

# Supreme Court

APPELLATE DIVISION—FOURTH JUDICIAL DEPARTMENT

Appellate Division Docket Number: CA 09-00787.

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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.*

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Erie County Index No.: I 2008-006996.

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## BRIEF FOR DEFENDANT-RESPONDENT THE PRESBYTERY OF WESTERN NEW YORK

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## PRELIMINARY STATEMENT

*We, the undersigned, do declare and affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and Book of Order. We receive and adopt its tenets and historical principles of church government.*

The above quote is from the 1998 "Lancaster Affirmation" authored by Plaintiffs-Appellants (collectively, the "Lancaster Church"). (R. 280). At the time the Lancaster Affirmation was written, the constitution of the Presbyterian Church (U.S.A.) ("PCUSA"), the Book of Order, had long contained a trust clause providing that all church property was held for the benefit of the PCUSA. The Lancaster Church, by its actions and writings over the last three decades, manifested its intent to be bound by the Book of Order.

The Lancaster Church abruptly changed its tune in June 2008 when it voted to disaffiliate from the PCUSA and commenced this lawsuit in Supreme Court, Erie County (J. Curran) to retain title to the church property in its possession. The Lancaster Church's prior affirmation of "loyalty and love" for the denomination as it was "constituted in the Book of Confessions and Book of Order" suddenly disappeared. To avoid the clear implication of the Book of Order's Trust Clause, the Lancaster Church devised a novel theory designed to render its previous conduct and writings completely irrelevant. While the Lancaster Church's legal theories had no basis to begin with, they were further weakened when the Court of Appeals issued its opinion *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008) ("*Harnish*") and this Court decided *First Presbyterian Church of Oakfield v. Presbytery of the Genesee Valley of the Presbyterian Church (USA)*, 56 A.D.3d 1188 (4th Dep't 2008) ("*Oakfield*"). Both cases upheld trust provisions in favor of the Episcopal and Presbyterian churches, respectively.

The lower court, after additional briefing and oral argument on *Harnish* and *Oakfield*, rejected the Lancaster Church's arguments that its previous actions and writings were meaningless simply because it incorporated before 1828. The court further granted the cross-motions of the Presbytery of Western New York (the "Presbytery") and PCUSA to enforce the Book of Order's Trust Clause. In doing so, the court correctly applied *Harnish* to the facts of the case and found that both an express *and* implied trust existed for the benefit of the PCUSA and the Presbytery.

The lower court's granting of summary judgment in favor of the Presbytery and PCUSA should be affirmed. Try as it may, the Lancaster Church cannot avoid the fact that all New York appellate level opinions deciding similar church property disputes have upheld the enforceability of trust provisions contained in the constitutions of a denominational church. The result should be no different here.

#### QUESTIONS PRESENTED

1. Under well settled law, the constitution of a general church can be made to recite an express trust in favor of the denominational church. Does the Lancaster Church hold property for the benefit and use of PCUSA subject to the express trust provision in PCUSA Book of Order ?

*Answer below:* Yes. Supreme Court correctly held that the express trust clause in Section G-8.0200 of the PCUSA Book of Order was enforceable against the Lancaster Church and granted the cross-motions for summary judgment of the Presbytery and PCUSA and denied the Lancaster Church's motion for summary judgment.

2. Under well settled law, an implied trust for the benefit of the denominational trust may be implied if there is a sufficient manifestation of intent to create such a trust. Does the Lancaster Church hold property for the benefit and use of PCUSA subject to an implied trust?

*Answer below:* Yes. Alternatively, Supreme Court correctly found that the actions and writings of the Lancaster Church were sufficient to create an implied trust for the benefit and use of PCUSA concerning the property subject to this action.

### **STATEMENT OF FACTS**

#### **A. The Presbytery and Relevant Book of Order Provisions**

The PCUSA is governed by Part II of its Constitution, the Book of Order. Section G-7.0100 of the Book of Order provides “A particular church in the [PCUSA] can be organized only by the authority of a presbytery and shall function under the provisions of this Constitution.” Section G-4.0100 states “that each particular church of the [PCUSA] shall be governed by this Constitution.”

The Presbytery is the regional governing body of a diverse collection of 64 congregations of the PCUSA stretching across Niagara, Erie, Chautauqua, and Cattaraugus Counties. (R. 78, 269). Within the PCUSA’s hierarchical structure, the Book of Order vests presbyteries with a wide range of authority concerning ecclesiastical and property matters in connection with the withdrawal, dissolution, or dismissal of a congregation. (R. 259-60). The Lancaster Church was a member of the Presbytery until it attempted to disaffiliate from the

PCUSA on June 15, 2008. (R. 238-40, 245). The Presbytery, however, had no occasion to formally dismiss the Lancaster Church pursuant to the Book of Order. (R. 265-66, 275).

The Book of Order's Trust Clause [Section G-8.0200] reads as follows: "All property held by or for a particular church..., whether legal title is lodged in a corporation, a trustee or trustees...is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A)." The Court is respectfully referred to pages 3-6 of the PCUSA's appellate brief for additional background concerning the Book of Order and the PCUSA's adoption of the Trust Clause.

**B. The Lancaster Affirmation and Church Information Form**

In 1998, the Lancaster Church submitted "The Lancaster Affirmation" to all churches within the Presbytery. (R. 278-83). The July 1998 cover letter accompanying Lancaster Affirmation states that the Lancaster Church wants to "stand for and within our Constitution." (R. 279). The Lancaster Affirmation, which was signed by the Elders, Clerk, and Moderator of the Lancaster Church, states as follows:

We, the undersigned, do declare and affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and Book of Order. We receive and adopt its tenets and historical principles of church government. Our hope is that this affirmation increases awareness of our constitution, fosters a love for it and a fidelity to it, and enables many others to either reaffirm or affirm their agreement with it. (R. 280).

In 2006, the Lancaster Church again manifested its intent to be bound by the PCUSA Constitution when it participated in the PCUSA process for calling a new pastor. The PCUSA's Office of Call Referral Services developed Church Leadership Connection ("CLC"), a

denominational web-based matching and referral system for all Presbyterians. As part of the matching process, a pastor nominating committee (i.e., a congregation's search committee) can submit a Church Information Form ("CIF") which essentially serves as the "resume" of the Church. In the CIF (R. 284-89), the Lancaster Church identified concerns about "disrespect of constitutional authority" by others as a key theological issue that is reflected in its ministry. To that end, the Lancaster Church stated as follows:

**WE AFFIRM** our loyalty and love for our denomination as it is constituted in the Book of Confessions & Book of Order. We receive & adopt its tenets and historical principles of church government. Our hope is that this affirmation fosters a love for our constitution & a fidelity to it. (R. 286) (emphasis in original).

The Lancaster Church utilized the PCUSA's policies and procedures to ultimately call a PCUSA minister (Reverend Kelly Negus). (R. 273).

**C. The Lancaster Church Seeks Presbytery Approval of Mortgage Financing**

In 2002, the Lancaster Church sought to secure a \$800,000 mortgage with Alden State Bank in order to enlarge the Church Sanctuary and renovate other portions of its Church Building. (R. 274). The mortgage commitment was approved by the Presbytery at a meeting held on May 28, 2002 as required by Religious Corporations Law, Section 12, subdivision 5-a. (R. 274, 305). In order to complete the transaction, the Lancaster Church submitted a Petition in New York State Supreme Court, Erie County. (R. 274, 290-310).

**D. Other Actions Showing the Lancaster Church's Participation in the PCUSA**

There are a number of other ways in which the Lancaster Church has evidenced its affiliation with the PCUSA over the past ten years which further demonstrate its connection to

the PCUSA and intent to be bound by the PCUSA Constitution. Such examples include, but are not limited to, the following actions:

- In 2004, Elder David Breckenridge of the Lancaster Church was elected to serve as a Principal Commissioner on the 216th General Assembly. In other words, the Lancaster Church participated in the connectional nature of the PCUSA and its Constitution by virtue of one of its Elders participating in the proceedings of the PCUSA's highest governing body. (R. 272).
- The Lancaster Church's annual filing of a "Church Report" with the PCUSA. The last such report was submitted in February 2008. (R. 275, 311-28).
- The Lancaster Church's acceptance of general mission monies from the Presbytery to fund various mission projects. (R. 275).
- The commissioning of a Lancaster Church youth as the Presbytery's Youth Advisory Delegate to the 212th General Assembly. (R. 275).
- The ordination, installation, and commissioning of Lancaster Church officers in accordance with the Book of Order. (R. 275).
- Utilizing PCUSA's exemption from federal tax as nonprofit religious organizations under section 501(c)(3) if the Internal Revenue Code. (R. 275).

## ARGUMENT

### **POINT I. TRUST PROVISIONS SERVE A VALID PURPOSE RECOGNIZED BY THE U.S. SUPREME COURT AND NEW YORK'S COURT OF APPEALS**

#### **A. PCUSA Adopted The Trust Clause In Response to the Supreme Court's Decision in *Jones v. Wolf***

In 1979, in *Jones v. Wolf*, 443 U.S. 595, the United States Supreme Court instructed hierarchical churches on how to ensure that, under a neutral principles analysis, church property could be retained by a loyal faction in the event of a schism. According to *Wolf*, "the constitution of the general church can be made to recite an express trust in favor of the

denominational church. . . . And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” *Id.* at 606. Trust provisions in hierarchical denominations serve a valid purpose. Not only do they reflect the fact that in a hierarchical denomination all congregations are part of a larger body, they provide for an orderly process for withdrawal from the denominations and the distribution of assets. In response to *Jones v. Wolf*, hierarchical denominations throughout the United States amended their constitutions to create an express trust in favor of the denominational church.

That the Presbyterian denomination, including PCUSA and its predecessors, is hierarchical is beyond dispute. *See Jones*, 443 U.S. at 597-98 (“The PCUS has a general hierarchical or connectional form of government, as contrasted with a congregational form.”); *Presbyterian Church in United States v. Hull Mem’l Presbyterian Church*, 393 U.S. 440, 441-42 (1969) (“Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches governed by a hierarchical structure of tribunals. . . .”); *Schenectady v. United Presbyt. Church in U.S. of Am.*, 62 N.Y.2d 110, 114 (1984) (“UPCUSA [the predecessor to the PCUSA] exhibits a hierarchical or connectional form of church government, as differentiated from a congregational form.”); *Knight v. Presbytery of Western New York*, 26 A.D.2d 19, 21 (4th Dep’t 1966), *aff’d*, 18 N.Y.2d 868 (1966) (finding the Presbyterian Church was hierarchical). The reason why this is significant is because in hierarchical denominations “whenever the question of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter been carried, the legal tribunals must accept such as final, and as binding on them . . . .” *Watson v. Jones*, 80 U.S. 679, 727 (1872).

