

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

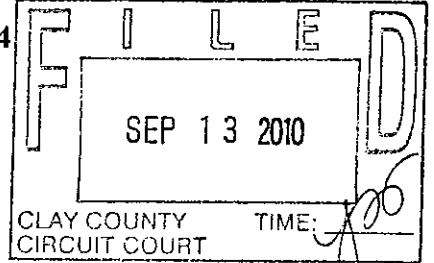
HEARTLAND PRESBYTERY, a Missouri  
Nonprofit Corporation, *et al.*  
Plaintiffs,

v

GASHLAND PRESBYTERIAN CHURCH, a  
Missouri Benevolent Corporation,  
Defendant.

Case No. 09CY-CV12424

Division 4



JUDGMENT OF DISMISSAL

Before the Court comes Defendant’s Motion to Dismiss Plaintiffs’ First Amended Petition. Defendant incorporated into its motion its prior Motion to Dismiss Plaintiff’s Petition. Having considered the First Amended Petition and the arguments and briefing of the parties, the Court enters its judgment of dismissal with prejudice for the following reasons:

Plaintiffs seek to represent the Presbyterian Church (USA) (“PCUSA” or “Denomination”), an unincorporated association, to obtain the property of Gashland Presbyterian Church (“Gashland”), a local church that disaffiliated from PCUSA in 2008, and damages. Plaintiffs’ action is based on purported trust and local-church control provisions in the Denomination’s Book of Order, which Plaintiffs attached to their Petition as Exhibit A.<sup>1</sup>

None of the factual allegations in the First Amended Petition are pleaded “on information and belief,” as might be expected if Plaintiffs’ case depended on additional factual development. Instead, Plaintiffs pleaded without equivocation the facts and documents on which their claims are based. The Court must treat those pleaded facts as true and construe them in favor of the Plaintiffs to determine whether they invoke

<sup>1</sup> The Plaintiffs attached numerous documents to their First Amended Petition, which the Court treats as part of the pleading for purposes of this motion to dismiss. Hendricks v. Curators of Univ. of Mo., 308 S.W. 3d 740, 747 (Mo. App. 2010).

“substantive principles of law which entitle the Plaintiff to relief.” LC Dev. CO., Inc. v. Lincoln County, 26 S.W. 3d 336, 339 (Mo. App. 2000). Applying this standard, Plaintiffs’ claims must be dismissed for failure to state a cause of action.

When deciding religious property disputes, Missouri courts are prohibited from deferring to religious hierarchy, but must instead use “neutral principles” of law in determining the property rights of congregations. Presbytery of Elijah Parish Lovejoy v. Jaeggi, 628 S.W. 2d 465, 467 (Mo. 1984)(en banc), citing Jones v. Wolf, 443 U.S. 595, (1979). “The [neutral principles] method relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice.” Id., at 468, quoting Jones, 443 U.S. at 603. A Missouri court cannot simply “defer” to the denomination’s interpretation of its governing documents, or its claim of right because it is a religious hierarchy, as might have been the case prior to the Elijah Parish case. Although Jones recognizes that a denomination may place trust language in the denomination’s governing documents, a court will only enforce such a trust if it is “embodied in a legally cognizable form.” Jones, 443 U.S. at 606.

In Missouri, under the facts alleged, a trust would be legally cognizable only if the owner of property declares that he holds identifiable property as trustee. R.S.Mo. 456.4-401 (2). Furthermore, a trust only could be created if (1) the settlor has capacity to create a trust, and (2) the settlor indicates an intention to create the trust. R.S.Mo. 456.4-402. In addition, a declaration of trust in land must be made in writing and signed by a party who is enabled to declare such a trust by law, or else it is void. R.S.Mo. 456.4-407.

The trust provision contained in the Denomination’s Book of Order is insufficient as a declaration of trust under Missouri law because it is neither made by the owner of the property (i.e. Gashland), nor to the extent the trust is alleged to cover Gashland’s real property, is the Denomination’s Book of Order signed on behalf of Gashland.

Because under Missouri law Plaintiffs cannot unilaterally impose a trust on Gashland's property through the Denomination's Book of Order, Plaintiffs allege in their First Amended Petition that Gashland consented to the Denomination's trust provision through a variety of other pleaded documents. These documents, however, fail to evidence Gashland's consent to an express trust.

Gashland's 1948 Articles of Agreement, Exhibit B to the First Amended Petition, never mention holding property in "trust" as a purpose of the corporation. R.S.Mo. 352.010 & .030 (purposes of corporation, including service as trustee, must be expressly set forth in its articles). Instead, Gashland's 1948 Articles at Article VII state that Gashland may acquire property for its purposes and "the title to the same shall vest in [Gashland], in its corporate capacity . . ." Therefore, upon the pleaded facts, Gashland's 1948 Articles are expressly inconsistent with the alleged trust.

Plaintiffs also attach an October 1, 1948 Deed from the Board of Trustees of the Presbytery of Kansas City to Gashland, by which the Presbytery conveyed real property to Gashland (Exhibit C to First Amended Petition). That deed does not support Plaintiffs' express trust theory because the Presbytery did not reserve a trust in favor of itself or any denomination, but instead conveyed the property outright to Gashland, consistent with Gashland's 1948 Articles.

Plaintiffs also plead purported 1987 Amended Articles and Bylaws of Gashland, Exhibits D & E to the First Amended Petition, as evidence of consent to the Denomination's trust provision. However, the 1987 Amended Articles and Bylaws are of dubious validity. Neither the First Amended Petition, nor the 1987 Amended Articles attached thereto, offers any factual allegation that the 1987 Amended Articles were approved by the Circuit Court of Clay County or filed with the Secretary of State, both of which are required to amend Gashland's 1948 Articles of Agreement. R.S.Mo. 352.060 & .070. As a result, the effect of the 1987 Amended Articles and Bylaws must be measured against the language of Gashland's duly-adopted 1948 Articles. To the extent

Plaintiffs allege that the provisions of the 1987 Amended Articles and Bylaws constitute consent to a trust on Gashland's property, that reading would be directly contrary to the provisions of the 1948 Articles stating that title to property will be vested in Gashland, and such provisions would be void. Rockhill Tennis Club of Kansas City v. Volker, 56 S.W. 2d 9, 17-18 (Mo. 1932) (acts contrary to corporate charter are void); Boatmen's First National Bank of West Plains v. Southern Missouri District, 806 S.W. 2d 706, 713 (Mo. App. 1991) (bylaw provisions contrary to articles of incorporation are void). As Gashland did not list among its purposes to serve as a trustee for another, Gashland lacked capacity to create the trust Plaintiffs allege. R.S.Mo. 456.4-402. See also State ex rel Miller v. St. Louis Union Trust Company, 74 S.W. 2d 348, 358 (Mo. 1934) (capacity of corporation to hold property in trust may be limited by law).

Plaintiff also attaches correspondence and minutes of Gashland through the years in which Gashland sought presbytery approval for loans and the sale of an easement to the City of Kansas City. (Exhibits F – K, First Amended Petition) Many of these exhibits predate the Denomination's trust provision, and these pleaded documents never discuss placing Gashland's property in trust or even refer to the Denomination's trust provision in its Book of Order. Mere participation and cooperation in denominational affairs alone does not demonstrate a church's intent to be bound by a denominational trust clause. See Church of God in Christ, Inc. v. Graham, 54 F. 3d 522 (8<sup>th</sup> Cir. 1995) (applying Missouri's neutral principles approach to a church property dispute).

As none of the facts pleaded by Plaintiffs give rise to an express trust, that claim must be dismissed for failure to state a cause of action. In the alternative, Plaintiffs also pleaded an unspecified "implied" trust, neither species of which is supported by Plaintiffs' pleading. Plaintiffs' have not pleaded facts alleging actual or constructive fraud as is required for a constructive trust. Neal v. Sparks, 773 S.W. 2d 481, 486 (Mo. App. 1989). Similarly, Plaintiffs have not pleaded any facts occurring prior to Gashland taking legal title to its property that would give rise to a resulting trust. Correale v. Hall,

9 S.W. 3d 624, 627 (Mo. App. 1999); Wenzelburger v. Wenzelburger, 296 S.W. 2d 163, 166 (Mo. App. 1956). Because all of Plaintiffs' trust theories fail, Plaintiffs have failed to allege any other facts that would give rise to a fiduciary duty, and that claim fails as well. See Preferred Physicians Mutual Management Group v. Preferred Physicians Mutual Risk Retention, 918 S.W. 2d 805, 810 (Mo. App. 1996).

Plaintiffs also plead a contract claim alleging that the Denomination's governing documents, including its trust and local-church control provisions, represent a contract that is binding upon Gashland. For many of the same reasons described above regarding the absence of facts showing consent to a trust, the Plaintiffs have failed to plead facts showing a meeting of the minds that is essential to a contract claim. See Drury v. Missouri Youth Soccer Association, 259 S.W. 3d 558, 574-575 (Mo. App. 2008). Although Plaintiffs plead that Gashland is a "member" of the Denomination,<sup>2</sup> and allege the Denomination's governing documents, including its Book of Order, are binding on Gashland, the very facts Plaintiffs have pleaded defeat this claim. Courts applying Missouri law look to the governing documents of local organizations to determine if they have agreed to be bound by the provisions of an umbrella organization's governing documents. See e.g. Boatmen's 806, S.W. 2d at 714; Church of God in Christ, 54 F. 3d at 526; Vikings USA Bootheel Missouri v. Modern Day Veterans, 33 S.W. 3d 709, 711 (Mo. App. 2000).

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<sup>2</sup> Plaintiffs have pleaded inconsistently that the PCUSA is an association of individuals, First Amended Petition at 8, and that Gashland, an entity, is a member of PCUSA. First Amended Petition at 7. While Missouri allows the pleading of alternative claims, it does not allow pleading alternative facts. These inconsistent facts are admissions against the interest of the pleader – and at trial are binding. Mays v. Maune and Associates, Inc. v. Werner Bros., 139 S.W. 3d 201, 206 – 207 (Mo. App. 2004). Because the pleading's admissions puts Defendant Gashland outside the scope of any contract or trust based on PCUSA's governing documents, dismissal is appropriate. Id.

The plain language of Gashland's 1948 Articles does not support the contract pleaded by Plaintiffs. Gashland's 1948 Articles not only state expressly that its property is to be titled in the name of the corporation, but Article VIII thereof makes clear that the government of the corporation is vested in its board of trustees alone. Gashland's 1948 Articles never describe the church as a "member" of any other entity or denomination, nor do they adopt any denominational charter as binding on Gashland or superior to its duly-adopted 1948 Articles. Those Articles never mention PCUSA.

Plaintiffs correctly point out that the 1948 Articles provide that Gashland is connected with, and ecclesiastically subject to, a predecessor of PCUSA, and provide that its bylaws will not be inconsistent with the governing documents of the predecessor denomination. However, in Missouri, a corporation has an "inherent corporate right" to disaffiliate from another organization, unless one of its express purposes is to be a subordinate organization of the other organization. Missouri State Teacher's Association v. St. Louis Suburban Teacher's Association, 622 S.W. 2d 745, 752 (Mo. App. 1981).

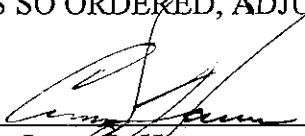
Gashland's purposes clause, Article VII of the 1948 Articles, does not identify Gashland as a subordinate of PCUSA or any other denomination. Thus, the absence of connectional language in Gashland's purposes clause indicates that the language upon which Plaintiffs rely is descriptive only, and not prescriptive. Id. at 749. The facts pleaded by Plaintiffs fail to state a contract claim against Gashland.

Plaintiffs also seek a declaratory judgment regarding its rights. To state a claim for declaratory judgment, a real dispute must be pleaded. Westphal v. Lake Lotawana Association, 95 S.W. 3d 144, 150 (Mo. App. 2003). For the reasons described above,

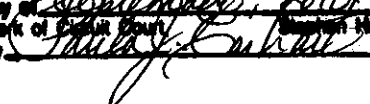
there is no real dispute between these parties, and Plaintiffs' declaratory judgment claim must be dismissed.

Taking the facts pleaded by Plaintiffs as true, the Court finds no legal or equitable theory that would entitle Plaintiffs to control Gashland Presbyterian Church or its property or be entitled to damages. Plaintiffs previously were given an opportunity to replead their claims so as to invoke substantive principles of law that would entitle them to relief, but Plaintiffs' attempt was unavailing and additional attempts to replead would appear equally futile. Based on the facts pleaded by Plaintiffs, the Court dismisses this case with prejudice.

IT IS SO ORDERED, ADJUDGED AND DECREED.

  
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Judge Larry D. Harman  
Circuit Court of Clay County, Missouri

Date: 9-12-10

**CERTIFIED COPY**  
STATE OF MISSOURI COUNTY OF CLAY.  
This is to certify that the foregoing is a true and  
correct copy of the Decree as the same appears.  
Witness my hand and official seal this 15th  
day of September, 2010.  
Clerk of Circuit Court Stephen Harman  
By:  D. C.