

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

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ERIE COUNTY
CLERK'S OFFICE

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

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

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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

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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.

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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

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2 Court that the appeal would be done with dispatch,
3 Your Honor.

4 THE COURT: Mr. Brown, what's your position
5 on that application?

6 MR. BROWN: Can I consult with my clients?

7 THE COURT: Of course.

8 MR. BROWN: 30 seconds.

9 THE COURT: Mr. Pilarz, obviously, I'm going
10 to have the same question for you in a minute.

11 MR. BROWN: No objection, Your Honor.

12 MR. PILARZ: No objection.

13 THE COURT: Fine.

14 Now, Miss Sofferin, prepare a separate order
15 on that and settle it with opposing counsel, with
16 respect to the stay pending appeal. And I'll be
17 happy to sign it, since it's stipulated. Any
18 requests for clarification?

19 MS. SOFFERIN: The only clarification request
20 that I have, Your Honor, in connection with the
21 determination that the incorporation of the church
22 prior to 1828 is a non-factor, so that the fact
23 that the statute speaks to the various mandates of
24 the statute before you're bound by the
25 constitution, understand it to be neutral

1 principles, but I also understand that to be the
2 very language that eliminates the need for a
3 church to do anything at all. And as I understand
4 Your Honor's decision, it is completely a
5 non-factor, not part of that analysis?
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7 THE COURT: My decision stands as it is. But
8 the record should reflect that during oral
9 argument, Miss Sofferin, since you raised it, you
10 agreed that the statutory analysis was a neutral
11 factor in both Harnish and in this case. Thank
12 you very much.

13 MS. SOFFERIN: Thank you.

14 THE COURT: Mr. Brown, any requests for
15 clarification?

16 MR. BROWN: No, Your Honor.

17 THE COURT: Mr. Pilarz?

18 MR. PILARZ: No.

19 THE COURT: All right. Take your papers on
20 your way out, please, folks. And you're on your
21 way out to Rochester.

22 (Proceedings concluded.)

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