

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

The Presbytery of Western North Carolina, Inc., and The Montreat Presbyterian Church (Presbyterian Church U.S.A.), an unincorporated religious congregation organized and existing under NCGS Chapter 61 by and through its Trustees R. James Henderson, Henry W. Neale and Arline J. Taylor, as Trustees of the Montreat Presbyterian Church (PCUSA)

Plaintiffs,

vs.

Montreat Presbyterian Church, a North Carolina corporation d/b/a Montreat Presbyterian Church, E.P.C. and E.A. Andrews, Jr., Jessie G. Barker and Natalie W. Schermerhorn, individually and as Trustees of the Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under NCGS Chapter 61,

Defendants.

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO: 08 CVS 4943

FILED

2009 FEB 17 PM 2:43

BUNCOMBE COUNTY, C.S.C.

BY AK

ORDER

THIS MATTER coming on to be heard and being heard before the undersigned Judge on January 20, 2009, upon Motion of Defendants to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure on the grounds that the Court lacks jurisdiction over the subject matter; to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure on the grounds that Plaintiff's Complaint fails to state a claim upon which relief can be granted; and pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure to strike certain paragraphs and portions of the Complaint; and

The Defendants, at hearing having withdrawn in open Court; their Rule 12(b)(1) motion; their Rule 12(b)(6) motion as to the First, Second, Third and Seventh Causes of Action in the Complaint, [but not as to the Fourth (Breach of Fiduciary Duty), Fifth (Actual or Constructive Fraud and Constructive Trust/Unjust Enrichment) and Sixth (Estoppel) Causes of Action in the Complaint;] and their Rule 12(f) Motion as to all references in the Complaint, except as to the

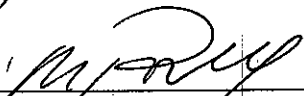
Fifth Cause of Action; and

The Court having considered the materials and authorities presented by the parties, except the Court did not consider the Affidavit of James E. Aydelotte filed prior to hearing, and the Court having heard the argument of counsel for Defendants and Plaintiffs; and

It appearing to the Court that Defendants' remaining Motion to Dismiss and to Strike should be denied.

IT IS THEREFORE ORDERED that Defendants' Motions pursuant to Rule 12(b)(6) to Dismiss the Fourth Cause of Action, the Fifth Cause of Action, and the Sixth Cause of Action and pursuant to Rule 12(f) to strike the Fifth Cause of Action are hereby denied.

This the 12 day of February, 2009.

  
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The Honorable Mark E. Powell  
Judge Presiding