

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. JOHN K. MCGUIRK, J.S.C.

SUPREME COURT : ORANGE COUNTY

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THE PRESBYTERY OF HUDSON VALLEY
OF THE PRESBYTERIAN CHURCH (U.S.A.)
and REV. RICHARD M. SPIERLING As
Chair of the Administrative
Commission Appointed by the Said
Presbytery with respect to THE
FIRST PRESBYTERIAN CHURCH OF
RIDGEBURY.

Plaintiffs,

-against-

THE TRUSTEES OF THE FIRST
PRESBYTERIAN CHURCH AND CONGREGATION
OF RIDGEBERRY a/k/a RIDGEBURY CHURCH
and/or THE CHURCH AT RIDGEBURY,
TRUSTEES OF THE FIRST PRESBYTERIAN
CHURCH and CONGREGATION of RIDGEBURY,
TRUSTEES OF THE PRESBYTERIAN CHURCH
OF RIDGEBURY, NEW YORK AND THE
RIDGEBURY PRESBYTERIAN CHURCH; and
LORI DEBLOCK, LES KIRBY, MARIE KNIBBS,
DOROTHY KWAPONG, RONALD LYONS,
THEDA WOLFE, THE REV. ROBERT W. HOAG,
and STANLEY WAYNE,

Defendants.

To commence the statutory time
period for appeals as of right
(CPLR 5513 [a]), you are
advised to serve a copy of this
order, with notice of entry,
upon all parties.

Index No. 6144/2005
Motion Date: Feb. 21, 2006

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The following papers numbered 1 to 22 were read on this motion by
defendants¹ and cross-motion by plaintiffs for summary judgment:

Notice of Motion-Affirmation-Verified Answer with Exhibits-Memorandum of Law-Statement of Undisputed Facts.....	1-5
Notice of Cross-Motion-Affidavit-Exhibits A-P-Affidavit-Exhibits A-D- Affidavit-Complaint-Answer.....	6-13
Plaintiff's Memorandum of Law-Exhibits A-B.....	14-15
Answering Affirmation and Reply-Exhibits A-D.....	16-17

¹ "Defendants" in this decision and order refers to all of
the defendants listed in the caption except the Rev. Robert W. Hoag
who has taken no position on these motions. It is unclear, on this
record, whether he has answered the complaint.

Answering Memorandum of Law.....	18
Reply Memorandum of Law.....	19
Verified Statement of "Undisputed Facts".....	20
Plaintiffs' Response to Defendants' Statement of "Undisputed Facts".....	21
Markup Statement of "Undisputed Facts".....	22

Upon the foregoing papers it is ORDERED that the motion is granted and the cross-motion is denied.

This case concerns defendants' desire to secede from the Presbyterian Church (U.S.A.) (hereinafter "PCUSA") and, more precisely, ownership of the church's real property in the Town of Wawayanda. On January 10, 2005, defendants had a congregational meeting and voted unanimously to disassociate themselves from PCUSA.

After correspondence and meetings between the parties, this action ensued. Plaintiffs seek declaratory and injunctive relief concerning the real property and personal property appurtenant thereto ("operational and investment funds, parishioner donations, furniture, ecclesiastical and sacramental items and church records and documents"), an accounting and an order of possession. Following joinder of issue both sides move for summary judgment. Defendants have not counterclaimed for any relief; they simply seek dismissal and cancellation of a notice of pendency.

This case must be decided using neutral principles of law (Jones v Wolf, 443 US 595). Since the Court of Appeals ruled in 1984 on the nature of ownership of real property by local churches affiliated with PCUSA on similar facts, (see First Presbyterian Church of Schenectady v United Presbyterian Church in the United States of America) 62 NY2d 110 (hereinafter referred to as the "Schenectady

case"), this court need only look at factual changes which have occurred since the Court of Appeals decided the Schenectady case and, applying familiar property law principles, determine whether a different result than the one reached by the Court of Appeals in 1984 is warranted.

In the Schenectady case, the First Presbyterian Church of Schenectady (hereinafter "First Church") wished to withdraw from the national denomination due to political differences. PCUSA and the presbytery of Albany refused to accept the vote of the members of First Church to withdraw. First Church commenced an action seeking declaratory and injunctive relief; declaring that it owned its property and enjoining PCUSA and the presbytery from attempting to control it. The Court of Appeals held in the plaintiff's favor. The court stated that "even though members of a local group belong to a hierarchical church, they may withdraw from the church and claim title to real and personal property, provided that they have not previously ceded the property to the denominational church" (62 NY2d supra at 120). The court, relying upon principles from decisions of the United States Supreme Court stated the standard to be applied in these cases:

In applying neutral principles, the focus is on the language of the deeds, the terms 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. The court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, *taking special care to scrutinize the documents in purely secular terms* and not to rely on religious precepts in determining

whether they indicate that the parties have intended to create a trust or restriction.
(62 NY2d supra at 122, citations omitted, emphasis added).

The corporate defendant was incorporated in 1805. The plurality of members elected trustees "to take charge of the estate and property belonging to the said Church & Congregation". It affiliated with the presbytery of the Hudson River in 1817, placing itself under that presbytery's care. Defendants own five parcels of real property, the first acquired in 1833 and the last in 1964. In each case, the title holder is "the Trustees of the First Presbyterian Church and Congregation of Ridgebury". The deeds contain no restriction on title. More specifically, none of the deeds contain language vesting a present or future interest in the favor of the Hudson River Presbytery or PCUSA.

So far, therefore, this case is factually on point with the Schenectady case. Here, as there, the corporate defendant was 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 PCUSA. Here, as there, the local congregation holds a fee simple absolute interest in its property without restriction or limitation.

The difference between this case and the Schenectady case is that in the nineteen eighties, PCUSA, in response to decisional law of the United States Supreme Court, amended the Book of Order (i.e., the constitution of PCUSA) to create an express trust provision for congregational property. This provision was first

introduced as "Overture A" and the clerk of the General Assembly was directed to send it to the presbyteries for comment. Eventually, it was adopted in 1981. It is contained in the eighth chapter of the Book of Order. It states that all property held by 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.)" [Book of Order G-8.0200]. It further provides, "[w]henver property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery" [Book of Order G-8.0300]. Finally, under a provision entitled "Property of Church in Schism", the Book of Order provides that the relationship to the Presbyterian Church (U.S.A.) can only be severed by action by the presbytery.

The issue in this case, in a nutshell, is whether this action by the General Assembly is enforceable. Inasmuch as Chapter Eight of the Book of Order purports to affect title in real property, the court will interpret it in accordance with secular property law in this State, as directed by the Court of Appeals in the Schenectady case.

General Obligations Law § 5-703 provides in relevant part:

1. An estate or interest in real property... or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, assigned, surrendered or declared, unless by act or operation of law,

or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this subdivision does not ... prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

It is hornbook property law that only the owner of real property can convey an interest in the property; B can not create a future interest in A's property without A's consent (see generally, Bogert, *Trusts & Trustees* [2nd ed rev] §§ 141 *et seq*).

In the absence of any language in the deed to defendants indicating that title is held subject to the laws or discipline of the national church (compare e.g. Matter of Church of St. James the Less, ___ A2d___, 888 A2d 795 2005 WL 3554711 [Pa. 12/29/2005]), a change in the laws of the national church does not affect title to the realty held by the local church. Moreover, when defendants acquired the real property Overture A did not exist (see Arkansas Presbytery of the Cumberland Presbyterian Church v Hudson, 344 Ark. 332, 40 S.W.2d 301 [2001]; York v First Presbyterian Church of Anna, 130 Ill. App.3d 611, 474 N.E.2d 716 [5th District]).

Plaintiffs rely heavily upon decisions involving the Episcopal Church in the United States in which local churches wishing to leave the national denomination also had to leave behind their real property. Upon close evaluation, however, such reliance is misplaced as the cases are distinguishable from the one at bar.

In Trustees of the Diocese of Albany v Trinity Episcopal Church

of Gloversville (250 AD2d 282), the Appellate Division, Third Department was faced with a dispute between the Episcopal Diocese of Albany and Trinity Episcopal Church of Gloversville, New York. The local church wanted to secede from the national denomination and affiliate itself with the Anglican Episcopal Diocese South, Inc. Trinity Episcopal Church had been incorporated "in accordance with the canons and constitution of the Protestant Episcopal Church in the United States of America" (250 AD2d Id. at 283) and the certificates of incorporation were drawn pursuant to Religious Corporations Law article 3 (or its predecessor) which confirmed that the local church was an integral part of the Protestant Episcopal Church and the Diocese (250 AD2d Id. at 287). In 1979, the national canons of the Episcopal Church were amended to add the "Dennis Canon" which specifically states that all real and personal property held by or for the benefit of a local parish or congregation is held in trust for the national church and the diocese in which the local church is located. The Chancellor to the Presiding Bishop of the Episcopal Church submitted an affidavit that the "Dennis Canon" was enacted to enunciate existing canonical church law and not to effect a change in the law. The Appellate Division, Third Department stated:

[i]n our view, the record supports the conclusion that the "Dennis Canon" amendment expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church. By accepting the principles of the Protestant Episcopal Church and the Diocese, defendants were subject to their canons, rules and practices. Defendants, for example, had to obtain approval of the Bishop and the Standing Committee prior to alienating or encumbering real property as required by

title I, canon 7, sections 2 and 3 (see, Religious Corporations Law § 12[2]). These provisions not only indicate that local church property was to be held for the benefit of the Protestant Episcopal Church and its dioceses, but they demonstrate the established customs of said church. . . . Likewise, the fact that Trinity Episcopal Church was incorporated pursuant to Religious Corporations Law article 3 confirms that it is an integral member of the Protestant Episcopal Church and that it adopted and is subject to the national church's constitution and canons.

(250 AD2d supra at 288-289)

Similarly, in The Rector, Wardens and Vestrymen of Trinity-St. Michael's Parish, Inc. v The Episcopal Church in the Diocese of Connecticut (224 Conn. 797, 620 A.2d 1280), also relied upon by plaintiffs, the court examined the history of the polity of the Episcopal Church and found that the "Dennis Canon" merely codified an implied trust between the parishes, their diocese and the national church which had always existed.

Here, however, that is not the case. The Episcopal Church has a structure of government which follows, roughly, the models of the Roman Catholic Church and the Eastern Orthodox Churches pursuant to which a diocese is governed by a bishop to whom the parishes in the diocese owe ecclesiastical obedience. The Presbyterian Church, following a Calvinist tradition, has a different system of government. In the Schenectady case, the Court of Appeals specifically rejected the contention that an implied trust could be found in the polity of the Presbyterian Church. Of the three types of property trusts in church property disputes, the Schenectady case found only one arguably implicated; an implied trust for the denominational church. The court stated that for the doctrine to be

applied there must be a manifestation of an intent to do so. It found nothing in the record to indicate that First Church intended to hold its property for the benefit of the denominational church.

Finally, the court acknowledges that there is an argument that by remaining in the national denomination for twenty-five years after the adoption of Overture A defendants acceded to the express trust placed in the Book of Order. The court finds, however, that mere silence and continuing its membership in the denominational church, absent more, is an insufficient expression of an intent to create a trust.

The Restatement (Third) of Trusts § 13 states, "[a] trust is created only if the settlor properly manifests an intention to create a trust relationship." The comment to this section of the Restatement states, "[t]he manifestation of intention requires an external expression of intention as distinguished from undisclosed intention." "The settlor must manifest with certainty his intent to have a trust and also provide the terms of the trust" (Bogert, Trusts & Trustees [2nd ed rev] § 45). The only affirmative actions on defendants' part on this subject since 1981 were their explicit manifestation *not* to hold their property for the benefit of plaintiffs.

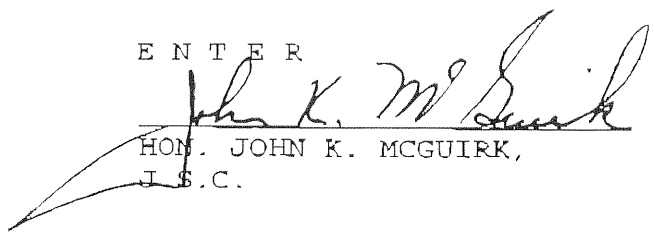
Accordingly, plaintiffs' motion is denied and defendants' motion is granted.

Settle judgment declaring the rights of the parties and directing cancellation of the notice of pendency accordingly.

The foregoing constitutes the decision and order of the court.

Dated: August 16, 2006
Goshen, New York

ENTER


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