

**IN THE SUPERIOR COURT OF HENRY COUNTY  
STATE OF GEORGIA**

<b>TIMBERRIDGE PRESBYTERIAN CHURCH, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action File No.</b>
	)	<b>07-CV-4142-M</b>
<b>PRESBYTERY OF GREATER ATLANTA, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S SUPPLEMENTAL 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, appearing specially and without waiving any defenses, including but not limited to those relating to lack of subject matter jurisdiction and improper venue, and files this Supplemental Response in Opposition to Plaintiff’s Motion for Temporary Restraining Order and shows the Court the following:

**I. STATEMENT OF FACTS**

Defendant incorporates herein by reference the Statement of Facts set forth in “Defendant’s Response in Opposition to Plaintiff’s Motion for Temporary Restraining Order.”

**II. ARGUMENT AND CITATION OF AUTHORITY**

Defendant supplements its Response in Opposition to Plaintiff’s Motion for Temporary Restraining Order as follows. As discussed fully below, this Court lacks subject matter jurisdiction over this matter and venue in this Court is improper.

Accordingly, any order entered by this Court, including a temporary restraining order, would be void.

**A. VENUE IS IMPROPER IN THIS COURT; THEREFORE, A TEMPORARY RESTRAINING ORDER ENTERED BY THIS COURT WOULD BE VOID.**

“A trial court without venue lacks authority to issue an order or judgment, and any such order or judgment is void.” Coastal Transport, Inc. v. Tillery, 270 Ga. App. 135, 139 (2004). “A court without venue lacks authority to issue an injunction.” First American Title Ins. Co. v. Broadstreet, 260 Ga. App. 705, 706 (2003).

A declaratory judgment is not an equitable action even if injunctive relief is requested in conjunction with the declaratory judgment. Shaw v. Crawford, 207 Ga. 67, 72 (1950). Declaratory judgments are to be filed and served in the same manner as other cases in the superior courts. O.C.G.A. § 9-4-5. Thus, standard venue rules apply to declaratory judgment actions. Under Georgia law, for purposes of proceedings generally, venue against a non-profit corporation lies in the county of the registered office of the corporation. O.C.G.A. § 14-3-510. PGA’s registered and principal offices are located in Fulton County, Georgia. A true and correct copy of PGA’s current Secretary of State registration is attached hereto as Exhibit “A” and clearly shows PGA’s registered office and the principal place of business located in Fulton County, Georgia.

Although Plaintiff failed to allege the exact basis for venue in its Complaint, one may surmise that Plaintiff relies on Article 6, Section 2, Paragraph 2 of the Georgia Constitution, which provides that in cases respecting title to land, venue is proper in the county in which the land is situated; however, this is not a case respecting title to land.

Under Georgia law, an action respecting title to land is an action at law, such as ejectment and statutory substitutes, wherein the plaintiff asserts a presently enforceable legal title **against possession by the defendant for the purpose of recovering the land.** Hopkins v. Baker, 258 Ga. App. 14, 15 (2002); Hayes v. Howell, 251 Ga. 580, 581 (1983); Graham v. Tallent, 235 Ga. 47, 49 (1975)(Emphasis added).

In the case at bar, PGA is not in possession of the property, nor does Plaintiff allege in its Complaint that PGA is in possession of the property. Because PGA does not possess the property, there can be no action at law to eject PGA or otherwise recover the property. Moreover, Plaintiff's Complaint alleges that Plaintiff's title is clear and shows record title solely in Plaintiff. Because Plaintiff is not asserting legal title against possession by PGA to recover any real property, under Hopkins, Hayes and Graham, this is not a case respecting title to land and venue is improper in Henry County.

Simply stated, this case is a request by the Plaintiff for the Court to interpret a trust clause contained in the Constitution of the Presbyterian Church (U.S.A.), which applies to real and personal, tangible and intangible property of the church. Because this is not a case respecting title to land as defined by Georgia law, venue is improper in Henry County. Venue is proper in Fulton County and Plaintiff's Complaint should be dismissed or transferred to the Fulton County Superior Court.

Because venue is improper in this Court, any temporary restraining order entered by the Court would be void.

**B. THE COURT LACKS SUBJECT MATTER JURISDICTION TO ENTER A TEMPORARY RESTRAINING ORDER.**

An order entered by a Court lacking subject matter jurisdiction is void. Danner v. Robertson, 221 Ga. 516, 517 (1965)(one cannot be in contempt of an order that is void for lack of subject matter jurisdiction); Henderson v. Justice, 237 Ga. App. 284, 291 (1999); Mitsubishi Motors Credit v. Sheridan, 2007 WL 1990022 (Ga. App.), 07 FCDR 2331 (Georgia Supreme Court has ruled that judgments which lack subject matter jurisdiction are considered to be void on their face). Because the Court does not have subject matter jurisdiction over this matter as discussed below, the Court is not vested with the authority to grant the injunctive relief that Plaintiff seeks ancillary to it's main claim, which is for declaratory judgment.

1) No actual controversy exists.

A declaratory judgment may not be granted unless an actual controversy exists between the parties. O.C.G.A. § 9-4-2 (a). In the absence an actual controversy, the trial court lacks jurisdiction to render a decision. Effingham County Bd. of Comm'rs v. Effingham County Industrial Dev. Auth., 2007 WL 1840196, 07 FCDR 2108 (June 28, 2007); See generally In the Interest of I.B., 219 Ga. App. 268, 269 (1995)(throughout Article VI of the Georgia Constitution, jurisdiction is given over cases, which requires an actual controversy). “Declaratory judgment will not be rendered based on a possible or probable future contingency.” Id. In order for there to exist an actual controversy, there must be interested parties asserting adverse claims on an accrued set of facts. Harrell v. Fulton County, 272 Ga. App. 760, 764 (2005). The controversy must be “definite and concrete...rather than hypothetical, abstract, academic or moot.” In the Interest of I.B., 219 Ga. App. at 269-270. Plaintiff may not seek an advisory opinion from the Court for

actions that it speculates that PGA may take in the future. See Harrell, 272 Ga. App. at 764.

In Harrell, the Plaintiffs were seeking a declaratory judgment from the trial court regarding the validity of an amendment to a zoning ordinance. The Court of Appeals found that there was no actual controversy and that the plaintiffs were merely seeking a declaration for the court “just in case” the defendants attempted to take action under the zoning amendment in the future. Harrell, 272 Ga. App. at 764. Plaintiff in the case at bar is doing the same thing as the Harrell plaintiffs; to wit, Plaintiff is seeking an advisory opinion regarding the validity of a property trust clause so that if they withdraw from the denomination in the future they will have an advisory opinion that they can take the church property with them. This case stands in stark contrast to other church property cases because in other church property cases, the local church withdraws from the denomination and the general church takes legal action to recover the property. In this case, there has been no withdrawal, thus there is no actual controversy at this time.

The language of Plaintiff’s Complaint itself belies Plaintiff’s assertion that an actual controversy exists. Paragraph 44 of the Complaint states that Plaintiff “**intends to discuss** various matters including, but not limited to, the initiation of a local capital improvement fund drive...The financing **may** require that Timberridge grant mortgages and security interests in the local church property to secure repayment thereof. Timberridge will not be able to **provide acceptable title insurance** on its property until such time as the questions presented are resolved. Moreover, the **underwriting** of any extension of credit is significantly impacted by the status of ownership of local church property.”

Paragraph 44 of the Complaint demonstrates that no actual controversy currently exists. First, the 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 grant mortgages in 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 it 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 merely 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 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, raised money, incurred debt or encumbered its property as necessary, without any interference by PGA. 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. Such a declaration would be nothing more than an advisory opinion since Plaintiff has not withdrawn from the denomination at this point; therefore, Plaintiff's Complaint fails to set out an actual controversy and this Court does not have jurisdiction over this matter.

2) Violation of First Amendment.

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 resolving church property disputes. 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. In response to the United States Supreme Court's decision in the Mary Elizabeth Blue Hull case, Georgia courts adopted a "neutral principles of law" doctrine when deciding church property cases. See Carnes v. Smith, 236 Ga. 30, 37 (1976); Crumbley v. Solomon, 243 Ga. 343, 343 (1979); Jones v. Wolf, 244 Ga. 388, 388 (1979). Under the "neutral principles of law" doctrine, a court will look to state statutes, corporate charters, deeds, and the organizational constitutions of the denomination to resolve the dispute. Crumbley, 243 Ga. at 343. Accordingly, PGA concedes that church property issues may be decided by this Court provided that the Court can do so by relying only on "neutral principles" and not by interpreting church doctrine.

PGA contends that this Court may decide the central issue in this case without wading into questions of church doctrine. A review of the applicable statutes, case law, corporate documents, the Constitution of the Presbyterian Church (U.S.A.) and other

governing documents clearly show that Plaintiff is subject to the property trust clause contained in the Constitution of the Presbyterian Church (U.S.A.). However, to the extent that this Court deems it necessary to wade into, interpret or rule on issues that are doctrinal in nature, PGA contends that such action by the Court would violate the First Amendment of the United States Constitution. Furthermore, PGA contends that the Court may not grant any injunctive relief that would have the effect of prohibiting PGA from exercising its authority under the Book of Order. To do so would run afoul of the United States Constitution and the U.S. Supreme Court's holding in the Mary Elizabeth Blue Hull case.

For the foregoing reasons, the Court lacks jurisdiction to enter any order in this matter; therefore, if the Court enters a temporary restraining order, it would be void.

**C. PLAINTIFF CANNOT SHOW IMMEDIATE AND IRREPARABLE INJURY IN THIS CASE; THEREFORE, THE GRANT OF A TEMPORARY RESTRAINING ORDER WOULD BE IMPROPER.**

The purpose of a temporary restraining order is to enjoin action so that immediate and irreparable injury, loss, or damage will not result to the applicant. See O.C.G.A. § 9-11-65 (b). In this case, however, since the property trust clause at issue has been effective for nearly 25 years, and because there is no claim that PGA adversely possesses the property, it is difficult to perceive the immediate injury or the urgency alleged by Plaintiff.

Nearly a quarter of a century after it first became subject to a property trust clause, Plaintiff is now seeking a judicial declaration of the validity of a provision of the Constitution of the Presbyterian Church (U.S.A.). Under any standard, the failure to

assert a right for a quarter of a century constitutes a waiver of Plaintiff's right to challenge the property trust clause. Not only does it constitute a waiver (and also laches to the extent that Plaintiff's Complaint asserts any equitable claims), but the failure to act for nearly a quarter of a century belies Plaintiff's claims that there exists a current immediate and irreparable threatened injury. If Plaintiff has waited for 25 years to bring this declaratory judgment and there was no action on the part of PGA that precipitated the filing of the Complaint or changed the relationship of the parties, how can Plaintiff claim that immediate harm has been threatened? It bears repeating that Plaintiff's Complaint does not allege that PGA itself has done anything; it alleges in the broadest of terms that presbyteries nationwide have taken certain actions to protect church property.

In Crumbley, 243 Ga. 343 (1979), the Georgia Supreme Court recognized an estoppel defense in a church property case. The facts of Crumbley are substantially similar to the facts in the case at bar except that in Crumbley the local church had already withdrawn from the greater church. In that case, the trustees of the general church brought an action against a local church that had voted to withdraw from the general church, in order to establish the right of the general church to control the church property. The Georgia Supreme Court found that a trust existed for the benefit of the general church. The Supreme Court expressly stated that the local church had participated in the process for the establishment of the trust rule, did not contest its validity for 30 years, remained a member of the greater church and accepted the benefits flowing from that membership, and were, therefore, estopped from denying the existence of the trust. Crumbley, 243 Ga. at 345.

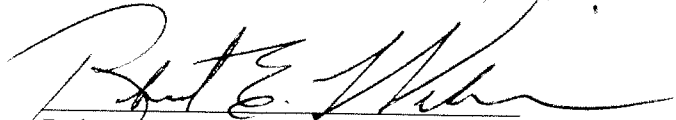
The same facts apply to the case at bar. Plaintiff has been a member of the Presbyterian Church (U.S.A.) for almost a quarter of a century. It has participated in the governance processes of the church during that time, has made its membership contributions to the greater church, and it has been subject to the Constitution of the Presbyterian Church (U.S.A.) for that entire time. It has benefited from its association with the denomination. Moreover, Plaintiff also had the opportunity to participate in the General Assembly meeting in which the former PCUS Constitution was amended to add the property trust clause and participated in the process of reunion. Because there was no action taken by PGA to change the relationship or relative positions of the parties prior to Plaintiff filing suit, Plaintiff's argument that immediate harm will result in this case unless a TRO is granted rings hollow.

### III. CONCLUSION

For all of the foregoing reasons, and for the reasons previously set out in "Defendant's Response in Opposition to Plaintiff's Motion for Temporary Restraining Order," PGA respectfully requests that the Court deny Plaintiff's Motion for Temporary Restraining Order.

Respectfully submitted, this 27<sup>th</sup> day of September, 2007.

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PRESBYTERY OF GREATER )  
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CERTIFICATE OF SERVICE

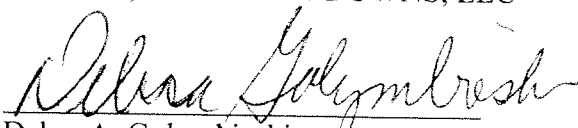
This is to certify that I have this date served upon counsel for Plaintiff a true and copy of the within and foregoing DEFENDANT'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER via first class mail, with sufficient postage affixed thereto, and in an envelope properly addressed to:

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This 27<sup>th</sup> day of September, 2007.

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