

At a Special Term of Supreme Court of the  
State of New York, held in and for the  
County of Erie in Part 4 on December 4,  
2008

PRESENT: Hon. John M. Curran., J.S.C.  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

KENNETH GORDON, JOHN MANLEY, MICHAEL  
EATON, MATTHEW BLACKWELL, SHAUN  
BABCOCK, RICHARD STOTZ, THOMAS CARLSEN,  
ROBERT HAMMOND, WILLIAM STORTZ, LEE  
STROCK, DAVID GEORGE, JOHN CONKLIN, DAVID  
YOUNG, as TRUSTEES OF THE TRUSTEES OF THE  
PRESBYTERIAN SOCIETY OF CAYUGA CREEK  
d/b/a LANCASTER PRESBYTERIAN CHURCH and  
THE TRUSTEES OF THE PRESBYTERIAN SOCIETY  
OF CAYUGA CREEK

Plaintiffs

v.

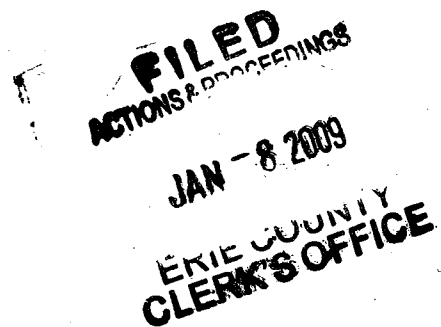
ORDER

THE PRESBYTERY OF WESTERN NEW YORK and  
PRESBYTERIAN CHURCH (U.S.A.), A  
CORPORATION

Index No. 2008-006996

Defendants

Plaintiffs Kenneth Gordon, John Manley, Michael Eaton, Matthew Blackwell, Shaun Babcock, Richard Stotz, Thomas Carlsen, Robert Hammond, William Stortz, Lee Strock, David George, John Cocklin, David Young, as Trustees of the Trustees of the Presbyterian Society of Cayuga Creek d/b/a Lancaster Presbyterian Church and the Trustees of the Presbyterian Society of Cayuga Creek having moved for summary judgment declaring: (a) plaintiffs' absolute right to "The Premises", as that term is more fully described in the Complaint and exhibits to the Complaint; (b) that complete title and possession of "The Premises" vested solely in plaintiffs and



that plaintiffs may remain in possession thereof; (c) plaintiffs' rights to all "Personal Property", as that term is more fully defined in the Complaint and affidavit of Richard Stotz; and (d) that complete title and possession of all such "Personal Property" is vested solely in plaintiffs; and defendant The Presbytery of Western New York having made a cross-motion for summary judgment declaring that all properties that are the subject of plaintiffs' Complaint are held in trust for the use and benefit of the Presbyterian Church (U.S.A.) with their disposition to be governed by the Constitution of the Presbyterian Church (U.S.A.); or, in the alternative, for summary judgment dismissing the Complaint; and the Presbyterian Church (U.S.A.), a Corporation having made a cross-motion for summary judgment declaring that all properties that are the subject of plaintiffs' Complaint are held in trust for the use and benefit of the Presbyterian Church (U.S.A.) with their disposition to be governed by the Constitution of the Presbyterian Church (U.S.A.); or, in the alternative, for summary judgment dismissing the Complaint,

Now, upon the Notice of Motion of plaintiffs dated July 23, 2008, together with the Affirmation of Andrew D. Merrick dated July 23, 2008, and attached exhibits; the Affirmation of Andrew D. Merrick dated June 15, 2008, and attached exhibits; the Affidavit of Mary Jane Keyse, sworn to February 28, 2008, and attached exhibit; the Affidavit of Richard Stotz, sworn to June 15, 2008, and attached exhibits; and the Affidavit of Reverend Kelly Nagus, sworn to June 15, 2008, and attached exhibits; the Notice of Cross-Motion of defendant Presbytery of Western New York dated August 7, 2008, together with the Affirmation of Joseph S. Brown dated August 7, 2008; the Affidavit of Patricia K. Townsend, sworn to July 31, 2008, and attached exhibit; and the Affidavit of Reverend Bronwen W. Boswell, sworn to July 31, 2008, and attached exhibits; and the Notice of Cross-Motion of the Presbyterian Church (U.S.A.) dated July 31, 2008, together with the Affidavit of Michael Pilarz, sworn to July 28, 2008, and attached exhibits; and the Declaration of Mark Tammen, sworn to July 30, 2008, and attached exhibits; the



STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ERIE  
PART 4

\*\*\*\*\*

KENNETH GORDON, JOHN MANLEY, MICHAEL EATON,  
MATTHEW BLACKWELL, SHAUN BABCOCK, RICHARD  
STOTZ, THOMAS CARLSEN, ROBERT HAMMOND,  
WILLIAM STORTZ, LEE STROCK, DAVID GEORGE,  
JOHN CONKLIN, DAVID YOUNG,  
AS TRUSTEES OF THE TRUSTEES OF THE  
PRESBYTERIAN SOCIETY OF CAYUGA CREEK  
d/b/a LANCASTER PRESBYTERIAN CHURCH,  
AND THE TRUSTEES OF THE PRESBYTERIAN  
SOCIETY OF CAYUGA CREEK

Plaintiffs

Index No. 6996/2008

vs.

Decision of the Court

THE PRESBYTERY OF WESTERN NEW YORK;  
PRESBYTERIAN CHURCH U.S.A., A CORPORATION

Defendant

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Erie County Courthouse  
Buffalo, New York  
December 4, 2008

BEFORE:

HONORABLE JOHN M. CURRAN  
Justice

APPEARANCES:

LISA T. SOFFERIN, ATTY-AT-LAW  
ANDREW D. MERRICK, ESQ.  
Appearing for the Plaintiffs

JOSEPH S. BROWN, ESQ.  
Appearing for Presbytery of WNY

MICHAEL PILARZ, ESQ.  
Appearing for Presbyterian Church, USA

Sally S. Frizzell, CSR  
Official Court Reporter

1  
2 THE CLERK: Calling the matter of Kenneth  
3 Gordon, John Manley, Michael Eaton, Matthew  
4 Blackwell, Shaun Babcock, Richard Stotz, Thomas  
5 Carlsen, Robert Hammond, William Stortz, Lee  
6 Strock, David George, John Conklin, David Young,  
7 As Trustees of the Trustees of the Presbyterian  
8 Society of Cayuga Creek doing business as  
9 Lancaster Presbyterian Church, et cetera versus  
10 the Presbytery of Western New York and others,  
11 Index Number 6996/2008. Please state your  
12 appearances for the record.

13 MS. SOFFERIN: Lisa Sofferin from Brown and  
14 Kelly on behalf of the plaintiffs.

15 MR. MERRICK: Andrew Merrick, same, Brown and  
16 Kelly, on behalf of plaintiffs.

17 MR. BROWN: Joseph Brown on behalf of the  
18 Presbytery of Western New York.

19 MR. PILARZ: Michael Pilarz, Presbyterian  
20 Church, USA.

21 THE COURT: Lawyers, good morning. Does  
22 anyone wish to have this oral argument on the  
23 record? Let me know if you do. We're off the  
24 record for now, Sally. Thank you.

25 (Oral argument not recorded.)

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2 THE COURT: The Court has heard a second  
3 round of oral argument here today with respect to  
4 the competing motions for summary judgment before  
5 it. After the first round of oral argument on the  
6 motions, the Court invited the opportunity for the  
7 parties to participate in mediation, if they so  
8 choose. They ended up taking the Court up on its  
9 offer. And through very good faith on both sides,  
10 it was still unsuccessful.

11 Thereafter, the Court of Appeals decided  
12 Harnish. And as a result of Harnish, the Court  
13 afforded the parties the opportunity to brief and  
14 further argue the impact of that case on the  
15 Court's decision. As it also happens, the  
16 Oakfield case came down from the Fourth Department  
17 very recently. So now the Court has the benefit  
18 of those two decisions from the Fourth Department  
19 and the Court of Appeals and is prepared to render  
20 its decision today.

21 No matter what I decide, I know this is going  
22 to the Fourth Department. And, very honestly, I'm  
23 very interested to see what they will say about  
24 it. But I know one thing and that is that I must  
25 be bound primarily by Harnish. So, therefore, the

Court's decision is as follows:

Before the Court are plaintiffs' motion for summary judgment and defendants' cross-motion for summary judgment. The matter was initially returnable on August 14, 2008, as I indicated. The Court heard oral argument at that time, and thereafter we have Oakfield and Harnish, as I indicated.

As reiterated by the Court of Appeals in Harnish, the Court must use the neutral principles of law approach to church property disputes. Quote: Application of the neutral principles doctrine requires the Court to focus on the language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. The Court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, taking special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties

1  
2 have intended to create a trust or restriction,  
3 unquote. And that's from Harnish.

4 In Harnish, the Court of Appeals found that  
5 in applying the neutral principles of law  
6 approach, there was nothing in the deed,  
7 certificate of incorporation or in the religious  
8 corporation law to conclusively establish a trust  
9 in favor of the diocese or national church.

10 However, in looking to, quote, the  
11 constitution of the general church concerning the  
12 ownership and control of church property, unquote,  
13 the Court found that factor to be dispositive.

14 This Court must apply the Harnish analysis  
15 here. As in Harnish, there is nothing here in the  
16 deeds or certificate of incorporation creating an  
17 express trust or an express adoption of the  
18 current Book of Order. Additionally, while  
19 Harnish involved an Episcopalian church and this  
20 case involves a Presbyterian one, and therefore  
21 the case for statutory or so-called statutory  
22 trust under the Religious Corporations Law was  
23 stronger in Harnish than it is here because of the  
24 date of the plaintiff incorporation date in this  
25 case, the Court of Appeals in Harnish concluded,

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2 despite the stronger argument there, that the  
3 Religious Corporations Law did not create a  
4 so-called statute based trust. The same is true  
5 here. Specifically in Harnish, as I read that  
6 case, the Religious Corporations Law and the  
7 creation of a trust in connection therewith was a  
8 neutral factor. The same is true here. That  
9 whole issue with respect to the religious  
10 corporation law and the incorporation date is a  
11 neutral factor. So we're exactly the same, as I  
12 see it, as in Harnish, with respect to its  
13 analysis. Therefore, the issue surrounding the  
14 date of plaintiff's incorporation is likewise a  
15 non-factor under that Harnish analysis, as I  
16 understand that case.

17 Accordingly, in applying the holding of  
18 Harnish, the Book of Order, as revised in 1980, is  
19 dispositive here. The current Book of Order, as  
20 did the Dennis Canons in Harnish, expressly  
21 creates a trust encompassing plaintiffs' real and  
22 personal property.

23 During oral argument here today, Mr. Brown  
24 argued that he understood Harnish to require not  
25 just the express trust of the constitution but

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2 also a manifestation of assent thereto by the  
3 local church. Mr. Pilarz took an opposite view  
4 and thinks it's simply enough to have the trust  
5 created in the so-called constitution of the  
6 national church. Despite that disagreement  
7 between the folks on that side of the case, this  
8 Court has analyzed Harnish and believes that the  
9 expression of assent, some manifestation, is  
10 required, given the fact that the Court used the  
11 word and. The Court of Appeals is not in the  
12 business of using language where it's not  
13 necessary. So I reject, with all respect,  
14 Mr. Pilarz's argument, and now must look as to  
15 whether or not there has been a manifestation of  
16 assent. And it doesn't have to be in the deed or  
17 certificate of incorporation, according to  
18 Harnish.

19 As in Harnish, the church here has expressed  
20 its assent to the express trust contained in the  
21 current Book of Order. It did so at least twice  
22 since its enactment. In July of 1998, Lancaster  
23 Presbyterian Church issued the Lancaster  
24 Affirmation, and it specifically calls it an  
25 affirmation. And it did so to all churches in the

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2           Presbytery. In that affirmation its members  
3           state, quote, we the undersigned do declare and  
4           affirm our loyalty to and love for our  
5           denomination as it is constituted in our Book of  
6           Confessions and the Book of Order. As a side  
7           note, it specifically refers to the Book of Order  
8           which then existed. We receive and adopt its  
9           tenets and historical principles of church  
10          government. We receive and adopt. It uses the  
11          word adopt.

12                 Thereafter, in January of 2005, the Lancaster  
13          Presbyterian Church completed a form in connection  
14          with its efforts to obtain a new pastor through  
15          the PC USA's process which states, we affirm our  
16          loyalty to and our love for our denomination as it  
17          constitutes in our Book of Confessions and Book of  
18          Order. Again, as aside -- as an aside, it refers  
19          to the Book of Order, which then had an express  
20          trust as of that time. Continuing on in the  
21          quote. We receive and adopt its tenets and  
22          historical principles of church government.  
23          Again, the congregation, represented by the  
24          plaintiffs, adopted, and so expressed it.

25                         As in Harnish, in light of this conclusion

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2 that the Book of Order creates an express trust,  
3 and that plaintiff church has manifested its  
4 assent to it, there is no need to consider an  
5 implied trust. However -- and it's not entirely  
6 clear to me why the Court did so in Harnish,  
7 perhaps it's dicta -- that Court went on to  
8 consider some factors that bear on an implied  
9 trust analysis as set out in the Schenectady case  
10 at 62 NY2d 110, 1984. Those same factors as  
11 recognized in Harnish are present here.  
12 Specifically, the Lancaster Presbyterian Church,  
13 as was the case in Harnish, never objected to the  
14 applicability and did not attempt to remove itself  
15 from the reach of the trust provision of the Book  
16 of Order. Moreover, applying the analysis in  
17 Schenectady, the Lancaster Presbyterian Church's  
18 consent to be bound by the amended Book of Order,  
19 as evidenced by the above-referenced affirmations  
20 that I read into the record, is a sufficient  
21 manifestation of the intention to form an implied  
22 trust or, at a minimum, establishes an implied  
23 agreement to be bound, especially in light of its  
24 failure to object to that revised Book of Order,  
25 in the approximately 28 years that the express

1 trust has existed.

2  
3 Again, to reiterate, the Court finds that  
4 this case meets the test of an express trust set  
5 out by Harnish. To the extent that the Harnish  
6 court requires an implied trust analysis, I've  
7 done that as well.

8 Based on the foregoing, plaintiffs' motion  
9 for summary judgment is denied and defendants'  
10 motion for summary judgment is granted.

11 Defense counsel shall settle the order with  
12 plaintiffs' counsel and attach a copy of the  
13 transcript of this decision to the order.

14 Miss Sofferin, any requests for  
15 clarification?

16 MS. SOFFERIN: One moment, Your Honor. Thank  
17 you.

18 Your Honor, if I could just get some  
19 clarification with respect to the filing and  
20 enforcement of the order, Your Honor. I would  
21 request that there be a stay of enforcement,  
22 allowing the plaintiffs to take an appeal to the  
23 Fourth Department. That there be no transition of  
24 the property, no filing of any documents, until  
25 that is completed. And I'll represent to the

