

To be Argued by:
SARAH E. BARROWS
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second 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,

Docket No.:
2008-04618

Plaintiffs-Appellants,

– against –

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, LORI DEBLOCK, LES KIRBY, MARIE KNIBBS, DOROTHY KWAPONG, RONALD LYONS, THEDA WOLFE and STANLEY WAYNE,

Defendants-Respondents,

– and –

REV. ROBERT W. HOAG,

Defendant.

BRIEF FOR PLAINTIFFS-APPELLANTS THE PRESBYTERY OF HUDSON RIVER OF THE PRESBYTERIAN CHURCH (U.S.A.)

WEIL, GOTSHAL & MANGES LLP
Attorneys for Plaintiffs-Appellants
The Presbytery of Hudson River of
the Presbyterian Church (U.S.A.)
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Orange County Clerk's Index No. 6144/05

7413-001

New York Supreme Court
Appellate Division—Second 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,

– against –

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, LORI DEBLOCK, LES KIRBY, MARIE
KNIBBS, DOROTHY KWAPONG, RONALD LYONS,
THEDA WOLFE and STANLEY WAYNE,

Defendants-Respondents,

– and –

REV. ROBERT W. HOAG,

Defendant.

-
1. The index number of the case in the court below is 06144/05.

2. The full names of the original parties are as set forth above. There have been no changes.
3. The action was commenced in Supreme Court, Orange County.
4. The action was commenced on or about August 31, 2005, by filing of a Summons and Verified Complaint. Issue was joined on or about November 23, 2005, by service of a Verified Answer by all Defendants excluding Robert W. Hoag.
5. The nature and object of the action is real property.
6. This appeal is from a Judgment, dated December 6, 2006.
7. This appeal is on the full reproduced record.

TABLE OF CONTENTS

	PAGE
Preliminary Statement.....	1
Questions Presented to the Lower Court	6
Statement of the Assignment of Errors.....	8
Statement of Facts.....	10
Argument	17
I. Undisputed Dispositive Facts Demonstrate Ridgebury Holds its Property Subject to an Express Trust for the Use and Benefit of the Presbytery	17
A. Legal Standard for Summary Judgment	17
B. The Lower Court Disregarded Undisputed Facts Evidencing Ridgebury's Obligation to Hold its Property Subject to an Express Trust for the Presbytery	18
1. The Law of Neutral Principles	18
2. An Express Trust Provision in the Denominational Constitution Has Binding Effect.....	23
a. This Case is Squarely On Point with the Facts in <i>Harnish</i> that led the Court of Appeals to Enforce an Express Trust Clause as to the Local Church	25
b. The Court of Appeals Ruling in <i>Harnish</i> Establishes as a Matter of Law that Ridgebury Holds its Property Subject to an Express Trust	27
c. Triable Issues of Fact Exist Concerning Ridgebury's Intent to be Bound by the Express Trust Clause in the <i>Book of Order</i>	28
C. The Lower Court Erroneously Distinguished this Case from <i>Trinity</i> , which Upheld an Express Trust Clause in the Episcopal Church	29
1. The Court Relied on an Irrelevant Distinction Between the Government of the Episcopal Church and that of PCUSA	30
2. The Express Trust Clause is Valid Even if it Does Not Codify a Historical Implied Trust	31

TABLE OF CONTENTS

	PAGE
II. Triable Issues of Fact Exist Concerning Whether Ridgebury Held the Church Property in an Implied Trust for the Presbytery and PCUSA	32
A. <i>Schenectady</i> Did Not Reach the Issue of Whether a Historical Implied Trust Exists in the PCUSA	32
B. Courts That Have Investigated the History of the Presbyterian Church Have Found an Implied Trust Doctrine in the History of the Polity of the Church	35
C. A Historical Implied Trust Relationship Exists Between PCUSA and its Local Churches	36
D. The Lower Court Erred By Failing to Consider Undisputed Evidence of Ridgebury's Affirmative Actions Evidencing an Intent to Hold its Property Subject to an Implied Trust Even Prior the Adoption of the Express Trust Clause in 1981	39
Conclusion	43
Appellate Division — Second Department Certification of Compliance	46

TABLE OF AUTHORITIES

	PAGE
Cases	
<i>Alvarez v. Prospect Hospital</i> , 68 N.Y.2d 320 (1986)	17
<i>Barkley v. Hayes</i> , 208 F. 319 (W.D. Mo. 1913).....	35, 41
<i>Carnes v. Smith</i> , 236 Ga. 30, 222 S.E.2d 322 (1976), <i>cert. denied</i> 429 U.S. 868 (1976)	19
<i>Duvall v. Synod of Kansas of Presbyt. Church</i> , 222 F. 669 (8th Cir. 1915).....	35
<i>Episcopal Diocese of Rochester v. Harnish</i> , No. 152, __ N.E.2d __, 2008 NY Slip Op. 07991 (N.Y. 2008).....	passim
<i>First Presbyt. Church of Schenectady v. United Presbyt. Church</i> , 62 N.Y.2d 110 (1984)	passim
<i>Fonken v. Community Church of Kamrar</i> , 339 N.W.2d 810 (Iowa 1983).....	33, 36
<i>Guiffrida v. Citibank Corp.</i> , 100 N.Y.2d 72 (2003)	17
<i>In re Church of St. James the Less</i> , 585 Pa. 428, 888 A.2d 795 (2005)	24
<i>JMD Holding Corp. v. Congress Fin. Corp.</i> , 4 N.Y.3d 373 (2005)	17
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)	passim
<i>Korean United Presbyt. Church of Los Angeles v. Presbytery of the Pacific</i> , 281 Cal. Rptr. 396 (Cal. Ct. App. 1991)	24

TABLE OF AUTHORITIES

	PAGE
<i>North Central New York Annual Conference v. Felker</i> , 28 A.D.3d 1130 (N.Y. App. Div. 4th Dep’t 2006)	41, 42
<i>Presbyt. Church v. Eastern Heights Church</i> , 225 Ga. 259, 167 S.E.2d 658 (1969).....	19
<i>Presbytery of Hudson River v. Trustees of First Presbyt. Church and Congregation of Ridgeberry</i> , 821 N.Y.S.2d 834 (N.Y. Sup. Ct. 2006)	passim
<i>Rector, Wardens and Vestrymen of Trinity-St. Michael’s Parish, Inc. v. The Episcopal Church in the Diocese of Connecticut</i> , 224 Conn. 797, 620 A.2d 1280 (1993).....	34, 41, 42
<i>Rotuba Extruders v. Ceppos</i> , 46 N.Y.2d 2231 (1978)	18
<i>Russo v. YMCA of Greater Buffalo</i> , 12 A.D.3d 1089 (N.Y. App. Div. 4th Dep’t 2004)	18
<i>Shepard v. Barkley</i> , 247 U.S. 1 (1918)	35
<i>Sillman v. Twentieth Century-Fox Film Corp.</i> , 3 N.Y.2d 395 (1957)	18
<i>St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.</i> , 145 P.3d 541 (Alaska 2006).....	25
<i>Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville</i> , 250 A.D.2d 282 (N.Y. App. Div. 3d Dep’t 1999)	passim
<i>Winegrad v. N.Y. Univ. Med. Ctr.</i> , 64 N.Y.2d 851 (1985)	17
<i>Zuckerman v. City of New York</i> , 49 N.Y.2d 557 (1980)	17

PRELIMINARY STATEMENT

This appeal concerns the attempt of a local congregation, Ridgebury Church, to break away from the Presbyterian Church (U.S.A.) (“PCUSA”) and take church property with it. The issue for this Court is whether that property is held in trust for the national denomination and should therefore remain with the Presbytery of Hudson River and PCUSA.

Plaintiffs, the Presbytery of Hudson River and Rev. Richard Spierling (hereinafter, the “Presbytery”), respectfully submit that the lower court erred by awarding the church property to the Trustees of the First Presbyterian Church and Congregation of Ridgebury (hereinafter, “Ridgebury”) on a grant of summary judgment despite the existence of triable issues of material fact. The lower court also erred as a matter of law by ignoring or misapplying binding precedent in granting Ridgebury’s summary judgment motion and denying the Presbytery’s cross motion for summary judgment.

Here, the lower court effectively ignored PCUSA’s constitution, which includes an express trust in favor of the denominational church, and awarded the property at issue to Ridgebury based primarily on the face of deeds and corporate charters alone. *Presbytery of Hudson River v. Trustees of First Presbyt. Church and Congregation of Ridgebury* (“Ridgebury”), 821 N.Y.S.2d 834, 837 (N.Y. Sup. Ct. 2006) (“In the absence of any

language in the deed to the defendants indicating that title is held subject to the laws or discipline of the national church ... , a change in the laws of the national church does not affect title to the realty held by the local church.”) (citations omitted). This application of “neutral principles of law” squarely contradicted the U.S. Supreme Court’s holding in *Jones v. Wolf*, 443 U.S. 595 (1979), which explicitly instructed courts to look beyond the deeds and charters and examine hierarchical churches’ governing documents to determine whether they recite an express trust. *Jones*, 443 U.S. at 600–02.

Indeed, in *Jones*, the U.S. Supreme Court held that United States hierarchical churches, such as PCUSA, could *ensure that church property would be retained by its loyal members* in the event of a dispute by amending their constitutions rather than amending individual deeds and corporate charters:

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.*

Id. at 606 (emphasis added). Following the Supreme Court’s instruction in *Jones*, PCUSA did just that. *Ridgebury*, 821 N.Y.S.2d at 836–37. In 1981, with full participation by Ridgebury, the denominational church amended its

constitution — the *Book of Order* — to recite an express trust in favor of the denominational church. Despite the U.S. Supreme Court’s holding that civil courts are bound to give effect to such action (*Jones*, 443 U.S. at 606), the lower court here imposed a neutral principles paradigm that effectively ignored the church constitution. Allowing such a decision to stand would eliminate the protections promised by *Jones v. Wolf* and “ensure” nothing remains with the denominational church. Indeed, it would empower Ridgebury — which previously pledged its loyalty to PCUSA and acceded to its constitution — to render impotent the long-standing trust embodied in the *Book of Order*. As recently made clear in the Court of Appeals’ decision in *Episcopal Diocese of Rochester v. Harnish* (“*Harnish*”), the adoption of the express trust language is “dispositive” of the issue. *Harnish*, No. 152, ___ N.E.2d ___, 2008 NY Slip Op. 07991, *6–7. Accordingly, under *Jones* and *Harnish*, this Court should find that, as a matter of law, Ridgebury holds its property subject to the express trust clause in PCUSA’s *Book of Order*.

The lower court further erred in distinguishing a precedential opinion (*Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* (“*Trinity*”), 250 A.D.2d 282 (N.Y. App. Div. 3d Dep’t 1999)), based upon a finding that PCUSA does not follow a hierarchical form of government sufficiently similar to that of the Episcopal, Roman Catholic,

and Eastern Orthodox Churches. *Ridgebury*, 821 N.Y.S.2d at 838. The lower court's finding is inconsistent with record evidence and prior case law, which has repeatedly found the Presbyterian form of government to be hierarchical. *Jones*, 443 U.S. at 597–98 (1979); *First Presbyt. Church of Schenectady v. United Presbyt. Church* (“*Schenectady*”), 62 N.Y.2d 110, 114 (1984).

Further, the lower court misread *Schenectady* to stand for the proposition that a historical implied trust does not exist in the polity of PCUSA. *Ridgebury*, 821 N.Y.S.2d at 838. Because of this error, the lower court disregarded triable issues of material fact concerning the existence of a historical implied trust for the benefit of the Presbytery and PCUSA, and wrongly granted summary judgment to *Ridgebury*.¹ The court's finding that there was “nothing in the record” to show a manifestation of an intent by *Ridgebury*, prior to adoption of the express trust, to hold its property for the benefit of the denominational church, ignores evidence to the contrary. *Id.*

¹ In *Trinity*, the Third Department held that proof of a historical implied trust relationship between the local church and the national denomination was sufficient to establish the enforceability of an *express* trust clause. 250 A.D.2d 282, 289–90 (N.Y. App. Div. 3d Dep't 1999). However, in light of the Court of Appeals' holding in *Harnish* that establishment of an earlier implied trust is not required to validate the subsequently adopted express trust, the existence of an earlier implied trust should no longer be considered material. *Harnish*, 2008 NY Slip Op. 07991, *7.

at 839. As discussed *infra* at Section II.C–D, the record showed not only a long-standing implied trust, but express conduct by Ridgebury acquiescing to the denominational church’s control over disposition of property.

Accordingly, Plaintiffs respectfully request that the judgment of the court below be reversed and summary judgment be awarded to Plaintiffs. Alternatively, due to the errors of law and existing triable issues of material fact, Plaintiffs request that this Court remand the case for consideration in light of applicable legal precedent and relevant facts, particularly given the Court of Appeals’ recent opinion in *Harnish*.

QUESTIONS PRESENTED TO THE LOWER COURT

1. Is there a triable issue of material fact that shows that Ridgebury is subject to the express trust provision in the national denomination's constitution?

Answer from the Supreme Court: No; applying neutral principles, the court relied on the absence of trust language in deeds to the property without giving proper weight to the express trust language in the *Book of Order*. *Ridgebury*, 821 N.Y.S.2d at 837.

2. On the undisputed facts in the record, is Ridgebury, as a matter of law, subject to the express trust provisions contained in the constitution of PCUSA?

Answer from the Supreme Court: No; although the court found that the *Book of Order* was amended in 1981 to recite an express trust in favor of the denominational church and that only a presbytery could sever ties between a schismatic congregation and PCUSA, *Ridgebury*, 821 N.Y.S.2d at 836–37, the court found such provisions unenforceable.

3. Is there a triable issue of material fact that shows that Ridgebury holds property subject to an implied trust for the Presbytery and the national denomination?

Answer from the Supreme Court: No; the court found no evidence showing an intent by Ridgebury to hold its property for the benefit of the denominational church. *Ridgebury*, 821 N.Y.S.2d at 839.

4. On the undisputed facts in the record, is Ridgebury, as a matter of law, subject to an implied trust whereby it holds its property for the use and benefit of the national denomination?

Answer from the Supreme Court: No; although evidence in the record demonstrates that the trust clause in the national denomination's constitution merely codified existing practice, similar to the facts in *Trinity*, 250 A.D.2d at 288-89, Ridgebury was not subject to an implied trust because of differences in structure between the Episcopal and Presbyterian forms of government. *Ridgebury*, 821 N.Y.S.2d at 838-39.

STATEMENT OF THE ASSIGNMENT OF ERRORS

1. The lower court erred in applying neutral principles of law by disregarding provisions in the constitution of PCUSA — the express trust clause in the *Book of Order* — and awarding the property at issue to Ridgebury based primarily on the face of deeds and corporate charters alone.

2. The lower court erred in holding, in direct contravention to the Supreme Court's instruction in *Jones v. Wolf* and in light of the recent New York Court of Appeals' opinion in *Episcopal Diocese of Rochester v. Harnish*, that "[i]n 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, a change in the laws of the national church does not affect title to the realty held by the local church." *Ridgebury*, 821 N.Y.S.2d at 837 (internal citations omitted).

3. The lower court erred in distinguishing precedent involving the Episcopal Church based upon a finding that PCUSA does not follow a hierarchical form of government sufficiently similar to that of the Episcopal Church, *Ridgebury*, 821 N.Y.S.2d at 838, a finding inconsistent with record evidence as well as prior case law.

4. The lower court erred in misreading *Schenectady*, 62 N.Y.2d 110, to stand for the proposition that a historical implied trust does not exist in the polity of PCUSA. *Ridgebury*, 821 N.Y.S.2d at 838.

5. The lower court erred in disregarding triable issues of material fact sufficient to defeat summary judgment concerning the existence of a historical implied trust for the benefit of the Presbytery and PCUSA.

6. The lower court erred in finding, contrary to the evidence in the record, that “[t]he only affirmative actions on the defendants’ part on this subject since 1981 were their explicit manifestation *not* to hold their property for the benefit of plaintiffs.” *Ridgebury*, 821 N.Y.S.2d at 839.

STATEMENT OF FACTS

I. RIDGEBURY OPERATED UNDER THE PCUSA HIERARCHY FOR DECADES

Ridgebury Church was organized in 1792 and incorporated under the laws of New York in 1805. (R. 21). In 1817, Ridgebury decided to affiliate with the Presbytery of Hudson, and passed two resolutions to reflect this association. (R. 162). First, the session, the governing body of the church made up of elected elders, formally adopted the “Form of Government” of the Presbyterian Church of the United States of America.² (R. 162). The “Form of Government” is and always has been a section of the *Book of Order* — the very section that contains the current express trust provision. (R. 166, 181–87). Second, the session resolved to “put ourselves under the care, and connect ourselves with the Presbytery of Hudson.”³ (R. 162). The parcels of real property which are subjects of this action were all transferred to Ridgebury after such affiliation. (R. 21).

The Presbyterian Church (U.S.A.) (“PCUSA”) was formed in 1983 by the merger of the United Presbyterian Church in the United States of

² The Presbyterian Church of the United States of America was a direct predecessor to PCUSA. (R. 162).

³ The Presbytery of Hudson, or Hudson Presbytery, existed until 1961 when it merged with the Presbyteries of North River and Westchester to form the current Presbytery of Hudson River. (R. 131).

America (“UPCUSA”), concentrated in the northern United States, and the Presbyterian Church in the United States, concentrated in the southern United States. (R. 125). The Presbytery of Hudson River and Ridgebury had been part of the UPCUSA prior to the merger. (R. 125).

In 2005, Ridgebury was a constituent church of the Presbytery, a regional presbytery of PCUSA. (R. 21). PCUSA is composed of one General Assembly, 16 regional synods, 173 regional presbyteries, and thousands of local congregations. (R. 154). All levels of government are bound by PCUSA’s constitution, which consists of two parts, the *Book of Confessions* and the *Book of Order*.⁴ (R. 154). It is the responsibility of each ascending layer of government to ensure that the constituent entities within its control are acting in accordance with PCUSA’s constitution. (R. 604, 622–23).

Courts, including the U.S. Supreme Court and the New York Court of Appeals, have repeatedly recognized that PCUSA follows a hierarchical form of government. *Jones v. Wolf*, 443 U.S. 595, 597–98 (1979); *First Presbyt. Church of Schenectady v. United Presbyt. Church*, 62 N.Y.2d 110, 114 (1984).

⁴ The *Book of Confessions* contains historical statements of what PCUSA as a church believes, and the *Book of Order* consists of three parts, the Form of Government, Directory for Worship, and Rules of Discipline.

II. RIDGEBURY ACCEDED TO HOLDING PROPERTY SUBJECT TO AN IMPLIED TRUST FOR THE BENEFIT OF THE PRESBYTERY

PCUSA and its predecessors historically maintained an implied trust relationship whereby local churches hold property in trust for the national denomination. (R. 167, 604, 612, 626). This implied trust relationship existed at the time Ridgebury first became a member of the entity now known as the Presbytery of Hudson River. (R. 626).

Ridgebury itself acted in accordance with this understanding. In 1979, before the adoption of any express trust clause, Ridgebury sought permission from the Presbytery to sell one of its properties. (R. 537). Indeed, the *Book of Order* required Ridgebury to take these steps. (R. 140). Like the property in this case, the property involved in the sale had been deeded to Ridgebury. (R. 537). Before selling, Ridgebury's pastor submitted a Request to Sell Church Property to Presbytery officials which included a Statement of Request, a Reason for Request, a description of the property and its uses, and a plan for the proceeds from the sale. (R. 537). The end of the form contained a section for the Presbytery to mark "Approved" or "Not Approved." (R. 538). Ridgebury's request was ultimately granted by the Presbytery. (R. 539). However, the sale did not go through for the requested price, so Ridgebury again sought permission from the Presbytery to sell the property at a lower price. (R. 551-52). The

record is devoid of any evidence showing conduct inconsistent with the implied trust.

III. PCUSA CODIFIED THE IMPLIED TRUST RELATIONSHIP BY ADOPTING AN EXPRESS TRUST

Following the U.S. Supreme Court's 1979 decision in *Jones v. Wolf*, UPCUSA proposed an amendment to the church constitution that would expressly codify its historical implied trust. (R. 607-13). The express trust clause specifically provided that it was "declaratory of principles to which the [UPCUSA] and its antecedent church bodies have adhered from the inception of the presbyterian form of church government." (R. 515, 612). The amendment passed by a vote of 146 presbyteries in favor to 4 against. (R. 524). The pastor of Ridgebury Church, Rev. William Wildeman, participated at the meeting of the Presbytery of Hudson River when the amendment was approved. (R. 520-22).

Upon the formation of PCUSA in 1983, the express trust clause was carried over into the new constitution in substantially similar form. (R. 132). It can be found in the Form of Government section of the *Book of Order*, and in particular at G-8.0201, titled "All Property Held in Trust":

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.)*.

(R. 181) (emphasis added).

IV. RIDGEBURY ABIDED BY THE BOOK OF ORDER UNTIL THE EVE OF THIS LITIGATION

Ridgebury took no action to reject the adoption of the express trust clause or distance itself from the trust obligations. (R. 635). To the contrary, Ridgebury continued to affiliate with the Presbytery and PCUSA and subject itself to the *Book of Order*. (R. 635). Indeed, from 1981 until it decided to schism in 2005, Ridgebury repeatedly affirmed its commitment to PCUSA's governing structure, taking actions including:

- seeking the Presbytery's approval for contracts with pastors and pastoral calls to the church (R. 378–87);
- allowing the Presbytery to appoint moderators to the church in 1986, 2001, 2002, and 2003 (R. 373–77);
- submitting lists of church officials, membership records, session records, and annual reports to the Presbytery (R. 396–431, 438–77);
- having elders stand before the congregation and agree to be governed by the church's polity and its discipline (R. 166);
- and regularly attending Presbytery meetings between 1982 and 2004, including a November 2004 meeting where a Ridgebury pastor and session clerk served as minutes readers (R. 223–372, 432–37).

This active participation continued until January 2005, when Ridgebury's session sent a letter to the Presbytery stating that Ridgebury had

determined to disassociate itself from PCUSA and take church property with it. (R. 90). In subsequent correspondence the Presbytery objected to any such withdrawal and noted that the property of a withdrawing church was to be held by the Presbytery pursuant to the *Book of Order*. (R. 91–93, 188–90, 193–95).

Following the *Book of Order*, the Presbytery appointed a Special Committee to “inquire pursuant to G-11.0103(a) of the *Book of Order* ... whether the Session of the First Presbyterian Church of Ridgebury is unable or unwilling to manage wisely the affairs of that Church.” (R. 188). Indeed, as the lower court recognized in its opinion, this was entirely according to church polity: the *Book of Order* provides that a congregation’s relationship to PCUSA can only be severed by action of the presbytery. *Ridgebury*, 821 N.Y.S.2d at 837 (referring to G-8.0600 in the *Book of Order*, at R. 182). The Presbytery’s Special Committee held a hearing to resolve the dispute (R. 183–85), and representatives from Ridgebury and the Presbytery attended and presented evidence. (R. 159). The Special Committee ultimately found in favor of the Presbytery, appointing an administrative commission that assumed original jurisdiction over the church and its property. (R. 494–503, 513–14). Nevertheless, Ridgebury maintained that it

legitimately left PCUSA and that the property in question belonged to the local church.

To resolve this conflict, the Presbytery brought suit for declaratory judgment. Ridgebury served its answer with a motion for summary judgment and the Presbytery responded with a cross motion for summary judgment. The lower court granted judgment to Ridgebury and denied the Presbytery's cross motion, entering judgment dismissing the complaint and declaring Ridgebury the owner of the property in dispute, all before any discovery was exchanged. This appeal ensued.

ARGUMENT

I. UNDISPUTED DISPOSITIVE FACTS DEMONSTRATE RIDGEBURY HOLDS ITS PROPERTY SUBJECT TO AN EXPRESS TRUST FOR THE USE AND BENEFIT OF THE PRESBYTERY

A. Legal Standard for Summary Judgment

Under New York law, the proponent of a motion for summary judgment is required to make a prima facie showing of entitlement to judgment as a matter of law by advancing sufficient evidence to demonstrate the absence of any material issues of fact. *JMD Holding Corp. v. Congress Fin. Corp.*, 4 N.Y.3d 373, 384 (2005); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citations omitted); *see also Winegrad v. N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). The failure to make such showing mandates denial of the motion, regardless of the sufficiency of the opposing papers. *Alvarez*, 68 N.Y.2d at 324; *Winegrad*, 64 N.Y.2d at 853.

Where the proponent of the motion has made a prima facie showing, the burden then shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a triable issues of fact. *Guiffrida v. Citibank Corp.*, 100 N.Y.2d 72, 81 (2003) (citing *Alvarez*, 68 N.Y.2d at 324). When deciding a summary judgment motion, the evidence must be viewed in the light most favorable to the

nonmoving party. *See Russo v. YMCA of Greater Buffalo*, 12 A.D.3d 1089, 1089 (N.Y. App. Div. 4th Dep't 2004). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957); *see Rotuba Extruders v. Ceppos*, 46 N.Y.2d 2231 (1978).

B. The Lower Court Disregarded Undisputed Facts Evidencing Ridgebury's Obligation to Hold its Property Subject to an Express Trust for the Presbytery

1. The Law of Neutral Principles

In 1979, the U.S. Supreme Court held that a state court may constitutionally adopt "neutral principles of law" as a means of adjudicating church property disputes. *Jones*, 443 U.S. at 597. That analysis would nonetheless require consideration of the church constitution in addition to secular documents such as deeds and corporate charters. *Id.* at 603. The *Jones* analysis permits a court to settle:

a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, *and the provisions of the constitution of the general church concerning the ownership and control of church property.*

Id. (emphasis added). The Court in *Jones* discussed proper application of neutral principles in two prior cases — one of which resulted in church property being awarded to the local congregation (*Presbyt. Church v.*

Eastern Heights Church (“*Presbyterian Church II*”), 225 Ga. 259, 167 S.E.2d 658 (1969)) and the second in church property being awarded to the denominational church (*Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), *cert. denied* 429 U.S. 868 (1976)). *Jones*, 443 U.S. at 600. The dispositive issue in each case was the existence of express trust language in the governing documents of the denominational church:

As in *Presbyterian Church II*, the court [in *Carnes*] found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The [*Carnes*] court observed, however, that the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church.

Id. at 600–01. Conversely, in discussing the case before it, the Court noted that the relevant documents, i.e., the deeds, local church charters, state statutes governing church property, and the provisions of the constitution of the general church concerning ownership and control of church property (*see id.* at 603–04) did not contain the trust language central to the *Carnes* decision:

And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church.

Id. at 601. Based upon the lack of any trust language in the relevant documents, the U.S. Supreme Court in *Jones* noted that the Georgia courts “accordingly held that legal title to the property of the [local] church was vested in the local congregation.” *Id.*

The *Jones* Court recognized that this neutral principles approach, with its emphasis on express trust language, might impose a heavy burden on national denominations to amend individual deeds and corporate charters of all their local churches. To address this burden, it set forth specific instructions as to how national denominations could “ensure” that church property would be retained by the denominational church in the event of a dispute. Specifically, the Supreme Court invited national denominations to amend their constitutions to recite an express trust in favor of the denominational church:

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.

Id. at 606. PCUSA and its predecessors followed the Supreme Court's instruction in *Jones* and expressly memorialized the existing trust arrangements that had been, up to that time, implicitly accepted and understood by members of the denomination. Specifically, in 1981, the General Assembly of the UPCUSA amended the Form of Government section of the *Book of Order* by adding Chapter XLII, "Of Property," which provided that all property held by or for a particular church, a presbytery, a synod, the General Assembly, or UPCUSA, whether legal title is lodged in a corporation, a trustee or trustees, was "held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America." (R. 515).

New York courts have adopted *Jones*' neutral principles analysis (*First Presbyt. Church of Schenectady v. United Presbyt. Church* ("Schenectady"), 62 N.Y.2d 110, 122 (1984), *Episcopal Diocese of Rochester v. Harnish* ("Harnish"), No. 152, __ N.E.2d __, 2008 NY Slip Op. 07991 (N.Y. 2008)) and upheld express trust provisions adopted into a church constitution in response to *Jones*' instruction. *Harnish*, 2008 NY Slip Op. 07991, *6-7; *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* ("Trinity"), 250 A.D.2d 282 (N.Y. App. Div. 3d Dep't 1999).

In *Schenectady*, the New York Court of Appeals adopted neutral principles and reaffirmed that this analysis would focus on interpreting the “language of the deeds, the terms of the local church charter, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.” 62 N.Y.2d at 122 (citing *Jones*, 443 U.S. at 503). Although *Schenectady* was filed prior to PCUSA’s adoption of an express trust clause, just a few weeks ago, the Court of Appeals in *Harnish* had the opportunity to consider the import of an express trust clause in a national denomination’s constitution. *Harnish* found the clause dispositive in determining that the local church held its property in trust. 2008 NY Slip Op. 07991, *6–7.

In *Harnish*, the Court of Appeals specifically held that, although nothing in the deeds or the certificate of incorporation of the local church established an express trust, the existence of an express trust clause in the church constitution was “dispositive” in determining that the local church held its property for the use and benefit of the national denomination. *Id.* at *6–7. Citing *Jones*, *Harnish* held that the Episcopal Church’s trust clause,

called the Dennis Canons,⁵ “clearly establish an express trust in favor of the Rochester Diocese and the National Church.” *Id.* at *7.

2. An Express Trust Provision in the Denominational Constitution Has Binding Effect

Despite *Jones*' decree that courts will be “bound” to give effect to trust clauses enacted in just this manner, 443 U.S. at 606, and without the benefit of the recent *Harnish* decision, the lower court declined to give effect to the trust clause in PCUSA's constitution. The lower court instead granted summary judgment to Ridgebury after finding that “[t]he issue in this case, in a nutshell, is whether this action [enacting the trust clause] by the General Assembly is enforceable.” *Presbytery of Hudson River v. Trustees of First Presbyt. Church and Congregation of Ridgeberry* (“Ridgebury”), 821 N.Y.S.2d 834, 837 (N.Y. Sup. Ct. 2006). By ignoring *Jones*' approval of express trust clauses like those in PCUSA's constitution, the lower court eviscerated the intent of *Jones*. Further, the lower court ignored evidence that Ridgebury manifested its intent, over the decades, to be bound by the

⁵ The “Dennis Canons” were added to the Episcopal Church's constitution in 1979. They provide that “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof” *Harnish*, 2008 NY Slip Op. 07991, *5–6 n.3. To compare, the trust clause in the *Book of Order*, in section G-8.0201, states: “All property held by or for a particular church ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)” (R. 181).

express trust clause and the *Book of Order*. See *Harnish*, 2008 NY Slip Op. 07991, *6–7 (holding that the Dennis Canons “clearly establish an express trust in favor of the Rochester Diocese and the National Church and that All Saints [the local church] agreed to abide by this express trust either upon incorporation in 1927 or upon recognition as a parish in spiritual union with the Rochester Diocese in 1947”).

Instead, the lower court held that absent any language in the deeds indicating that title is “subject to the laws or discipline of the national church ... , a change in the laws of the national church does not affect title to the realty held by the local church.” *Ridgebury*, 821 N.Y.S.2d at 837 (citations omitted). This holding directly contradicts the U.S. Supreme Court’s holding in *Jones* and numerous opinions applying neutral principles in New York and across the country,⁶ including the recent decision in *Harnish*.⁷

⁶ Courts in other jurisdictions have upheld such express trust clauses under the neutral principles standard. For example, in *In re Church of St. James the Less*, the Supreme Court of Pennsylvania opined that a similarly worded trust provision in the constitution of the National Episcopal Church “codified in explicit terms a trust relationship.” 585 Pa. 428, 451, 888 A.2d 795, 810 (2005). See also *Korean United Presbyt. Church of Los Angeles v. Presbytery of the Pacific*, 281 Cal. Rptr. 396, 414 (Cal. Ct. App. 1991) (reversed on other grounds) (holding that a denominational trust provision should be enforced in part because “the Supreme Court, in *Jones*, invited” this “very type” of provision); *St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d

a. **This Case is Squarely On Point with the Facts in *Harnish* that led the Court of Appeals to Enforce an Express Trust Clause as to the Local Church**

The Court of Appeals ruling in *Harnish* is significant and instructive in light of the many factual similarities concerning the local church's manifestation of intent that this case shares with *Harnish*. As an initial matter, both cases stem from an identical circumstance — in *Harnish*, just as in this case, the local church attempted to leave the national denomination and take the church property with it. 2008 NY Slip Op. 07991, *1–2. The Episcopal Diocese, the church hierarchical equivalent of PCUSA's Presbytery, sued for, *inter alia*, a declaratory judgment that the real and personal property of the local church was impressed with a trust in favor of the diocese and the national denomination. *Id.* at *3.

In *Harnish*, the local church had agreed to abide by all “canonical or legal enactments” long before the adoption of the express trust provision in

541, 554 (Alaska 2006) (“[R]eliance upon trust language such as that contained in the Discipline to determine the objective intent of the parties was contemplated by and endorsed by the United States Supreme Court in *Jones*.”).

⁷ The lower court attempted to distinguish church property cases involving the Episcopal Church from those involving the PCUSA. These distinctions are irrelevant for the purposes of the express trust analysis, as further discussed *infra* at Section I.C.1.

the national denomination's constitution. *Id.* at *7. Similarly, here, Ridgebury agreed, when it joined the Presbytery in 1817, to accede to PCUSA's constitution when it formally resolved to "adopt the ... Form of Government of the Presbyterian Church of the United States of America" and to "put ourselves under the care and connect ourselves with the Presbytery of Hudson."⁸ (R. 636). In *Harnish*, the Court of Appeals found that the local church's earlier agreement to abide by the church canons and legal enactments demonstrated that it was unlikely that the parties intended that the local church could reserve veto power over every future change in the constitution. 2008 NY Slip Op. 07991, *7. Here, the facts show that Ridgebury never retained veto power.

Tellingly, the Court of Appeals in *Harnish* found it "significant" to its finding of an express trust that the local church never objected to the applicability or attempted to remove itself from the reach of the express trust clause in the more than twenty years since the national church adopted the express trust provision. *Id.* Here too, after the adoption of the express trust clause in 1981, Ridgebury never objected to the express trust clause provision of the *Book of Order*. Indeed, the evidence shows Ridgebury

⁸ The "Form of Government" is and always has been a section of the *Book of Order* — the very section that contains the current express trust provision. (R. 166, 181–87).

abided by the polity of PCUSA for over twenty more years (R. 635), abided by all provisions in the *Book of Order*, and did not otherwise make any attempt to remove itself from the reach of PCUSA's constitution until just before this action commenced. (R. 635).

b. The Court of Appeals Ruling in *Harnish* Establishes as a Matter of Law that Ridgebury Holds its Property Subject to an Express Trust

A correct reading of *Harnish* leads to the conclusion that the Presbytery has established, as a matter of law, that it is entitled to the real and personal property at issue. Ridgebury does not dispute that there is an express trust clause in the *Book of Order* (R. 635); that Ridgebury formally resolved to join the Presbyterian Church in 1817 and adopt the "Form of Government of the Presbyterian Church of the United States of America" (R. 636) (the same section of the *Book of Order* that now contains the express trust clause); and that it continued to act in accordance with the *Book of Order* for more than twenty years after the adoption of the express trust clause (R. 635). *Harnish* makes clear that these undisputed facts show a manifestation of intent to be bound by an express trust clause, and Ridgebury did not raise any triable issue of fact to preclude this determination. Therefore, as a matter of law, the Presbytery should have prevailed on its cross-motion for summary judgment.

c. Triable Issues of Fact Exist Concerning Ridgebury's Intent to be Bound by the Express Trust Clause in the *Book of Order*

Even if the Court does not agree that the similarity of the undisputed facts in this case to those in *Harnish* mandates judgment as a matter of law in favor of the Presbytery, at a minimum, this case should be remanded to the lower court because the Presbytery proffered admissible evidence sufficient to defeat summary judgment on the issue of whether Ridgebury exhibited an intent to be bound by the express trust.⁹

For example, the Presbytery set forth evidence that Ridgebury participated in communion with the Presbytery from 1817 through 2004. (R. 634). Ridgebury sought approval from the Presbytery to dispose of property. (R. 537–38, 551–52). Ridgebury's minister represented Ridgebury at the 1979 meeting where the Presbytery approved the adoption of the express trust clause (R. 635), and, following the adoption of the trust clause, Ridgebury continued to participate in the affairs of the Presbytery in accordance with the *Book of Order* and continued to abide by the polity of PCUSA without disavowing its trust obligations. (R. 635–36). During this

⁹ Indeed, here the lower court granted summary judgment on affidavits before the benefit of any discovery. After the Presbytery served on Ridgebury its action for declaratory judgment on August 31, 2005, Ridgebury served its answer along with a motion for summary judgment on November 23, 2005.

time, the Presbytery lent its continual support to Ridgebury, providing administrative and theological structure and services necessary for Ridgebury to function as part of PCUSA. (R. 634). Ridgebury even paid the Presbytery annual per capita apportionments to defray the cost of the services provided. (R. 634). Given these facts, questions of material fact exist regarding whether Ridgebury manifested its intent to be bound by the *Book of Order*, including its trust provisions.

C. The Lower Court Erroneously Distinguished this Case from *Trinity*, which Upheld an Express Trust Clause in the Episcopal Church

In refusing to uphold the express trust clause provision of the *Book of Order*, the lower court erroneously distinguished this case from a Third Department opinion that upheld an express trust clause in the constitution of the Episcopal Church. *Trinity*, 250 A.D.2d 282. The lower court distinguished *Trinity* from this case by mistakenly finding that: (1) the Presbyterian Church has a “different system of government” than the Episcopal Church; and (2) evidence of a historical implied trust in the national church was necessary to find an express trust clause in the *Book of Order* enforceable (and PCUSA’s express trust clause did *not* codify a historical implied trust for the benefit of PCUSA).

These errors caused the lower court to ignore triable issues of fact related to whether Ridgebury has church property subject to an implied trust for the use and benefit of the Presbytery and PCUSA.

**1. The Court Relied on an Irrelevant Distinction
Between the Government of the Episcopal Church
and that of PCUSA**

The lower court's first error in distinguishing *Trinity* was in finding material differences between the Episcopal Church's form of government and that of the PCUSA. It stated that the Presbyterian Church, "following a Calvinist tradition, has a different system of government" than the Episcopal Church, "which follows, roughly, the models of the Roman Catholic Church and the Eastern Orthodox Churches pursuant to which a diocese is governed by a bishop to whom the parishes in the diocese owe ecclesiastical obedience." *Ridgebury*, 821 N.Y.S.2d at 838. Although not identical to that of the Episcopal Church, the Presbyterian form of government is considered hierarchical, as are those of the Episcopal, Roman Catholic, and Eastern Orthodox Churches. The court's distinction, i.e., that a legislative-type body, the General Assembly, sits atop the hierarchy, has no bearing on whether an express trust can be created by the denominational church. The fact is that, like the Episcopal Church, the Presbyterian Church has a hierarchical form of government. This fact is supported by the affidavits in

the record (R. 622, R. 154), the New York Court of Appeals, and the Supreme Court of the United States:

UPCUSA exhibits a hierarchical or connectional form of church government, as differentiated from a congregational form. Under the hierarchical system, authority is vested in the first instance in the governing body of the local church — the Session — but its actions are subject to review and control by higher church bodies, in ascending order of authority, the Presbytery, the Synod and the General Assembly. To contrast, a congregational type church is independent of higher church authority and is self-governing.

Schenectady, 62 N.Y.2d at 114; *see also Jones v. Wolf*, 443 U.S. 595, 597–98 (1979) (same). To the extent that the lower court distinguished the precedent involving the Episcopal Church based on form of government, it was in error.

2. The Express Trust Clause is Valid Even if it Does Not Codify a Historical Implied Trust

The lower court assumed that evidence of a historical implied trust was necessary to give effect to an express trust clause in the denominational constitution. *Ridgebury*, 821 N.Y.S.2d at 838–39. However, the recent decision in *Harnish* clarifies that there is no prerequisite of finding an implied trust relationship between the denomination and its local church to find that a denomination's constitutional express trust clause is enforceable. In *Harnish*, the court found an express trust existed for the benefit of the

denomination, and therefore declined to even reach the issue of whether an implied trust also existed, stating:

We conclude that the Dennis Canons clearly establish an express trust in favor of the Rochester Diocese and the National Church (*see Jones*, 443 U.S. at 606), and that All Saints agreed to abide by this express trust. ... We therefore do not need to consider the existence of an implied trust.

2008 NY Slip Op. 07991, *6-7.

II. TRIABLE ISSUES OF FACT EXIST CONCERNING WHETHER RIDGEBURY HELD THE CHURCH PROPERTY IN AN IMPLIED TRUST FOR THE PRESBYTERY AND PCUSA

Even if this Court finds existence of an implied trust material, it should remand because the lower court erred in interpreting *Schenectady* as finding, as a matter of law, that no historical implied trust exists in the PCUSA. Due to this erroneous interpretation of *Schenectady*, the lower court failed to consider triable issues of fact regarding the existence of PCUSA's historical implied trust. Accordingly, this Court should remand to allow the lower court to resolve the triable issues of fact and consider all relevant precedent.

A. *Schenectady* Did Not Reach the Issue of Whether a Historical Implied Trust Exists in the PCUSA

In *Trinity*, the court upheld the Episcopal Church's express trust provision in part because the express trust merely codified an existing,

implied trust between the local churches and the national denomination. *Ridgebury*, 821 N.Y.S.2d at 838. However, the lower court distinguished *Trinity* by erroneously concluding that the New York Court of Appeals in *Schenectady* “specifically rejected the contention that an implied trust could be found in the polity of the Presbyterian Church.” *Id.* Thus, the lower court held that the Presbytery could not claim that PCUSA’s express trust clause codified a similar and existing implied trust, and therefore the PCUSA express trust clause was unenforceable. *Id.* at 838–39.

But *Schenectady* did not address whether an implied trust existed within the polity of the Presbyterian Church,¹⁰ 62 N.Y.2d at 124–25; rather, in *Schenectady*, the court only considered whether there was evidence that the local church in that case intended to hold its property in trust for the national denomination. *Id.* at 124. Thus, the *Schenectady* analysis and

¹⁰ In *Schenectady*, the court does note that not only was there no express trust clause in the *Book of Order* as of 1979, “but in 1929 UPCUSA [the predecessor of the PCUSA] proposed an amendment to the church rules establishing a trust of all church properties for the denominational trust and the amendment failed to receive the necessary votes of the Presbyteries for passage.” 62 N.Y.2d at 125. However, reference to this one fact does not constitute an evaluation of the implied trust doctrine within the history of the Presbyterian Church. And, in any event, the fact that an express trust clause did not pass in 1929 does not negate the existence of an implied trust. *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 819 (Iowa 1983). It is just as likely that an express trust clause failed to pass in 1929 for fear that it might undermine evidence of the long-standing implied trust within the church as any other reason.

holding are limited. *Compare Trinity*, 250 A.D.2d at 288 (finding “the record supports the conclusion that ... a trust relationship ... has implicitly existed between the local parishes and their dioceses throughout the history of the Protestant Episcopal Church”); *Rector, Wardens and Vestrymen of Trinity-St. Michael’s Parish, Inc. v. The Episcopal Church in the Diocese of Connecticut*, 224 Conn. 797, 820–21, 620 A.2d 1280, 1292–93 (1993) (finding an implied trust in the history of the Episcopal Church after review of extensive facts related to the polity of the church, including testimony describing the attributes of the hierarchical polity of the Episcopal Church, and how various property and business affairs are governed by the Episcopal constitution, and expert testimony proffering the opinion that the express trust clause of the Episcopal Church recognized a preexisting trust on parochial property in favor of the national church).¹¹

¹¹ Notably, the facts reviewed by the court in *St. Michael’s Parish* are similar to those put forth in the affidavits of Rev. Richard Spierling and Rev. Mark Tammen addressing the hierarchical structure of PCUSA and the longstanding trust doctrine within the PCUSA. (R. 154, 164–68, 603–06).

B. Courts That Have Investigated the History of the Presbyterian Church Have Found an Implied Trust Doctrine in the History of the Polity of the Church

Numerous courts that have examined the history of the Presbyterian Church have found evidence of a longstanding trust doctrine built into the polity and fabric of the church.

Indeed, in 1913, in *Barkley v. Hayes*, the district court considered the “essential character of Presbyterian ... property; how it is held, by and for whom, and in what such Presbyterian property rights consist” when determining whether an implied trust existed within the Presbyterian Church. 208 F. 319, 322 (W.D. Mo. 1913), *aff’d sub nom. Duvall v. Synod of Kansas of Presbyt. Church*, 222 F. 669, 671 (8th Cir. 1915) (fully concurring with district court opinion), *aff’d sub nom. Shepard v. Barkley*, 247 U.S. 1 (1918). *Barkley* concluded that property held by the local church “is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it ... [but] belongs to the church which is composed of its entire membership” *Id.* The U.S. Supreme Court and the Eighth Circuit each affirmed the district court’s opinion in *Barkley* — these opinions remain good law today.

More recently, in *Fonken v. Community Church of Kamrar*, the court considered “whether the UPCUSA constitution, pursuant to and subject to which the local church was organized, establishes an implied trust in UPCUSA,” and held that the *Book of Order* did establish an implied trust in the UPCUSA. 339 N.W.2d 810, 818–19 (Iowa 1983). In reaching this determination, the court found the *Book of Order* gave the general church “exclusive ultimate control of the uses and disposition of local church property.” *Id.* In addition, the court found a failure to codify an express trust clause “does not negate the existence, if it otherwise appears, of an implied trust.”

C. A Historical Implied Trust Relationship Exists Between PCUSA and its Local Churches

In this case, the lower court disregarded the Presbytery’s evidence on PCUSA’s historical implied trust because, as discussed *supra* at Section II.A, it incorrectly concluded that *Schenectady* held there was no such trust in the polity of PCUSA. *Ridgebury*, 821 N.Y.S.2d at 838–39. However, the Presbytery did submit evidence which, viewed in light most favorable to the Presbytery, establishes that Ridgebury holds its property subject to PCUSA’s historical implied trust. Ridgebury disputed these facts and submitted its own evidence in opposition. (*See R.* 638–55). Thus, this

Court should reverse the grant of summary judgment and remand to the lower court to resolve these triable issues of material fact.

In particular, the Presbytery submitted evidence that demonstrated that PCUSA's express trust provision did not appear out of the blue, but rather, was merely the codification of an implied trust relationship that has existed from the inception of the Presbyterian Church. (R. 611). For instance, the Presbytery submitted evidence to show that it was only after the Supreme Court's 1979 decision in *Jones v. Wolf* introduced some uncertainty into the legal landscape that PCUSA considered an express trust provision imperative. This evidence is reflected in the 1979 Report of the UPCUSA's Permanent Committee on Conservation of Property, which describes the *Jones* decision and notes: "Both churches [the UPCUSA and PCUS] have relied upon the concept of 'implied trust,' a doctrine that in many states may no longer be relied upon with confidence following the recent decision." (R. 608). The Report went on to recommend that the church pass Overture A, an express recognition of the trust relationship that the UPCUSA had relied on for years. Significantly, the introductory paragraph states:

This chapter is declaratory of principles to which
The United Presbyterian Church in the United
States of America and its antecedent church bodies

have adhered *from the inception* of the presbyterian form of church government.

(R. 612) (emphasis added). Hence, when the presbyteries — which are made up of representatives from local congregations — around the country voted 146 to 4 to approve Overture A (R. 524), they were not simply passing a new express trust provision. Instead, they were recognizing and reaffirming the historical principles cited in the Report and the Overture itself.

The Presbytery also submitted evidence to the lower court of PCUSA's predecessors making similar pronouncements of their commitment to implied trust principles. For example, the Presbytery put forward evidence that, in 1964, the 176th General Assembly stated, “[w]e reaffirm the position that the ownership of all property in The United Presbyterian Church in the United States of America is shared by all members, despite the multiplicity of corporations among its parts.” (R. 609). And, four years later, the 180th General Assembly adopted a recommendation to “[a]ffirm its continued adherence to the principle that all property owned by a local church ... is held in trust for The United Presbyterian Church in the United States of America.” (R. 615).

These statements reflect the core principle of “organic unity” of the Presbyterian Church, a concept which emphasizes that the multitude of

congregations are held together with vital bonds that constitute one Church. (R. 604). In no area is the concept of “organic unity” more clear than in the historical implied trust doctrine of the PCUSA. (R. 604). Plaintiffs submitted affidavits from experts on the history and polity of the Presbyterian Church confirming facts related to the “organic unity” concept of the Presbyterian Church and its historical implied trust relationship with its churches. (R. 602, 621). The lower court erred by failing to consider these triable issues of fact. Accordingly, this Court should remand and allow the lower court resolve the triable issues of fact.

D. The Lower Court Erred By Failing to Consider Undisputed Evidence of Ridgebury’s Affirmative Actions Evidencing an Intent to Hold its Property Subject to an Implied Trust Even Prior the Adoption of the Express Trust Clause in 1981

The lower court erred by disregarding undisputed facts in the record of affirmative actions Ridgebury took *prior* to the adoption of the express trust clause of the *Book of Order* in 1981 evidencing its intent to hold property for the use and benefit of PCUSA. This issue is independent of the determination of whether the PCUSA’s historical implied trust exists. Regardless of the presence of such a historical implied trust, courts engage in an independent examination of whether the particular church at issue intended to hold its property in trust. *See Trinity*, 250 A.D.2d at 289–90

(finding a historical implied trust in the Episcopal Church and then going on to consider whether any affirmative actions taken by the local church demonstrated a manifestation of intent to hold its property in trust). The undisputed facts here demonstrate such intent.

In this case, the lower court incorrectly stated that the case was “factually on point with the *Schenectady* case” where there was “nothing in the record to indicate that First Church intended to hold its property for the benefit of the denominational church.” *Ridgebury*, 821 N.Y.S.2d at 835–36, 839. That is simply not the case here, where the Presbytery submitted evidence of such intent. For example, the Presbytery submitted undisputed evidence that, in 1979, two years *prior* to the enactment of PCUSA’s express trust clause, *Ridgebury* demonstrated its awareness of its implied trust relationship by seeking the Presbytery’s permission to sell its own property. (R. 537–54). *See* discussion, *supra* at Statement of Facts, Section II. This fact presents strong evidence of *Ridgebury*’s understanding of the ownership of church property, yet it appears nowhere in the lower court’s decision.

In addition to evidence showing that *Ridgebury* sought the Presbytery’s permission to sell property, the Presbytery submitted evidence into the record that other courts have found to support an implied trust. For

example, the *Trinity* court concluded that the local church had demonstrated a sufficient manifestation of intent because, throughout the local parish's existence, its representatives sought permission from the bishop and Standing Committee to convey property held by the parish and "actively participated in numerous Church activities, such as presenting annual reports to the Diocese regarding its financial condition and attending the annual convention of the Diocese, signifying its solidarity with the Protestant Episcopal Church." *Trinity*, 250 A.D.2d at 289; *see also St. Michael's*, 224 Conn. at 821–23, 620 A.2d at 1292–93 (finding historical implied trust after reviewing testimony showing the hierarchical polity of the Episcopal Church, describing how various property and business affairs are governed by the Episcopal constitution, and opining on how the express trust clause of the Episcopal Church recognized a preexisting trust on parochial property in favor of the national church); *North Central New York Annual Conference v. Felker*, 28 A.D.3d 1130 (N.Y. App. Div. 4th Dep't 2006) (finding historical implied trust when the name, customs, and polity of the national church are used in such a way that the local church is known to the community as part of such denomination and the congregation of the local church accepts the ordained ministers appointed by the denominational hierarchy); *Barkley*, 208

F. at 322 (finding historical implied trust after inquiring into the essential character of Presbyterian governance).

There is no doubt that Ridgebury was an active member of the Presbytery from the time that it put itself under the Presbytery's care in 1817. (R. 636). It continuously manifested its solidarity, union, and support for the Presbytery by presenting annual reports and attending annual conventions of the types referenced in *Trinity* (R. 223-372, 438-77); it used the name "First Presbyterian Church and Congregation of Ridgeberry," and accepted ministers only after approval by the Presbytery (R. 382-87), as in *Felker*; and the Presbytery presented evidence showing how Ridgebury's property affairs were governed by the *Book of Order* (R. 181-82), as in *St. Michael's Parish*.

In addition, prior to the adoption of the express trust clause of the *Book of Order*, Ridgebury was active in major church events, participating extensively in the 1961 merger of the Presbyteries of Hudson, North River, and Westchester to create the Presbytery of Hudson River. (R. 140). At a meeting related to the formation of the Presbytery, Ridgebury was represented by church elders and Rev. Wildeman. (R. 527-36). While an elder of Ridgebury was appointed to be a delegate from the new Presbytery

to the Synod, Rev. Wildeman was appointed to a position on the Presbytery's Stewardship and Promotion Committee. (R. 527-36).

Despite a record replete with facts evidencing Ridgebury's understanding that it held its property subject to an implied trust for the benefit of the Presbytery and PCUSA, the lower court's opinion did not make *any* reference to these facts one way or another, and effectively ignored the issue as if the Presbytery had not put forth any evidence on the subject. But the undisputed evidence the Presbytery submitted established as a matter of law that Ridgebury held its property in trust for the Presbytery and PCUSA. At the very least, that evidence, when viewed in a light most favorable to the Presbytery, raised triable issues of material fact on the issue sufficient to defeat summary judgment.

Therefore, the lower court erred in awarding summary judgment and this Court should reverse and remand with instructions to reconsider in light of the evidence in the record.

CONCLUSION

For the foregoing reasons, the Presbytery respectfully requests that this Court overturn the grant of summary judgment to Ridgebury and rule that, as a matter of law, the Presbytery has proven that Ridgebury holds its property for the benefit of the Presbytery and PCUSA. Or, at the very least,

this Court should overturn summary judgment because the Presbytery presented triable issues of material fact regarding Ridgebury's manifestation of intent to hold its property for the benefit of the Presbytery and PCUSA.

In the alternative, the Presbytery respectfully requests that this Court remand the case back to the trial court for reconsideration of the facts in light of the recent Court of Appeals decision in *Harnish*.

Dated: November 5, 2008

Respectfully submitted,



Kenneth L. Steintal
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
[Tel.] (212) 310-8000
[Fax] (212) 310-8007

Sarah E. Barrows
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
[Tel.] (650) 802-3000
[Fax] (512) 802-3100

*Attorneys for Plaintiffs-Appellants the
Presbytery of Hudson River of the
Presbyterian Church (U.S.A.) and
Rev. Richard M. Spierling*

APPELLATE DIVISION — SECOND DEPARTMENT
CERTIFICATION OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 670.10.3(f) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface:	Times New Roman
Point size:	14 pt.
Line spacing:	Double

Word count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 8,627.

Dated: Redwood Shores, California
November 5, 2008

Sarah E. Barrows
WEIL, GOTSHAL & MANGES LLP
Attorneys for Plaintiffs-Appellants

767 Fifth Avenue
New York, New York 10153
[Tel.] (212) 310-8000
[Fax] (212) 310-8007



COUNSEL PRESS

The Appellate Experts

520 EIGHTH AVENUE, NEW YORK, NEW YORK 10018

(212) 685-9800; (716) 852-9800; (800) 4-APPEAL

www.counselpress.com

(218687)