

Point I

Oakfield Church's Quiet Title Action May Be Resolved

Under the Neutral Principles of Law Doctrine

The First Presbyterian Church of Oakfield ("Oakfield Church") has brought an action pursuant to the Real Property Actions and Proceedings Law to quiet its title to its property. The action meets the requirements of Article 15 of the RPAPL for an action to compel the determination of a claim to real property and requests relief declaring Oakfield Church's property is held free from any trust interest and is held exclusively by and for Oakfield Church and further that the defendant Presbytery of Genesee Valley ("PGV") of the Presbyterian Church (USA) ("PC(USA)") have no legal interest in Oakfield Church's property. See Verified Complaint, p.11.

Oakfield Church has requested no relief determining any theological or religious dispute. To the contrary, Oakfield Church has articulated particular issues of theological dispute for the express purpose of assisting the Court in avoiding unwarranted and unconstitutional intrusion in the religious dispute.

PGV, on the other hand, having vigorously argued that the Court may not decide a religious dispute, then requests that the Court decide the religious dispute in its favor by declaring that its religious claim to a trust interest overrules the neutral legal principles supporting Oakfield Church's title to the property it bought and paid for and which property it owns, maintains and possesses.

There is no religious dispute concerning the Deeds by which Oakfield Church holds title to its property. The Deeds proclaim Oakfield Church's title free and clear of any competing

interests. No trust interests, reverters or other reservations are set forth. The Deeds present a nearly irrebuttable presumption that Oakfield Church has clear title to its property. Great mischief would be unleashed on the landscape if property owners cannot rely on their Deeds to show ownership of their property. Deeds are recorded as public records for the very purpose of establishing clear title to property. Imagine the turmoil and uncertainty which would occur if anyone outside the chain of title might declare a trust interest in one's property merely by their unilateral declaration, unrecorded in the Libers of Deeds. For this reason, the law of New York finds deeds to be presumptive of title and requires anyone claiming a trust to prove the existence of such a trust "beyond a reasonable doubt." *Beaver v Beaver*, 117 NY 421.

An examination of the property deeds is the primary principle in the Neutral Principles of Law Doctrine for determining church property disputes. In *Jones v Wolf*, 443 US 595 at 603, the majority notes in footnote 3:

"Indeed, even in *Watson v Jones*, a common-law decision heavily relied upon by the dissent [and the defendant herein], Mr. Justice Miller, in speaking for the Court, stated that, regardless of the form of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will, or other instrument of church property ownership. *13 Wall*, at 722-723".

The Court here has the same "obvious duty" to enforce the express terms of the deeds, particularly when the PGV's trust claim is unsupported by any instrument of property ownership in cognizable form in New York.

There is no religious dispute concerning Oakfield Church's Certificates of Incorporation. The Certificates are documents authorized by secular law and recorded in the County Clerk's office. The Certificates place the control of Oakfield Church's property in the hands of its

elected trustees who hold the property in trust for the members of the congregation. Nothing in the Certificates indicates that the elected trustees are to hold the property in trust for any other denominational or religious body. The Amended Certificate restates the legal requirements for any trust claims in congregational property in New York. The Congregation must approve the granting of the trust. There must be a writing subscribed by a Trustee declaring the trust and the court must approve the grant of the trust pursuant to §12 of the Religious Corporations Law. The Certificates show that Oakfield Church's property is held for Oakfield Church alone. There were no express or implied claims to a denominational trust in 1906 at the time of the original incorporation. The reincorporation pursuant to Article 10 of the RCL proclaims Oakfield Church to be an independent presbyterian church free of any trust claims.¹

The Amended Certificate of Incorporation, filed in the Genesee County Clerk's office, clearly shows the intent of the donors of the property of Oakfield Church. The congregation of Oakfield Church donated the property for the benefit of their local church, a church which reflects the same traditional Biblical Reformed faith held by the founders and members of Oakfield Church for nearly 175 years. Oakfield Church has kept the faith.

There is no religious dispute concerning the requirements of the General Obligations Law ("GOL") concerning the formation of a property trust. GOL §5-703 requires that the owner of the property create the trust by a written instrument subscribed by the owner. Here, the non-

¹PGV claims, without support, that Oakfield Church cannot reincorporate pursuant to Article 10 of the Religious Corporations Law. Since the Court of Appeals has held that a local church may withdraw even from a hierarchical denomination and claim title to its own property, provided that it has not previously ceded the property to the denominational church (*FPC Schenectady v UPCUSA*, 62 NY2d 110 at 120), it is clear that the local church may reincorporate under a different article of the RCL than the article of the RCL related to the denominational church from which it has withdrawn. Oakfield Church's reincorporation pursuant to Article 10 provides documentary proof that Oakfield Church has disaffiliated from the Presbyterian Church (USA).

owner beneficiary denomination claims to create the trust by its unilateral declaration. It is “hornbook law” that the beneficiary cannot create the trust. It is the intent and action of the owner that is determinative. *See Presbytery of Hudson River v FPC Ridgebury*, 13 Misc 3d 707.

It is undisputed that Oakfield Church’s property was acquired, improved, and maintained by Oakfield Church. PGV contributed nothing towards the acquisition, improvement or maintenance of Oakfield Church’s property. Therefore, it is clear that Oakfield Church’s congregation, acting through its elected trustees, is the owner of the property. The owner is the only one having the legal capacity to create a trust interest in its property. Oakfield Church’s trustees have never been authorized by the congregation to execute a written trust instrument and, in fact, have never executed any written trust instrument on behalf of Oakfield Church. Therefore, it is clear that no trust in Oakfield Church’s property has been “created, assigned, surrendered or declared” in the legally cognizable form required by New York law.

There is no religious dispute concerning the requirements of Religious Corporations Law §12 which requires court approval for Oakfield Church to transfer its property rights to PGV. It is beyond dispute that prior to the 1980's there was no basis to claim a trust in favor of the presbytery. The highest courts of the two states that considered the issue found that there was no implied denominational trust. *See FPC Schenectady v UPCUSA*, 62 NY2d 110, at 125 and *Presbytery of Beaver-Butler v Middlesex Presbyterian Church*, 507 Pa 255. In 1929, an attempt to amend the denominational constitution to include a trust provision was defeated. This defeat of an attempt to introduce a trust provision is strong evidence that there was no denominational trust prior to 1929 and certain proof that there was no denominational trust after 1929. Thus for 150 years Oakfield Church owned its property free and clear of even the claim of such a

denominational trust. Oakfield Church owned its own property which is held in trust for the congregation. The congregation acquired, improved and maintained the property without any financial contribution of the presbytery or denomination. Oakfield Church held its property itself in the same manner as all presbyterian churches since the original 1560 and 1578 Books of Discipline. If the ownership of the Oakfield Church property has now been conveyed to PGV, the courts were required to have approved the conveyance pursuant to RCL §12.

A conveyance of real property owned by a religious corporation without leave of the court is invalid. A transfer of a local church's property must be found by the court to be in the best interest of its congregation. *Church of God v Fourth Church*, 54 NY2d. 742. Indeed, a transfer not approved by the trustees and executed without authorization may be nullified even if approved by the court. *St. Andrey Church v Bosakov*, NYLJ, Jan 19, 1999, p28, col 6; aff'd 272 AD2d 55. In this case, PGV can not show that the property was conveyed to the Presbytery by action of Oakfield Church's trustees, by an authorized signature, or with the approval of the court. In fact, in this case, the RCL is serving its purpose to protect the members of Oakfield Church's congregation (who voted 72-2 (>97%)² to request the Court to quiet the Church's title to its property) from the attempt of the denomination to arrogate Oakfield Church's property to itself and away from the congregational beneficiaries. The unmistakable intent of the Legislature when it enacted the Religious Corporations Law is stated in *Morris v Scribner*, 69 NY2d 418, 423:

“The primary purpose of the Religious Corporations Law is to

²It cannot be determined whether the two voting not to bring a quiet title action were merely indicating their belief that no Christian should go to court against another. Oakfield Church exercised the power under RPAPL §1515(2) to provide that it was bringing no personal claim against PGV.

provide an orderly method for the administration of the property and temporalities dedicated to the use of religious groups, and to preserve them from exploitation by those who might divert them from the true beneficiaries of the corporate trust (citing authority)”

In order to approve a conveyance, the court must find that the transfer will promote the interests of the donor corporation. Without such a benefit to the donor corporation, the court will annul the transfer. See *Congregation Yetev Lev of D'Satmar Kiryas Joel v Congregation Yetev Lev*, 31 AD3d 480 (2006)

The only issues regarding which there is a religious dispute are the issues relating to the denominational constitution. Oakfield Church, while it was affiliated with the denomination, was in full compliance with the PC(USA) constitution. Indeed, compliance with the denominational constitution required Oakfield Church to leave the PC(USA), which no longer complies with its own constitution.³ Even now Oakfield Church has essentially adopted the constitutional standards for its governance while considering whether to affiliate with another presbyterian denomination. PGV, on the other hand, wants the Court to resolve the religious dispute in its favor by selectively applying disputed provisions of the denominational constitution while ignoring or dismissing other parts of the constitution that the Book of Order itself says “nor may they be ignored or dismissed.” G.2.0200. The PGV wants the Court not to consider the denominational constitutional rule that Book of Order and the Book of Confessions say is the “only rule.” G1.0307, 6.1004 - 6.1010.

³Several Scriptural passages require believers to separate themselves from those who do not continue their adherence to Biblical standards. While the “trust provisions” violate the denominational constitution, even including the Book of Order itself (G1.0307, G2.0200), the 217th General Assembly adopted a report permitting ordaining authorities to ignore constitutional standards. Over 150 churches and several presbyteries have indicated that they are considering leaving the denomination over this “constitutional crisis”. Several articles from the Layman Online discussing this issue are attached as “Exhibit A”.

For the reasons PGV states that the Court may not resolve a religious dispute, the Court may not apply any disputed provisions of the PC(USA) constitution relating to property. Oakfield agrees with the Book of Order provision which states: “We do not even wish to see any religious constitution aided by the civil power...” Therefore, upon application of Neutral Principles of Law, the Court should enforce the Deeds of Oakfield Church, consistent with the certificates of incorporation and the laws of New York concerning church property.

Point II

PGV’S CLAIM OF A TRUST IS NOT IN A COGNIZABLE LEGAL FORM

Even were we to assume for argument’s sake that the Court could selectively consider disputed parts of the PC(USA) constitution, PGV’s attempt to enforce the “trust provisions” would fail because it has not put its claimed trust in cognizable legal form. PGV relies heavily on dicta from *Jones v Wolf*, 443 US 595 at 606 which states:

“At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form”.

While the form may vary in other states, New York specifies the legally cognizable form

in the GOL. GOL §5-703 specifies the form. The trust must be created by the owner of the property; it must be in writing; and it must be executed by the creator of the trust. A deed with a trust clause or reverter is a cognizable legal form. A certificate of incorporation with a trust clause or reverter is a cognizable legal form. A unilateral declaration by the beneficiary denomination buried in its Book of Order, without the consent of the owner and without a writing executed by the owner is simply ineffective to create a trust of any sort. This is the holding of *Presbytery of Hudson River v FPC Ridgebury*, 13 Misc 3d 707 (2006) in a recent case concerning this very issue. The Court in the *Ridgebury* decision, declaring Ridgebury the owner of free of any trust in favor of the Presbytery, indicated that it is “hornbook law” that the beneficiary cannot create a future interest in another’s property. The US Supreme Court has said that Neutral Principles of Law “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.” *Jones v Wolf*, 443 US 95 at 603. Nothing in trust or property law permits the non-owner to obtain an interest in property without the consent of the owner. Now under similar facts to the *Ridgebury* case, Oakfield Church is seeking the same relief that the Court declared in the *Ridgebury* case. Oakfield Church, having bought and paid for its property for the benefit of its congregation is not divested of its property simply because the denomination which it has been associated or affiliated⁴ with thought it could subsequently claim a trust interest in that property.

Were the PC(USA) the hierarchical denomination that PGV claims it to be, it could easily have required Oakfield Church to place a trust provision in its deeds or amend its certificate in

⁴In its brief, and in the affidavit of Melvin Olver, Esq., PGV claims that Oakfield Church was a “constituent member” of the PC(USA). However, the Certificate of Incorporation of the PC(USA) clearly indicates that the PC(USA) has no members. See the Reply Affidavit of Donald G. Nichol.

incorporation to include a trust in its favor. Indeed, it had an obligation to do so. The Court of Appeals in *FPC Schenectady*, 62 NY2d 110 at 121 stated of Neutral Principles of Law:

“It also provides predictability so that religious organizations may order their affairs to account for its application”.

PGV has had 23 years from the Court of Appeals adoption of Neutral Principles of Law to put its claimed trust in a legally cognizable form. The Supreme Court in *Jones v Wolf*, 443 US 595 at 604, quoting *Presbyterian Church I*, 393 US at 449 stated:

“...religious organizations ...[have an obligation to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.”

Putting a trust clause in a deed or amending a certificate of incorporation to include a trust clause would be an easy task for a hierarchical church. The hierarchy would simply direct that it be done. That is the way of the hierarch – so let it be written, so let it be done.

Putting a trust clause in a deed or amending a certificate of incorporation to include a trust clause would fulfill the obligation of the denomination and presbytery to structure their relationships with individual churches so as not to require the civil courts to determine the meaning and intent of the denominational constitution.

Putting a trust clause in a deed or amending a certificate of incorporation to include a trust clause would fulfill the obligation of the denomination and presbytery to put trust provisions in a legally cognizable form.

There is only one problem with this course of action – a presbyterian denomination is not a hierarchy and does not possess the ecclesiastical power to force a local church to order its

affairs without the consent of that church. Presbyterian history is full of examples of churches leaving presbyterian denominations over religious issues. The PC(USA)'s own "The Presbyterian Family Connections" (Verified Complaint Exhibit "B") illustrates this history, a history which is not so prevalent in hierarchical churches. PGV wants and needs the civil power of the courts to enforce and establish its religious preferences over those of Oakfield Church. What PGV wants, the Court cannot do without violating the US Constitution. To do so would be to directly establish PGV's religion and abridge Oakfield Church's free exercise of its religion contrary to the First Amendment and would cause a taking of property without compensation contrary to the Fifth Amendment. As the Court of Appeals has stated in disapproving denominational deference:

"Moreover, we agree with those who have observed that the [neutral principles] doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purpose of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause. Additionally, by supporting the hierarchical polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion..."

Since PGV has not put its claimed trust in a cognizable legal form, its claim may not be enforced by the Court.

Point III

Neutral Principles – Moving Towards Formal Title

-An Analysis of the Legal Theories Governing Church Property Cases in the context of the Presbytery's Claims regarding Denominational Governance and the Denominational Constitution

Formal Title is a form of Neutral Principles of Law which avoids any intrusion by the courts in religious disputes. Church Property cases present a number of thorny issues, particularly since the root to the dispute is most often rooted in theological controversy. The common law or English Rule of deciding Church Property cases, known as the “departure from doctrine rule” had its roots in the “cy pres” trust doctrine. Its purpose was to attempt to resolve the cases in a manner that was as close as possible to the original intent of those whose contributions acquired, improved, and maintained the property. This theory would award the property to the group whose doctrine is closest to the original doctrine of the religious body. In the US, the Constitution prevents the courts from determining questions of doctrine. Therefore, the need for alternate legal theories has moved legal thought to what is now the prevailing theory – Neutral Principles of Law.

Neutral Principles offers much to commend it over the denominational deference theory – advantages which are well expressed by the Court of Appeals in *FPC Schenectady, supra*, in rejecting deference and adopting Neutral Principles as the law in New York. Denominational deference, in reality, does not stop short of a judicial establishment of religion. The courts become enforcement arm of the denomination, establishing as doctrine those elements which the denomination cannot impose by ecclesiastical power. Denominational deference appeals to those

whose religious views contemplate an infallible hierarch or organization. The courts merely deal with the unruly few who failure to acknowledge the authority of the hierarch brand them as heretics or schismatics. Denominational deference must run afoul of the First Amendment, since, as it has been well said, “The law knows no heresy.” The heretic or schismatic has an equal Constitutional right to practice his religion without judicial abridgement of that right.

Neutral Principles avoids the Constitutional pitfalls of other methods determining religious property disputes – with one glaring exception. That exception drags the courts into forbidden territory. The exception is that principle which suggests that the courts examine the contents of religious constitutions. This point will illustrate, in the context of the facts of this case, why the courts’ intrusion in the area of religious constitutions is an idea which has outlived its original usefulness.

Limiting Neutral Principles to “Formal Title” will eliminate the Constitutional pitfalls of the Neutral Principle doctrine. There is no reason why religious organizations cannot arrange their property titles to avoid doctrinal disputes causing court battles. As the US Supreme Court stated in *Jones v Wolf, supra*, religious organizations have a duty to arrange their affairs in a manner which will not require the courts to examine religious doctrine to determine property titles. Religious organizations have had adequate time since the announcement that the courts of this state was adopting Neutral Principles to put their property titles in good order. The process of judicial examination of ordinary property titles is both simple and certain. It will reduce the resort of religious organizations to the courts to determine the manner in which the religious beliefs of the organization have to say about how property is to be held. No examination of religious doctrine or organization is required. The doctrine of Formal Title is simple, efficient

and exceedingly “neutral”.

Examining religious constitutions presents problems which raise Constitutional issues. The problems are judicial perspective, denominational governance, identification of the denominational constitution, interpretation of that constitutions and issues raised by constitutional amendments. These issues present problems for the court and problems for the litigants which are unhealthy for the judicial process and public confidence in that process.

Every judge has biases which spring from his or her beliefs. It’s a fact. It has to do with human nature. We would not have such struggles over Supreme Court nominations if judicial perspective was not an issue. Nowhere does judicial perspective have so great an influence as in religious issues. As much as we try to put it aside, our religious beliefs color the way we look at the world. Religion, more than any other influence, gives us a worldview.

The “Louisville Papers” is the popular name for the secretive internal plan drafted by the PC(USA)’s lawyers to play “hard ball” on the church property disputes resulting from the growing trend of the denomination to violate and ignore the constitutional foundations of Presbyterianism. The Louisville Papers contain instructions on selecting and dealing with judges based on their religious affiliation. Catholics and Episcopalians are preferable. Baptists are not desirable. The most memorable instruction in the Louisville Papers is the directive to tell the Catholic judge that the Presbytery is the Bishop⁵. These issues of judicial perspective are eliminated when we ask the judge to do what judges are supposed to do – rule on the law. Formal Title lets judges decide legal issues.

⁵As a young lad in a presbyterian home and church, I was taught a dislike of bishops. The equation of a presbytery with a bishop galls me. A youthful heroine among presbyterians is Jenny Geddes, who threw her stool at the english bishop who dared invade the presbyterian cathedral in Edinburgh, Scotland.

The classification of denominational governance also presents issues for the courts. The attempt of divide denominations into two classes does violence to religious belief. Even the theologians struggle to classify denominations in three classes: congregational, presbyterian, and hierarchical. Calling a presbyterian church a hierarchical church is an offense to a traditional presbyterian. A hierarchical church must have a hierarch. The dictionary defines a hierarch as “the chief ruler of an ecclesiastical body”, *National Dictionary*, Colliers, 1940. Presbyterianism, on the other hand, is defined as “ the system of church government by presbyters, all of whom are regarded as having equal rank and function.” *National Dictionary*. This equality of rank and function is a fundamental of presbyterian belief. Calling the PC(USA) a hierarchical church implies that those is the regional and national councils “outrank” the local church elders. This is heretical to traditional presbyterians. Such presbyterians will not accept the “Animal Farm” argument that “some elders are more equal than others.”

Presbyterian churches are organized on the basis of shared beliefs, not shared organizational structure. The elaborate presbyterian system of church councils - presbyteries, synods, and general assemblies – allows for the mistaken impression that presbyterian churches are hierarchies. But the watchword which underlies the system is that “councils do err.” That is why presbyterian churches are held together by the shared belief that the Bible is the infallible and inerrant Word of God which reveals the only head of the Church – the LORD Jesus Christ. The Bible is held up as “the only rule of faith and practice”. Consonance with the Word of God thus becomes the basis for obedience to the “higher” councils. Thus obedience to hierarchical authority does not have a place in presbyterian beliefs. When a local church or group of churches finds that the decisions of the denomination are no longer consonant with the Scriptures, the local

church seeks reform or leaves as its conscience directs. The PC(USA)'s own "The Presbyterian Family Connections" (Verified Complaint Exhibit "B") illustrates that such splits are a presbyterian phenomena.

The Louisville Papers contain a singular admission:

"Certainly, the Presbyterian Church (USA) does not refer to itself as a hierarchical church."

Nevertheless, the denomination's lawyers direct that the PC(USA) be presented to the court as a hierarchical church. The courts determining that a presbyterian denomination is hierarchical infringes on the beliefs and practices of traditional presbyterians and results in the denomination attempting to mislead the courts to obtain the perceived legal benefits of hierarchical status.

Two things must be remembered about hierarchical denominations in New York: first, that denominational deference is not the law and likely unconstitutional, and second, that even were Oakfield Church affiliated with a hierarchical denomination, it "may withdraw from the church and claim title to real and person property, provided that they have not previously ceded the property to the denominational church". *FPC Schenectady*, 62 NY2d 110 at 120.

Formal Title does not require the courts to evaluate the religious structure of a denomination or church, only the deeds and charters.

Identification of the denominational constitution presents problems to the court. Sacred texts are regularly incorporated in denominational constitutions by reference. Like the PC(USA), the denominational constitution may be multi-leveled. Presbyterian Churches normally have three levels of constitutional documents in rank order: the Holy Scriptures (the Bible), the Confessions, and a Book of Order or Discipline. The Regulative Principle of presbyterian

churches defines the Bible as the only rule of faith and practice. The need of the court to review the denominational constitution under Neutral Principles has resulted in a misleading mis-characterization of the PC(USA) constitution as being solely the Book of Order. The Book of Order itself states otherwise. At G1.03037, the Book of Order states:

“that the Holy Scriptures are the only rule of faith and manners; that no Church governing body ought to pretend to make laws to bind the conscience in virtue of their own authority...”

Since the Bible is the “only rule” it certainly rules over the Book of Order.

Likewise, the Book of Order defines the constitution of the PC(USA). G1.0500 states:

“The Constitution of the Presbyterian Church (U.S.A.) consists of *The Book of Confessions* and the *Book of Order*”.

G2.0100 of the Book of Order states of the Book of Confessions:

“In these confessional statements the church declares to its members and to the world who and what it is, what it believes, what it resolves to do”.

G2.0200 of the Book of Order states of the Book of Confessions:

“They are not lightly drawn up or subscribed to, **nor may they be ignored or dismissed.**⁶ [emphasis added]”

Thus PGV is in the embarrassing position of arguing contrary to its own documents as to the true composition of the denominational constitution and contrary to centuries of presbyterian polity.

⁶ Strangely, PGV argues at p.8 of its Memorandum of Law that since the full text of the property guarantee provision found in the Book of Confessions is not set forth at length in G2.0000 it should apparently not be considered and thus may be ignored or dismissed contrary to the express language of G2.0200.

The PGV claims that legal precedents establish the Book of Order as the constitution of the PC(USA). Precedents are applications of law and not factual determinations. Oakfield Church cannot be bound by a factual finding in a case where it was not a litigant. This type of factual error is certainly bound to occur when lawyers and judges pretend to establish constitutions of denominations with which they are not intimately familiar. However, any eighth grade communicant's class member should be able to tell you that the Bible is the only rule of faith and practice and that the constitution of PC(USA) consists of the Book of Confessions and the Book of Order.

Formal Title does not require courts to determine the consistency of denominational constitutions. Formal Title lets judges determine deeds and charters – legal matters of which they are familiar.

Interpretation of denominational constitutions presents problems for the courts. Simply put, such interpretation is a matter of religious faith and practice; interpretation is not for the courts to do. In this case, Oakfield Church rightly believes that it was, while associated with the PC(USA), in full compliance with the denominational constitution⁷. Indeed, it decided to leave the denomination because the denomination was no longer in compliance with the constitution. The unauthorized adoption of an interpretation allowing wholesale violation of the ordination requirements of officers created a constitutional crisis which caused Oakfield Church to disaffiliate. The denomination's trust provisions were adopted contrary to G1.0307 and thus are *ultra vires*. The trust provisions are otherwise contradicted by the superior parts of the PC(USA)

⁷PGV attempts to argue that the Religious Corporations Law requires Oakfield Church to comply with their interpretation of the denominational constitution. Oakfield Church was always in full compliance with the denominational constitution when properly interpreted pursuant to Biblical and Confessional standards.

constitution. The constitution itself requires Oakfield Church to deny such *ultra vires* enactments. Can the Court determine that Oakfield Church is wrong in its interpretation without un-Constitutionally abridging Oakfield Church's religious practice? The obvious answer is no.

PGV claims that the "trust provisions" may be secularly interpreted. Can a demonical doctrine be rendered religiously benign by a secular interpretation? Can the religious beliefs be set aside by a court without damage to the Constitution?

PGV claims that Oakfield Church has not argued that the PC(USA) constitutional provisions it relies on can be secularly interpreted. Can the provisions Oakfield Church relies on be secularly interpreted? Yes, they can. The Church is at Oakfield's house. Oakfield Church's right and title to its property have not been infringed by its association with the PC(USA). Therefore, Oakfield Church's property continues to belong to Oakfield Church. These are secular interpretations. But whether the denominational constitution interpretations favor Oakfield Church or favor PGV, such interpretations are ecclesiastical interpretations and not the province of the courts. Such interpretations of the denominational constitution are the heart of the religious dispute and may not be decided by the courts.

Local churches may continue affiliation with denominations because of favorable denominational constitutional provisions while tolerating other undesirable provisions. This is particularly true when then undesirable provisions are trust provisions which do not even come into play unless the church decides to withdraw from the denomination. Selectively applying constitutional provisions enforces the detriment of the undesirable provisions while denying the local church the benefit of the other desirable provisions. Additionally, it must be noted that enforcement of the denominational constitution is equitable relief. The one seeking equitable

relief may not be granted relief if they it violates the “clean hands” doctrine. A denomination which does not abide by its own constitution, as is the case here, does not have clean hands.

Formal title does not require any interpretation of denominational constitutions.⁸

Amendment of denominational constitutions after a church has affiliated with a denomination for a time presents problems for the courts. When Oakfield Church first affiliated with a predecessor denomination of the PC(USA), it was a presbyterian, not a hierarchical denomination. Oakfield Church had the vested right of disaffiliating for whatever reason and had unencumbered title to its property. When the denominational beliefs change and when the constitution is amended purporting to eliminate the vested right and to transfer ownership of Oakfield Church’s property to the denomination, can Oakfield Church be required to stay and to surrender its property? The simple answer is no. While persons and organizations are ordinarily subject to the rules of voluntary associations with which they choose to associate, the courts will not enforce such unreasonable rules which take away vested rights or divest the property of the local church. 6 NY Jur 2d, Associations and Clubs, §4. As the Court said in the *Ridgebury* case, 13 Misc3d 707 (2006):

⁸Strangely, PGV at p.15 of its Memorandum of Law prominently quotes from *North Central NY Conference v Felker*. concerning specific provisions found in the Methodist Book of Discipline concerning the elements by which a trust may be implied in Methodist Churches. These three specific conditions set forth in the Methodist Book of Discipline are also noted in *Jones v Wolf*, 443 US 595 at 601. No similar conditions, which if present would give rise to an implied trust, are stated in the Book of Order or elsewhere in the PC(USA) constitution. Obviously these Methodist [a hierarchical denomination] provisions cannot apply to a presbyterian church. Furthermore, being presbyterian and not hierarchical, Oakfield Church, as a local church, has never accepted ministers appointed by a bishop. To the contrary, Book of Order G6.0107 states:

“The government of this church is representative, and the right of God’s people to elect their officers is inalienable. Therefore, no person can be placed in any permanent office in a congregation or governing body of the church except by election of that body”.

PGV reliance on Episcopal and other hierarchical denomination cases is misplaced for the reasons stated in the *Ridgebury* case, 13 Misc3d 707, at 711.

“In the absence of any language in the deed to defendants indicating that title is held subject to the laws or discipline of the national church (compare e.g. *Matter of Church of St. James the Less*, 585 Pa. 428, 888 A.2d 795, 888 A.2d 795, 2005 WL 3554711 [Pa. 12/29/2005]), a change in the laws of the national church does not affect title to the realty held by the local church. Moreover, when defendants acquired the real property Overture A [the Book of Order trust provisions] did not exist (see *Arkansas Presbytery of the Cumberland Presbyterian Church v Hudson*, 344 Ark.332, 40 S.W.3d 301 [2001]; *York v First Presbyterian Church of Anna*, 130 Ill. App. 3d 611, 474 N.E.2d 716, 85 Ill. Dec. 756 [5th District])”

The courts will not enforce provisions by which the majority seeks to appropriate the property of other affiliated churches by a change in the “rules”.

Formal title does not require the courts to consider the effect of amendments to the denominational constitution. Formal Title requires the court to examine what the denominations and local churches are obligation to put in order – their deeds and charters.

Conclusion

For the reasons set forth in Oakfield Church’s papers, the Court should grant summary judgment to Oakfield Church as requested in its complaint.

Dated: Walden, New York
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