

COPY

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

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HENRY COUNTY
SUPERIOR COURT

SEP 17 2007

[Signature]
CLERK OF SUPERIOR COURT

TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)

Plaintiff,)

v.)

PRESBYTERY OF GREATER)
ATLANTA, INC.,)

Defendant.)

CIVIL ACTION FILE
NO.: 07-CV-4142M

**PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER**

COMES NOW TIMBERRIDGE PRESBYTERIAN CHURCH, INC., Plaintiff in
the above-styled action, and, pursuant to O.C.G.A. § 9-11-65, files this brief in support of
its motion for entry of temporary restraining order, showing the Court as follows:

STATEMENT OF FACTS

On September 6, 2007, Plaintiff filed its verified Complaint for Declaratory
Judgment and Petition for Injunction, which sets forth the basis of its lawsuit and the
grounds upon which an injunction is sought. As described, Plaintiff contends that the
actual filing of its complaint, in and of itself, exposes Plaintiff to retaliatory actions of
Defendant Presbytery of Greater Atlanta, Inc. A copy of Plaintiff's complaint was
delivered to the Fulton County sheriff's office on September 7, 2007, and is awaiting
service. Additionally, a courtesy of Plaintiff's complaint and brief in support of
interlocutory injunction was sent to Defendant, in the care of Ed Albright, located at

1024 Ponce de Leon Avenue, Atlanta, Georgia. Plaintiff was contacted by attorney Debra A. Golymbleski, who informally acknowledged receipt of the courtesy copy of Plaintiff's complaint and brief.

Because Plaintiff has no way to protect itself without assistance from the Court, and because Plaintiff faces exposure of immediate and irreparable injury, loss, or damage, a temporary restraining order, until such time that the parties may be heard on Plaintiff's pending motion for interlocutory judgment, is justified.

ARGUMENT AND CITATION OF AUTHORITY

Under O.C.G.A. § 9-11-65, this Court has the authority to issue a temporary restraining order (hereinafter "TRO") to protect a party's interests from injustice until the parties may be heard on a motion for interlocutory injunction. The Georgia Code permits the entry of a TRO without notice to the adverse party as long as two requirements are satisfied:

(1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and

(2) The applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

O.C.G.A. § 9-11-65(b).

Here, the elements required for granting a temporary restraining order (“TRO”) can be satisfied. Plaintiff’s Complaint for Declaratory Judgment and Petition for Injunction sets forth the basis of its lawsuit and the grounds upon which an injunction is sought. The Complaint was verified by Michael L. West, Chief Executive Officer of Plaintiff Timberridge Presbyterian Church, Inc.

As stated in the Complaint, the filing of Plaintiff’s lawsuit against Defendant will be interpreted by Defendant as an indication that Plaintiff is a church that is affected with disorder. According to the Presbyterian Church (USA) Book of Order, when there is a report that a particular church is “affected with disorder”, a presbytery can, *without prior notice or hearing*, appoint an administrative commission to indefinitely assume original jurisdiction of the existing session (i.e. remove and replace the governing body of the particular church) and act to correct the perceived difficulties with the church, which can include the power to “dissolve a pastoral relationship,” meaning to remove and replace the local pastor. (See Book of Order, §§ G.-9.0503a.(4), G-11.0103.s., G-11.0502j, attached to Plaintiff’s complaint as Exhibits 8 and 9.)

Under similar circumstances, presbyteries of the Presbyterian Church (USA) (hereinafter “PCUSA”) have variously: (a) taken acts intended to assert ownership or place clouds on otherwise merchantable local property titles by recording, without prior notice, affidavits or other documents in local mortgage and conveyance records which improperly assert trusts on local church property in favor of the denomination, regardless

of the facts of a local church's property history or the laws of the state in which local church property is situated; (b) without notice, sought to change locks on local church property and otherwise seize local church assets; and (c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice and opportunity for hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own.

Timberidge is a not-for-profit corporation. Plaintiff's primary purpose is not monetary but spiritual and philanthropic. Thus, a monetary award is an insufficient remedy at law to cure any injuries or damages it may sustain. Absent a TRO and injunction, the rights of Plaintiff and the ministry of Timberidge will be irreparably injured if Plaintiff's governing body is replaced and control of the Timberidge church is assumed by Defendant's appointees. A temporary restraining order and the interlocutory injunction that Plaintiff ultimately seeks would preserve the status quo until such time as the question of ownership and use of the property of Timberidge can be determined by this Court.

Importantly, no prejudice will come to Defendant if the temporary restraining order is granted. Defendant has not indicated a present desire to usurp control of the Timberidge church, although there is the risk that it will do so upon a finding that Plaintiff's complaint indicates that Timberidge is a church that is affected with disorder.

In fact, the temporary restraining order and the injunction Plaintiff ultimately seeks are designed to preserve the status quo for all interested parties until a determination may be made as to the merits of Plaintiff's claims.

The Georgia Code grants this Court the authority to enter a TRO without prior notice to Defendant; however, in this case, Defendant has been placed on notice of Plaintiff's complaint and request for interlocutory injunction. A courtesy copy of Plaintiff's complaint has been mailed to Defendant, and Defendant has received a copy of the same. Counsel for Defendant, Attorney Debra A. Golymbleski, has contacted the undersigned, acknowledging receipt of Plaintiff's complaint and motion for injunctive relief. Additionally, Defendant and its counsel have been served with the instant motion, and counsel for Plaintiff has contacted defense counsel regarding the instant motion prior to service.

Under Georgia law, however, despite this notice, this Court may enter a TRO before Defendant, if it chooses to do so, appears to oppose Plaintiff's motion. Exercising such authority would be particularly justified here, where Defendant will likely act to assume control of Timberridge church, causing irreparable harm to Plaintiff, without itself providing notice to Plaintiff.

Accordingly, Plaintiff moves for immediate entry of a TRO, prior to any opposition by Defendant. The harm Plaintiff is most concerned of will be triggered upon service of Plaintiff's complaint, and therefore, in order to be completely effective, the

TRO should be granted as soon as possible. A delay until such time when Defendant can oppose Plaintiff's motion will permit Defendant ample time to assume control of Timberridge church or otherwise interfere with the operations of the church in ways which will cause irreparable injury to Plaintiff. A proposed order granting a TRO has been prepared and is being filed concurrently with the filing of Plaintiff's motion.

This 17th day of September, 2007.

Respectfully submitted,

TALLEY, FRENCH & KENDALL, P.C.



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