

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-4142M

PLAINTIFF’S BRIEF IN OPPOSITION TO MOTION TO DISMISS

COMES NOW TIMBERRIDGE PRESBYTERIAN CHURCH, INC., Plaintiff in
the above-styled action, and files this brief in opposition to Defendant’s motion to
dismiss, showing the Court as follows:

STATEMENT OF FACTS

On September 6, 2007, Plaintiff Timberridge Presbyterian Church, Inc.
 (“Timberridge”) filed the above-referenced lawsuit seeking, among other relief, a
 declaration from this Court as to its rights to certain real property. Timberridge is a non-
 profit Georgia corporation that operates as a church affiliated with the national
 denomination Presbyterian Church (USA) (hereinafter “PCUSA”). Timberridge Church
 is located in McDonough, Henry County, Georgia, and the land on which it sits is the
 property which forms the subject of the instant suit. Defendant Presbytery of Greater
 Atlanta, Inc. (hereinafter “PGA” or “Presbytery”) is non-profit Georgia corporation
 serving as the regional administrative unit (akin to a diocese) for the PCUSA.

As evidenced by the Answer and Counterclaim filed by the PGA, it is apparent that a dispute exists regarding the property on which Timberridge sits. Timberridge seeks a declaration that it owns the property, which was conveyed to Timberridge by members of its church, free and clear of any encumbrances by PGA. Similarly, Timberridge has filed a separate, statutory claim to quiet title to the property on which the church sits. The Presbytery, however, contends that the property is subject to a trust, and that Timberridge is holding the property in trust for the benefit, use and enjoyment of PCUSA.

The issues raised by Plaintiff in its complaint for declaratory judgment and claim to quiet title are ripe for review by this Court. Because the dispute which exists between Timberridge and PGA constitutes a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment, Timberridge has filed a justiciable claim pursuant to the Georgia Declaratory Judgment Act. Additionally, because Timberridge's amended complaint sets forth a proper claim in rem to establish its title to the land and to determine all adverse claims and/or to remove any particular cloud or clouds upon its title, Timberridge has filed a justiciable claim pursuant to the Quiet Title Act. Furthermore, because this case concerns a dispute as to the ownership and title to property, and because this case presents a request to quiet title to property, venue is proper in this Court, which sits in the county in which the property in question is located. Lastly, Timberridge has not waived any claim, nor is it estopped from bringing its claim. As a result, Plaintiff respectfully

requests that this Court deny Defendant's motion to dismiss, and allow this case to proceed.

ARGUMENT AND CITATION OF AUTHORITY

I. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THE CONTROVERSY PRESENTED IN THE INSTANT SUIT.

A. This Case Presents an Actual Controversy to be Decided by this Court.

The Presbytery's first argument in its motion to dismiss asserts that no actual controversy exists to be tried. In support of this position, the PGA suggests that Timberridge's request for a declaration from the Court is improperly based upon a possible or probable future contingency. The PGA further suggests that the parties are not asserting adverse claims based upon an accrued set of facts, and therefore no justiciable question has been presented. The Presbytery's position, however, is not supported by law and is undermined by the pleadings it has filed and the representations it has made to this Court.

This Court's authority to entertain declaratory judgment actions is granted through the Georgia Code, which provides:

In cases of actual controversy, the respective superior courts of this state shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed; and the declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

O.C.G.A. § 9-4-2(a).

As the Presbytery has noted, Georgia courts have interpreted this Code section to find that a justiciable controversy justifying declaratory relief exists where the interested parties assert adverse claims upon an accrued state of facts. Sierra Craft, Inc. v. T.D. Farrell Const., Inc., 282 Ga. App. 377, 638 S.E.2d 815, (2006). The Georgia Court of Appeals has recognized that

Georgia's declaratory judgment act is to be construed liberally, and all that is required to state a claim for declaratory judgment is “the presence in the declaratory action of a party with an interest in the controversy adverse to that of the petitioner.”

Mariner Healthcare, Inc. v. Foster, 280 Ga. App. 406, 634 S.E.2d 162, (2006) (citations omitted) (recognizing the propriety of a declaratory judgment action for resolving a dispute regarding a lease).

The Georgia Court of Appeals has further found that declaratory relief is proper “where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations.” Sierra Craft, Inc. v. T.D. Farrell Constr., Inc., 282 Ga. App. 377, 379, 638 S.E.2d 815, 818 (2006). In Sierra Craft, the Georgia Court of Appeals found that petitioner T.D. Farrell Construction, Inc. faced uncertainty as to the legal effect of a payment bond it had obtained, and that Farrell was entitled to instruction from the Court to assist it in taking future actions. In a case cited by the court in Sierra Craft, it was

recognized that a plaintiff was entitled to have “the lights turned on before stepping into darkness, and a declaratory judgment was the proper remedy.” Id.

Here, the dispute identified by Timberridge satisfies the test for warranting declaratory judgment. The interested parties in this case, Timberridge and the PGA, clearly assert adverse claims based upon an accrued state of facts. Given the answer and counterclaim filed by the Presbytery, along with representations it has made to the Court during oral arguments, it is difficult to understand the Presbytery’s current contention that no dispute exists.

The subject of the instant action, and the issue on which Timberridge seeks a declaration, is whether certain real property owned by Timberridge is owned free and clear of any trust provision or other incumbrance at the hands of the Presbytery or the PCUSA. Each substantive paragraph setting forth the declaration that Timberridge seeks from this Court was denied, without condition, by the PGA. For example, the Presbytery denied Timberridge’s allegation that “[b]ecause the relevant deeds and other records reflect Timberridge and PCUSA’s intent that Plaintiff shall own the property free and clear and not in trust, Plaintiff is entitled to a judgment declaring that all property held by or for Timberridge... is held without any trust in favor a national denomination or any of its regional administrative units, such as the PGA.” (See Complaint, ¶ 60; see also Answer, ¶ 60.)

Similarly, Timberridge seeks a declaration that, in the event this Court determined that Timberridge was required to “opt out” of being subject to a trust provision, Timberridge, in fact, satisfied all requirements to opt out of any trust, to the extent that its property was, at any time, subject to a trust. The PGA denied this allegation, as well as all related allegations. In fact, the Presbytery affirmatively pled that “Plaintiff did not opt out of the property trust clause.” (See Complaint, ¶¶ 65-69; see also Answer, ¶¶ 65-69.)

In addition to the dispute which is apparent through the Presbytery’s answer, Defendant has also filed a counterclaim, which evidences and emphasizes the disagreement between the parties regarding the substance of the instance action. Through its factual allegations, the Presbytery has made clear its position that the property on which Timberridge Church sits is subject to a trust, and is not held by Timberridge free and clear. (See, e.g., Counterclaim, ¶ 10, alleging that “Plaintiff is subject to the Constitution of the Presbyterian Church (USA) and holds its property in trust for the Presbyterian Church (USA).”)

In light of the parties’ dispute over the subject of the declaratory judgment action and, in fact, the specific issues on which Timberridge seeks declaratory relief, it cannot be said that no controversy exists. Timberridge’s declaratory judgment action satisfies the requirement that it present an accrued state of facts over which the interested parties assert adverse claims. As a result, Timberridge’s declaratory judgment action is proper.

In addition, in the absence of a declaration from this Court as to any potential encumbrances, Timberridge is uncertain what limits may be in place as to the use of its property. If Timberridge attempted to sell or in any way encumber its property, Timberridge would expose itself to potential penalties, fines and liability in the event it was determined that the property was subject to a trust and that Timberridge had acted improperly. Just as the Georgia Court of Appeals noted, Timberridge needs the lights turned on regarding its property rights before stepping into the darkness, and this declaratory judgment action is the proper forum to resolve Timberridge's uncertainty and the dispute that exists between Timberridge and the PGA.

The primary contention underlying the Presbytery's argument is that a declaratory judgment action is premature where no actions have yet been taken. The Presbytery's description of the proper timing of a declaratory judgment action, however, is the precise opposite of its purpose and intent. Under Georgia law, a party who is uncertain as to its rights and the legal relations between it and another interested party is entitled to a declaration from the court. In this case, Timberridge is uncertain as to its rights with regard to the property at issue, and uncertain as to the legal relationship between it and the Presbytery with regard to the property on which the church sits.

Despite the PGA's contention, if Timberridge undertook an affirmative action such as selling the property, it would then no longer be entitled to a declaration from this Court as to its ownership interest. As Georgia law provides, a party is entitled to have the lights

turned on *before* it acts. Once the actions are taken, the parties' respective rights and legal relations are established. Once affirmative actions are taken, a declaratory judgment action would no longer be available, since the party would not be seeking guidance, but instead would improperly be seeking an affirmation of actions already completed.

Here, Timberridge's declaratory judgment action is proper because Timberridge seeks guidance from the Court before taking any affirmative action. Timberridge is uncertain as to its rights to the property at issue, and it is uncertain as to the legal relations between it and the Presbytery. As a result, Timberridge is entitled to a declaration from the court regarding the ownership of and encumbrances on its property, which is disputed by the Presbytery.

Ultimately, even setting aside the question of the claims for declaratory judgment brought by Timberridge, it has amended its complaint to add a claim to quiet title. Under the Georgia Code, a party may bring a claim in rem to establish its title to the land and to determine all adverse claims and/or to remove any particular cloud or clouds upon its title. Because Timberridge amended its complaint to bring a proper claim to quiet title, pursuant to O.C.G.A. § 23-3-61, a justiciable claim exists warranting resolution by this Court. For these reasons, Timberridge requests that the Presbytery's motion to dismiss its action be denied.

B. This Suit Does Not Breach the Separation of Church and State or Violate the First Amendment.

In its brief, the Presbytery raises and then dispels its own argument, that this Court's handling of the issues raised by Timberridge constitutes a violation of the First Amendment of the United States Constitution. As the Presbytery acknowledges, the Supreme Court of Georgia has devised a test designed specifically to avoid delving into issues concerning church doctrine, which may violate the First Amendment's separation of church and state requirement. See Jones v. Wolf, 244 Ga. 388, 260 S.E.2d 84 (1979).

In Jones v. Wolf, as the PGA notes, the Georgia Supreme Court applied the "neutral principles" test, through which a court analyzing a church property dispute reviews statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination, without exploring ecclesiastical questions. Under the method, courts do not merely defer to ecclesiastical decisions. Instead, courts consider the language in religious documents like denominational constitutions but are not to use religious concepts in interpreting them or give undue deference to those religious documents. Further, courts are to undertake an examination of all of the property-related documents which may bear on the question of consent and mutual intent. Specifically, the court reviews language in the local property deeds at issue, the local church's corporate charter or Articles of Incorporation, local resolutions, minutes, or correspondence, and any other evidence relevant to asserting mutual intent and the relationship between the parties. On review by the United States Supreme Court, the

neutral principles test was deemed constitutionally acceptable, and its use has been well-established in Georgia. See, e.g., Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1979); Carnes v. Smith, 236 Ga. 30, 222 S.E.2d 322 (1976); Pritchett v. Wesleyan Pentecostal Church at Holly Springs, 265 Ga. App. 565, 594 S.E.2d 750 (2004).

Not only do Georgia courts employ an analysis designed to avoid church/state conflicts, but the Georgia Court of Appeals has specifically acknowledged that the resolution of church property disputes does not violate the First Amendment. Thannawaro v. Cambodian Buddhist Soc’y, Inc., 274 Ga. App. 857, 619 S.E.2d 365 (2005). In Thannawaro, the Court of Appeals recognized that, “[a]lthough the principle of separation of church and state prevents courts from deciding questions involving a church's internal affairs in matters of theology, discipline or governance, courts have jurisdiction to address church property disputes.” Id., 274 Ga. App. 857, 858, 619 S.E.2d 365, 366 (noting that the application of the neutral principles tests avoids First Amendment violations in resolving church property disputes).

Ultimately, this Court has jurisdiction over this action. A justiciable controversy exists because Timberridge and the Presbytery assert adverse claims upon an accrued state of facts. The Presbytery has confirmed the dispute by filing permissive counterclaims, subjecting itself to the jurisdiction of this Court. Finally, this Court has the authority to hear this case and issue a declaration as to the property despite which has been raised; and, moreover, by using the neutral principles test, this Court will not violate

the First Amendment to the U.S. Constitution in doing so. For these reasons, Timberridge respectfully requests that this Court deny the PGA's motion to dismiss and permit this case to proceed.

II. VENUE IS PROPER IN HENRY COUNTY.

Although venue typically lies in the county where the defendant resides, the Georgia Constitution has identified a number of exceptions to the general rule, among which is included an exception for cases touching real property. "Cases respecting titles to land shall be tried in the county where the land lies, except when a single tract is divided by a county line, in which case the superior court of either county shall have jurisdiction." GA. CONST. art. VI, § II, ¶ II.

Here, The Presbytery does not dispute that the property at issue lies in Henry County, but rather contends that the case does not present a dispute regarding title to land. Because the sole issue in this case concerns title to the land at issue, venue properly lies in Henry County, where the property is located.

A. Plaintiff's Declaratory Judgment Claims Respect Title to the Land at Issue.

As its complaint was originally filed, Timberridge seeks a declaration from this Court regarding title to the land on which its church is located. The claims for declaratory relief seek a ruling that Timberridge holds title to the property free and clear of any encumbrances, and that, in the event a trust provision may have triggered a response from Timberridge, that Timberridge timely and effectively opted out of any trust concerning its

property. Because the declaratory relief Timberridge seeks relates directly to title to land, it was properly brought in the county in which the land lies.

B. Plaintiff's Claim to Quiet Title Respects Title to the Land at Issue.

Regardless of whether the suit, as a declaratory judgment action, was filed properly in Henry County, on October 3, 2007, Plaintiff amended its complaint to assert a claim, pursuant to O.C.G.A. § 23-3-61, to quiet title to the property at issue. Although the parties may disagree whether, prior to the amendment, the instant matter respected title to land, there can be no dispute that the amended complaint clearly brings an in rem claim; and, therefore, is properly pending in Henry County.

O.C.G.A. § 23-3-61 provides that:

Any person, which term shall include a corporation, partnership, or other association, who claims an estate of freehold present or future... in any land in this state, whether in the actual and peaceable possession thereof or not and whether the land is vacant or not, may bring a proceeding in rem against all the world to establish his title to the land and to determine all adverse claims thereto or to remove any particular cloud or clouds upon his title to the land, including an equity of redemption, which proceeding may be against all persons known or unknown who claim or might claim adversely to him, whether or not the petition discloses any known or possible claimants.

The Code section clearly provides that any action brought to quiet title pursuant to section 23-3-61 are actions *in rem*. As a result, the action must be brought in the county where the land is located. Smith v. Georgia Kaolin Co., 264 Ga. 755, 755, 449 S.E.2d 85, 86 (1994) (finding that, because an action brought pursuant to O.C.G.A. 23-3-62 is an in rem

proceeding, it is initiated by filing suit in the superior court in which the land is located); Schuehler v. Pait, 239 Ga. 520, 238 S.E.2d 65 (1977) (treating actions “respecting title to land” and actions in rem as one in the same, which must be brought in the county where the land lies).

Because Timberridge’s action respects the title to its property, and because Count IV was brought specifically as an in rem claim to quiet title, venue lies in Henry County, where the property at issue is located.

C. Improper Venue Does Not Justify Dismissal of a Suit.

Even if this Court determined that the appropriate venue for this lawsuit lay in a county other than Henry, a conclusion with which Timberridge disagrees, still, the remedy for improper venue is transferring the lawsuit, not dismissing it. Orkin Exterminating Co. v. Morrison, 187 Ga. App. 780, 371 S.E.2d 407 (1988). As a result, PGA’s attempt to inject an argument relating to venue within the context of its motion to dismiss is improper. Though Timberridge contends that venue properly lies in Henry County, an argument contesting venue is not an appropriate basis for seeking dismissal of a lawsuit. As a result, Timberridge requests that this Court deny the PGA’s motion to dismiss.

III. TIMBERRIDGE'S COMPLAINT STATES A VALID CLAIM.

A. Timberridge Has Presented a Prima Facie Case for a Ruling in its Favor.

The Presbytery argues that Timberridge's complaint fails to state a claim for relief, seeking redress under O.C.G.A. 9-11-12(b)(6). In support of its position, the Presbytery asserts broadly - and incorrectly - that there is no set of facts that Timberridge could assert to avoid a ruling in the Presbytery's favor. Timberridge, however, set forth in great detail the basis for its contentions. Through its complaint, Timberridge has outlined why the relevant deeds naming Timberridge as the sole owner preclude the finding of a trust, and why, even in the event this Court finds an applicable trust provision, the provision would not apply to Timberridge in the wake of its opting out. Moreover, Timberridge has amended its complaint to seek Because Timberridge has sufficiently set forth the basis of its claims and the grounds therefore, placing Defendant on notice of the claims asserted against it, Timberridge has presented a prima facie case for a declaratory ruling in its favor, as well as for an order quieting title.

An analysis of the Presbytery's 12(b)(6) argument necessarily begins with a review of the complaint filed by Timberridge. The Georgia Code identifies the rules parties must follow in submitting pleadings to the Court. Under Georgia law, it is well-established that the rules for pleading render Georgia a "notice pleading" state, as opposed to the more exacting "issue pleading" style. Under the Civil Practice Act, "[a]ll pleadings shall be so construed as to do substantial justice." O.C.G.A. § 9-11-8(f). The test whether a

plaintiff has satisfied its obligations in presenting its claim is whether the complaint has placed the defendant on notice of the claim against him. Andemeskel v. Waffle House, Inc., 227 Ga. App. 887, 887, 490 S.E.2d 550, 551 (1997).

Additionally, the Georgia Supreme Court has held that “[w]hen the sufficiency of a complaint is questioned by a motion to dismiss, the complaint is to be construed in the light most favorable to the plaintiff, with all doubts resolved in plaintiff's favor.” DeKalb County v. State, 270 Ga. 776, 779, 512 S.E.2d 284, 286-287 (1999) (citation omitted).

“A motion to dismiss for failure to state a claim should not be sustained unless the allegations of the complaint reveal, with certainty, that plaintiff would not be entitled to relief under any state of provable facts asserted in support thereof.” Id.

In this case, Timberridge has satisfied its obligation to place Defendant squarely on notice of the claims asserted against it. While the PGA clearly disagrees with the claims Timberridge has set forth and the effect of the documents on which it relies, its defenses to Timberridge’s claims do not render them meritless. As a result, the Presbytery’s argument based on Timberridge’s alleged failure to state a claim should fail.

B. The Doctrine of Waiver Does Not Apply to Timberridge’s Complaint.

The concept of waiver is most often discussed in conjunction with estoppel. The two doctrines are similar, but distinct. While estoppel typically involves one party’s detrimental reliance on another’s conduct, waiver is defined as a party’s voluntary relinquishment of some known right, benefit, or advantage, which, except for such

waiver, the party otherwise would have enjoyed. New York Underwriters Ins. Co. v. Noles, 101 Ga. App. 922, 115 S.E.2d 474 (1960). Under Georgia law, “a waiver is not favored and must be voluntary, knowing, and unequivocal.” Myers v. Texaco Refining & Marketing, Inc., 205 Ga. App. 292, 295, 422 S.E.2d 216, 218 (1992).

Based upon the PGA’s brief, it appears the PGA is resting its waiver argument on its contention that Timberridge delayed in seeking a declaration as to its property rights.¹ Applying this argument to the definition of waiver, the PGA appears to assert that seeking a declaration as to its property rights, and attempting to quiet adverse claims, constitutes a right, benefit, or advantage that Timberridge enjoyed that it has voluntarily relinquished. The Presbytery’s argument does not stand to reason and has no support under Georgia law.

First, and most importantly, the PGA has not identified what right it contends has been waived, or what actions or inactions Timberridge may have taken to relinquish the right. The only case cited by the PGA in its assessment of waiver is St. Mary’s Hosp., Inc. v. Cohen. The case is inapplicable to the instant matter and, in fact, the two propositions plucked from the decision in that case are an incomplete reflection of its holding. St. Mary’s, 216 Ga. App. 761, 456 S.E.2d 79 (1995).

¹ This defense sounds more in laches than waiver; however, as discussed below, laches is no more applicable to the instant action than waiver or estoppel.

It appears that the Presbytery cited St. Mary's for the proposition that silence constitutes waiver; however that principle is limited, both in the holding issued by the Georgia Court of Appeals in the St. Mary's decision, and under Georgia law. The entire relevant passage from which the Presbytery drew its conclusion is as follows:

'Acquiescence or silence, when the circumstances require an answer, a denial, or other conduct, may amount to an admission.' OCGA § 24-3-36. And more specifically, '[in the ordinary course of business, when good faith requires an answer, it is the *duty* of the party receiving a letter from another to answer within a reasonable time. Otherwise he is presumed to admit the propriety of the acts mentioned in the letter of his correspondent and to adopt them.' (Emphasis supplied.) OCGA § 24-4-23. '[Mere silence is not sufficient to establish a waiver unless there is an obligation to speak. [Cit.]' Jordan v. Flynt, 240 Ga. 359, 364(3)(b), 366, 240 S.E.2d 858 (1977). 'In cases of silence there must be not only the *right* but the *duty* to speak before failure to do so [becomes] an estoppel. [Cit.]' Tybrisa Co. v. Tybeeland, 220 Ga. 442, 445, 139 S.E.2d 302 (1964). The above cited statutes impose such a duty and obligation.

216 Ga. App. at 762-763, 456 S.E.2d at 81.

Reduced to its essence, St. Mary's concerned whether a radiologist had waived his right to contest a condition placed on his relationship with the hospital where he was appointed. The doctor had been notified of the condition by language in his reappointment letter, which was issued in 1981, and reissued in 1983, 1985, 1987, and again in 1989. Only upon receipt of the correspondence in 1989 did the doctor respond in writing to contest the condition. Id., 216 Ga. App. at 762, 456 S.E.2d at 80-81. Under those facts, the Georgia Court of Appeals found that the doctor had an affirmative duty to

respond to the hospital when the new condition was first presented in 1981, and that, by waiting eight years to respond, he waived his right to contest the arrangement.

The facts at issue here bear no resemblance to St. Mary's. There has been no on-going communication from the Presbytery to which Timberridge has failed to respond. In fact, to the extent that Timberridge was placed on notice of the trust issue, Timberridge promptly and affirmatively addressed the question by voting to opt-out of the trust provision contained in the Book of Order. (See Plaintiff's Complaint for Declaratory Judgment and Petition for Injunction, Exhibit 5, on file with this Court.) Furthermore, association with PCUSA is a voluntary one, and not involuntary. As a voluntary member in the denomination, the Presbytery has no basis for contending that Timberridge was subject to a time requirement for bringing its claims.

As the decision on which the Presbytery relies reflects, in order to establish waiver of a duty or obligation, the Presbytery must first identify the duty or obligation at issue, and the Presbytery has failed to do so. Timberridge had no duty, at any identifiable point in time, to raise its concern about the trust provision. Timberridge believed that it had satisfied all of its obligations to opt out of the trust, and, as a result, was under no obligation to take any further action. Moreover, the Presbytery is not prejudiced or otherwise affected by the timing of Timberridge's suit.

The declaration Timberridge now seeks is not the manifestation of any duty to raise the instant property question, but rather the exercise of its option, under Georgia law,

to resolve a dispute which apparently exists. In fact, under O.C.G.A. § 23-3-61, Timberridge has an absolute right to bring a claim to quiet title at any time.

Timberridge has not waived any right to seek a declaration from this Court or to quiet the title to its property. Because the doctrine of waiver does not apply here, Timberridge respectfully requests that this Court deny the Presbytery's motion to dismiss the instant suit.

C. The Doctrine of Laches Does Not Apply to Timberridge's Complaint.

The doctrine of laches has been codified at O.C.G.A. § 9-3-3, which provides that:

Unless otherwise provided by law, limitation statutes shall apply equally to all courts. In addition, courts of equity may interpose an equitable bar whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights.

Laches is an equitable remedy, and as the Code section intimates, and as Georgia courts have expressly held, the doctrine of laches is not triggered solely by the passage of time. In addition to the passage of time, in order to apply the doctrine of laches, a court must find that permitting the claim to proceed would constitute an inequity, such as proceeding in the face of lost evidence or where the delay rendered the ascertainment of truth difficult. See, e.g., O.C.G.A. § 23-1-25. Similarly, the Georgia Supreme Court found that the party asserting the equitable defense must make a showing that the claimant negligently failed to bring its claim sooner and, as a result, prejudice occurred. Troup v. Loden, 266 Ga. 650, 469 S.E.2d 664 (1996). Finally, as employed by Geogia

courts, the theory underlying the doctrine asserts that laches is relevant only where a claimant had an affirmative obligation to bring its claim earlier and, because of negligence, failed to do so.

Here, the doctrine of laches does not apply. First, the Presbytery has not made any showing that Timberridge had any obligation to bring its claim earlier. Second, the Presbytery has failed to identify any way in which inequity exists. The PGA has not asserted that the timing of Timberridge's complaint will create difficulties in resolving the issues raised, or that the Presbytery has suffered any prejudice. In fact, the timing of Timberridge's complaint will have no effect on the parties' ability to litigate this case, or the Court's ability to analyze the arguments and evidence presented. The issues in this case revolve around the ownership of property and whether that property is subject to a trust. Timberridge has framed its claim, and the Presbytery has framed its response, in terms of the documents which are relevant to this case: the deeds conveying property to Timberridge, the corporate documents relating to Timberridge, and the governance documents relating to Timberridge and the PCUSA. The documents are finalized, complete, and speak for themselves. The timing of Timberridge's complaint does not affect the accuracy, relevance or admissibility of the documents, or the ability of the parties to fashion their arguments.

Because the doctrine of laches does not apply, it cannot be relied upon as a basis for dismissing Timberridge's complaint. As a result, Timberridge respectfully requests

that this Court deny the Presbytery's motion to dismiss and permit its case to go forward.

D. Plaintiff Is Not Estopped from Seeking a Declaration as to its Property Rights.

The Presbytery also argues that Timberridge is estopped from seeking a declaration as to its property rights, and bases its argument on the decision of the Georgia Supreme Court in Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1979). Despite the PGA's assertion, the facts of Crumbley are not "substantially similar" to the instant matter, and the case does not support a finding that the equitable principle of estoppel applies to Timberridge's declaratory judgment action.

In Crumbley, a dispute over property arose when a majority of the congregation of Franklin Tabernacle church voted to withdraw from the Holiness Baptist Association ("Association"). The minority group of Tabernacle congregants who opposed withdrawal, along with the trustees of the Holiness Baptist Association filed suit against the withdrawing members to establish the right of the Association to control Franklin Tabernacle's property. Crumbley, 243 Ga. at 343, 254 S.E.2d at 332.

In addressing the property dispute, the court first assessed whether Tabernacle employed a congregational or hierarchical government. The distinction is important. Property disputes arising within a congregational church are decided by applying the intent of the majority of its members. Hierarchical church property disputes, as discussed above, are assessed using the neutral principles method, in which a court reviews "state statutes, corporate charters, relevant deeds, and the organizational constitutions of the

denomination” to identify ownership of the property. Id.

The only substantially similar fact between Crumbley and the instant matter concerns the fact that both Tabernacle and Timberridge are subject to hierarchical forms of church governance. Beyond that overlapping fact, little is the same. The facts giving rise to Crumbley concern the aftermath of a withdrawal from the main church association, which is not the case here. More importantly, the deeds, meeting minutes and other relevant documents under review in Crumbley reflected a different intent than the deeds and documents at issue here; and, consequently, justified a different result than the declaration Timberridge seeks.

In the first place, the original deed conveying property to the Tabernacle church provided that the property was conveyed “to Tabernacle Church of the Holiness Baptist Church in Coffee County, Georgia, and to the deacons of said church, to be held in trust by them and their successors for said church...” Id., 243 Ga. at 344, 254 S.E.2d at 332. In addition, the Disciplinary Rules of the Association provide that “the Association shall hold all church property, regardless if all the members vote to change the church to some other faith. Also, that deeds of new churches be drawn up to be property of the Holiness Baptist Association until sold by the committee appointed by the Association.” As the court recognized, the disciplinary rule became effective in 1947, and was reprinted in the Association’s minutes every year for 30 years before Tabernacle voted to withdraw from the Association. Id., 243 Ga. at 344-345, 254 S.E.2d at 332.

The significance of the differences between the relevant facts underlying the Crumbley decision and the deeds and documents at issue here cannot be overlooked. In Crumbley, the original deed conveying property to the church, from the outset, named the Holiness Baptist Church (the pre-incorporation predecessor to the Association), and specifically identified and created a trust in which to hold Tabernacle's property. Here, no deed relating to property owned by Timberridge refers in any way to PCUSA or any of its predecessors, or creates, identifies or refers to a trust. Likewise, the denominational provisions are different. Before the Association was incorporated, it promulgated disciplinary rules that implied a trust, and made no provision for option out of the trust. As the Georgia Supreme Court noted (and as the Presbytery has emphasized in support of its motion to dismiss), the trust provision was reprinted in the Association's minutes every year for the 30 years preceding the local church's withdrawal, with no dissent from the Tabernacle.

In this case, the only relevant trust provisions are the eleventh-hour attempt by the PCUSA's predecessor organization to subject member churches' property, in which it had no ownership interest, to a trust, on the eve of that organization's dissolution, and the unilateral enactment of the purported trust provision included in the 1983 Book of Order. However, where the Association provided no option for a member church to exclude its property from the trust, the Book of Order specifically identified a procedure member churches, like Timberridge, could follow to opt out of the Book of Order's trust

provision. Additionally, where, in Crumbley, the member church was renotified of the absolute trust requirement every year for 30 years, and never questioned or opposed the trust, the trust provision relating to Timberridge's property was not repeating or absolute, and Timberridge timely and affirmatively exercised its right to oppose and opt out of the trust.

For these reasons, it is clear that the relevant facts in Crumbley render the holding inapplicable to the instant case. More specifically, the Presbytery has improperly relied on Crumbley for the proposition that the doctrine of estoppel precludes Timberridge's declaratory judgment action. In the first place, the Crumbley decision does not mention the word "estoppel" or apply any analysis under the doctrine. Additionally, to the extent that the opinion's passing observation of the fact that Tabernacle did not oppose the implementation of a trust, the facts at issue in Crumbley are materially different than here. Timberridge has satisfied all procedures for announcing its desire to hold its property free and clear of any trust; and, therefore, Crumbley cannot be relied upon to support a finding of estoppel.

Georgia law identifies the required elements for the application of the equitable defense of estoppel, though the Presbytery made no mention of these elements in its briefing. A party seeking relief under the doctrine must show: (1) a false representation or concealment of facts; (2) that the concealment is within the knowledge of the party making the one or concealing the other; (3) that the person affected thereby must be

ignorant of the truth; (4) that the person seeking to influence the conduct of the other must act intentionally for that purpose; and (5) that the complaining party shall have been induced to act by reason of such conduct of the other. Kim v. Park, 277 Ga. App. 295, 626 S.E.2d 232 (2006). Stated more simply, estoppel requires a showing that the estopped party had made a knowingly false statement to an ignorant party, who, in turn, was compelled to act in reliance on the false statement. Under such a circumstance, the acting party is estopped from changing course or repudiating its false statement. Further, under Georgia law, the doctrine of estoppel is predicated on “a detrimental change in position in reliance upon the conduct of the party to be estopped.” Georgia Farm Bureau Mut. Ins. Co. v. Vanhuss, 243 Ga. App. 26, 26, 532 S.E.2d 135, 136 (2000) (citations omitted).

In this case, the PGA has failed to show that *any* of the elements of estoppel have been satisfied, no less all of them. There has been no false statement made by Timberridge to the Presbytery, and there has been no action by the Presbytery, with regard to the property at issue, that was conducted in reliance on representations made by Timberridge. The Presbytery has not asserted that, over time, its position has changed, or that it has detrimentally relied on any conduct of Timberridge. Because the doctrine of estoppel has no relevance to the instant action, Timberridge requests that this Court deny the PGA’s motion to dismiss.

CONCLUSION

Ultimately, none of the arguments raised by the Presbytery support dismissal of Timberridge's suit. An actual controversy exists between the parties, which is ripe for this Court's review. Furthermore, because this case presents questions which are limited strictly to a dispute over church property, this Court's review of the issues will not touch or violate the First Amendment's separation of church and state requirement.

Relatedly, Timberridge's complaint states a justiciable claim, and Timberridge is not equitably estopped from bringing its claims under the theories of waiver, estoppel or laches. Finally, venue is proper in this Court because Timberridge's suit constitutes an in rem action which must be filed in the county where the property lies.

Because Timberridge brought a proper, justiciable claim in the appropriate court, it respectfully requests that this Court deny the Presbytery's motion to dismiss and permit this case to proceed.

This 22nd day of October, 2007.

Respectfully submitted,

TALLEY, FRENCH & KENDALL, P.C.

Michael C. Kendall
Georgia State Bar No. 414030

Maureen E. Murphy
Georgia State Bar No. 530990

3152 Golf Ridge Blvd., Suite 201
Douglasville, Georgia 30135
Telephone: 770-577-3559
Facsimile: 770-577-8113

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-4142M

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **Plaintiff's Brief in Opposition to Motion to Dismiss** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Robert E. Wilson, Esq.
Debra A. Golymbleski, Esq.
WILSON, MORTON & DOWNS, LLC
Two Decatur TownCenter
125 Clairemont Avenue, Suite 420
Decatur, Georgia 30030

This 22nd day of October, 2007.

Maureen E. Murphy