

St. James was founded in 1846 by laypeople living in what is now the East Falls section of the City of Philadelphia. In re Church of St. James the Less, 833 A.2d 319, 327 (Pa. Cmwlth. 2003) (Colins, P.J., dissenting). The real property in dispute in the case *sub judice* consists of five parcels of land that St. James acquired on five different occasions over the course of eighty years. In re Church of St. James the Less, No. 953NP, 2003 WL 22053337, *1, *3 (Pa. Com. Pl. Mar. 10, 2003). Various improvements gradually were made to this land, including the erection of a church building, a burial ground, a rectory, a sexton's house, a parish house, a day school, and a memorial bell tower. St. James, 833 A.2d at 321. St. James acquired this real and personal property through donations made by its own parishioners as well as through purchases made with funds that those parishioners contributed. Id. at 327 (Colins, P.J., dissenting). The deed to each of the five parcels of land reflects that St. James is the fee simple owner of the property. Id. St. James remains today on the property where it was founded almost 160 years ago. Id.

Twenty years ago, in Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, 489 A.2d 1317, 1318 (Pa. 1985), cert. denied, 474 U.S. 887 (1985), this Court addressed the very same issue we are asked to decide in the instant case, namely, “whether the members of a local church which has been affiliated with a national denomination can retain ownership of the assets and property of that local church after having terminated their membership in that denomination.” After a careful examination of the relevant documents in that case, including the deeds to the property, the charter of the local church, and the denominational constitution, we found no support for the determination of the Commonwealth Court that the record revealed an intent on the part of Middlesex Church to create a trust for the benefit of the national denomination. Although the facts of Beaver-

Butler are not identical to those *sub judice*,¹ I believe that a comparison of the two cases undermines, rather than supports, the holding of the Majority that St. James intended to create a trust with respect to its property for the benefit of the Diocese.

As the Majority notes, in Beaver-Butler, we explicitly adopted the “neutral principles of law” approach to resolving church property disputes that the United States Supreme Court endorsed in Jones v. Wolf, 443 U.S. 595 (1979). Consequently, we must decide the instant dispute solely based on “objective, well-established concepts of trust and property law familiar to lawyers and judges.” Id. at 603. Few, if any, principles of the law of trusts are further from doubt than the requirement of “clear and unambiguous language or conduct evidencing the intent to create [a] trust” before a court may find that a trust has been created. Beaver-Butler, 489 A.2d at 1324. Indeed, as we emphasized in Beaver-Butler, it is beyond dispute that a trust “cannot arise from loose statements admitting possible inferences consistent with other relationships.” Id. (quoting Bair v. Snyder County State Bank, 171 A. 274, 275 (Pa. 1934)). To create an enforceable trust with respect to the real property at issue in this case, St. James would have had to declare in writing that it would hold its property for the benefit of the Diocese. See 33 P.S. § 2.

The Majority cites five principles codified in ecclesiastical documents that it perceives as “compel[ling] the conclusion that St. James intended to, and did, hold its property in trust for the Diocese and the National Episcopal Church.” (Majority Slip Op. at 22). These principles include three that are codified in the charter of St. James (“Local

¹ Initially, I note the similarly grassroots origins of Middlesex Church, which, as we mentioned in Beaver-Butler, “was not a creation or offshoot of the central denomination. Rather, the record establishe[d] that the Middlesex [C]hurch was created and incorporated on the local level by members of the parish; and that all property was retained in the corporate name of the local church.” Beaver-Butler, 489 A.2d at 1324.

Charter” or “Charter”) and two that derive from canons of the National Church (National Canons). The language upon which the Majority relies that is contained in these documents falls far short of the “clear and unambiguous” standard that we have always employed to determine whether a trust has been created.

The Majority initially makes reference to various provisions dispersed throughout the Local Charter in support of its contention that St. James intended to create a trust with respect to its property for the benefit of the Diocese. First, according to the Majority, St. James “agreed to hold its property in trust for the Diocese” when it declared in its Charter that its purpose was “to serve as a place to worship God ‘according to the faith and discipline of the [National Episcopal Church].’” (Majority Slip Op. at 21 (quoting Charter)). In Beaver-Butler, however, we found unpersuasive the reliance of the Commonwealth Court on the presence of remarkably similar language in the charter of Middlesex Church. See Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, 471 A.2d 1271, 1280 (Pa. Cmwlth. 1984), rev’d, 489 A.2d 1317 (Pa. 1985) (quoting the charter as declaring that the purpose of Middlesex Church was to “worship Almighty God according to the faith, doctrine, creed, discipline and usages of the Presbyterian Church of the U.S.A.”).

Nevertheless, the Majority emphasizes the permanent nature of these purposes, as reflected in a pair of provisions of the Local Charter, namely, those that: (1) excluded from membership “any person who disclaims the authority of the National Episcopal Church or the Diocese;” and (2) required that “[St. James] obtain the Diocese’s consent for amendments to its charter.” (Majority Slip Op. at 21). The Majority distinguishes the instant case from Beaver-Butler on the basis of the absence of similar provisions in the charter of Middlesex Church. (Id. at 23 n.29). Nevertheless, the fact that these provisions fail even to mention the *res* of the supposed trust precludes the possibility that St. James intended by

including this language in its Charter to create a trust with respect to its property for the benefit of the Diocese. See Bair, 171 A. at 275-76.

In addition, the Majority cites the declaration of St. James in its Charter “that if it ever dissolves, its property will be placed in trust for the Diocese.” (Majority Slip Op. at 22). I fail to understand the relevance of this provision, for the trial court specifically found that “there was no corporate dissolution of [St. James], and therefore no devolvement of its property to the Diocese.” St. James, 2003 WL 22053337, at *12. Moreover, in Beaver-Butler, we found similar language in the denominational constitution to fall far short of the “clear and unambiguous” evidence required to show an intent to create a trust. See Beaver-Butler, 489 A.2d at 1325; Beaver-Butler, 471 A.2d at 1280 (quoting the provision as providing that, “[i]n the case of a formal dissolution or extinction of a particular church, its properties shall be held, used and applied to such uses as the presbytery should direct or sold by the presbytery”); see also id. at 1273 (defining “presbytery” as a body of ministers and elders representing the particular churches within a geographical district who are charged with ensuring that the churches within that district abide by the denominational constitution).

In addition to the above-quoted passages from the Local Charter, the Majority relies upon two principles derived from the National Canons as clear and unambiguous evidence of an intent on the part of St. James to create a trust whereby it would hold its property for the benefit of the Diocese. Taking the less persuasive argument first, the Majority cites excerpts from a pair of Canons prohibiting the encumbrance or alienation of parish property without the prior consent of the Bishop and Standing Committee of the Diocese. (Majority Slip Op. at 22 (quoting Canons 6.3 and 25.2)). Again, the Majority fails to mention the fact that, in Beaver-Butler, a materially identical provision was codified in the denominational constitution. See Beaver-Butler, 471 A.2d at 1280 (citing the Presbyterian Book of Order

for the provision that “[t]he particular church may not sell, mortgage, encumber, or lease real property without permission of the presbytery”). It was the presence of this very provision, together with the declaration of purpose of Middlesex Church and the constitutional provision regarding the contingency of dissolution, that this Court in Beaver-Butler considered “far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.” Beaver-Butler, 489 A.2d at 1325. In the instant case as well as in that one, such language at most serves as evidence of the desired interpretation of the putative trustee, namely, the national denomination. Id.

The last remaining documentary evidence that the Majority cites as clearly and unambiguously showing an intent on the part of St. James to create a trust is that in which “St. James specifically agreed to take and hold its property ‘for the work of the [Diocese].” (Majority Slip Op. at 22 (quoting Canon XII, § II (alteration in original))). The quotation, in its full context, reads as follows:

It is hereby declared that all real property which has heretofore been or shall hereafter be devised, conveyed to, or acquired by . . . any incorporated, or unincorporated Parish or Mission in said Diocese, for use for religious worship, or for a Rectory, Parish House or School, shall be taken and held by such devisee or grantee for the work of the Protestant Episcopal Church in the Diocese of Pennsylvania

St. James, 2003 WL 22053337, at *4 (quoting Canon XII, § II) (first omission in original). Although this language comes closer than the other provisions upon which the Majority relies to suggesting the creation of a trust, well-established concepts of Pennsylvania trust law compel the conclusion that this provision, too, failed to create a trust for the benefit of the Diocese.

Notably, the language just quoted is not a discrete declaration issued and signed by representatives of St. James. Rather, it is merely the first clause of a provision that, in 1941, the Diocese adopted as an amendment (1941 Amendment) to its own Canons (Diocesan Canons). A beneficiary, however, cannot unilaterally declare a trust. In the language of President Judge Colins, who dissented from the Opinion of the Majority of the Commonwealth Court:

There is simply no mechanism by which a beneficiary can create a trust in Pennsylvania without the explicit consent and cooperation of the settlor. A trust may be created on the part of the **settlor** (St. James) and not on the part of the **beneficiary** (the Diocese).

In re Church of St. James the Less, 833 A.2d 319, 329 (Pa. Cmwlth. 2003) (Colins, P.J., dissenting). Moreover, not only must the settlor clearly intend to create a trust; the statute of frauds requires that he must also affix his signature to the trust instrument to memorialize that intent. 33 P.S. § 2 (“All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, and all grants and assignments thereof, shall be manifested by writing, signed by the party holding the title thereof . . .”). As we ourselves confirmed in Beaver-Butler, “the primary focus must be on the intent of the settlor **at the time of the creation of the alleged trust.**” Beaver-Butler, 489 A.2d at 1324 (emphasis added).

As the Majority states, when, in 1967, St. James last amended its own Charter, it thereby formally acceded to the Diocesan Canons as they existed at that time. The Majority, however, fails to cite any evidence from the record to support its contention that St. James thereby specifically agreed to hold its property for the sole benefit of the Diocese. Rather, by the 1967 “accession” of St. James to the Diocesan Canons, nothing

more is meant than the republication of the Charter subsequent in time -- twenty-six years to be precise -- to the amendments that the Diocese, in 1941, made to its Canons.²

As the trial court noted, the 1967 Charter amendments left intact the following provision from the Local Charter: “[St. James] adopts the constitution, canons, doctrine and worship of the Episcopal Church and the Diocese.” St. James, 2003 WL 22053337, at *2 (quoting “intrinsic provisions” of the Charter). I can understand how one could make the inference that, by declining in 1967 to repeal this provision from its Charter, St. James intended to recognize the 1941 Amendment as having created a trust with respect to its property for the benefit of the Diocese. Nevertheless, “[t]he intention to create a trust must be definite and particular.” In re Evans’ Estate, 93 A.2d 683, 685 (Pa. 1953). The act of St. James in amending its Charter in 1967 falls far short of constituting the clear and unequivocal evidence that we require to find that a trust has been created. In any event, in finding that a trust was thereby created, the Majority relies not upon any words of the 1967 amendments but, rather, upon the **act** of amending. Therefore, because only a **writing** can create trusts as to land, 33 P.S. § 2, the 1967 amendments could, at most, affect interests in the personal property of St. James.

In conclusion, although I agree with my colleagues that title to the property remains in the name of St. James, I am unable to accept their determination that that property is subject to a trust interest in favor of the Diocese. When viewed in the light of objective, well-established concepts of the law of trusts in Pennsylvania, neither the Local Charter, nor the National Canons, nor, least of all, the deeds to the property in dispute in this case

² It is worth noting that, in making the 1967 amendments, St. James chose not to insert the language of the 1941 Amendment into its own Charter.

provide any clear and unambiguous evidence of an intent on the part of St. James to create a trust for the benefit of the Diocese.