

Paul Rolf Jensen, CSB #154013  
**WESTMINSTER FELLOWSHIP, INC.**  
**Litigation Project**  
650 Town Center Drive, Twelfth Floor  
Costa Mesa, California 92626  
(714) 662-5527  
fax (714) 708-2321

Attorneys for PLAINTIFF SERONE CHURCH, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

SERONE CHURCH, INC.,	)	CASE # BC 327 134
	)	
Plaintiff	)	Assigned Temporarily to Judge Yaffe, Dept 86
	)	
vs.	)	Assigned to I/C Judge Willhite, Dept. 23 for
	)	subsequent proceedings
HANMI PRESBYTERY, INC., a California	)	
Corporation, a constituent entity of the SYNOD	)	MEMORANDUM OF POINTS AND
OF SOUTHERN CALIFORNIA AND	)	AUTHORITIES IN REPLY TO PAPERS
HAWAII, a constituent entity of the	)	FILED IN OPPOSITION TO ORDER TO
PRESBYTERIAN CHURCH (U.S.A.), and	)	SHOW CAUSE
DOES 1 through 20, inclusive,	)	
	)	Dept: 86
Defendants.	)	Time: 9:30 a.m.
	)	Date: 2-4-05

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MEMORANDUM OF POINTS AND AUTHORITIES

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## I

### SUMMARY OF ARGUMENT

Serone Church has come to this Court to have its dispute with the Presbyterian Church resolved in court, rather than through the physical and verbal intimidation of its members, or any attempts to physically remove its real and personal property. On Sunday, January 23, 2005, seven representatives of Hanmi Presbytery tried to seize the property of Serone Church, Inc., and to disrupt its worship and business meetings, and to otherwise disturb the peace. But for the presence of armed guards obtained by Serone to protect its property, Hanmi would have succeeded. Hanmi's intentions were disclosed in a written document addressed "To the Former Members of the Serone Church", which demands that Serone turn over to Hanmi all of Serone's property. (See Exhibit "Q".) Serone comes to this court to keep the peace and to preserve the status quo so that this dispute is not resolved on the street in front of the church with violence and intimidation.

Plaintiff, as a corporate citizen of California, is entitled to—and justice requires it be given—the neutral application of California law, and in particular, Corp. Code §9142 and Probate Code §15400. These statutes have *never* been interpreted to allow one entity to, by the adoption of a rule, impose a trust upon the property of another entity. There are not "two lines of cases" in this regard. Hanmi Presbytery would have this Court deny Plaintiff the right to have Prob. Code §15400 neutrally applied, and instead seeks this Court's interpretation and enforcement of ecclesiastical law. Recent California authority affirms that church corporate entities, like all corporate entities, are entitled to the protection of our basic civil laws—and in so doing does not run counter to any other strain of law, or indeed even one single other case. *California-Nevada Annual Conference of the United Methodist*

*Church v. St. Luke's United Methodist Church* (App. 5 Dist. Aug. 13, 2004) 121 Cal.App.4<sup>th</sup> 754, 17 Cal.Rptr.3d 442, rev. den'd \_\_\_ Cal. \_\_\_, 2004 LEXIS 11372 (Cal. Dec. 1, 2004), hereafter "*St. Luke's*".

Serone Church, Inc. was founded, developed and built as an independent church. All of its assets, real and personal, were created by church members long prior to any affiliation with the Presbyterian Church (U.S.A.). Serone never undertook to change the ownership or control of its property under civil law. It has withdrawn from the ecclesiastical relationship it had with the Presbyterian Church. The Presbyterian Church now attempts to strip Serone Church of its property based exclusively on ecclesiastical principles. Courts in California as well as the United States Supreme Court have consistently held that in matters of property, the civil law, neutrally applied, prevails. (Id.) The claims of the Presbyterian Church to the property of Serone Church have no merit under California law.

## II

### THE DEFENDANT MUST BE ENJOINED IN ORDER TO KEEP THE PEACE AND PRESERVE THE STATUS QUO

On Sunday, January 23, 2005, the Defendant tried to physically prevent Serone from conducting worship services and a congregational (members) business meeting. Seven representatives of the Hanmi Presbytery, calling themselves "the Administrative Commission for Serone Church" came to Serone's door, but were prevented from entry by armed guards hired by Serone. Law Enforcement had to be called to keep the peace.<sup>1</sup> The verbal shouting and disruption that the defendant precipitated echoed these words from its written demands which it attempted to pass out: "The Serone Administrative Commission is now the only body empowered to act as Serone Church...The Serone Administrative Commission hereby demands that [a]ll ecclesiastical and

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<sup>1</sup> Thus the Plaintiff's fears were realized as predicted in its ex parte application for a Temporary Restraining Order. Sadly, this Court's hope, expressed at the ex parte hearing, that Hanmi not threaten Serone absent a TRO, was too optimistic.

business records of Serone Church be turned over to the Serone Administrative Commission immediately; All personal property of Serone Church be left [at the church]; All financial resources of Serone Church be turned over to the control of the Serone Administrative Commission immediately; Keys to real property owned by Serone Church be delivered...immediately; All persons, except as authorized by [the defendant] cease and desist in use of any property, including real property; Each prior member or representative of Serone Church forthwith cease and desist from purporting to engage or retain legal counsel on behalf of Serone Church.” Declaration of Fred Yu.

Without the injunction sought at this hearing, there is the immediate and imminent prospect of physical and verbal violence. The injunction sought seeks nothing more than to maintain the status quo, and has become essential to avoid putting law enforcement in the position of adjudicating this dispute which is properly decided only by this Court.

**III THE PROPERTY INVOLVED HAS ALWAYS BEEN THE PROPERTY  
OF SERONE CHURCH, NOT THE NATIONAL CHURCH, AND THERE IS NO BASIS  
IN LAW OR EQUITY FOR IT TO BE FORFEITED BY SERONE CHURCH**

California law has *never* allowed for the imposition of such an involuntary irrevocable trust, as urged by Hanmi Presbytery, Inc., and to the contrary, has consistently held that real property (far and away the largest element of plaintiff’s property) cannot be transferred into a trust except by a written instrument. Cal. Civ. Code §1624, 1627; *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, 171 CalRptr. 541. The statute of frauds has always prohibited parole evidence to evidence the transfer of title to real property to contradict a writing<sup>2</sup>. *Cobbs v. Cobbs* (1942) 53 Cal.App.2d 780; *Hale v. Bohannon* (1952) 38 Cal.2d 458. Nevertheless, it is exactly such a unilateral

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<sup>2</sup>The only “writings” presented have come from plaintiff: the deed by which it holds title without any trust language, and the articles of incorporation. Hanmi has no writing to evidence the terms by which, if any there were, that Serone “joined” the Presbyterian Church, U.S.A.

involuntary trust that the Presbyterian Church (U.S.A.) attempts to rely on to strip Serone Church, Inc. of its property.

As evidenced by the Declaration of Fred Yu, and moreover (which has not been disputed by the Defense) the property in question—which is *all* of the property of the plaintiff—was purchased by the small donations over time of those members of the congregation: plaintiff Serone Church, Inc. The Hanmi Presbytery has contributed *nothing* in this regard, but yet argues it should be able to confiscate all of that property by the imposition of a trust in its favor, and not merely any trust, but *an irrevocable* trust. “[U]nless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the Settlor.” Prob. Code §15400, emphasis added.

The defendant has not come forward with *any writing* to evidence their contention that plaintiff consented to its real property being transferred into trust, and indeed hasn’t even presented any writing to evidence its contention that plaintiff “joined” the Presbyterian Church (U.S.A.) and in so doing assented even impliedly consented to the trust provisions of Chapter VIII of the Book of Order. (For this reason, plaintiff has objected to the parole evidence of the defendant’s declarations.)

Defendant Hanmi Presbytery does not contend that there is any equity to its claim that it should be allowed to confiscate plaintiff’s property. **Hanmi Presbytery has not claimed it contributed one cent to the benefit of Serone Church.** Instead, Hanmi Presbytery argues it should receive a windfall by operation of a church law that contradicts every settled principle of California law. This court should not countenance such an unjust and inequitable confiscation.<sup>3</sup> The similarities between

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<sup>3</sup> In the *St. Luke’s* case the congregation was sued because they wanted to record deeds to their real

the facts here and those presented in *St. Luke's* when it comes to forfeiture, are striking. The Court in *St. Luke's* could be speaking directly to the facts in this case, when it found as follows:

In the present case, there appears to be no dispute that St. Luke's purchased the properties that are the subject of the present dispute. If the properties were held in trust for the benefit of the United Methodist Church, it is because St. Luke's manifested in a number of different ways its intention to so hold the properties. "Unless a trust is expressly made irrevocable by the trust instrument, the trust is

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property to vitiate language in previously recorded deeds that set forth a trust, with the result that the Court of Appeals held that the prior trust was revocable. The Serone Church property NEVER had trust language in any of its deeds, and indeed there is no writing –not even one slip of paper—that the defense has presented to evidence its claim that Serone agreed to the imposition upon itself of a *revocable* trust, much less an *irrevocable* trust. To the contrary, the Articles of Incorporation of Serone Church, throughout its history, have expressly declared the intention that their real and personal property not be subject to any other body or religious denomination. "[T]he primary and specific purpose for which this corporation is formed is the following: (a) To teach and disseminate the Gospel of Jesus Christ according to the general form and doctrine adopted by the Presbyterian Church to communicants of Korean nationality and ancestry [sic] using the Korean language and dialects as a medium of communication and contact, but independently, however, from any direct control by the generally organized Presbyterian Church, or any of the other Protestant sect." (Plaintiff's Request for Judicial Notice, Exhibit 3, "Article THIRD".)

revocable by the settlor. This section applies only where the settlor is domiciled in this state when the trust was created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state govern the trust.” (Prob. Code, §15400.) California’s rule that a trust is presumed to be revocable differs from the rule in many other states where trusts are presumed to be irrevocable unless the settlor reserves the right to revoke. (See 18 Cal.L.Rev.Comm. Reports, p.565.) But the presumption of revocability has been the rule in California since 1931 and applies to trusts created since a 1931 amendment to the former Civil Code, section 2280. [ ] “The person who creates a trust is the settlor.” (Rest. 2d Trusts, §3, p. 12.) Because this trust was created by St. Luke’s manifested intention to hold the property in trust for the benefit of itself and of the United Methodist Church, we see no conclusion other than that St. Luke’s was the settlor, and that St. Luke’s could and did revoke that trust when it amended its articles of incorporation in December of 2000 to disaffiliate itself from the “discipline ... of the United Methodist Church” and to declare that it would hold property “in trust for the sole benefit of this Corporation.” (See Prob. Code §15401.)

*St. Luke’s* 121 Cal.App.4<sup>th</sup> 754, 767-68.

A religious corporation only has the power to do acts which are not limited by its Articles of Incorporation and which are not out of compliance therewith. Cal. Corp. Code §9140. While it is not disputed that Serone Church, Inc. affiliated itself *in an ecclesiastical sense* with the *principles* of Presbyterianism, and during the 1980’s, undertook measures to connect itself with the Presbyterian Church (U.S.A.) it is equally true that the Serone Church consistently maintained the civil separation of its own real and personal property. Without such a change recognized under civil law, there is no legitimate question that Serone Church is now, and has always been, the legal and equitable owner of its property.

IV NEUTRAL PRINCIPLES MUST GOVERN AND  
DETERMINE THE INJUNCTION SHOULD ISSUE

Other cases bear out the mandate that this case be governed by the neutral application of California law:

To resolve the often delicate question of the First Amendment’s application to disputes concerning church property, a principle of state “neutrality” has developed. This concept has been described as the application of “neutral principles of law, developed for use in all property disputes, which can be applied” without establishing “religion, or prohibiting the free exercise thereof”; in applying these neutral principles civil courts must take care “to decide church property disputes without resolving underlying controversies over religious doctrine.” (*Presbyterian Church v. Hull Church, supra*, 393 U.S. 440, 449 [21 L.Ed.2d 658, 665].)

*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 858-859.

Subsequently, the United States Supreme Court held in *Jones v. Wolf* (1979) 43 U.S. 595<sup>4</sup>:

The only question presented by this case is which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property... There can be little doubt about the general authority of civil courts to resolve this question.

....

At least in general outline, we think the “neutral principles of law” approach is consistent with the foregoing constitutional principles.

....

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.

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<sup>4</sup> The full text of which is lodged at Tab 5 to Plaintiff’s Notice of Lodging.

*Jones v. Wolf*, Id.

Ultimately, the defense relies on *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 281 Cal.Rptr. 396.<sup>5</sup> However, their confidence is misplaced. The Court in *The KUPC Case* began by noting that the trial “court could and should have decided the case by utilizing ‘neutral principles of law’,”. 230 Cal.App.3d at 486. But the facts in *The KUPC Case* are quite different from those presented here, and thus under the neutral application of law, the outcome was different. In *The KUPC Case*, certain corporate acts were undertaken by a minority faction representing “between 15 and 30 percent” of the membership, who was nevertheless in possession. 230 Cal.App.3d at 487. There was no restriction in the KUPC church’s articles of incorporation against affiliation with the Presbyterian Church. Just the opposite. The KUPC’s articles subserviated it to the “discipline of the Presbyterian Church” 230 Cal.App.3d at 490. The Presbytery of the Pacific had always held record title to the real property used by KUPC. 230 Cal.App.3d at 491. Here, the Hanmi Presbytery *never* held record title, and the Serone Church always held record title to its property, by virtue of the fact that this property was paid for exclusively with the funds of Serone Church, Inc. Declaration of Fred Yu. The Presbytery was the primary guarantor of loans made to KUPC. 230 Cal.App.3d at 492. Here, no loans have been made, much less guaranteed by the Presbytery, and the Serone Church, Inc. owns all of its real and personal property free and clear of any encumbrance. Declaration of Fred Yu. In the KUPC case, more than one minister served the church, and one of these ministers wrested control of a congregational meeting at which actions were taken. 230 Cal.App.3d 493. Here, no such thing occurred.

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<sup>5</sup> Hereafter, *The KUPC Case*.

The holding in *The KUPC Case* is squarely on the side of Serone in the present matter:

“Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. ...” [citing *Jones v. Wolf*]

The conclusion to be drawn from *Jones* is that a state court may resolve disputes over church property through use of neutral principles of law, focusing on sources such as deeds to church property, articles of incorporation, bylaws, state statutory law and the constitution and rules of the general church... *The KUPC Case*, 230 Cal.App.3d at 498.

Thus we see there is no inconsistency between the holding in *St. Luke's* and the holding in *The KUPC Case*. Both require the neutral application of corporation and probate law. On the specific and very different facts of *The KUPC Case*, the Court of Appeal found that a trust had been created, and never reached the issue of whether that trust was revocable. The Court in *St. Luke's*, as should the Court in the case at bar, found on the specific facts that any trust created was revocable—and indeed absent an express provision to the contrary, any trust HAD to be revocable—and found further that any trust had been revoked.

V

THE JANUARY 11, BOARD MEETING WAS FOLLOWED ON JANUARY 22<sup>nd</sup> BY A MEMBERS MEETING AND AT EACH THE VOTE WAS OVERWHELMINGLY TO REPUDIATE ANY TRUST IMPOSED BY CHAPTER VIII OF THE BOOK OF ORDER AND TO SEVER ALL TIES WITH THE PRESBYTERIAN CHURCH

While it was unnecessary to do so under California civil law, the Serone Church members wished to remove any doubt as to their continued adherence to the principle that Serone Church owns its own property, by passing a resolution to that affect. This act of caution and clarity has now been

falsely accused of being a fraudulent act—and Defendant went to great measures to try to physically prevent the members of Serone Church from even meeting for this purpose.

As evidenced by the complaint and moving papers, together with the declarations submitted herewith of Fred Yu, Chang Jin Park, Ruth Yu, Moon Jung Park, Jonh Won Kim, Kyung Hwan Kim, Samuel Park and Won Kyong Yang, there is no “fraud being perpetrated on this Court by plaintiff”, as suggested by Hanmi Presbytery in its opposition papers. A duly noticed meeting was held of the Board of Directors on January 11<sup>th</sup> at which were enacted the resolutions attested (as a ministerial act only) by the corporate Secretary, Byung Chil Kim.<sup>6</sup> As of the time of this meeting, there was NO dispute as to the authority of the Board to act for the corporation. The defense purports to manufacture a dispute *after the fact*—and even now, only *because* of the actions taken by the Board on January 11<sup>th</sup>. Thus, the question for this court is squarely presented: as of January 11<sup>th</sup>, were the actions of the Board taken properly?<sup>9</sup> We submit that they were. The most compelling evidence of this is the Korean-language document executed a super-majority of the members of the Serone Church supporting the Board’s action. The first signature, like that of John Hancock to the Declaration of Independence, is that of the same *Byung Chil Kim*—and he placed his signature on this document before leaving the Board meeting on January 11<sup>th</sup>! Declaration of Kyung Hwan Kim and Exhibit “O”. In any event, Hanmi presents a classic *post hoc ergo propter hoc* argument: because Serone Church acted to leave the denomination, its action was improper. Hanmi now claims to have replaced Serone’s Board because of its action. The Court should reject this rhetorically flawed argument,

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<sup>6</sup> Objection is taken to the Declaration of Byung Chil Kim submitted by the Defense, for a variety of reasons including the fact that it was obtained unethically by defense counsel in violation of Rule of Professional Conduct Rule 2-100. However even that declaration concedes that Mr. Kim *did* execute all of the corporate resolutions and the verification, which are in the same language as his declaration—English. We are given to believe that there were other serious improprieties involved in the execution of Mr. Kim’s declaration given to Hanmi’s counsel, and that Mr. Kim would so testify if called as a witness. To the extent the Court wishes to consider Mr. Kim’s testimony, Plaintiff would ask that Mr. Kim be called as a witness and that his live testimony be presented in open court.

because it begs the question of whether the actions of Serone's Board, and then its congregation, were validly taken. There is no legitimate dispute on that point.

Subsequent to the Board meeting, and following proper notice<sup>7</sup>, the members themselves of Serone Church, Inc. overwhelmingly independently enacted the identical changes to the Articles of Incorporation and a Certificate of Amendment of the same has been duly filed with the Secretary of State of California. Declaration of Fred Yu. Additionally, the members voted to sever all ties with the Presbyterian Church (U.S.A.) and to repudiate and revoke any trust which may exist, and enacted the same new Bylaws which had been passed by the Board of Directors.<sup>8</sup>

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<sup>7</sup> Notice of a congregational (members) meeting of Serone Church, Inc. was required to be given two successive Sundays in a row, and then the meeting held following the Sunday morning worship on the second of these Sundays. That is what took place on the 22<sup>nd</sup> of January. Declarations of Fred Yu, Chang Jin Park, Ruth Yu, Moon Jung Park, Jong Hwan Kim, Samuel Park and Won Kyong Yang, filed concurrently herewith.

<sup>8</sup> Under Corp. Code §9150 (b), the Board of Directors of a religious corporation may amend the corporation's Bylaws, unless the existing Articles or Bylaws preclude such amendment by the Board. The defense has not contended that such preclusive language existed in the Articles or prior Bylaws, and indeed there is none. In any event, the Board's amendment of the Bylaws was followed by the adoption of the same amendments by the congregation.

The Defendant’s entire opposition in the matter before this Court is that under Presbyterian ecclesiastical law the actions taken by the Serone Church, first through its Board of Directors, and then second by a super-majority of its members, are invalid—because they require the permission of the Defendant (which was not sought or given). To accept this argument, this Court would have to make a preliminary determination that Presbyterian ecclesiastical law is what the Defendant says it is. This Court must decline this invitation of the Defendant to make such an adjudication of church law, and instead decide this case based on the neutral application of California law. This point is so fundamental that we thought it beyond dispute: whether the plaintiff’s actions violate—or do not violate—Presbyterian ecclesiastical law is not for this Court to decide, but for the courts of the Presbyterian Church to decide; this Court’s inquiry begins and ends with whether the plaintiff’s actions were valid under California corporate law. As we averred in our moving papers, but which bears repetition here, the Court of Appeals has on *identical facts*<sup>9</sup> explicitly so held:

A general church may certainly view a local church’s board of directors as being “unauthorized” and not in compliance with the general church’s rules. This is an ecclesiastical matter, and not a matter with which a civil court would interfere. (*Jones v. Wolf, supra*, 443 U.S. 595.) **But we respectfully disagree with the view that acts of a board of directors of a lawfully formed corporation may be viewed by a civil court to be a nullity simply because those acts are deemed unauthorized not by any recognized rule of state law, but rather only by the general church’s own rules.**

*St. Luke’s*, 121 Cal.App4th at 771, emphasis added.

## VI

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<sup>9</sup> In both cases the congregation, by amendment of its articles of incorporation, unilaterally repudiated and severed any ties to the national denomination.

A MINIMAL BOND IS SUFFICIENT

We acknowledge that a bond is mandatory upon the issuance of the injunction sought, but aver that the amount of any such bond is within the sound discretion of this Court. The defendant is so unconcerned by this subject that it failed even to address it in its opposition papers. Under the circumstances Plaintiff submits that a minimal bond, perhaps \$2,500, would provide more than adequate protection.

VII

CONCLUSION

For all of the foregoing reasons, and based on the evidence properly before this Court, it is reasonably likely that the Plaintiff will prevail in this action, and that there exists an imminent peril sufficient to justify an injunction in order to keep the peace and preserve the status quo.

Dated: January 31, 2005

Respectfully submitted,

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Paul Rolf Jensen