

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

DARDENNE PRESBYTERIAN)
CHURCH, INC.,)
)
Plaintiff / Counterclaim-Defendant)
)
v.)
)
PRESBYTERY OF GIDDINGS-)
LOVEJOY, INC.)
)
Defendant / Counterclaimant)
)
and)
)
PRESBYTERIAN CHURCH (U.S.A.),)
A CORPORATION,)
)
Defendant.)

Case No. 2311-CC01028

**PRESBYTERY OF GIDDINGS-LOVEJOY, INC.’S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIM COUNT I**

Defendant / Counterclaimant Presbytery of Giddings-Lovejoy, Inc. (the “Presbytery”), through its undersigned counsel and per Rule 74.04 of the Missouri Rules of Civil Procedure, hereby submits its Memorandum in Opposition to Plaintiff Dardenne Presbyterian Church, Inc.’s (“Dardenne Church”) Motion for Summary Judgment on Counterclaim I (“Motion”).

The Court should deny the Motion because genuine issues of material fact remain and Dardenne Church is not entitled to judgment as a matter of law in its favor. In 1984, Dardenne Church, through a congregational vote, passed a resolution to hold title to its property according to a property-centric chapter of a governing denominational document stating that “all property” held by a member church “is held in trust nevertheless for the use and benefit of the” denomination. It then sent a signed letter to the Presbytery notifying it of the vote and promising that it would hold title to property in the same manner stated in the resolution. 40 years later,

Dardenne Church disclaims the irrevocable trust that it created in that congregational vote. At the very least, a reasonable finder of fact could conclude that the Resolution and Letter evidence a clear intent to place Dardenne Church's property into trust for the benefit of the PCUSA.

If the Court were inclined to conclude, however, that Dardenne Church had met its burden to demonstrate an entitlement to summary judgment in its favor on Count I, then the Court should nevertheless continue the proceedings under Rule 74.04(f) to allow the Presbytery time to develop additional record evidence to further oppose the Motion, such as by taking depositions of the several individuals who sponsored affidavits to support the Motion.

The Presbytery has a moral and ecclesiastical obligation to advocate for the rights of *all* of its members and member churches. That includes those members worshipping at Dardenne Church who always have believed (rightly) that Dardenne Church's property is held in trust for the benefit of the Presbyterian Church (U.S.A.) and to be used for the denomination's benefit. Current leaders at Dardenne Church, despite the church having enjoyed a fruitful and mutually beneficial 40-year affiliation with the PCUSA, appear to be on the precipice of calling for a congregational vote to disaffiliate from the denomination. The Petition acknowledges that there is "tension in the relationship," Pet. ¶ 39, and the actions Dardenne Church leaders have taken more recently, especially removing all references to the PCUSA from its bylaws in October 2023, make this intention plain, *id.* ¶ 38. Overcoming the trust into which Dardenne Church placed its property in 1984 is the penultimate step in that disaffiliation process, just before calling for a congregation vote on whether to disaffiliate and leave the PCUSA behind.

Yet there may be many members of Dardenne Church, perhaps a majority, who wish for the church to remain a member church and to keep its property in trust for the benefit of the PCUSA, but do not speak up for fear of being ostracized for their opinions. Recent changes to

Dardenne Church's bylaws are not a reliable indicator of the views of the church as a whole; bylaw amendments are made by a two-thirds vote of *just 10%* of the active and duly recognized members of the congregation. Even if a few of Dardenne Church's leaders ultimately wish to leave the PCUSA, according to the Presbytery's governing ecclesial document, the PCUSA *Book of Order*, the Presbytery has an obligation to ensure that the members at Dardenne Church who represent "true Church within the Presbyterian Church (U.S.A.)" are able to carry out their mission as a PCUSA member church by using the church property held in trust for the benefit of the PCUSA. That obligation includes enforcing the trust in favor of the PCUSA created by member churches.

ARGUMENT

I. Genuine disputes of material fact remain on the ultimate question whether Dardenne Church in 1984 placed its property into an irrevocable trust for the benefit of the PCUSA.

The Presbytery's claim to recognize an express trust in its favor is straightforward, compelling, and based upon documents that evidence a clear intention to create a trust. In January 1984, Dardenne Church's congregation voted on the recommendation of its governing body—its "Session"—to pass several resolutions (collectively, the "Resolution"), and to then send a letter telling the Presbytery about the resolution and carrying them out. Relevant here, one resolution was to recognize that "the Dardenne Presbyterian Church, in Dardenne Prairie, Missouri, on or about June 10, 1983 became [a] particular church in the reunited denomination known as the Presbyterian Church (U.S.A.)," also referred to at times as the PCUSA. *See* Statement of Additional Material Facts ("Additional Facts") ¶¶ 17–18 & Exhibit 13.¹

¹ References herein to numerical "Exhibits" are to the exhibits that Dardenne Church offered to support the Motion. References to alphabetical "Exhibits" are to the exhibits attached to the Affidavit of Ryan Landino, offered by the Presbytery in opposition to the Motion. The Affidavit of Ryan Landino is attached to the Presbytery's Statement of Additional Material Facts.

Another resolution the church congregation passed was to recognize that the Presbyterian Church (U.S.A.)'s Constitution, called the *Book of Order*, included provisions about the treatment of member church property that were "somewhat different from those contained in the *Book of Church Order* of the Presbyterian Church in the United States," of which denomination Dardenne Church had been "a particular church" before the creation of the Presbyterian Church (U.S.A.) in June 1983. Additional Facts ¶ 17 & Exhibit 13.

A third resolution, in an acknowledgement of the governing authority of the PCUSA *Book of Order* over Dardenne Church, was to recognize that the *Book of Order* allowed member churches that before the PCUSA's creation in 1983 were "not subject to a similar provision of the" PCUSA *Book of Order* addressing the treatment of church property to "be excused from" that provision of the *Book of Order*, if "the congregation shall within a period of eight years following the establishment of the Presbyterian Church (U.S.A.) vote to be exempt from such in a regularly called meeting and shall thereafter notify the Presbytery." *Id.*

The fourth and final resolution that Dardenne Church passed at that 1984 meeting here came in two parts. The first part formally recognized the congregation's 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 Presbyterian Church (U.S.A.)." *Id.* The second part, which the church did not need to state in order to exercise the option to exempt itself from the different provisions in the PCUSA *Book of Order*, was to "hold title to its property and exercise its privileges of incorporation under the provisions of the *Book of Church Order, Presbyterian Church in the United States* (1982-1983 edition), this action having been taken within the period of either years following the establishment of the Presbyterian Church (U.S.A.)." *Id.*

Relevant here, the 1982/1983 edition of the Presbyterian Church in the United States'

Book of Church Order, Chapter 6, under which Dardenne Church affirmatively voted to hold title to its property, states as follows regarding church property:

§ 6–3. *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 Presbyterian Church in the United States.*

§ 6–4. If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the Presbyterian Church in the United States or otherwise ceases to exist or function as a member of the Presbyterian Church in the United States, *any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion may direct.*

Additional Facts ¶ 20 & Exhibit A (emphasis added).

Two weeks after it voted to hold title to its property under these two provisions (*i.e.*, in trust for the use and benefit of the successor PCUSA denomination), Dardenne Church, on January 31, 1984, sent the Presbytery an official letter (the “Letter”) as follows:

On the 15th day of January, in the year of our Lord 1984, the congregation of the Dardenne Presbyterian Church of Dardenne Prairie, Missouri, voted to be exempt from the provisions of G-8.0501 and G-8.0502 of the Form of Government of the Presbyterian Church (U.S.A.). These provisions deal with selling, encumbering, or leasing the property of said congregation.

The Presbytery of Southeast Missouri is hereby informed of such action, *and is further informed that the congregation of the Dardenne Presbyterian Church, from the date of that congregational meeting, “shall hold title to its property and exercise its privileges of incorporation and property ownership” according to the provisions of Chapter 6 of the Book of Church Order of the Presbyterian Church in the United States as that chapter existed on the date of June 10, 1983.*

Additional Facts ¶ 19 & Exhibit 15 (emphasis added). The letter was prepared on official “Dardenne Presbyterian Church” letterhead and was signed by Thomas L. Sale and Charles C. Poe, Jr. *Id.* As the letterhead indicates, Mr. Sale was then the “Pastor” of Dardenne Church. He signed the letter as the “Moderator” of the Church’s Session. According to Dardenne Church’s current bylaws, the “Moderator” is “the Pastor recognized by the Session and congregation” and

serves as “the Corporation Chairman.” Mr. Poe signed the letter in his capacity as “Clerk” of the Church’s Session. According to Dardenne Church’s current bylaws, the Clerk of Session serves as “the Corporation Secretary.”²

Dardenne’s Resolution and Letter in 1984 distinguish this case from others where Missouri courts have declined to recognize an express trust over local church property in favor of a national denomination. In those cases, there was no expression by the local church to hold title to property under the trust provisions contained in the denomination’s national constitution. Rather, there were only general statements in organizational documents stating that the local church was a member of the national denomination, which was not enough. *See Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 195 (Mo. App. W.D. 2012); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 591 (Mo. App. W.D. 2012) (“What Heartland ignores . . . is that under Missouri law the provisions of the PCUSA’s Book of Order are not necessarily binding on Gashland, *without some effective expression of Gashland’s agreement to be bound by those provisions*; this is particularly true where Heartland seeks to use the denomination’s Constitution to impose a trust on Gashland’s real property.” (Emphasis added)); *id.* at 592 (“In order to establish an express trust on that property, fundamental principles of Missouri law required some effective expression of intent *by Gashland*.”). The decisions are therefore inapposite.

Despite making this clear statement of intent in 1984, Dardenne Church now refuses to acknowledge that its property is irrevocably held in trust for the use and benefit of the Presbyterian Church (U.S.A.).³ It filed this lawsuit seeking the Court’s blessing of this view

² See https://www.dpc4u.org/files/ugd/1cf791_fa4423a951c64a789dd5a3ec3272802b.pdf

³ Under the Missouri common law, “all trusts are irrevocable unless expressly stated to be revocable,” which the 1984 Resolution and Letter did not do. Francis M. Hanna, *Missouri Practice Series, Trust Code and Law Manual* § 456.6-602 (2023 ed.) (Missouri comment). Missouri’s

before it presumably takes a congregational vote to determine whether to disaffiliate from and leave the PCUSA. Dardenne Church now claims that its intent was so clearly *not* to create a trust that none in fact was created, and says that this Court can so declare without the need for a trial on the matter. Dardenne Church is wrong on each one of its arguments in the Motion.

A. The 1984 Resolution and Letter are reasonably read to create a trust (Response to MSJ Argument #1).

In its first argument to avoid a trust, Dardenne Church argues that no one can reasonably read the 1984 Resolution to create a trust. Memo at 15–19. Plaintiff can be right only if the Court ignores critical language in the Resolution and ignores the accompanying 1984 Letter altogether, a good indication that Plaintiff is wrong. *See Rouner v. Wise*, 446 S.W.3d 242, 253 (Mo. 2014) (“In construing the letter, it must be read as a whole, without giving undue importance to any particular word or phrase.”).

Dardenne Church begins with the observation that the Resolution “never mentions a trust or purports to grant anyone else any property rights.” Memo at 17. It is “well settled,” however, that “no particular words are necessary to declare a trust.” *In re Soulard’s Estate*, 43 S.W. 617, 622 (Mo. 1897). Rather, if language in the instrument “sufficiently expresses an intention to create a trust, that will be sufficient.” *Id.*; *see also Rouner*, 446 S.W.3d at 254.

Here, the 1984 Resolution expressed Dardenne Church’s clear intention to “hold title to its property and exercise its privileges of incorporation under the provisions of the *Book of Church Order, Presbyterian Church in the United States* (1982-1983 edition),” one of which was that “all property held by or for a particular church . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.” Additional Facts ¶¶ 17, 18, 20.

Uniform Trust Code changed the law by “canceling the ancient common law presumption of irrevocability, but the change ‘does not apply to a trust created under an instrument executed before January 1, 2005,’” and thus does not apply here. Mo. Rev. Stat. § 456.6-602.1.

Dardenne Church’s Letter to the Presbytery weeks later expressed the same intention once again, specifically “to further inform[]” the Presbytery that Dardenne Church “shall hold title to its property and exercise its privileges of incorporation and property ownership according to the” same provisions in the *Book of Church Order*. Additional Facts ¶ 19.

Nevertheless, Dardenne Church argues that the Resolution somehow expressed a contrary intention, claiming that the Resolution’s “stated purpose” was “to *reject* the PCUSA denominational rules that ‘deal with selling encumbering or leasing the property of [the] congregation.’” Memo at 17. Although the Resolution does not state what its “purpose” was, one can infer that opting out of those particular PCUSA provisions was *a* purpose of the Resolution and Letter. But it was not the sole purpose. Under the 1982/1983 PCUS *Book of Church Order*, a church could “buy, sell, or mortgage property” and had to “act under the instructions of the congregation adopted at a regularly constituted meeting.” Additional Facts ¶ 20 & Exhibit A (§ 6-1). In other words, and as reiterated and made doubly clear in a second provision of the *Book of Church Order* (§ 6-8), church leaders did *not* need to “seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell, or mortgage” church property. *Id.*

By contrast, the PCUSA *Book of Order* did (and still does) state that a member church needs presbytery permission before it sells, encumbers, or leases church property. Specifically:

G-4.0206 *Selling, Encumbering, or Leasing Church Property*

a. *Selling or Encumbering Congregational Property*

A congregation shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the congregation.⁴

⁴ This provision in 1983 was numbered G-8.0501. *See* Landino Aff. ¶ 19 & Exhibit B.

b. Leasing Congregational Property

A congregation shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the congregation.⁵

Exhibit 8, pp. 64–65. *See Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville*, 240 So. 3d 399, 409 (Miss. 2018) (King, J., dissenting) (“The difference between the PCUS rules on property and the PCUSA rules on property is that congregations under the PCUS rules may exercise property rights without the approval of the denomination, while PCUSA rules forbid the congregation from buying, selling, leasing, or encumbering their property without denominational permission.”).

Accordingly, opting out of the PCUSA’s less flexible property provisions in favor of the more flexible ones in the PCUS *Book of Church Order* was just one purpose of the Resolution. And Dardenne Church could have achieved it by declaring that it was opting out of those provisions and saying no more.

But Dardenne Church did say more, and what it said and the fact that it said it at all are legally significant. Going further in the Resolution, Dardenne Church resolved to “hold title to its property and exercise its privileges of incorporation under the provisions of the *Book of Church Order, Presbyterian Church in the United States* (1982-1983 edition)” And then it sent a two-paragraph letter to the Presbytery stating, in paragraph 1, that it had “voted to be exempt from the provisions of G-8.0501 and G-8.0502” and, in a separate paragraph 2, going “further” and “inform[ing]” the Presbytery that, from the date of its congregational vote, it would “hold title to its property and exercise its privileges of incorporation and property ownership according

⁵ This provision in 1983 was numbered G-8.0502. *See* Landino Aff. ¶ 19 & Exhibit B.

to the provisions of Chapter 6 of the *Book of Church Order* of the Presbyterian Church in the United States as that chapter existed on the date of June 10, 1983.” Additional Facts ¶¶ 17, 19.

This second paragraph of the Letter did not limit itself to the Chapter 6 provisions that allow the church to sell, lease, or encumber property without obtaining presbytery consent or approval beforehand (§§ 6–1, 6–8). To the contrary, the Letter said that Dardenne Church would hold its property “according to the provisions of Chapter 6,” which means *all* of the provisions. If the Resolution’s sole purpose was to opt out of PCUSA *Book of Order* sections G-8.0501 and G-8.0502 alone, then why did the Presbytery say more in the Resolution and Letter? And in saying more, why didn’t Dardenne Church limit itself to saying that it would hold property consistent with § 6-8 alone, rather than say it would hold property according to all of Chapter 6? Reading the entire Resolution and the Letter requires giving meaning to Dardenne Church’s decision to say more than it needed to opt out of G-8.0501 and G-8.0502.

Dardenne Church calls the Presbytery’s reasonable reading of all the language in the Resolution and Letter “truly absurd.” Memo at 18. Yet it cannot explain why it chose to say more than it had to in those documents—and said what it said so clearly—if it never intended the natural intendment of the words it used. *See Brown v. Brown*, 530 S.W.3d 35, 41 (Mo. App. E.D. 2017) (“A grantor is presumed to know and intend the legal effect of the language he uses in the trust.”). Dardenne Church offers no contrary reading that considers all of the language used. Nor is the Presbytery’s reading “absurd” at all. It would be eminently reasonable for a church to conclude (as Dardenne did based on the language it used) that, in solidarity with and fidelity to its newly joined Presbyterian denomination, it would follow the denomination’s new governing document and place its property into trust for the use and benefit of the denomination, yet still wish to retain the flexibility, consistent with the options provided in governing documents, to not

need approval before selling, leasing, or encumbering church property.⁶

Dardenne Church leaves no room for this reasonable reading of the two 1984 documents. Its contrary reading leaves over half of the text of the 1984 Letter as doing absolutely no work, thereby creating unnecessary surplus language, an exercise that a court must avoid if it reasonably can. *See Liberty Storage Co. v. Kansas City Terminal Warehouse Co.*, 340 S.W.2d 189, 192 (Mo. App. 1960) (“We are not at liberty to ignore the presence of the word, but must attach meaning and significance to it, because every part of the contract must be given effect, if fairly and reasonably possible.”).

B. The best evidence of Dardenne Church’s intent in the 1984 Resolution and Letter is the clear language it used in both (Response to MSJ Argument #2).

Dardenne Church understandably wants to distance itself from the documents it signed in 1984, the language it used, and the vote it took—all of which expressed a clear intention to place its property into trust. It wants to look elsewhere to attempt to locate a contrary intent found nowhere in those documents. But as the cases that it cites acknowledge, a settlor’s intention “must be ascertained . . . from all provisions contained within the four corners of the instrument.” *Alexander v. UMB Bank, NA*, 497 S.W.3d 323, 327 (Mo. App. W.D. 2016). Only where necessary “to clarify the settlor’s true purpose and intent” may a court look elsewhere and consider “the circumstances surrounding its execution.” *Id.* Here, the intent is clear from resolution and letter, executed just weeks apart. Resort to extrinsic evidence thus is unnecessary.

⁶ Dardenne Church suggests it was helpless when the church leaders and congregation “found themselves in a denomination they voted against.” Memo. at 20. Yet, nothing prevented Dardenne Church from leaving the PCUSA denomination after the merger in 1983. In fact, the PCUSA *Book of Order* provided a mechanism for individual churches to leave the denomination with their property if elected by a vote of the congregation during the eight years after the merger. Exhibit 8, Art. 13; *see Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446, 449 (Ga. 2011); *Presbytery of St. Andrew*, 240 So. 3d at 409 & n.4 (dissenting opinion). Dardenne Church never voted to leave the PCUSA. Additional Facts ¶ 21.

Resisting this, Dardenne Church offers the Court several items of untested extrinsic evidence. The first set of documents is a church resolution from May 1982 and a deed from June 1982 regarding two parcels of property. Memo at 20. But these do not demonstrate the circumstances that existed *more than a year and half later*, in January 1984, when Dardenne Church passed the Resolution and sent the Presbytery the Letter.

Next, Dardenne Church offers several affidavits from individuals who apparently served in some official capacity for Dardenne Church long ago. Memo at 21–26. Yet in none of these affidavits does the affiant explain why Dardenne Church said so much more than it had to if it intended only to opt out of sections G-8.0501 and G-8.0502 of the PCUSA *Book of Order*. One might reasonably ask: Why would the Dardenne Church congregation vote to say that Dardenne Church will hold its property in accord with *all* of Chapter 6 of the PCUS *Book of Church Order* if that is not what it intended? None of the affidavits gives an answer.

Moreover, while the personal thoughts and distant memories of a few church elders might be relevant if Dardenne Church's intention were not already made crystal clear from the language used in the 1984 Resolution and Letter, they could not be dispositive of the intention of the church congregation *as a whole*, in the way the Resolution and the Letter are. Recall that it was *the congregation* that voted on the resolution, not just church leaders. The individual votes of the leaders counted for no more than the votes of other members of the congregation did. Different understandings that members of the congregation may have had when voting on the proposed resolution makes it all the more important to look for intention in the language that the congregation actually approved, rather than asking certain individuals what they personally intended or believed when they cast their individual votes. *Cf. Ass'n of Equip. Mfg. v. Burgum*, 932 F.3d 727, 731 (8th Cir. 2019) (“Virtually all legislation enacted by multi-member bodies

will be motivated by multiple purposes in the minds of individual legislators, but those subjective intentions are not controlling.”); *Isle Royale Boaters Ass’n v. Norton*, 330 F.3d 777, 784–85 (6th Cir. 2003) (noting that courts are wary of considering the “almost always cacophonous” comments of individual legislators in determining legislative intent).

C. Dardenne Church went well beyond making “a reference to the Book of Church Order” in its 1984 Resolution and Letter to the Presbytery (Response to MSJ Argument #3).

Dardenne Church contends next that it created no trust because it opted in 1984 to hold its property in trust for the use and benefit of the PCUS, and, in Dardenne Church’s telling, “the PCUSA is not the same thing as the PCUS.” Memo at 27. In making this argument, Dardenne Church mistakes the PCUSA denomination, which undoubtedly *is* the successor to the PCUS denomination, for the “Presbyterian Church (U.S.A.), A Corporation,” which is the corporate expression of the PCUSA denomination at the General Assembly council level of internal governance. Additional Facts ¶ 22. The PCUSA denomination and the “Presbyterian Church (U.S.A.), A Corporation” are not the same thing.

Exhibit 24 to the Motion is a compilation of corporate documents for the “Presbyterian Church (U.S.A.), A Corporation.” They are irrelevant, as the Presbyterian Church (U.S.A.), A Corporation, has never claimed any interest in Dardenne Church’s property. *See* January 23, 2024 Presbyterian Church (U.S.A.), A Corporation’s Memorandum of Law in Support of Motion to Dismiss at 5 (“[T]he A Corporation never maintained that it held any interest in the property, and the A Corporation continues to claim no such interest.”).

The PCUSA is indisputably the successor denomination to the PCUS. Consider, for instance, the following passage from the Article I of the Articles of Agreement Between the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America, which demonstrate the succession:

- 1.1 These Articles of Agreement are intended to, and they do, provide for the union of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America to form one Church which shall be known as the Presbyterian Church (U.S.A.). Whenever it becomes necessary to identify the Presbyterian Church in the United States or The United Presbyterian Church in the United States of America after union, the Presbyterian Church (U.S.A.) is, and shall be, the successor of each and the successor shall have that identity. The history of the Presbyterian Church (U.S.A.) is, and shall embody, the history of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America. . . . The Presbyterian Church in the United States, The United Presbyterian Church in the United States of America, and the Presbyterian Church (U.S.A.) affirm that it is the intention of each that the Presbyterian Church (U.S.A.), from the time of reunion, shall comprise and be one single ecclesiastical entity which is the continuing Church resulting from the reunion of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America.

Additional Facts ¶ 23 & Exhibit 8 (Appendix A, Articles of Agreement § 1.1).

Dardenne Church knew at the time of its 1984 election that the PCUSA was the successor denomination to the PCUS, and that the PCUS no longer existed as a denomination. Dardenne Church expressly stated exactly that in the first two resolutions passed on the property issue at the January 1984 congregation meeting. Additional Facts ¶ 17 & Exhibit 13 at 6. Therefore, in voting to “hold title to its property and exercise its privileges of incorporation and property ownership’ according to the provisions of Chapter 6 of the *Book of Church Order* of the Presbyterian Church in the United States as that chapter existed on the date of June 10, 1983,” Dardenne Church was voting to hold title in trust for the benefit of the successor PCUSA denomination—the only one that then existed. This is the only reasonable reading, which saves the congregational vote (and later notice to the Presbytery) from being a nullity, given the merger in June 1983. *See Boland v. Mercantile-Commerce Bank & Trust Co.*, 163 S.W.2d 597, 600 (Mo. 1942) (“In construing the trust instrument all provisions must be read and considered and given effect, if that can be done.”).

Other jurists have read similar actions by other former PCUS member churches that made

the same election as intending to hold title to their property in trust for the benefit of the successor PCUSA, not the non-existent PCUS. *See Presbytery of St. Andrew*, 240 So. 3d at 409 (dissenting opinion) (“Indeed, the opt-out provision specifically provided that in opting out of the PCUSA property provision, a church ‘shall hold title to its 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.”). This Court should too.

Next, Dardenne contends that the 1984 Resolution and Letter could not create a trust because the “PCUS’s trust provision was always and expressly deprived of any legal effect.” Memo at 28. Setting aside for the moment that Dardenne Church has cherry picked certain statements from these documents and misread them, Dardenne Church has not shown that its members were generally aware of any supposed “assurances” that the PCUS’s trust claim was legally ineffective. Accordingly, the “assurances” could not have altered Dardenne Church’s clear intention to create a trust as expressed in the 1984 Resolution and Letter.

Dardenne Church misreads and separates these materials from their context in any event. The historical record is far more robust than the handful of comments that Dardenne Church cites. Dardenne Church cites a single sentence from a 21-page discussion of the PCUS property provisions from the *Book of Church Order*: “The beneficial ownership of the property of a particular church of the [PCUS] is in the congregation of such church.” Exhibit 5. “Beneficial ownership” simply differentiates between legal title and the right to use and enjoy property held in trust for the PCUS. This sentence cannot be reasonably read to disclaim a trust in favor of the denomination over member church property. *See Presbytery of St. Andrew*, 240 So. 3d at 409 (King, J., dissenting) (“The majority asserts that ‘it is clear that PCUS disclaimed any interest in church trust property until just before the merger forming PCUSA.’ This is incorrect. . . . The

longstanding tradition of *both* PCUS and PCUSA is that congregational property is held in trust for the denomination”). Indeed, in the same document one finds the following statement, made in 1953 and reaffirmed in 1967 and 1971: “In every instance nothing in the manner or tenure of [church property] or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church,” which includes its trust provision. Exhibit 5, pg. 235.

Another document Dardenne Church cites states that the trust language in the PCUS *Book of Church Order* does not “establish any kind of encumbrance on church property as that term is understood in connection with real estate.” Exhibit 6. That language does not defeat the imposition of a trust. An “encumbrance” is “any property right that is *not* an ownership interest,” such as a lien or mortgage. *Black’s Law Dictionary* 568 (8th ed. 2004) (emphasis added). A trust, by contrast, creates an ownership interest in the beneficiary, here the denomination. In addition, the same document states that “the passage of Chapter 6 . . . will make a difference in those situations where a congregation is persuaded to attempt a unilateral withdrawal or to ignore the decision of a presbytery with regard to a request for dismissal.” Exhibit 6, pg. 168. The difference is that the church may not unilaterally withdraw from the PCUS and take all of its property with it. Exhibit 7, too, contains no language that suggests the PCUS, despite clear language otherwise in its *Book of Church Order*, disclaimed the existence of a trust over church property. The *Book of Church Order* permits each church to “own its own property” by titling it in the church’s name. In no way is that inconsistent with a trust relationship. *See Presbytery of Greater Atlanta, Inc.*, 719 S.E.2d at 456 (opting out of property provisions of the PCUSA’s *Book of Order* did not also “opt [the church] out of the property *trust* provision in Section G–8–0201,

which mirrored the one in Section 6.3 of the PCUS Book of Church Order”).⁷

D. The 1984 Resolution and Letter satisfy the requirement to place “all” of Dardenne Church’s property into trust (Response to MSJ Argument #4).

Finally, Dardenne Church contends that no trust exists because the 1984 Resolution and following Letter do not contain an “adequate legal property description.” Memo at 30. That is wrong. In Missouri, the proponent of a trust must show “a trust res so sufficiently described or capable of identification that title thereto can pass.” *Rouner*, 446 S.W.3d at 251. The requirements to convey title to real estate are similar: the property must be described sufficiently “to enable a surveyor to locate it.” *First Nat’l Bank of Cape Girardeau v. Socony Mobil Oil Co.*, 495 S.W.2d 424, 434 (Mo. 1973). A signed writing needed to satisfy the Statute of Frauds need “not be a single document but may comprise several writings that, in combination, supply the essential terms.” *Ahrens v. Dodd*, 863 S.W.2d 611, 613 (Mo. App. E.D. 1992).

Here, by the Resolution’s and the Letter’s express references to Chapter 6 of the PCUS *Book of Church Order*, the trust *res* is “all property” held by the Dardenne Church at the time. “All property” is readily capable of identification by referring to the deeds that Dardenne Church holds to its real property. There is nothing indefinite or insufficient about “all property.” Dardenne Church offers no authority that an express trust may not be declared across more than one document where one makes express reference to the other.

⁷ Nor is there anything inconsistent in a church opting out of the PCUSA provision that limits a church’s right to “sell, mortgage, or otherwise encumber any of its real property” without getting permission first, on the one hand, and, on the other hand, placing or keeping its property into trust for the benefit of the PCUSA. A church opting for that could sell property without permission; the proceeds would be held in trust for the PCUSA. *See Presbytery of Greater Atlanta, Inc.*, 719 S.E.2d at 456 n.4 (“Because the PCUS Book of Church Order did not contain a similar provision, Timberridge could opt out of that provision, allowing the local church to buy, sell, and encumber real property without prior approval (but still in trust for the national church).”).

II. The Court should deny the motion without prejudice to Dardenne Church renewing it after giving the Presbytery sufficient opportunity to develop added evidence in discovery.

For the reasons explained above, the Presbytery has offered sufficient evidence and argument to warrant denying Dardenne Church's summary-judgment motion on the Presbytery's express trust claim. But if the Court is unconvinced, it should nevertheless deny the motion without prejudice to Dardenne Church renewing the motion after sufficient discovery has been taken.

The Presbytery filed its Counterclaim in this case on December 29, 2023. Dardenne Church moved to dismiss two counts in that Counterclaim, and that motion is scheduled to be heard on June 7, 2024. The Presbytery has postponed serving written discovery and taking depositions until the Court decides the pending motions and the pleadings are set.

Under Missouri Rule 74.04(f), where it appears from party affidavits that, "for reasons stated in the affidavits facts essential to justify opposition to the motion cannot be presented in the affidavits, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

As explained in the affidavit of Presbytery Leader Ryan Landino, the Presbytery needs an opportunity to serve and receive answers to written discovery and to take the depositions of, at a minimum, the several Dardenne Church representatives who sponsored affidavits offered to support Dardenne Church's motion for summary judgment.⁸ That discovery will allow the Presbytery to offer additional facts essential for the Presbytery to oppose Dardenne Church's

⁸ The Landino Affidavit is attached to the Presbytery's Statement of Additional Material Facts.

motion.

In particular, church leaders have offered testimony about their personal intention and, in some respects, the intentions of other leaders at the time that they voted to hold Dardenne Church's property in trust under Chapter 6 of the PCUS *Book of Church Order*. These affiants claim that Dardenne Church never intended to place its property into trust for the PCUSA, notwithstanding its affirmative vote to hold title to its property "according to the provisions of Chapter 6 of the *Book of Church Order* of the Presbyterian Church in the United States as that chapter existed on the date of June 10, 1983." Although the Presbytery believes that extrinsic evidence of intent need not be considered given the clear intent expressed in the 1984 Resolution and Letter, if the Court disagrees, it should consider additional evidence adduced in discovery.

One's intention to create a trust is generally a question of fact. *See Obermeyer v. Bank of America, N.A.*, 140 S.W.3d 18, 22 (Mo. 2004). If the Court decides that evidence apart from the Resolution and Letter is helpful to decide the question of Dardenne Church's intention to create a trust over its property, then depositions will allow the Presbytery to explore and test the stated intentions of the church leaders. As the Court will observe, the several affidavits are remarkably similar in content, especially given that they address events and mindsets from more than 40 years ago. That could indicate that all of these affiants have extraordinary memories and things happened and people spoke as recounted in their affidavits. Or it could indicate that there was substantial coordination among the affiants, perhaps including with Dardenne Church's attorneys (which would not be improper in itself, but could undermine the credibility of the affiants), in preparing these affidavits. Cross-examination will allow the Presbytery the opportunity to determine which is the case.

CONCLUSION

Dardenne Church has not met its burden to show, based upon undisputed evidence, that it is entitled to judgment as a matter of law on the Presbytery's Counterclaim seeking to recognize a trust in favor of the Presbytery over property titled in Dardenne Church's name. Accordingly, the Court should deny Dardenne Church's Motion for Summary Judgment.

Dated: May 23, 2024.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, the foregoing in the above styled case was electronically served via Case.Net on all counsel of record.

/s/ Britton St. Onge _____