

**IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA**

**TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)
)
Plaintiff,)
)
v.)
)
PRESBYTERY OF GREATER)
ATLANTA, INC.,)
)
Defendant.)**

**Civil Action File No.
07-CV-4142-M**

ANSWER AND COUNTERCLAIM

COMES NOW Defendant, Presbytery of Greater Atlanta, Inc. ("PGA") and files this Answer and Counterclaim to Plaintiff's Complaint for Declaratory Judgment and Petition for Injunctive Relief, showing the Court as follows:

FIRST DEFENSE

Plaintiff's Complaint should be dismissed because this Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

SECOND DEFENSE

Plaintiff's Complaint should be dismissed because venue is improper in this Court.

THIRD DEFENSE

Plaintiff's Complaint should be dismissed because it seeks to have a Court of this State determine ecclesiastical questions in violation of the First Amendment to the United States Constitution and the Georgia Constitution.

FOURTH DEFENSE

Plaintiff's Petition fails to state a claim upon which relief may be granted against Defendant.

FIFTH DEFENSE

One or more of Plaintiff's claims are barred due to waiver.

SIXTH DEFENSE

One or more of Plaintiff's claims are barred by estoppel.

SEVENTH DEFENSE

Plaintiff is not entitled to any declaratory relief or any other relief for which it prays in its Complaint.

EIGHTH DEFENSE

Plaintiff's claims for equitable relief are barred because Plaintiff, if entitled to any relief, has an adequate remedy at law.

NINTH DEFENSE

One or more of Plaintiff's claims are barred by the doctrine of laches.

TENTH DEFENSE

Plaintiff's Complaint was not authorized by the session of Timberridge Presbyterian Church and must be dismissed.

ELEVENTH DEFENSE

Plaintiff's Complaint must be dismissed because there is no actual case or controversy ripe for decision by the Court.

TWELFTH DEFENSE

As a thirteenth defense, and for their answer to the individual paragraphs of Plaintiff's Complaint, Defendant responds to those numbered paragraphs as follows:

THE PARTIES

1.

Upon information and belief, PGA admits that Plaintiff is a non-profit corporation organized and existing under the laws of the State of Georgia and that its principal place of business is located in Henry County, Georgia. PGA denies that venue is proper in this Court. PGA lacks sufficient information to admit or deny the remaining allegations of paragraph 1 of Plaintiff's Complaint; therefore, they stand denied.

2.

PGA admits that it is a non-profit corporation organized and existing under the laws of the State of Georgia with both its registered and principal office located in Fulton County, Georgia. PGA denies that jurisdiction and venue are proper in this Court. PGA denies as stated the rest and remainder of the allegations of paragraph 2 of Plaintiff's Complaint. By way of further answer, PGA admits that it is the "corporate expression of the church consisting of all the churches and ministers of the Word and Sacrament" within the metro-Atlanta district. *See* Book of Order, Section G-11-.0101.

JURISDICTION AND VENUE

3.

Denied. By way of further answer, PGA states that "O.C.G.A. § 9-1-4, *et seq.*" is not the declaratory judgment statute, as alleged by Plaintiff. PGA further states that no actual controversy presently exists between the parties.

4.

Denied.

5.

Denied.

OWNERSHIP OF LOCAL CHURCH PROPERTY

6.

PGA lacks sufficient information to admit or deny this allegation; therefore, it stands denied.

7.

PGA lacks sufficient information to admit or deny this allegation; therefore, it stands denied.

8.

PGA lacks sufficient information to admit or deny this allegation; therefore, it stands denied.

9.

Upon information and belief, PGA admits this allegation.

10.

PGA lacks sufficient information to admit or deny this allegation; therefore it stands denied.

11.

PGA lacks sufficient information to admit or deny this allegation; therefore it stands denied. By way of further answer, at all times relevant to this litigation, Plaintiff was a member of the Presbyterian Church in the United States or of the successor

Presbyterian Church (U.S.A) and is subject to a property trust provision in the Constitution of the Presbyterian Church (U.S.A.).

12.

PGA lacks sufficient information to admit or deny this allegation; therefore it stands denied. By way of further answer, at all times relevant to this litigation, Plaintiff was a member of the Presbyterian Church in the United States or of the successor Presbyterian Church (U.S.A) and is subject to a property trust provision in the Constitution of the Presbyterian Church (U.S.A.).

GOVERNANCE UNDER PCUSA AND ITS PREDECESSOR

13.

Denied as stated. By way of further answer PGA states that in 1983, there was a “reunion” of the Presbyterian Church in the United States (“PCUS” sometimes known as the “southern church”) and The United Presbyterian Church in the United States of America (“UPCUSA” sometimes known as the “northern church”). The reunion resulted in one church known as the Presbyterian Church (U.S.A.), which is the successor of both PCUS and UPCUSA and which has the identity and history of both PCUS and UPCUSA. [See Presbyterian Church (U.S.A.) ARTICLES OF AGREEMENT, Preamble and Article 1, § 1.1.]

14.

Admitted.

15.

Admitted.

16.

Denied. By way of further answer, PGA admits the first sentence of paragraph 16 of Plaintiff's complaint and states that the PCUS Book of Church Order also contained a property trust provision. PGA denies the rest and remainder of the allegations contained in paragraph 16 of Plaintiff's Complaint.

17.

Denied. By way of further answer, the Constitution of the Presbyterian Church (U.S.A.), Section G-8.0600 relates to the property of a church in schism and despite all appearances, Plaintiff has taken great pains in its Complaint to deny being either a church in schism or a church that wishes to disaffiliate from the denomination. Upon information and belief, the PCUS Book of Church Order also contained a similar provision relating to the property of churches in schism. The rest and remainder of the allegations contained in paragraph 17 of Plaintiff's Complaint are denied.

18.

Denied as stated. By way of further answer, PGA admits that Section G-8.0301 of the Book of Order provides: "Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery." Upon information and belief, the Book of Church Order of PCUS contained a similar provision. PGA denies the rest and remainder of the allegations contained in paragraph 18 of Plaintiff's Complaint.

19.

PGA admits the first sentence of paragraph 19 of Plaintiff's Complaint. Upon information and belief, PGA admits the rest and remainder of the allegations contained in paragraph 19 of Plaintiff's Complaint.

20.

Denied. By way of further answer, paragraph 20 of Plaintiff's Complaint is so vague and unspecific as to prevent PGA from responding to the allegation.

21.

Denied as stated. By way of further answer, PGA states that Section G-1.0301(a) and (b) speak for themselves and denies Plaintiff's characterization of the meaning of those provisions.

22.

Denied as stated. By way of further answer, the Book of Confessions speaks for itself.

23.

Denied as stated. By way of further answer, Plaintiff's allegation is vague and lacks citation to authority, which prevents PGA from responding to the allegation.

24.

Denied as stated. By way of further answer, PGA admits that Book of Order, Section G-8.0700 contains an exception to Chapter VIII of the Book of Order if a church was not subject to a similar provision in the Constitution of the church of which it was a part prior to reunion. Section G-8.0700 speaks for itself.

25.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 25 of Plaintiff's Complaint; therefore they stand denied. By way of further answer PGA states that even if Plaintiff exercised the exemption under Section G-8.0700, there was a property trust clause in the PCUS constitution prior to the reunion, to which Plaintiff is subject; therefore, Plaintiff is not exempt from the property trust clause.

26.

PGA lacks sufficient information to admit or deny the allegations of paragraph 26 of Plaintiff's Complaint; therefore they stand denied.

27.

Denied. By way of further answer, Plaintiff was a member of PCUS prior to reunion and the PCUS Constitution contained a property trust clause prior to reunion.

28.

Denied. By way of further answer, the documents speak for themselves.

29.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 29 of Plaintiff's Complaint; therefore they stand denied.

30.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 30 of Plaintiff's Complaint; therefore they stand denied.

31.

Denied. By way of further answer, as a former member of PCUS and as a member of the Presbyterian Church (U.S.A.), Plaintiff was and still is subject to the

provisions of the respective Constitutions, including the property trust provisions contained in both Constitutions. Plaintiff may not pick and choose which provisions of the church Constitution it wishes to submit to.

32.

Admitted.

33.

Denied. Upon information and belief, Plaintiff had the opportunity to participate in and respond to the actions taken at the 122nd General Assembly of the PCUS, during which a property trust clause was added to the PCUS Constitution. By way of further answer, pursuant to Article 13, Section 13.4 of the Articles of Agreement (which is the contract for reunion), Plaintiff had eight years from the date of reunion to petition for dismissal with its property and Plaintiff did not exercise that right.

34.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 34 of Plaintiff's Complaint; therefore they stand denied.

35.

Denied. By way of further answer, the Constitution of the Presbyterian Church (U.S.A.) clearly states: "Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution." Book of Order, Section 4.0104.

NO TRUST HAS BEEN CREATED UNDER GEORGIA LAW
RELATING TO THE PROPERTY OWNED BY TIMBERRIDGE

36.

To the extent that paragraph 36 of Plaintiff's Complaint requires an answer, the law speaks for itself.

37.

To the extent that paragraph 37 of Plaintiff's Complaint requires an answer, the law speaks for itself.

38.

To the extent that paragraph 37 of Plaintiff's Complaint requires an answer, the law speaks for itself.

39.

Denied.

**THE PCUSA AND THE PCUS HAVE RECOGNIZED THAT
CHURCH PROPERTY MATTERS ARE SUBJECT TO STATE LAW**

40.

PGA admits the allegations relating to the PCUSA Book of Order, which speaks for itself. By way of further answer, PGA lacks sufficient information to admit or deny the allegations relating to the PCUS Book of Church Order; therefore they stand denied.

41.

Denied. By way of further answer the Book of Order speaks for itself.

42.

Denied.

43.

PGA admits that the Book of Order of the Presbyterian Church (U.S.A.) does not require an individual church's Articles of Incorporation to identify the Presbyterian denomination. PGA denies the rest and remainder of the allegations contained in paragraph 43 of Plaintiff's Complaint.

THE NEED FOR INJUNCTIVE RELIEF

44.

Denied.

45.

Denied.

46.

Denied. The Constitution of the Presbyterian Church (U.S.A.), to which Plaintiff is subject, states in pertinent part: "Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of the jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint an administrative commission with the full power of the session." *See* Book of Order, Section G-11.0103(s).

47.

To the extent that paragraph 47 of Plaintiff's Complaint makes any allegations against PGA specifically, as opposed to making overly broad and generalized statements about "PCUSA presbyteries" collectively, PGA denies any and all allegations contained

in paragraph 47 of Plaintiff's Complaint. PGA denies any and all other allegations contained in paragraph 47 of Plaintiff's Complaint.

48.

To the extent that paragraph 48 of Plaintiff's Complaint makes any allegations against PGA as opposed to the Presbyterian Church USA, who is not a party to this case, PGA denies them. By way of further answer, upon information and belief, PGA admits that the Presbyterian Church USA issued an Advisory Opinion Note 19, which speaks for itself. PGA denies any and all other allegations contained in paragraph 48 of Plaintiff's Complaint.

49.

To the extent that paragraph 49 of Plaintiff's Complaint makes any allegations against the PGA specifically, as opposed to overly broad and generalized allegations against the Presbyterian Church (U.S.A.) and "PCUSA presbyteries" collectively, PGA denies all allegations contained in paragraph 49 of Plaintiff's Complaint. By way of further answer, any documents published by the Presbyterian Church (U.S.A.) speak for themselves. PGA denies any and all other allegations contained in paragraph 49 of Plaintiff's Complaint.

50.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 50 of Plaintiff's Complaint; therefore, they stand denied.

51.

PGA lacks sufficient information to admit or deny the allegations contained in paragraph 51 of Plaintiff's Complaint, therefore, they stand denied.

52.

Denied.

53.

Denied.

54.

Denied.

55.

Denied.

56.

Denied.

COUNT ONE

57.

Denied.

58.

To the extent that paragraph 58 of Plaintiff's Complaint contains any allegations of fact, PGA denies each and every allegation contained therein. To the extent that paragraph 58 of Plaintiff's Complaint contains opinions of law, PGA states that the law speaks for itself.

59.

Denied as stated. By way of further answer, the law speaks for itself.

60.

Denied.

61.

Denied.

62.

Denied.

COUNT TWO

63.

Denied.

64.

Denied.

65.

Denied as stated. By way of further answer, PGA states that the Book of Order speaks for itself and that Plaintiff did not opt out of the property trust clause.

66.

Denied.

67.

Denied.

68.

Denied.

69.

Denied.

COUNT THREE

70.

Denied.

71.

Denied. By way of further answer, PGA states that the Book of Order speaks for itself.

72.

Paragraph 72 of Plaintiff's Complaint contains pure speculation rather than allegations of fact; however, to the extent that it contains any allegations, they are denied.

73.

Denied.

74.

To the extent that paragraph 74 of Plaintiff's Complaint contains any allegations against PGA they are denied.

75.

PGA denies Plaintiff's prayer for relief.

76.

PGA denies any and all other allegations contained in Plaintiff's Complaint that were not heretofore either admitted or denied by PGA.

COUNTERCLAIM

COMES NOW PGA and files this Counterclaim against Plaintiff and shows the Court the following:

1.

PGA is a non-profit corporation organized and existing under the laws of the State of Georgia.

2.

PGA is a district presbytery of the Presbyterian Church (U.S.A.) and Plaintiff church is located within the geographic district over which PGA has authority.

3.

Plaintiff is a member of the larger Presbyterian Church (U.S.A.).

4.

In 1983, the Presbyterian Church (U.S.A.) was formed through the reunion of the Presbyterian Church of the United States (“PCUS,” commonly known as the southern church with which Plaintiff was formerly associated) and the United Presbyterian Church of the United States of American (“UPCUSA,” commonly known as the northern church).

5.

Each particular church of the Presbyterian Church (U.S.A.) is governed by the Constitution of the Presbyterian Church (U.S.A.). See Book of Order Section G-4.0104.

6.

The Constitution of the Presbyterian Church (U.S.A.) provides: “All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.). See Book of Order Section G-8.0200.

7.

Prior to reunion, when Plaintiff was still a member of PCUS, the PCUS governing document also contained a property trust clause which provided: "All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States." PCUS Book of Church Order, Section 6-3.

8.

Plaintiff did have an opportunity to "opt out" of any new property provisions for which there was formerly no similar property provision in its former governing document; however, because there was a property trust clause in Plaintiff's former governing document, it could not opt out of the property trust clause in the Presbyterian Church (U.S.A.). *See* Book of Order, Section 8.0700.

9.

Pursuant to Article 13 of the Articles of Agreement, Plaintiff, upon a congregational vote, could have left the denomination with the church property at anytime within 8 years after the date of reunion.

10.

Plaintiff is subject to the Constitution of the Presbyterian Church (U.S.A.) and holds its property in trust for the Presbyterian Church (U.S.A.).

COUNTERCLAIM COUNT ONE-INJUNCTIVE RELIEF

11.

PGA realleges paragraphs 1 through 10 of its counterclaim as if set forth verbatim herein.

12.

In its Complaint, Plaintiff has exhibited a clear and unmistakable intent to violate the property trust clause of the Book of Order and to decline to hold its property in trust for the Presbyterian Church (U.S.A.).

13.

PGA will suffer immediate and irreparable injury if Plaintiff persists in its actions to thwart the property trust clause of the Book of Order.

14.

PGA does not have an adequate remedy at law to protect against the immediate and irreparable injury threatened by Plaintiff.

15.

Based on the statutes, case law, corporate documents and the Book of Order, the likelihood that PGA will prevail is substantial.

16.

PGA is entitled to a temporary restraining order and an interlocutory injunction enjoining Plaintiff from violating the trust clause and from selling, transferring, encumbering, or otherwise disposing of Plaintiff's property in order to maintain the status quo pending the resolution of this case.

COUNTERCLAIM COUNT TWO-ATTORNEYS' FEES

17.

PGA realleges paragraphs 1 through 16 of its Counterclaim as if set forth verbatim herein.

18.

Upon information and belief, Plaintiff has aligned itself with an association of churches called the New Wineskins, which takes issue with various perceived doctrinal positions of the Presbyterian Church (U.S.A.) and has devised strategies to assist churches that are part of the Presbyterian Church (U.S.A.) to leave the denomination but take all of the Church property with them.

19.

Although some members of the church appear to be aligned with the New Wineskins, there is no allegation by Plaintiff that a majority of its congregation, or that its session, has voted to thwart the property trust clause or to bring this lawsuit. It is more likely than not that there is a group within Plaintiff church who are faithful to the Presbyterian Church (U.S.A.) and under the Constitution of the Presbyterian Church (U.S.A.) those who are faithful to the Presbyterian Church (U.S.A.), whether or not they are a minority, are protected by the Constitution of the denomination and are entitled to retain the church property.

20.

Both the PCUS Constitution and the Presbyterian Church (U.S.A.) Constitution contain clear property trust provisions.

21.

Despite the clear property trust provisions that Plaintiff has been subject to for more than a quarter of a century, Plaintiff has brought this suit in bad faith seeking the Court to intervene to invalidate a provision of the Presbyterian Church (U.S.A.) Constitution because Plaintiff, or some portion thereof, wishes to position itself to leave the Presbyterian Church (U.S.A.) with the property.

22.

There is no good faith basis for Plaintiff's Complaint.

23.

Plaintiff has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.

24.

Plaintiff is entitled to an award of attorneys' fees against the Plaintiff.

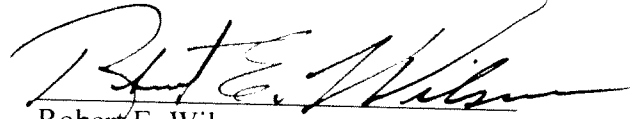
WHEREFORE, PGA prays:

- a) That the Court dismiss Plaintiff's Complaint in its entirety or in the alternative that the Court grant judgment in favor of PGA and against Plaintiff on all counts asserted in the Complaint; and
- b) That the Court grant judgment in favor of PGA on all counts of its Counterclaim; and
- c) That the Court award to PGA all costs and expenses of litigation, including but not limited to attorneys' fees, in an amount to be determined at the trial of this case; and
- d) That the Court award PGA interest as provided by law; and

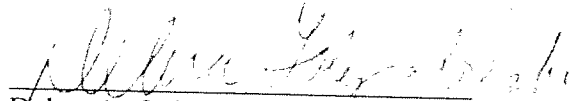
- e) That the Court issue a temporary restraining order and interlocutory injunction against Plaintiff enjoining Plaintiff from violating the property trust clause and enjoining the sale, transfer, encumbrance or disposal of the property pending resolution of the issues in this case; and
- f) For a trial by jury of twelve persons; and
- g) For such other and further relief that the Court deems just and proper.

Respectfully submitted this 16th day of September, 2007

WILSON, MORTON & DOWNS, LLC



Robert E. Wilson
Georgia Bar No. 768950



Debra A. Golymbieski
Georgia Bar No. 300508

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IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN)
CHURCH, INC.,)
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Plaintiff,)
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v.)
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PRESBYTERY OF GREATER)
ATLANTA, INC.,)
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Defendant.)

Civil Action File No.
07-CV-4142-M

CERTIFICATE OF SERVICE

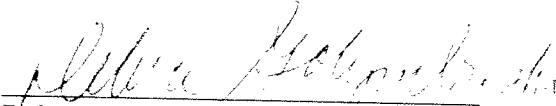
This is to certify that I have this date served upon counsel for Plaintiff a true and copy of the within and foregoing **ANSWER AND COUNTERCLAIM** via first class mail, with sufficient postage affixed thereto, and in an envelope properly addressed to:

Michael C. Kendall, Esq.
Maureen E. Murphy, Esq.
Talley, French & Kendall, P.C.
3152 Golf Ridge Blvd., Suite 201
Douglasville, GA 30135

Robert E. Talley, Esq.
Laura French, Esq.
Talley, French & Kendall, P.C.
1892 Ga. Hwy. 138, S.E.
Conyers, GA 30013

This 19th day of September, 2007.

WILSON, MORTON & DOWNS, LLC


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Georgia Bar No. 300508

Attorney for Defendant

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