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FILED

OCT 25 2007

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY RM DEPUTY
RENÉE ROGERS

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

HOLY APOSTOLIC CATHOLIC
ASSYRIAN CHURCH OF THE EAST,
DIOCESE OF WESTERN CALIFORNIA,

Plaintiff,

vs.

NENOS MICHAELS, et al.,

Defendants.

Case No. 1-05-CV-054786 (Consolidated
with 1-05-CV-054812 and 1-06-CV-064289)

ORDER RE: SUMMARY ADJUDICATION

AND CONSOLIDATED CASES

The motion for summary adjudication by plaintiffs in 1-05-CV-054812 and defendants in 1-05-CV-054786 and 1-06-CV-064289, the Holy Synod of the Holy Apostolic Catholic Assyrian Church of the East, Mar Odisho Oram, Holy Apostolic Catholic Assyrian Church of the East – Diocese of North America, Holy Apostolic Catholic Assyrian Church of the East – Diocese of Western United States, and defendants in 1-05-CV-054786 and 1-06-CV-064289, Mar Dinkha IV, Mar Meelis Zaja, Nenos Michael, and Narsai de Baz (the Synod parties) to the first and second causes of action in case numbers 1-05-CV-054786 (the WC Diocese Complaint) and 1-06-CV-064289 (the St. George Complaint) and the first and sixth through eighteenth causes of action in case number 1-05-CV-054812 (the Synod Complaint) came on for hearing before the Honorable Kevin J. Murphy on October 25, 2007 at 9:00 a.m. in Department 22. The matter

ORDER RE: SUMMARY ADJUDICATION

1 having been submitted, the court orders as follows:

2 The motion for summary adjudication of the first and second causes of action to the WC
3 Diocese and the St. George Complaints is GRANTED. The undisputed facts establish that the
4 Holy Apostolic Catholic Assyrian Church of the East (the Church) is a hierarchical organization
5 with the Synod vested with ultimate ecclesiastical authority over the individual congregations
6 and members of the entire organized church. (Material Facts [MF] 1, 4, 49, 50, 14, 51, 54, 52,
7 77, 80, 101, 102, 116, 103, 62, 18, 19, 22-26, 30, 63; see *Concord Christian Center v. Open*
8 *Bible Standard Churches* (2005) 132 Cal.App.4th 1396; *Singh v. Singh* (2004) 114 Cal.App.4th
9 1264, 1277.) The disputes over whether Ashur Bawai Soro (Soro) has been properly removed as
10 bishop and who has the authority to control the WC Diocese and St. George corporations are
11 ecclesiastical matters in which the state court must defer to the "highest court of a hierarchical
12 church organization." (*Jones v. Wolf* (1979) 443 U.S. 595, 602; *Serbian Eastern Orthodox*
13 *Diocese v. Milivojevich* (1976) 426 U.S. 696; *Korean United Presbyterian Church v. Presbytery*
14 *of the Pac.* (1991) 230 Cal.App.3d 480.) The undisputed facts establish that Soro created the
15 WC Diocese and St. George Diocese corporations in his role as bishop on behalf of the Church
16 to hold Church property and that the Synod has decreed that Soro was removed from his position
17 has bishop of the WC Diocese. (MF 194, 196, 197, 75, 198, 204, 205.) Therefore, Soro no
18 longer has the authority to control the WC Diocese and St. George Diocese corporations; instead,
19 the Synod's appointed successor, Bishop Mar Oshido Oraham, has the authority to control these
20 corporations and the property they have title to.

21 Soro's argument that the Synod no longer has authority because it is under anathema does
22 not create a triable issue of fact because a determination of this kind involves ecclesiastical
23 matters and the undisputed evidence establishes that the Synod is the highest authority within the
24 Church. The fact that Soro is personally named director of the corporations does not create a
25 triable issue of fact because a "corporation, even if composed of all of the members of the
26 church, is 'a body separate and distinct from the church proper' . . . 'The corporation is a
27 subordinate factor in the life and purposes of the church proper.'" (*Central Coast Baptist Assn.*
28 *v. First Baptist Church of Las Lomas* (2007) 154 Cal.App.4th 586, 619 quoting *Wheelock v. First*

1 *Presbyterian Church of Los Angeles* (1897) 119 Cal. 477, 486.) Soro's argument and evidence
 2 that bishops generally oversee the property and finances within their territory does not create a
 3 triable issue of fact because the Synod has the power to appoint and remove bishops. (See
 4 *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.)

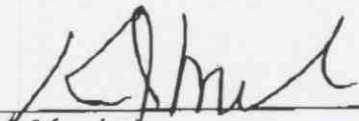
5 The motion for summary adjudication of the first, sixth and twelfth causes of action to the
 6 Synod complaint is DENIED. The Synod parties have not established facts completely disposing
 7 of an issue of duty or cause of action because the nature of Soro's relationship with the Church
 8 has changed over time, the Synod parties have not established damages, and the Synod parties
 9 have not identified all of the property over which a constructive trust is sought. (See Code Civ.
 10 Proc., § 437c, subd. (f)(1).)

11 The motion for summary adjudication of the seventh through eleventh causes of action to
 12 the Synod complaint, for quiet title, is DENIED. The moving parties have not established that
 13 the Synod has title to the property held in the name of the WC Diocese and St. George Parish
 14 corporations.

15 The motion for summary adjudication of the fourteenth through eighteenth causes of
 16 action to the Synod complaint, for declaratory relief, is GRANTED. The undisputed evidence
 17 establishes that Soro created the corporations at issue in his role as bishop of the Church and the
 18 properties were transferred to the corporations when Soro was a bishop of the Church in good
 19 standing. Accordingly, the court declares that the Synod has the authority to control and use the
 20 WC Diocese and St. George Parish corporations, including the corporation's property at 1623
 21 43rd Ave., San Francisco; 3939 Lawton St., San Francisco; 680 Minnesota Ave., San Jose; the
 22 McKean Rd. parcel; and 3900 Bricket Ct., Ceres. (MF 226, 227.)

23 The parties' objections do not comply with Rules of Court, rule 3.1354. In any event, the
 24 court has considered only admissible, competent evidence. (See *Reid v. Google, Inc.* (October 4,
 25 2007) __ Cal.App.4th __ [2007 Cal.App.LEXIS 1663, *26-*27].)

26
 27 Dated: 10-25-07

28 
 Kevin J. Murphy
 Judge of the Superior Court

