

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-4142-M

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

Comes now Presbytery of Greater Atlanta, Inc. ("PGA"), Defendant in the above-styled action, by and through counsel of record, and files this Response in Opposition to Plaintiff's Motion for Temporary Restraining Order and shows the Court the following:

I. STATEMENT OF FACTS

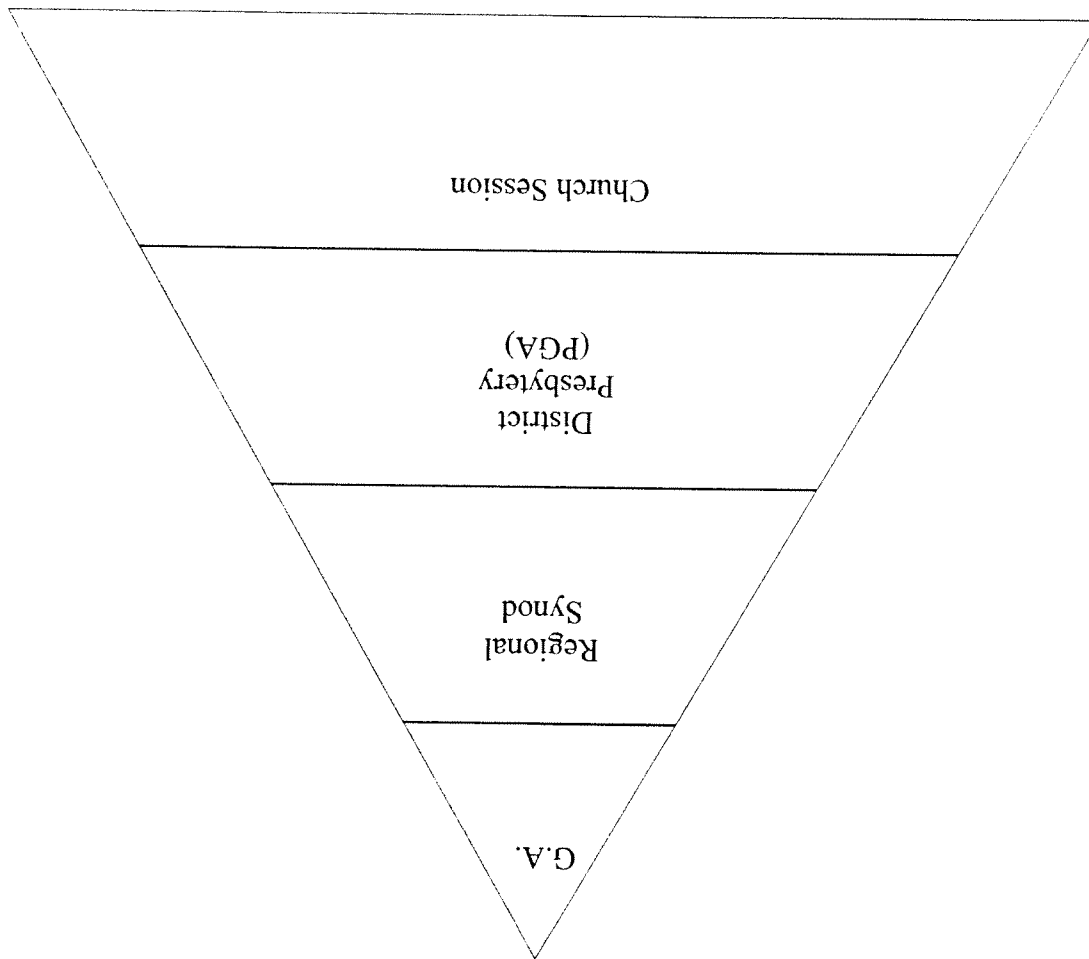
Plaintiff is the corporate incarnation of Timberridge Presbyterian Church, Georgia. Plaintiff church is a member of the Presbyterian Church (U.S.A.). PGA is a non-profit corporation with its registered and principal office located in Fulton County, Georgia. PGA is a district presbytery of the Presbyterian Church (U.S.A.).

The Presbyterian Church (U.S.A.) came into being in 1983 when the southern branch of the Presbyterian denomination (Presbyterian Church of the United States -PCUS) and the northern branch of the Presbyterian denomination (The United Presbyterian Church of the United States of America -UPCUSA) came together in

“reunion.” The unified church is called the Presbyterian Church (U.S.A.). The unified church is, in all ecclesiastical, judicial, legal and other respects the continuing entity of both the PCUS and the UPCUSA.¹

The Presbyterian Church (U.S.A.) is a hierarchical church with the following

structure:



The General Assembly (G.A.) is the highest governing body of the denomination. A

synod consists of several presbyteries in a geographic region, a presbytery consists of all

¹ Articles of Agreement, Preamble, Book of Order, Appendix B, p. B-1.

churches and ministers within its assigned geographic district, and the session is the

governing body of a specific church.

Prior to reunion, which occurred in 1983, Plaintiff was a member of PCUS. In June of 1982, the 122nd General Assembly of the PCUS met in Columbus, Georgia and in accordance with procedures prescribed in its Constitution, enacted certain amendments to its Constitution (called the Book of Church Order). One amendment added Section 6-3 of the PCUS Constitution, which is a property trust clause, which provided that PCUS churches held their property in trust for the PCUS.²

On June 10, 1983, reunion occurred. PCUS and UPCUSA ceased to exist but their history and existence were carried on by the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is governed by its Constitution. The Constitution of the Presbyterian Church (U.S.A.) is comprised of two books—the Book of Confessions and the Book of Order. Like the former PCUS Constitution, the Book of Order also contains a property trust clause, which provides: “[a]ll property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), 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.).”³

² “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 the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.” PCUS Book of Church Order, Section 6-3.
³ Book of Order, Chapter VIII, Section G-8.0201. Note that the Book of Order also contains other property provisions relating to ownership of property when a church ceases to be associated with the Presbyterian Church (U.S.A.) or when there is a schism within a church. Book of Order, Chapter VIII, Section G-8.0301, G-8.0401, G-8.0601.

For a period of eight years after reunion, a church could exercise two options: 1)

opt out of only those church property provisions contained in Chapter VIII of the Book of Order to which the church was not subject under its pre-reunion Constitution; or 2) under Article 13 of the Articles of Agreement, petition to be dismissed from the denomination with its property upon a vote by the congregation.⁴

Plaintiff never sought to be dismissed under Article 13 of the Articles of Agreement, but Plaintiff did exercise an opt-out under G-8.0701. G-8.0701 states in pertinent part:

The provisions of this chapter shall apply to all particular churches of the Presbyterian Church (U.S.A) except that any church which was **not subject to a similar provision of the Constitution of the church of which it was a part,** prior to the reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America to form the Presbyterian Church (U.S.A.), shall be excused from that provision of this chapter if the congregation shall, within a period of eight years following the establishment of the Presbyterian Church (U.S.A.), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote.”

(**Emphasis added.**)

⁴ See Book of Order, Chapter VIII, Section G-8.0701 and Article 13 of the Articles of Agreement, Book of Order, Appendix B, p.B-13-B-15.

The opt out contained in G-8-0701, did not excuse Plaintiff from the property trust clause because Plaintiff was already subject to an almost identical property trust clause under its pre-reunion Constitution. Thus, pursuant to the plain language of G-8-0701, Plaintiff could not opt out of the property trust clause.⁵

Despite the fact that both the pre-reunion PCUS Constitution and the Presbyterian Church (U.S.A.) Constitution contain property trust clauses (See Exhibits 3 and 4 of Plaintiff's Complaint), Plaintiff has filed this suit requesting that the Court interpret and construe the denomination's Constitution and that the Court declare that Plaintiff is not subject to the property trust clause. Upon information and belief, Plaintiff seeks the Court's intervention in this matter because it has aligned with an association of churches called the New Wineskins. The New Wineskins take issue with certain perceived doctrinal positions of the Presbyterian Church (U.S.A.) and is offering legal strategy and assistance to churches to help position the churches to leave the denomination and to take the church property with them. Plaintiff desires a judicial determination that it is exempt from the property trust clause before it leaves the denomination so that it may take the church property with it.

Plaintiff's Complaint does not allege a cloud on title, or adverse possession by PGA, or seek to quiet title or make any other title related claim. Indeed, Plaintiff's Complaint clearly and correctly alleges that the deeds to its real property show only Plaintiff as owner of record. (Complaint ¶ 12). Nor is there any allegation by the

⁵ Churches that exercised the opt out provision only opted out of Chapter VIII, Section G-8.0500 (which requires churches to seek a presbytery's permission prior to selling, transferring or encumbering property). Churches exercising the opt out provision could not and did not opt out of G-8.0201 (the property trust clause) or the balance of Chapter VIII. Prior to reunion, neither the PCUS or the UPCUSA Constitutions ever contained provisions whereby a local church could unilaterally leave the denomination with the church property.

Plaintiff that PGA is in possession of or is occupying Plaintiff's property. The chain of title to the property is clear and there is no adverse possession by PGA; thus, Plaintiff does not ask this Court to rule on title to land, it asks this Court to construe the Constitution of the Presbyterian Church (U.S.A.) to determine the validity of a property trust clause, which applies to all church property, whether real, personal, tangible and intangible.

II. ARGUMENT AND CITATION OF AUTHORITY

A motion for a temporary restraining order is an extraordinary motion. Focus

Entertainment Int'l, Inc. v. Partridge Greene, Inc., 253 Ga. App. 121, 123 (2001). A

temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) It clearly appears from specific facts shown by

affidavit or by the verified complaint that immediate and

irreparable injury, loss, or damage will result to the

applicant before the adverse party or his attorney can be

heard in opposition; and

(2) The applicant's attorney certifies to the court, in

writing, the efforts, if any, which have been made to give

the notice and the reasons supporting the party's claim that

notice should not be required.

O.C.G.A. § 9-11-65 (b).

Neither Plaintiff's Complaint nor its Motion for Temporary Restraining Order

alleges facts that constitute immediate, irreparable harm to Plaintiff. The grounds upon

which the Plaintiff bases its Complaint and its request for injunctive relief are conjecture at best. Paragraph 44 of the Complaint demonstrates that no actual controversy currently exists. First, paragraph 44 states that Plaintiff "intends to discuss" a capital improvement fund drive, but does not allege that it has actually discussed, planned or commenced such a drive. Second, Plaintiff engages in pure speculation when it states that "financing may require" that Plaintiff secure mortgages by pledging the property. There is no allegation that Plaintiff has even applied for a loan, let alone determined that it will have to pledge property to secure a loan, or that an actual lender has taken exception to title or any other circumstances relating to the hypothetical loan. Third, Plaintiff's allegation that Timberridge will not be "able to provide acceptable title insurance;" is also pure speculation. There's no allegation that a title insurer has refused to issue a title insurance policy on the property, nor is it likely that such would be the case in light of the fact that Plaintiff has clear title to the property (as noted in the Complaint). Finally, with regard to the allegations relating to credit underwriting, since Plaintiff has not even applied for a loan, Plaintiff's allegation is pure conjecture. Paragraph 45 of the Complaint is also filled with speculation about what may happen in the future.

Similarly, the "retaliatory actions" that Plaintiff refers to in its counts for injunctive relief have not occurred to date and may or may not occur in the future. Plaintiff has been a member of the Presbyterian denomination for over 100 years. During that time, it has purchased property, improved its property, raised money, incurred debt or encumbered its property as necessary, without any interference by PGA. Plaintiff possesses clear title to the property, which it admits in its Complaint, and PGA is not adversely possessing the property. The property trust clause has never created a problem

For Plaintiff in the past and there is no reason to suspect that it would do so in the future. That being the case, there is only one logical reason for bringing this action, which is that Plaintiff is preparing to leave the denomination and desires a judicial declaration regarding the church property before it leaves.

In the Complaint, Plaintiff speculates that the filing of the law suit, would trigger the establishment of an administrative commission to investigate whether Plaintiff is a "church in disorder." To date, PGA has not formed an administrative commission despite the fact that PGA held a meeting on September 15th during which it could have initiated procedures for establishing such a commission; however, the establishment of an administrative commission lies entirely within the power and authority granted to PGA pursuant to the Constitution of the Presbyterian Church (U.S.A). Essentially, therefore, Plaintiff is requesting that this Court enjoin PGA, a district level governing body of a national religious denomination, from exercising those powers granted to it in the denomination's highest governing document if, in PGA's discretion, it deems it necessary and proper to do so. Such interference with PGA's power and authority would run afoul of the right of Free Exercise of Religion guaranteed under the United States Constitution because it would prevent the individuals at PGA from adhering to the processes and procedures of the Presbyterian Church (U.S.A). Furthermore, it would violate the First Amendment of the United States Constitution because a civil court would be injecting itself into the actual operations of a religious denomination.

The United States Supreme Court has held that the First Amendment to the Constitution of the United States severely circumscribes the role that civil courts may play in interpreting ecclesiastical policy. Presbyterian Church in the United States v.

Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969). The First Amendment commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Id. at 449. The First and Fourteenth Amendments require civil courts to defer to the rules and decision of hierarchical churches for internal discipline and governance:

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding on them.

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 725 (1976).

Plaintiff is not only seeking a TRO to prevent PGA from taking possession of Plaintiff's property (despite the fact that PGA has taken no such action); Plaintiff is seeking to enjoin the actual discipline and governance provisions of the Constitution of the Presbyterian Church (U.S.A.). The Plaintiff would have this Court enjoin members of the national religious denomination from adhering to the processes and mandates of its Constitution. To do so would cut to the core of the PGA's exercise of its religion and would usurp its religious authority, which would violate the United State Constitution. Because Plaintiff cannot articulate any specific immediate, irreparable harm, and because

granting the relief that Plaintiff seeks would violate the United States Constitution, the balancing of equities favors PGA. For that reason, the Motion for TRO should be denied.

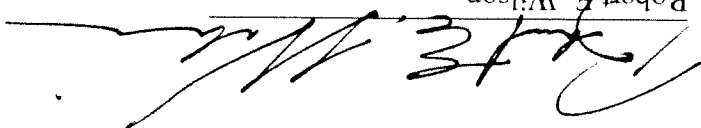
III. CONCLUSION

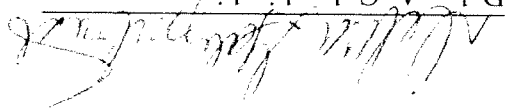
For all of the foregoing reasons, PGA respectfully requests that the Court deny

Plaintiff's Motion for Temporary Restraining Order.

Respectfully submitted, this 19th day of September, 2007.

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