

To be Argued by:
LISA T. SOFFERIN, ATTY.
Estimated Time for Argument:
(15 Minutes)

STATE OF NEW YORK
Supreme Court

APPELLATE DIVISION—FOURTH JUDICIAL DEPARTMENT

— 0 —

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.

Erie County Index No.: I 2008-006996.

BRIEF FOR PLAINTIFFS-APPELLANTS

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I.
PRELIMINARY STATEMENT

This Appeal presents to this Court two primary issues: whether a Presbyterian Church incorporated prior to 1828 may become bound by the Trust Clause of the Constitution of the Presbyterian Church (U.S.A.) by any means other than strict compliance with Religious Corporations Law §24 which requires either reincorporation after 1828 or the passage and filing of a resolution specifically agreeing to be bound, and, if so, what language and circumstances may constitute an agreement, express or implied, to be bound by the Trust Clause of Constitution.

II.
QUESTIONS PRESENTED

Question: Did the court below err, as a matter of law, when it declared that Appellants hold their property in trust for Respondents pursuant to an express trust?

Answer: Yes, the court below erred.

Question: Did the court below err, as a matter of law, when it declared that Appellants hold their property in trust for Respondents pursuant to an implied trust?

Answer: Yes, the court below erred.

III.
PROCEDURAL HISTORY

Plaintiffs/Appellants 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 (hereinafter collectively "LPC") commenced this action 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, which is the local representative for PCUSA in Western New York (“the Presbytery”) (R.69). Upon the application of the LPC, the court below granted a Temporary 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 the LPC held its property in trust in favor of the PCUSA (R.20, 31, 33, 37, 251, 329).

After the Motions were argued and submitted on August 14, 2008, the Court of Appeals issued its Decision in Episcopal Diocese of Rochester v. Harnish, 11 N.Y.3d 340, 870 N.Y.S.2d 814 (2008) (“Harnish”) following which this Court issued its Decision in First Presbyterian Church of Oakfield v. Presbytery of Genesee Valley, 56A.D.3d 1188, 866 N.Y.S.2d 900 (4th Dept. 2008), *leave to appeal denied*, 59 A.D. 3d 1108, 873 N.Y.S. 2d (2009), *motion to Court of Appeals for leave to appeal pending* (“Oakfield”) (R. 9-10). The court below heard further argument on the Motions on December 4, 2008, announcing its prepared decision on the record on that same date (R.7). The court below, by the Honorable John M. Curran, determined that under Harnish, a 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 the Religious Corporations Law was a neutral or non-dispositive factor, that the date of Lancaster’s incorporation was irrelevant, that certain text in a “Lancaster Affirmation” and a 2005 Church Information Form prepared by LPC collectively expressed the intent of LPC to create an express trust in favor of the PCUSA, and, further, that the failure of LPC to affirmatively object to

the PCUSA trust clause evidenced LPC's intention to form an implied trust in the LPC property in favor of the PCUSA (R. -10). These findings and determinations are contrary to the holding of the Court of Appeals 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"), not mandated by the Decision of the Court of Appeals in Harnish or this Court's Decision in Oakfield, and are otherwise unsupported by the Record.

The Order granting and denying the respective Motions was signed on December 18, 2008 and entered in the Erie County Clerk's Office on January 8, 2009 (R. 4). A timely Notice of Appeal was filed by LPC on February 3, 2009 (R. 2).

IV. 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 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 in the collective sum of \$880,000.00 (R.

195-96, 210-236). The mortgage agreements do not grant any rights in favor of Respondents (R. 210-236.) With the exception of granting the mortgagees security interests in the real property, LPC has not conveyed any estate, trust or other interest in the real property to any person or entity (R. 136).

LPC also owns a certain amount of personal property assets (R. 196-97, 237). These assets include, but are not limited to, bank accounts and investments held by or in the name of the LPC (R. 196-97, 237). LPC has not conveyed any estate, trust or other interest in the personal property to Respondents (R. 197). None of the personal property at issue herein is held in the name of Respondents or otherwise recognizes Respondents as having any interest (R. 197).

On or about 1981, PCUSA unilaterally adopted the following provision as Section G8.0201 of the PCUSA Constitution (referred to herein as the "Trust Clause"):

"All property held by or for a particular church, presbytery, a synod, the General Assembly or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)(R. 32).

LPC never signed a document by which it expressly accepted or agreed to be bound by the Trust Clause (R.128). It did issue a document in 1998 styled the "Lancaster Affirmation" (R. 271, 279-83). The stated purpose of the Lancaster Affirmation was to object to the direction of the National Church, and to state what LPC "believe[d] to be at stake in the Church" (R. 279). As is relevant to this Appeal, the Lancaster Affirmation includes the following two sentences:

"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 . . ." (R. 280-283)

At all times, and more particularly during the period of 1981 to June 15, 2008, the LPC was a participating member church of the PCUSA. It is undisputed that LPC participated in proceedings of the PCUSA, sought out the consent of the Presbytery for the mortgage commitments on the real property as mandated by Religious Corporations Law §12(5a), filed annual church reports, accepted money from the Presbytery, installed its officers in accordance with the PCUSA Constitution and utilized the PCUSA's policies and procedures to call a new pastor to lead its congregation (R. 272-75.) In connection with the LPC's search for a new pastor in 2005, the LPC completed a Church Information Form for the PCUSA which included information on the size of the congregation and demographics of its community. This Form also contains the same two sentences contained in the Lancaster Affirmation, cited above (R. 285-286).

LPC was affiliated with the PCUSA until June 15, 2008, when, by a majority vote at a duly called meeting of the congregation, the LPC disaffiliated from the PCUSA (R. 238-40, 245). The vote in favor of disaffiliation was unanimous (R. 240).

V.

**LPC ESTABLISHED THAT ITS PROPERTY IS NOT SUBJECT
TO AN EXPRESS TRUST IN FAVOR OF THE PCUSA**

The starting point of any religious property dispute in New York is the seminal Schenectady case. In Schenectady, the Court of Appeals recited the factors a court must look at to determine whether a trust in real property exists in favor of a larger governing body. The Court of Appeals stated that "the focus is 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." Schenectady, 62 N.Y.2d 110 at 122, 476 N.Y.S.2d at 93. In sum, the courts are to look to: 1) the deeds; 2) the terms of incorporation of the local church; 3) state statutes and 4) the constitution of the National Church.

These factors were recently re-confirmed by the Court of Appeals in Harnish. Each of these issues are separately analyzed below.

A. The Deeds

The deeds to the real property at issue in this litigation do not contain any language which would give Respondents any interest in LPC's property. The plain language of the deeds indicates that LPC holds title free and clear of any interest of Respondents.

B. Articles of Incorporation

The Articles of Incorporation filed by LPC in 1822 fail to recognize any right of Respondents in LPC's property. Further, the subsequent Certificate of Assumed Name filed pursuant to General Business Law § 130 does not recognize the authority or property rights of Respondents. However, the inquiry does not end here. Although the court below held that the date of incorporation of LPC was irrelevant, as will be discussed in Section C., below, the date of LPC's incorporation, 1822, and the failure of LPC to reincorporate, is of primary significance to the analysis.

C. Statutes

While the inquiry in other church property cases focuses on the constitution of the National Church, the focus in this case is on the statutes, and more specifically, Religious Corporation Law §24 and 69.3 which govern the holding of church property by a Presbyterian Church. Religious Corporations Law §24 provides that provisions of the RCL do not apply to **any** church incorporated under any general or special law **prior to January 1, 1828** "if such provision is *inconsistent with or in derogation of* any of the rights and privileges of such corporation *as they existed under the law* by or pursuant to which such corporation was formed." (emphasis added). RCL Section 69.3, which deals specifically with Presbyterian churches, states that, "the trustees of an incorporated church to which this article is applicable shall have the custody and control of all the temporalities and

property belonging to the corporation and of the revenues from such property and shall administer the same in accordance with the constitution of the Presbyterian Church (U.S.A.) . . .” To see that Section 69.3 is inconsistent with and/or in derogation of the rights of LPC, this Court need only look to Schenectady which also addressed a church incorporated prior to 1828. In holding that Section 69.3 of the RCL did not apply to the local church because it was inconsistent with the law in 1803, the Schenectady court cited to First Presbyterian Church of Buffalo, 106 N.Y. 251, 12 N.E. 626 (1887). In First Presbyterian Church of Buffalo, the Court of Appeals dealt with the change in the RCL after the legislature passed the Acts of 1875 and 1876. For the first time, those Acts imposed a requirement that the transfer of property of the local church be in accordance with the rules of the denomination, and also required approval of any land transfer by the presbytery itself. With regard to the changes in law resulting from the Acts of 1875 and 1876, the Court stated:

“Before those amendments were made, it had been settled that a religious corporation held its temporalities **wholly free from the domination of any ecclesiastical authority, and by a tenure so independent that it could change its creed and denominational character without losing its hold upon its property**. Doubtless, the acts 1875 and 1876 were intended to restrain in some degree that sort of diversion of church property from one sect to another, for the provision is that the trustees shall hold and administer it according to the rules and usages of the denomination to which the church members of the corporation belong, and shall not divert it to the support of some other disconnected institution.” Id. at 254, 12 N.E. at 627 (emphasis added)

Thus, Schenectady established that the duty on the trustees of the local church to administer property in accordance with the “laws of the denomination” did not arise until after the Acts of 1875 and 1876. *See also, Application of Presbytery of Albany*, 63 Misc.2d 791, 312 N.Y.S.2d 505 (3rd Dept. 1970) (“[i]t has been the law of this State since 1875 that the temporalities of a religious corporation should be administered in accordance with the rules and usages of the denomination to which the church members of the corporation belong”).

