

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2018 NOV 17 10:08 AM GVS-4943
PP 2-27

BUNCOMBE COUNTY, C.S.C.

BY _____

THE PRESBYTERY OF WESTERN NORTH CAROLINA
INC. and THE MONTREAT PRESBYTERIAN CHURCH
(Presbyterian Church U.S.A.), an unincorporated religious
congregation organized and existing under NCGS Chapter 61,
by and through its Trustees, R. James Henderson, Henry W.
Neale and Arline J. Taylor, as Trustees of the Montreat
Presbyterian Church (PCUSA),

Plaintiffs,

vs.

MOTIONS OF DEFENDANTS
(Motions to Dismiss and Motion to Strike)

MONTREAT PRESBYTERIAN CHURCH, E.P.C.
and E.A. ANDREWS, JR., JESSIE G. BARKER and
NATALIE W. SCHERMERHORN, individually, and as
Trustees of the Montreat Presbyterian Church,

Defendants.

1. NOW COME the Defendants, pursuant to Rule 12 (b)(1) of the North Carolina Rules of Civil Procedure, and move to dismiss the Complaint on the grounds that the Court lacks jurisdiction over the subject matter in that this Court has no subject matter jurisdiction over ecclesiastical matters which is the heart of the matters raised in the Complaint, rather than neutral principles of law which govern matters of real property, personal property and trust law. Plaintiffs are requesting that this Court make decisions relating to religious, ecclesiastical and spiritual matters, and this Court should decline to become involved in such religious, ecclesiastical and spiritual matters. The Complaint should be dismissed.

2. NOW COME the Defendants, pursuant to Rule 12 (b)(6) of the North Carolina Rules of Civil Procedure, and move to dismiss the Complaint on the grounds that the Complaint fails to state a claim upon which relief can be granted in that an attempt has been made to create a controversy concerning religious doctrine, and an attempt has been made to request relief governed by religious doctrine which in fact should be decided by neutral principles of law applicable to real property, personal property and trust law. Further, the Plaintiffs are attempting to seek relief from this Court as to matters of real property, personal property and trusts based upon religious organizational documents, rather than upon neutral principles of law applicable to real property, personal property and trust law. Plaintiffs are requesting that this Court make decisions relating to religious, ecclesiastical and spiritual matters, and this Court should decline to become involved in such religious, ecclesiastical and spiritual matters. The Complaint should be dismissed.

3. NOW COME the Defendants, pursuant to Rule 12 (f) of the North Carolina Rules of Civil Procedure, for an order striking the following paragraphs and portions of the following paragraphs from the Complaint on the grounds that said paragraphs and portions of paragraphs contain irrelevant, immaterial, impertinent or scandalous matter as follows:

a. Strike all paragraphs and portions of paragraphs or references in the Complaint to the Montreat Presbyterian Church d/b/a Montreat Presbyterian Church, E.P.C. as "schismatic," "the schismatic congregation," "schismatic Montreat Church," or any reference to schismatic as it relates to the said Defendant, which said allegations should be stricken as irrelevant, immaterial, impertinent or scandalous.

b. Strike the Fifth Cause of Action: Actual or Constructive Fraud and Constructive Trust/Unjust Enrichment consisting of paragraphs 65 through 71 which contain irrelevant, immaterial, impertinent or scandalous matter as to a church taking appropriate legal action and accepting appropriate legal advice and as to its attorney who has provided appropriate legal services and legal advice.

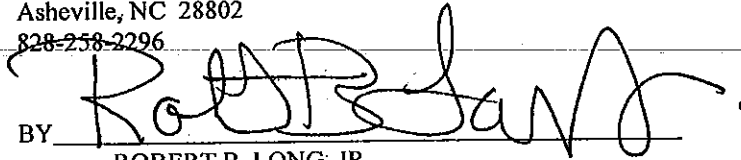
c. Strike all references to the Plaintiff Church as being the "true church" which said allegations are irrelevant, immaterial, or impertinent to the property issues involved in this matter.

d. Strike all paragraphs and portions of paragraphs with allegations of ecclesiastical and spiritual matters and ecclesiastical governance which are irrelevant, immaterial, or impertinent.

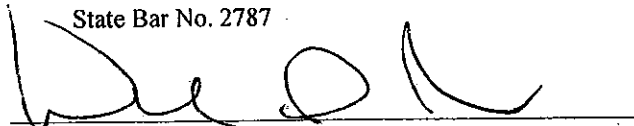
This, the 17th day of November, 2008.

LONG, PARKER, WARREN & ANDERSON, P.A.
P. O. Box 7216
Asheville, NC 28802
828-258-2296

BY



ROBERT B. LONG, JR.
State Bar No. 2787



WILLIAM A. PARKER
State Bar No. 6322

STATE OF NORTH CAROLINA

CERTIFICATE OF SERVICE


COUNTY OF BUNCOMBE

This is to certify that the undersigned has this day served counsel for the opposing party in the foregoing matter with a copy of the foregoing Motions of Defendant by depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon, or by delivering a copy of same to the office of said counsel, at the following address:

John W. Mason, Esq.
Roberts & Stevens, P.A.
One West Pack Square
P. O. Box 7647
Asheville, NC 28802

C. Frank Goldsmith, Esq.
Goldsmith, Goldsmith and Dews, P.A.
57 South Main Street
P. O. Box 1107
Marion, NC 28752

This, the 17th day of November, 2008.


WILLIAM A. PARKER

STATE OF NORTH CAROLINA

FILED

COUNTY OF BUNCOMBE

2008 DEC -2 PM 3:49

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 4943

THE PRESBYTERY OF WESTERN NORTH CAROLINA
INC. and THE MONTREAT PRESBYTERIAN CHURCH
(Presbyterian Church U.S.A.), an unincorporated religious
congregation organized and existing under NCCS Chapter 61,
by and through its Trustees, R. James Henderson, Henry W.
Neale and Arline J. Taylor, as Trustees of the Montreat
Presbyterian Church (PCUSA),

Plaintiffs,

vs.

RE-NOTICE OF HEARING

MONTREAT PRESBYTERIAN CHURCH, E.P.C.
and E.A. ANDREWS, JR., JESSIE G. BARKER and
NATALIE W. SCHERMERHORN, individually, and as
Trustees of the Montreat Presbyterian Church,

Defendants.

TO: John W. Mason, Esq.
Roberts & Stevens, P.A.
One West Pack Square
P. O. Box 7647
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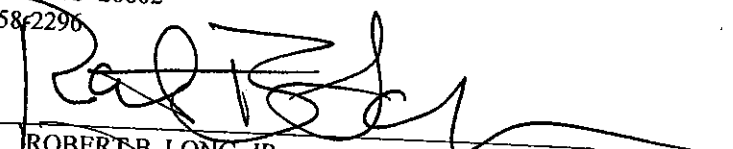
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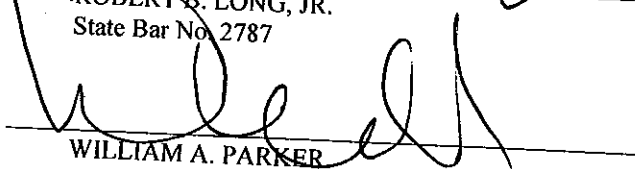
PLEASE TAKE NOTICE that the undersigned will bring on for hearing Motions of Defendant pursuant
to Rule 12(b)(1), Rule 12(b)(6) and Rule 12(f) of the North Carolina Rules of Civil Procedure, at the Buncombe
County Courthouse, in Asheville, North Carolina, on the 20th day of January, 2009 at 10:00 a.m., or as soon
thereafter as the Court may hear the same.

This, the 1st day of December, 2008.

LONG, PARKER, WARREN & ANDERSON, P.A.
P. O. Box 7216
Asheville, NC 28802
828-258-2296

BY


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