

**Presbytery of N.Y. City v Zion Presbyt. Church of
Brooklyn**

2020 NY Slip Op 31649(U)

May 28, 2020

Supreme Court, Kings County

Docket Number: 523817/18

Judge: Richard Velasquez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of May, 2020.

PRESENT:

HON. RICHARD VELASQUEZ,

Justice.

-----X
PRESBYTERY OF NEW YORK CITY,

Plaintiff,

-against-

Index No. 523817/18

ZION PRESBYTERIAN CHURCH OF BROOKLYN N.Y. and FLERIDA ALVAREZ, GUADELUPE TAPIA and ORLANDO ARIAS, AS MEMBER OS THE SESSION OF ZION PRESBYTERIAN CHURCH OF BROOKLYN, N.Y. and RICARDO ALBERTO ESTRADA INDIVIDUALLY AND AS A MEMBER OF THE SESSION OF ZION PRESBYTERIAN CHURCH OF BROOKLYN N.Y.,

Defendants.

-----X

The following e-filed papers read herein:

NYCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

37-49; 50-93

Opposing Affidavits (Affirmations) _____

97-99 _____

Upon the foregoing papers in this quiet title action, defendants Zion Presbyterian Church of Brooklyn, N.Y. (Zion), Florida Alvarez (Alvarez), Guadalupe Tapia (Tapia), Orlando Arias (Arias) and Ricardo Alberto Estrada (Estrada) (collectively, defendants) move (in motion sequence [mot. seq.] three) for an order, pursuant to CPLR 3212,

granting them summary judgment dismissing the complaint.

Plaintiff Presbytery of New York City (PNYC) moves (in mot. seq. four) for an order, pursuant to CPLR 3212, granting it summary judgment: (1) declaring that plaintiff has a valid claim to the property at 4802 Sixth Avenue and 574 48th Street in Brooklyn (collectively, the Property); (2) permanently enjoining defendants from asserting any claim to an estate or interest in the Property; and (3) ordering defendants to deliver title to and possession of the Property to PNYC.

Background

This is a dispute over ownership of church property between the presbytery of a denominational church, PNYC, and its local congregation, Zion, and Zion's members. PNYC is the local governing body of the Protestant denomination Presbyterian Church (U.S.A.) (PCUSA), and the umbrella organization for 92 PNYC member congregations in New York City. PCUSA was formed in 1983 through the merger of two national Presbyterian denominations, United Presbyterian Church of the U.S.A. (UPCUSA) and the Presbyterian Church in the United States (PCUS). Zion has been a member congregation of PCUSA and its predecessor, UPCUSA, since Zion's incorporation in 1960.

For more than 40 years, Zion's ministry has been located at the Property, which includes a church sanctuary located at 4802 Sixth Avenue in Brooklyn (Church) and an attached townhouse at 574 48th Street in Brooklyn (Manse). Defendants Estrada, Alvarez and Tapia are Zion members. Estrada, a ruling Elder and Zion's acting pastor, resides in the Manse.

In 2013, defendants informed PNYC of their decision to secede from PCUSA, and attempted to take real and personal property allegedly owned by it, including the Property.

On November 27, 2018, PNYC commenced this action to quiet title to the Property seeking: (1) a declaration that it has a rightful claim to the Property and to personal property in Zion's custody, pursuant to an express and/or implied trust; (2) a declaration that defendants' claim to the Property is invalid; and (3) an order delivering title to the Property, and other personal property held by Zion, to PNYC to be held in trust for PCUSA.

Zion's History and Incorporation

In 1958, Zion began holding a Sunday service at the Property, which was then owned and occupied by the Park United Presbyterian Church of Brooklyn (Park United). In 1960, Zion incorporated as a New York religious corporation, and became a member congregation of PNYC. Zion's 1960 Certificate of Incorporation stated that Zion was incorporating "in connection with the general assembly of [UPCUSA]," and "pursuant to Article 4 of the Religious Corporations Law." Zion's Certificate of Incorporation also provided that "[t]he temporalities of the church shall be managed by trustees to be elected by the church." Prior to its incorporation, Zion was a member congregation of another UPCUSA presbytery, the Presbytery of Brooklyn-Nassau.

The Property

In 1965, Park United merged with another Presbyterian Church and thereafter vacated the Property. On November 12, 1966, Park United transferred the Property to PNYC for \$98,754.81. After Park United vacated the Property in 1965 or 1966, Zion, with PNYC's permission, assumed possession of the Property.

On June 23, 1976, PNYC transferred title to the Property to Zion, subject to three separate mortgages: (1) a \$23,754.81 mortgage from PNYC to the Board of the National Missions of UPCUSA, dated November 15, 1966, which Zion assumed; (2) a \$10,000.00 purchase money mortgage known as the "Ten Year Self Amortizing Loan" from Zion to PNYC; and (3) \$10,000.00 purchase money mortgage known as the "Five Year Deferred Payment Loan" from Zion to PNYC. The deed and mortgages were simultaneously recorded in the Office of the City Register of the City of New York.

The Ten Year Self-Amortizing Loan and the Five Year Deferred Payment Loan were intended to provide Zion with sufficient capital to make improvements to the Church sanctuary. The deed did not contain any express trust provision stating that the Property was held for the benefit of UPCUSA. While there is no dispute that Zion has paid off the "Ten Year Self-Amortizing Loan" and the "Five Year Deferred Payment Loan," the parties disagree about whether the \$23,754.81 mortgage was ever satisfied.

***The 1979 United States Supreme Court
Church Property Ruling and "Overture A"***

On July 2, 1979, in *Jones v Wolf*, the United States Supreme Court held that a state is constitutionally entitled to adopt secular, neutral principles of law that rely on objective, well-established concepts of trust and property law familiar to law and judges to resolve church property disputes (443 US 595, 603 [1979]). The neutral principles of law method would accommodate all forms of religious organization and polity, but would steer clear of resolving questions of religious doctrine, polity, and practice (*id.*). The Supreme Court further held that this approach would allow courts to interpret church property systems, trust provisions, and contingencies in the event of a schism or a local

church's secession from a denomination accordance with the intention of the parties (*id.* at 603-604).

In 1980, in response to the *Jones v Wolf* decision, the 192nd General Assembly UPCUSA directed its clerk to send "Overture A" to its presbyteries to elicit their input as to whether the UPCUSA constitution should be amended to include an express property trust clause, which the constitution did not previously contain. In 1981, at a meeting of the 193rd General Assembly, PNYC recommended that "Overture A" be approved to explicitly state that in the constitution that all church property was held in trust for the denomination, and "Overture A" was adopted by a vote of 146 in favor and four against. "Overture A" expressly directs that all property held by or for a particular church, presbytery, synod, the General Assembly, or the UPCUSA is held in trust for the use and benefit of UPCUSA.

The amendment, codified in UPCUSA's Book of Order (discussed below), Chapter XII, "Of Property," provides:

"This chapter is declaratory of principles to which The United Presbyterian Church in the United States of America and its antecedent church bodies have adhered from the inception of the presbyterian form of church government.

"1. The provisions of Form of Government, Chapter V, Section 1, and other provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this Church are applicable to all matters pertaining to property.

"2. All property held by or for a particular church, a presbytery, a synod, the General Assembly, or The United Presbyterian Church in the United States of America, 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 of a more inclusive judicatory or retained for the production of income, is held in

trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

"3. Whenever property of or held for, a particular church of The United Presbyterian Church in the United States of America ceases to be used by that church as a particular church of The United Presbyterian Church in the United States of America in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery."

The Book of Confession and the Book of Order

PCUSA and its constituents are governed by the PCUSA constitution, consisting of two parts: (1) the Book of Confessions, which contains the historical beliefs of the PCUSA, and (2) the Book of Order, which contains the principles of Presbyterian government and regulates the operations and organization of the PCUSA and its General Assembly, PCUSA's highest governing body, regional "synods," district level "presbyteries" and local congregations¹. As a local congregation within the PCUSA, Zion operated in accordance with PCUSA's constitution, including adopting the form of government articulated in the Book of Order.

After UPCUSA merged with PCUS to form the PCUSA, PCUSA adopted a Book of Order that added an express property trust clause. Section G-4.02 of the Book of Order pertains to the manner in which decisions are made, reviewed and corrected within the denomination pertaining to church property (see G-4.0202). Subsection G-4.0203 of the PCUSA Book of Order reads:

¹ The synod is the next tier of authority below PCUSA, and there are 16 regional synods that are responsible for the geographic area within its boundaries. Each synod has the responsibility and power to review records of its presbyteries and ensure that they function in accordance with the PCUSA constitution. Each synod has several geographically defined presbyteries, and each presbytery has local congregations with the presbytery's region. A session is the governing board of a local church, comprised of Elders.

"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.)."

Subsections G-4.0204 and G-4.0205 of the Book of Order applies to disposition of property when a member congregation ceases to exist or is dismissed:

"Whenever property of, or held for, a congregation of the Presbyterian Church (U.S.A.) ceases to be used by that congregation as a congregation of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery" (G-4.0204).

"Whenever a congregation is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Presbyterian Church (U.S.A.)" (G-4.0205).

It is unclear whether any Zion members attended the 193rd General Assembly when "Overture A" was adopted. However, the Book of Order contains a provision exempting any congregation from the newly adopted church property provisions if: (1) it was not subject to a similar trust provision pursuant to a constitution of the church of which it had been a part, and (2) the congregation, within eight years following the establishment of PCUSA, voted to be exempt from such provisions in a regularly called meeting, and thereafter notified its presbytery of such vote (G-4.0208). Notably, the record does not

contain any indication that Zion objected to the property provisions or voted to be exempt from them within the eight years following PCUSA's establishment.

Zion's Dismissal Request

On September 8, 2013, Zion, by its elders Estrada, Alvarez, Tapia and Arias, wrote to PNYC requesting that PCUSA dismiss Zion from its denomination, along with the Property, so that it could join a different denomination, the Evangelical Presbyterian Church (EPC) (Dismissal Request).

On July 26, 2014, PNYC appointed an administrative commission (AC-1) to investigate Zion, assist the parties in mediating any disputes and report its recommendation to the presbytery concerning Zion's relationship with PCUSA and the disposition of Zion's real and personal property. The AC-1 met with Zion numerous times between 2014-2015.

At a February 1, 2015 congregational meeting attended by the AC-1, all 31 Zion members polled voted in favor of leaving PNYC. On November 8, 2015, Zion informed AC-1 and PNYC that it "is leaving the denomination with its name, property, building, and everything included therein; and . . . is joining the EPC," and asserted that PNYC's position with respect to the Property was fraudulent. The AC-1 recommended that PNYC dismiss Zion to the EPC without the Property or its personal property. On November 18, 2015, PNYC approved Zion's request for dismissal from PCUSA effective December 31, 2015 conditioned upon: (1) Zion's transfer of title to the Property, and (2) Zion vacating the Manse by March 31, 2016 and the Church by June 30, 2016. However, Zion neither vacated nor transferred title to the Property.

PNYC then appointed a second administrative commission (AC-2) to gather information on Zion's assets and debts, assessments of the Property, to mediate with Zion regarding the disposition of the Property and implement its prior report and recommendation. During this period of investigation, AC-2 allegedly discovered that the Property was appraised in April, 2017 for \$2,250,000.00 in "as is" condition, although PNYC believed that its value was higher. AC-2 also discovered that the Property requires significant roof repairs, which were estimated to cost approximately \$150,000.00.

On January 12, 2018, AC-2 offered Zion three options for dismissal and disposition of the Property: (1) that Zion pays PNYC the appraised value of \$2,250,000.00 in exchange for a quitclaim deed from PNYC, confirming that Zion owns the Property and releasing any claims by PNYC; (2) Zion provides a deed to PNYC confirming that PNYC owns the Property and PNYC rents the Property to Zion for \$5,000/month, pursuant to a six-month lease under which PNYC agrees to make necessary repairs to the Property; and (3) PNYC makes a \$25,000.00 goodwill payment to Zion in exchange for Zion's vacating the entire Property (both the Church and Manse) within 60 days of February 9, 2018, in exchange for Zion providing a deed confirming that PNYC owns the Property. Under any of the foregoing three scenarios, PNYC offered to allow Zion to keep the money in the congregation's bank account for its ministry's use.

On February 8, 2018, Zion made a counterproposal, offering to pay PNYC "a gift" of \$23,754.81, the amount of its first mortgage, which Zion claimed was from "an ancient loan for which you have not found record of payment" and which "even if owed, would not be collectable as a matter of law." In its counterproposal, Zion contended that its relationship with PNYC has already been dissolved and that it already become associated

with EPC. Zion further asserted that PNYC chose not to retain a trust interest in the Property when it was sold to Zion, that the trust clause is a contested matter of religious doctrine and that courts will be unable to consider it in any claim PNYC made.

Zion's Amended Certificate of Incorporation

On December 6, 2015, Zion filed an amended certificate of incorporation under Article 10 of the Religious Corporations Law reaffirming the church's "faith to Presbyterian principles of governance and Reformed principles of doctrine," and stating its new affiliation with EPC. Zion's amended certificate of incorporation stated that it is made, in part, to confirm that Zion's leader never authorized the denominational trust as stated in "Overture A." Zion's amended certificate also noted that Zion continued to hold the Property, and that Zion's ownership can only be modified by an affirmative vote of the majority of Zion's members.

Zion's Relationship with UPCUSA and PCUSA

Since Zion's incorporation and affiliation with UPCUSA (and then with PCUSA) until the Dismissal Request and this dispute, Zion has adhered to the practices and procedures of PCUSA and PNYC, and has requested PNYC's guidance, assistance and financial support. Among other things, Zion has: (1) sought PNYC's approval of its appointment of moderators and pastors; (2) made applications for grants, funding and salary supplements; (3) requested financial assistance for overdue pension payments; (4) sought attestation that it is a member congregation, and thus, entitled to tax exempt status; (5) requested that PNYC approve the dissolution of its relationship with its pastor; (6) submitted to regular triennial visits by a liaison from PNYC Committee on Ministry; (7) invited PNYC leaders to attend anniversary functions; and (8) communicated on

letterhead that contained PCUSA's logo. Zion also regularly participated in routine, administrative obligations set forth in the Book of Order, such as submitting statistical reports, ministerial compensation reports and session records.

PNYC's Summary Judgment Motion

PNYC contends that while Zion holds record title to the Property, that title is subject to an express trust for the benefit of PCUSA, and that Zion violated that trust for the benefit of PCUSA. PNYC argues that it has a valid claim on the Property and that Zion does not. PNYC argues that Zion's refusal to transfer the Property violates the clear requirements of the PCUSA constitution and controlling case law. According to PNYC, Zion has not been dismissed from the denomination because the conditions the AC-1 report have not yet been satisfied in that Zion never vacated the Property or turned over title of the Property to PNYC. PNYC argues that Zion had no right to leave the denomination with the Property, pursuant to the Book of Order subsections G-4.0204 and G-4.0207. PNYC also claims that it has no record that Zion ever repaid the first mortgage on the Property for \$23,754.81.

PNYC alleges that throughout Zion's affiliation with the denomination, PCUSA and UPCUSA have adhered to the principle that all property is held in trust for the purpose of the denomination. In this regard, PNYC submit an affidavit from Mark Tammen, PCUSA's director of constitutional services at the time the affidavit was sworn to on January 20, 2016, previously submitted in *Presbytery of Hudson Riv. of Presbyt. Church (U.S.A.) v Trustees of First Presbyt. Church & Congregation of Ridgeberry*, (72 AD3d 78 [2010], *lv denied* 14 NY3d 711 [2010]), addressing the property trust doctrine. Tammen attests that from the date of the Presbyterian Church's founding in Europe to the present, dating back

to the 18th Century, Presbyterian and Reform theologians have emphasized the organic unity of the church, which is concretely manifested in the trust doctrine. Tammen further attests that the express property trust clause made part of the UPCUSA Book of Order in 1981 merely codified the longstanding property trust principle followed by the Presbyterian denomination. According to Tammen, PCUSA's polity assigns the presbytery with the primary role of enforcing the trust clause and makes it the contingent beneficiary for all property held by local congregations. Tammen notes that, pursuant to the Book of Order, only presbyteries can dissolve or release congregations (G-11.0103i), and the decision whether to release a congregation without its property is to be made on the basis of the presbytery's strategy for mission (G-11.0103a).

PNYC also submits an affidavit (previously filed in the *Ridgeberry* case) from William Chapman, a former stated clerk² of the Palisades Presbytery and a historian and expert on Presbyterian policy, concerning the structure and polity of PCUS and the property trust doctrine. According to Chapman, the property of each Presbyterian congregation is held in trust for the national Presbyterian denomination under both an express trust and under a historical doctrinal implied trust. Chapman contends that the property clauses adopted in "Overture A" and in the Book of Order were simply express declarations of long-established Presbyterian property trust principles.

PNYC contends that binding New York appellate case law, including *Episcopal Diocese of Rochester v Harnish*, (11 NY3d 340 [2008]), and *Ridgeberry*, have addressed the church property trust issue and have applied neutral principles of law to hold that

² A stated clerk is the equivalent of a corporate officer of a presbytery whose duties include assuring that all actions are taken in accordance with the Presbyterian Church's official governing rules.

property of local churches are held in trust for a hierarchal religious denomination such as PCUSA. Additionally, PNYC argues that the Religious Corporations Law, under which Zion incorporated, requires that trustees of local churches govern the property in their possession in accordance with the constitution of PCUSA, which here, contains express trust language.

PNYC further argues that it is not material that the property trust was not memorialized in the constitution at the time Zion took title to the Property because there is no record that Zion ever objected to the passage of "Overture A" in 1981 or to the Book of Order's provisions, or to the governance structure of PNYC or PCUSA prior to 2013.

Finally, PNYC argues that the language in Zion's amended certificate of incorporation, stating that it is not subject to the express trust provision, should not be considered because it was filed in direct response to the denial of its Dismissal Request, and thus, the amendment has no bearing on whether the Property was subject to a trust prior to the amendment.

Defendants' Summary Judgment Motion

Defendants contend that the court lacks jurisdiction to consider either party's arguments based on the PCUSA constitution because this action involves a religious dispute in which courts must not interfere. Defendants submit a document entitled "*Historic Principles, Conscience and Church Government*," which was allegedly adopted by the General Assembly in 1983, and which challenges plaintiff's contention that PCUSA is a hierarchal denomination. Defendants allege that the Presbyterian denomination differs from a hierarchal church on the issue of how authority is exercised and on the issue of the highest authority, which under Presbyterian polity is Scripture. Essentially,

the document submitted by defendants asserts that the Bible is the only rule of faith and practice.

Defendants further argue that the 1646 Westminster Confession of Faith has been the governing standard of every Presbyterian denomination throughout the religion's existence. According to defendants, the Book of Confessions contains the Westminster Confession. Defendants asserts that Section 6.148 of the Westminster Confession provides that its communion with the denomination does not take away or infringe its title or property.

Defendants submit an affirmation from Donald Nichol, their attorney and a purported expert on the Presbyterian religion and its history. Nichols affirms that in his first 40 years as a Presbyterian, first in a UPCUSA church and then in a PCUSA church, he never encountered any claims that a presbytery or the denomination had any interest in the property of a local church. Defendants contend that they were not aware that there was any claim of a trust with respect to the Property until 2013, when Zion began considering separating from PCUSA. Defendants also claim that neither Zion's officers nor its members were given notice that PNYC claimed any trust interest in Zion's property prior to Zion's initial consideration of being dismissed from the denomination. Defendants assert that the members of the congregation would need to approve the grant of any trust pursuant to the Book of Order, subsection G-1.0503d. Defendants also allege neither Zion nor any other congregation were ever offered an opportunity to "opt out" of the trust provision in "Overture A."

Defendants argue that the deed to the Property is unambiguous and dispositive because it does not contain express trust language, nor does it evidence an implied trust.

Defendants request that only the four corners of the deed be considered by the court. Defendants argue that the PCUSA constitution alone is not enough to create a trust, and that Zion's amended certificate of incorporation evidences the lack of a trust. Zion argues that to prove a trust interest in Zion's property, PNYC must establish that Zion intended to create a trust beyond a reasonable doubt. Zion asserts that PNYC has not alleged, let alone proven, that Zion had any notice that PNYC was making any such claim of a trust.

Defendants further argue that the cases relied upon by PNYC are distinguishable because none of them address or consider RPL § 240 (3), the Not-for-Profit Corporations Law, or the General Obligations Law (GOL), or make a finding that a trust was proved beyond a reasonable doubt. Defendants allege that none of the cases relied upon by PNYC address a situation analogous to Zion's or consider the term of the PCUSA constitution. Defendants contend that *Harnish* is distinguishable because it involved the Episcopalian denomination, whose canon had civil effects and permitted civil enforcement while the PCUSA constitution does not; defendants also contend that *Ridgeberry* was wrongly decided.³ Defendants argue that PNYC has not submitted any case where the court has expressly ruled that the RPL is not applicable to church property cases, and has not cited any case where the denominational entity sold property to a local church and then reclaimed such property by subsequent adoption of an alleged trust in the denominational constitution. Defendants cite cases from Louisiana, Missouri, and Minnesota that have found that the PCUSA Book of Order does not create a trust.

In addition, defendants assert that Zion fully satisfied the mortgage on the Property and that there is no evidence to the contrary. Defendants aver that the value of the

³ Defendants attorney, Nichol, also represented the local church the *Ridgeberry* case.

Property increased to over \$2 million under Zion's ownership because of its care and improvement of the Property. Defendants also argue that the disposition of Zion's assets requires court approval, and that the disposition of assets is summarized in *Religious Corporations: Sales and other Disposition of Assets* published by the New York State Attorney General's Office. Defendants assert that the Not-For-Profit Corporations Law, the Religious Corporations Law, and the Attorney General's rules require court and/or Attorney General approval prior to disposition of the Property. Defendants further contend that, pursuant to GOL § 5-703 (3), the express trust provisions at issue here are not in a legally cognizable form, and thus, are void because the owner of the Property, Zion, did not sign a written instrument.

Analysis

A party moving for summary judgment bears the burden of making a prima facie showing of entitlement to judgment as a matter of law and must tender sufficient evidence in admissible form to demonstrate the absence of any material factual issues (CPLR 3212 [b]; *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make this prima facie showing requires denial of the motion (*Alvarez*, 68 NY2d at 324; *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidence in admissible form sufficient to establish an issue of material fact requiring a trial (*Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562). “[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment” (*Banco Popular North America v Victory Taxi Management, Inc.*, 1 NY3d 381, 383 [2004] [internal quotations omitted]). The court must view the

totality of evidence presented in the light most favorable to the non-moving party and accord that party the benefit of every favorable inference (see *Fortune v Raritan Building Services Corp.*, 175 AD3d 469, 470 [2019]; *Emigrant Bank v Drimmer*, 171 AD3d 1132, 1134 [2019]).

Summary judgment is a drastic remedy that "should not be granted where there is any doubt as to the existence of such issues or where the issue is 'arguable'; issue-finding, rather than issue-determination, is the key to the procedure" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404, *rearg denied* 3 NY2d 941 [1957] [internal citations omitted]). "The court's function on a motion for summary judgment is 'to determine whether material factual issues exist, not resolve such issues'" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2010], quoting *Lopez v Beltre*, 59 AD3d 683, 685 [2009]).

Both the United States Supreme Court and the New York Court of Appeals have held that civil courts have authority to resolve church property disputes (see *Jones v Wolf*, 443 US 595, 602 [1979]; *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d 110, 117 [1984]). However, "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice" (*Jones*, 443 US at 602; see also *Schenectady*, 62 NY2d at 117-118; *Eltingville Lutheran Church v Rimbo*, 174 AD3d 856, 857-858 [2019]). The First Amendment does not dictate that a state follow a particular method in resolving church property disputes, and a state can adopt any method so long as it does not consider doctrinal matters, ritual and liturgy of worship or tenets of faith (*Jones*, 443 US at 602).

One method a state is entitled to adopt is the neutral principles of law approach (*Jones*, 443 US at 604 ["a State is constitutionally entitled to adopt neutral principles of

law as a means of adjudicating a church property dispute"). This approach involves settling church property disputes by looking to: (1) the language of the deeds; (2) the state statutes governing the holding of church property; (3) the terms of the local church charters; and (4) the provisions in the constitution of the general church concerning ownership and control of church property (see *Jones*, 443 US at 603; *Harnish*, 11 NY3d at 350-351; *Schenectady*, 62 NY2d at 122; *Rimbo*, 174 AD3d at 858; *Ridgeberry*, 72 AD3d at 94). In utilizing this approach, a court must review the applicable religious documents in purely secular terms and must not rely on "religious precepts" in determining whether the parties intended to create a trust (*Jones*, 443 US at 604).

New York courts utilize the neutral principles of law approach to resolve church property disputes (see e.g. *Harnish*, 11 NY3d at 350; *Rimbo*, 174 AD3d at 858; *Ridgeberry*, 72 AD3d at 94). In *Harnish*, the Court of Appeals applied neutral principles of law to hold that the local church held the property in dispute in trust for the denomination (see *Harnish*, 11 NY3d at 352). While the deed to the property in *Harnish* and the local church's certificate of incorporation did not establish an express trust, the language in the constitution of the general church constitution established an express trust in favor of the Rochester Diocese and the National Church, and the Court of Appeals found this factor dispositive (*id* at 351-352). In *Harnish*, the Court of Appeals found that the local church agreed to abide by this express trust provision either upon its incorporation in 1927 or upon recognition as a parish in spiritual union with the Rochester Diocese in 1947, and thus, the Court held that it need not have considered the existence of an implied trust (*id.*). The Court of Appeals also found it significant that the local church never objected to the applicability of the express trust clause or attempted to remove itself from the reach

of the parent church in the more than 20 years since the national church adopted the express trust provision (*id.* at 352).

In *Ridgeberry*, a factually analogous case, the Second Department followed the holding in *Harnish* and reversed the lower court's order granting summary judgment in favor of the local church (see 72 AD3d at 99). *Ridgeberry*, like *Zion* here, sought to secede from PCUSA and take with it real and personal property that it acquired between 1833 and 1964 (*id.* at 81). The court held that *Ridgeberry* failed to satisfy its initial burden of eliminating all issues of fact as to their ownership of the property (72 AD3d at 93). Even though *Ridgeberry* presented some proof of ownership of the property in the form of deeds conveying the property, which did not evidence an express or implied trust in favor of the denomination, the court held that the Book of Order, a component of PCUSA's constitution, specified that all property held by a particular church is held in trust for the national denomination (*id.* at 91). Moreover, the court recognized that adding an express trust provision to the constitution was an alternative to amending deeds or corporate charters (*id.* at 95). The court determined that the language in PCUSA's constitution regarding ownership and control of the church property was dispositive (*id.*).

Indeed, courts in the Second Department have cited *Ridgeberry* to resolve church property disputes in favor of the denominational church (see *Kelley v Garuda*, 57 Misc 3d 1212[A], 2017 NY Slip Op 51393[U] [Sup Ct, Nassau County 2017]; *Episcopal Diocese of Long Island v St. Matthias Nondenominational Ministries, Inc.*, No. 142472012, Sup Ct, Nassau County Jan. 21, 2015, Diamond, J.). Similarly, in *Trustees of Diocese of Albany v Trinity Episcopal Church of Gloversville*, a factually analogous case dealing with a church property dispute within the Episcopal Church upon a local church's cessation from

the denomination, the Third Department ruled in favor of the denomination and enforced an express trust clause added after the local church acquired their real property (*Gloversville*, 250 AD3d 282 [1999]).

Hamish, Ridgeberry and *Gloversville* are dispositive of the dispute here. While it is undisputed that the deed to the Property does not evidence an express or an implied trust in favor of PCUSA, New York's statutes governing the holding of church property, the terms of Zion's 1960 incorporation, and PCUSA's constitution concerning ownership and control of property provide such evidence. Under New York statutory law, property disputes between local Presbyterian churches the PCUSA are governed by Article Four of the Religious Corporations Law (Religious Corporations Law § 60; see also *Ridgeberry*, 72 AD3d at 92). Religious Corporations Law § 69 (3) expressly states that local churches shall hold and administer property in accordance with PCUSA's constitution.⁴ Similarly,

⁴ Religious Corporations Law § 69 (3) states:

“Subject to the authority of the session, the trustees of an incorporated church to which this article is applicable shall have the custody and control of all the temporalities and property belonging to the corporation and of the revenues from such property and shall administer the same in accordance with the constitution of the Presbyterian Church (U.S.A.), and with the provisions of law relating thereto, for the support and maintenance of the church corporation or, providing the members thereof at a corporate meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by such church or connected with it or with the denomination with which it is connected, and they shall not use such property or revenue for any other purpose or divert the same from such uses.”

At the time of Zion's incorporation in 1960, the language of Section 69 (3) was not substantially different, and required church trustees to administer church property “in accordance with the discipline, rules, usage, laws and book of government of the religious body with which the church is connected, and with the provisions of law relating thereto.”

Religious Corporations Law § 12 (5-a) prohibits an incorporated Presbyterian church affiliated with PCUSA to make an application to the court to mortgage, lease or sell any of its property without the consent of the presbytery to which it is connected. These provisions evidence the Presbyterian denomination's interest in real property held by a local affiliated church. Importantly, the terms of Zion's 1960 certificate of incorporation explicitly states its intention to affiliate with PCUSA's predecessor, and to be subject to New York State Religious Corporations Law governing PCUSA, and thus, evidences Zion's intent to be bound by the state statute and the PCUSA constitution (*see Harnish*, 11 NY3d at 351-52).

PCUSA's Book of Order creates an express trust in favor of the denomination, as it explicitly states that all property held by a local congregation "is held in trust nevertheless for the use and benefit of the [PCUSA]" (G-4.0203). This express trust provision is dispositive, despite the fact that the deed to the Property and Zion's 1960 Certificate of Incorporation do not evidence a trust (*see Harnish*, 11 NY3d at 351; *Ridgeberry*, 72 AD3d at 95). The express addition of that trust provision to PCUSA constitution is an alternative to amending deeds or corporate charters (*Harnish*, 11 NY3d at 350; *Ridgeberry*, 72 AD3d at 95). Moreover, the evidence demonstrates that over the course of its affiliation with UPCUSA and PCUSA, Zion adhered to the denomination's practices, requested and received guidance, assistance and financial support from PNYC and participated in routine administrative obligations set forth in the Book of Order. This interrelationship and dependence on the denomination demonstrates Zion's intent to be bound by the Book of Order and its property provisions.

Contrary to defendants' contention, by not contesting or raising any objection to

"Overture A" prior to or in the 30 years after its passage, Zion has acceded and accepted the changes and cannot now argue that it did not know or agree (*Harnish*, 11 NY3d at 352 ["[w]e find it significant . . . that All Saints never objected to the applicability or attempted to remove itself from the reach of the Dennis Canons in the more than 20 years since the National Church adopted the express trust provision"]). The operative trust provisions in *Ridgeberry* and *Harnish* were adopted by the denominational churches long after the local church took title, and did not preclude rulings in favor of the denominational churches. By incorporating under Article 4 of the Religious Corporations Law, Zion acceded to present and future PCUSA constitutions and its civil laws governing management of church property, as a matter of law (see *Rimbo*, 174 AD3d at 858 ["By uniting with a denominational body, a local congregation consents to be bound by the ecclesiastical determinations of the denominational government, subject only to such appeals as the organism itself provides for"]).

Zion's argument that its amended certificate of incorporation demonstrates that no trust was created is unavailing. As noted under similar circumstances by the court in *Ridgeberry*, while the amended certificate contains explicit language of ownership by the local church, on this record, it is clear that Zion only inserted this language to bolster the church's position in contemplation of this controversy (see *Ridgeberry*, 72 AD3d at 92). Moreover, Estrada's and Nichol's affirmations, as experts in Presbyterian history and polity, are self-serving, as Estrada is a defendant and Nichol is an attorney who previously represented *Ridgeberry* and argues that the case was wrongly decided.

Defendants' reliance on the GOL, the Not-for-Profit Corporation Law and the Attorney General rules is misplaced, as defendants fail to identify any analogous New

York case involving a church property dispute in which the court held that the GOL, rather than the Religious Corporations Law § 69 (3), controls. Furthermore, churches affiliated with PCUSA are not required gain the state attorney general's approval prior to disposing of church property (see Religious Corporations Law § 2-b [1] [d-1]).

Accordingly, PNYC has met its prima facie burden of demonstrating that Zion held the Property in trust for it and PCUSA, and Zion has failed to raise any triable issue of fact in opposition (see *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562). Zion has also failed to meet its burden on its summary judgment motion of demonstrating that no trust in favor of PNYC or PCUSA existed (see *Alvarez*, 68 NY2d at 324; *Winegrad*, 64 NY2d at 853). The court has considered the parties' remaining contentions and finds them to be without merit.

Accordingly, it is;

ORDERED that defendants' motion (in mot. seq. three), for an order, pursuant to CPLR 3212, granting them summary judgment dismissing the complaint is denied; and it is further;

ORDERED that plaintiff's motion (in mot. seq. four), for an order, pursuant to CPLR 3212, granting it summary judgment is granted in part;⁵ and it is further;

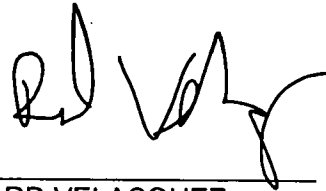
ORDERED, ADJUDGED AND DECLARED that plaintiff has a valid claim to the Property; and it is further;

ORDERED that defendants shall deliver title and possession of the Property to

⁵ Although PNYC, in its notice of motion, seeks an injunction permanently enjoining defendants from asserting any claim to an estate or interest in the Property, PNYC does not address this request for relief in its motion papers. Consequently, that branch of PNYC's motion (in mot. seq. four) is denied.

PNYC within sixty (60) days of service of this order with notice of entry thereof. This constitutes the decision, order and judgment of the court, for the reasons stated above.

Dated: Brooklyn, New York
May 28, 2020



HON. RICHARD VELASQUEZ

So Ordered
Hon. Richard Velasquez

MAY 28 2020