

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
OF TALLASSEE, ALABAMA, *

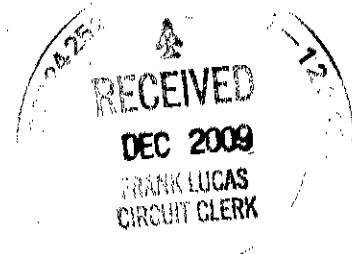
Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. CV-09-112



COMPLAINT

Plaintiff, The First Presbyterian Church of Tallassee, Alabama ("First Presbyterian"), files its complaint against Defendant, Presbytery of Sheppards and Lapsley (the "Presbytery"), and states as follows:

The Parties

1. First Presbyterian is an Alabama non-profit corporation located in Tallassee, Alabama, established in 1950, and incorporated in 1954.

2. The Presbytery is an Alabama non-profit corporation located in Birmingham, Alabama. The Presbytery is a regional administrative unit for the Presbyterian Church (U.S.A.) ("PCUSA" or "Denomination"). PCUSA was formed in 1983 and currently has approximately 11,000 member churches located throughout the United States, including the State of Alabama and Tallapoosa County.

Jurisdiction and Venue

3. This Court has jurisdiction to hear and decide this church property dispute under *Jones v. Wolf*, 443 U.S. 995 (1979) and *Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So. 2d 861 (Ala. 1979) and pursuant to *Ala. Code* §§ 12-11-30 and 12-11-33 (1975).

4. Venue is proper in Tallapoosa County, Alabama, Dadeville, Alabama, as the property which is the subject of this litigation is located on the east side of the Tallapoosa River in Tallapoosa County, Alabama.

Factual Allegations

5. First Presbyterian's charter of incorporation is recorded in Corporation Record 4, pages 101-104, in the Office of the Judge of Probate of Tallapoosa County, Alabama. A certificate of amendment to the corporate charter of First Presbyterian is recorded in Corporation Record 6, pages 497-499, in the Office of the Judge of Probate of Tallapoosa County, Alabama. The Charter of Incorporation and the Certificate of Amendment are attached hereto as Exhibit 1, and made a part hereof by reference. Both the original charter and the amendment provide as follows:

"The purpose of said proposed corporation is to create the members of said Church, present and future, into a body corporate with power to acquire, hold, own, possess, enjoy, use, mortgage and dispose of property, real or personal, in an unlimited amount, in the worship of Almighty God for the propagation of the Christian religion".

6. All of the real property owned by First Presbyterian consists of the property described in deeds located at volume 117, page 145 and volume 168, at page

151, in the office of the Judge of Probate of Tallapoosa County, Alabama. Said deeds are attached hereto as Exhibit 2, and made a part hereof by reference.

7. The tracts of real property described in the deeds in Exhibit 2 have been held, controlled, insured, maintained, improved, and purchased by members of First Presbyterian without interruption since their acquisition.

8. All acquisitions of real property held by First Presbyterian, and all improvements thereon, whether corporeal or incorporeal, moveable or immovable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by the members of First Presbyterian with the clear understanding that the property and improvements would continue to be owned by First Presbyterian.

9. None of the national denominations to which First Presbyterian belonged at any point in time held or obtained any interest in the real property, including, without limitation, the real property described in the deeds in Exhibit 2. None of the deeds in Exhibit 2, which convey various tracts of real property to First Presbyterian, mention or refer to a national denomination as grantee or trustee (including the PCUSA), nor does any deed contain language creating or accepting a trust over said property in favor of a national denomination or any of its regional administrative units, such as the Presbytery.

Ala. Code § 10-4-22 provides as follows:

“Unless otherwise clearly stated in the deed or other instrument under which any church corporation organized under the provisions of this article derives title or unless afterwards approved by a majority of the adult members of the congregation of such church at a meeting held after announcement from the pulpit of the church at least seven days from the date of the announcement, such church corporation, whether heretofore or hereafter organized and incorporated under the provisions of this article, shall be, and shall remain, a distinct and independent church corporation free from the regulation and control of any higher church body, denomination or other organization with

which it is now or hereafter, associated or affiliated insofar as the management, control, disposition or alienation of its real property is concerned.”

10. In addition to personal property located on the real property owned by First Presbyterian, there are other items of personal property, including bank accounts, owned by First Presbyterian, and none of the national denominations to which First Presbyterian belonged at any point in time held or obtained any interest in said personal property.

11. PCUSA was formed by the merger in 1983 of the Presbyterian Church in the United States (hereinafter the “PCUS” or the “Southern Church”) and the United Presbyterian Church in the United States of America (hereinafter “UPCUSA” or the “Northern Church”). Prior to the formation of PCUSA, First Presbyterian was associated with PCUS. Upon the formation of PCUSA, the PCUS ceased to exist as a separate denomination, and First Presbyterian became affiliated with PCUSA with the Presbytery being the regional administrative unit of PCUSA having jurisdiction over First Presbyterian.

12. The constitution of the PCUSA contains two parts: the Book of Confessions (Part I); and the Book of Order (Part II). The Book of confessions contains doctrinal statements. The Book of Order focuses on church governance and divides itself into three sections: (1) the form of government; (2) the directory for worship; and (3) the rules of discipline. The provisions in the PCUSA Constitution relating to property are found primarily, but not exclusively, in the form of government of the Book of Order, Chapter VIII.

13. PCUSA Book of Order contains a clause, G-8.0201, which states, “all property held by or for a particular church . . . is held in trust nevertheless for the use and

benefit of the Presbyterian Church (USA).” This clause is not applicable to First Presbyterian or its real or personal property, and is not legally enforceable under the Constitution or the laws of the State of Alabama.

14. The PCUSA Book of Order contains a clause which, upon information and belief, the Denomination contends pertains to ownership of property. Specifically, the Denomination contends that a PCUSA presbytery, (such as the Presbytery) may dictate ownership of local church property located within the geographical bounds of the Presbytery pursuant to clause G-8.0600. Clause G-8.0600 is not applicable to First Presbyterian’s real and personal property, and is not legally enforceable under the Constitution or the laws of the State of Alabama.

15. Clause G-8.03001 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be “held, used, applied, transferred, or sold as provided by the presbytery.” Clause G-8.0301 is not applicable to First Presbyterian’s property, and is not legally enforceable under the Constitution or the laws of the State of Alabama.

16. The PCUSA Book of Order states at G-1.0301 (1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the power of civil courts. Clause G-1.301 (1) provides:

“(a) That God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.

(b) Therefore we consider the rights of private judgment in all matters that respect religion, as universal and unalienable. We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for production and security, and at the same time, be equal and common to all others.”

17. Part I of the Constitution of the PCUSA, the Book of Confessions, set forth the principle that the collective organization or gathering (communion) of Christians under a Presbyterian form of government shall not burden or infringe existing property rights. The Westminster Confession of 1647, including the Book of Confessions, provides at 6.148, "Nor doth their communion one with another as saints take away or infringe the title or property which each man hath in his goods and possessions."

18. The process whereby the property clause of the 1983 PCUSA Book of Order (G-8.0201) was adopted did not include or result from any vote, approval or action by First Presbyterian, which is the owner and title holder of record of both its real and personal property. Instead, the process involved: (a) participation by commissions (voting delegates) to the General Assembly which commissioners are chosen by regional bodies (the presbyteries) who would be beneficiaries of the asserted trusts, and (b) participation by presbyters (voting delegates) to the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, those presbyters are not required under Presbyterian governance to act in a representative capacity on behalf of the congregations.

19. Following initial approval by the commissioners to the General Assembly, the new clauses that asserted trusts were added to the denominational Constitutions upon ratification by a requisite number of presbyteries, irrespective of whether or not the Presbytery, acting through its then-presbyters, voted in favor of ratification.

20. The PCUSA Book of Order does not require that any property deeds include trust clauses in favor of a national denomination, such as the PCUSA.

21. At no time has the congregation of First Presbyterian, its governing body (the Session) or the governing body of its local church corporation (the Board of Trustees) ever voted for, concurred in, accepted or otherwise indicated acquiescence in or agreement to the denomination's assertion of a trust over local church property, nor any Denominational claim to determine ownership of property titled in the name of the local church corporation or of any improvements thereon, or of any personal property owned by First Presbyterian.

22. At a congregational meeting, First Presbyterian voted to be exempt from all property provisions in the PCUSA Book of Order as permitted by Section G-8.0701. The Trustees Report of the Presbytery, dated November 18, 2004, reflects the fact that First Presbyterian is exempt from the trust provisions of the Book of Order. Said Report is attached hereto as Exhibit 3, and made a part hereof by reference.

23. At all times the congregation, the Session, and the Board of Trustees of First Presbyterian have affirmed and reaffirmed their understanding and intent that all property held by the corporation known as The First Presbyterian Church of Tallassee, Alabama, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, are held by it in full and complete ownership, and by their own affirmation and reaffirmation none of the said property is held in trust for the use and benefit of a national denomination or any of its regional administrative units such as the Presbytery.

24. The Articles of Incorporation of First Presbyterian do not contain any provision creating or establishing any trust, express or implied, upon its property in favor of a national denomination. The said Articles have never been amended to add any such

trust provision. Neither the congregation, the Session, nor the Board of Trustees of First Presbyterian have ever adopted a corporate or congregational resolution creating or establishing a trust pertaining to property held by and titled in the name of First Presbyterian.

25. The law of the State of Alabama, *Ala. Code*, § 19-3B-401, sets forth the exclusive means by which a trust may be validly established and, absent conformity with these requirements, among others (*Ala. Code* § 19-3B-402), a trust does not exist in Alabama.

26. The actions of First Presbyterian, and its property related documents recited herein, preclude the finding of the existence of any trust with respect to its property in favor of a national denomination. Specifically, but not exclusively, none of the methods of creating a trust contained in *Ala. Code* § 19-3B-401 have been satisfied, nor have any of the requirements for creating a trust contained in *Ala. Code* § 19-3B-402, with respect to any property held by or titled to First Presbyterian, and any improvements thereon been satisfied in regard to a trust in favor of a national denomination. Further, *Ala. Code* § 19-3B-1301 provides, in pertinent part, "No trust concerning lands . . . can be created unless by instrument in writing, signed by the party creating or declaring the same . . ." No such written instrument concerning the subject property exists by and between First Presbyterian and the Presbytery or the Denomination and a parol trust in land in Alabama is void *ab initio*.

27. Clause G-7.0401 of the PCUSA Book of Order provides that churches shall cause corporations to be formed and maintained. THE PCUSA Book of Order not

only mandates incorporations, but also provides, at clause G-7.0402, that the corporation so formed shall be the title holder of record of the local church property.

28. In mandating local church incorporation when permitted by civil law, the PCUSA and its regional administrative unit, the Presbytery, have tacitly agreed to submit to and be bound by the laws of the state in which the property is located. The PCUSA has expressly acknowledged this in its Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches 2000-2003 ("Almost all property matters are governed by state law . . ."). Clause G-9.0102 of the PCUSA Book of Order further distinguishes spiritual province from civil authority by providing that, "Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction to impose civil penalties. They have only ecclesiastical jurisdiction..."

29. First Presbyterian does not identify with or submit to the authority of the PCUSA its Articles of Incorporation, or amendments thereto, nor does it include the PCUSA in its name.

30. There is a justiciable issue and controversy presently existing between First Presbyterian and the Presbytery which requires immediate resolution, otherwise, economic and other material interests of First Presbyterian will be damaged and a cloud on the title to the subject property will exist.

31. According to the PCUSA book of Order at clauses G-9.0503a (4), G-11.0103.s. and G-11.0502.j., 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, through purportedly for ecclesiastical governance, is the mechanism or device which has actually been used by the PCUSA in its effort to seize ownership and control over local church property. There are presently cases pending in other jurisdictions in which such actions have been undertaken.

32. PCUSA presbyteries, in response to dissent (whether perceived or actual) by local congregations, ministers, church officers, and trustees to certain denominational actions, have in other actual situations engaged in the following actions:

(a) taken actions 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, improperly asserting trusts on local church property in favor of the denomination. Such action is taken 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. Such actions permit the PCUSA presbytery to effectively confiscate local church property and treat it as if such property was its own.

There is a likelihood that the filing of this complaint will be perceived to be dissent, causing the Presbytery to act in such a manner.

33. In response to this escalation of retaliatory behavior, a conclave of traditional Presbyterians, gathered from around the United States, passed a resolution on July 22, 2006, asking PCUSA denominational officials to declare a “moratorium” on

retaliatory action in the form of "discipline," administrative commissions or other punitive measures, stating:

"... we call upon the Moderator of the PCUSA and all general presbyters to announce and adopt a moratorium on discipline of ordained members engaged in discourse regarding the issues of theology and polity which confront our denomination, including those discussions which may lead to a consideration of departure from the denomination. We call upon you to announce a moratorium on actions to seize or encumber property, interfere with the operations of duly elected session members, or otherwise exercise or initiate discipline upon ordained members of our denomination for engaging in such discussions on either side of the debate."

34. On August 22, 2006, the highest PCUSA officials, the Stated Clerk and the Moderator, issued a reply, refusing to urge or otherwise call for such a moratorium.

COUNT ONE

DECLARATORY JUDGMENT

35. First Presbyterian realleges and incorporates by reference paragraphs 1 through 35 as if fully set out herein.

36. As noted above a bona fide dispute and controversy exists between the parties as to the ownership of certain real and personal property.

37. Specifically, First Presbyterian seeks a judicial determination of its rights and duties, and a declaration: (a) that all real and personal property owned by First Presbyterian, corporeal or incorporeal, movable or immovable, is held without any trust in favor of the national denomination or any of its regional administrative units, such as the Presbytery; (b) that all real and personal property held by or titled in the name of the local church corporation is held by it in full and exclusive ownership; and (c) that neither

the PCUSA nor the Presbytery has any right, title, or interest in the said property, nor right to determine or interfere with the ownership thereof or the exercise of rights therein.

38. A judicial declaration is necessary and appropriate at this time under the circumstances to declare and protect the rights of First Presbyterian in the subject property.

COUNT TWO

INJUNCTIVE RELIEF

39. First Presbyterian realleges and incorporates by reference paragraph 1 through 39 as if fully set out herein.

40. The actions taken by the PCUSA presbyteries described above and threatened actions against First Presbyterian violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by the Alabama Constitution, the religious clauses of the First Amendment to the United States Constitution and the Alabama Constitution, the due process guarantees of the Fourteenth Amendment to the United States Constitution and the Alabama Constitution. The effect of such actions, if taken in whole or part or threatened by the Presbytery, would chill if not violate, the foregoing rights, impede the ability of the congregation of First Presbyterian to hold a congregational or corporate meeting free of improper interference, and create a cloud on the title of property held by First Presbyterian.

41. As noted above, First Presbyterian is a not-for-profit corporation. Its primary purpose is not monetary. The damages which will be inflicted upon it and its members by the stated actions are not susceptible to quantification or measurement in monetary damages. A monetary award is thus an insufficient remedy at law.

42. Absent a preliminary injunction, the rights of petitioners and the ministry of First Presbyterian will be irreparably injured. First Presbyterian has an approximate membership of 38, with a budget of over \$73,000. It employs four persons. It supports numerous ministries and missionaries. No amount of subsequent monetary award would be an adequate remedy to the irreparable damage that would be done to the mission and ministries of First Presbyterian which would occur as a result of confiscatory or disciplinary action initiated by the Presbytery in retaliation for the exercise of Plaintiff's rights.

43. A preliminary injunction during the pendency of this suit is necessary to stay the hand of the Presbytery from appointing an administrative commission that would, without just cause, usurp and replace the authority of the Pastor, the Session, or the Board of Trustees. A preliminary injunction would protect the members of First Presbyterian who, under Alabama non-profit corporation law, are also the members and, in effect, the shareholders.

44. A preliminary injunction would preserve the status quo until such time as the question of ownership and use of the subject property of First Presbyterian can be determined by this Court. Absent the entry of a preliminary injunction, the rights of First Presbyterian, the governing body of First Presbyterian (the Session), and the members of

the congregation of First Presbyterian, as well as First Presbyterian's property rights will be irreparably injured.

45. Inasmuch as First Presbyterian seeks only a preliminary injunction during the pendency of this suit, the interests of First Presbyterian, its members and its local church corporation outweigh any possible injury to the Presbytery which might result from the granting of a preliminary injunction, as said relief and injunction are in the public interest.

46. Moreover, there is a substantial likelihood that First Presbyterian will prevail on the merits of its suit for declaratory judgment.

47. The public interest favors prohibiting the kind of interference and damaging actions which may occur if the Presbytery is not enjoined and restrained by this Court.

48. A permanent injunction should be entered protecting the subject real and personal property and other rights or interest of First Presbyterian, as set forth above.

WHEREFORE, premises considered, First Presbyterian prays for a declaratory judgment and granting of relief against the Presbytery as follows:

1) For a preliminary and permanent injunction restraining and enjoining the Presbytery and any of its agents, employees, or other persons or entities acting on its behalf or in its stead, or acting in concert with it, from (a) filing any documents in the mortgage and conveyance records of Tallapoosa County, Alabama, the effect of which would be to place a cloud on the title of any real or personal property titled in the name of First Presbyterian, or otherwise taking any action to claim ownership of local church property, including, without limitation, the real property, and the bank accounts, 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 First Presbyterian; and (b) further restraining and enjoining the Presbytery and its agents, employees or other persons or entities acting on its behalf or in its stead, or acting in concert with it, from asserting any rights to the real or personal property of First Presbyterian, including, without limitation, seeking to change the

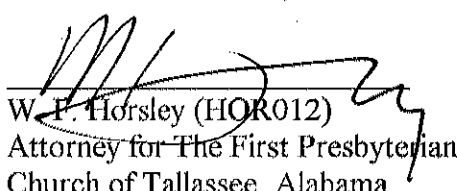
locks of First Presbyterian, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of First Presbyterian, the governing body of First Presbyterian (the Session), its congregation, or the governing body of its local church corporation First Presbyterian (the Board of Trustees); and (c) further restraining and enjoining the Presbytery and its agents, employees or other persons or entities acting on its behalf or in its stead, or acting on concert with it, from taking any action to remove or replace the pastor, session, and board of trustees of First Presbyterian.

2) For a declaration by the Court that all real and personal property held by or titled in the name of First Presbyterian or any predecessor or successor in interest, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is owned by First Presbyterian without trust for the use and benefits of the PCUSA or any other national denomination, or any of its regional administrative units such as the Presbytery, and that First Presbyterian holds all property titled in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Alabama, and that neither the PCUSA nor any of its regional administrative units, such as the Presbytery, has any right, title or interest in said real and personal property, nor right to determine the ownership thereof;

3) For all general and equitable relief to which First Presbyterian shows itself to be justly entitled; and

4) For all costs of these proceedings

Respectfully submitted,


W. P. Horsley (HOR012)
Attorney for The First Presbyterian
Church of Tallassee, Alabama

SAMFORD & DENSON, LLP
P.O. Box 2345
Opelika, AL 36803-2345
Telephone (334) 745-3504
Facsimile (334) 745-3506

J. Victor Price

J. Victor Price (PRI015)
Attorney for the Plaintiff

17 Sistrunk Street
Tallasse, AL 36078
Telephone: (334) 283-3388
Facsimile: (334) 283-3447

Serve Defendant by Certified Mail:

Sheppards and Lapsley
3603 Lorna Ridge Drive
Birmingham, AL 36216

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
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Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
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Defendant *


CIVIL ACTION NO. CV.09.112

DEC

APPLICATION FOR EXPARTE TEMPORARY RESTRAINING ORDER

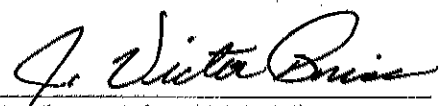
Plaintiff, The First Presbyterian Church of Tallassee, Alabama, ("First Presbyterian"), moves this Court, pursuant to Rule 65 of the Alabama Rules of Civil Procedure, for a temporary restraining order enjoining the Defendant, Presbytery of Sheppards and Lapsley (the "Presbytery"), and its officers, agents, employees, and counsel, and any persons in active concert or participation with it, on its behalf or in its stead, from taking adverse actions which would interfere with First Presbyterian's real or personal property rights or interest, as well as its lawful and legal business operations. First Presbyterian's counsel hereby certifies that they have delivered a copy of this application, as well as the affidavit of Buford Hardy (which is attached hereto and made a part hereof by reference) to the Presbytery. The affidavit (and exhibits thereto) filed by First Presbyterian states in more detail the basis upon which First Presbyterian is entitled to a temporary restraining order.

Respectfully submitted,



W. F. Horsley (HOR012)
Attorney for The First Presbyterian
Church of Tallassee, Alabama

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J. Victor Price (PRI015)
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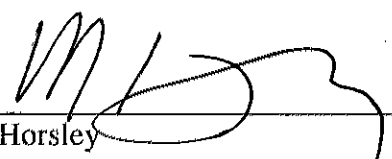
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application For Ex Parte Temporary Restraining Order has been served upon the following parties of record:

Via U.S. Mail and facsimile:

Presbytery of Sheppards and Lapsley
3603 Lorna Ridge Drive
Birmingham, AL 35216
Facsimile: (205) 978-0330

This 28 day of Dec, 2009.



W. F. Horsley

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
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Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. _____

AFFIDAVIT OF BUFORD HARDY

Personally appeared before me, the undersigned Notary Public, Buford Hardy, who, upon first being duly sworn, deposes and testifies upon his oath as follows:

1. My name is Buford Hardy. I am over the age of nineteen (19) years of age and am of sound mind. I am currently the Clerk of the Session of the First Presbyterian Church of Tallassee, Alabama ("First Presbyterian").

2. This affidavit is given in support of First Presbyterian's application for a temporary restraining order and request for a preliminary injunction filed in the above styled case.

3. The information contained in this affidavit is within my personal knowledge.

4. All of the real property owned by First Presbyterian consists of the property described in deeds located in Volume 117, Page 145 and Volume 168 at page 151 in the Office of the Judge of Probate of Tallapoosa County, Alabama. Said deeds are attached as Exhibit 2 to the Complaint filed by First Presbyterian in this case.

5. The tracts of real property described in the deeds in Exhibit 2 to the Complaint have been held, controlled, insured, maintained, improved, and purchased by members of First Presbyterian without interruption since their acquisition.

6. All acquisitions of real property held by First Presbyterian, and all improvements thereon, whether corporeal or incorporeal, moveable or immoveable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by members of First Presbyterian with the clear understanding that the property and improvements would continue to be owned by First Presbyterian.

7. None of the national denominations to which First Presbyterian belonged at any point in time held or obtained any interest in the real property, including, without limitation, the real property described in the deeds in Exhibit 2 to the Complaint. None of the deeds in Exhibit 2 mention or refer to a national denomination as grantee or trustee (including the PCUSA), nor does any deed contain language creating or accepting a trust over said property in favor of a national denomination or any of its regional administrative units, such as the Presbytery of Sheppards and Lapsley (The "Presbytery").

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Alabama. A Certificate of Amendment to the Corporate Charter of First Presbyterian is recorded in Corporate Record 6, pages 497-499, in the Office of the Judge of Probate of Tallapoosa County, Alabama. The Charter of Incorporation and the Certificate of Amendment are attached as Exhibit 1 to the Complaint filed by First Presbyterian in this case. Both the original charter and the amendment provide as follows:

“The purpose of said proposed corporation is to create the members of said Church, present and future, into a body corporate with power to acquire, hold, own, possess, enjoy, use, mortgage and dispose of property, real or personal, in an unlimited amount, in the worship of Almighty God for the propagation of the Christian religion”.

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14. Clause G-8.03001 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be "held, used, applied, transferred, or sold as provided by the presbytery." Clause G-8.0301 is not applicable to First Presbyterian's property, and is not legally enforceable under the Constitution or the laws of the State of Alabama.

15. The PCUSA Book of Order states at G-1.0301 (1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the power of civil courts. Clause G-1.301 (1) provides:

(a) That God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.

(b) Therefore we consider the rights of private judgment in all matters that respect religion, as universal and unalienable. We do

not even wish to see any religious constitution aided by the civil power, further than may be necessary for production and security, and at the same time, be equal and common to all others."

16. Part I of the Constitution of the PCUSA, the Book of Confessions, set forth the principle that the collective organization or gathering (communion) of Christians under a Presbyterian form of government shall not burden or infringe existing property rights. The Westminster Confession of 1647, including the Book of Confessions, provides at 6.148, "Nor doth their communion one with another as saints take away or infringe the title or property which each man hath in his goods and possessions."

17. The process whereby the property clause of the 1983 PCUSA Book of Order (G-8.0201) was adopted did not include or result from any vote, approval or action by First Presbyterian, which is the owner and title holder of record of both its real and personal property. Instead, the process involved: (a) participation by commissions (voting delegates) to the General Assembly which commissioners are chosen by regional bodies (the presbyteries) who would be beneficiaries of the asserted trusts, and (b) participation by presbyters (voting delegates) to the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, those presbyters are not required under Presbyterian governance to act in a representative capacity on behalf of the congregations.

18. Following initial approval by the commissioners to the General Assembly, the new clauses that asserted trusts were added to the denominational Constitutions upon ratification by a requisite number of presbyteries, irrespective of whether or not the Presbytery, acting through its then-presbyters, voted in favor of ratification.

19. The PCUSA Book of Order does not require that any property deeds include trust clauses in favor of a national denomination, such as the PCUSA.

20. At no time has the congregation of First Presbyterian, its governing body (the Session) or the governing body of its local church corporation (the Board of Trustees) ever voted for, concurred in, accepted or otherwise indicated acquiescence in or agreement to the denomination's assertion of a trust over local church property, nor any Denominational claim to determine ownership of property titled in the name of the local church corporation or of any improvements thereon, or of any personal property owned by First Presbyterian.

21. At a congregational meeting, First Presbyterian voted to be exempt from all property provisions in the PCUSA Book of Order as permitted by Section G-8.0701. The Trustees Report of the Presbytery, dated November 18, 2004, reflects the fact that First Presbyterian is exempt from the trust provisions of the Book of Order. Said Report is attached as Exhibit 3 to the Complaint filed by First Presbyterian in this case.

22. At all times the congregation, the Session, and the Board of Trustees of First Presbyterian have affirmed and reaffirmed their understanding and intent that all property held by the corporation known as The First Presbyterian Church of Tallassee, Alabama, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, are held by it in full and complete ownership, and by their own affirmation and reaffirmation none of the said property is held in trust for the use and benefit of a national denomination or any of its regional administrative units such as the Presbytery.

23. The Articles of Incorporation of First Presbyterian do not contain any provision creating or establishing any trust, express or implied, upon its property in favor of a national denomination. The said Articles have never been amended to add any such trust provision. Neither the congregation, the Session, nor the Board of Trustees of First Presbyterian have ever adopted a corporate or congregational resolution creating or establishing a trust pertaining to property held by and titled in the name of First Presbyterian.

24. First Presbyterian does not identify with or submit to the authority of the PCUSA in its Articles of Incorporation, nor does it include PCUSA in its name.

25. A bona fide dispute and controversy presently exists between First Presbyterian and the Presbytery which requires immediate resolution, otherwise, economic and other material interests of First Presbyterian will be damaged and a cloud on the title of the subject property will exist.

26. According to the PCUSA book of Order at clauses G-9.0503a (4), G-11.0103.s. and G-11.0502.j., 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, through purportedly for ecclesiastical governance, is the mechanism or device which has actually been used by the PCUSA in its effort to seize ownership and control over local

church property. There are presently cases pending in other jurisdictions in which such actions have been undertaken.

27. PCUSA presbyteries, in response to dissent (whether perceived or actual) by local congregations, ministers, church officers, and trustees to certain denominational actions, have in other actual situations engaged in the following actions:

(a) taken actions 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, improperly asserting trusts on local church property in favor of the denomination. Such action is taken 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. Such actions permit the PCUSA presbytery to effectively confiscate local church property and treat it as if such property was its own.

There is a likelihood that the filing of the complaint in this case will be perceived to be dissent, causing the Presbytery to act in such a manner.

28. 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. A true and correct copy of the "Louisville Papers" is attached hereto as Exhibit "A" and incorporated by reference herein. 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 the local church assets and physically seize property;
- c) recommend placing a cloud on local church property titles by filing affidavits I 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."

29. In response to this escalation of retaliatory behavior, a conclave of traditional Presbyterians, gathered from around the United States, passed a resolution on July 22, 2006, asking PCUSA denominational officials to declare a "moratorium" on

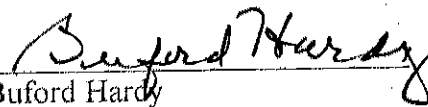
retaliatory action in the form of "discipline," administrative commissions or other punitive measures, stating;

... we call upon the Moderator of the PCUSA and all general presbyters to announce and adopt a moratorium on discipline of ordained members engaged in discourse regarding the issues of theology and polity which confront our denomination, including those discussions which may lead to a consideration of departure from the denomination. We call upon you to announce a moratorium on actions to seize or encumber property, interfere with the operations of duly elected session members, or otherwise exercise or initiate discipline upon ordained members of our denomination for engaging in such discussions on either side of the debate.

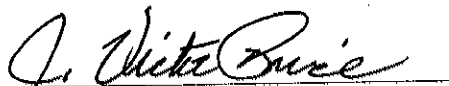
30. On August 22, 2006, the highest PCUSA officials, the Stated Clerk and the Moderator, issued a reply, refusing to urge or otherwise call for such a moratorium.

31. It is reasonable to conclude that the Presbytery intends to engage in some or all of the tactics discussed above or contained in the "Louisville Papers". A temporary restraining order and preliminary injunction are necessary to protect the property rights of First Presbyterian.

Further Affiant saith not.


Buford Hardy

Sworn to and subscribed before me this 7th day of December, 2009.


Notary Public

My commission expires: 09/08/2010

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
OF TALLASSEE, ALABAMA, *

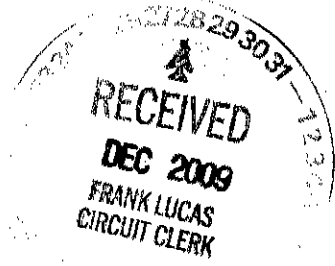
Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. CV-09-112



ORDER

CONSIDERING THE FOREGOING Application for Ex Parte Temporary Restraining Order filed herein by The First Presbyterian Church of Tallassee, Alabama, ("First Presbyterian"):

IT IS ORDERED that a Temporary Restraining Order be and is hereby issued as of this 28th day of December, 2009, at 1:00, p.m., which Temporary Restraining Order shall continue for ten (10) days hereafter from the date and time above indicated unless, prior to the time of expiration, it is extended by the court for good cause shown.

This Temporary Restraining Order shall be effective against the defendant, Presbytery of Sheppards and Lapsley (the "Presbytery"), its officers, agents, employees, and counsel, and any persons in active concert or participation with it, on its behalf or in its stead, restraining the Presbytery from filing any document in the Probate Court of Tallapoosa County, Alabama, to assert rights of ownership, or rights to determine ownership, to any property titled in the name of The First Presbyterian Church of Tallassee, Alabama (or its predecessors in interest) or to assert a trust on behalf of the Presbytery or other third party over property titled in the name of First Presbyterian (or

its predecessors in interest), the effect of which would be to place a cloud on the title of said property, or otherwise take any action to claim ownership of local church property, or a right to determine ownership of local church property, in the possession of, control of or owned by First Presbyterian (or its predecessors in interest), whether real or personal.

IT IS FURTHER ORDERED that the defendant, the Presbytery, and all persons in active concert or direct or indirect participation with them, on its behalf or in its stead, are temporarily restrained from taking any action that could affect the property and rights of First Presbyterian, whether real or personal, including, but not limited to: 1) seeking to change the locks of First Presbyterian; 2) initiating any disciplinary action against the minister or members of First Presbyterian; 3) appointing an administrative commission to assert original jurisdiction over First Presbyterian; 4) appointing a special administrative review committee or other committee to inspect, review, interrogate, admonish, or take any other similar actions against or with respect to First Presbyterian, its members, minister or records; or 5) seeking to interfere with First Presbyterian's control of any bank accounts in the name of First Presbyterian; or 6) otherwise interfering with the normal duties and responsibilities of the minister and other employees of First Presbyterian, the governing body of said local church, or the board of trustees, the governing body of the local church corporation.

IT IS FURTHER ORDERED, that First Presbyterian is required to furnish security as a condition to the issuance of this Temporary Restraining Order in the amount of \$ 2,500.00

This Order is being granted without notice and hearing to temporarily preclude the Presbytery and PCUSA from appointing an administrative commission to exercise original jurisdiction to replace the authority of the ordained clergy employed by First Presbyterian or the authority of the session or board of trustees of First Presbyterian prior to a determination by this Court of the rights and responsibilities of the parties.

IT IS FURTHER ORDERED that this Temporary Restraining Order be filed in the Clerk's Office and entered of record.

IT IS FURTHER ORDERED that the defendant, the Presbytery, show cause on the ⁵~~1~~th day of January, 2010, at 9:00, a.m. why a preliminary injunction should not be issued and granted as prayed for by First Presbyterian.

DONE this 28th day of December, 2009.



Ray B. Martin
Circuit Judge

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH
OF TALLASSEE, ALABAMA,

THE FIRST PRESBYTERIAN CHURCH *
OF TALLASSEE, ALABAMA, *

Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. 09-112

RECEIVED

FEB 2010

FRANK LUCAS
CIRCUIT CLERK

AFFIDAVIT OF PAMELA N. PRICE

Personally appeared before me, the undersigned Notary Public, Pamela N. Price, who, upon first being duly sworn, deposes and testifies upon her oath as follows:

1. My name is Pamela N. Price. I am over the age of nineteen (19) years of age and of sound mind. I am currently the Clerk of the Session of the First Presbyterian Church of Tallassee, Alabama ("First Presbyterian"). I succeeded Buford Hardy as Clerk of the Session in January of 2010.

2. This affidavit is given in support of First Presbyterian's application for a preliminary injunction filed in the above styled case.

3. The information contained in this affidavit is within my personal knowledge.

4. I have read the Complaint filed by First Presbyterian in this case, and the facts stated in said Complaint are true and correct.

5. I have read the Affidavit of Buford Hardy dated December 7, 2009, which was submitted in support of the application for the ex parte Temporary Restraining Order, and the facts stated in said affidavit are true and correct.

6. Exhibits 1 and 2 are attached hereto and made a part hereof by reference. Exhibit 1 is the original charter of incorporation for First Presbyterian. The charter does not mention the Presbyterian Church of United State of American ("PCUSA"). The charter specifically provides:

"The purpose of the said proposed corporation is to create the members of said Church, present and future, into a body corporate with power to acquire, hold, own, possess, enjoy, use, mortgage and dispose of property, real or personal, in an unlimited amount, in the worship of Almighty God and for the propagation of the Christian religion".

Exhibit No. 2 is an amendment to First Presbyterian's Corporate Charter correcting the name of First Presbyterian. The Certificate of Amendment does not mention PCUSA, and specifically provides:

"That the purpose of the corporation as set forth in the original declaration of incorporation is to 'create the members of said Church, present and future, into a body corporate with powers to acquire, hold, own, possess, enjoy, use, mortgage and dispose of property, real or personal, in an unlimited amount in the worship of Almighty God and for the propagation of the Christian religion' No alterations or amendments thereof are desired."

7. Exhibits 3 and 4 are attached hereto and made a part hereof by reference. Exhibits 3 and 4 are the deeds to the real property owned by First Presbyterian. Neither deed contains any reference to PCUSA, or provides for any trust in favor of PCUSA.

Exhibit 3 contains this granting clause:

". . . the undersigned Mount Vernon Mills, Inc., a corporation, does hereby sell, assign, quit claim, and convey unto the said First Presbyterian Church of Tallassee, Alabama, a religious corporation, its assigns, with the exception hereinafter set forth, all its right, title, and interest in and to the following described property, situated in Tallapoosa County, Alabama. . . .

* * *

TO HAVE AND TO HOLD the same unto the First Presbyterian Church of Tallassee, Alabama, a religious corporation, its assigns, forever.”

Exhibit 4 is a deed to the property on which the First Presbyterian Church building is actually located. Exhibit 4 does not refer to PCUSA, and, in fact, it specifically excludes any interests in any higher Church. The deed provides:

“The property hereby conveyed is for the absolute, sole, and exclusive use and benefit of the members of the congregation, present and future, of the First Presbyterian Church, East Tallassee, Alabama, a corporation, without any right, title, interest or estate, legal or equitable, existing or being in said property in favor of the Presbyterian Church in the United States, or in favor of any Presbytery, Synod, General Assembly, or other ecclesiastical body whatsoever, whether now existing or hereafter created.”

7. Exhibits 5 is attached hereto and made a part hereof by reference. Exhibit 5 contains excerpts from the PCUSA Book of Order, which is the constitution of the PCUSA. Section G-8.0200 of the constitution provides that local Churches hold all their real and personal property in trust for PCUSA. First Presbyterian contends that it owns all of its property, both real and personal, unencumbered by any trust interest of PCUSA.

Paragraph G-8.0700 provides that a Church shall be excused from the provisions of the property chapter if the Church votes to be exempt from the property chapter. Exhibit 6 is attached hereto and made a part hereof by reference. Exhibit 6 is a report from the Trustees of the Presbytery of Sheppards and Lapsley (the “Presbytery”) reflecting the fact that First Presbyterian is exempt from the provisions of the property chapter as permitted by Section G-8.0700 of the constitution.

I am advised by our attorneys that there are additional legal reasons substantiating First Presbyterian's position that it owns its property free and clear from any trust in favor of PCUSA.

8. This declaratory judgment action was filed to establish the fact that First Presbyterian owns its real and personal property unencumbered by any trust interest in favor of PCUSA.

The declaratory judgment action is against the Presbytery. Presbyteries are the agencies used by PCUSA to conduct its business. Each Presbytery is responsible for a defined geographic area. The Sheppards and Lapsley Presbytery serves central Alabama, and purports to have jurisdiction over First Presbyterian. Pursuant to the constitution, Presbyteries are empowered to take over local churches, and their property, if the local church is at risk of disaffiliating from PCUSA. See constitution section G-11.0103.

Exhibit 7 is attached hereto and made a part hereof by reference. Exhibit 7 is a letter from me, as Clerk of the Session of First Presbyterian to the Stated Clerk of the Presbytery, advising that the congregation of First Presbyterian voted unanimously on January 24, 2010, to sever all ties with Sheppards and Lapsley Presbytery and, therefore, its ties with PCUSA.

9. Exhibit 7 also reflects the fact the church sanctuary of First Presbyterian was constructed by its members. First Presbyterian has never received any loans or grants from PCUSA or the Presbytery. All of First Presbyterian's property (both real and personal) was acquired by the members of the congregation without any aid, financial or otherwise, from PCUSA or the Presbytery.

10. PCUSA has distributed legal strategy memoranda to its Presbyteries known as the "Louisville Papers". The Louisville Papers are attached as Exhibit 8, and made a part hereof by reference. The Louisville Papers direct the Presbyteries to secure the property (both real and personal) of churches at risk of disaffiliating. The Presbyteries are advised that this can be done by securing the land and changing the locks on the buildings, notifying banks to not release any holdings, filing documents in probate court to put a cloud on the title to the real property and generally to assume jurisdiction over the Church and its assets, to include dismissing the pastor and the Session, which is the governing body of the local church .

11. First Presbyterian will suffer irreparable harm and injury if an injunction is not issued to prevent the Presbytery from taking any action with respect to its real or personal property. If the Presbytery takes the action recommended by PCUSA in the Louisville Papers, First Presbyterian will not be able to pay its bills or employees, and will not be able to worship in its sanctuary.

12. The issuance of a preliminary injunction will not impose any hardship on the Presbytery or the PCUSA, since neither entity is presently using First Presbyterian's property.

Further Affiant saith not.

Pamela N. Price
Pamela N. Price

Sworn to and subscribed before me this 8 day of FEB, 2010.

[Signature]
Notary Public

My commission expires: 7/11/12

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
OF TALLASSEE, ALABAMA, *

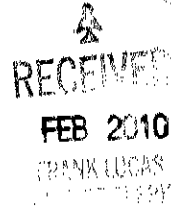
Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. CV-09-112



PRELIMINARY INJUNCTION

On December 28, 2009, at 1:00 p.m., this Court entered a Temporary Restraining Order in the above noted case. The parties consented to an extension of said Temporary Restraining Order until January 28, 2010. Because of the Court's schedule a hearing could not be held on January 28, 2010, so for good and just cause, the Court further extended the Temporary Restraining Order to February 8, 2010.

On February 8, 2010, a Hearing was held on the Plaintiff's application for a Preliminary Injunction. After considering the submissions by Plaintiff and Defendant on the application, and hearing the arguments of counsel for Plaintiff and Defendant, the Court finds that a Preliminary Injunction is due to be issued.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that this Preliminary Injunction shall be effective against the Defendant, The Presbytery of Sheppards and Lapsley ("The Presbytery"), its officers, agents, employees, and counsel, and any persons in active concert or participation with it, or on its behalf or in its stead enjoining the Presbytery from filing any document in the Probate Court of Tallapoosa County, Alabama, to assert rights

of ownership, or rights to determine ownership, to any property titled in the name of the First Presbyterian Church of Tallassee, Alabama (or its predecessors in interest) or to assert a trust on behalf of the Presbytery or any other third party over property titled in the name of First Presbyterian (or its predecessors in interest), the effect of which would be to place a cloud on the title of said property, or otherwise take any action to claim ownership of local Church property, or a right to determine ownership of local Church property, in the possession of, control of, or owned by First Presbyterian (or its predecessors in interest), whether real or personal.

IT IS FURTHER ORDERED that the Defendant, The Presbytery, and all persons in active concert or direct or indirect participation with them, on its behalf or in its stead, are enjoined from taking any action that could affect the property and rights of First Presbyterian whether real or personal, including, but not limited to:

- (1) Seeking to changing the locks of First Presbyterian;
- (2) Initiating any disciplinary action against the minister or members of First Presbyterian;
- (3) Appointing an administrative commission to assert original jurisdiction over First Presbyterian;
- (4) Appointing a special administrative review committee or other committee to inspect, review, interrogate, admonish, or take any other similar actions against or with respect to First Presbyterian, its members, minister, or records; or
- (5) Seeking to interfere with First Presbyterian's control of any bank accounts in the name of First Presbyterian; or


(6) Otherwise interfering with normal duties and responsibilities of the minister or other employees of First Presbyterian, the governing body of said local Church, or the board of trustees, the governing body of the local Church corporation.

IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until the Plaintiff's Declaratory Judgment action is finally resolved, at which time it shall be determined whether or not a permanent injunction will issue.

IT IS FURTHER ORDERED that First Presbyterian's cash bond in the amount of \$2500.00 posted as a condition to the issuance of the Temporary Restraining Order shall remain in full force and effect, as a condition of the issuance of this Preliminary Injunction.

IT IS FURTHER ORDERED that this Order issuing a Preliminary Injunction be filed in the Clerk's Office and entered of record.

DONE this 18th day of February, 2010.


Ray D. Martin
Circuit Judge

Copies to:
Victor Price
17 Sistrunk Street
Tallasse, AL 36078

W. F. Horsley
Samford & Denson, LLP
P.O. Box 2345
Opelika, AL 36803-2345

Frank James
Attorney at Law
Suite 1600
420 20th Street North
Birmingham, AL 35203-5202

IN THE CIRCUIT COURT OF TALLAPOOSA COUNTY
AT DADEVILLE, ALABAMA

THE FIRST PRESBYTERIAN CHURCH *
OF TALLASSEE, ALABAMA, *

Plaintiff *

vs. *

PRESBYTERY OF SHEPPARDS AND *
LAPSLEY, *

Defendant *

CIVIL ACTION NO. CV-09-112

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ORDER

This Court entered a judgment granting a preliminary injunction to the First Presbyterian Church of Tallassee, Alabama, against the The Presbytery of Sheppards and Lapsley on February 18, 2010. On February 26, 2010, The First Presbyterian Church of Tallassee, Alabama, filed its: "Motion to Substitute Preliminary Injunction," which the Court finds to be a motion under ARCP Rule 59(e) to amend said judgment.

The Presbytery of Sheppards and Lapsley filed a notice of appeal in this case on March 1, 2010. The appeal is from the judgment granting the preliminary injunction dated February 18, 2010. Under ARAP Rule 4(a)(5) a Notice of Appeal filed after the entry of Judgment, but before the disposition of all post-judgment motions shall be held in abeyance until the post-judgment motion is ruled upon. Therefore, the trial court finds that it still has jurisdiction to rule on the post-judgment motion to substitute preliminary injunction.

The Plaintiff's Motion to Substitute Preliminary Injunction is granted, and this Court amends its judgment dated February 18, 2010, to read as set out below.

PRELIMINARY INJUNCTION:

On December 28, 2009, at 1:00 p.m., this Court entered a Temporary Restraining Order in the above noted case. The parties consented to an extension of said Temporary Restraining Order until January 28, 2010. Because of this Court's schedule a hearing could not be held on January 28, 2010, so for good and just cause, the Court further extended the Temporary Restraining Order to February 8, 2010.

On February 8, 2010, a Hearing was held on the Plaintiff's application for a Preliminary Injunction. After considering the submissions by Plaintiff and Defendant on the application, and hearing the arguments of counsel for Plaintiff and Defendant, the Court found that a Preliminary Injunction was due to be issued, and Preliminary Injunction was, in fact, issued on February 18, 2010.

There is now before the Court a Motion by the Plaintiff to issue a Substituted Preliminary Injunction to include the reasons for the issuance of the Preliminary Injunction as required by ARCP Rule 65 (d)(2). The Plaintiff's motion is granted, and the Court issues this Substituted Preliminary Injunction with reasons as required by ARCP Rule 65 (d)(2).

At the Hearing on February 8, 2010, the Court considered the arguments of counsel, the affidavit of Pamela N. Price, and the affidavit of Beverly Dobson. Pamela N. Price is the Clerk of the Session of the First Presbyterian Church of Tallassee, Alabama ("First Presbyterian"), the Plaintiff in this case. Beverly Dodson is the Stated Clerk of the Presbytery of Sheppards and Lapsley (the "Presbytery"), the Defendant in this case.

Based on the evidence presented to the Court at the hearing on February 8, 2010, and the arguments of counsel, the Court makes the following findings:

1. The Plaintiff seeks a Preliminary Injunction to prevent the Defendant from taking control of its real and personal property. The Court finds that there is a reasonable probability that the Defendant will attempt to take control of Plaintiff's real and personal property absent the issuance of a Preliminary Injunction;

2. Under the Defendant's constitution, the Presbytery is empowered to take over the Plaintiff's real and personal property if the Plaintiff is at risk of disaffiliating from the national organization known as Presbyterian Church (U.S.A.), and the Plaintiff has given the Presbytery notice that it does intend to disaffiliate and sever all ties with the Presbytery and with the Presbyterian Church (U.S.A.);

3. The Presbytery has received directions from its national organization, which is the Presbyterian Church (U.S.A.) to physically take control of the real and personal property of local churches who are at risk of disaffiliating from Presbyterian Church (U.S.A.);

4. Should the Presbytery take over the real and personal property of the Plaintiff, the Plaintiff would suffer irreparable injury and damage, in that it would not be able to continue its normal operations, such as worshiping in its Church building, or paying its employees.

5. The Court finds that the Plaintiffs have no adequate remedy at law, in that compensatory damages would not adequately compensate Plaintiff from its right to worship and continue its normal operations;

6. The Court finds that the Plaintiff has a reasonable chance of success in this matter, since none of the deeds to the real property mention the Presbyterian Church (U.S.A.) or the Presbytery, and one deed specifically excludes any national organization. Furthermore, the incorporation papers for the Plaintiff do not mention any national organization and provide that incorporation is for the purpose of creating a body with power to "acquire, hold, own, possess,

enjoy, use, mortgage and dispose of property, real or personal, in an unlimited amount . . .”

Furthermore, there is no trust created on behalf of the Presbyterian Church (U.S.A.) as required by Alabama law.;

7. The Court finds that the Presbytery is not presently exercising control over the real or personal property of the Plaintiff, so any hardship imposed on the Defendant by the issuance of a Preliminary Injunction is outweighed by the benefit to the Plaintiff of being allowed to continue its normal operations pending a final resolution of this case;

8. This Substituted Preliminary Injunction is issued based on the reasons set forth above.

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that this Preliminary Injunction shall be effective against the Defendant, The Presbytery of Sheppards and Lapsley (“The Presbytery”), its officers, agents, employees, and counsel, and any persons in active concert or participation with it, or on its behalf or in its stead enjoining the Presbytery from filing any document in the Probate Court of Tallapoosa County, Alabama, to assert rights of ownership, or rights to determine ownership, to any property titled in the name of the First Presbyterian Church of Tallassee, Alabama (or its predecessors in interest) or to assert a trust on behalf of the Presbytery or any other third party over property titled in the name of First Presbyterian (or its predecessors in interest), the effect of which would be to place a cloud on the title of said property, or otherwise take any action to claim ownership of local Church property, or a right to determine ownership of local Church property, in the possession of, control of, or owned by First Presbyterian (or its predecessors in interest), whether real or personal.

IT IS FURTHER ORDERED that the Defendant, The Presbytery, and all persons in active concert or direct or indirect participation with them, on its behalf or in its stead, are enjoined from taking any action that could affect the property and rights of First Presbyterian whether real or personal, including, but not limited to:

- (1) Seeking to changing the locks of First Presbyterian;
- (2) Initiating any disciplinary action against the minister or members of First Presbyterian;
- (3) Appointing an administrative commission to assert original jurisdiction over First Presbyterian;
- (4) Appointing a special administrative review committee or other committee to inspect, review, interrogate, admonish, or take any other similar actions against or with respect to First Presbyterian, its members, minister, or records; or
- (5) Seeking to interfere with First Presbyterian's control of any bank accounts in the name of First Presbyterian; or
- (6) Otherwise interfering with normal duties and responsibilities of the minister or other employees of First Presbyterian, the governing body of said local Church, or the board of trustees, the governing body of the local Church corporation.

IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until the Plaintiff's Declaratory Judgment action is finally resolved, at which time it shall be determined whether or not a permanent injunction will issue.

IT IS FURTHER ORDERED that First Presbyterian's cash bond in the amount of \$2500.00 posted as a condition to the issuance of the Temporary Restraining Order shall remain in full force and effect, as a condition of the issuance of this Preliminary Injunction.

IT IS FURTHER ORDERED that this Order issuing a Preliminary Injunction be filed in the Clerk's Office and entered of record.

This Preliminary Injunction is substituted for the Preliminary Injunction issued by this Court on February 18, 2010.

DONE this 10th day of March, 2010.



Ray D. Martin
Circuit Judge

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