

To be Argued by:
LISA T. SOFFERIN, ATTY.
Estimated Time for Argument:
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STATE OF NEW YORK

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.

Erie County Index No.: I 2008-006996.

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS In Response to Presbyterian Church (U.S.A), a Corporation

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I.
INTRODUCTION

By Notice of Motion dated May 18, 2009, Defendant/Respondent The Presbytery of Western New York (“the Presbytery”) moved this Court for an extension of time to file its Brief in Opposition. Defendant/Respondent Presbyterian Church (U.S.A.) (“PCUSA”) did not join in such Motion. Accordingly, this Reply Brief is filed by Plaintiffs/Appellants Lancaster Presbyterian Church, *et. al.* (“LPC”) solely in response to the Brief of the PCUSA. A separate Reply Brief will be filed by LPC in response to the Brief of the Presbytery.

II.
THE TRUST CLAUSE IS NOT BINDING ON LPC
ABSENT COMPLIANCE WITH SECTION 24

The PCUSA asks this Court to ignore RCL Section 24, arguing that to allow an exception to the Trust Clause for a pre-1828 church “has no basis in logic or law”, and “would create an incongruous situation”(Brief of PCUSA at p. 11). There is simply no basis in logic or law for the Court to ignore Sections 24.

In 1822 when LPC was incorporated, and until 1875, a local Presbyterian church “could change its creed and denominational character without losing its hold upon its property.” First Presbyterian Church of Buffalo, 106 N.Y. 251, 254, 12 N.E. 626, 627 (1887). Thereafter, Section 69.3 was adopted, providing that the local church “shall administer [its property] in accordance with the constitution of the [PCUSA].” In 1981 the PCUSA incorporated the Trust Clause into its Constitution. However, RCL Section 24 carves out an exception to the requirement of administering property in accordance with the PCUSA Constitution for a local church incorporated prior to 1828 if: 1) the clause of the Constitution affecting its property “is inconsistent with or in derogation of any of the rights and privileges” of the local church when it was incorporated; and 2)

the local church does not opt-in by reincorporating or filing the statutory resolution with the County Clerk's office. The Section 24 statutory exemption was by design, and not merely happenstance. 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); Application of Presbytery of Albany, 63 Misc.2d 791, 312 N.Y.S.2d 505 (3rd Dept. 1970). The statutory scheme does not create an incongruous situation. It embodies the history of property rights in the Presbyterian Church. This is to be contrasted with the national Episcopal church where the Canons which relate to property rights are merely declaratory of the history of property rights vested in the National Church. Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville, 250 A.D.2d 282, 288, 684 N.Y.S.2d 76, 81 (3rd Dept. 1999).

The PCUSA also argues that to apply the RCL as written would "impair the entire structure of the PCUSA's governance of its churches" (PCUSA Brief at p. 12). The Section 24 exception is narrowly drawn to affect only pre-1828 churches, and is only implicated in this case for the purpose of resolving property rights. Inasmuch as this Court is constrained under the First Amendment to adjudicate only "secular" issues and to avoid interference with the PCUSA's governance of any church, and inasmuch as it is undisputed that adjudicating property rights in this case is accomplished under neutral principles of law this "concern" of the PCUSA is not well founded. If the PCUSA perceived the restrictions imposed by Sections 24 to impair its governance of LPC, it could have required the LPC, and the few other pre-1828 churches in this State, to comply with the requirements of Section 24 as a condition of continued membership in the PCUSA. It did not. The PCUSA may not now be heard to complain that the Trust Clause is not enforceable against the LPC, a clause which is admittedly a less favorable provision of the PCUSA Constitution than in effect at the time of LPC's incorporation.

In any event, these arguments advanced by the PCUSA are at odds with the position taken by the PCUSA's regional presbytery before this Court in First Presbyterian Church of Oakfield v. Presbytery of Genesee Valley, 56 A.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 (4th Dept. 2009), *leave to appeal denied*, ___ N.Y.3d ___, 2009 WL 1260170 (2009). In the Brief of the regional presbytery dated June 14, 2008, excerpts of which are attached in Addendum A to this Reply Brief for which judicial notice is sought, it was the position of the regional presbytery that Section 69.3 the Trust Clause would not apply to a church incorporated prior to 1828, expressly distinguishing Schenectady and Presbytery of Hudson River v. Trustees of the First Presbyterian Church & Congregation of Ridgebury, 13 Misc. 3d 707, 710 (S. Ct. Orange Co. 2006). (By that date Ridgebury had already been appealed to the Second Department; it is currently is awaiting disposition.) In Oakfield, the PCUSA, through its regional presbytery, has admitted in this Court that a church incorporated prior to 1828 is different and is protected from the imposition of the Trust Clause. It should be estopped to argue to the contrary now.

III.

IF AN EXPRESS TRUST CAN BE BASED ON THE TRUST CLAUSE ABSENT COMPLIANCE WITH SECTION 24 THERE MUST BE A MANIFESTATION OF INTENT TO BE BOUND IN A LEGALLY COGNIZABLE FORM

The PCUSA argues that under the authority of Jones v Wolf, 443 U.S. 595, 99 S. Ct. 3020 (1979) all a national church must do to impose an express trust upon property of a local congregation is to incorporate a trust clause within the national church constitution prior to the property dispute. And, nothing more. This position, too, has no support in the law and was firmly rejected by Justice Curran, below, who stated:

“During oral argument here today, [counsel for the Presbytery] argued that he understood Harnish to require not just the express trust of the

constitution but also a manifestation of assent thereto by the local church. [Counsel for PCUSA] took an opposite view and thinks it's simply enough to have the trust created in the so-called constitution of the national church. Despite that disagreement between the folks on that side of the case, this Court has analyzed Harnish and believes that the expression of assent, some manifestation, is required, given the fact that the [Harnish] Court used the word . . . and now must look as to whether or not there has been a manifestation of assent . . ." (R. 12-13).

The insistence of the Court of Appeals in Episcopal Diocese v. Harnish, 11 N.Y.3d 340, 870 N.Y.S.2d 814 (2008) that there be a manifestation of intent to be bound is based, at least in part, on the clear mandate of the Supreme Court, in Jones, that the trust clause be "embodied in some legally cognizable form". Harnish at 350, 870 N.Y.S.2d at 818, citing to Jones, *supra*. While the Supreme Court did not define what would constitute a "legally cognizable form", the documentary evidence upon which a manifestation of intent is found must be scrutinized in "purely secular terms and not to rely on religious precepts in determining whether the parties have intended to create a trust . . .". Harnish at 351, 870 N.Y.S.2d at 818. Furthermore, the cases are in accord that the recognition of a religious property trust must be consistent with state law on creation of secular trusts. See Schenectady at 125, 476 N.Y.S.2d at 94, discussing what is required in New York to impose a trust absent a trust document. See, also, the recent case of African Methodist Episcopal Church, Inc. v. St. Johns African Methodist Episcopal Church of Uhrichsville, Ohio, 2009 WL795264 *4 (2009) recognizing that under Jones, the enforcement of the trust clause must be consistent with state law on the creation of trusts. Of course, to require anything less would favor religious property trusts over secular trusts in violation of the First Amendment.

The PCUSA asserts that the Schenectady case implicitly holds that had a trust clause existed in the Book of Order when Schenectady was decided in 1984, a trust would have been found, citing to 62 N.Y. 2d at 123, 476 N.Y.S.2d at 93. This statement is lacking in merit, for two reasons. First,

the Schenectady Court merely noted that there was no language in the Book of Order to support defendant's claim of a trust. There was no suggestion by the Court that had a trust clause existed the outcome for defendant would have been different. Second, Harnish effectively rejected any notion that a trust clause adopted by a national church after the local church becomes a member will automatically result in the imposition of a trust on the local church property. The Harnish Court made clear that the enforcement of the trust clause on property of an pre-existing member church will rise and fall on proof of a manifestation of intent by the local church to be bound by the subsequently adopted trust clause. Thus, both Schenectady and Harnish are in accord that the presence of an express trust clause in a national church constitution is just one factor to be considered, but not the sole or dispositive factor. Proof of intent to be bound is a necessary element and "the" dispositive factor.

In Harnish, the Court held that by the local Episcopal church agreeing to be bound by the Canons as a condition of acceptance as a parish in the national Episcopal Church meant that the local church did not retain veto power over future changes in the Canons even if the Canons, as amended, adversely affected property rights in the future. Harnish at 352, 870 N.Y.S.2d at 819. By contrast, RCL Section 24 makes clear that a local Presbyterian church incorporated prior to 1828 always retains veto power over changes in the Book of Order which are less favorable than when the local church joined the PCUSA. That veto power is exercised by the local church failing to reincorporate or filing the necessary resolution with the County Clerk. Even, assuming, *arguendo*, that the requirements of Section 24 can be substituted or supplanted by the PCUSA adopting the Trust Clause (a theory which LPC rejects) the only documents before this Court by which the PCUSA has sought to establish LPC's manifestation of intent to be bound by the Trust Clause are documents of


an ecclesiastical nature which are devoid of a secular meaning, or which have a mixed meaning or purpose, thereby insufficient upon which to grant summary judgment in favor of the PCUSA.

IV.
CONCLUSION

There is no basis to impose a trust on the property of the Lancaster Presbyterian Church, as a matter of law. It is therefore respectfully requested that the Court reverse the Order of the court below granting summary judgment in favor of the PCUSA, and grant summary judgment in favor of the Lancaster Presbyterian Church. Alternatively, it is respectfully requested that the Court reverse the Order and remand to the trial court for further proceedings.

Dated: June 2, 2009

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ADDENDUM A

PRELIMINARY STATEMENT

In this appeal, defendant The Presbytery of Genesee Valley of the Presbyterian Church (U.S.A.) ("the Presbytery") respectfully submits that the lower court (Hon. Robert C. Noonan, A.J.S.C.) properly granted the Presbytery's motion for summary judgment confirming a trust upon the property of plaintiff First Presbyterian Church of Oakfield ("Oakfield") and, simultaneously, properly dismissed Oakfield's action to quiet the title on its property.

The undeniable proof both in the Record and in case law and statute is that the Presbyterian Church (U.S.A.) ("PCUSA") and its predecessors have been and continue to be hierarchical in nature and that the PCUSA's constitution provides for a trust upon local church property for the use and benefit of the PCUSA. Not only have such trusts been enforced in New York and other jurisdictions, but Oakfield, a member of PCUSA and its predecessors for decades, participated in the decision to include the express trust provision in the denomination's constitution. Additionally, through its subsequent actions, Oakfield acknowledged that its property was subject to the trust. Further, New York's Religious Corporations Law, to which Oakfield is subject, specifically provides that the officers of Presbyterian congregations will administer the church's property in accordance with the denominational constitution.

Conversely, Oakfield's attempt to declare the trust unenforceable was properly dismissed because the neutral principles analysis of a church property dispute allows a court to consider a denominational constitution as well as deeds, charters, and state statutes. Furthermore, the Court properly refrained from addressing Oakfield's contention that the trust provision was unenforceable because it was inconsistent with the Bible and Book of Confessions. Such an analysis would have required the Court to decide a religious controversy, an action clearly proscribed by the First Amendment and numerous federal and New York decisions.

amendment to its Certificate of Incorporation. This “local charter” document is one to which the Court may refer in making a neutral principles analysis. *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 62 N.Y. 2d 110, 122 (1984).

- * At the time that this action was taken, the Constitution of the PCUSA contained (*Book of Order* at G 8.0200) the precise trust provisions to which Oakfield now claims it is not subject, and RCL § 69(3) required that the Oakfield trustees administer the Church’s property “in accordance with the constitution of the [PCUSA] and with the provisions of law relating thereto.” Thus, Oakfield and its board of trustees, as re-constituted in 2003 – some 22 years after the trust clause was adopted – were bound by the constitutional and statutory provisions which they acknowledged at that time by changing their Certificate of Incorporation.

F. In concluding that through its actions, over time Oakfield had accepted the trust upon its property, the court below properly applied the neutral principles of law approach to a church property dispute and followed well-settled New York law.

The decision of the Supreme Court in this case noted accurately that the cases of *First Presbyterian of Schenectady v. United Presbyterian Church*, 62 N.Y.2d 110, 120-121 (1984), and *Presbytery of Hudson River v. Trustees of the First Presbyterian Church & Congregation of Ridgebury*, 13 Misc. 3d 707 (Sup. Ct. Orange Co. 2006), in which the denominational trust was not enforced, were factually dissimilar from this case and therefore, not controlling. In those cases, the churches had been incorporated prior to the adoption of § 69 of the Religious Corporations Law.

Consider, for example, the clear distinction which the court in *Hudson River* articulated:

Here, as there [in *Schenectady*], the corporate defendant as formed before 1828 and is not subject to section 69 of the Religious Corporations Law which requires that the trustees govern the property in accordance with the constitution of the PCUSA.

Presbytery of Hudson River v. Trustees of the First Presbyterian Church & Congregation of Ridgebury, 13 Misc. 3d 707, 710 (Sup. Ct. Orange Co. 2006).

The results in both the *Schenectady* and *Hudson River* cases are therefore distinguishable from Oakfield’s claim by virtue of the fact that both of those churches were incorporated before

1828, while Oakfield was incorporated in 1906 (R. 110, ¶6). The court here properly concluded that the provisions of the Religious Corporations Law are binding upon Oakfield and its trustees.

Furthermore, as noted above, the leaders of Oakfield have consistently acted in a manner which acknowledged the existence of a trust upon the church's property in favor of the PCUSA. Judge Noonan's decision was therefore both legally and factually well founded.

G. Oakfield's 2007 attempt to amend its certificate of incorporation to disavow any trust upon its property did not comply with New York law and was, therefore, invalid.

In April 2007, at a meeting "called and held in conformity with Article 10 of the Religious Corporations Law. . ." members of Oakfield voted to amend its certificate of incorporation "to confirm that no property, real or personal, of the Church is to be subject to a trust. . ." (R. 13 at ¶22; R. 109).

Initially, it cannot be ignored that the meeting was held pursuant to a portion of the statute which does not apply to Presbyterian churches.

This article [Article 10] is not applicable to a . . . Presbyterian church. . . .

N.Y. Religious Corporations Law § 190.

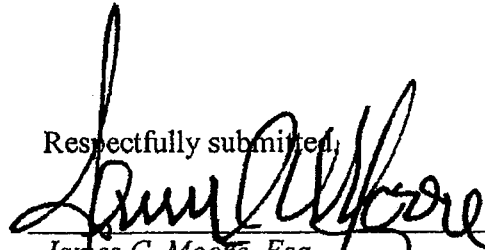
Furthermore, having specifically incorporated in 1906 under Article III (now Article 4) of the Religious Corporations Law, as a "Presbyterian church in connection with the general assembly of the Presbyterian church in the United States of America" (see Section 37 of Article III, as adopted by Chapter 97 of the Laws of 1902; R. 98), and then amending its certificate of incorporation by changing its System of Trustees in 2003 (R. 105), which confirmed its corporate existence under Article 4 of the Religious Corporations Law, Oakfield was prohibited from taking any corporate action under Article 10 of the Religious Corporations Law.

CONCLUSION

THE SUPREME COURT OF GENESEE COUNTY PROPERLY DENIED
OAKFIELD'S MOTION FOR SUMMARY JUDGMENT AND GRANTED
THE RELIEF SOUGHT BY PRESBYTERY IN ITS COUNTERCLAIM;
THE DECISION BELOW SHOULD BE AFFIRMED.

Dated: June 14, 2008

Respectfully submitted,



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