
STATE OF NEW YORK

Court of Appeals

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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 PRESBYTERIAN SOCIETY OF
CAYUGA CREEK d/b/a LANCASTER PRESBYTERIAN CHURCH and
THE TRUSTEES OF THE PRESBYTERIAN
SOCIETY OF CAYUGA CREEK,
Plaintiffs-Appellants,

vs.

THE PRESBYTERY OF WESTERN NEW YORK
and PRESBYTERIAN CHURCH (U.S.A), a Corporation,
Defendants-Respondents.

Appellate Division Docket Number: CA 09-00787.
Erie County Index No.: I 2008-006996.

**NOTICE OF MOTION FOR LEAVE TO APPEAL
TO THE COURT OF APPEALS AND
STATEMENT IN SUPPORT OF MOTION
ON BEHALF OF PLAINTIFFS-APPELLANTS**

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THE PRESBYTERY OF WESTERN NEW YORK and
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Defendants/Respondents.

NOTICE OF MOTION

Fourth Department
Docket No. CA 09-00787

Erie County
Index No.: I2008-006996

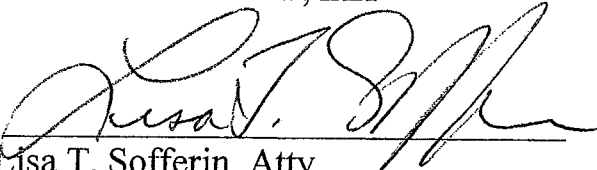
PLEASE TAKE NOTICE, that upon the annexed: 1) statement setting forth the procedural history of the case and timeliness of motion; 2) statement establishing this Court's jurisdiction over the proposed appeal and this motion; 3) statement of the questions presented for review; 4) argument showing why the questions presented merit review; 5) the briefs filed with the Appellate Division; (6) the record on appeal in the Appellate Division and exhibits hereto, Plaintiffs-Appellants will move the Court of Appeals, at Court of Appeals Hall, 20 Eagle Street, Albany, New York, on the 25th day of January, 2010, for leave to appeal from an Order of the

Appellate Division, Fourth Department, entered November 13, 2009 which affirmed an order of the Supreme Court, County of Erie, entered January 8, 2009, granting summary judgment in favor of Defendants-Respondents The Presbytery of Western New York and Presbyterian Church (U.S.A.). The Fourth Department denied Plaintiffs/Appellants motion for leave to appeal to this Court in an Order granted December 30, 2009.

Pursuant to 22 NYCRR 500.21 (a), oral argument on the return date is not permitted, and no appearance is necessary or allowed.

DATE: January 12, 2010

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By: 

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STATEMENT OF PROCEDURAL HISTORY AND TIMELINESS OF MOTION

This is an action by Plaintiffs/Appellants Lancaster Presbyterian Church and its Trustees (hereinafter collectively "LPC") to quiet title to real and personal property. LPC filed its Complaint on June 16, 2008 seeking a declaration that LPC holds title to all of its real and personal property free from any trust, estate or other interest of Defendants/Respondents Presbyterian Church U.S.A. ("PCUSA") or The Presbytery of Western New York ("the Presbytery") (R.69). Upon the application of LPC, the court below granted a Restraining Order on June 17, 2008 pending disposition of an Order to Show Cause pursuant to which LPC sought an injunction against Respondents' interference with LPC's right to exclusive ownership and control of its real and personal property (R.27). The Restraining Order was extended upon the stipulation of the parties, following which all parties served Motions for Summary Judgment seeking a declaration as to whether LPC held its property in trust in favor of the PCUSA (R.20, 31, 33, 37, 251, 329).

After the Motions for Summary Judgment were argued on August 14, 2008, and submitted, this Court issued its Decision in Episcopal Diocese of Rochester v. Harnish, 11 N.Y.3d 340, 870 N.Y.S.2d 814 (2008) ("Harnish"). The court below heard further argument on the Motions on December 4, 2008 and then announced its prepared decision on the record on that same date (R.7 and Exhibit "A", hereto). The

court below, by the Honorable John M. Curran, determined that under Harnish, both an express and implied trust existed in LPC's property in favor of the PCUSA, thereby denying the Motion of LPC and granting the Motions of the PCUSA and Presbytery (R. 7). In its Oral Decision, as reflected in the December 4, 2008 Transcript, the court below determined that, *inter alia*, Religious Corporations Law Section 24 was irrelevant to the disposition of LPC's property contrary to the clear and unambiguous language of the statute and the Decision of this Court in First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States, 62 N.Y.2d 110, 476 N.Y.S.2d 86 (1984) ("Schenectady") which held that the failure to comply with the statutory requirements of RCL Section 24 is, at the very least, evidence of a lack of intent to form a trust, which alone should have defeated the Motions of the PCUSA and Presbytery.

The Order below was granted on December 18, 2008 and entered in the Erie County Clerk's Office on January 8, 2009 (R. 4 and Exhibit "B", hereto). A timely Notice of Appeal to the Fourth Department was filed by LPC on February 3, 2009 (R. 2 and Exhibit "C", hereto). The Appellate Division, by Order granted on November 13, 2009, affirmed the Order and Decision of Justice Curran for the reasons stated in his Decision (Exhibit "D", hereto). Notice of Entry was provided by the Presbytery on November 16, 2009 (Exhibit "E", hereto). LPC filed a Motion in the Fourth Department for permission to appeal to this Court, which Motion was denied by the

Fourth Department by Order dated December 30, 2009 (Exhibit "F", hereto). Notice of Entry of such Order was provided by the Presbytery on January 5, 2010 (Exhibit "G", hereto).

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction of the proposed Appeal in that pursuant to Civil Practice Law and Rules LR §5602(a)(1)(I), the order or judgment sought to be appealed is from an action originating in the Supreme Court and from an Order of the Appellate Division which finally determined the action and which is not appealable as of right.

CORPORATE DISCLOSURE STATEMENT

Lancaster Presbyterian Church is now affiliated with the Evangelical Presbyterian Church. Lancaster Presbyterian Church has not issued any public shares, and has no parent company, subsidiaries or affiliates which have issued public shares nor does any publicly held company own 10% or more of its stock.

STATEMENT OF QUESTIONS FOR REVIEW

The following questions will be presented on the proposed Appeal:

1. Can an express or implied trust be imposed upon the property of a church incorporated prior to 1828 where the church fails to bring itself within the property provisions of the constitution of the denomination by failing to comply with the statutory conditions precedent of Religious Corporations Law Section 24?
2. What constitutes assent in a "legally cognizable form" to a trust clause unilaterally adopted by a denomination where the church became a member of the denomination prior to adoption of the trust clause, acquired its property prior to adoption of the trust clause and was not required to sign a document accepting the denomination constitution or trust clause as a condition to continued membership in the denomination?
3. Has the First Amendment and rules applicable to summary adjudication of claims been compromised by the property, contract and trust law principles which have been adopted for church property cases in this State?
4. Did the courts below err, as a matter of law, when each declared that the LPC holds all real and personal property in trust for Respondents?

FACTS

LPC was incorporated as a Presbyterian church by a Certificate of Incorporation dated December 29, 1821, and filed in 1822, pursuant to "an ACT to provide for the Incorporation of Religious Societies", passed by the New York State Legislature on or about April 5, 1813 (R. 111, 191, 200). Although LPC was incorporated under the name "The Trustees of the Presbyterian Society of Cayuga Creek" it assumed the name "Lancaster Presbyterian Church" by filing an assumed name certificate pursuant to Business Law §130 on February 12, 2003 (R. 89, 192, 203). LPC has never reincorporated (R.191, 248). LPC acquired the real property in issue in this action during the course of several real estate transactions, dating back to as early as 1832 (R. 192-196). The deeds to the real property give LPC full and unencumbered title to the real property parcels (R. 91-109, 208-09). The deeds lack any reference to PCUSA or the Presbytery, and fail to grant any interest to either (R. 91-109). The deeds lack any express trust clause which confers a trust to either the PCUSA or Presbytery (R. 91-109).

LPC executed mortgages on the real property in 1998 and 2002, respectively, in the collective sum of \$880,000.00 (R. 195-96, 210-236). In the mortgage agreements, LPC warranted that it had good and marketable title to the property, pledged the property to the mortgagees as security, and covenanted not to transfer or convey any interest in the property in favor of another (R.210, 230). The mortgage

