defendants)

26. Plaintiffs repeat and reallege their allegations set forth in Paragraphs "1" through "25" above, as if fully set forth herein.

27. Through a series of payments drawn on the Parish's bank and stock accounts and without the Parish's, the Diocese's and Trustees' authority, The Jakubik Defendants received \$163,446.92.

28. During the time in which The Jakubik Defendants were receiving payments drawn on the Parish's bank and stock accounts, The Jakubik Defendants were not entitled to receive said money from the Parish since the Dissidents who drew the checks payable to The Jakubik Defendants were acting ultra vires with respect to the Parish corporation and were not authorized to exercise control over the Parish's real and personal property, including its bank and stock accounts.

29. The Jakubik Defendants retain and refuse to return the \$163,446.92 which, in equity and good conscience, ought not to be retained by The Jakubik Defendants and which belongs to the Parish, the Diocese and the Trustees.

AS AND FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment Against The Jakubik Defendants)

30. The Parish repeats and realleges the allegations of paragraphs "1" through "29" above, as if fully set forth herein.

31. The Jakubik Defendants have retained and refused to remit to the Parish \$163,446.92.

32. By retaining said funds without cause or justification, The Jakubik Defendants were unjustly enriched at the expense of the Parish in an amount to be established at trial but which is no less than \$163,446.92.

33. The Jakubik Defendants continue to be unjustly enriched by said amount by their failure and refusal to remit that money to the Parish.

34. Plaintiffs are entitled to an award of damages against The Jakubik Defendants in an amount to be established at trial plus interest.

AS AND FOR A THIRD CAUSE OF ACTION
(Conversion Against The Jakubik Defendants)

35. Plaintiffs repeat and reallege their allegations set forth in Paragraphs "1" through "34" above, as if fully set forth herein.

36. The Jakubik Defendants have retained and exercised control over property belonging to the Parish, the Diocese and the Trustees, specifically \$163,446.92, and have failed to return said property to the Parish despite the Parish's demand.

37. While The Jakubik Defendants were receiving payments drawn on the Parish's bank and stock accounts The Jakubik Defendants were not entitled to receive said money from the Parish since the Dissidents who drew the checks payable to The Jakubik Defendants were not

authorized to exercise control over the Parish's real and personal property, including its bank and stock accounts.

38. The Jakubik Defendants have wrongfully converted the sum of \$163,446.92 and the Parish, the Diocese and the Trustees are entitled to an award of damages against The Jakubik Defendants in an amount to be established at trial plus interest.

AS AND FOR A FOURTH CAUSE OF ACTION

(Aiding and Abetting Conversion Against the Jakubik Defendants)

39. Plaintiffs repeat and reallege their allegations set forth in Paragraphs "1" through "38" above, as if fully set forth herein.

40. The Jakubik Defendants knew when accepting the checks drawn on the Parish's bank and stock accounts that the use of said funds by the Dissidents to pay their legal expenses was illegal and/or tortious.

41. The Jakubik Defendants' inappropriate acceptance of the Parish's funds over a nearly three year period caused a substantial loss to the Parish in an amount not less than \$163,446.92.

42. The Jakubik Defendants' acceptance of the Parish's funds over a nearly three year period without, on information and belief, advising their clients that the use of said funds by the Dissidents was illegal and/or tortious substantially contributed to the Dissidents' initial conversion of said funds.

43. The Jakubik Defendants are liable for aiding and abetting the conversion of the Parish's funds in the sum of \$163,446.92 and the Parish, the Diocese and the Trustees are entitled to an award of damages against The Jakubik Defendants in an amount to be established

at trial plus interest.

AS AND FOR A FIFTH CAUSE OF ACTION
(Money Had and Received Against The Silber Defendants)

44. Plaintiffs repeat and reallege their allegations set forth in Paragraphs "1" through "43" above, as if fully set forth herein.

45. Through a series of payments drawn on the Parish's bank and stock accounts and without the Parish's authority, The Silber Defendants received \$41,088.64.

46. During the time in which The Silber Defendants were receiving payments drawn on the Parish's bank and stock accounts, The Silber Defendants were not entitled to receive said money from the Parish since the Dissidents who drew the checks payable to The Silber Defendants were acting ultra vires with respect to the Parish corporation and were not authorized to exercise control over the Parish's real and personal property, including its bank and stock accounts.

47. The Silber Defendants retain and refuse to return the \$41,088.64 which, in equity and good conscience, ought not to be retained by The Silber Defendants and which belongs to the Parish, the Diocese and the Trustees.

AS AND FOR A SIXTH CAUSE OF ACTION
(Unjust Enrichment Against The Silber Defendants)

48. Plaintiffs repeat and reallege the allegations of paragraphs "1" through "47" above, as if fully set forth herein.

49. The Silber Defendants have retained and refused to remit to the Parish \$41,088.64.

50. By retaining said funds without cause or justification, The Silber Defendants were

unjustly enriched at the expense of the Parish in an amount to be established at trial but which is no less than \$41,088.64.

51. The Silber Defendants continue to be unjustly enriched by said amount by their failure and refusal to remit that money to the Parish.

52. Plaintiffs are entitled to an award of damages against The Silber Defendants in an amount to be established at trial plus interest.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Conversion Against The Silber Defendants)

53. Plaintiffs repeat and reallege their allegations set forth in Paragraphs “1” through “52” above, as if fully set forth herein.

54. The Silber Defendants have retained and exercised control over property belonging to the Parish, the Diocese and the Trustees, specifically \$41,088.64, and have failed to return said property to the Parish despite the Parish’s demand.

55. While The Silber Defendants were receiving payments drawn on the Parish’s bank and stock accounts, The Silber Defendants were not entitled to receive said money from the Parish since the Dissidents who drew the checks payable to The Silber Defendants were not authorized to exercise control over the Parish’s real and personal property including its bank and stock accounts.

56. The Silber Defendants have wrongfully converted the sum of \$41,088.64 and the Parish, the Diocese and the Trustees are entitled to recover from them the sum of \$41,088.64 with interest.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Aiding and Abetting Conversion Against the Silber Defendants)

57. Plaintiffs repeat and reallege their allegations set forth in Paragraphs “1” through “

56" above, as if fully set forth herein.

58. The Silber Defendants knew when accepting the checks drawn on the Parish's bank and stock accounts that the use of said funds by the Dissidents to pay their legal expenses was illegal and/or tortious.

59. The Silber Defendants' inappropriable acceptance of the Parish's funds over a nearly three year period caused a substantial loss to the Parish in the amount of \$41,088.64.

60. The Silber Defendant's acceptance of the Parish's funds over a nearly three year period, without, on information and belief, advising their clients that the use of said funds by the Dissidents to pay their legal expenses was illegal and/or tortious, substantially contributed to the Dissidents' initial conversion of aid funds.

61. The Silber Defendants are liable for aiding and abetting the conversion of the Parish's funds in the sum of \$41,088.64.

WHEREFORE, Plaintiffs demand judgment:

- a. on their first cause of action against the Jakubik Defendants for money had and received in an amount to be determined at trial but not less than \$163,446.92, or
- b. on their second cause of action against the Jakubik Defendants for unjust enrichment in an amount to be determined at trial but not less than \$163,446.92, or
- c. on their third cause of action against the Jakubik Defendants for conversion in an amount to be determined at trial but not less than \$163,446.92, or
- d. on their fourth cause of action against the Jakubik Defendants for aiding and abetting conversion in an amount to be determined at trial but not less than

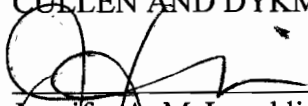
\$163,446.92; and

- e. on their fifth cause of action against the Silber Defendants for money had and received on an amount to be determined at trial but not less than \$41,088.64, or
- f. on their sixth cause of action against the Silber Defendants for unjust enrichment in an amount to be determined at trial but not less than \$41,088.64, or
- g. on their seventh cause of action against the Silber Defendants for conversion in an amount to be determined at trial but not less than \$41,088.64, or
- h. on their eighth cause of action against the Silber Defendants for aiding and abetting conversion in an amount to be determined at trial but not less than \$41,088.64;

all together with the costs and disbursements of this action.

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