

FIRST PRESBYTERIAN CHURCH	§	IN THE CHANCERY COURT
	§	
PCUSA OF STARKVILLE, MISSISSIPPI,	§	
	§	
Plaintiff	§	OKTIBBEHA COUNTY, MISSISSIPPI
	§	
v.	§	
	§	CAUSE NO.: 2015-0151-D
PRESBYTERY OF ST. ANDREW,	§	
PRESBYTERIAN CHURCH U.S.A., INC.,	§	
	§	
Defendant		

**FPC STARKVILLE’S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff First Presbyterian Church PCUSA of Starkville, Mississippi (“FPC Starkville”) respectfully submits this Memorandum in Support of Motion for Summary Judgment, representing to the Court as follows:

I. SUMMARY OF ARGUMENT

1. The only dispute in this case is whether or not FPC Starkville truly owns its property. FPC Starkville paid for its own property, holds title to its own property, and has always acquired property for the benefit of its own congregation. However, FPC Starkville happens to be a member of a Presbyterian denomination—the PCUSA—whose local administrative body claims the right to control FPC Starkville’s property. Of course, that local body is the Oxford-based Presbytery of St. Andrew (“Presbytery”), the defendant in this matter. According to Presbytery, it represents the interests of the PCUSA, which it contends to have an enforceable trust interest over every worldly thing FPC Starkville has ever acquired.

2. While Presbytery may believe that the PCUSA has a right to everything owned by FPC Starkville, it is the law of Mississippi—and only the law of Mississippi—that governs whether or not a trust has been created. As set forth below, there is no genuine issue of material

fact that Presbytery's trust claim does not pass muster under Mississippi law. This court should accordingly grant summary judgment in favor of FPC Starkville.

II. BACKGROUND

A. The Parties

3. FPC Starkville is a local church congregation founded in 1821, before Starkville was incorporated and only four years after Mississippi became a state. At the time of its founding, FPC Starkville was an unaffiliated congregational mission to the "Western Frontier." FPC Starkville subsequently associated with various Presbyterian denominations, including: the "Presbyterian Church in the United States of America" (1830), "the Old School Presbyterian Church" (1837), "the Presbyterian Church, Confederate States of America" (1861), and "the Presbyterian Church in the United States" ("PCUS") (1865). In 1983, the PCUS merged with another Presbyterian denomination to create "the Presbyterian Church in the United States of America" ("PCUSA"). FPC Starkville has been affiliated with the PCUSA denomination since that date.

4. FPC Starkville's congregation owns approximately seven parcels of real property in the Starkville area, which it variously acquired over the past 160 years. *See* Exhibit 1 (property deeds). In each case, it was FPC Starkville alone that paid for the property¹ and FPC Starkville alone who obtained the deed to the property. Exhibit 1 (property deeds). Importantly, each of the church's property deeds vests FPC Starkville with full rights to the property, and no trust or other property interest is acknowledged in favor of any other party. *See* Exhibit 1.

5. In 2003, FPC Starkville's congregation vote to formally organize as a Mississippi

¹ *See* Answer of Presbytery at 5-6, ¶ 1 ("[I]t is admitted that members of FPC-Starkville paid for the property and buildings on that 'patch of land' . . .").

non-profit corporation. *See* Exhibit 2. Pursuant to the congregation’s incorporation resolution, “all the rights . . . owned by the present First Presbyterian Church of Starkville, Mississippi” were vested in the new corporation. Exhibit 3 at 2 (emphasis added). Neither before nor after its incorporation has FPC Starkville’s congregation ever approved the conveyance of any property, or any interest therein, to the PCUSA or any other denomination. *See Affidavit of Charles L. Guest* at ¶ 6.

6. Defendant Presbytery is one of 171 geographically-based presbyteries, or administrative units of the PCUSA denomination. Generally speaking, PCUSA presbyteries are responsible for managing the denominational affairs of the PCUSA in a given locale. To the extent the PCUSA has any interest in the property of a church in northern Mississippi, it is the defendant Presbytery who is responsible for enforcing the denomination’s rights and representing its interests.

B. Property Trusts in the PCUSA

7. Unfortunately, property disputes between PCUSA presbyteries and PCUSA congregations are not uncommon. In nearly all cases, the dispute centers around the existence—or lack thereof—of an enforceable trust in favor of the PCUSA. *See, e.g., First Presbyterian Church of Greenwood, Inc. v. Presbytery of St. Andrew*, No. G15-0064 (litigation pending in Leflore County Chancery Court); *Windwood Presbyterian Church, Inc. v. Presbyterian Church (U.S.A.)*, 438 S.W.3d 597 (Tex. Ct. App. 2014); *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 77 So. 3d 975 (La. Ct. App. 2011).²

8. The history underlying the alleged PCUSA trust is relatively short. Prior to 1981,

² *See also* *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 579 (Mo. Ct. App. 2012); *Presbytery of Hudson River of Presbyterian Church (U.S.A.) v. Trustees of First Presbyterian Church & Congregation of Ridgeberry*, 72 A.D.3d 78, 86 (N.Y. Ct. App. 2010); *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099, 1103 (Ind. 2012), *cert. denied*, 133 S. Ct. 2022 (2013).

no Presbyterian constitution contained any reference to a trust. Indeed, the PCUS denomination—of which FPC Starkville was a member until the PCUS merged into the PCUSA—unambiguously disclaimed any trust interest in local church property. In 1953, the PCUS adopted its first official statement on the issue as a binding “Declaratory Statement” of the denomination’s position:

The beneficial ownership^[3] of the property of a particular church of the [PCUS] is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the [PCUS] as established by the Constitution of such Church.

Disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the Church.

Exhibit 4 at 235.

9. The PCUS continuously affirmed the official 1953 statement until the PCUS merged into the PCUSA denomination in 1983. *See* Exhibit 4 at 235-36 (citing official reaffirmations of the Declaratory Statement in 1967 and 1971). Once formed, the PCUSA repeated the same statements pertaining to the “beneficial ownership” of local church property. *See* Exhibit 5 (1990 PCUSA statement). To this day, in fact, the above statement represents the official position of the PCUSA.⁴

10. Notwithstanding its official position that the “beneficial ownership of the property

³ The use of the legal term “beneficial ownership” is significant, because the essence of a trust is the division of legal title and beneficial ownership. *Conner v. Conner*, 119 So. 2d 240, 260 (Miss. 1960) (“[T]here can be no trust when both the legal title and the beneficial interest are in the same person.”).

⁴ *See* Exhibit 19, Deposition of Presbytery, Transcript at p. 107 (**Counsel:** “And so during that whole time, it remained true that the beneficial ownership of the property of a particular church of the PCUS was in the congregation of such church? — **Presbytery:** That’s always been true, and it remains true today.”).

of a particular church . . . is in the congregation of such church,” in 1982, the PCUS amended its Constitution to mention the word “trust” for the first time. *See generally* Exhibit 4. The so-called “trust clause” adopted by the PCUS in 1982 asserted:

All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the [PCUS].

Exhibit 4 at 229, § 6-3; Exhibit 6 at § 6-3.

11. To combat concerns that the new trust clause could divest local churches of any property rights, the PCUS repeatedly assured local congregations in 1982 that the amendments including the trust clause did *not* change anything and did *not* create a legal trust. *See* Exhibit 7 at 2 (“These amendments do not give Presbytery . . . any jurisdiction over property.”); Exhibit 7 at 1 (“These amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property.”); Exhibit 4 at 237 (“The amended Chapter 6 . . . does not represent a change.”); Exhibit 8 at 3 (“The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate.”); Exhibit 4 at 237 (“[H]igher courts [of the PCUS] are not granted any original powers over the property of a congregation.”).

12. As proof that the new trust clause was only aspirational and not an attempt to deprive local churches of their property rights, the trust clause was approved subject to an accompanying reservation provision (§ 6-8): “Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any [other entity] in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.” Exhibit 6 at § 6-8. In the PCUS’s words, “Section 6-8 is intended to make

congregational ownership explicit.” Exhibit 8 at 3. This, of course, was consistent with the PCUS’s longstanding recognition that the denominational constitution did not alter or affect any worldly property rights:

“Church courts are altogether distinct from the government of the state *and possess no civil jurisdiction or power to inflict civil penalties.*”

“The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth.”

“Nor doth their communion one with another as saints, take away or infringe the title or property which each man hath in his goods and possessions.”

Exhibit 6 at §§ 1-2, 14-1, and Constitution Part I § 6.148.

13. The PCUS’s assurances aside, the addition of the trust clause to the denominational constitution in 1982 was accomplished without the assent of the individual congregations that owned property. Importantly, it was *Presbyteries*—not individual congregations or their governing bodies—that voted to adopt the new trust clause. *See* Exhibit 4 at 228, 229 § 6-7, 230 § 6-7, 237.

14. The combined effect of the above circumstances is that few, if any, members of the PCUS interpreted the 1982 adoption of a PCUS trust clause as creating or attempting to create a legal property trust. Because local churches were not asked to approve the trust clause, only those paying close attention to the annual constitutional amendments were aware that the denomination had adopted a trust clause. Moreover, anyone who *did* know was reassured that (1) local church property rights were not altered or encumbered in any way, (2) local churches retained absolute freedom to use and dispose of their property, (3) congregations continued to retain the beneficial ownership of their property, and (4) that the § 6-8 reservation provision made congregational ownership explicit.

C. The PCUSA, its property rules, and the “property exemption”

15. Exactly one year after the PCUS’s trust clause was adopted, in 1983, the PCUS disappeared in the denominational merger that created the PCUSA. With the new denomination came a new denominational constitution and a new set of property rules. Specifically, while the PCUSA constitution contained a trust clause similar to the one adopted by the PCUS in 1982,⁵ there were no similar assurances that the PCUSA trust clause could not be used to divest local churches of their property rights. Moreover, absent from the PCUSA Constitution was the property-reservation provision of the PCUS Constitution (§ 6-8) that had previously “ma[d]e congregational ownership explicit” and guaranteed local churches the absolute right to freely dispose of property. To allay the concerns of churches who feared their property rights might be diminished in the PCUSA, former PCUS churches were assured that they could invoke a “grandfather clause” in the PCUSA and “remain subject to traditional PCUS provisions dealing with ownership, sale, and mortgaging of property.” Exhibit 7 at 2.

16. In fulfillment of the “grandfather clause” promise, the inaugural 1983/84 PCUSA Constitution included the following “exception” or “exemption” clause:

The provisions of this [property] chapter shall apply to all congregations of the [PCUSA] except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the [PCUS] and the [UPCUSA] to form the [PCUSA], has been excused from that provision of this chapter if the congregation, within a period of eight years following the establishment of the [PCUSA], voted to be exempt from such provision. . . . The congregation voting to be so exempt shall hold title to its

⁵ The PCUSA trust clause states:

All property held by or for a congregation, 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 congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Exhibit 9 at § G-4.0203.

property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the [PCUSA].

Exhibit 9 at 63, § G-4.0208 (formerly designated as § G-8.0701). In simple terms, former PCUS churches who did not like the PCUSA's property rules could "opt out" and remain under the PCUS's property rules.

17. Following their absorption into the PCUSA in 1983, former PCUS churches rushed to exercise the PCUSA property exemption. It was at this time that William Clark, then-chief officer of Presbytery, attended a meeting of FPC Starkville's session.⁶ As affirmed by the attached affidavit of Dr. James E. Long, the Clerk of FPC Starkville's Session in 1983:

William Clark explained to FPC Starkville's session at that time that the property rules of the PCUSA were different than the rules to which FPC Starkville had previously been subject. According to William Clark, the PCUSA would have certain rights to FPC Starkville's property if the church did not vote to except itself from the PCUSA property rules. Conversely, William Clark advised the session that FPC Starkville could retain all of its property rights by voting to except itself from the new PCUSA property rules.

Affidavit of Dr. James E. Long at ¶ 7.

18. Spurred by William Clark's comments, a concerned FPC Starkville session immediately began taking the necessary steps to exercise the PCUSA property exemption. According to the minutes of a session meeting on January 15, 1984, "Elder Thomson moved that the Session adopt a resolution *retaining our church property* and recommend this resolution to a Congregational Meeting in the near future. . . . Motion seconded and passed unanimously." Exhibit 10 at 2 (emphasis added). The proposed resolution stated:

⁶ A "session" is the ruling body of a Presbyterian church. The session is charged with managing the affairs of the church, and it typically consists of about twenty individuals elected by the congregation to serve two- or three-year terms.

WHEREAS, the First Presbyterian Church, in Starkville, Mississippi, on or about June 10, 1983, became a particular church in the reunited denomination known as the [PCUSA];

WHEREAS, the First Presbyterian Church in Starkville, Mississippi, prior to that date was a particular church of the [PCUS] . . . ;

WHEREAS, the Book of Order of the [PCUSA] in Chapter VIII which is entitled “The Church and Its Property” contains provisions which are somewhat different from those contained in the Book of Church Order of the [PCUS] in Chapter VI which is entitled “Church Property”;

WHEREAS, Chapter VIII of the Book of Order of the [PCUSA], Sub-section 7, entitled “Exceptions” and numbered G.8.0701, provides that where there are provisions in that Chapter which are different from those in Chapter VI of the Book of Church Order, “any church which was not subject to a similar provision of the Constitution of the Church of which it was a part prior to the reunion shall be excused from the provision of this Chapter if the Congregation shall . . . vote to be exempt from such in a regularly called meeting and shall thereafter notify the Presbytery”

NOW, THEREFORE, BE IT RESOLVED that the congregation of the First Presbyterian Church, in a meeting properly called and conducted, does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the reunion which established the [PCUSA] and will hold title to its property and exercise its privileges of incorporation under the provisions of the Book of Church Order, [PCUS] (1982-1983 edition).

Exhibit 10 at 3.

19. As stated in the affidavit of Dr. James E. Long, “The session’s understanding was that this exception provision would allow FPC Starkville to avoid any trust claim and retain sole ownership of its property even as a member of the PCUSA. That is why, according to the session’s minutes, the action was described as ‘a resolution retaining our church property.’”

Affidavit of Dr. James E. Long at ¶ 8.

20. On July 1, 1984, FPC Starkville’s congregation met to vote on the property exemption resolution. *See* Exhibit 11. As recounted in Dr. James E. Long’s affidavit, “[a] representative of the session at that time explained to the congregation that the purpose of the

resolution was to ensure that FPC Starkville retained sole ownership of its property.” Exhibit 9 at

¶ 10. According to the minutes of that congregational meeting:

Elder Rogers moved that the congregation adopt the resolution expressing its intent to be exempt from the provisions of Chapter VIII of the Book of Order and to hold title to its property under the provisions of the Book of Church Order of PCUS (1982-83 edition). . . . Seconded by Elder Harry Teasley and passed by voice vote.

Exhibit 11 at 2.

21. Following the July 1, 1984, vote, the church continually manifested its understanding that it had properly exempted itself from the PCUSA trust clause and thereby “retained” the church’s property. Indeed, when a question concerning the church’s property was raised at a session meeting in June 1989, the session noted:

Elder George stated that when the merger of the northern and southern Presbyterian Churches took place our church had a sated time period to elect to retain our real church property. *It had been voted on by our congregation to retain our property.* This directive which had been voted on was retained in our church archives. Elder George stated that he had *directed that this request now be forwarded to the Presbytery in order that First Presbyterian Church may retain its property.* Elder George stated that the church had not received a confirmation letter back. Elder Long moved that the question be referred to our Trustees to insure that the question is resolved. The point of clarification was made on this subject by Elder Smith when he stated that *the local congregation can maintain its ties with the national church and also retain its real property. There is no conflicting position in retaining its property and keeping its ties with the national level.* Motion seconded and passed.

Exhibit 20 at 3 (emphasis added).

22. Two months later, in August 1989, the session again reiterated that, “in 1984 we passed a resolution at a Congregational Meeting to remain under the Old Book of Church Order.” Exhibit 12 at 4. “[U]nder the Old Book of Church Order,” the session further noted, “If we pull out of the Presbyterian Church, we get our property.” Exhibit 12 at 4. Although the 1989 session was confident that FPC Starkville had properly exempted itself from the PCUSA

property rules, in an abundance of caution FPC Starkville “re-submitted the [exemption] request so as to cover this church in the eventuality that no action was taken earlier.” Exhibit 12 at 5.

23. FPC Starkville was not alone in believing that it had rejected the PCUSA property rules and therefore retained its property rights. Indeed, on December 18, 1990, the Presbytery’s chief officer confirmed FPC Starkville’s understanding of the property exemption in a letter. *See* Exhibit 13. That letter, which the session incorporated into its official records, states as follows:

The “Book of Order” has a provision in G-8.0701 to exempt churches that were in the [PCUS] prior to the reunion from the provisions contained in Chapter 8 [(the PCUSA property chapter)]. . . .

First Presbyterian Church, Starkville, has taken this exemption and will always be under the property chapter of the “Book of Church Order” of the [PCUS].

The effect of this exemption is that the First Presbyterian Church, Starkville, does not have to request permission of the Presbytery to sell, mortgage, or encumber any of its real property and does not have to receive permission of the Presbytery to buy additional property. ***The Church will continue to hold title to its property and take action concerning the property as it always has in the past.***

Exhibit 13 (emphasis added).

24. When FPC Starkville formally incorporated in 2003, the property exemption re-emerged yet again, with the session resolving that the exemption “be incorporated in the incorporation document.” Exhibit 14 at 2. In 2005, when proposed bylaws were prepared for the church, the bylaws included a “reservation” provision making clear that nothing else in the bylaws—including any references to the PCUSA constitution—“shall be deemed to contradict or nullify the rights reserved by the First Presbyterian Church of Starkville, Mississippi . . . whereby this Church voted . . . to be exempt from the provisions of Chapter VIII [(the property chapter)] of the Constitution of the Presbyterian Church (U.S.A).” Exhibit 15 at 4.

25. The minutes from the July 2005 session meeting at which the proposed bylaws were introduced similarly note the session’s concern that its absolute property rights be guarded.

Indeed, the only recorded comment about the proposed bylaws was that “The Church By Laws were introduced and it was related that the by laws will follow the Book of Church Order with the exception of *retaining ownership of church property in the event the church dissolves. The property will not become property of the Presbytery.*” Exhibit 16 at 6 (emphasis added).

D. FPC Starkville’s Complaint and Presbytery’s Answer

26. In early 2015, fearful that Presbytery was positioning itself to assume control of FPC Starkville’s property, the church sought a declaratory adjudication of its property rights. Specifically, FPC Starkville requested a judgment recognizing FPC Starkville’s exclusive ownership of all property held by it or in its name, free of any trust in favor of the PCUSA. Complaint at ¶¶ 23-26.

27. On May 8, 2015, Presbytery filed its “Answer, Defenses and Counterclaim.” Disputing FPC Starkville’s full-ownership claim, Presbytery requested that the Court instead declare that FPC Starkville’s property is held in trust for the use and benefit of the PCUSA. *See* Answer of Presbytery at 21-28. Presbytery further asserted that FPC Starkville’s property is subject to an “implied trust,” an “express trust,” a “resulting trust,” and/or a “constructive trust” in favor of the PCUSA. *See* Answer of Presbytery at 4.

28. Broadly speaking, the central issue in this case is whether or not the PCUSA holds a legally-enforceable trust interest in FPC Starkville’s real and personal property. As discovery has confirmed, the trust claimed by Presbytery simply does not meet the plain requirements of Mississippi trust law. Accordingly, there is no genuine issue of material fact, and FPC Starkville is entitled to judgment as a matter of law.

III. SUMMARY JUDGMENT

29. The Mississippi Supreme Court has recently explained:

Summary judgment is appropriate and “shall be rendered” if the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Importantly, the party opposing summary judgment “may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, will be entered against him.

Karpinsky v. Am. Nat. Ins. Co., 109 So. 3d 84, 88 (Miss. 2013).

30. In the instant case, it is Presbytery who claims that a trust exists and therefore Presbytery who has the burden of producing evidence of the trust’s existence.⁷ Accordingly, FPC Starkville is entitled to summary judgment if Presbytery cannot offer evidence in support of *each* element essential to its trust claim. *See id.* at 89 (“[S]ummary judgment ‘is appropriate when the non-moving party has failed to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.’”).

IV. ARGUMENT 1: FPC STARKVILLE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE REQUIREMENTS TO CREATE A TRUST HAVE NOT BEEN SATISFIED.

31. “Mississippi has adopted the ‘neutral principles of law’ approach for resolving church property disputes.” *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 824 (Miss. 2009). Importantly, “[t]his method . . . relies on objective, traditional concepts of trust and property law familiar to attorneys and judges. It calls ‘for the completely secular examination of

⁷ Regardless of which trust theory is at issue, the party asserting the trust bears the burden of proof. *See Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 211 (Miss. 1998) (“To succeed, Pentecostal [(the denomination claiming a trust)] had the burden to demonstrate that the property was held in trust for it by the Moss Point congregation or show that the deeds evinced such.”); *Cooper v. Gilder*, 156 So. 3d 262, 274 (Miss. Ct. App. 2009) (“The burden of proving a constructive trust rests on the party seeking to have the constructive trust imposed.”); *Bourn v. Bourn*, 375 So. 2d 421, 424 (Miss. 1979) (“[T]he burden of proof is upon the person claiming the benefit of a resulting trust.”).

deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons, Books of Discipline and the like to determine whether any basis for a trust in favor of the general church exists.” *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200, 205 (Miss. 1998).

32. Using the neutral principles analysis, courts are to determine the property rights of religious entities in the same way they determine the property rights of any other entities. Accordingly, acts that would be insufficient to create a trust over the property of a business corporation are likewise insufficient to create a trust over the property of a religious corporation. In this precise context, the Mississippi Supreme Court has therefore held that a religious denomination claiming ownership of local church property “must demonstrate either an actual transfer of property from the congregation to the denomination, an express trust, or clear and convincing evidence evincing an intent on the part of the local congregation to create a ‘trust’ in favor of the denomination.” *Id.* at 206.

33. In the present case, Presbytery has variously alleged that FPC Starkville’s property is subject to every type of trust recognized by Mississippi law, including an express trust, a constructive trust, a resulting trust, and an implied trust. *See* Answer of Presbytery at 4. However, because Presbytery has primarily framed its trust claim as an “express trust,” this motion focuses on demonstrating that FPC Starkville has never established an express trust under Mississippi law.

A. The prerequisites to creating an express trust under Mississippi law: (1) trust intent; (2) a written trust instrument; and (3) corporate approval.

34. Under Mississippi law, an express trust “is created only if: . . . The settlor^[8] indicates an intention to create the trust.” MISS. CODE § 91-8-402. Moreover, for a trust to apply to land or real property, the trust must be established in a signed trust document: “No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust (the ‘settlor’).” MISS. CODE § 91-8-407.

35. Though perhaps obvious, the Mississippi Trust Code also makes clear that an express trust “is created only if: The settlor has *capacity* to create a trust.” MISS. CODE § 91-8-402 (emphasis added). In the case of an unincorporated religious association, which was FPC Starkville’s organizational form until 2003, that means the association’s property can only be subjected to a trust by a minimum-quorum, congregational vote in accordance with MISS. CODE § 79-11-31:

Upon the completion of the organization of any such [unincorporated religious] society, the title to the real property theretofore owned by it shall thereupon vest in the society as hereunder organized, and *shall not be divested out of the same, or encumbered, except by a deed, deed of trust, or mortgage duly executed under the authority of a resolution adopted by a majority vote of the members present at a meeting duly called for that purpose*, at which meeting at least twenty per cent (20%) of the members in good standing of such organized society must be present.

MISS. CODE § 79-11-31 (emphasis added). Once FPC Starkville became a non-profit corporation in July 2003, the church’s ability to subject all of its property to a trust became even more limited. Under the Mississippi Nonprofit Corporation Act, any transfer of substantially all of a corporation’s property—such as the creation of a global trust—“must be approved: (a) By the board of directors; and (b) By the members of two-thirds (2/3) of the votes cast or a majority of the voting power.” *See* MISS. CODE § 79-11-331.

⁸ “‘Settlor’ means a person, including a testator, who creates, or contributes property to, a trust.” MISS. CODE. § 91-8-103.

36. Through the lens of the above statutes, FPC Starkville's property is only held in an express trust for the PCUSA if: (1) FPC Starkville intended to create a trust; (2) FPC Starkville manifested its intent to create a trust in a written and signed trust instrument; and (3) FPC Starkville's congregation duly approved the trust instrument in a meeting that satisfies the relevant requirements of § 79-11-31 (pre-incorporation) or § 79-11-331 (post-incorporation).

B. FPC Starkville's 1984 property exemption resolution is not a written instrument creating a trust in favor of the PCUSA.

37. In the instant case, Presbytery has identified only one document that it alleges to be a written trust instrument duly approved by FPC Starkville's congregation: FPC Starkville's 1984 property exemption resolution (Exhibit 11 at 3). Ironically, this is the very resolution by which FPC Starkville attempted to protect its property from the PCUSA. Unbothered by FPC Starkville's clear intent, however, Presbytery's position is that FPC Starkville's attempt to reject a PCUSA trust is *actually what created* a PCUSA trust.

1. Presbytery's Position: FPC Starkville's 1984 Property Exemption Resolution Was Intended to Create a Trust.

38. For ease of reference, the relevant language of FPC Starkville's 1984 property exemption resolution is as follows:

WHEREAS, the Book of Order of the [PCUSA] in Chapter VIII which is entitled "The Church and Its Property" contains provisions which are somewhat different from those contained in the Book of Church Order of the [PCUS] in Chapter VI which is entitled "Church Property";

....
NOW, THEREFORE, BE IT RESOLVED that the congregation of the First Presbyterian Church, in a meeting properly called and conducted, does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the reunion which established the [PCUSA] and will hold title to its property and exercise its privileges of incorporation under the provisions of the Book of Church Order, [PCUS] (1982-1983 edition).

Exhibit 11 at 3.

39. According to Presbytery, the above resolution may have made clear that FPC Starkville would not be subject to any new PCUSA property rules, but the resolution also indicated that FPC Starkville would hold title to its property under the 1982-83 PCUS property rules. It was with this reference, Presbytery alleges, that FPC Starkville made a fatal misstep. According to Presbytery, because the 1982-83 PCUS property rules contained a trust clause, FPC Starkville by implication bound itself to the PCUS trust clause. Presuming that the PCUS trust clause now operates in favor of the PCUSA, Presbytery asserts that FPC Starkville thereby used the defunct PCUS trust clause to create a present trust in favor of the PCUSA.

40. At bottom, Presbytery's position is that FPC Starkville's attempt to reject a PCUSA trust is actually what created a PCUSA trust. As set forth below, this Court should reject Presbytery's stance because it eviscerates FPC Starkville's avowed intent, contradicts the Presbytery's own statements, jettisons the absolute property rights of churches in the PCUS, and is unsupported by the exemption resolution's text.

2. The Uncontroverted Evidence Shows that FPC Starkville Did Not Intend for its 1984 Property Exemption to Create a Trust.

41. Trust intent is—and has always been—a necessary prerequisite to create an express trust in Mississippi. MISS. CODE § 91-8-402. As stated by the Mississippi Supreme Court in *Landau v. Landau*:

[L]oose and equivocal expressions are not sufficient to denote a trust, in favor of him who has the burden of proof. To constitute an express trust there must be either explicit language to that effect, or circumstances which show, with reasonable certainty, that a trust was intended to be created.

187 So. 224, 226 (Miss. 1939). Judged against this standard, there is simply no evidence that FPC Starkville ever intended or desired to create a trust in favor of the PCUSA. Quite the opposite, FPC Starkville's history is characterized by manifestations of the church's desire to

jealously guard the property rights of its congregation.

42. For its entire history—and long before the PCUSA even existed—FPC Starkville acquired and disposed of its property freely and for the benefit of its own congregation. Neither before nor after the PCUSA came into existence has FPC Starkville ever acknowledged any denominational interest in the church’s property. To the contrary, each of FPC Starkville’s property deeds indicates that the property was acquired exclusively in the name of FPC Starkville, and there is no record anywhere of a conveyance of a “beneficial interest,” “equitable title,” or “trust” to any third party, presbytery, or denomination. *See* Exhibit 1.

43. When it found itself in the PCUSA in 1984, FPC Starkville promptly sought to use the PCUSA “property exemption” to preserve its sovereign property rights and “retai[n] our property.” Exhibit 10 at 2. No one in the world knows more about this than Dr. James E. Long, who was an elected leader of FPC Starkville throughout the 1980’s and 1990’s, and who has sworn as follows:

I was serving as Clerk of Session at FPC Starkville when the church became a member of the PCUSA in June 1983. FPC Starkville never voted to become a member of the PCUSA.

When FPC Starkville became a member of the PCUSA, it was my understanding that FPC Starkville had paid for all its property, held title to all of its property, and was the exclusive owner of all of its property. Based on my experience as a member of the session in 1984, the rest of the session shared my understanding of FPC Starkville’s property rights.

.....

Following William Clark’s address to the session, the leadership of the church was acutely concerned with protecting the church’s property rights and retaining complete ownership of the church’s property. Accordingly, on or about January 15, 1984, FPC Starkville’s session voted to except itself from the property rules of the PCUSA. The session’s understanding was that this exception provision would allow FPC Starkville to avoid any trust claim and retain sole ownership of its property even as a member of the PCUSA. That is why, according to the session’s minutes, the action was described as “a resolution retaining our church property.”

The sole purpose of approving the property exception was to protect FPC Starkville's property rights. Accordingly, in voting to exercise the property exception, it was not the intent of FPC Starkville's session to convey any interest in FPC Starkville's property to the PCUSA. To my knowledge, there was never any mention of any trust being placed on the church's property.

The property exception resolution approved by FPC Starkville's session was presented to FPC Starkville's congregation on July 1, 1984. A representative of the session at that time explained to the congregation that the purpose of the resolution was to ensure that FPC Starkville retained sole ownership of its property. No suggestion was made that the resolution was intended to convey a substantial portion of FPC Starkville's property rights to the PCUSA.

To the extent the session- and congregation-approved property exception resolution referenced the property rules of the PCUS, it was with the understanding that FPC Starkville had exclusive and complete ownership of its property in the PCUS.

Throughout my tenure as a member and leader of FPC Starkville, the church has always acted to guard and protect its property rights. To my knowledge, there has never been a congregational meeting to consider whether to convey an interest in the church's property to the PCUSA. I believe I would have been aware of such a meeting and a record of such a meeting would be reflected in the church minutes. Moreover, a conveyance of property rights to the PCUSA would have been inconsistent with the long-held views and actions of FPC Starkville's leadership.

Affidavit of Dr. James E. Long.

44. Dr. James E. Long's testimony is confirmed by FPC Starkville's pervasive preoccupation with the PCUSA property exemption, which the church made sure to request not once, but *twice*. See Exhibit 11 (1984); Exhibit 12 at 5 (1989). Consistent with Dr. James E. Long's testimony, the evidence shows that FPC Starkville's session repeatedly expressed its understanding that by exercising the property exemption in 1984, FPC Starkville had properly rejected the PCUSA trust clause:

- In June 1989, FPC Starkville discussed the implications of the property exemption at length, variously explaining: (a) that "It had been voted on by our congregation to retain our property"; (b) that an elder "directed that th[e] [exemption] request now be forwarded to the Presbytery in order that First Presbyterian Church may retain its property"; (c) that "the local congregation can maintain its ties with the national church and also retain

its real property”; and (d) that “There is no conflicting position in [FPC Starkville] retaining its property and keeping its ties with the national level.” Exhibit 20 at 3.

- In August 1989, FPC Starkville expressly noted its belief that, because of the PCUSA property exemption, “[i]f we pull out of the Presbyterian Church, we get our property.” Exhibit 12 at 4.
- In 1990, FPC Starkville obtained written confirmation from Presbytery that, because of the PCUSA property exemption, FPC Starkville (a) was “exempt . . . from the provisions contained in Chapter 8” (the PCUSA property chapter); (b) “does not have to request permission of the Presbytery to sell, mortgage, or encumber any of its real property”; and (c) “will continue to hold title to its property and take action concerning the property as it always has in the past.” Exhibit 13.
- In 2003, FPC Starkville’s session resolved that the PCUSA property exemption be incorporated into its incorporation document. Exhibit 14 at 2.
- In 2005, FPC Starkville’s session considered proposed church bylaws, but insisted that they be drafted to ensure that FPC Starkville “retain[ed] ownership of church property in the event the church dissolves. The property will not become property of the Presbytery.” Exhibit 16 at 6.

45. While Presbytery may deny it now, it is well aware that churches who exercised the PCUSA property exemption, like FPC Starkville, very much thought that they were escaping from the PCUSA trust clause. Indeed, Presbytery’s chief officer candidly admitted this “widely”-held belief in a 2014 e-mail: “What is widely mis-understood is the effect of that exemption. It is not from the whole chapter (and therefore the property trust clause).” Exhibit 17. Of course, Presbytery’s admission only confirms what is already abundantly clear from FPC Starkville’s records—that the church never intended to create a trust in favor of the PCUSA.

3. Presbytery’s Attempt to Re-construe FPC Starkville’s 1984 Exemption Resolution as a Trust Instrument is Contradicted by Presbytery’s Prior Statements.

46. Presbytery’s proposed interpretation of FPC Starkville’s property exemption resolution also ignores Presbytery’s own previous statements about the matter. Notwithstanding

Presbytery's position in this litigation, it was the Presbytery's chief officer who assured FPC Starkville's session in 1984 that the PCUSA property exemption would allow the church to avoid any PCUSA trust. *See Affidavit of Dr. James E. Long* at ¶ 7.

47. Six years later, in 1990, it was Presbytery's new chief officer who wrote a letter to FPC Starkville confirming that the church had exercised the PCUSA property exemption. *See* Exhibit 13. While Presbytery might now claim that FPC Starkville's property exemption did not allow it to escape the PCUSA property rules altogether, its position in 1990 was much different:

The "Book of Order" has a provision to *exempt churches that were in the [PCUS] prior to the reunion from the provisions contained in Chapter 8* [(the PCUSA property chapter)].

....

First Presbyterian Church, Starkville, has taken this exemption

....

The Church will continue to hold title to its property and take action concerning the property *as it always has in the past*.

Exhibit 13 (emphasis added).

48. Having made these statements, Presbytery cannot now seriously contend that FPC Starkville's 1984 resolution is actually the means by which FPC Starkville gave control of its property to the PCUSA.

4. Presbytery cannot use the 1983 PCUS property rules—which expressly had no legal effect and did not create a legal trust—to claim a trust in favor of the PCUSA.

49. The final discrepancy in Presbytery's exemption resolution argument is the unsupported assertion that the 1982-83 PCUS property rules—to which FPC Starkville is ostensibly subject—somehow create an enforceable legal trust. It was these "rules," after all, that were repeatedly announced to have no legal effect and specifically declared not to create a legal trust. *See, e.g.*, Exhibit 7 at 1 ("These amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property."); Exhibit 4 at 235 ("The beneficial

ownership of the property of a particular church . . . is in the congregation of such church.”); Exhibit 8 at 3 (“The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate.”).⁹

50. In addition to the assurance that PCUS rules entailed “no civil jurisdiction or power to inflict civil penalties,”¹⁰ the 1982-83 PCUS property rules also contained the previously-referenced § 6-8—the reservation provision guaranteeing local churches the absolute right to freely use and dispose of their property. Accordingly, as even Presbytery recognizes, an “exemption church” returning to the PCUS property rules retains the “§ 6-8 right” to control the use of its property. *See Answer at p. 10 ¶ 17.*¹¹ Understandably, the promise that the PCUS could not interfere with a church’s decision to freely buy, sell, or dispose of its property was seen as precluding any type of legally-enforceable trust. Indeed, such was the declared intent of § 6-8: “Section 6-8 is intended to make congregational ownership explicit.” Exhibit 8 at 3. For this precise reason, a Louisiana appellate court held that a PCUSA trust could not survive exercise of the PCUSA property exemption: “[T]he unfettered right to dispose of all of one’s property is mutually exclusive of any right by a third party to dictate the disposition of that same property. In other words, in allowing [a church] to fall back on § 6–8, [the PCUSA property exemption] negated any express trust.” *Carrollton*, 77 So. 3d at 981.

5. The PCUSA cannot claim a trust interest that FPC Starkville allegedly conveyed to the PCUS in 1984, when that entity that no longer existed.

51. The final problem inherent in Presbytery’s attempt to construe FPC Starkville’s

⁹ *See also* Exhibit 7 at 2 (“These amendments do not give Presbytery . . . any jurisdiction over property.”); Exhibit 7 at 1 (“[T]he amendments . . . do not represent any significant change in the traditional view of church property.”).

¹⁰ Exhibit 6 at § 14-1 (1982-83 PCUS Constitution).

¹¹ “This ‘opt out’ by FPC-Starkville . . . allow[s] a church to buy, sell or mortgage church property without first obtaining consent or approval of the Presbytery.”

exemption resolution as a trust instrument is Presbytery's conflation of the PCUS and PCUSA. According to Presbytery, FPC Starkville created a trust in favor of the PCUSA when the church mentioned the PCUS property rules in 1984. The PCUS property rules, however, only refer to using property for the *PCUS*, an entity that ceased to exist forever on June 10, 1983. *See* Exhibit 6 at § 6-3. In fact, pursuant to the "Articles of Agreement," which is the document that created the PCUSA:

[T]he single reunited [PCUSA] will come into being and the separate existences of the [PCUS and UPCUSA] will terminate. The two parties to the original agreement will no longer be in existence as separate Churches. . . . By the act of reunion, the separate interests of the two parties reflected in the agreement are united in one reunited Church that could not represent the concerns of either predecessor body.

Exhibit 18 at Preamble.

52. The sole purpose of the "PCUS" reference in FPC Starkville's 1984 exemption resolution was to make clear that the church was retaining all of the rights that it had prior to the creation of the *PCUSA*. Even if FPC Starkville's actions could be construed as an attempted conveyance of rights to the "PCUS," the PCUSA cannot simply step in and claim those rights. Rather, a trust interest allegedly conveyed to the PCUS after the PCUS's dissolution date would simply be void for want of a beneficiary. *See* MISS. CODE. § 91-8-402 ("A trust is created only if: . . . The trust has a definite beneficiary."); RESTATEMENT (SECOND) OF TRUSTS § 66 ("A trust cannot be created unless there is . . . a proper beneficiary.").

C. The PCUSA's unilateral adoption of a trust clause cannot create a trust.

53. Though Presbytery's express trust claim appears to rely exclusively on the 1984 exemption resolution, it bears noting that the PCUSA trust clause alone cannot establish a trust over FPC Starkville's property. Applying neutral principles, courts have consistently rejected the assertion that a self-written trust clause can be effective if the local church does not formally

approve or adopt it. *See, e.g., Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099, 1107 n.7 (Ind. 2012) (“[S]uch a rule would result in . . . enforcing the claim of the denominational church organization merely because the trust claim is added to the denominational church organization’s constitution and regardless of any contrary evidence or state law.”).¹² Considering a similar denominational trust clause in *Church of God Pentecostal*, the Mississippi Supreme Court reasoned that the trust clause in the denomination’s bylaws was meaningless unless it was expressly adopted by the local church. *Church of God Pentecostal*, 716 So. 2d at 208 (“[T]here was no evidence produced at trial that the Moss Point congregation had adopted the by-laws of [the denomination].”).

D. FPC Starkville has not created a resulting trust or constructive trust in favor of the PCUSA.

54. As an alternative to an express trust, Presbytery has summarily alleged that FPC Starkville’s property is subject to a constructive trust, a resulting trust, and/or an implied trust. An implied trust, however, is simply a category that includes resulting trusts and constructive trusts. *See Smiley v. Yllander*, 105 So. 3d 1171, 1175 (Miss. Ct. App. 2012) (“Mississippi recognizes two types of implied trusts: (1) resulting trusts and (2) constructive trusts.”). Barring the creation of an express trust, then, FPC Starkville is entitled to summary judgment if Presbytery cannot alternatively establish either (1) a **resulting** trust or (2) a **constructive** trust.

55. As set forth below, there is no genuine issue of material fact that FPC Starkville’s property is not subject to either a resulting trust or a constructive trust.

1. FPC Starkville’s Property is Not Subject to a Resulting Trust.

¹² *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S. Carolina*, 685 S.E.2d 163, 174 (S. Car. 2009) (reaching same conclusion); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 612 (Tex. 2013) (reaching same conclusion); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 589 (Mo. Ct. App. 2012) (reaching same conclusion).

56. In *Allgood v. Allgood*, the Mississippi Supreme Court summarized the concept of a resulting trust as follows:

That which we have historically labeled a resulting trust may arise in several ways. Most familiar is the case of the transfer of property made to one person with the purchase price being paid by another, a resulting trust being said to arise in favor of the person by whom the purchase price is paid.

Our law also recognizes that a trust results where a transfer of property is made to one person . . . and another person . . . at the time of the transfer undertakes an obligation to pay the purchase price.

Allgood v. Allgood, 473 So. 2d 416, 421 n.1 (Miss. 1985) (citations omitted).

57. The classic scenario in which a resulting trust arises is when one party provides or promises to provide the funds to purchase property, but the deed identifies someone else as the buyer: “The foundation of trust in such cases is that the property really belongs to *him whose funds have paid for it.*” *Church of God Pentecostal*, 716 So. 2d at 206 (Miss. 1998) (emphasis added). In all cases, the proponent of a resulting trust must demonstrate the existence of the trust by clear and convincing evidence. *See In re Estate of Horrigan*, 757 So. 2d 165, 170 (Miss. 1999) (“Proof of facts necessary to establish a trust by implication of law, *i.e.*, a constructive or resulting trust, must be clear and convincing.”).

58. There is no resulting trust in the present case, because the Presbytery does not allege that the PCUSA ever paid for, or undertook an obligation to pay for, any of FPC Starkville’s property. As Presbytery testified in its deposition:

Counsel: Other than contributions by FPC Starkville’s own members or ministers, are you aware of any other contributions, monetary - - any other monetary contributions or payments towards FPC Starkville’s property by the PCUSA?

Presbytery: I am not aware that they received any grants or loans or any such funds from another part of the church, the Presbytery, the Synod, or the General Assembly. We do that upon request when churches’ needs can’t be met by the PCUSA

members, who are their particular church members. And, in fact, Starkville has been blessed and has in it people with substantial financial resources, and so their giving, generally, has not only provided for them, but it has provided for the Presbytery to be able to make such contributions when needed to other churches.

Counsel: And you said you're not aware of FPC Starkville ever receiving any such grants towards the purchase of its property from the Presbytery or the PCUSA; is that correct?

Presbytery: That is correct.

Counsel: Are you aware of any agreement by the PCUSA to pay for the purchase price of any of FPC Starkville's property?

Presbytery: The congregation, when it has - - and its session are the PCUSA when they act. I am not aware of any entities - - other than the congregation of FPC, when it's been appropriate to take action or the session of FPC, when it has taken action relative to property on behalf of the PCUSA, I am not aware of any other entities than those who have been participants in those decisions.

Counsel: Okay. So to the extent that the PCUSA or the Presbytery is a separate entity, a separate incorporated entity or what have you, you're not aware of any agreement by those entities to ever pay for FPC Starkville's property?

Presbytery: Correct.

Exhibit 19, Deposition of Presbytery, Transcript at p. 160-62.

59. Because Presbytery does not allege that the PCUSA paid for—or made any promise or assumed any obligation to pay for—FPC Starkville's property at the time of its purchase, as a matter of law, there can be no resulting trust.

2. FPC Starkville's Property is Not Subject to a Constructive Trust.

60. Like its resulting trust claim, Presbytery's constructive trust claim must also fail as a matter of law. Just as with a resulting trust, Presbytery bears the burden of proving a

constructive trust by clear and convincing evidence. *In re Estate of Horrigan*, 757 So. 2d at 170 (“Proof of facts necessary to establish a trust by implication of law, *i.e.*, a constructive or resulting trust, must be clear and convincing.”).

61. In numerous cases, the Mississippi Supreme Court has defined a constructive trust as follows:

A constructive trust is one that arises by operation of law against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, to hold and enjoy.

Allred v. Fairchild, 785 So. 2d 1064, 1067 (Miss. 2001); *In re Admin. of Estate of Abernathy*, 778 So. 2d 123, 127 (Miss. 2001) (same); *Joel v. Joel*, 43 So. 3d 424, 431 (Miss. 2010) (same).

62. There is neither evidence nor allegation in this matter that FPC Starkville has done anything fraudulent, deceptive, or inequitable, or has otherwise acquired title to its property unfairly. Presbytery’s own deposition makes clear that it does not truly allege the elements necessary to justify the creation of a constructive trust:

Counsel: So for purposes of this litigation no, are you - - is it Presbytery’s position that FPC Starkville has done anything to defraud the PCUSA or the Presbytery?

Presbytery: No.

Counsel: Is it Presbytery’s position that FPC Starkville has done anything fraudulent or deceptive to obtain its property holdings?

Presbytery: No.

Counsel: Is it Presbytery’s position that FPC Starkville has done anything unconscionable to obtain its property holdings?

Presbytery: No.

....

Counsel: Is it Presbytery's position that FPC Starkville has used any deceit or concealment to obtain its property or title to its property?

Presbytery: No.

Counsel: Is it Presbytery's position that FPC Starkville did anything unfair to obtain its property or title to its property?

Presbytery: No.

Exhibit 19, Deposition of Presbytery, Transcript at p. 169-71.

63. Because there is there is no genuine issue of material fact concerning the creation of a constructive trust, FPC Starkville is entitled to summary judgment dismissing Presbytery's constructive trust claim.

V. ARGUMENT 2: FPC STARKVILLE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE CLAIM THAT THE PCUSA HAS A TRUST IS INCONSISTENT WITH THE PCUSA'S OWN RECORDS.

64. Further evidence that the PCUSA does not possess an enforceable trust interest in the property of FPC Starkville are the official financial records of the PCUSA. As affirmed by the attached affidavit of Brook Harvey, CPA, an expert in non-profit accounting standards, any claim that the PCUSA has a trust interest in FPC Starkville's assets is completely inconsistent with the PCUSA's own financial statements. *See Affidavit of Brook Harvey, CPA* ("CPA Affidavit").

65. The PCUSA is a large non-profit corporation that annually compiles and issues comprehensive, public financial statements. *See Exhibit A to CPA Affidavit*. Importantly, the PCUSA reports its financial information and position in accordance with "Generally Accepted Accounting Principles" ("GAAP"), which means that the PCUSA is required to follow specific rules and make particular disclosures. *See CPA Affidavit at ¶ 10*. The PCUSA's financial

statements are also audited, which means that a third party accountant has certified the statements' compliance with GAAP accounting regulations. *See* CPA Affidavit at ¶ 12.

66. By their very nature, an entity's financial statements purport to show *all* of the assets, revenues, and similar resources belonging to the entity. Indeed, "[f]inancial statements are the primary tool for disclosing to interested parties the assets, liabilities, revenue, and expenses of a not-for-profit entity." *See* CPA Affidavit at ¶ 11. For this reason, even assets and proprietary rights that cannot easily be quantified are required to be disclosed, in some form, on GAAP-compliant financial statements.

67. While the particulars are more fully set forth in Mr. Harvey's affidavit, the essence of his opinion is that the PCUSA's financial statements not only fail to support Presbytery's trust claim, but those statements actually contradict Presbytery's trust claim. In support of his opinion, Mr. Harvey's affidavit identifies numerous non-profit accounting regulations that require the PCUSA to declare and record any identifiable trust interest or right of beneficial ownership. For instance:

FASB ASC 958-20-25 "requires the PCUSA to declare and record any asset held by FPC Starkville that FPC Starkville is obligated to transfer to the PCUSA or use on behalf of the PCUSA."

FASB ASC 958-30-25 "requires the PCUSA to declare and record any asset held by other entities to which the PCUSA has an unconditional right, even if the PCUSA's right is only partial, and even if the PCUSA can only claim the remainder interest of the asset."

FASB ASC 958-605-25 dictates that if FPC Starkville "does not have the unilateral right to redirect the benefit or use of its assets to some entity other than the PCUSA," then "the PCUSA should record and state revenue for any asset received by FPC Starkville in a given period."

FASB ASC 958-810-50 "require that a not-for-profit entity disclose in the notes to its financial statements any other entity over which it has control or in which it has an economic interest."

See CPA Affidavit at ¶¶ 15, 17, 20, and 23.

68. Notwithstanding the above rules, the PCUSA's financial statements make absolutely no mention of the property of FPC Starkville (or any other local PCUSA church), or any interest therein. Considering the multiplicity of rules requiring the PCUSA to disclose any trust interest it claims or has a right to claim, the absence of any disclosed interest in FPC Starkville's assets is significant. As summarized in Mr. Harvey's affidavit:

I have reviewed the financial statements of the PCUSA and other related documents, which materials are cited in my expert report. For the reasons set forth [in my affidavit], it is my opinion that the trust claim of the Presbytery is inconsistent with the financial statements of the PCUSA. If the trust alleged by the Presbytery existed, the authoritative accounting rules dictate that the interest in the assets held in trust should be recorded, classified, and described appropriately in the financial statements of the PCUSA. This conclusion is proper in light of both the magnitude of the trust asserted and the recordation of other trusts by the PCUSA.

....

Though admittedly technical, properly accounting for the beneficial interest of a trust is a common task for non-for-profit corporations, especially corporations as large as the PCUSA. In fact, the PCUSA records approximately \$464 million in beneficial interest assets held by associated foundations, banks, or other outside parties. It is especially significant, then, that the same financial statements make no mention of the *billions* of dollars' worth of local church property—including FPC Starkville's—that the Presbytery contends is held in trust for the PCUSA.

Based upon [my] analysis, it is my opinion as a CPA experienced in these matters that the PCUSA trust alleged by the Presbytery contradicts the information and disclosures found in the PCUSA's own financial statements. If the PCUSA's audited financial statements are accurate, then the PCUSA does not have a material interest, trust or otherwise, in the property of FPC Starkville or other local PCUSA churches.

See CPA Affidavit at ¶¶ 8, and 29-30.

69. In conjunction with his review of the PCUSA's financial statements, Mr. Harvey also reviewed FPC Starkville's financial statements for 1970, 1975, 1980, 1985, 1990, 1995, 2000, 2005, 2010, and 2015. Citing additional relevant accounting practices that are ordinarily followed by a trustee holding assets, Mr. Harvey concluded:

[I]f FPC Starkville intended to hold its assets in trust for the PCUSA, the relationship should be disclosed in FPC Starkville's financial statements. None of FPC Starkville's current or historical financial statements indicate any obligation to the PCUSA or otherwise identify any trust interest in favor of the PCUSA. Thus, the contention that FPC Starkville knowingly and intentionally subjected its assets to a trust in favor of the PCUSA is inconsistent with FPC Starkville's financial statements.

See CPA Affidavit at ¶¶ 27-28.

70. Put another way, both the PCUSA's and FPC Starkville's financial statements simply confirm what FPC Starkville has consistently stated throughout its entire history: FPC Starkville has never established a trust in favor of the PCUSA.

VI. CONCLUSION

71. Based upon the exhibits and affidavits duly submitted, there can be no genuine dispute that the requirements of an express trust, a resulting trust, and/or a constructive trust have not been satisfied. FPC Starkville is therefore entitled to summary judgment.

PRAYER

For the reasons more fully set forth above, this Court should grant FPC Starkville's Motion for Summary Judgment and award the following relief:

1. Declaratory Judgment:

A declaration recognizing that FPC Starkville alone is the absolute, full, exclusive, fee simple owner of all real or personal property that is owned by FPC Starkville, held for FPC Starkville, or titled in its name; further, that the Presbyterian Church (U.S.A.) ("PCUSA") and the Presbytery of St. Andrew, Presbyterian Church U.S.A. Inc. ("Presbytery of St. Andrew"), have no right to or interest in any of the real or personal property so owned by FPC Starkville; and further, that neither the PCUSA nor the Presbytery of St. Andrew has any trust, equitable, or beneficial interest, including any express trust, constructive trust, or resulting trust, in any of the real or personal property so owned by FPC Starkville.

2. Permanent Injunction:

In accordance with the declaratory judgment sought by FPC Starkville, it further requests the entry of a permanent injunction upon the same terms as the preliminary injunction already in force.

Respectfully submitted,

/s/ Ryan K. French

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