

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)

Plaintiff,)

v.)

PRESBYTERY OF GREATER)
ATLANTA, INC.,)

Defendant.)

CIVIL ACTION FILE
NO.: 07-CV-4142M

FILED IN OFFICE
HENRY COUNTY
SUPERIOR COURT

SEP 08 2007

PLAINTIFF'S BRIEF IN SUPPORT OF
PETITION FOR INTERLOCUTORY INJUNCTION

Judith C. Linnell
CLERK OF SUPERIOR COURT

COMES NOW TIMBERRIDGE PRESBYTERIAN CHURCH, INC., Plaintiff in
the above-styled action, and, pursuant to O.C.G.A. §§ 9-5-1, *et seq.*, files this brief in
support of its Petition for Interlocutory Injunction, showing the Court as follows:

STATEMENT OF FACTS

Timberridge Presbyterian Church, Inc. (hereinafter "Timberridge") is a non-profit corporation organized and existing under the laws of the state of Georgia, located in McDonough, Henry County, Georgia. Defendant Presbytery of Greater Atlanta, Inc. (hereinafter "PGA") is non-profit corporation organized and existing under the laws of the state of Georgia, with its principal place of business in Georgia. PGA is a regional administrative unit (akin to a diocese) for the Presbyterian Church (USA) ("PCUSA" or "denomination"), which denomination was formed in 1983 and currently has approximately 11,000 member churches located throughout the United States, including

the State of Georgia and the greater metro-Atlanta region, including Henry County.

Timberridge brings its complaint for declaratory judgment seeking a declaration from this Court regarding the ownership and control of real property held by warranty deed by Timberridge. Specifically, Timberridge seeks a declaration that its property is not held in trust for the benefit of PCUSA or PGA, but rather, that Timberridge owns the property free and clear of the encumbrances of any trust.

To that end, Timberridge shows that until 1970, all of the land on which Timberridge Presbyterian Church sat was owned by private property owners/members of the Timberridge church. From 1970 through 1987, through four separate deeds, the private property owners/Timberridge church members conveyed their respective interests in the property to Timberridge Presbyterian Church. (Exhibit 1.)

In 1984, Timberridge Presbyterian Church was incorporated with the Georgia Secretary of State as Timberridge Presbyterian Church, Inc., a Georgia non-profit corporation; and in 1999, all real property owned by Timberridge Presbyterian Church was conveyed by warranty deed to Timberridge Presbyterian Church, Inc. (Exhibit 2.)

All acquisitions of real property held by Timberridge which comprises its campus, and all improvements thereon, whether corporeal or incorporeal, movable or immovable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by the members of Timberridge with the clear understanding that the property and improvements were and would continue to be owned by Timberridge. No

financial contributions were made by the PGA, the PCUSA or any predecessor denomination. All deeds of real property held by Timberridge which comprise its campus were originally titled in, and at all times have remained titled in, private property owners and the entities "Timberridge Presbyterian Church" and "Timberridge Presbyterian Church, Inc.", and do not mention or refer to a national denomination such as the PCUSA nor contain any language creating or accepting any trust over said property in favor of a national denomination or any of its regional administrative units such as the PGA. Said property has continuously been so titled in the public mortgage and conveyance records of Henry County, in the state of Georgia. (Exhibit 1.) Furthermore, as evidenced by Timberridge corporate documents, such as its Articles of Incorporation, no trust was contemplated or intended by Timberridge, any of its members, PCUSA or PGA with regard to the real property owned by Timberridge. (Exhibit 2.)

Despite the absence of a trust, or any indicia of a trust, Timberridge has reason to believe that the PGA contends that a trust, in the PCUSA's favor, exists with regard to Timberridge's property, concerning which the PCUSA Book of Order grants to the PGA exclusive authority to exercise on behalf of the PCUSA. If such a trust existed, Timberridge would be prevented from exercising full and uninhibited control over its property. As a result, Timberridge has filed the above-styled action seeking a declaration that the property on which its church sits, reflected in deeds which have been attached to

its complaint as Exhibit 1, is owned by Timberridge, free and clear, and that no trust exists with regard to the property.

In light of the filing of its complaint, Timberridge has legitimate concern that the control and ownership it now exerts over its church may be usurped by the PGA. According to the PCUSA Book of Order, at G.-9.0503a.(4), G-11.0103.s. and G-11.0502j, when there is a "report" that a particular church is "affected with disorder", a presbytery can, *without prior notice or hearing*, appoint an "administrative commission" to indefinitely assume "original jurisdiction of the existing session" (i.e. remove and replace the governing body of the particular church) and act to "correct the difficulties," which can include the power to "dissolve a pastoral relationship" (i.e. remove and replace the local pastor). The use of an administrative commission, though purportedly for ecclesiastical governance, is the mechanism or device used by the PCUSA in its efforts to seize ownership and control over local church property. (Exhibits 8, 9.)

PCUSA presbyteries, in response to dissent (whether perceived or actual) by local congregations, ministers, church officers, and trustees to certain denominational actions, have variously: (a) taken acts intended to assert ownership or place clouds on otherwise merchantable local property titles by recording, without prior notice, affidavits or other documents in local mortgage and conveyance records which improperly assert trusts on local church property in favor of the denomination, regardless of the facts of a local church's property history or the laws of the state in which local church property is

situated; (b) without notice, sought to change locks on local church property and otherwise seize local church assets; and (c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice and opportunity for hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own. There is a likelihood that the filing of this petition will be perceived to be dissent, causing the PGA to act in such a manner.

Further heightening the threat to local congregations, on or about August 10, 2006, the PCUSA, through its Office of General Assembly (Department of Constitutional Services), issued "Advisory Opinion Note 19", which states in part III thereof that if a presbytery, such as the PGA, fails to appoint an administrative commission to take over control of a local church voicing dissent over denominational policies then the next higher ecclesiastical authority, the synod, may appoint an administrative commission to take over control of the presbytery. (Exhibit 10.)

In further illustration of the aggressive tactics being used by PCUSA presbyteries and their use of "administrative commissions" as the mechanism or device to try and seize denominational ownership and control over local church property, the PCUSA has prepared legal strategy memoranda, waived any privilege of confidentiality and disclosed them to the press and public. These memoranda have been publicly available on the Internet since at least August 9, 2006, and are available through a Google search of

“Presbyterian Church (USA) and property law”. No attempt has been made by the PCUSA to dispute the authenticity of these memoranda, to retrieve them, or to prohibit their further circulation. These PCUSA memoranda:

- a) advocate use of “administrative commissions” specifically for church property disputes, and in conjunction therewith advises how to remove the local pastor and/or governing board of the local church;
- b) advise how to freeze local church assets and physically seize property;
- c) recommend placing a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;
- d) recommend mailing letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters “order” that no assets be released to the local church;
- e) instruct presbyteries to investigate the religious background of any judge assigned to the case in order to exploit potential partiality or religious bias;
- f) recommend that presbyteries in their pleadings “use spiritual language” in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as “schismatic”; and

- g) recommend to presbyteries, through the use of administrative commissions, to try and keep the local church in a defensive secular legal posture, counseling "Let the schismatics seek Caesar's help."

(Exhibit 9.)

Even if Timberridge is ultimately successful on the merits of its declaratory judgment action, no remedy exists, in the absence of an injunction, to protect Timberridge from the harm it faces, or to cure any actions which may be taken against it. Moreover, the PGA will not suffer any harm or prejudice if the injunction is granted. The PGA has not indicated an immediate need or desire to exert any control over the property owned by Timberridge, so the imposition of an injunction against the PGA from taking any action against Timberridge or its property will have no practical effect on Defendant or its daily operations.

In the meantime, however, justice instructs that the status quo should be maintained until this Court has an opportunity to consider the merits of the parties' positions and to resolve the issues presented in this case based upon the evidence that is presented. Accordingly, Timberridge respectfully requests that this Court impose an interlocutory injunction against the PGA, maintaining the status quo by preventing the PGA, and its agents, servants, and employees, and all persons acting under, in concert with, or for it, from:

(a) filing any documents in the mortgage and conveyance records of Henry County, in the state of Georgia, the effect of which would be to place a cloud on the title of any property titled in the name of petitioner, or otherwise taking any action to claim ownership of local church property whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership of local church property, in the possession of, control of, or owned by Timberridge;

(b) asserting any rights to the property of Timberridge Presbyterian Church or Timberridge Presbyterian Church, Inc., including but not limited to seeking to change the locks of Timberridge, initiating any disciplinary action against the ministers or members of Timberridge, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of Timberridge, the governing body of Timberridge (the session), its congregation, or the governing body of its local church corporation Timberridge (the board of trustees); or

(c) proceeding in any way in violation of Georgia law and Plaintiff's property rights until a final decision on the merits of this case can be reached.

ARGUMENT AND CITATION OF AUTHORITY

Under O.C.G.A. § 9-5-1, this Court has the authority to issue an injunction to protect a party's interests from injustice. The Georgia Code provides that "[equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal or

contrary to equity and good conscience and for which no adequate remedy is provided at law.” O.C.G.A. § 9-5-1. An interlocutory injunction is proper where the parties’ rights under the law ultimately will be adjudicated, but where one party continues to sustain irreparable injury during the pendency of the related suit. O.C.G.A. § 9-11-65. In other words, the purpose of the interlocutory injunction is to preserve the parties’ status quo pending final adjudication of their case. Canard v. Roman Farm Homeowners’ Assen, 278 Ga. 149, 598 S.E.2d 479 (2004); MARTA v. Wallace, 243 Ga. 491, 254 S.E.2d 822 (1979).

The trial court has wide discretion to grant injunctive relief, which will not be disturbed absent a showing of manifest abuse or unless no evidence existed on which to base the ruling. O.C.G.A. § 9-5-8; Sea Island Bank v. First Bulloch Bank & Co., 245 Ga. 715, 716, 267 S.E.2d 12 (1980); Glen Oak, Inc. v. Henderson, 258 Ga. 455-456, 369 S.E.2d 736 (1988). Although it exists here, a showing of irreparable injury is not an absolute prerequisite to interlocutory injunctive relief. Benton v. Patel, 257 Ga. 669, 672, 362 S.E.2d 217 (1987); Jackson v. Deck, 257 Ga. 541, 544, 361 S.E.2d 370 (1987). Rather, the consideration of awarding an interlocutory injunction is based largely on a balancing of rights, considering the harm accruing to the movant versus the harm, if any, caused by the imposition of an injunction. Lee v. Environmental Pest & Termite Control, 271 Ga. 371, 373, 516 S.E.2d 76 (1999). Additionally, while not determinative, the movant’s likelihood of success on the merits of his pending suit is relevant in considering

the justification for the award of an interlocutory injunction. Garden Hills Civic Ass'n, Inc. v. MARTA, 273 Ga. 280, 539 S.E.2d 811 (2000).

Here, a balancing of the equities as well as an evaluation of the parties' likelihood of ultimate success weigh in favor of Timberridge. Accordingly, Timberridge respectfully requests that this Court grant an interlocutory injunction, enjoining the PGA from taking any retaliatory action against Timberridge, or in any way interfering with Timberridge's ownership and control of its property until this Court reaches a final decision on the merits of Timberridge's case.

I. TIMBERRIDGE WILL SUFFER HARM IF THE INJUNCTION IS NOT GRANTED.

The primary consideration regarding interlocutory injunctions is a balancing of the equities. The Georgia Supreme Court has held that "[a] trial court may issue an interlocutory injunction to maintain the status quo until the final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction." Lee v. Environmental Pest & Termite Control, 271 Ga. 371, 373, 516 S.E.2d 76 (1999). Thus, the relevant question here, upon balancing the interests of Timberridge against the PGA, is whether Timberridge will suffer more harm if the injunction is not granted versus whether the PGA will suffer more harm if it is.

In this case, the balance is not complicated. If the injunction is not granted, Timberridge will be exposed to severe harm. As discussed above, the PCUSA Book of Order purports to grant tremendous power to a presbytery to assert control and dominance

over an individual church. When a presbytery perceives or identifies dissent within a local church to the denomination, the presbytery can intervene in the daily operations of the church, going so far as to interfere with ownership, control and access to property, and to replace a church's governing body. There is a likelihood that the filing of this petition will be perceived to be dissent, causing the PGA to act in such a manner.

While the injunction will protect Timberridge from unwarranted harm, it will not harm the PGA if it is granted. The PGA has not indicated any immediate need or desire to control, use or otherwise access Timberridge's property for any legitimate purpose. In the event the PGA identifies a need to intervene in Timberridge's control over its property in the future, and if this Court ultimately finds that the PGA has a right to do so, they may exercise that control, to the extent permitted by this Court, after this Court rules upon Timberridge's claims. In the meantime, the status quo will be protected so that no party incurs any harm while the Court considers the merits of this case.

II. TIMBERRIDGE HAS A HIGH LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS DECLARATORY JUDGMENT ACTION.

In addition to the balancing of equities, when evaluating whether to impose an interlocutory injunction, Georgia courts have taken into consideration the movant's ultimate likelihood of success. Garden Hills Civic Ass'n, Inc. v. MARTA, 273 Ga. 280, 539 S.E.2d 811 (2000). Although this analysis is not dispositive, where the party seeking an injunction is likely to be successful on the merits of his case, Georgia courts have been inclined to issue an injunction to protect that party while he awaits final ruling from the

court. Lee v. Environmental Pest & Termite Control, 271 Ga. 371, 373, 516 S.E.2d 76 (1999).

In this case, Timberridge filed its Complaint seeking, among other relief, a declaration that its property, reflected in the deeds attached to the related complaint as Exhibit 1, is owned by Timberridge free and clear, and is not encumbered by a trust in favor of the PGA or any other entity. Due to the strength of its arguments, Timberridge has a high likelihood of success on the merits of its case.

A. Because the Georgia Law Requirements for the Establishment of a Trust Have Not Been Met, Timberridge's Property Should Not Be Encumbered by a Trust.

Georgia law sets forth specific requirements for finding the existence of a trust.

Specifically, in order to establish an express trust, Georgia law requires

- (a) A declaration in writing; and
- (b) Each of the following elements, ascertainable with reasonable certainty:
 - (1) An intention by a settlor to create a trust;
 - (2) Trust property;
 - (3) A beneficiary;
 - (4) A trustee; and
 - (5) Active duties imposed on the trustee, which duties may be specified in the writing or implied by law.

O.C.G.A. § 53-12-20.

In this case, the requisite elements for establishing a trust do not exist. Most importantly, there no document relating to Timberridge or the ownership of its property that indicates the existence of a trust in favor of the PGA. On the contrary, all of the property on which Timberridge sits was conveyed to Timberridge from private property owners. (Exhibit 1.) Since the original conveyances to Timberridge Presbyterian Church, the property was conveyed to the corporate entity Timberridge Presbyterian Church, Inc. No deed mentions the PGA or the existence of a trust. Furthermore, no corporate documents reflect the existence of a trust. Likewise, no other required elements of an express trust are satisfied.

Although the Georgia Code provides for constructive trusts, the required elements of a constructive trust are absent here, as well. Under the Georgia Code, a constructive trust is found where the circumstances are such that the person holding legal title to property cannot enjoy the beneficial interest in the property without violating some established principle of equity. Here, Timberridge holds legal title to the property and equitably enjoys its interest in the property. Consequently, no constructive trust exists.

Under Georgia civil law, in the absence of any indicia of a trust, Timberridge can show that it owns its property free and clear, and that the property is not encumbered by any trust, in favor of any entity. Likewise, the application of case law interpreting and resolving property disputes (and church-owned property in particular) instructs that Timberridge owns its property free and clear and outside of any trust.

B. Application of Georgia Law Resolving Church Property Disputes Instructs that No Trust Exists.

The resolution of competing claims to ownership or use of local church property, though largely a matter of state statutory and case law, is guided by decisions of the United States Supreme Court interpreting the religion clauses of the First Amendment to the U.S. Constitution. Those decisions set the guidelines within which state courts are required to operate. Georgia has adopted the “neutral principles of law” method for resolving church property disputes, which has been approved by the U.S. Supreme Court. Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979).

The neutral principles of law method for resolving church property disputes can best be understood in contrast with earlier, now-discarded methods. In Colonial days the “English Rule” was followed, where disputes between a denomination and a congregation, or between factions within a congregation, concerning the ownership or use of local church property were resolved by awarding the property to the party deemed by the civil court to most closely adhere to the founding religious doctrines. In the absence of any express language in the denominational constitution or local charter or deeds establishing a trust, an implied trust was deemed to exist, for the benefit of the party deemed faithful to the true religion. The English Rule was thus also known as the “departure-from-doctrine/implied trust” method. Not surprisingly, this approach was eventually held incompatible with the establishment clause of the First Amendment to the U.S. Constitution. Civil courts opining on what does or does not conform to correct

doctrine is an unacceptable intrusion by civil authority into ecclesiastical affairs and would constitute an impermissible state establishment of religion.

With discomfort over the departure-from-doctrine method growing, the U.S. Supreme Court held that a different approach, the "hierarchical method", was constitutionally permissible (but not mandatory). Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1872) held that the U.S. Constitution does not prohibit civil courts from deferring to the decisions on church property disputes made by the highest ecclesiastical tribunals to which the matter may have been appealed in a hierarchical denomination (usually the diocese in an Episcopal church, the conference in a Methodist church, or the presbytery in a Presbyterian church). States were left free to adopt other methods for resolving church property disputes, such as statutory schemes, so long as the method chosen did not require civil courts to impermissibly base their decisions on religious concepts or on interpretations by civil courts of religious doctrine.

The hierarchical method remains operative in some states today, but it tends in usual practice to favor national denominations to the disfavor of local congregations, a not surprising result given that the ecclesiastical tribunals which decide such matters are created and controlled by the very denominations claiming ownership or use of local church property. Some courts have noted that such one-sided favoritism resulting from civil court deference to denominational authorities was effectively a state establishment

of the hierarchical denomination's religion, prohibited under state and federal constitutions.

Recognition of this problem inherent in the hierarchical method eventually led to the approval by the United State Supreme Court of still another method, the "neutral principles of law" method, which now governs resolution of church property disputes in most states, including Georgia. In Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) the U.S. Supreme Court first said that the neutral principles of law method was also a constitutionally permissible, alternative approach to resolving church property disputes. Ten years later, in Jones v. Wolf, 443 U.S. 595 (1979), the U.S. Supreme Court elaborated on the meaning of neutral principles of law and advocated its adoption by the states. Under the neutral principles of law method, courts do not merely defer to ecclesiastical decisions. Instead, courts consider the language in religious documents like denominational constitutions but are not to use religious concepts in interpreting them or give undue deference to those religious documents. Further, courts are to undertake examination of all of the property-related documents which may bear on the question of consent and mutual intent, specifically, language in the local property deeds at issue, the local church's corporate charter or Articles of Incorporation, local resolutions, minutes, or correspondence, and any other evidence relevant to asserting mutual intent and the relationship between the parties.

Because of the importance of Wolf to the present controversy, its key, explanatory passages are excerpted:

[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. ... As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. ... Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt any one of various approaches for settling church property disputes as long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

At least in general outline, we think the "neutral principles of law" approach is consistent with the foregoing constitutional principles. ...

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The 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. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure the dispute over the ownership of church property will be resolved in accord with the desires of the members.

This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method ... requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions related to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Jones v. Wolf at 602-604 (citations omitted).

Georgia courts have a well-established history of applying the “neutral principles of law” method for resolving church property disputes. Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1979); Carnes v. Smith, 236 Ga. 30, 222 S.E.2d 322 (1976); Pritchett v. Wesleyan Pentecostal Church at Holly Springs, 265 Ga. App. 565, 594 S.E.2d 750 (2004). Under the neutral principles of law method, Georgia courts review documents such as property deeds and articles of incorporation to make a determination as to the ownership of the property in question. In this case, all relevant documents and records support a finding that the property on which Timberridge church sits was owned, and was intended to be owned, by Timberridge alone, free and clear of any trusts or other encumbrances.

As discussed above, until 1970, all of the land on which Timberridge Presbyterian Church sat was owned by private property owners/members of the Timberridge church. From 1970 through 1987, through four separate deeds, the private property owners/Timberridge church members conveyed their respective interests in the property to Timberridge Presbyterian Church. (Exhibit 1.) In 1984, Timberridge Presbyterian Church was incorporated with the Georgia Secretary of State as Timberridge Presbyterian Church, Inc., a Georgia non-profit corporation; and in 1999, all real property owned by Timberridge Presbyterian Church was conveyed by warranty deed to Timberridge Presbyterian Church, Inc. (Exhibits 1, 2.)

All acquisitions of real property held by Timberridge which comprises its campus, and all improvements thereon, whether corporeal or incorporeal, movable or immovable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by the members of Timberridge with the clear understanding that the property and improvements were and would continue to be owned by Timberridge. No financial contributions were made by the PGA, the PCUSA or any predecessor denomination. All deeds of real property held by Timberridge which comprise its campus were originally titled in, and at all times have remained titled in, private property owners and the entities "Timberridge Presbyterian Church" and "Timberridge Presbyterian Church, Inc.", and do not mention or refer to a national denomination such as the PCUSA nor contain any language creating or accepting any trust over said property in favor of a

national denomination or any of its regional administrative units such as the PGA. Said property has continuously been so titled in the public mortgage and conveyance records of Henry County, in the state of Georgia. (Exhibit 1.) Furthermore, as evidenced by Timberridge corporate documents, such as its Articles of Incorporation, no trust was contemplated or intended by Timberridge, any of its members, or PCUSA or PGA with regard to the real property owned by Timberridge. (Exhibit 2.)

At every opportunity, by the adopting, recording and furnishing of its articles of incorporation, property deeds, and church minutes and resolutions, Timberridge has specifically denied the denomination's assertion of a right to ownership or to determine ownership. All of these actions have been open and public and all of the related documents have been furnished to the PGA, which has accepted them without objection. As a result, the PGA is unable to show that any trust concerning the real property owned by Timberridge has been created in favor of any other entity such as the PCUSA or the PGA, or that any such entity has any ownership interest in Timberridge's property.

C. Timberridge Has Complied with the Provisions Set Forth in the Book of Order to Except Themselves from the Creation of Any Trust.

Timeberridge anticipates that the PGA may attempt to rely on provisions of the Book of Order to reach beyond Georgia law and the intent of the parties and nonetheless establish a trust. The basis of this argument is expected to be a provision in the Book of Order which purports that, "[a]ll property held by or for a particular church ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA)." (Exhibit 3,

G-8.0201.) However, the Book of Order also contains a provision pursuant to which local churches are permitted to exempt themselves from the creation of any trust over their property. Under G-8.0700, the Book of Order provides that no particular church (local congregation) of the PCUSA shall be bound by any of the provisions in Chapter VIII of the Book of Order (relating to ownership and control of property) if it was not previously subject to a similar provision in the denomination of which it was a part before the creation of the PCUSA, as long as that congregation, within a period of eight years following the establishment of PCUSA, votes to exempt itself from such provision. In the event of such timely vote, a particular church "shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church USA." (Exhibit 3.)

Timberridge was not previously subject to any trust provision, and it timely exercised the exemption clause of G-8.0700 of the PCUSA Book of Order. At an annual congregational meeting held on November 15, 1987, the members of Timberridge voted in favor of exercising the exception option. (Exhibit 5.) Following the congregation's approval of accepting the Exception Option set forth in the Book of Order, the minutes of the November 15, 1987 meeting were read and approved by the Moderator of the Session on March 3, 1988. The minutes were properly recorded and the PGA was duly notified of

Timberridge's vote to opt out of dissimilar provisions and fall back on Chapter 6 of the PCUS Book of Church Order, retaining local ownership and control of church property.

Consequently, even if the PGA successfully argues that Georgia law and the intent of the parties may be superceded by the provisions of the Book of Order, the PGA still cannot show that a trust was created with regard to the real property owned by Timberridge. Pursuant to the provisions set forth in the Book of Order, Timberridge has affirmatively excepted itself from the formation of any trust which might exist by timely voting to opt out of any trust provision contained in the Book of Order.

Ultimately, Timberridge will show that no trust has been created concerning its property. Timberridge will show that it owns its property free, clear, and unencumbered, and that the PGA has no rights in Timberridge's property, through a trust or any other means.

Because Timberridge will be harmed if no injunction is granted, because the PGA will not be prejudiced or harmed in any way if an injunction is granted, and because Timberridge has a substantial likelihood of success on the merits of its case, Timberridge respectfully requests that a temporary and permanent injunction be granted, enjoining the PGA from taking any retaliatory actions against Timberridge, as described herein, arising from the filing of the instant lawsuit.

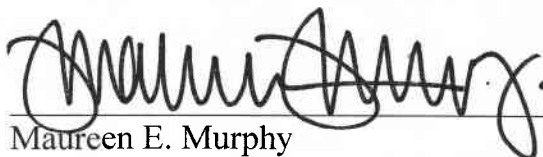
This 6th day of September, 2007.

Respectfully submitted,

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