

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

COLONIAL PRESBYTERIAN CHURCH,)	
)	
Plaintiff,)	Case No.: 1016-CV24909
)	
v.)	Division 4
)	
HEARTLAND PRESBYTERY,)	
)	
Defendant.)	

PARTIAL JUDGMENT/ORDER

NOW ON THIS 9th day of June 2011, the court takes up and considers Plaintiff's Motion for Summary Judgment on Counts II and IV of Defendant's Counterclaim, filed March 14, 2011; Defendant's Suggestions in Opposition to Plaintiff's Motion for Summary Judgment on Counts II and IV of Defendant's Counterclaim, filed April 26, 2011, and Plaintiff's Reply in Support of Motion for Summary Judgment on Counts II and IV of Defendant's Counterclaim, filed May 13, 2011. For good cause shown;

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment on Counts II and IV of Defendant's Counterclaim is **GRANTED**.

IT IS FURTHER ORDERED that judgment be entered in favor of Plaintiff and against Defendant on Defendant's Counts II and IV.

IT IS FURTHER ORDERED that The Colonial Presbyterian Church holds title to all property at issue in this suit.

MEMORANDUM

The parties agree and case law requires that Missouri courts, when resolving issues of church property disputes, must apply the neutral principles approach, by relying on objective concepts of trust and property law, and scrutinizing any documents in purely secular terms.

Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W.2d 465 (Mo. 1984). In so doing, the Court finds that plaintiff breached neither an express or implied trust as alleged in Counts II & IV of defendant's Counterclaim, because no such trust has been created.

In Count II of defendant's counterclaim, Heartland, representing the PCUSA, (hereinafter referred to as "defendant") allege that the property in question was held in an express trust in favor of defendant. Section 456.4-401 RSMo provides for the manner, in which a trust may be formed,

- (1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death; (2) declaration by the owner of property that the owner holds identifiable property as trustee; (3) exercise of a power of appointment in favor of a trustee; or
 (4) a court under section 475.092, 475.093, or 511.030, RSMo, or 42 U.S.C. Section 1396p(d)(4).

Defendant admits that at all times the property in question has been titled to Colonial (hereinafter referred to as "plaintiff") solely, and not to Defendant.¹ Defendant also admits that Plaintiff is not financially indebted to Defendant in connection with any of the property in dispute.² In order to create an express trust under Missouri law, plaintiff as grantor would have to declare that it holds the property in trust for defendant. Defendant, however, cites the following clause from the PCUSA's Book of Order, added in 1983, in support of their position that an express trust exists:

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (USA), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporation association, and whether the property is used in programs or 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 (USA).
 [Emphasis Added]

¹ Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 74-81 pg. 23-24.

² Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 79-80 pg. 24.

The language “for the use and benefit”, confers only a right to use the property, it does not confer ownership of the property. The Book of Order is a unilateral document created by the defendant as beneficiary of said trust and not by Plaintiff, the grantor. It is not signed by Plaintiff.³ The above clause in the Book of Order refers to property, generally. Missouri law requires that in order for a trust to be created, the subject matter must be definite. *Edgar v. Fitzpatrick*, 377 S.W. 2d 314 (Mo 1964). The above clause does not describe the property with any specificity. Missouri law also requires that an express trust be created by the “direct or express words of a grantor or settler, or by the intentional act of the party having dominion over the property.” *Gwin v. Gwin*, 219 S.W.2d 282 (Mo App. 1949). The above clause is drafted by the beneficiary and not the grantor contrary to and in violation of Missouri law. For these reasons, the court finds that the above clause does not create a trust over plaintiff’s property.

Defendant asserts that although unsigned, plaintiff’s submitted themselves to the trust clause in the Book of Order. In support of this argument, defendant points to the following provision in plaintiff’s bylaws,

“Being a congregation of the Presbyterian Church, we recognize that these Bylaws and all their provisions are subject to the Constitution of this denomination. All members of this Congregation shall be under the discipline of the Session according to rules agreed upon in harmony with the Constitution, subject in any event to the laws of the State of Missouri and the State of Kansas.”⁴

[Emphasis Added]

This provision acknowledges that despite any commitments made, Plaintiff is still subject to the laws of the State of Missouri and Kansas.⁵ The law in Missouri requires that in order for a trust to be created, the grantor must expressly create such a trust. There are simply no “express words”, either in plaintiff’s bylaws or in the Book of Order, or “intentional act by the party

³ Defendant’s Response to Plaintiff’s Statement of Uncontroverted Material Facts, ¶ 102, pg. 31.

⁴ Defendant’s Statement of Additional Material Facts, Exhibit A. The Colonial Church Bylaws, Article II.

⁵ A review of the Book of Order, references compliance with civil law. The Constitution of the Presbyterian Church,

having dominion over the property” to show that plaintiff has specifically conferred property to defendant. *Gwin*, supra. No express trust has been created by plaintiff. Defendant cannot create a trust of another’s property for its benefit. The defendant’s alleged trust clause violates Missouri law. No express trust exists.

Defendant also alleges in Count IV of their counterclaim that an implied trust exists in favor of defendant over plaintiff’s property. Missouri law identifies two types of implied trusts, a resulting or a constructive trust.

A resulting trust is one implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises. *In re Marriage of Hunt*, 933 S.W.2d 437, 442 (Mo. App. S.D. 1996). It is created from what the parties do and never from what they agree to do. *Ward v. Hudgens*, 22 S.W.3d 260, 263 (Mo. App. S.D. 2000) (citing *Duncan v. Rayfield*, 698 S.W.2d 876, 879 (Mo. App. S.D. 1985)). A resulting trust arises “where one pays the purchase price for land with legal title taken in another.” *In re Marriage of Hunt*, 933 S.W.2d at 442. The theory behind a resulting trust is that one who provides purchase money for property intends to receive the benefit of that property. *Tomasovic v. Tomasovic*, 845 S.W.2d 661, 664 (Mo. App. E.D. 1992). A resulting trust arises, if at all, the instant a deed is taken. *Correale v. Hall*, 9 S.W.3d 624, 627 (Mo. App. E.D. 1999). It cannot be created by subsequent occurrences. *Ward*, 22 S.W.3d at 263 (citation omitted). Clear and convincing evidence must exist in order for a court to find a resulting trust. *Prange*, 755 S.W.2d at 592.

[Emphasis Added]

A constructive trust is created when;

Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises." *Wallach v. Joseph*, 420 S.W.2d 289, 295 (Mo. 1967). Further, "To establish a constructive trust, an extraordinary degree of proof is required. The evidence must be unquestionable in character. The evidence must be so clear, cogent, and convincing as to exclude every reasonable doubt in the mind of the trial court." *Fix v. Fix*, 847 S.W.2d 762, 765 (Mo. banc 1993). "The stringency of the proof requirements has been attributed to the public policy in favor of the security of titles and the reluctance of courts to disturb record or other apparent ownership." *Owen v. Smith*, 532 S.W.2d 538, 539 (Mo.App. 1976). The touchstone for imposition of a constructive trust is injustice or unfairness, which may take the form or bet the product of fraud, abuse of a fiduciary or confidential relationship, undue influence, or unjust enrichment. *Brown v. Brown*, 152 S.W.3d 911. (Mo. App. 2005).

[Emphasis Added]

Defendant's Count IV, for breach of implied trust, reads as follows:

Count IV- Breach of Implied Trust

56. Colonial incorporates by reference all preceding paragraphs as though fully set forth herein.

57. Section G-8.0200 of the PCUSA's Constitution created an implied trust in favor of the PCUSA and Heartland. Book of Order, at G-8.0200.

58. Colonial its real and personal property in an implied trust for the use and benefit of the PCUSA pursuant to the PCUSA Constitution. Book of Order, at G-8.0200.

59. As trustee holding its real and personal property for the use and benefit of the PCUSA, Colonial owed the PCUSA and Heartland a fiduciary duty to use the property only in furtherance of the mission of PCUSA.

60. Colonial attempted to disaffiliate from the PCUSA in violation of the PCUSA Constitution. Through its attempted disaffiliation, Colonial failed to further the mission of the PCUSA, which amounts to a breach of the implied trust in favor of Heartland and the PCUSA.

61. Colonial also attempted to affiliate with the Evangelical Presbyterian Church. This attempted affiliation with the Evangelical Presbyterian Church was not in furtherance of the mission of the PCUSA and thus is a further breach of the implied trust in favor of Heartland and PCUSA.

62. As a direct and proximate cause of Colonial's breach of trust, Heartland and PCUSA suffered damages. Wherefore, Heartland requests that this Court enter its judgment in favor of Heartland and against Colonial.....

[Emphasis Added]

Nothing in this count contains facts supporting a claim of an implied trust, either resulting or constructive. There are no facts in the counterclaim or motions submitted herein that allege that defendant provided purchase money for the property, that there was a taking of the deed resulting in fraud or mistake or that plaintiff has been unjustly enriched. The uncontroverted facts asserted in the motions are in opposite to what is required to establish an implied trust;

1. Defendant did not furnish anything for the deed, and admit that plaintiff is not financially indebted to Defendant in connection with any of the

property in dispute.⁶

2. The property remains deeded to Plaintiff.⁷
3. Defendant admits that from the date of its incorporation to the present, with respect to all property, plaintiff has been self-sustaining and financially independent from any national Presbyterian denomination or local presbytery, with which it has been affiliated.⁸
4. Defendant admits that plaintiff paid for the maintenance and upkeep of the buildings and grounds of the property, including taxes and utilities.⁹

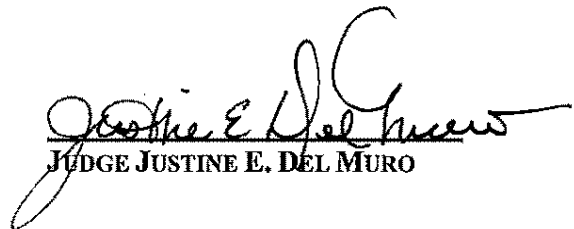
There is no evidence that a deed was taken, that purchase money for the property was provided or that plaintiff has been unjustly enriched. There is no evidence of fraud or mistake. Rather the court finds that it would be defendant who would be unjustly enriched by taking possession of plaintiff's property.

For the reasons stated above, the Court grants Plaintiff's Motion for Summary Judgment as to Counts II and Counts IV of Defendant's Counterclaim, and further finds that Plaintiff holds title to all property at issue in this suit.

IT IS SO ORDERED.

Dated: _____

June 9th 2011


JUDGE JUSTINE E. DEL MURO

⁶ Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 74-81, pg. 23, 24.

⁷ Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 74-81, pg. 23, 24.

⁸ Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 80, pg. 24.

⁹ Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts, ¶ 71, pg. 22, ¶ 79, pg. 24.

Certificate of Mailing

I certify that I e-mailed a copy of the
foregoing order on 6/9, 2011 to:

J. Brett Milbourn

Eric M. Shimamoto

Ryan G. Terri

Allan Hallquist

Kathryn G. Lee