

3/19/07

1 DAVID W. TYRA, State Bar No. 116218
2 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
3 A Professional Corporation
4 400 Capitol Mall, 27th Floor
5 Sacramento, California 95814
6 Telephone: (916) 321-4500
7 Facsimile: (916) 321-4555

FILED
SUPERIOR COURT OF CALIFORNIA
MAR 19 2007
JOHN MENDES
EXECUTIVE CLERK & CLERK
P. Bohner
By _____ Deputy

8 Attorneys for Plaintiff
9 FIRST PRESBYTERIAN CHURCH OF ROSEVILLE,
10 CALIFORNIA, a California Nonprofit Religious
11 Corporation

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF PLACER

14 FIRST PRESBYTERIAN CHURCH OF
15 ROSEVILLE, CALIFORNIA, a California
16 Nonprofit Religious Corporation,

17 CASE NO. **SCV 20758**

18 **VERIFIED COMPLAINT:**

19 Plaintiff,

- 20 **1. DECLARATORY RELIEF;**
- 21 **2. QUIET TITLE; AND**
- 22 **3. INJUNCTIVE RELIEF**

23 v.

24 PRESBYTERY OF SACRAMENTO, a
25 California Nonprofit Religious
26 Corporation; and Does 1 through 20,
27 inclusive,

28 Defendants.

COMES NOW, Plaintiff FIRST PRESBYTERIAN CHURCH OF ROSEVILLE,
CALIFORNIA, and for causes of action alleges:

I.

GENERAL ALLEGATIONS

A. The Parties.

1. Plaintiff FIRST PRESBYTERIAN CHURCH OF ROSEVILLE,
CALIFORNIA ("FPC") is now, and at all times relevant herein was, a California nonprofit
religious corporation duly organized under the laws of the State of California, with its principal
place of business in the County of Placer, State of California.

1 2. Defendant PRESBYTERY OF SACRAMENTO ("Presbytery") is now, and at
2 all times relevant herein was, a nonprofit religious corporation organized under the laws of the
3 State of California, with its principal place of business in the County of Sacramento, State of
4 California. Presbytery is a local administrative unit of the Presbyterian Church (USA)
5 ("PC(USA)" or "denomination"), which was formed in 1983 and currently has approximately
6 11,000 churches throughout the United States, including the County of Placer, State of California.

7 3. The true names and capacities of Does 1 through 20, inclusive, are unknown
8 to FPC, which therefore sues said Defendants by such fictitious names. FPC is informed and
9 believes and thereon alleges that each of the Defendants designated herein as "DOE" is legally
10 and/or equitably responsible in some manner for the events, transactions, occurrences, and
11 happenings alleged herein. Plaintiff will amend this Complaint to allege the true names and
12 capacities of these fictitiously named Defendants when they are ascertained.

13 4. Plaintiff is informed and believes and thereon alleges that the defendants
14 named herein, and each of them, were at all times herein relevant the principals and/or agents of
15 each of the remaining defendants, and that in doing the things herein alleged, the defendants, and
16 each of them, were acting within the course and scope of said agency.

17 **B. Jurisdiction and Venue.**

18 5. The real property, which forms the subject matter of this action, is located in
19 the City of Roseville, County of Placer, State of California. It consists of two parcels of real
20 property the physical addresses of which are 515 Sunrise Avenue, Roseville, California 95661, on
21 which sits FPC's sanctuary and other church buildings (hereinafter, "church lot"), and 1260
22 Coloma Way, Roseville, California 95661, which consists of an auxiliary church parking lot
23 (hereinafter, "parking lot"). The legal description of the church lot is as follows:

24 Parcel A as shown on Parcel Map filed November 30, 1987 in Book
25 23, Page 115 of Parcel Maps. APN: 014-310-082.

26 The legal description of the parking lot is as follows:

27 That portion of Section 12, Township 10 North, Range 5 East,
28 MDB&M, included within the land shown and designated as
 Parcels B, C, and D filed for record in the office of the County

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Recorder of Placer County, California, on November 3, 1993 in
Book 27 of Parcel Maps, at Page 143, Placer County Records.

(See Title Report attached hereto as Exhibit 1 and incorporated herein by reference.)

6. As more fully set forth in the Title Report which is marked as Exhibit 1 to this complaint and which is incorporated herein by reference, FPC first took title to the church lot on or about June 30, 1961. From that date and continuously through to the present, FPC has held title to the church lot in fee simple, subject to certain exceptions not applicable to this proceeding.

7. As more fully set forth in the Title Report which is marked as Exhibit 1 to this complaint and which is incorporated herein by reference, FPC first took title to the parking lot on or about October 24, 2001. From that date and continuously through to the present, FPC has held title to the parking lot in fee simple, subject to certain exceptions not applicable to this proceeding.

8. All deeds of real property held by FPC for both the church lot and the parking lot (hereinafter, collectively referred to as "the church property") were originally titled in, and at all times have remained titled in, the corporation, "First Presbyterian Church of Roseville, California." At no time have the deeds of real property which comprise the church property mentioned or referred to a national denomination such as PC(USA), nor contain language creating or accepting any trust over said property in favor of a national denomination, or any of its regional administrative units including, but not limited to, defendants, and each of them. Said property has continuously been so titled in the public records of the County of Placer, State of California from the original recording of any and all applicable documents showing title to said real property up to and including the present time. As more fully set forth in the Title Report which is marked as Exhibit 1 to this complaint and which is incorporated herein by reference, none of the defendants named herein has held any legal and/or equitable interest in either the church lot or the parking lot at any time relevant to this action and more specifically, from the date of original conveyance to FPC up to the present.

1 C. Relevant Provisions From Plaintiff's Corporate Governing Documents.

2 9. FPC was originally incorporated on or about April 11, 1910. On or about
3 March 19, 2006, FPC, at a duly noticed congregational meeting at which a quorum was present,
4 adopted Amended and Restated Articles of Incorporation (hereinafter "Articles"), a true and
5 correct copy of which is attached hereto, marked as Exhibit 2, and incorporated herein by
6 reference. As stated in FPC's Articles, FPC's corporate purpose includes, *inter alia*, "[t]o
7 acquire, own, hold, lease, encumber, convey, or otherwise dispose of real and personal property
8 within or without the State of California for religious purposes, *free of any express or implied*
9 *trust interest, and solely and exclusively for, and on behalf of, members of the corporation ...*"
10 (Emphasis added.) In order to fulfill that purpose, the Articles specifically provide that "FPC
11 hereby expressly revokes and disclaims any such express or implied trust interest claimed by any
12 denominational or national body to the corporation's real or personal property or other assets."

13 10. The above-quoted provisions from FPC's Articles are consistent with parallel
14 provisions in its corporate bylaws ("Bylaws"), a true and correct copy of which is attached hereto
15 as Exhibit 3 and is incorporated by reference. FPC's Bylaws provide that, among other powers,
16 FPC's corporate board of directors shall have "sole and exclusive authority to acquire, own, hold,
17 lease, encumber, convey, or otherwise dispose of real and personal property within or without the
18 State of California, free of any express or implied trust interest, and solely for, and on behalf of,
19 members of FPC." FPC's Bylaws further provide:

20 In order to properly effectuate the above-stated corporate duties and
21 powers, the FPC Session [*i.e.*, its board of directors] expressly
22 declares that any purported trust interest in any property, real,
23 personal, or otherwise of FPC is, and hereafter shall be, revoked.
24 Furthermore, and as a limitation on the corporate powers and duties
25 of the FPC Session, any property, real, personal or otherwise,
26 heretofore or hereafter held by or for FPC or titled in the name of FPC or
27 its predecessors, and any gifts, sums of money and/or chattels heretofore
28 or hereafter given, devised, or bequeathed to FPC shall be held for the
use and benefit of FPC and its members only, without a trust in favor of
any other entity.

1 **D. Present Dispute Between the Parties.**

2 11. The constitution of the PC(USA) consists of two parts: Part I is the *Book of*
3 *Confessions* and Part II is the *Book of Order* ("BOO"). (See section G-1.0500 of the BOO
4 defining what constitutes the Constitution of the PC(USA).) The Book of Confessions contains
5 doctrinal statements and statements of church governance (polity). The BOO focuses on church
6 governance and is divided into three main sections: the Form of Government, the Directory of
7 Worship, and the Rules of Discipline.

8 12. Chapter VIII, section G-8.0200 of the BOO provides as follows:

9 All property held by or for a particular church, a presbytery, a
10 synod, the General Assembly, or the Presbyterian Church (USA),
11 whether legal title is lodged in a corporation, a trustee or trustees, or
12 an unincorporated association, and whether the property is used in
13 programs of a particular church or of a more inclusive governing
14 body or retained for the production of income, is held in trust
15 nevertheless for the use and benefit of the Presbyterian Church
16 (USA).

17 Plaintiff is informed and believes and thereon alleges that defendants, and each of them, rely on
18 this clause for the proposition that they have a legally enforceable trust interest in the church
19 property.

20 13. Yet, the PC(USA) Constitution is inherently ambiguous and contradictory
21 with respect to its support of defendants' assertion of a legally enforceable trust interest in the
22 church property. For instance, section 6.148 of the Westminster Confession, which forms a part
23 of the Book of Confessions and is, therefore, a part of the Constitution of the PC(USA) states
24 "[n]or doth their communion one with another as saints, take away or infringe the title or property
25 which each man hath in his goods and possessions." Thus, plaintiff alleges that its association
26 with defendants, and each of them, does not, and historically has not, infringed on plaintiff's
27 rights to exclusive right, title, and interest to the church property. This is made even more
28 manifest by the fact that at no time have defendants, or any of them, contributed in any way
financially to the purchase, improvement, or maintenance of the church property, but rather such
purchase, improvement, and maintenance of the church property has at all times herein relevant
been financed by the contributions of members of FPC. Plaintiff alleges that the inherent

1 contradictions and ambiguities in the PC(USA) Constitution render any claim by defendants, or
2 any of them, to any express or implied trust interest in the church property unenforceable,
3 particularly in light of the clear and unequivocal action of plaintiff to revoke any such express or
4 implied trust interest to the extent such interest may exist.

5 14. Pursuant to the powers and authority expressly granted it by California law, by
6 the constitution of the PC(USA), and by its own governing documents, FPC, at its regularly
7 scheduled corporate meeting of February 27, 2007, unanimously passed a corporate resolution
8 expressly revoking any and all trust interest in its property, including any trust interest that
9 defendants, and any of them, might attempt to assert based upon language found in Chapter VIII,
10 section G-8.0200 of the BOO. A true and correct copy of this corporate resolution is attached
11 hereto, marked as Exhibit 4, and incorporated herein by reference.

12 15. It was necessary for FPC to take this action as a result of unprecedented and
13 improper actions taken and threatened by defendants, and each of them, to confiscate the property
14 of local churches such as FPC.

15 16. These actions and threats by defendants, and each of them, have been
16 manifested in, *inter alia*, two legal strategy papers authored and published by legal counsel for the
17 PC(USA) instructing subordinate bodies such as defendants in this action regarding steps to be
18 taken to improperly confiscate the property of local churches. True and correct copies of these
19 legal strategy papers are attached hereto, marked as Exhibits 5 and 6 respectively, and
20 incorporated herein by reference. Among other things, these legal strategy papers recommend:

21 a. That presbyteries send a letter to all banks and other
22 institutions that hold accounts for a particular church to instruct
23 these financial institutions that no assets belonging to an individual
church be released pending further notice from the presbytery.

24 b. That presbyteries file suits against individual churches to
25 confiscate church property and name its members as defendants in
the lawsuit, referring to them as "schismatics."

26 c. That the presbytery determine the religious background of
27 the judge who will hear the case because the judge's religious
28 background will likely influence the way the presbytery's case is
viewed. Specifically, this recommendation goes on to state that
judge's from an episcopal system, such as the Roman Catholic

1 Church, are preferable and that when a case is brought before such
2 a judge "it is very helpful to say, 'The presbytery is the bishop.'"

3 d. That presbyteries, synods, and even the General Assembly
4 appoint administrative commissions to take over the governance
5 and property of local churches even to the point of dissolving
6 relations between the local church and its pastor(s).

7 e. Finally, the legal strategy papers instruct the presbytery to
8 secure the corporate name of the individual church to ensure that
9 present endowments and future estates will be in the name of the
10 original church. "Keeping the name and corporation with the
11 presbytery should ensure that these funds remain secure."

12 17. In addition to the recommendations contained in the legal strategy papers
13 (Exhibits 5 and 6), the PC(USA) has issued Advisory Opinion No. 19 in which it threatens to take
14 over presbyteries unless presbyteries take the draconian measures advocated in the legal strategy
15 papers to control local church property. A true and correct copy of Advisory Opinion No. 19 is
16 attached hereto as Exhibit 7 and incorporated herein by reference.

17 18. Most recently, Presbytery proposed an amendment to its own bylaws which
18 would shift the authority to appoint administrative commissions empowered, among other things,
19 to take action against local church property such as the church property at issue here away from
20 the Presbytery's full assembly to four unelected and/or unrepresentative agents of the Presbytery.
21 Plaintiff is informed and believes and thereon alleges that this bylaw change was proposed at
22 Presbytery's February 24, 2007 meeting in order to give Presbytery greater ability to take adverse
23 action quickly against local church property such as the church property at issue here.

24 II.

25 FIRST CAUSE OF ACTION

26 (DECLARATORY RELIEF)

27 19. FPC incorporates by reference as though fully set forth herein, each and every
28 preceding paragraph in this Complaint.

29 20. An actual controversy has arisen and now exists between FPC and defendants,
30 and each of them, concerning their respective rights and duties to FPC's real property in that FPC
31 contends it owns that property free and clear of any express or implied trust interest claimed by

1 defendants, and each of them, while defendants contend they hold a trust interest in FPC's real
2 property as a result of the property trust clause in the BOO.

3 21. FPC seeks a judicial determination of whether defendants have an enforceable
4 trust interest in FPC's real property in order that FPC may ascertain its rights to encumber, sell,
5 lease, or otherwise dispose of this real property and/or acquire additional real property in its name
6 free and clear of the efforts of defendants, and each of them, to impose a trust interest on such
7 property.

8 22. A judicial determination of the rights and responsibilities of the parties over
9 the real property in question is necessary and appropriate at this time in that the uncertainty over
10 the issue of whether defendants, and each of them, have an enforceable trust interest in FPC's
11 property is thwarting FPC's efforts to engage in a capital campaign to obtain funding for church
12 expansion and/or to acquire additional real property for that same purpose.

13 **III.**

14 **SECOND CAUSE OF ACTION**

15 **(QUIET TITLE)**

16 23. FPC incorporates by reference, as though fully set forth herein, each and every
17 preceding paragraph alleged in this Complaint.

18 24. FPC is the sole owner in fee simple of the real property hereinabove
19 described.

20 25. The basis of FPC's title is a grant deed granting title to FPC in fee simple that
21 was recorded in the official records of the County of Placer on June 30, 1961 in Book 811, pages
22 556 and 557 as to the church lot and grant deed granting title to FPC in fee simple recorded
23 October 24, 2001 as to the parking lot.

24 26. FPC is informed and believes and thereon alleges that defendants, and each of
25 them, claim an interest in the above-described real property adverse to FPC in that defendants,
26 and each of them, claim a trust interest in that real property by operation of the property trust
27 clause in the BOO.

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1 27. FPC seeks in this action to quiet title against the trust claims of defendants,
2 and each of them. The claims of defendants, and each of them, are without merit and defendants
3 have no right, title, or interest whatsoever in the above-described real property or any part thereof.
4 FPC seeks to quiet title in the aforementioned real property solely in its name, free and clear of
5 any claimed trust interest by defendants, and each of them, and seeks to so quiet title as of the
6 date of the commencement of this action.

7 IV.

8 **THIRD CAUSE OF ACTION**

9 **(INJUNCTIVE RELIEF)**

10 28. FPC incorporates by reference, as though fully set forth herein, each and every
11 preceding paragraph alleged in this Complaint.

12 29. At all times herein relevant, defendants, and each of them, have wrongfully
13 and unlawfully threatened: (1) FPC's quiet enjoyment and use of its real property; (2) FPC's
14 governance of its own corporate affairs; and (3) the livelihood of FPC officers, directors,
15 employees, agents, and affiliated persons including, but not limited to, FPC's pastors, through the
16 actions advocated in defendants' legal strategy papers, Advisory Opinion No. 19, and other
17 official and unofficial statements and publications attributable to defendants, and each of them.

18 30. Defendants' threatened conduct, unless and until enjoined and restrained by
19 this Court will cause great and irreparable injury to FPC in that (1) it will be deprived of the quiet
20 use and enjoyment of its real property; (2) its governance of its own corporate affairs will be
21 disrupted; (3) the livelihood of its officers, directors, employees, agents, and affiliated persons
22 including, but not limited to, its pastors will be harmed; (4) critical operations will be disrupted
23 harming members of the public including, but not limited to, a pre-school operation attended by
24 over 140 children, a breakfast program that feeds 50-75 elementary school children on a daily
25 basis, an after-school program that provides a safe after-school environment for youth, and a
26 number of other activities that serve the community surrounding FPC.

27 31. Not only will defendants' threatened conduct cause great and irreparable harm
28 to FPC unless and until enjoined, but that same threatened conduct will cause great and

1 irreparable harm to the community as well. FPC operates a number of community-based
2 activities on church property which are of great benefit to the surrounding community. Some of
3 these activities include, but are not limited to, the following:

4 a. **FPC Preschool** – FPC operates a preschool program that services over 140
5 preschool age children in the Roseville and South Placer County communities.

6 b. **Breakfast Program** – Each morning, Monday through Friday, FPC
7 provides a hot breakfast to between 50 and 75 elementary school children and their
8 families who would otherwise be unable to afford such a meal. This program is
9 conducted in cooperation with the neighboring Roseville City elementary school,
10 Sierra Gardens.

11 c. **Crosswalk** – Every Tuesday afternoon, FPC provides a free after-school
12 recreational program for neighborhood elementary school children to provide them
13 with a safe environment in which to play.

14 d. **Deacon's Food Closet** – Several times each year, FPC delivers food
15 baskets to lower income families in the surrounding communities, particularly
16 during holiday times, so that these families may enjoy a traditional holiday meal.

17 e. **"Trunk-or-Treat"** – Each Halloween, FPC puts on a Halloween carnival
18 known as "Trunk-or-Treat." This program is specifically designed to reach out to
19 families in the community who do not regularly attend FPC in order to provide
20 them with a free, safe and fun environment in which to enjoy Halloween
21 festivities. The program reaches over 1,000 persons annually.

22 f. **Katrina Relief** – nearly every month since in or about November 2005,
23 FPC has sent teams of volunteers to perform construction, clean-up, and other
24 needed work for families devastated by Hurricane Katrina in the New Orleans
25 area.

26 g. In addition to these specific programs, FPC offers a number of other
27 programs including divorce care, divorce care for children, grief counseling, and
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1 outreach to a number of community based recovery groups such as Sacramento
2 Valley Teen Challenge.

3 If an injunction does not issue restraining and enjoining defendants, and each of them, from
4 disrupting plaintiff's customary and normal operations, not only will plaintiff be irreparably
5 harmed, but members of the greater Roseville/South Placer community will be irreparably
6 harmed as a result of the loss of the above-described programs.

7 32. FPC has no adequate remedy at law for the injuries that will result from the
8 threatened conduct of defendants, and each of them, in that it will be impossible for FPC to
9 calculate the precise amount of damages it will suffer if defendants' conduct is not enjoined and
10 restrained.

11 WHEREFORE, plaintiff First Presbyterian Church of Roseville, California prays
12 for judgment against defendants, and each of them, as follows:

13 1. For a judgment declaring that defendants, and each of them, have no
14 enforceable trust interest, express or implied, in FPC's real property and that FPC owns and holds
15 that real property free and clear of any trust interest so claimed by defendants, and any of them;

16 2. For a judgment quieting title in the aforementioned real property finding
17 that FPC is the owner in fee simple of that property and that defendants, and each of them, have
18 no enforceable trust interest, express or implied, in that real property;

19 3. For the issuance of a temporary restraining order, preliminary and
20 permanent injunction enjoining defendants, and each of them, along with defendants' officers,
21 directors, employees, agents, attorneys, and any and all persons acting in concert with any of
22 them, from any and all of the following acts:

23 a. Trespassing on FPC's real property;

24 b. Filing any documents in the official records of Placer County,
25 California to assert any trust or ownership interest in any real property titled in the name of First
26 Presbyterian Church of Roseville, California the effect of which would be to place a cloud on title
27 to that real property ;

1 c. Taking any action that could adversely affect FPC's rights to the
2 quiet use and enjoyment of the aforementioned real property including, but not limited to, (1)
3 seeking to change the locks of the church; (2) initiating any disciplinary action against the pastors
4 or members of FPC with respect to any issue raised in, prompted by, or related to this action; (3)
5 appointing or initiating processes leading to the appointment of an administrative commission to
6 assert original jurisdiction over FPC with respect to matters related to this action; (4) contacting
7 any financial institution with which FPC does business in order to interfere with, or adversely
8 impact, FPC's financial assets; or (5) otherwise interfering with the normal duties,
9 responsibilities, and operations of FPC, its pastors, and other employees, as well as the governing
10 officers and directors of FPC.

11 4. For costs of suit incurred in this action; and

12 5. For such other and further relief as the Court deems just and proper.

13
14 Dated: March 5, 2007

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

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16
17 By: 

18 David W. Tyra
19 Attorneys for Plaintiff
20 FIRST PRESBYTERIAN CHURCH OF
21 ROSEVILLE, CALIFORNIA, a California Nonprofit
22 Religious Corporation
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VERIFICATION

I, the undersigned, certify and declare that I have read the foregoing complaint, and know its contents. The statement following the box checked is applicable.

I am a party to this action. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I am [] an officer [] a partner [X] President of First Presbyterian Church of Roseville, California, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document described above are true.

I am the attorney, or one of the attorneys for _____ parties to this action. Such parties are absent from the county where I or such attorneys have their offices and is unable to verify the document described above. For that reason, I am making this verification for and on behalf of that parties. I am informed and believe on that ground allege that the matters stated in said document are true.

Executed on March 5, 2007, at Roseville, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Robert Watt
Robert Watt