

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, FRED  
JOHANSEN, 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,

**VERIFIED**  
**COMPLAINT**

Index No.:

-----X  
Plaintiff, by his attorneys, Hamburger, Maxson, Yaffe & McNally, LLP,  
complaining of the defendants, alleges:

**INTRODUCTION**

1. This is an action for declaratory and injunctive relief which challenges the transfer and consolidation of certain monies previously held by defendant Caroline Church of Brookhaven (“Caroline Church”) in four permanently restricted funds — the

Remembrance Fund, the Churchyard Fund, the Building Fund and the Organ Fund — into a single consolidated operating fund.

2. Plaintiff, J. Christopher Haring (“Haring”), seeks a declaration that the challenged transfers were illegal and void, and an injunction directing the defendant Rector and defendant members of the Caroline Church Vestry to restore, return and transfer the monies back into separate permanently restricted accounts.

3. Defendants Episcopal Diocese of Long Island and its Bishop, which supervise and have jurisdiction over the geographic area in which Caroline Church is located, and defendant Attorney General of the State of New York, are sued herein as potentially necessary parties.

4. The venue of this proceeding properly lies in the County of Suffolk, pursuant to CPLR 503, on the basis that plaintiff and defendant Caroline Church of Brookhaven are both residents of Suffolk County.

### **THE PARTIES**

5. Plaintiff J. Christopher Haring, is a resident of the State of New York, County of Suffolk.

6. Mr. Haring is an adult member of the Protestant Episcopal Church in the United States of America.

7. Mr. Haring is a communicant in good standing of the Protestant Episcopal Church in the United States of America.

8. Mr. Haring has worshiped at Caroline Church since 1956, and for more than 20 years has been an active Church member:

- a. Mr. Haring taught Sunday School from 1996 to 2002;
- b. Mr. Haring established the website for the Church in 1998 and has continuously maintained that website and the IT infrastructure of the Church until 2017;
- c. Mr. Haring served on Vestry from February 2003 until January 2009, and again from February 2010 until January 2016;
- d. Mr. Haring was Treasurer of the Church from 2003 to January 2009 and again from February 2010 to 2012;
- e. Mr. Haring was Church Warden from 2012 to 2016;
- f. Mr. Haring was Chair of the Churchyard Committee from 2012-2016;
- g. From in or about 2003 to the present, and continuing, Mr. Haring has volunteered his time to repair and maintain the physical structures and burial ground of the Church, and he frequently negotiates and supervises outside contractors and vendors who provide goods and services to the Church; and

h. In 2018 alone, Mr. Haring made 129 trips to Caroline Church for non-worship purposes.

9. Upon information and belief, defendant Caroline Church of Brookhaven (“Caroline Church”) is a religious corporation duly organized and existing under and by virtue of the laws of the State of New York, with a principal place of business on the Village Green, Setauket, New York, and a mailing address of 1 Dyke Road, Setauket, New York 11733.

10. Upon information and belief, Caroline Church was organized in 1723, the Church building was completed and consecrated in 1729-30, and the Caroline Church was incorporated under the Religious Corporations Law in 1811.

11. Upon information and belief, Caroline Church is the second oldest Episcopal Church building in continuous use in the United States and was added to the National Register of Historic Places in 1991.

12. Upon information and belief, Caroline Church acquired its burial ground, also called the “churchyard,” in 1734.

13. Upon information and belief, defendant Reverend Canon Richard D. Visconti is the duly appointed Rector of Caroline Church (“Defendant Rector”).

14. Upon information and belief, defendant Mark LaSorsa is Senior Churchwarden and a member of the Vestry of Caroline Church.

15. Upon information and belief, defendant Barbara Russell is Junior Churchwarden and a member of the Vestry of Caroline.

16. Upon information and belief, defendants Nick Amato, Carolyn Martezian, William Rhame, Mirjana Ellis, William Harvey, Fred Johansen, Susan Rydzeski, Jackie Hull and Frank Weiland are members of the Vestry of Caroline Church (together with Churchwardens LaSorsa and Russell (hereinafter the “Vestry Defendants”).

17. Upon information and belief, defendant Episcopal Diocese of Long Island (the “Diocese”) is a religious corporation duly organized and existing under and by virtue of the laws of the State of New York, with a principal place of business at 36 Cathedral Avenue, Garden City, New York 11530.

18. Upon information and belief, the Diocese is the representative governing body of the Protestant Episcopal Church in the United States of America in Brooklyn, Queens, Nassau and Suffolk Counties, State of New York.

19. Upon information and belief, the Diocese is composed of 132 congregations, parishes and missions, including Caroline Church.

20. Upon information and belief, defendant Right Reverend Lawrence C. Provenzano is the duly elected Diocesan Bishop of the Diocese (the “Bishop”).

21. The Diocese and the Bishop (collectively hereinafter, the “Diocese Defendants”) are sued herein as potentially necessary parties pursuant to CPLR§ 1001(a) on the basis that their joinder may be necessary to accord complete relief between the

other parties, and because they may be inequitably affected by the judgment entered herein.

22. The Honorable Leticia James is the duly elected Attorney General of the State of New York.

23. Attorney General James is sued herein as a potentially necessary party pursuant to EPTL § 8-1.1(f) which designates the Attorney General as the protector of the public interest in charitable gifts, and related statutes.

### **CHURCH BY-LAWS**

24. Article III of the By-Laws of the Church (“By-Laws”) is entitled, “Financial Operations.”

25. Section 1 of Article III of the By-Laws is entitled “Funds” and provides that, “The Vestry shall establish and maintain the following funds and accounts, and other such funds as the Vestry from time to time may deem necessary for the efficient operation of the Church.”

26. “Operating Funds” are defined and established by Article III, Section 1, Paragraph “A,” as follows:

**Operating Funds:** Operating accounts shall consist of a checking account and one more income producing accounts for the deposit of monies not immediately needed for the day to day operation of the Church. The Treasurer shall distribute operating fund monies into the accounts in a reasonably prudent manner so as to balance goals of maximizing the

earnings and having funds available for the normal operation fo the Church.

27. The “Remembrance Fund” is defined and established by Article III, Section 1, Paragraph “B,” as follows:

**Remembrance Fund:** This fund is for the purpose of the deposit of funds in memory of the departed and to commemorate anniversaries or other events of special significance. From time to time the principal and income, as the Vestry finds appropriate, may be used to provide permanent commemorative memorials in and about the Church for its use.

28. The “Churchyard Endowment Fund,” sometimes called the “Churchyard Fund,” is defined and established by Article III, Section 1, Paragraph “C,” as follows:

**Churchyard Endowment Fund:** This fund is for the purpose of the maintenance of the Churchyard, grounds and Caroline Church’s part of the Village Green. All payments in connection with plot assignments or interments in the churchyard and all contributions for care thereof shall become part of the Churchyard Endowment Fund. Monies for the Churchyard Endowment Fund shall not be used for the installation of grave and plot markers, which are the responsibility of the assignees of individual plots.

29. Article III, Section 1, Paragraph “E” of the By-Laws also provides for “Other Limited Use Funds” as follows:

**Other Limited Use Funds:** Any devise, bequest or gift for special purposes shall be kept in one or more separate accounts and used only for the purposes specifically designated by the terms of the wills or any other instruments pursuant to which the gifts are made. The Vestry may also establish a

limited use fund by motion at a regular meeting. Limited use funds may be co-mingled with other limited use funds by depositing them in a single account providing accurate records are maintained to differentiate the individual funds and the income produced therefrom.

30. Such “Other Limited Use Funds” include the “Building Fund,” the “Organ Fund,” the “Father James Spata Fund” and the “Transition Fund.”

31. Article III, Section 2, of the By-Laws, entitled “Financial Procedures, separately provides for the inter-fund transfer of “Fund Earnings” and “Fund Principal.”

32. Regarding Fund Earnings, pursuant to Article III, Section 2, Paragraph “C” of the By-Laws, “[u]nless otherwise restricted by the fund itself,” the annual earnings from funds (defined to include interest, dividends and appreciation in market value” may be transferred by majority vote of the Vestry to another fund maintained by the Church “by December 31 of the following year.”

33. Regarding Fund Principal, pursuant to Article III, Section 2, Paragraph “D,” Subparagraph (1) of the By-Laws, “unless such a transfer is prohibited or restricted by the document(s) which established the fund,” funds may be transferred from one fund to another “in order to meet an important need of the Church.” A total of nine votes of the Rector, Churchwardens and Vestrypersons is required to authorize such a transfer, and the affirmative votes must include the Rector and at least one Churchwarden. The transfer must specify whether the transfer is with or without “restriction” on the



financial records of the Church. If restricted, “the Vestry shall make every effort to raise funds to reimburse the fund within a reasonable time.”

34. Also regarding Fund Principal, pursuant to Article III, Section 2, Paragraph “D,” Subparagraph (2) of the By-Laws the Investment Committee is authorized to approve a “short term transfer” to be repaid within three months is permitted “where such transfer avoids the liquidation of securities at a time that, in the opinion of the Investment Committee, would not be in the financial interests of the Church.”

**THE TRANSFER AND CONSOLIDATION  
OF RESTRICTED FUNDS INTO A NEW  
“CONSOLIDATED” OPERATING ACCOUNT**

35. Upon information and belief, Caroline Church has historically segregated funds that were restricted for a particular purpose from its general or operating funds and accounts, either through separate fund accounting, or by maintaining separate cash or investment accounts for the restricted use funds.

36. Upon information and belief, the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund were established as, and have always been, *permanently* restricted funds and accounts.

37. The permanent restrictions on these funds have also been expressly imposed by donors who restricted the purposes for which the funds could be used, or they

arise from the representations made by the Church when it solicited the funds for a particular purpose.

38. Upon information and belief, from time to time, beginning in or about 2000, certain transfers were made from the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund for purposes not permitted by the use restrictions affecting those funds.

39. Upon information and belief, these transfers were allowed to happen because then-members of the Vestry were not fully or properly informed as to the true nature of the restrictions, or were led to believe that such restrictions were Vestry-designated or could be removed or superseded by Vestry action.

40. Upon information and belief, in this same period, the annual audits of the Church prepared by its outside professional auditors erroneously re-characterized the permanently restricted funds as temporarily restricted funds.

41. Upon information and belief, in this same period, the By-Laws of the Church were amended, in violation of the permanent restrictions, to permit the transfer of interest earned and unrealized appreciation in market value from a permanently restricted fund to an operating or general fund on an annual basis, as well as to permit short-term "loans."

42. Upon information below, as more fully set forth below, rising costs and reduced membership combined to create financial pressure on the Church, causing

Defendant Rector and the then members of the Vestry, in or about May 2016, to simply abolish and combine all the restricted funds into a single Operating Fund or Operating Account for day-to-day support operations of the Church, rather than to continue taking from those funds, as needed, on an *ad hoc* basis.

**A. Remembrance Fund.**

43. Upon information and belief, the Remembrance Fund is a permanently restricted fund that was established to commemorate the departed, successive anniversaries, or other events of special significance.

44. Upon information and belief, in or about November 2000, in violation of the permanent restrictions, approximately \$15,000 was transferred from the Remembrance Fund for a departing gift for a minister employed by the Church.

45. Upon information and belief, in or about 2000, approximately \$63,653.22 was transferred from the Remembrance Fund to pay post-employment payroll and pension obligations for the retiring rector, and for a retirement party.

46. Upon information and belief, in or about May 2002, in violation of the permanent restrictions, approximately \$25,000 was transferred from the Remembrance Fund to pay for the moving expenses of a newly hired rector.

47. Upon information and belief, the balance in the Remembrance Fund in or about May 2016, was \$1,503,466.

48. Upon information and belief, the balance on account in the Remembrance Fund in or about May 2016 represented monies donated and solicited for the particular purposes set forth above.

49. In or about May 2016, all the securities in the Remembrance Fund were transferred to the new “consolidated” Operating Account, leaving a cash balance in the Remembrance Fund of approximately \$127,000.

50. Upon information and belief, that cash balance was thereafter drawn down to cover the Church’s budget deficit, resulting in a zero balance in the Remembrance Fund by early 2017.

51. Upon information and belief, prior to the transfer, monies in the Remembrance Fund had actually been deposited in one or more separate segregated accounts in one or more financial institutions, and were held as cash or securities.

**B. Building Fund.**

52. Upon information and belief, the Building Fund is a permanently restricted fund that was established for building renovations and maintenance.

53. Upon information and belief, in or about May 2016, the balance in the Building Fund account was approximately \$408,347, and that amount was transferred in its entirety to the new “consolidated” Operating Account.

54. Upon information and belief, the balance on account in the Building Fund in or about May 2016 represented monies donated and solicited for the particular purposes set forth above.

55. Upon information and belief, prior to the transfer, monies in the Building Fund had actually been deposited in one or more separate segregated accounts in one or more financial institutions, and were held as cash or securities.

**C. Organ Fund.**

56. Upon information and belief, the Organ Fund is a permanently restricted fund that was established for needed repairs and rebuild of the Church organ in the mid-1990's. A separate account was opened for the Organ Fund in or about December 2001, with an initial balance of approximately \$53,000.

57. Upon information and belief, all monies donated and solicited for the Organ Fund were donated or solicited for the particular purposes of making repairs, rebuilding and maintaining the Church organ, including a testamentary gift from the Estate of Georgia Beck in the approximate amount of \$278,788.77, that was received in April 2010.

58. Plaintiff is and was named as alternate executor under the Last Will and Testament of parishioner Georgia Beck.

59. Upon information and belief, the bequest received for the Organ Fund from the Beck Estate was transferred, in or about April 2010, to the Remembrance Fund.

60. Upon information and belief, on or about March 24, 2012, a transfer of \$5,000 was made from the Organ Fund to purchase office equipment.

61. Upon information and belief, on or about May 31, 2012, a transfer of approximately \$63,200 was made from the Organ Fund to the Remembrance Fund.

62. Upon information and belief, on or about October 2, 2015, a transfer of approximately \$3,400 was made to the Church operating account.

63. Upon information and belief, in or about May 2016, the balance in the Organ Fund account was approximately \$69,932, and that amount was transferred in its entirety to the new “consolidated” Operating Account.

64. Upon information and belief, prior to the transfer, monies in the Organ Fund had actually been deposited in one or more separate segregated accounts in one or more financial institutions, and were held as cash or securities.

**D. Churchyard Fund.**

65. Upon information and belief, the Churchyard Fund is a permanently restricted fund that was established for the upkeep and maintenance of the cemetery, grounds and Caroline Church’s part of the Village Green.

66. Upon information and belief, the Churchyard Fund was funded through donations and interment fees.

67. Upon information and belief, the earnings and market value increases of the Churchyard Fund were used for the regular maintenance of the cemetery, with any surplus dedicated for occasional capital projects, such as fencing replacement.

68. Upon information and belief, in or about 2000, in violation of the permanent restrictions, approximately \$50,000 was transferred from the Churchyard Fund to the “Transition Fund” which is used to pay for expenses incurred during the period of selecting a new rector.

69. Upon information and belief, in or about 2003, in violation of the permanent restrictions, approximately \$50,000 was transferred from the Churchyard Fund to pay for rectory landscaping.

70. Upon information and belief, on or about May 2016 the balance in the Churchyard Fund account was approximately \$835,935, and that amount was transferred in its entirety to the new “consolidated” Operating Account.

71. Upon information and belief, the balance on account in the Churchyard Fund in or about May 2016 represented monies donated and solicited for the particular purposes set forth above.

72. Upon information and belief, prior to the transfer, monies in the Churchyard Fund had actually been deposited in one or more separate segregated accounts in one or more financial institutions, and were held as cash or securities.

**E. New “Consolidated” Operating Account.**

73. Upon information and belief, prior to May 2016, in addition to restricted funds, Caroline Church maintained a fund called the “General Fund” or “Operating Fund” that was used for support and operations.

74. Upon information and belief, monies classified as General Fund or Operating Fund monies were segregated from restricted fund monies and were deposited or invested in various banks and financial institutions.

75. Upon information and belief, a new “consolidated” Operating Account (“Operating Account”) was created in or about May 2016 with the transfer to it of more than \$2,800,000 from the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund.

76. Upon information and belief, the Operating Account has its monies held or invested in one or more financial institutions, and is held as cash or securities.

77. Upon information and belief, the Operating Account does not employ “fund accounting” to separately account for monies transferred from the Remembrance Fund, the Building Fund, the Organ Fund or the Churchyard Fund.



78. Rather, upon information and belief, all such transferred monies have been commingled, without differentiation regarding their origin or purpose, and are expended by Defendant Rector and the Vestry Defendants for day-to-day Church operations and for whatever Church expenses may arise.

79. Upon information and belief, the Operating Account does not employ “fund accounting” to separately account for monies received from parishioners after it was established in or about May 2016, notwithstanding that such monies have been donated for the specific uses and purposes previously discharged by the Remembrance Fund, the Building Fund, the Organ Fund or the Churchyard Fund.

80. Rather, upon information and belief, all such donated monies have been commingled, without differentiation regarding their origin or purpose, and are expended by Defendant Rector and the Vestry Defendants for day-to-day Church operations and for whatever Church expenses may arise.

### **SOLICITATIONS AND DONATIONS**

81. Upon information and belief, Caroline Church has historically solicited donations specifically for the Remembrance Fund, the Organ Fund, the Building Fund, and the Churchyard Fund in its weekly bulletins and in donation envelopes forwarded to Church members for their use in the coming year.

82. However, upon information and belief, beginning in or about 2017, a sticker has been affixed to each box in which the donation envelopes are delivered, stating:

This Church is a qualified section 501(c)(3) organization. All tithes, offerings, or donations of any kind are tax-deductible under section 170(c)(2). *Using this envelope constitutes your agreement to relinquish control in accordance with IRS regulations.*

(Emphasis added).

83. Upon information and belief, beginning in or about February 2017, the same statement, including the donor's agreement to "relinquish control," began to appear in the weekly bulletins of the Church in connection with all donation solicitations.

84. Upon information and belief, prior to October 2016, no donor who was solicited to donate to the Remembrance Fund, the Building Fund, the Organ Fund or the Churchyard Fund, or who donated without being solicited, was advised that he or she had agreed to relinquish control of the use or purpose to which such donation would be put.

85. To the contrary, prior to 2017, all donations to the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund were restricted to the particular use or purpose for which the Funds had been established.

86. Upon information and belief, in or about June 2017, Caroline Church mailed a letter soliciting donations for a roof replacement, stating, "All contributions will go directly to the new roof."

87. Upon information and belief, although more than \$30,000 was raised in response to the roof replacement solicitation, such monies were not used for roof replacement but were instead deposited into one or more of consolidated operating accounts to be used for day-to-day Church operations or whatever Church expenses may arise.

**PLAINTIFF'S CHURCHYARD FUND DONATION AND THE  
ALTERATION OF RESTRICTED FUND ACCOUNTING ENTRIES**

88. In or about June 2016, Plaintiff made a \$500 donation to the Churchyard Fund, which was deposited into the regular checking account of the Church and "debited" to cash with a corresponding credit "due to Churchyard Fund."

89. Upon information and belief, that \$500 donation, together with other restricted donations made to the Remembrance Fund, the Building Fund, the Organ Fund and the Churchyard Fund after January 1, 2016, was never transferred or moved to the restricted fund to which the donation had been made.

90. Instead, upon information and belief, in or about late 2017, all transactions credited to the liability accounts, such as "Due to Remembrance Fund" or "Due to Churchyard Fund," were altered to new income accounts such as "Remembrance Donations" or "Churchyard Donations," effectively eliminating the donor imposed restrictions.

**RELIGIOUS CORPORATION LAW AND**  
**NOT-FOR PROFIT CORPORATION LAW**

91. The Religious Corporations Law (“RCL”) applies to Protestant Episcopal Churches, like defendant Caroline Church of Brookhaven, pursuant to Article 3 thereof, Sections 40-49.

92. With exceptions not here relevant, the Not-for-Profit Law (“NPCL”) applies to every corporation to which the RCL applies. *See* RCL § 2-b.

93. Where a conflict exists between the RCL and the NPCL, the provision of the RCL shall prevail, but where there is no conflict and provisions of each apply to a matter embraced by both, both the RCL and the NPCL will apply. *See* RCL § 2-b(1)(a).

94. Section 513(b) of the NPCL, entitled “Administration of assets received for specific purposes,” provides:

Except as may be otherwise permitted under article eight of the estates, powers and trusts law or section 555 (Release or modification of restrictions on management, investment, or purpose), the governing board shall apply all assets thus received to the purposes specified in the gift instrument as defined in section 551 (Definitions) and to the payment of the reasonable and proper expenses of administration of such assets. The governing board shall cause accurate accounts to be kept of such assets separate and apart from the accounts of other assets of the corporation. Unless the terms of the particular gift instrument provide otherwise, the treasurer shall make an annual report to the members (if there be members) or to the governing board (if there be no members) concerning the assets held under this section and the use made of such assets and of the income thereof.

95. “Charitable purpose” includes advancement of religion, or any purpose that is charitable under the laws of the state of New York. *See* NPCL § 551(a).

96. “Donor” means the person who grants or transfers the property to an institution pursuant to a gift instrument. *See* NPCL § 551(a-1).

97. “Gift instrument” means a record or records, including an “institutional solicitation.” *See* NPCL § 551(c).

98. A “record” means information that is inscribed on a tangible medium, electronic or otherwise, that is retrievable. *See* NPCL § 551(I).

99. “Institution” means any corporation described in NPCL 102(a)(5), and provides that any obligation imposed upon an institution, is imposed upon its governing board. *See* NPCL § 551(d).

100. RCL § 2-b(2) provides that “Every corporation to which the not-for-profit law is made applicable by this section is a charitable corporation as defined in [NPCL § 102(a)] for all purposes of that law.”

101. “Governing body” means the body responsible for the management of a corporation or an institutional fund. *See* NPCL § 102(a)(15).

102. “Institutional fund” means a fund held by an institution. *See* NPCL § 551(e).

103. Section 555(c) of the NPCL provides, *inter alia*, that restrictions contained in a gift instrument on the use of an institutional fund becomes “unlawful,

impracticable, impossible to achieve, or wasteful, the court, upon application, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the purposes expressed in the gift instrument.” Such application shall be made to the Supreme Court of the judicial district in which the institution has its office or principal place of business or, if the particular gift instrument was a Will, to the Surrogate’s Court in which the Will was probated. *See* NPCL § 555(4)(e)(1)&(2).

**FIRST CAUSE OF ACTION**  
**DECLARATORY RELIEF REGARDING**  
**ALL PERMANENTLY RESTRICTED FUNDS**

104. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “103” of the Complaint as though fully set forth at length.

105. A justiciable controversy exists as between Plaintiff on the one hand, and Defendant Rector and the Vestry Defendants on the other hand, as to whether the Remembrance Fund, the Organ Fund, the Building Fund and the Churchyard Fund are and were, at all times relevant hereto, *permanently* restricted funds.

106. Pursuant to CPLR 3001, and based on the foregoing, this Court should issue a declaration declaring such funds to have been, and to be, permanently restricted.

107. Based on the foregoing, because Article III, Section 2, Paragraph “C” of the By-Laws, permits annual earnings from permanently restricted funds (defined to include interest, dividends and appreciation in market value) to be transferred by majority

vote of the Vestry to another fund maintained by the Church, this Court should also declare this By-Law to be *ultra vires*, void, and of no further force and effect.

108. Based on the foregoing, because Article III, Section 2, Paragraph “D,” Subparagraph (1) of the By-Laws permits a transfer of permanently restricted funds “in order to meet an important need of the Church, this Court should additionally declare this By-Law to be *ultra vires*, void, and of no further force and effect.

109. Based on the foregoing, because Article III, Section 2, Paragraph “D,” Subparagraph (2) of the By-Laws permits a “short term transfer” of permanently restricted funds to be repaid within three months where the Investment Committee determines that the transfer would avoid the liquidation of securities at a time that would not be in the financial interests of the Church, this Court should further declare this By-Law to be *ultra vires*, void, and of no further force and effect.

**SECOND CAUSE OF ACTION**  
**INJUNCTIVE RELIEF REGARDING**  
**ALL PERMANENTLY RESTRICTED FUNDS**

110. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “109” of the Complaint as though fully set forth at length.

111. Based on the foregoing, this Court should issue a preliminary and permanent injunction directing Defendant Rector and the Vestry Defendants to reverse all transfers of funds from the Remembrance Fund, the Building Fund, the Organ Fund and

the Church Yard Fund to the new “consolidated” Operating Account or to any other funds from which such transfers were made, and to return and restore such funds to the particular permanent fund from which it was transferred.

112. Based on the foregoing, this Court should also issue a preliminary and permanent injunction directing Defendant Rector and the Vestry Defendants to cause accurate accounts to be kept of such permanently restricted funds separate and apart from the accounts of other Church funds, and to cause the treasurer of the Church to make an annual report to the Vestry concerning these permanently restricted funds, and the use made of such assets, including the income thereof.

**THIRD CAUSE OF ACTION**  
**FOR DECLARATORY AND INJUNCTIVE**  
**RELIEF REGARDING CHURCHYARD FUND**

113. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “112” of the Complaint as though fully set forth at length.

114. Section 1507(c)(1) of the NPCL provides in pertinent part:

Every cemetery corporation and *every religious corporation* having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, *shall keep separate and apart from its other funds*, all moneys and property received by it, whether by contract, trust, or otherwise, for the perpetual care and maintenance of any lot, plot or part thereof in its cemetery and all such moneys so received by any such corporation are hereby declared to be, and shall be held by the corporation as trust funds.

(Emphasis added).



115. Based on the foregoing, 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, that portion of Article III, Section 1, Paragraph “C” of the By-Laws, that permits the Churchyard Fund to also be expended for maintenance of the non-cemetery grounds of the Church and on the Church’s part of the Village Green, should be declared *ultra vires*, void, and of no further force and effect.

116. Based on the foregoing, this Court should issue a preliminary and permanent injunction directing the Defendant Rector and the Vestry Defendants to return and restore such funds so expended to the Churchyard Fund.

**WHEREFORE**, Plaintiff respectfully requests that a judgment be entered against the defendants as follows:

- a. On plaintiff’s first cause of action, declaring that:
  - i. Remembrance Fund, the Building Fund, the Organ Fund and the Church Yard Fund are permanently restricted funds;
  - ii. Article III, Section 2, Paragraph “C” of the By-Laws, permitting annual earnings from permanently restricted funds (defined to include interest, dividends and appreciation in market value) to be transferred by majority vote of the Vestry to another fund maintained by the Church, is *ultra vires*, void, and of no further force and effect;
  - iii. Article III, Section 2, Paragraph “D,” Subparagraph (1) of the By-Laws permitting a transfer of permanently restricted funds

“in order to meet an important need of the Church, is *ultra vires*, void, and of no further force and effect; and

- iv. Article III, Section 2, Paragraph “D,” Subparagraph (2) of the By-Laws permitting a “short term transfer” of permanently restricted funds to be repaid within three months where the Investment Committee determines that the transfer would avoid the liquidation of securities at a time that would not be in the financial interests of the Church is *ultra vires*, void, and of no further force and effect.

b. On plaintiff’s second cause of action, this Court should issue a permanent injunction directing Defendant Rector and the Vestry Defendants:

- i. To reverse all transfers of funds from the Remembrance Fund, the Building Fund, the Organ Fund and the Church Yard Fund to the new “consolidated” Operating Account, or to any other funds to which such transfers were made, and to return and restore such funds to the particular permanent fund from which it was transferred; and
- ii. To cause accurate accounts to be kept of such permanently restricted funds separate and apart from the accounts of other Church funds, and to cause the treasurer of the Church to make an annual report to the Vestry concerning these permanently restricted funds, and the use made of such assets, including the income thereof.

c. On plaintiff’s third cause of action:

- i. Declaring that portion of Article III, Section 1, Paragraph “C” of the By-Laws, that permits the Churchyard Fund to also be expended for maintenance of the non-cemetery grounds of the Church and on the Church’s part of the Village Green, is *ultra vires*, void, and of no further force and effect; and
- ii. Permanently enjoining the Defendant Rector and the Vestry Defendants to return and restore such funds so expended to the Churchyard Fund.

plus an award in favor of Plaintiff for the costs and disbursements of this action, as provided by law, together with such other and further relief as to the Court seems just and proper.

Dated: Melville, New York  
April 25, 2019

Yours, etc.,

**HAMBURGER, MAXSON, YAFFE  
& McNALLY, LLP**  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

Richard Hamburger, Esq.  
225 Broadhollow Road, Suite 301E  
Melville, New York 11747  
631.694.2400

**VERIFICATION**

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

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

I am the petitioner-plaintiff in the within action; I have read the foregoing Petition/Complaint and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

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

Sworn to before me this  
\_\_\_\_ day of April, 2019.

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