

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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J. CHRISTOPHER HARING,

Plaintiff,

- against -

CAROLINE CHURCH OF BROOKHAVEN, REVEREND  
CANON RICHARD D. VISCONTI, AS RECTOR OF THE  
CAROLINE CHURCH OF BROOKHAVEN, MARK  
LaSORSA, AS SENIOR CHURCHWARDEN, BARBARA  
RUSSELL, AS JUNIOR CHURCHWARDEN, NICK  
AMATO, CAROLYN MARTEZIAN, WILLIAM RHAME,  
MIRJANA ELLIS, WILLIAM HARVEY, MARY WUESTE,  
SUSAN RYDZESKI, JACKIE HULL and FRANK  
WEILAND, AS MEMBERS OF THE VESTRY OF THE  
CAROLINE CHURCH OF BROOKHAVEN, EPISCOPAL  
DIOCESE OF LONG ISLAND, RIGHT REVEREND  
LAWRENCE C. PROVENZANO, AS BISHOP OF THE  
EPISCOPAL DIOCESE OF LONG ISLAND, and  
LETICIA JAMES, AS ATTORNEY GENERAL OF THE  
STATE OF NEW YORK,

Defendants,

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STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF SUFFOLK    )

**AFFIDAVIT IN  
OPPOSITION TO  
MOTION TO DISMISS  
PURSUANT TO CPLR  
3211(a)**

Index No.: 608259/2019

Assigned Justice:  
HON. GEORGE NOLAN

**J. CHRISTOPHER HARING**, being duly sworn, deposes and says:

## INTRODUCTION

1. This affidavit, together with the affirmation of my attorney Richard Hamburger, dated November 20, 2019 (“Hamb. Aff.”) is submitted in opposition to the motion of the Caroline Church Defendants to dismiss the complaint.

## MY PERSONAL HISTORY WITH CAROLINE CHURCH

1. My personal history with Caroline Church is set forth in detail in the Verified Complaint (*see* Exh. “A” to affirmation of Daniel Barker, dated August 12, 2019 (“Barker Aff.”), ¶ 8(a) - (h). In summary form, and with additional information concerning my financial contributions to Caroline Church, that history is as follows:

2. My family joined Caroline Church in 1956 when my younger brother was baptized at the church.

3. During my youth/teen years, I attended Sunday School, was confirmed and served at the altar as an acolyte.

4. Both our children were baptized, confirmed, attended Sunday School, and served at the altar. Our daughter was married at Caroline Church by Canon Visconti in 2014.

5. As an adult, I served as an usher, taught Sunday School, and become involved in the office technology. I built the wired network, recommended hardware

purchases and generally managed the software and hardware of the Church from the late 1990's on.

6. I created and managed the Church website from approximately 1998 through late 2016, until that responsibility was summarily terminated approximately six months after I objected to the consolidation of the restricted funds in mid-2016.

7. In November 2002, before I was elected to the Vestry, I received the "Bishop's Medal" in recognition of my service to the Church.

8. After election to the Vestry in early 2003, I served in many capacities, including Treasurer, Investment Committee chair, Buildings & Grounds committee chair, Budget & Finance committee, and many *ad hoc* committees.

9. Even during a one-year hiatus from the Vestry in 2009, I was referred to as the "shadow treasurer" as I continued to perform over 20 monthly reconciliations on the various investment accounts and prepared statements for the monthly Vestry meetings.

10. From 2000 through mid-2019, I was involved in innumerable tasks for the Church. These ranged to "lowly" tasks such as plunging/repairing toilets and broken water/sprinkler lines, electrical repairs, retrofitting light fixtures, work in the gardens/cemetery and painting to more supervisory tasks such as coordinating contractors on projects, building and maintaining computer servers, preparing financial information for annual audits, training staff on software, maintaining network security, drafting leases for rental of space for a pre-school, and numerous other tasks.

11. In 2016, after my objections to the consolidation of funds, I ceased doing the monthly reconciliations of the UBS accounts, which I had continued to perform even after I was no longer the treasurer (about 2012) and leaving the Vestry (January of 2016). I wanted nothing to do with the financials of the Church after this consolidation of funds.

12. At this time, I also reduced my financial giving to the Church but continued to give much of my time. My rationale was that by continuing to devote my time, 100% of that method of giving to the Church would directly benefit the Church. I had long kept a spreadsheet of the cost of the Rector's package as compared to the pledge donations received by the Church. What I saw was that the Rector's package had grown from consuming an amount equal to 45% of the pledge receipts in 2005, to an amount consuming 85% of the pledge receipts.

13. During that time period, I also made regular visits to the Church to perform various tasks such as those enumerated above. As I kept a calendar of those trips, which total over 340 trips from May 2016 to July 2019 when the Vestry demanded the return of my keys, credit card and passwords in retaliation for the filing of this lawsuit.

14. During that time, I indeed did make financial contributions to the Church. This included \$500 to the Churchyard Fund in May 2016 (which was deposited to the general account and never moved to the Churchyard Fund), \$500 to the "Save the Carriage Shed" fund (which I took directly to the bank for deposit to the appropriate

account, then gave the deposit slip into the office), and the purchase of a \$250 internet connected “smart sprinkler” controller, which I installed in the Rectory in early spring 2018.

15. I make this portion of the affidavit to establish my standing to bring the instant declaratory judgment action and to refute any inference that I am simply a malcontent who is attempting to stir up controversy. On the contrary, I am attempting to save the Church from fiscal ruin due to its irresponsible spending of monies donated for specific purposes that are being used instead to support its unsupportable deficit. Current annual expenses are simply unsustainable based on declining membership. In order to survive, the Church must make hard choices and “rightsize” itself. That may very well entail reducing the compensation and benefits received by Canon Visconti which, as noted, currently consumes approximately 85% of annual donations.

16. The solution is not to take money from permanently restricted funds until all our funds are depleted, the Church collapses, and Canon Visconti retires or moves on to another posting. Invading the permanently restricted funds is also likely to accelerate the fiscal ruin of the Church as members withdraw or reduce their financial support as they realize that a permanent restriction means nothing to Canon Visconti and Vestry.

17. And, of course, if Caroline Church does fail and is sadly forced to close its doors as an ongoing congregation, there will still be a churchyard that needs to be

maintained; only now, with the Churchyard Fund transferred and consolidated with the operating account, the monies that were donated for perpetual care by the families and friends of those buried in the churchyard will have been entirely depleted.

18. Put another way, if indeed the Church does fail financially, the Churchyard Fund nonetheless had sufficient monies to continue the perpetual care of the cemetery — until those funds were moved out of the Churchyard Fund accounts in mid-2016.

19. For three years before filing suit, I attempted to quietly convince the Canon Visconti and Vestry of how unwise this consolidation was, and that it was illegal. I only discovered the transfer and consolidation was illegal after conducting my own research long after the amendments to the By-Laws were adopted in 2003. That research consisted of reviewing general information available on the Charities Bureau section of the website hosted by the Office of the New York State Attorney General, reviewing old Vestry minutes, old Caroline Church audit reports, and other historical documents that I could get my hands on.

20. I had hoped that my dialogue with Canon Visconti and the Churchwardens would result in a compromise (a) approving a five or ten-year plan for increasing membership and reducing costs in order to balance the Church budget; (b) agreeing on the transfer of some monies from the permanently restricted funds to support Church programs and operations while that long term plan was being

implemented; and (c) making an application to the New York Supreme Court to approve those transfers pursuant to Not for Profit Corporation Law § 555. But I was stonewalled by Canon Visconti and the Churchwardens, who refused my entreaties to take any action. Only as a last resort, and in the interest of Caroline Church and my fellow parishioners, I felt compelled to initiate this lawsuit.

### **RESPONSE TO THE VISCONTI AFFIDAVIT**

21. In support of their motion, the Caroline Church Defendants have submitted the affidavit of Canon Richard D. Visconti, sworn to August 12, 2019 (the “Visconti Aff.”).

22. Canon Visconti states that to the “best of [his] knowledge,” the monies previously held in the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund were not created by donors but rather, “were created by the Church’s Vestry, our governing body” (Visconti Aff. § 4). This is contrary to the allegations of the Complaint that repeatedly allege that these funds were established as *permanently* restricted funds (*see* Complaint, Exh. “A” to Barker Aff., ¶¶ 36, 43, 52, 56 and 65), that donations to these funds were solicited, and received, upon the representation of the Church that the funds would only be used for the particular purpose for which each fund was established (*see* Complaint, Exh. “A” to Barker Aff., ¶ 37), and that these funds had historically been

identified in annual audits as *permanently* restricted funds (*see* Complaint, Exh. “A” to Barker Aff., ¶ 40).

23. I am advised by my attorneys that these allegations must be accepted as true for the purpose of deciding this motion.

24. Moreover, I have substantial documentation posted on my website, [www.savethechurchyard.org](http://www.savethechurchyard.org), which demonstrates that Canon Visconti is wrong, and as the party opposing this motion, I am also entitled to engage in pre-trial discovery of Church records to secure “facts unavailable to opposing party” in order ferret out additional Vestry minutes, financial statements, audits and other documents of Caroline Church to further establish the validity of my contentions. *See* CPLR 3211(d).

25. Canon Visconti recites my service on Vestry at the time these By-Law amendments were adopted in order to set up an estoppel defense to this lawsuit (*see* Visconti Aff., ¶¶ 7-10), but that is of no consequence. At the time these amendments were adopted, and at the time, before I left Vestry, that these transfers were made, the Vestry was told by Canon Visconti and certain prior Vestry members that the Vestry had the authority to invade permanently restricted funds. I did not know this was illegal until I investigated after I left Vestry (*see* ¶ 19, *supra*). Notably, the notion that I would be estopped from correcting an error that I was, in part, responsible for, contradicts basic Judeo-Christian teachings.



26. Finally, in a truly hurtful and morally unjustified act of retaliation, Canon Visconti has cast me out of the Caroline Church community. He claims I am not a member and communicant in good standing because I have not received Holy Communion at least three times during the preceding year and I have not made any financial contributions, donations or pledges to the Church during 2018 and 2019 (*see* Visconti Aff., ¶¶ 19-21). This attempted character assassination is unworthy of a clergyman.

27. In recent years, I have not received Holy Communion from Canon Visconti for good and sufficient personal reasons arising from my views of his honesty, integrity, and leadership, as evidenced by the manner in which he has managed the defense of this action — trying to suppress my Free Speech rights by shutting down my website, trying to block a judicial determination that permanently restricted funds have been illegally transferred into a single consolidated operating account by moving to dismiss this action on non-merits grounds, and now, by accusing me, essentially, of being a lapsed Episcopalian. Certainly, under these circumstances, my rationale for not receiving Holy Communion from Canon Visconti would constitute “good cause” under the exception provided in the Constitution, Canons and Rules of Order quoted by Canon Visconti (*see* Exh. “C” to Visconti Aff., p. 7, § 3).

28. Moreover, in seeking to now deny my status as a member and communicant in good standing, Canon Visconti is directly contradicting a sworn statement he made in his affidavit submitted in support of the rejected order to show to direct me to

take down my website. In that affidavit, Canon Visconti acknowledged that I was a communicant in good standing during my 12 years on Vestry:

Plaintiff, as alleged in his complaint, was a long time member of the Vestry of the Church, from approximately 2003-2009, and again from 2010 through 2016. The Vestry of the Church *is a group of communicants of the Church in good standing that are the trustees and governing body of the Church.* During this time period, plaintiff maintained additional positions within the Church, including Treasurer and Church Warden.

*See* ECF Doc. No. 13, ¶ 8 (emphasis added).

29. I assure this Court that there is no meaningful difference in the frequency of my receiving Holy Communion since I left Vestry in 2016 as compared to the immediately preceding six years that I served on Vestry. Moreover, during the many years that I have devoted a substantial amount of my free time to volunteer for Caroline Church, no one, including Canon Visconti, has ever suggested that I was not in good standing or that my good standing as a member and communicant of Caroline Church was in jeopardy because I had not regularly received Holy Communion. Indeed, to the best of my knowledge, the communicant in good standing standard now being advanced by Canon Visconti has never been used to oust another parishioner from the Church.

30. With regard to the alternate basis for my banishment from communicant status — my alleged failure to make financial contributions — the fact is that Caroline Church, since I filed this declaratory judgment action, on orders from Canon Visconti, will not accept my donations. Attached as Exhibit “C” is a note signed by “Canon

Richard” which has been placed on the counter where the weekly Sunday donation baskets are counted, recorded and deposit tickets prepared. The note directs: “Do not count or deposit any contribution from Chris / Linda Haring.” Linda Haring, my wife, is also a member in good standing of Caroline Church.

31. Another example of refusal by Caroline Church to accept donations from myself or my wife is illustrated in attached Exhibit “D,” a redacted page from my MasterCard statement for the period July 28, 2019, through August 27, 2019. On August 9, I made an on-line contribution to Caroline Church of \$10. On August 12 that transaction was reversed and I was credited back that amount. The reversal of this transaction was not my doing. Upon information and belief, it was directed by Canon Visconti.

### **MY STANDING TO BRING THIS ACTION**

32. The Caroline Church Defendants argue that this lawsuit is barred because it is in the nature of a shareholder derivative action for waste which requires 5% of the stock ownership or, in the case of religious corporations, 5% of membership to commence an action (*see* Barker Aff. ¶¶ 12-18). I respectfully disagree.

33. First, as alleged in the verified complaint, I have standing based on my undisputed \$500 donation to the Churchyard Fund, which has been transferred into the consolidated operating account (Exh. “A” to Barker Aff.). A donor always has standing to object to the use of his donation for purposes other than the purpose for which the

donation was given. That is, because the purpose of the Churchyard Fund was and is permanently restricted to maintenance of the cemetery, and because NPCL § 1507(c)(1) requires that perpetual care and maintenance funds collected in the Churchyard Fund be segregated and held in trust for that purpose, my specific donation to the Churchyard Fund provides me with standing to challenge the expenditure of Churchyard Funds for any other purposes.

34. Second, and as a more general matter, the Caroline Church Defendants' interpretation of standing is far too narrow. I have standing to enforce the statutes that protect from unauthorized invasion (a) permanently restricted funds; (b) the donors to permanently restricted funds; and (c) the institution (*i.e.*, Caroline Church) holding and receiving permanently restricted funds. *See* Hamb. Aff., ¶ 27.

35. I am no stranger to Caroline Church. Nor am I a newcomer. I have devoted most of my adult life to the service of Christ through my extensive volunteer work for and behalf of the Caroline Church as a member of Vestry, as Treasurer, as the Chair of many committees including the Investment Committee, the Buildings and Grounds Committee and the Budget and Finance Committee. I have built and managed IT for the Church and created and managed its website. I have taught Sunday school, and served as handyman and fixer, as construction coordinator, as drafter of agreements, and more (*see again*, ¶¶ 2-14 *supra*; and Complaint, Exh. "A" to Barker Aff., ¶ 8(a) - (f)).

36. As noted, as far back as 2002, my volunteer service was recognized with the award of the Bishop's Medal.

37. These good works are my expression of a life well lived and dedicated to the service of others through religious community. I believe it is critically important to save that community from the devastating consequences of invading and depleting all the monies in the permanently restricted funds as a short term and ultimately futile solution to a long term problem of unsustainability.

38. My standing arises from the personal, tangible and consequential stake I have in stopping the wholesale invasion of all the permanently restricted funds, without a long term plan and without judicial approval, an invasion that will ultimately deplete those funds that were donated for very specific purposes that were centrally important to the donors, and which will not, in any event, save Caroline Church.

39. In this mission I am sincerely, honestly, and in good faith motivated by my religious beliefs that the Church and its leadership must keep faith with those who donated for specific permanently restricted purposes and relied upon the Church's promises to abide permanently by these restrictions.

40. Caroline Church of Brookhaven is a historic community treasure. It was organized in 1723, with the present structure built in 1729. The Church was placed on the National Register of Historic Places by the U.S. Department of the Interior in 1991. My website — *www.savethchurchyard.org* — has received 19,390 page requests to date,

averaging 231 page requests per day, from its launch on August 7 to October 31, 2019. There could be no clearer demonstration that there is great public interest in this lawsuit and in the issues that I have raised, and that the resolution of this lawsuit, on the merits, is important far beyond me.

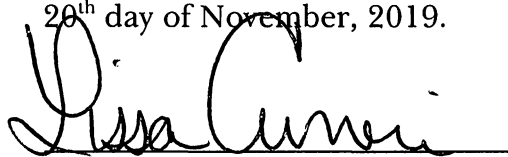
### CONCLUSION

41. In this motion, the Caroline Church Defendants seek to foreclose a resolution on the merits of a well-pled and well-documented complaint that challenges, as unlawful and *ultra vires*, a series of transfers of funds from permanently restricted funds — the Churchyard Fund, the Remembrance Fund, the Organ Fund and the Building Fund — to a single consolidated operating fund. This motion is consistent with the prior failed application of the Caroline Church Defendants to suppress the community discussion of these challenged transfers by shutting down my website rather than addressing the merits of the lawsuit.

42. Based on the foregoing, it is respectfully requested that the motion of the Caroline Church Defendants to dismiss this action be denied.

  
\_\_\_\_\_  
J. CHRISTOPHER HARING

Sworn to before me this  
20<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
Notary Public

**LISSA CURRERI**  
Notary Public, State of New York  
No. 01CU6195120  
Qualified in Suffolk County  
Commission Expires October 20, 2020

**EXHIBIT "C"**



COUNTERS

Do not count  
or deposit  
any contribution  
a check from  
Chris/Linda  
Having.

On Phil



**EXHIBIT "D"**



**Transactions**

Transaction Date	Posting Date	Description	Reference Number	Account Number	Amount	Total		
<b>Payments and Other Credits</b>								
08/12	08/12	VP*CAROLINE CHURCH	6319414245	NY	3788	3329	-10.00	
08/24	08/24	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL PAYMENTS AND OTHER CREDITS FOR THIS PERIOD</b>							[REDACTED]	[REDACTED]

**Purchases and Adjustments**



08/09	08/10	VP*CAROLINE CHURCH	6319414245	NY	2323	3329	10.00	
<b>TOTAL PURCHASES AND ADJUSTMENTS FOR THIS PERIOD</b>							[REDACTED]	[REDACTED]

**Interest Charged**

08/27	08/27	INTEREST CHARGED ON PURCHASES					0.00	
08/27	08/27	INTEREST CHARGED ON BALANCE TRANSFERS					0.00	
08/27	08/27	INTEREST CHARGED ON DIR DEP&CHK CASHADV					0.00	
08/27	08/27	INTEREST CHARGED ON BANK CASH ADVANCES					0.00	
<b>TOTAL INTEREST CHARGED FOR THIS PERIOD</b>								<b>\$0.00</b>

Total fees charged in 2019	\$0.00
Total interest charged in 2019	\$0.00