

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT**

The Presbytery of Hudson River of the Presbyterian Church (U.S.A.) and Rev. Richard M. Spierling as Chair of the Administrative Commission appointed by the said Presbytery with respect to the First Presbyterian Church of Ridgebury,

Plaintiffs-Appellants,

v.

The Trustees of the First Presbyterian Church and Congregation of Ridgeberry a/k/a Ridgebury Church and/or The Church at Ridgebury, Trustees of the First Presbyterian Church and Congregation of Ridgebury, Trustees of the Presbyterian Church of Ridgebury, New York and The Ridgebury Presbyterian Church; and Lori DeBlock, Les Kirby, Marie Knibbs, Dorothy Kwapong, Ronald Lyons, Theda Wolfe, and Stanley Wayne,

Defendants-Respondents,

and

Rev. Robert W. Hoag,

Defendant.

Docket No. 2008-04618

**NOTICE OF MOTION TO  
STRIKE PORTIONS OF  
DEFENDANTS-  
RESPONDENTS'  
ANSWERING BRIEF**

**TO THE COURT:**

*Motion made by:* Plaintiffs-Appellants


*Date, Time, and Place:* Friday, January 23, 2009, at 9:30 a.m.

*Relief requested:* Order striking portions of Defendants-Respondents' brief

*Supporting papers:* Affirmation of Kenneth L. Steinthal, Esq.

**PLEASE TAKE FURTHER NOTICE** that opposition papers, if any, are required to be filed by 4:00 p.m. on January 22, 2009, and served upon the Plaintiffs-Appellants.

Dated: January 7, 2009

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Defendants-Respondents,

and

Rev. Robert W. Hoag,

Defendant.

Docket No. 2008-04618

**AFFIRMATION OF  
KENNETH STEINTHAL  
IN SUPPORT OF  
MOTION TO STRIKE  
PORTIONS OF  
DEFENDANTS-  
RESPONDENTS'  
ANSWERING BRIEF**

STATE OF NEW YORK)

)ss:

COUNTY OF ORANGE )

Kenneth Steinthal, an attorney licensed in the State of New York, affirms under penalties of perjury:

1. I am a member of Weil, Gotshal & Manges, LLP, counsel for the Presbytery of Hudson River and Reverend Richard Spierling (Plaintiffs-Appellants) (hereafter "the Presbytery"). I make this affirmation in support of

the Presbytery's motion to strike portions of the Defendants-Respondents' answering brief.

2. The Presbytery filed an opening brief, a Record on Appeal, and supporting documents on November 6, 2008. In response, The Trustees of the First Presbyterian Church and Congregation of Ridgeberry (hereafter, "Ridgeberry") filed an answering brief on December 10, 2008.

3. In its answering brief, Ridgeberry makes repeated references to facts and documents without citation to the Record on Appeal ("Record"). Many of these facts and documents are not found in the Record; thus, they should all be stricken from the briefs as outside the Record. Further, any references to or quotes from these documents contained in the answering brief should be stricken, or, in the alternative, not considered by this Court.

4. An appellate court is bound by the record (*Block v. Nelson*, 71 A.D.2d 509, 511 (N.Y. App. Div. 1st Dep't 1979), and the Court's review is confined to the evidence before the motion court. *Becker v. City of New York*, 249 A.D.2d 96, 98 (N.Y. App. Div. 1st Dep't 1998) (citing *Broida v. Bancroft*, 103 A.D.2d 88, 93 (N.Y. App. Div. 2d Dep't 1984); see also *Tryon v. Tryon*, 37 A.D.3d 455, (N.Y. App. Div. 2d Dep't 2007) (court would not consider a contention on appeal when it was based on matters outside the record); *Merl v. Merl*, 128 A.D.2d 685, 686 (N.Y. App. Div. 2d Dep't 1987)

(chastising appellant for injecting matters dehors the record); *Arias v. New York City Hous. Auth.*, 40 A.D.3d 298, (N.Y. App. Div. 1st Dep't 2007) (declining to consider information dehors the record that petitioner placed in her appellate brief).

5. Ridgebury, by way of argument and evidence outside the record, is attempting to bring before this Court evidence that was not before the lower court.

6. Because of the volume of unsupported statements in Ridgebury's answering brief, a copy of the answering brief with all unsupported statements highlighted is attached for the Court's convenience. *See* Appendix A.

7. Particularly egregious are Ridgebury's citations to texts that are not in the Record (or, if they are in the Record, its citations to texts without citations to the appropriate pages in the Record). Some examples are listed below.

- a. "In John Knox's original 1560 Book of Discipline (Books of Order were originally called Books of Discipline), the control of church property was placed in the hands of deacons and treasurers, which are exclusively local church offices. (Elders, who are also local officers, are the officials who organize and participate in larger councils known as presbyteries, synods, and general assemblies. See Book of Confessions, 6.173175.) Local ownership of church property had a Biblical basis and was a reaction to the centralized

property ownership of the hierarchical systems from which the Presbyterians had separated. See Scots' Confession (1560), Chapter VIII. These principles were continued in the 1578 Book of Discipline." (Answering Brief at 11–12).

b. "In the 1640's, this principle of local ownership of church property was confirmed by the 'express property guaranty' written into the Westminster Confession of Faith. Book of Confessions, 6.148. This express property guaranty provided that one's property rights and title were not infringed by one's church affiliation. As this is stated in the Index of the 1902 constitution of the Presbyterian Church in the United States of America, p. 514: "Property rights [are] not affected by church relation." (Answering Brief at 12).

c. "The unique role of the Bible in Presbyterian polity (as opposed to hierarchical polity) is expressed by Rev. Charles Hodge, DD, the Principal of the Princeton Theological Seminary in *What is Presbyterianism?*, found at <http://www.pcahistory.org/documents/wip.html> which states:

Jesus Christ is its head. All power is derived from him. His word [the Bible] is our written constitution. All Church power is, therefore, properly ministerial and administrative." (Answering Brief at 16).

d. "Commentators on the Westminster Confession are clear on the meaning of this express property guaranty. Dr. R.C. Sproul, a well known theologian and author of more than forty books, writes in *Truths We Confess — A Layman's Guide to the Westminster Confession of Faith*, vol 3, p74, Presbyterian and Reformed Publishing, 2007:

The confession reaffirms the principle of private ownership. This may seem insignificant, but it isn't simply a statement on economics or political theory. The authors of the confession were concerned about Christian ethics and Christian faith. They wanted to maintain the right of private ownership as an ethical

principle.” (Answering Brief at 27–28).

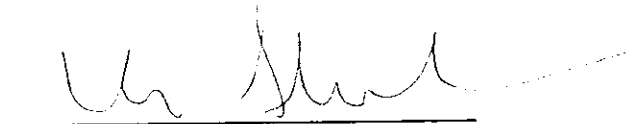
- e. “Similarly, Prof Gordon H. Clark affirms that the Westminster Confession intended to preserve private ownership against the communal ownership reflected in a denominational trust, stating: “The Apostles stressed the right of private property.” They did not endorse communal ownership. See *What do Presbyterians Believe?*, p. 228, Trinity Foundation, 1965, 2001.” (Answering Brief at 28).
- f. “Thus it is clear that any decrees and determinations which are not consonant with the Word of God may be vetoed. The Scot’s Confession, 3.20, places this veto power in much more emphatic terms:

As we do not rashly condemn what good men, assembled together in general councils lawfully gathered, have set before us; so we do not receive uncritically whatever has been declared to men under the name of the general councils, for it is plain that, being human, some 30 of them have manifestly erred, and that in matters of great weight and importance. So far then as the council confirms its decrees by the plain Word of God, so far do we reverence and embrace them. But if men, under the name of a council, pretend to forge for us new articles of faith, or to make decisions contrary to the Word of God, then we must utterly deny them as the doctrine of devils, drawing our souls from the voice of the one God to follow the doctrines and teachings of men.” (Answering Brief at 30–31).

**Wherefore**, the Presbytery respectfully requests this Court strike the offending portions of Ridgebury’s answering brief, including any evidence outside the record and all references to and quotations from said evidence, or in the alterative, not consider the offending portions of the answering brief.

Dated: January 7, 2009

By:



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