

NEW YORK SUPREME COURT

Appellate Division—Fourth Department

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,

– against –

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

Defendants-Respondents.

BRIEF FOR DEFENDANT-RESPONDENT PRESBYTERIAN CHURCH (U.S.A.)

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PRELIMINARY STATEMENT

This appeal is a rare instance where the United States Supreme Court caselaw provides a clear, controlling answer for resolution of a state court religious dispute.

In the case at bar, Lancaster Presbyterian Church, a local church of the Presbyterian Church (U.S.A.), left the denomination and seeks to retain title to church property in its possession. In doing so, it ignores and rejects a provision in the denomination's constitution that deems such property to be held in trust for the Presbyterian Church (U.S.A.).

In 1979, the Supreme Court in *Jones v. Wolf* delved into religious property disputes and proposed a solution—a constitutional trust clause—to resolve disputes such as this. The solution was adopted by the Presbyterian Church (U.S.A.) and ratified by the court below.

The lower court properly decided that property owned by the local church was held in trust for the Presbyterian Church (U.S.A.). That ruling should be affirmed.

QUESTION PRESENTED

1. Is the trust clause found in Section G-8.0200 of the Book of Order of the Presbyterian Church (U.S.A.) enforceable against property that was owned by the Lancaster Presbyterian Church at the time of its disaffiliation?

The lower court answered "Yes".

STATEMENT OF FACTS

In 1981, the United Presbyterian Church in the United States (“UPCUSA”) enacted an express trust clause whereby property owned by local churches was held in trust for UPCUSA. In 1982, the Presbyterian Church in the United States enacted a similar trust clause. In 1983, the two denominations merged, creating the Presbyterian Church (U.S.A.) (“PCUSA”). The constitution of the PCUSA—the Book of Order—contains an express trust clause in G-8.0200, stating that property owned by a particular church is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). Lancaster incorporated as a Presbyterian Church in 1821. Lancaster Presbyterian Church was a member of the UPCUSA in 1981 and then, upon merger, a member of the PCUSA and subject to the Book of Order until Lancaster’s disaffiliation in 2008. During that time, it was a member of the Presbytery of Western New York. Record at 132-33, 146, 178, 184-85; and Book of Order separately submitted).

In 1998, Lancaster submitted the “Lancaster Affirmation” to all churches within the Western New York Presbytery. (R. at 271) The Affirmation was signed by the Elders, Clerks, and Moderator of Lancaster Presbyterian Church (U.S.A.). (R. at 271) It states as follows:

We, the undersigned affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and the Book of Order. We receive and adopt its tenets and historic principles of church government. (R. at 280)

Further, in July 1998, in a letter to “Fellow Presbyterians”, the Session of Lancaster Presbyterian Church declared: “We choose to stand for and within our Constitution.” (R. at 279)

In 2004, David Breckenridge, an Elder of the Lancaster Presbyterian Church was elected by the Presbytery to serve as a Principal Commissioner on the 216th General Assembly of the Presbyterian Church (U.S.A.), the highest governing body of the PCUSA. (R. at 272)

In 2005, Lancaster submitted a Church Information Form as part of a process calling for a new pastor. In the Church Information Form, Lancaster identified concerns about “disrespect of constitutional authority” and reaffirmed its fidelity to the Book of Order with language virtually identical to the 1998 Affirmation. (R. at 286)

Plaintiff Lancaster Presbyterian Church commenced suit and moved for summary judgment for a declaration that it owned the subject personal and real property free and clear of any trust. (R. at 20-250) Defendant Presbyterian Church (U.S.A.) answered plaintiff’s Complaint, claiming a trust over the subject personal and real property, and made a cross-motion for summary judgment for a declaration that it had a trust over the subject personal and real property. (R. at 251-63)

The court below granted the cross-motions of defendant Presbyterian Church (U.S.A.) and the Presbytery of Western New York, declaring that the subject personal and real property 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.). (R. at 4-5)

ARGUMENT

INTRODUCTION

The United States Supreme Court has held that hierarchical churches, such as the Presbyterian Church of the United States (“PCUSA”), can ensure that church property is retained by the denominational church in the event of a dispute by amendment of its constitution, rather than amendment of individual deeds and corporate charters. *Jones v. Wolf*, 443 U.S. 595 (1979). New York courts have, accordingly, upheld express trust provisions in church constitutions that were enacted in response to the Supreme Court’s ruling. *First Presbyt. Church of Schenectady v. United Presbyt. Church*, 62 N.Y.2d 110 (1984); *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008).

The PCUSA functions as a hierarchical or connectional form of church government in which authority is vested in the first instance in the local church (the session) with its actions subject to review and control by higher church bodies: in ascending order, the presbytery, the synod, and the General Assembly. *First Presbyt. Church of Schenectady v. United Presbyt. Church*, 62 N.Y.2d 110 (1984).

The Constitution of the PCUSA comprises The Book of Confessions (Part I) and the Book of Order (Part II). The Book of Order contains the Form of Government for the PCUSA.

Section G-7.0100 [“Organization, Mission, and Government”] of the Book of Order states:

A particular church in the Presbyterian Church (U.S.A.) can be organized only by the authority of a presbytery and shall function under the provisions of this Constitution.

Section G-4.0100 [“The Church—Universal and Particular”] states:

Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution.

Section G-8.0200 ["All Property Held in Trust"], adopted by the PCUSA in 1983, 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.).

Upon its enactment, the trust clause contained in Section G-8.0200 was binding on Lancaster Presbyterian Church. Lancaster, however, has now quit the PCUSA and seeks to disavow and reject the trust imposed on property that it acquired during its existence as a member of the PCUSA or its predecessors.

Such an effort by Lancaster Presbyterian Church is untenable, erroneous, and violative of the constitution by which it was bound as a member church.

POINT I

JONES v. WOLF IS PRINCIPAL AUTHORITY FOR THE IMPOSITION OF A TRUST

In 1979, the United States Supreme Court decided *Jones v. Wolf*, 443 U.S. 595, the seminal case concerning church property disputes. *Jones* involved a schism in a local church affiliated with the Presbyterian Church of the United States. At issue was title to disputed property originally held in the name of the local church.

The Supreme Court in *Jones* held that a state court may constitutionally adopt "neutral principles of law" as a means of adjudicating church property disputes. *Jones*, 443 U.S. at 597. Such adjudication requires consideration of language of deeds, terms of local church charters, state statutes governing the holding of church property, and provisions of the constitution of the general church concerning the ownership and control of church property. *Id.* at 603. (emphasis added).

The Supreme Court discussed proper application of neutral principles in two prior cases — one of which resulted in church property being awarded to the local congregation (*Presbyt. Church v. 19 Eastern Heights Church* (“*Presbyterian Church II*”), 225 Ga. 259 (1969)) and one in which resulted in church property being awarded to the denominational church (*Carnes v. Smith*, 236 Ga. 30 (1976), *cert. denied* 429 U.S. 868 (1976)). *Jones*, 443 U.S. at 600. The dispositive issue in each case was the existence of express trust language in the governing documents of the denominational church:

As in *Presbyterian Church II*, the court [in *Carnes*] found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The [*Carnes*] court observed, however, that the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church. *Jones* at 600–01.

In discussing the facts before it, the court noted that relevant documents, i.e., deeds, local church charters, state statutes governing church property, and the provisions of the constitution of the general church concerning ownership and control of church property, did not contain the trust language central to the *Carnes* decision:

And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church. *Id.* at 601.

Based upon lack of trust language in relevant documents, the Supreme Court in *Jones* noted that Georgia courts “accordingly held that legal title to the property of the [local] church was vested in the local congregation.” *Id.*

The *Jones* Court recognized that amendment of individual deeds and corporate charters of local churches to create trusts would impose a heavy burden on denominational churches. To

allay the burden, the Supreme Court allowed that constitutions instead could be amended to recite an express trust in favor of the denominational church:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. 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. (emphasis added)

In recognizing this alternative – modification of the general church constitution – the Supreme Court endorsed an approach that is binding upon and that cannot be unilaterally revoked by a schismatic faction. As the Supreme Court implicitly recognized, denominational constitutions are not amended by actions of local congregations acting on their own, but by the general church at large according to its own polity. As a necessary result, modification or revocation of a constitutional trust can only be accomplished by the general church in compliance with its ecclesiastical polity.

In response to *Jones*, the PCUSA and its predecessors expressly created a trust in its favor. Specifically, in 1981, the General Assembly of the UPCUSA, with participation from local churches, presbyteries, and synods, amended the *Book of Order* by adding Chapter XLII, “Of Property”, which provided that all property held by or for a particular church, a presbytery, a synod, the General Assembly, or UPCUSA, whether legal title is lodged in a corporation, a trustee or trustees, was “held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.” In 1983, this language eventually became Chapter VIII of the Book of Order of the PCUSA (“The Church and Its Property”), section G-8.0201

("All Property Held in Trust"), stating that property owned by a local church is held in trust for the PCUSA.

POINT II

NEW YORK COURT OF APPEALS CASELAW RECOGNIZES THE SUPREMACY OF *JONES v. WOLF* AND COMPELS THE FINDING OF A TRUST IN FAVOR OF PCUSA

New York courts have adopted the neutral principles analysis of *Jones* and adhered to the *Jones* document-based analysis. *First Presbyt. Church of Schenectady v. United Presbyt. Church* ("Schenectady"), 62 N.Y.2d 110 (1984). Furthermore, New York courts have upheld express trust provisions in church constitutions enacted in response to *Jones*. *Episcopal Diocese of Rochester v. Harnish* ("Harnish"), 11 N.Y.3d 340 (2008); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* ("Trinity"), 250 A.D.2d 282 (3d Dept. 1999).

In *Schenectady*, decided before UPCUSA's enactment of an express trust clause in 1981, the Court of Appeals adopted neutral principles and reaffirmed an analysis focusing on "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." 62 N.Y.2d at 122 (citing *Jones*, 443 U.S. at 503).

The analysis in *Schenectady* is telling. The court looked for a trust clause in the previous version of the Book of Order, the clear inference being that the existence of such a clause would be determinative of a trust:

The last item to be considered is the constitution of the denominational church, known as the Book of Order....The Book contains no provision which creates an express trust in favor of the UPCUSA.
Id. at 123.

In 2008, the Court of Appeals decided *Harnish*, a case where the Dennis Canons of the Episcopal Church, adopted in 1979, contain an express trust clause similar to the Book of Order.

Consistent with *Jones*, the Court of Appeals found that such a clause was critical in determining that the local church held its property in trust for the denomination, holding that although nothing in the deeds or the certificate of incorporation of the local church established an express trust, the existence of an express trust clause in the church constitution was “dispositive” in determining that the local church held its property for the use and benefit of the national denomination. *Id.* at 351. Citing *Jones*, *Harnish* held that the Episcopal Church’s trust clause, called the Dennis Canons, “clearly establish an express trust in favor of the Rochester Diocese and the National Church.” *Id.* at 351.

Thus, because the Dennis Canons in *Harnish* were enacted while a local parish—All Saints Protestant Episcopal Church—was a member of the national church, the express trust clause was held enforceable against the parish. *See also, First Presbyterian Church of Oakfield v. Presbytery of Genesee Valley of the Presbyterian Church (U.S.A.)*, 56 A.D.3d 1188 (4th Dept. 2008), *leave to appeal denied*, ___ N.Y.3d ___, 2009 WL 1260170.

Therefore, *Schenectady* and *Harnish* compel a finding that the enactment of a trust clause in the Book of Order in the wake of *Jones v. Wolf* is binding on Lancaster Presbyterian Church.

POINT III

ARGUMENTS OF LANCASTER PRESBYTERIAN CHURCH ARE INCORRECT

Lancaster Presbyterian Church (“Lancaster”) erroneously argues that the opt-in provision of Religious Corporation Law §24 for pre-1828 churches is the only means by which an express trust can be imposed on such churches. Section 24 states that the provisions of the Religious Corporation Law will not apply to a church incorporated before January 1, 1828, unless that church passes a resolution to that effect. Section §69(3) (part of Article 4—“Presbyterian Churches”) states that subject to the authority of the session, trustees of an incorporated church

subject to Article 4 shall have custody and control of all temporalities and property belonging to the corporation and shall administer the church property in accordance with the Constitution of the PCUSA. Thus, §69 is a “statutory trust provision.” *Schenectady* at 125. Lancaster’s flawed reasoning is exemplified by the following two sentences contained in its Appellant’s Brief at page 8:

- “Religious Corporation Law §24 makes clear that in order for RCL §69.3 to apply to a pre-1828 church, the local church must take very specific steps to express its intention to be bound to statutes and church rules....”
- “Specifically, §24 provides that such church shall *only* be subject to the PCUSA Constitution *if* the local church shall by resolution determine that the provisions of this chapter [including §69.3]...shall apply; the resolution shall be submitted...and ratified...and published and the trustees shall cause a certificate setting forth a copy of such resolution to be filed.” (emphasis added)

Therein lies the flaw—a first sentence summarizing the meaning of §24 followed by a second sentence declaring that §24 is the *only* means by which a pre-1828 church can be subject to the PCUSA Constitution. In effect, Lancaster wrongly argues that a church that does not opt-in to the Religious Corporation Law per §24 cannot, therefore, be subject to the PCUSA Constitution at all.

Lancaster entirely ignores the binding effect of a *constitutional* trust provision as enacted in the Book of Order in 1983. According to Lancaster, it and other pre-1828 churches are immune to such a constitutional enactment as long as they avoid the §24 opt-in. Such reasoning has no basis in logic or law and would create the incongruous situation where a local Presbyterian church could ignore its Constitution by virtue of its pre-1828 incorporation. Such an outcome, moreover, would defeat the intent and purpose of *Jones v. Wolf*.

Schenectady refutes Lancaster’s argument. In that case involving another pre-1828 church, the Court of Appeals specifically looked for a constitutional trust clause in the Book of

Order. Finding none (this being before the 1981 UPCUSA enactment), the court held that the local church held its property free and clear of any trust by the United Presbyterian Church. The implication is clear: if the Book of Order contained a trust clause, the court would enforce it.

In 1983, the PCUSA was formed and adopted the trust clause in its Book of Order. Lancaster was a member of the PCUSA at the time. Therefore, per *Schenectady* and *Harnish*, the trust clause is dispositive and enforceable against Lancaster.

Lancaster, nonetheless, resists this imperative by postulating that the trust clause is negated by the absence of an affirmative act on its part to adopt the trust clause. But caselaw does not mandate that every individual congregation affirmatively adopt a constitutional trust clause. That assertion is without merit and contrary to *Jones*, which expressly states that constitutional trusts are an alternative to the more burdensome process of modifying deeds or charters of each individual local church. *Jones* at 606.

As a constituent member of the PCUSA, Lancaster was inextricably bound by its rules. See, Book of Order, Section G-4.0104 ("Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution.") To hold otherwise impairs the entire structure of the PCUSA's governance of its churches.

Consistent with *Schenectady*, *Harnish* requires nothing more than the enactment of an express trust in a constitution in order to be binding on a local church:

The remaining factor for consideration, under neutral principles, however, requires that we look to "the constitution of the general Church concerning the ownership and control of church property" (quoting *Schenectady* at 122) *It is this factor that we find dispositive.* (emphasis added) *Harnish* at 351.

Indeed, that language is followed by factual dictum, i.e., All Saints agreed to abide by the express trust upon incorporation or upon recognition as a parish. That, however, is simply a fact unique to the case flowing from the existence of the trust, but is not, in itself, determinative of

this issue. Per *Jones* and *Schenectady*, the trust was operative whether or not the church made affirmative statements to that effect.

POINT IV

IN THE ALTERNATIVE, LANCASTER AGREED TO ABIDE BY THE BOOK OF ORDER, THEREBY CREATING A TRUST

If, however, the court finds that affirmative manifestations of constitutional fidelity and obedience are indeed required to enforce the Book of Order trust clause against Lancaster, the court has ample evidence of such. Lancaster made two prior statements—in 1998 and 2005—affirming its loyalty and love for the Book of Order and its acceptance of the faith’s tenets and historical principles:

We affirm our loyalty and love for our denomination as it is constituted in the Book of Confessions and the Book of Order. We receive and adopt its tenets and historic principles of church government.

In 1998, the Lancaster session advised its members that “[w]e choose to stand for and within our Constitution.” In 2004 a Lancaster elder was elected to and participated in the General Assembly, the highest governing body of the PCUSA. Book of Order, G-13.0000.

In summary, the lower court was correct to find, based on *Harnish*, that these actions on the part of Lancaster were unquestionable demonstrations of assent and obedience to the Book of Order and its trust clause. Lancaster cannot now disavow those laws.

Similarly, as the court below found, these factors are also sufficient to find an implied trust in favor of PCUSA. Lancaster erroneously adverts to General Obligations Law §5-703 (“Statute of Frauds”) to argue against an implied trust. The statute, however, which pertains only to real property, allows for the creation of a trust through act, implication, or operation of law. General Obligations Law §5-703(1). The above statements by Lancaster are sufficient to create

an implied trust through act, implication, or operation of law. It is also noteworthy that neither *Schenectady* nor *Harnish* refers to the Statute of Frauds in their analysis of the trust issue.

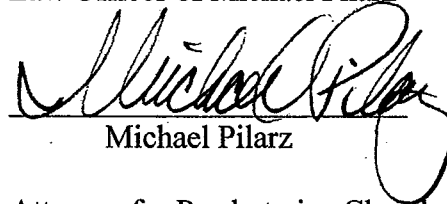
CONCLUSION

SUMMARY JUDGMENT WAS PROPERLY GRANTED
TO THE PRESBYTERIAN CHURCH (U.S.A.) AND
THE PRESBYTERY OF WESTERN NEW YORK

DATED: Buffalo, New York
May 21, 2009

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