

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PETERS CREEK UNITED)
PRESBYTERIAN CHURCH,)
)
Plaintiff)
)
v.)
)
WASHINGTON PRESBYTERY)
OF PENNSYLVANIA,)
)
Defendant)
and)
)
REVEREND L. RUS HOWARD and)
ROBERT J.ELMES,)
)
Additional Defendants)

Doc. No. 2007-2941

PROthonOTARY
WASHINGTON CO. PA

09 OCT -1 AM 9:25

FILED



ORDER

AND NOW, this 1ST day of October 2009, after careful review of relevant decisional and statutory law as well as both parties findings of fact and conclusions of law, and briefs in support of their respective motions, for the reasons set forth in this Court's Opinion in Support of Order, it is hereby **ORDERED, ADJUDGED AND DECREED** that Defendant's Motion for Summary Judgment and Judgment on the Pleadings is **DENIED**, and Plaintiff's Motion for Summary Judgment is **GRANTED**.

Plaintiff, Peters Creek United Presbyterian Church is hereby granted the following relief:

1. Peters Creek United Presbyterian Church is the rightful owner of all real and personal property titled in its own name as described in Peters Creek United Presbyterian Church's Amended Complaint;
2. Peters Creek United Presbyterian Church is entitled to the quiet, exclusive, uninterrupted and peaceful possession of the Peters Creek United Presbyterian Church Property without any interference of the Defendant, Washington Presbytery of Pennsylvania;

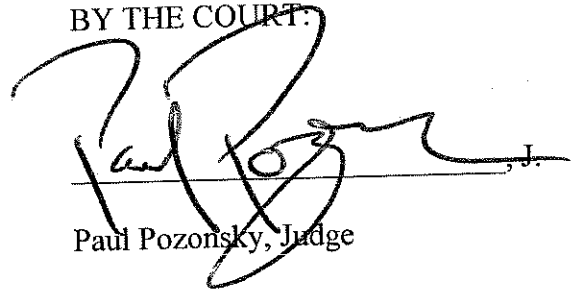
3. Peters Creek United Presbyterian Church is entitled to sole possession and control over any of its personal property, including all cash and other assets in its possession or control or deposited with any financial institution;

4. Title to the Peters Creek United Presbyterian Church Property is hereby quieted solely in Peters Creek United Presbyterian Church;

5. Neither the Washington Presbytery nor the PCUSA holds any property interest whatsoever in the Peters Creek United Presbyterian Church Property, whether in trust or otherwise;

6. Because neither Washington Presbytery nor the PCUSA holds any property interest whatsoever in the Peters Creek United Presbyterian Church Property, Washington Presbytery's counterclaims are hereby dismissed with prejudice.¹

BY THE COURT.

A handwritten signature in black ink, appearing to read "Paul Pozonsky, J.", is written over a horizontal line. The signature is stylized and cursive.

Paul Pozonsky, Judge

¹ Defendant's counterclaims each require that the Defendant have a property interest in the subject property; because they have no interest in the property their counterclaims necessarily must fail.

ENTRY OF OPINION, ORDER, DECREE,
ADJUDICATION OR JUDGMENT FILED 10-1-09

MAILED 10-1-09

TO _____

S. Morison Jr.
A. Deraghty

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Paul Pozonsky, J.

October ^{1st}, 2009

OPINION IN SUPPORT OF ORDER

This case is a dispute over the ownership of church property following the decision of Peters Creek United Presbyterian Church, (“Peters Creek Church”), to break from the national church with which they had been affiliated, the Presbyterian Church in the United States of America (“PCUSA”).¹ The critical questions currently before this Court are: (1) whether Peters Creek Church is bound by certain property provisions within the Book of Order of the PCUSA;² (2) whether Peters Creek Church can bring suit to quiet title to certain real and personal property without first proceeding with the

¹ Peters Creek Church was one of numerous churches affiliated with the PCUSA. The PCUSA is hierarchical in structure in so far as local parishes are affiliated with a presbytery and the presbytery with the PCUSA. No central body, however, exercises authority over local church affairs, and local churches maintain broad authority in conducting their affairs.

² The relevant provisions are contained in Chapter VIII of the PCUSA Book of Order.

procedures outlined in the PCUSA Book of Order; and (3) whether the property at issue is owned outright by Peters Creek Church, or is held in trust by Peters Creek Church for the benefit of the Defendant, Washington Presbytery, pursuant to the PCUSA Book of Order.

FACTUAL and PROCEDURAL BACKGROUND

Peters Creek Church was founded in the 1790's. The real and personal property of Peters Creek Church has been acquired with funds donated and raised by the local congregation of Peters Creek Church. Peters Creek Church has owned portions of the property at issue dating back to the year 1809, the original church building having been built in 1832, and served as the congregation's place of worship for approximately 130 years. The deeds conveying the property at issue each show that the properties were acquired in the name of Peters Creek Church. The deed of August 28, 1809, conveyed property to the Trustees of the Associate Congregation of Peters Creek and made no reference to any denomination. Deeds executed in 1873, 1894, 1897, and 1921 conveyed property to Trustees of the United Presbyterian Church of Peters Creek. In 1955, 1981, and 2005, the various parcels of property were conveyed to Peters Creek United Presbyterian Church, and none of the deeds at issue indicate that the property was to be held in trust for the benefit of any national denomination. The property also is encumbered by one mortgage, yet nothing in the record indicates that prior to encumbering the property, Peters Creek Church requested written permission from the Defendant to encumber the property with a mortgage.³

³ See, *Book of Order, G-8.0501*, requiring a local church to request written permission to encumber property.

The local Peters Creek Church was incorporated under the laws of Pennsylvania in 1931 and remains properly chartered as a Non-Profit Pennsylvania corporation. At the time of incorporation the local church was affiliated with the United Presbyterian Church of North America (“UPCNA”). The charter of Peters Creek Church existed prior to the creation of the PCUSA, contains no mention of the PCUSA, and the charter does not provide in any way that Peters Creek Church would hold its property in trust for the UPCNA or the PCUSA.

In 1958, the UPCNA merged with the Presbyterian Church of the United States of America and formed the United Presbyterian Church in the United States (“UPCUSA”). Thereafter, in 1983, the UPCUSA merged with the PCUSA, and Peters Creek Church thereby became affiliated with the PCUSA.⁴ Peters Creek Church, since becoming affiliated with the PCUSA, has never amended its corporate documents, charter or deeds to include any express trust provisions to benefit the PCUSA or the Washington Presbytery.

On May 9, 2007, Peters Creek Church commenced this action, seeking to determine title of certain real and personal property, as well as an Emergency Motion for a Permanent Injunction.⁵ The injunction sought to prevent Washington Presbytery from taking over the operation of the local congregation. The injunction was issued and following an agreement by both parties to lift the injunction, negotiations began to

⁴ The Defendant, Washington Presbytery, is the local Presbytery of the PCUSA overseeing Peters Creek Church.

⁵ Count I of the Plaintiff’s complaint sought declaratory judgment requesting the Court declare the Plaintiff the owner of real and personal property and that both the Washington Presbytery and PCUSA had no interest in the property.

resolve the underlying property dispute; to date, however, the parties have been unable to come to an amicable resolution.

An Amended Complaint to Quiet Title was then filed on November 13, 2007; on July 24, 2008, Washington Presbytery filed an Answer, New Matter and Counterclaim.⁶ Peters Creek Church has now filed a Motion for Summary Judgment seeking an order declaring Peters Creek Church to be the rightful owner of certain real and personal property. Defendant, Washington Presbytery, has filed a Motion for Judgment on the Pleadings and a Motion for Summary Judgment, seeking a determination that the named Plaintiff does not have a right to bring the current action because the minority of Peters Creek Church is the "true church," and that the Plaintiff has agreed to follow the procedures set forth in the Book of Order to determine who owns the real and personal property at issue.⁷

The facts underlying the current dispute are the result of a majority of the members of Peters Creek Church voting to disaffiliate from the PCUSA, and to join the Evangelical Presbyterian Church. On April 27, 2007, Peters Creek Church notified Washington Presbytery that they intended to join another denomination. Thereafter, the

⁶ The counterclaim sought declaratory judgment in Count I, and to quiet title in Count II. Count III is a replevin action for personal property, and Count IV purports to be an equitable claim seeking an accounting, monetary damages for loss of rental value, and loss of value and assets, and a declaration that the property is held in constructive trust by the Plaintiff for the benefit of the Defendant. Count V is an ejectment action.

⁷ Count I argued for Judgment on the Pleadings on the basis that the "minority" of Peters Creek Church is the correct Plaintiff because the "minority" is the "true church." Count II argues for Summary Judgment on the same grounds. Count III argues for Judgment on the Pleadings and alleged the parties have chosen to have the issue decided by the Washington Presbytery. Count IV is identical to Count III and requested Summary Judgment. The Defendant has not argued for summary judgment or judgment on the pleadings on the basis that the property is held in trust by Peters Creek Church for the benefit of Washington Presbytery.

Defendant, Washington Presbytery, proceeded pursuant to the Book of Order by appointing a commission to determine whether to dismiss Peters Creek Church to the Evangelical Presbyterian denomination.⁸ A majority of Peters Creek Church held a duly authorized vote, pursuant to Peters Creek Church bylaws, requesting Washington Presbytery dismiss the church to the Evangelical Presbyterian Church.

On October 5, 2007, a minority of the members of Peters Creek Church presented an "Overture" to determine what should happen to the assets of the church.⁹ The commission formed by the Washington Presbytery refused to dismiss Peters Creek Church to the Evangelical Presbyterian Church. On November 4, 2007, the majority of members of Peters Creek Church voted again, this time to disaffiliate. Such a vote even when duly authorized pursuant to Peters Creek Church's bylaws is considered by the Defendant as an improper procedure to break away from the national church. *See, Book of Order, Chapter VIII, G-8.0601.*

STANDARD FOR JUDGMENT ON THE PLEADINGS AND SUMMARY JUDGMENT

A motion for judgment on the pleadings is in the nature of demurrer and shall be granted where there are no facts at issue and the moving party is entitled to judgment as a matter of law. *Parish v. Horn*, 768 A.2d 1214 (Pa. Cmwlth. 2001). A trial court will only consider the pleadings themselves and any documents properly attached and must accept all well-pled allegations of the party opposing the motion as true, and only those facts admitted by the party opposing the motion may be considered against the party.

In determining a motion for summary judgment the Court examines the record in

⁸ No date is set forth by either party as to when this occurred.

⁹ An overture in the Presbyterian Church is the same as the filing of a complaint in a civil court.

a light most favorable to the non-moving party, resolving all doubts as to the existence of an issue of material fact in favor of the non-moving party. *Thorsen v. Iron and Glass Bank*, 476 A.2d 928 (Pa. Super. 1984). Summary judgment is only granted if there are no genuine issues of material fact. *Id.*

Motions for judgment on the pleadings and summary judgment motions involve similar considerations, however, the motions differ in relation to the trial court's scope of inquiry. A motion for judgment on the pleadings is limited to the averments contained in the pleadings while a motion for summary judgment may rely on outside material contained in the record. *DiGregorio v. Keystone Health Plan E.*, 840 A.2d 361 (Pa. Super. 2003).

OVERVIEW OF RELEVANT PENNSYLVANIA CASE LAW

A series of cases within Pennsylvania have addressed similar issues that are before this Court. *See generally, Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church of North America*, 312 A.2d 35 (Pa. 1973); *The Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985); *Presbytery of Donegal v. S. Reed Calhoun*, 513 A.2d 531 (Pa. Cmwlth. 1986); *Bd. of Bishops v. Milner*, 513 A.2d 1131 (Pa. Cmwlth. 1986); *Conference of African Union First Colored Methodist Protestant Church v. St. Paul A.U.M.P. Church*, 659 A.2d 77, 79 (Pa. Cmwlth. 1995); *In Re: Church of St. James the Less*, 888 A.2d 795 (Pa. 2005).

In *Everson Evangelical*, *supra*, the plaintiff filed an equity action requesting a ruling that they retained right of ownership, possession, and control over certain property. The defendant was a local church and a member of the Evangelical United Brethren

Church (E.U.B.), a hierarchically governed church. The E.U.B. merged with the United Methodist Church, another hierarchical church. The Book of Discipline of the United Methodist Church held that all property held by a member church was to be governed by the parent denomination. The court reasoned that because the Book of Discipline was a binding contractual agreement and set forth that property issues were to be determined by the parent denomination, the court found that the parent church had control over the property. Importantly, the Court in *Everson* found that the party seeking to secede from the parent church had admitted to being bound by the governing rules of the parent church.

The Court also cited *10 P.S. Section 81*, which requires local churches affiliated with a national church to hold their property in accordance with the rules of the national church with which they are associated. Since the rules of the national church were controlling and the national church rules set forth that the parent church had control over the property, the Court ruled in favor of the national church.

Twelve years later in *Beaver-Butler, supra*, the Pennsylvania Supreme Court again addressed the issue of a church property dispute between a local and national church. In *Beaver-Butler*, the local church, Middlesex Presbyterian Church, voted to disaffiliate from the larger church, the United Presbyterian Church U.S.A. ("UPCUSA"). After Middlesex disaffiliated from the national church, the Presbytery of Beaver-Butler sought delivery of all church property, claiming a trust interest in the property.

The Court in *Beaver-Butler* formally adopted the neutral principles of law approach to determining church property disputes. It found that because the dispute was not based on a doctrinal schism, and because neither party was arguing that either was the

true church, the court could resolve the dispute using general principles of Pennsylvania civil law. The Court held that certain provisions within the UPCUSA Book of Order did not establish a trust by clear and unambiguous language, nor did the conduct of the parties evidence intent to create a trust.¹⁰ The primary focus in trust law is on the intent of the settlor (i.e. Peters Creek Church in the present case), and the Court reasoned that because Middlesex was created on a local level, all property was retained in the corporate name of the local church; and when they affiliated with the national church no express trust language existed within the denominations constitution, therefore, no trust was created and the local church held the property in fee simple absolute.¹¹

The Court in *Presbytery of Donegal, supra*, found similarly to *Beaver-Butler*. In *Presbytery of Donegal* the Presbytery appointed an administrative commission to look into actions taken by the Coatesville Church in transferring their assets to an independent corporation which leased back the property for one dollar a year for 99 years.¹² The Coatesville Church assured the Presbytery that they did not intend to leave the

¹⁰ The provisions are substantially similar to provisions within the PCUSA Book of Order and stated: (1) when a local church formally dissolves, its property is "held, used and applied to such uses as the National Presbyterian Church should direct;" (2) a local church cannot "sell, encumber, or lease real property without permission of the National Presbyterian Church;" (3) the National Presbyterian Church may "take charge of" a local church if it determines the local church is unable or unwilling to manage wisely its affairs; (4) the National Presbyterian Church has "exclusive authority over the uses to which the church buildings and property may be put;" and (5) the local church "shall deal with property only as they may be authorized or directed" by the National Presbyterian Church).

¹¹ Peters Creek was also created on a local level and the property was retained in its corporate name, however, express trust language does exist in the PCUSA Book of Order. Also, the Book of Order for the UPCUSA (at the time) did not prohibit the congregation from disaffiliating, nor did the local church in *Beaver-Butler* accept an amendment to the 1979 Book of Order that created a trust in favor of the national church with respect to property owned by affiliated churches.

¹² The calling or proposed calling of an administrative commission in the present action spurred the Plaintiff to file this action.

denomination, but the Presbytery also made clear they intended to take action to rescind the property transfer. As a result, the Coatesville Church terminated the congregations' relationship with the Presbytery. The Presbytery thereafter appointed a second commission giving it authority to act on behalf of Coatesville Church and replace the elected session of the church.¹³ The elected session remained in control of the church property and contended they were no longer associated with the Presbytery and not under its authority. The Presbytery filed an action in equity requesting its commission be given title to the real property retained by Coatesville Church.

The Court held the denominations constitution did not create a trust in the property for the benefit of UPCUSA and at no time during the Coatesville Church's affiliation did the denomination have any express trust language. The trial court also found, and the Commonwealth Court affirmed, that the UPCUSA did not prevent or penalize member churches from unilaterally disaffiliating from the denomination, and there was no question that the Coatesville Church's vote to leave the denomination was effective. Accordingly, the Court in *Presbytery of Donegal* held that the issue was not whether the Book of Order invalidated the transfer, but whether the provisions in the Book of Order constituted evidence of an intention to create a trust. The Court also held that the Presbytery's actions in appointing a commission after the Coatesville Church had voted to disaffiliate made it clear that the commission was without authority to control the disposition of the congregation's property.¹⁴

¹³ Washington Presbytery has taken similar action in this case.

¹⁴ Peters Creek Church has argued that pursuant to *Beaver-Butler* their vote of disaffiliation was effective; however, in *Beaver-Butler* the national church's governing documents did not prohibit disaffiliation. This distinction was made in *St. James. See, St. James*, at 810. In the present case, the Book of Order does prevent a member church

In more recent developments in church property disputes, Pennsylvania courts have held for the national church. The Court in *St. Paul, supra*, resolved a dispute over church property in favor of the national church, finding clear and unambiguous trust language within the national church's Book of Discipline. The national church had filed an action against the local church for declaratory and injunctive relief to establish that the national church retained ownership of church property after the local church withdrew its affiliation with the national church. The Court found that the local church had accepted and agreed to be bound by the Book of Discipline which governed the use and disposition of church property and represented a contractual agreement that may be enforced by the courts. The relevant provision of the Book of Discipline stated:

All church property and other property belonging to the Connection shall be deeded to the members and Connection, and should the members disband or secede the property shall remain in the possession of the Connection, and that each local Church shall be so incorporated that if the members should disband or secede, the said Church and property shall remain in the Connection.

The Court found that the evidence demonstrated in clear and unambiguous language that a trust was created by the local church and the local church failed to establish an express intent to retain rights to ownership and possession of their church property.

Most recently in *In Re: Church of St. James the Less, supra*, the Pennsylvania Supreme Court held that a local church held legal title to its property, but pursuant to the local church and national church's governing documents, the local church held the property in trust for the benefit of the national church. In *St. James*, much like the

from unilaterally disaffiliating and also contains express trust language, thus a vote of disaffiliation is not necessarily effective, as was the case in *Presbytery of Donegal*.

present case, a local church attempted to separate itself from the hierarchical church and the hierarchical church asserted that the local church's property was subject to a trust.

The Pennsylvania Supreme Court held that the local church had acceded to the national church and accepted its authority. According to the Court, provisions within the local church's charter clearly acknowledged that the local church was governed by the national church. The provisions within the local church's charter also expressly discussed property matters. The Court also found clear and unambiguous language existed within the national church's canons establishing a trust, and also cited to *10 P.S. Section 81* which requires local churches affiliated with a national church to hold their property in accordance with the rules of the national church with which they are associated. Specifically, the Court found that explicit trust language existed in the "Dennis Canon" enacted in 1979.

Because the local church had remained a member of the national church for twenty years after the adoption of the Dennis Cannon and did not establish through its articles of incorporation an intent to retain possession and control of its church property, the Court found the local church held its property in trust for the national church. The Court also found that although the local church never expressly acceded to the Dennis Canon, they were nevertheless bound by the canon. Members of a voluntary association are bound by amendments to the association's rules if the rules are duly enacted and do not deprive the member of vested property rights without the member's explicit consent.¹⁵

¹⁵ The Court found that the St. James charter made clear that St. James had agreed to hold its property in trust for the Diocese prior to the enactment of the Dennis Canon, thus no vested interest in the property was deprived by the Canon.

The Court in *St. James* distinguished *St. James* from *Beaver-Butler* because *St. James* was always required to accede to the authority of the National Episcopal Church, whereas in *Beaver-Butler*, the national church's Book of Order did not prohibit a local church from disaffiliating from the national church. *St. James*, at 810. In the present case, according to Washington Presbytery, the PCUSA Book of Order prohibited local churches from disaffiliating from the national church. In conclusion, the *St. James* court determined that the property was held in trust by the local church and the local church was required to act as trustees for the benefit of the larger church. However, because the local church property was deeded solely to the local church, the local church retained ownership and legal title.

ANALYSIS

The "neutral principles of law" approach applies to disputes between local churches and their national denominations. *The Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985). Disputes as to the meaning of contracts, trusts, and property ownership are not predicated on religious doctrine and therefore may properly be decided by the courts. *Id.* "Parties may agree to settle their disputes according to their own agreed fashion, the question of what they agreed to, or whether they agreed at all, are not doctrinal and can be solved without intruding into the sacred precincts." *Id.* at 1322 (emphasis added). However, disputes related to doctrinal schism, or which party is "the true church in an ecclesiastical sense" cannot be determined by this Court. *See generally, Beaver-Butler*, at 1323 (determining that the issue was not based on a doctrinal schism or a dispute over who was the true church). Deference must be shown to issues decided by a judicature

within the national church body if the issue is doctrinal in nature. *Id.* at 1322. Where the resolution of a dispute does not involve ecclesiastical questions, “courts are to apply the same principles of law as would be applied to non-religious associations.” *Id.* at 1323.

A Book of Order, “which governs matters related to the use and disposition of property held by a member church...represents a contractual agreement that *may* be enforced by the courts.” *Conference of African Union First Colored Methodist Protestant Church v. St. Paul A.U.M.P. Church*, 659 A.2d 77, 79 (Pa. Cmwlth. 1995); citing *Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church of North America*, 312 A.2d 35 (Pa. 1973).

Enforcing an agreement between a religious body and its members does not require interpretation of doctrinal or theological matters. *Everson*, at 38. The Court in *Everson* held that the Book of Discipline, similar to the Book of Order in this case, was a contractual agreement between the parent denomination and its members. *Id.* at 38. Unlike *Everson*, however, Peters Creek Church asserts they are not bound by the Book of Order because they have disaffiliated with the national church. The Book of Order of the PCUSA, however, prohibits a congregation from disaffiliating and therefore unlike *Presbytery of Donegal* and *Beaver-Butler*, Peters Creek may still be bound by the contractual nature of the Book of Order, despite their claim otherwise.¹⁶ Thus, the question becomes what Peters Creek Church agreed to when they became affiliated with the PCUSA, and whether at any time after becoming affiliated with the PCUSA they

¹⁶ Because this Court does not agree that the Peters Creek Church’s vote of disaffiliation automatically renders the Book of Order irrelevant, the question of whether the disaffiliation vote was *ultra vires* is irrelevant to the determination of the Court in this matter. Rather, the question is what provisions of the Book of Order did the parties agree to, and what if any provisions are binding on Peters Creek Church.

placed their property in trust or agreed to the property provisions within the Book of Order.

In interpreting a contract the court is to consider the entire instrument and give effect to all its provisions. *St. Paul, supra*. The court will look to the intent of the parties at the time the contract was entered in determining the meaning of the agreement. A court will enforce terms of a contract which are freely negotiated and that reflect the intent and understanding of the parties. Generally, a contract is enforceable where it is the product of an open negotiation process between two parties of equal bargaining power who have a true choice. An agreement generally will be interpreted against the party responsible for the drafting of the agreement. The Court therefore must determine whether the provisions at issue within the Book of Order accurately reflect the intent and understanding of both parties to the contract at the time the contract was entered.

Washington Presbytery argues that based on the provisions within the Book of Order, a doctrinal schism has occurred, and the identity of the "true church" has been resolved in favor of the minority members of Peters Creek Church by the Presbytery. Washington Presbytery's position is that the "true church" determination now controls that corporate entity, and that because the minority members of Peters Creek Church are the "true church," they are, in fact the corporate body which holds title to the property. In essence, Washington Presbytery argues that the issue is one of identity of the corporate body, and therefore who owns the property in question.

However, a court also may recognize two different entities, the "true church" as decided by the terms of the Book of Order, and a distinct secular corporate entity

established under state corporate law.¹⁷ Thus, while this Court would be required to defer to the “true church” determination made by the Defendant, the hierarchy’s determination of the “true church” is not necessarily relevant to determining who controls the corporation. Simply put, the “true church” and the civil corporation are not automatically one in the same.

Unlike the “true church” issue, a determination as to who controls the corporate body does not require the Court to delve into ecclesiastical issues. In determining who controls a local corporate entity under the neutral principles of law approach, the Court must look to state incorporation law and the bylaws of the local entity. There is a presumption of majority control, *see generally, Jones v. Wolf*, 443 U.S. 595 (1979), and where there is a conflict between the corporate provisions of the local corporation and the national denomination, the provisions of the local corporation prevail. *Mikilak v. Orthodox Church*, 513 A.2d 541 (Pa. Cmwlth. 1986).

Washington Presbytery attempts to assert that the bylaws of the local church (by recognizing the Book of Order) allow the Presbytery to establish the identity of the local church corporation. According to Washington Presbytery, the provisions of Peters Creek Church’s bylaws combined with the provisions of the Book of Order, allows the Presbytery to determine the corporate entity.¹⁸ However, nothing within the Peters Creek

¹⁷ *See generally*, Advisory Opinion Note #11, Dept. of Constitutional Services, Office of the General Assembly, PC(USA) April 2, 2004. *See also, Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So. 2d 861 (Ala. 1979) (discussing recognition under Alabama law of two separate and distinct entities). This Court recognizes that *Trinity, supra*, is non-binding authority, however, this Court cites to the case as persuasive authority on the issue of whether the “true church” and the civil corporation are identical.

¹⁸ The provision at issue states:

This church, incorporated under the laws of the Commonwealth of Pennsylvania, and known as the Peters Creek United Presbyterian Church,

Church bylaws or the Book of Order grants the Presbytery the authority to determine the corporate body of Peters Creek Church. Rather, the Book of Order provides a mechanism in which the Presbytery can determine the “true church,” i.e. the followers of the PCUSA faith. While this Court recognizes that prior Pennsylvania case law has stated that the “true church” and the corporate body are the same, such decisions were made based on the “departure from doctrine,” and made prior to the adoption of the neutral principles of law approach. *See, First Church of Brethren v. Snider*, 367 Pa. 78 (1951); *Nagle v. Miller*, 275 Pa. 157 (1922), *Bose v. Christ*, 193 Pa. 13 (1899), *Schlichter v. Keiter*, 27 A. 45 (Pa. 1893); *Schnorr’s Appeal*, 67 Pa. 138 (1870); *Winebrenner v. Colder*, 43 Pa. 244 (1862); *McGinnis v. Watson*, 41 Pa. 9 (1862).

The “departure from doctrine” held that when a church splits into differing factions, the group which remained loyal to the church doctrine followed at the time the property was donated was entitled to the church property. *See, First Church of Brethren v. Snider*, 367 Pa. 78 (1951). However, the “departure from doctrine” was abrogated by the United States Supreme Court in *Presbyterian Church in the United States v. Mary Elizabeth Hull Memorial Presbyterian Church*, 339 U.S. 440 (1969). Thus, any reliance upon the Pennsylvania cases mentioned *supra* for the proposition that the “true church” and the corporate body are one in the same is misplaced because such decisions relied on a doctrine no longer applicable under Pennsylvania law. Again, under the

being a particular congregation of the Presbyterian Church (U.S.A.), recognizes that the Constitution of said church is, in all its provisions, obligatory upon it and its members. Nothing in these bylaws shall prevail over the Constitution of said church nor the charter of this corporation. These bylaws shall be considered to include mandatory provisions and requirements on local churches set forth in the Book of Order of the Presbyterian Church (U.S.A.) whether or not incorporated by specific reference.

neutral principles of law approach, the Court must look to state incorporation law and the bylaws of the local entity to determine who controls a local corporate entity. Neither the local church documents, nor Pennsylvania statutory law, provide a mechanism to establish minority control of a civil corporate body.

Washington Presbytery further argues that a Motion to Consolidate filed in relation to this case and a companion case, and signed by President Judge O'Dell-Seneca, in which the order to consolidate refers to the Washington Presbytery's determination of the "true church," resolves this case and is binding upon this Court based on coordinate jurisdiction.¹⁹ However, as stated in *Beaver-Butler*, the question of what the parties agreed to, or whether they agreed at all to certain provisions in a document, is not doctrinal and maybe resolved by this Court. Thus, a determination must first be made as to whether the parties agreed to allow the Presbytery to resolve the "true church" issue, and whether such a determination is relevant to the property ownership in this case.

Although Washington Presbytery asserts that Peters Creek Church must follow the Book of Order's mechanism for resolving property disputes, it must be noted that the Book of Order explicitly states "governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction..." *See, Book of Order, Chapter IX 1(a). G-9.0000*. Thus, the Book of Order's own provisions appear inconsistent, providing in one

¹⁹ The order states in full:

AND NOW this 10th day of July, 2009, upon presentation of the Plaintiffs' Motion to Consolidate, and oral argument thereon, it is hereby ordered, adjudged and decreed that the Motion is granted. The Presbyterian Church U.S.A. via the Washington Presbytery that Plaintiffs are the "True Church" which was not appealed rendering same a final decision. This consolidation is for judicial economy and to have the cases consolidated at # 2007-2941 before Judge Pozonsky.

section the authority to resolve non-doctrinal property and corporate issues, and in the section governing jurisdiction, explicitly stating that the organization has no civil jurisdiction and will only resolve ecclesiastical matters.

Under the First Amendment, a church may provide procedures to resolve property disputes, however, such procedures must be agreed to in a legally cognizable form, and when the dispute involves a question of legal title the issue may properly be decided by a civil court. *See, Jones v. Wolf*, 443 U.S. 595 (1979). The Book of Order does not prohibit local churches from seeking to resolve property disputes with the national church via civil action, nor is the purpose of the Book of Order designed to resolve issues of civil law. Washington Presbytery also argues that the Book of Order's provisions which provide a court like adjudication system are analogous to an agreement to arbitrate. However, the resolution procedures set forth in the Book of Order pertain to and are designed to resolve ecclesiastical matters, and there is no explicit arbitration like language within the Book of Order.²⁰

It is clear from the record that Peters Creek Church has owned portions of the property at issue dating back to the year 1809, and that the deeds conveying the property show that the properties were acquired in the name of Peters Creek Church. The charter of Peters Creek Church also existed prior to the creation of the PCUSA; the corporate charter of Peters Creek Church contains no mention of the PCUSA, and does not provide

²⁰ Under Pennsylvania law, agreements to arbitrate require explicit agreement. *Quiles v. Financial Exchange Co.*, 879 A.2d 281 (Pa. Super. 2005). An agreement to resolve ecclesiastical concerns through the church governing body is far from explicit agreement to allow the church governing body decide the civil question of property ownership and issues of corporate law.

in any way that Peters Creek Church would hold its property in trust for the PCUSA or the PCUSA's predecessors.

Since becoming affiliated with the PCUSA, Peters Creek Church has never amended its corporate documents, charter or deeds to include any express trust provisions to benefit the PCUSA or the Washington Presbytery. Neither the charter nor the deeds of Peters Creek Church have provided at any time that the property in question was to be held in trust for the benefit of the PCUSA or its predecessors. Additionally nothing within the local Peters Creek Church's governing documents provides that the corporate entity may be controlled by a minority of its members, or that the civil corporate body is to be determined by the PCUSA.

The Washington Presbytery, by the very terms of its own Book of Order, has only ecclesiastical jurisdiction. A decision by the Presbytery in relation to property ownership and or who is the proper civil corporate body are not ecclesiastical in nature, and would not be binding upon this Court. The question in this case, as presented by the Washington Presbytery, is who are the members of the corporation; in other words, who owns the corporation, and thus owns the church property? This is not an ecclesiastical question, as it involves issues of property rights and the constituency of a legal corporate entity created by statute. Stated otherwise, under the neutral principles of law approach there can exist a spiritual church, i.e. the "true church," and a secular legal corporation. While questions involving the "true church" are ecclesiastical in nature, in contrast, the secular corporate entity is formed by the state and is not ecclesiastical in its function; therefore, civil courts can decide questions concerning the corporation and corporate property.

Because the Washington Presbytery has no authority to determine under Pennsylvania civil law which faction controls the civil corporate entity, Peters Creek Church does not lack standing.²¹ Moreover, a party will have standing if the party is adversely affected in any way by the matter he is bringing forth. *Fumo v. City of Philadelphia*, 972 A.2d 487 (Pa. 2009). A party can demonstrate they have standing if they establish that they have been aggrieved. An aggrieved party is one that has a substantial, direct and immediate interest in the outcome of the litigation. As stated in *Fumo, supra*, “a party has a substantial interest in the outcome of litigation if his interest surpasses that of all citizens in procuring obedience to the law. The interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative.” *Fumo*, at 496. The Plaintiff in this matter has established that it has standing as it has a substantial, direct and immediate interest in the outcome of the litigation.

Because Peters Creek Church has standing, and a decision by the Washington Presbytery in relation to property law and corporate law issues are not binding upon this Court, and because the Book of Order's adjudicatory system is for the purpose of resolving ecclesiastical matters and not civil law matters, the dispute in this case is properly before this Court. Accordingly, Defendant's Motion for Summary

²¹ Count 1 and II of the Defendant's motion argue that the 'minority' is the true church and therefore the Plaintiff cannot bring suit. Although the Book of Order provides that the "true church" may dispose of property held by the national church, the issue of whether Peters Creek Church agreed to be bound by such a provision remains. Thus, the question of whether Peters Creek Church is bound by the provisions of the Book of Order which divest them of their property rights is properly before this Court. Additionally, a decision by a church body in relation to who owns property would not be binding on this Court, as it is not ecclesiastical in nature, nor is the Presbytery's decision with respect to who controls the civil corporate entity.

Judgment/Judgment on the Pleadings, that the Plaintiff does not have standing, and that the Plaintiff has agreed to follow the adjudicatory system of the Book of Order for resolving the purely legal question of who owns certain real and personal property, are hereby DENIED.

Having denied the Defendant's motions, the Court must now determine whether Peters Creek Church is entitled to summary judgment. Peters Creek Church seeks summary judgment on the basis that no trust was created between Peters Creek Church and the national church. Peters Creek Church argues that it is not part of a hierarchical church, and that no clear and unambiguous language exists in any documents which created a trust, and that the Book of Order is no longer binding upon it because it has disaffiliated with the national church.

The *Restatement 2d of Trusts* § 2 defines a trust as "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it." The Restatement further defines manifestation of intention as "the external expression of intention as distinguished from undisclosed intention." *See, St. James*, at 809.

A beneficiary cannot unilaterally declare a trust, and may only create a trust with the explicit consent and cooperation of the settlor. *See St. James*, at 813-814. Under Pennsylvania law, to create an express trust involving real property, the *settlor* must clearly intend to create the trust, and the statute of frauds requires that the instrument creating the trust be signed. *St. James*, at 814; *33 P.S. Section 2* ("All declarations or creations of trusts or confidences of any lands...shall be manifested by writing, signed by

the party holding the title thereof..."). "The primary focus must be on the intent of the settlor at the time of the creation of the alleged trust." *Beaver-Butler*, 489 A.2d at 1324.

Thus, to create a trust, Peters Creek Church must have, at some time after becoming affiliated with the national church, manifested an intent to create a trust by signing a trust document.²² Thus, while the PCUSA may have intended to create a trust, the proper inquiry is whether at the time Peters Creek Church affiliated with the PCUSA, or at anytime thereafter, they manifested an intent to place their property in trust for the benefit of the PCUSA.

Washington Presbytery relies on *St. James*, to argue that the writings creating the trust interest in their favor are a provision within the PCUSA Book of Order, and the June 3, 2001 amendment to the Peters Creek Church bylaws. Washington Presbytery also asserts that the actions of Peters Creek Church in following the Book of Order indicated an intention to be bound by the Book of Order. The relevant provision of the Book of Order provides:

All property held by or for a particular church....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.).²³

²² Statutory law in Pennsylvania plainly requires a trust involving real property to be evidenced by a signed writing. The Book of Order in the present case is not a signed writing. Allowing an unsigned document that one party did not draft to provide the basis for the deprivation of a property right and create a trust in favor of the party which drafted the document skirts the requirements of trust law in Pennsylvania, and is a plain violation of the neutral principles of law approach.

²³ The Book of Order also provides: "Whenever 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." *G-8.0300*. The Book of Order also provided an opt out provision,

Additionally, Washington Presbytery cites to *10 P.S. Section 81*, which requires local churches affiliated with a national church to hold their property in accordance with the rules of the national church with which they are associated.²⁴ Under Pennsylvania law, by becoming part of a national church, a local church is bound by the rules of the national church with which they associate. Where the national church's governing documents provide that the property of a local church is held in trust for the benefit of the national church, the local church is contractually bound by the national church's governing documents and holds the property in trust IF (emphasis added) the local church intended to place their property in trust when they became affiliated with the national church or after they became affiliated with the national church. *See, Beaver-Butler, supra.*

Unlike *St. James*, there is no specific evidence within the record to show that at the time the PCUSA merged with the UPCUSA, thereby affiliating Peters Creek Church with the PCUSA, that Peters Creek Church intended to place their property in trust for the benefit of the PCUSA.²⁵ Additionally, the provision within the Book of Order clearly deprives Peters Creek Church of a vested property right, and in order to be binding,

however, Peters Creek Church did not follow the opt out procedures. *See, Book of Order, G-8.0701.* These property provisions were not adopted until the early 1980's, and although the PCUSA and the Defendant assert that these provisions merely codify a long standing Presbyterian policy of local churches holding property in trust for the larger church, there is no evidence of record of this long standing policy.

²⁴ In so far as *10 P.S. Section 81* is in conflict with the neutral principles of law approach it violates Pennsylvania law in that it defers to ecclesiastical law over civil law.

²⁵ This Court notes that the 1983 edition of the Book of Order is not part of the record, thus there is no evidence within the record demonstrating any "in trust for" language existed at the time the PCUSA merged with the UPCUSA and Peters Creek Church became affiliated with the PCUSA. However, as stated in *Jones v. Wolf, supra*, an express trust may be created any time before the dispute erupts. *Jones*, 443 U.S. at 606.

Peters Creek Church must have consented, in a signed writing, to the deprivation of that right. There is no indication that in 1983, or anytime thereafter, that Peters Creek Church manifested an intent to place their property in trust for the benefit of the PCUSA.

Throughout the Defendant's court filings they have argued that actions taken by Peters Creek Church, subsequent to 1983, demonstrate that Peters Creek Church intended to be bound by the Book of Order. However, the actions taken by Peters Creek Church do not indicate that they intended to be bound by the *trust provisions* of the Book of Order, i.e. placing their property in trust. Agreeing to follow the ecclesiastical doctrine and procedures of the national church is one thing; agreeing to give up a property right *under the law* is quite another. Because the creation of a trust is determined by the intent of the settlor, amendments or provisions within a national churches constitution without more do not provide justification for construing a trust in favor of the national denomination.

While the case of *Jones v. Wolf*, 443 U.S. 595 (1979), did provide that a hierarchical church could place express trust language in its church constitution, the Court also specified that the trust would have to be "embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. The fact that the national church placed plain and unambiguous trust language in its Book of Order does not bind a local church, unless the local church specifically consented to declaring a trust in writing. A mere assertion by the beneficiary that property is held in trust is clearly insufficient. As stated before, there is simply no method by which a beneficiary (PCUSA) can create a trust in real property in its own favor without the cooperation and written consent of the settlor (Peters Creek Church). Moreover, to be in a legally cognizable form, a trust, under Pennsylvania law,

requires that the settlor creating the trust to sign a writing indicating its intention to create the trust and contain provisions of the trust. *See, 20 Pa.C.S.A. Section 7732; 33 P.S. Section 2* (discussing the writing requirement to create a trust in real property). No writing signed by Peters Creek Church exists to show that it intended to create a trust, nor does a writing exist containing provisions of the alleged trust. If this Court were to create a presumption of intent and consent to create a trust, it would be violating the neutral principles of law approach by crafting specific rules which only apply in a church property dispute.

This Court also finds that the June 3, 2001 amendment to the Peters Creek Church's bylaws clearly falls short of the clear and unambiguous language necessary to manifest an intent to place the property in trust. The bylaws at issue state:

This church, incorporated under the laws of the Commonwealth of Pennsylvania, and known as the Peters Creek United Presbyterian Church, being a particular congregation of the Presbyterian Church (U.S.A.), recognizes that the Constitution of said church is, in all its provisions, obligatory upon it and its members. Nothing in these bylaws shall prevail over the Constitution of said church nor the charter of this corporation. These bylaws shall be considered to include mandatory provisions and requirements on local churches set forth in the Book of Order of the Presbyterian Church (U.S.A.) whether or not incorporated by specific reference.²⁶

This Court finds that the above referenced language does not clearly and unambiguously manifest an intent on the part of Peters Creek Church to give up a

²⁶ Unlike the Charter in *St. James*, no part of the bylaws at issue which have been made part of the record discusses property issues. Also, the Charter in *St. James* was adopted in 1846 prior to the local church becoming affiliated with the national church indicating that the local church intended to hold its property in trust for the national church when they joined the national church.

property right and place its property in trust for the benefit of the PCUSA.²⁷ Also, while the Peters Creek Church bylaws of June 3, 2001, do provide that “mandatory provisions” of the Book of Order are binding upon Peters Creek Church, the trust provision of the Book of Order cannot be considered mandatory because Peters Creek Church must take some action to place its property in trust. Simply joining the PCUSA is clearly insufficient under Pennsylvania trust law to create a trust, therefore the trust provision cannot be deemed a mandatory provision of the Book of Order.

This Court cannot presume intent and consent on the part of Peters Creek Church to place its property in trust based on the Book of Order, an unsigned document drafted by the beneficiary. To do so would be to ignore the well-known and established body of law accepted in property, trust, and contract law. Moreover, the fact that a local church accepts the benefits of affiliation with a national denomination does not prove intent on the part of the local church to place its property in trust. Additionally, because the purpose for which Peters Creek Church was incorporated did not change when it became affiliated with the PCUSA and there is no evidence of record that its purpose changed when it disaffiliated, *15 Pa.C.S.A. Section 5547(b)*, is inapplicable.²⁸

²⁷ Simply because a denomination is mentioned in the corporate documents does not establish clearly and unambiguously an intent to have the local church hold its property in trust for the benefit of the national denomination. Such reasoning would require the Court to find an implied trust in real property without meeting the trust requirements under Pennsylvania trust law, and would circumvent the neutral principles of law approach.

²⁸ *15 Pa.C.S.A. Section 5547(b)* states:

Property committed to charitable purposes shall not, by any proceeding under Chapter 59 (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised unless and until the board of directors or other body obtains from the court an order under 20 Pa. C.S. Ch. 61 (relating to estates) specifying the disposition of the property.

Prior to and since becoming affiliated with the PCUSA, Peters Creek Church has never amended its corporate documents or deeds to include any express trust provisions to benefit the predecessors of the PCUSA, the PCUSA, or the Washington Presbytery. Neither the charter nor the deeds of Peters Creek Church have ever provided that the property in question be held in trust for the benefit of any national denomination. The only document which contains express trust language in this case is the Book of Order, which was written by the beneficiary, PCUSA. Additionally, Peters Creek Church has not, under the law of Pennsylvania, manifested an intent to place their property in trust for the benefit of the PCUSA.

The real and personal property of Peters Creek Church has been acquired with funds donated and raised by the local congregation of Peters Creek Church, and the deeds at issue indicate that Peters Creek Church has always been the owner of its real property. Since the charter of Peters Creek Church existed prior to the creation of the PCUSA, and contains no mention of the PCUSA, Peters Creek Church is the lawful owner of the property at issue.

Because Peters Creek Church has never amended its corporate documents or deeds to include any express trust provisions to benefit the predecessors of the PCUSA, the PCUSA, or the Washington Presbytery, and neither the charter nor the deeds of Peters Creek Church provide that the property in question be held in trust, the Defendant does not have a trust interest in the property. Moreover, no trust document signed by Peters

Creek Church exists, nor does a trust document exist describing the *res* of the alleged trust.²⁹

As the documents of conveyance establish, Peters Creek Church is the owner of the real property at issue. No evidence of intent to create a trust exists, and the record is absent of any clear and unambiguous language or conduct evidencing an intent on the part of Peters Creek Church to place its real or personal property in trust for the benefit of the national church. Therefore, the corporate entity known as Peters Creek Church is entitled to sole ownership of the property at issue, and the Plaintiff's Motion for Summary Judgment is GRANTED.

Plaintiff, Peters Creek Church is hereby granted the following relief:

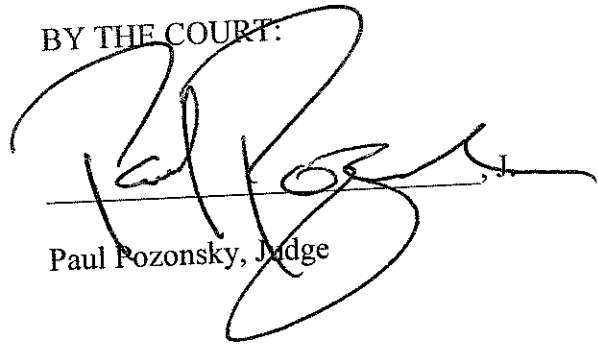
1. Peters Creek United Presbyterian Church is the rightful owner of all real and personal property titled in its own name as described in Peters Creek United Presbyterian Church's Amended Complaint;
2. Peters Creek United Presbyterian Church is entitled to the quiet, exclusive, uninterrupted and peaceful possession of the Peters Creek United Presbyterian Church Property without any interference of the Defendant, Washington Presbytery of Pennsylvania;
3. Peters Creek United Presbyterian Church is entitled to sole possession and control over any of its personal property, including all cash and other assets in its possession or control or deposited with any financial institution;
4. Title to the Peters Creek United Presbyterian Church Property is hereby quieted solely in Peters Creek United Presbyterian Church;

²⁹ This Court notes that the Court in *St. James* found that St. James own charter, drafted and adopted by the local church provided evidence that it intended to place its property in trust, no such evidence exists in this case. Also, the fact that Peters Creek Church did not follow the Book of Order provision, *G-8.0701*, relating to being exempt from placing property in trust for the benefit of the national church, does not indicate Peters Creek Church intended to place its property in trust. Because Peters Creek Church did not place their property in trust they did not need to vote to be exempt from placing their property in trust.

5. Neither the Washington Presbytery nor the PCUSA holds any property interest whatsoever in the Peters Creek United Presbyterian Church Property, whether in trust or otherwise;

6. Because neither Washington Presbytery nor the PCUSA holds any property interest whatsoever in the Peters Creek United Presbyterian Church Property, Washington Presbytery's counterclaims are hereby dismissed with prejudice.³⁰

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Pozonsky, J.", is written over a horizontal line. The signature is stylized and somewhat cursive.

Paul Pozonsky, Judge

³⁰ Defendant's counterclaims each require that the Defendant have a property interest in the subject property; because they have no interest in the property their counterclaims necessarily must fail.

ENTRY OF OPINION, ORDER, DECREE,
ADJUDICATION OR JUDGMENT FILED 10-1-09
MAILED 10-1-09
TO _____

Q Deraghty

S Marvies Jr

*George Holman for
Stephen Marvies
10/1/09*