

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF GENESEE

In the Matter of the Application of FIRST PRESBYTERIAN
CHURCH OF OAKFIELD,

Plaintiff,

- against -

PRESBYTERY OF GENESEE VALLEY OF THE
PRESBYTERIAN CHURCH (USA) ("PC (USA)"),

Defendant.

REPLY AFFIDAVIT

Index No. 55522

**Assigned Judge:
Hon. Robert C. Noonan**

STATE OF NEW YORK)
)SS.:
COUNTY OF ORANGE)

DONALD G. NICHOL, being duly sworn, deposes and says:

1. I am an attorney licensed in New York, a member of Jacobowitz and Gubits, LLP, the attorneys for the First Presbyterian Church of Oakfield, New York. As such, I am fully familiar with the facts and circumstances in this proceeding.
2. I am a presbyterian elder and qualified by my positions and training to give evidence regarding presbyterian polity.
3. This affidavit is given in reply on Oakfield Church's motion for summary judgment in this action to quiet title.
4. Oakfield Church seeks a declaration of its title to its property pursuant to the Neutral Principles of Law Doctrine regarding church property disputes.
5. Several matters concerning the constitution of the Presbyterian Church (USA) are in dispute. It is, therefore, prohibited for the court to determine such matters without violating the United States Constitution.
6. Preliminarily, Oakfield Church contends that it is presbyterian and that prior to its disaffiliation with the PC (USA) it was always affiliated with what it believed to be presbyterian denominations. The Presbytery of Genesee Valley ("PGV"), contrary to what the denominational name would imply, now contends that the PC (USA) is a hierarchical denomination.
7. Annexed hereto as Exhibit A is an excerpt from *Introducing Christian Doctrine*, by Millard J. Erickson, *Baker*, 1992. *Introducing Christian Doctrine* is a textbook ordinarily used at bible institutes and seminaries for introductory classes.

8. Three general classifications of church government are stated in this text: hierarchical or episcopal, presbyterian, and congregational.
9. In hierarchical churches authority resides in a hierarch - the bishop or the episcopate. Hierarchical churches include the Roman Catholic Church, the Episcopal Church and the Methodist Church.
10. Presbyterian churches are different. To quote the text:

In the presbyterian system, the authority of Christ is understood as dispensed to individual believers and delegated by them to the elders whom they select and who thereafter represent them.
11. All elders are considered to have equal rank in function.
12. The different levels of governing assemblies do not rule over those below but represent a gathering of the consensus and wisdom of the church.
13. Delegated power may, of course, be withdrawn if not exercised in accordance with the terms of its delegation.
14. Presbyterian churches are connectional in nature and held together by shared beliefs. The regulative principle of presbyterian churches is that the Bible is the only rule for faith and practice.
15. This regulative principle is set forth in the PC USA Book of Order at G-1.0307 which states:

(7) That all Church power, whether exercised by the body in general or in the way of representation by delegated authority, is only ministerial and declarative;^c that is to say, that the Holy Scriptures are the only rule of faith and manners; that no Church governing body ought to pretend to make law to bind the conscience in virtue of their own authority; and that all their decisions should be founded upon the revealed will of God. Now though it will easily be admitted that all synods and councils may err, through the frailty inseparable from humanity, yet there is much greater danger from the usurped claim of making laws than from the right of judging upon laws already made, and common to all who profess the gospel, although this right, as necessity requires in the present state, be lodged with fallible men.
16. Accordingly, it would abridge the constitutional rights of the members of Oakfield Church to practice their religion as presbyterians by treating them as if they were subservient to a hierarchical church in refusing to allow them to exercise their religious duty to disaffiliate from PGV and PC(USA).
17. It should be noted that in the affidavit of Melvin Oliver, Esq., and in its memorandum of law,

PGV has alleged that Oakfield Church is a constituent member of the PC(USA). This is incorrect. Annexed hereto as Exhibit "B" is an excerpt from the Articles of Incorporation of the PC(USA). Article VII specifically states that the corporation shall have no members.

18. PGV has made a point of the fact that Religious Corporations Law provides that the trustees of a local church hold its property in accordance with the constitution of the denomination of which it is associated.
19. Oakfield Church has and will comply with the denominational constitution of any denomination with which it associates. Indeed, it has adopted a similar provision into its Amended Certificate of Incorporation.
20. At all times, prior to its disaffiliation with the PC(USA), Oakfield Church was in full compliance with the denominational constitutions of the several denominations with which it was affiliated.
21. PGV, however, would have the court interpret this provision as making Oakfield Church subservient to a hierarchical entity and requiring it to comply with provisions which would divest Oakfield Church of its vested rights and property in violation of the very constitution with which Oakfield Church is in full compliance.
22. As PGV would interpret this provision, it would be unconstitutional.
23. Interpreting this provision as in PGV would have it interpreted is also contrary to the holding of *FPC Schenectady v. UPCUSA*, 62 NY2d 110 at 120, wherein the Court of Appeals has declared Oakfield Church's right to withdraw from the PC(USA) with its property provided it has not previously ceded that property to the denomination.
24. Oakfield Church has determined to leave the PC USA for the simple reason that the PC(USA) no longer is in compliance with its constitution. Annexed hereto as Exhibit C is an article from the Layman Online regarding the actions of the 217th General Assembly which adopted a report permitted wholesale disregard of substantive and important PC(USA) constitutional provisions found not only in Scripture and the Book of Confessions, but also in the Book of Order.
25. Oakfield Church, therefore, has chosen to do its constitutional duty and disaffiliate with the PC(USA).
26. Hundreds of churches and several presbyteries are considering withdrawing from the PC(USA) as a result of these and other actions by the denomination contrary to its own constitution. The denomination apparently has been plotting against those churches who would feel compelled to

disaffiliate as a result of denomination's constitutional breaches. Two purportedly "privileged and confidential" documents by denominational lawyers calling on presbyteries to use draconian measures when claiming local church property have been selectively disseminated to organizational functionaries at presbytery levels.

27. These documents direct unwarranted disciplinary proceedings, unauthorized administrative commissions and hardball litigation tactics, including naming local church officers, against those churches exercising their constitutional freedom of conscience in seeking to withdraw from the denomination with their property in response to the denominations' constitutional breaches.
28. While ordinarily, a church could seek dismissal from the denomination, it is clear that the dismissal process has already been "fixed." Presbyteries are being pressured to attempt to enforce the trust provisions even where unlawful under state law.
29. Several presbyteries which rules that the trust provisions were inapplicable and the churches were free to leave with their property have come under discipline as reported in the Layman. A report on the *Louisville* papers is annexed as Exhibit D. The complete text of the *Louisville* papers is online at www.layman.org.
30. The denominations attempt at constitutional shenanigans makes it extremely clear that courts must avoid being drawn into these religious disputes. A sub-species of the Neutral Principles of Law, known as Formal Title, looks only at the deeds, charters and state laws concerning the holding of church property and thus avoid entirely religious entanglements.

WHEREFORE, for the reasons stated in Oakfield Church's papers, the Court should grant Oakfield Church's motion for summary judgment and declare it to be the owner of its property free of any encumbrances from the denomination, together with such other and further relief as the court deems just and/or equitable.

Dated: Walden, New York
August 27, 2007

DONALD G. NICHOL

Sworn to before me this
____ day of August, 2007

Notary Public of the State of New York