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

DARDENNE PRESBYTERIAN CHURCH, INC., Plaintiff	)	CASE NO. 2311-CC01028
v.	)	DIVISION NO. 4
PRESBYTERY OF GIDDINGS-LOVEJOY, INC. and PRESBYTERIAN CHURCH (U.S.A.), A CORPORATION, Defendant	)	JUDGE: Hon. Michael J. Fagras

MEMORANDUM IN SUPPORT OF DARDENNE PRESBYTERIAN CHURCH, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTERCLAIM COUNT I

Dardenne Presbyterian Church, Inc., appearing now as a counterclaim-defendant, respectfully submits this Memorandum in Support of its "Motion for Summary Judgment on Counterclaim Count I,"[1] further representing as follows:

I. SUMMARY OF RELIEF REQUESTED

This summary judgment motion presents a simple legal question: whether or not the property of Dardenne Presbyterian Church, Inc. (the "Dardenne Church" or "the church") is subject to an "express trust" in favor of a national Presbyterian denomination, the PCUSA. The relevant question is thus entirely distinct from that presented in the church's previously-filed motion to dismiss, which concerns only whether the Dardenne Church's property is subject to an "*implied* trust" (a resulting or constructive trust).

[1] The summary judgment sought herein will also partially resolve Count I of the Dardenne Church's petition, which, in addition to requesting other legal determinations, also seeks a declaration that the Dardenne Church's property is not subject to an express trust.

For the last 40 years, the Dardenne Church has been a member of the national PCUSA denomination. The PCUSA and its regional administrative unit, the Presbytery of Giddings-Lovejoy, Inc. (the "Presbytery") (together the "PCUSA Defendants"), assert that all of the Dardenne Church's property is legally held in an express trust for the PCUSA. More specifically, the PCUSA Defendants assert that the PCUSA's rulebook contains a legally-enforceable "trust clause" that, approximately 35 years ago, permanently transferred control of any property from the church to the PCUSA. If the PCUSA Defendants' legal position is valid, then the Dardenne Church would now be prohibited from disposing of its assets or otherwise determining how to use them. *See generally Presbytery Counterclaim* (filed 12.29.2023).

As a matter of law, the Dardenne Church's property is not subject to an express trust, because the church paid for its own assets, the church has never adopted the PCUSA "trust clause", and the church has otherwise never taken any action to create a trust under Missouri law. Quite the opposite, the Dardenne Church historically undertook a series of unprecedented actions to ensure that no denomination and no presbytery could ever attach a trust to the church's property. The Dardenne Church is accordingly entitled to a judgment dismissing the Presbytery's express trust claim.

II. FACTUAL BACKGROUND

A. Dardenne Church and its Denominational Associations

Dardenne Church held the church's first service in 1819, 160 years before its current denominational partner, the PCUSA, came into existence. According to historical church documents, the church originally started as "an interdenominational society" that soon became the Dardenne Church. From its beginning, the Dardenne Church identified itself as a "Presbyterian" church, or a church characterized by certain "Calvinist" beliefs and participation in a decentralized

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democratic structure.[2] In Presbyterian churches, most administrative support and denominational oversight is provided by regional "presbyteries," which generally function as the denominational authority in a given geographic region.

It is unclear whether or to what extent Dardenne Church connected itself to a particular presbytery or denomination when the church was first founded. At some point in the 1820's, though, the Dardenne church followed one presbyterian denomination, and then another, before joining a post-civil-war southern denomination, the Presbyterian Church in the United States (the "PCUS"), around 1865. *See Affidavit of Geoff Wilson* at ¶ 3. For the next 120 years, the Dardenne Church would remain a member of the PCUS. *Id*.

In 1983, the PCUS merged with a larger Presbyterian denomination to create a dominant new Presbyterian denomination, the PCUSA. As a PCUS church at the time, the Dardenne Church was automatically deemed to be a member of the PCUSA denomination, despite the church's relevant representatives voting *against* creating or joining the denomination. Affidavit of Tom Sale at ¶ 5. Nevertheless, the Dardenne Church has remained a member of the PCUSA since 1983.

B. Dardenne Church's Property

Perhaps owing to its frontier origins, the Dardenne Church has historically been a church wary of denominational overreach. And nowhere was the church's concern more evident than in the church's real property transactions, which reflect a 200-year obsession with protecting the church's property—not for denominations, but *from* denominations. In almost all cases, the

[2] There are dozens of different Presbyterian denominations in the United States. "Presbyterian" churches are characterized by an inter-church governance structure in which each church in a geographical area elects delegates to a district body called a "presbytery"; the presbytery, in turn, sets limited policy and handles certain administrative matters for all churches within its geographic bounds. *See* MERRIAM-WEBSTER DICTIONARY (2023 ed.) (defining presbyterian as "of, relating to, or constituting a Protestant Christian church that is presbyterian in government and traditionally Calvinistic in doctrine"). In most Presbyterian churches, the elected governing board of the local church body or corporation is called a "session."

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Dardenne Church's property is not dedicated to an outside organization, but is specifically held for the benefit of the Dardenne Church's individual members.

The Dardenne Church obtained its first real estate in 1823, just after the church's founding. *See* Exhibit 1. According to the original deed, which is titled in the name of the Dardenne Church, the lot was acquired "in trust . . . for the purposes of maintaining a Church for public worship according to the Presbyterian forms and discipline." *Id*.

When the Dardenne Church acquired its next parcel of land in 1845, the church began to show its unusual concern with local autonomy. *See* Exhibit 2. According to the church's 1845 deed, the subject property was to be held by:

> The Elders of the Dardenne Presbyterian Church and Congregation and [] their future associates and successors as Elders of said Church and Congregation for the purpose of building a Church or house of worship upon **for the use and benefit of said Dardenne Presbyterian Church and Congregation**. It being understood that said tract of land is to be perpetually kept in trust **for the use and benefit of said Church and Congregation who are to have the entire interest and control of the same**. It being further understood that the legal title of said property shall always vest in the regularly appointed Elders of said Church and Congregation from time to time, always including the regular pastor thereof as one of the Elders, and shall be always kept, used and applied in good faith **for the benefit of said Presbyterian Church and Congregation** according to the Standards of said Church.

Exhibit 2 (bold added).

In 1870, the Dardenne Church acquired the church's next sizable piece of land. On this occasion, however, the relevant deed was very explicit that the subject property was <u>not</u> being held for any denominational organization:

> [Grantees are] to have and to hold the said tract, with all the rights and privileges thereto belonging . . . in trust that the said tract of land or lot of ground shall be possessed and enjoyed by the association of persons known as "the Dardenne Presbyterian Church" as a place of worship and also as a burial ground; and in trust further that the said lot of ground with the privileges and appurtenances thereto belonging **shall be controlled conveyed and disposed of, as the said trustees or their successors may be directed in writing by a majority of the members of**

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said church. And the trustees of **said property shall in no way or manner be subject to the control, interference or meddling of any Presbytery, Synod,**[3] **General Assembly,**[4] **or other ecclesiastical body**.

Exhibit 3 (bold added). Because the donors of the relevant property were Mr. and Mrs. Barton Bates, the deed became known as "the Bates Deed."

In 1951, 1968, and 1975, the Dardenne Church acquired three more adjacent parcels of property. *See* Exhibit 4. In these transactions, the Dardenne Church did not adopt explicit anti-denominational provisions, but nor did the church in any way grant any right or interest in the real estate to the church's then-denomination, the PCUS. *See id*. In fact, these three deeds say nothing about any denomination and instead vest "Dardenne Presbyterian Church" with full and exclusive "fee simple" title to the relevant properties. *See id*.

C. The PCUS in 1981 and 1982

Against this backdrop, in 1981, the Dardenne Church found itself in a denomination (the PCUS) that appeared to be changing its view of church property rights. In particular, the PCUS proposed to amend the denomination's governing rulebook to include a so-called "trust clause"—that is, a new statement that unilaterally declared all assets of local churches to be subject to a trust in favor of the PCUS denomination. *See* Exhibit 5.

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[3] In Presbyterian denominations, a "synod" is a regional body or committee that is geographically larger than a presbytery, and which has limited oversight over the various presbyteries in its region. In the case of the Presbytery in this matter, it is within the PCUSA's "Synod of Mid-America," which encompasses the six PCUSA presbyteries in Kansas and Missouri.

[4] In Presbyterian denominations, the "General Assembly" is the national governing body of the denomination, and it is the body that makes any important decisions affecting the entire denomination. A General Assembly—unlike presbyteries and synods—is only physically constituted for about one week every two years. At this bi-annual conference, delegates from presbyteries across the country gather to form the General Assembly and vote on specified actions; a week later, the delegates disperse until the next gathering, leaving in its place an administrative body with the delegated authority to deal with all business, civil, and administrative matters in the interim periods. That administrative entity is "The Presbyterian Church (U.S.A.), A Corporation," which describes itself as the "corporate entity of the General Assembly" that "provides business services for the PC(USA)." *See* https://www.pcusa.org/acorp/what-is-acorp/.

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The PCUS's proposed trust clause caused an immediate uproar across the denomination, as the PCUS had, for the preceding 50 years, repeatedly assured local churches that they alone held complete control of their own property. For instance, in an official statement repeated from 1953 to 1981, the PCUS had assured local churches that:

> The beneficial ownership[5] of the property of a particular church of the [PCUS] is in the congregation of such church . . . . The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. . . . Disposition of the property of a particular church rests in the will of the congregation of that church.

Exhibit 5 at 235-36.

Acting to assuage the concerns of member churches, the PCUS quickly clarified that its proposed trust language had no legal effect. Indeed, not only did the PCUS again commit to its historical position, but it also provided new assurances that "[t]he language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate." Exhibit 6. In a 1981 letter circulated to all churches, the PCUS further promised that "th[e] amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property." Exhibit 7; *see also id*. at 2 ("These amendments do not give Presbytery . . . any jurisdiction over property."); Exhibit 5 at 237 ("The amended Chapter 6 . . . does not represent a change."); Exhibit 5 at 230 ("[T]he sections in the Chapter do not adopt

[5] It is difficult to overstate the significance of the PCUS's recognition that "beneficial ownership" of church property was held by local church members and *not* the PCUS, as that wording is a term of art used to reference the proprietary interest that is part of any trust. To say that another party holds the beneficial ownership in some property is to also disclaim any trust interest, as only the *beneficial* owner can claim to have any trust. *See* BLACK'S LAW DICTIONARY (11th ed. 2019) ("**Beneficial ownership**: A beneficiary's interest in trust property, also termed 'equitable ownership.'") ("**Beneficial owner**: One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust."); *Horn v. Muckerman*, 307 S.W.2d 482, 485 (Mo. 1957) ("A trust implies two estates or interests. The trustee holds the legal title while the beneficial or equitable interest belongs to the beneficiary."); *Shelton v. Harrison*, 167 S.W. 634, 636 (Mo. Ct. App. 1914 - Springfield) ("A trust is the beneficial title or ownership of property of which the legal title is in another.").

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new policies.”).

Parenthetically, it was not absurd for local churches to believe that the legal-*sounding* PCUS trust language would have no legal effect, as the PCUS had always maintained—and continued to maintain—that it had no authority to intrude upon secular or civil matters. *See, e.g.*, Exhibit 22 at § 14-1 (“Church courts [(denominational bodies)] . . . possess no civil jurisdiction or power to inflict civil penalties.”). Moreover, the PCUS also agreed to add a provision that guaranteed churches their right to freely dispose or sell property without having to answer to the presbytery or denomination. *See* Exhibit 5 at 225, ¶ 6-8.

Nevertheless, many churches in 1981 viewed the PCUS’s new trust language with skepticism, because, at the time, the denomination was actively planning to merge with the **U**PCUSA—a denomination that *did* claim to control local church property. The PCUS, however, vehemently denied that the new trust language had anything to do with the impending formation of the PCUSA, with the denomination assuring churches that the change was not “intended to deprive congregations of property rights in advance of the reunion.” Exhibit 6. In another communication, the PCUS informed all of its churches that, after the PCUSA transition, churches could invoke a “grandfather clause” and “remain subject to traditional PCUS provisions dealing with ownership, sale, and mortgaging of property.” Exhibit 7.

Apparently satisfied by the PCUS’s repeated assurances, a majority of PCUS members and presbyteries across the country approved the addition of the “non-legal” trust language to the PCUS’s rulebook in 1982. Then, one year later, on June 10, 1983, the PCUS was swallowed into a new mega-denomination, the PCUSA.

Unlike the PCUS, the PCUSA immediately began to proclaim that its rulebook contained an enforceable “trust clause,” pursuant to which the denomination had the right to control (or just

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take) the property of member churches. *See* Exhibit 8 (PCUSA BOO excerpts). But—as promised—if a PCUS church did not like the PCUSA's property policies, a "grandfather clause" would allow the church to "except" itself from any new PCUSA rules. *See id*. at § G-4.0208.[6]

D. The Dardenne Church in 1982

Here the story returns to Dardenne Prairie, where the Dardenne Church in 1982 was still worried that its property rights could be affected by the PCUS's new property rules. Indeed, a very concerned Dardenne Church hired a local law firm in April 1982 to ensure that its property rights were not affected. *Affidavit of Jerry Leigh* at ¶ 5, *Affidavit of Allen Sebaugh* at ¶¶ 5-6. Perhaps the most perceptive PCUS church in the country, the Dardenne Church then acted quickly to permanently "trust-proof" its property from any denominational or presbytery property claim.

In the Spring of 1982, the Dardenne Church held six total parcels of property, but only one of the relevant property deeds (the 1870 Bates deed) explicitly prohibited denominations or presbyteries from claiming the property. *See* Exhibits 1-4. So, in May 1982, the members of the Dardenne Church gathered and unanimously voted to sell the five unprotected parcels to two church families (the "Schumans")—at their appraised value, so that the sale could not be challenged. To remove any doubt about the purpose of the transaction, the official resolution states:

> [I]t is the intention of said William Schuman and Glen Schuman to contribute said property to a charitable trust to be held for the benefit of the congregation of the Dardenne Presbyterian Church, with the restriction that said property never become

[6] The so-called "property exception" provision (grandfather clause) states: "The provisions of this chapter shall apply to all congregations of the [PCUSA] except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the [PCUS] and the [UPCUSA] to form the [PCUSA], has been excused from that provision of this chapter if the congregation, within a period of eight years following the establishment of the [PCUSA], voted to be exempt from such provision in a regularly called meeting and thereafter notified the presbytery of which it was a constituent congregation of such vote. The congregation voting to be so exempt 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]." *See* Exhibit 8.

the property of any denomination or church court[7].

Exhibit 9.

On June 8, 1982—a mere week before the PCUS would approve its "non-legal"/spiritual trust provision—the skeptical Dardenne Church completed the transfer of church real estate to the Schumans. Exhibit 10. While the parties had initially contemplated the use of a charitable trust, that plan was scrapped in favor of a "reconveyance-subject-to-reversionary-interest." More particularly, the same day that the Schumans purchased the five unprotected parcels, the Schumans re-conveyed the properties *back to* the Dardenne Church, but this time, the properties were subject to a new *anti*-denominational-trust restriction like the one in the 1870 Bates Deed: according to the new controlling deed, should any presbytery or denomination ever acquire control of the church's properties, ownership of all properties would "revert" back to the Schumans:

> [This conveyance is to the Dardenne Church] to have and to hold the same, in trust, together with all rights and appurtenances to the same belonging unto the said [church] and to their successors and assigns, for the sole benefit, use and enjoyment of the members of the Congregation of the Dardenne Presbyterian Church, so long as said premises shall remain the property of the Congregation of the Dardenne Presbyterian Church **and shall not become the property of any denomination or church court, nor be deemed to be held in trust or for the benefit of any denomination or church court**, **upon which event all right, title and interest in and to the said premises shall forthwith revert** to and become the property of [the Schumans], their heirs or assigns, who shall have the immediate right to possession of said premises, and all right, title and interest of the [Dardenne Church] and their successors and assigns in and to said premises shall forthwith cease.

Exhibit 11.

Not done yet, the Schumans and the Dardenne Church reconvened the following year, in

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[7] In Presbyterian denominations, the various bodies in the denomination's administrative structure—sessions, presbyteries, synods, and general assemblies—are sometimes referred to as "courts" or "councils." *See, e.g.*, *Boyles v. Roberts*, 121 S.W. 805, 808 (Mo. 1909) ("The courts or judicatories of the Cumberland Presbyterian Church consisted, first, of a church session, made up of the minister and the ruling elders, the latter chosen by the congregation; secondly, the Presbytery, made up of the ministers and certain selected ruling elders for the several congregations in a certain district; thirdly, a Synod, made up of three or more Presbyteries; and, fourthly, of a General Assembly.").

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March 1983. As the final step in the parties' seemingly-paranoid property protection plan, the Schumans transferred their reversionary interest in the church's property to the "Session or other ruling body of any Church from time to time using the property." *See* Exhibit 12. According to the transfer instrument, the reversionary interest would be triggered "should the property . . . be deemed to be held in trust or for the benefit of any denomination or church court." *Id*. Thus, if there ever was ever an attempted trust conveyance to the PCUS or PCUSA, all rights to the Dardenne Church's property would instead legally revert to the governing body of the church group physically using the property. *Id*.

E. The Dardenne Church's invocation of the Grandfather Clause and the 1984 Resolution

Even after the church's astute 1982 and 1983 maneuvering, the Dardenne Church was not done protecting its property. As soon as the church found itself in the PCUSA, it also passed the resolution required to invoke the PCUS "grandfather clause," explicitly declaring that the church's property would not be subject to any new PCUSA property rules. *See* Exhibit 13 (the "1984 Resolution"). The 1984 Resolution specifically stated:

> WHEREAS, 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 [PCUSA]; and
>
> . . . .
>
> WHEREAS, the Book of Order of the [PCUSA] in Chapter VIII which is entitled "The Church and Its Property" contains provisions which are somewhat different from those contained in the *Book of Church Order* of the [PCUS] in Chapter VI which is entitled "Church Property"; and
>
> WHEREAS, Chapter VIII of the *Book of Order* of the [PCUSA], Sub-section 7, entitled "Exceptions" and numbered G.80701, provides that where there are provisions in that Chapter which are different from those in Chapter VI of the *Book of Church* [*Order*], "any church which was not subject to a similar provision of the Constitution of the Church of which it was a part, prior to the reunion shall be excused from that provision of this Chapter if the Congregation shall within a period of eight years following the establishment of the [PCUSA] vote to be exempt from such in a regularly called meeting and shall notify the Presbytery."

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

Exhibit 13.

As required by the underlying exemption provision, the Dardenne Church sent a letter to the Presbytery to advise that the exemption had been claimed. *See* Exhibit 15. Regarding the 1984 Resolution, that letter declared:

> 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 [PCUSA]. 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 [PCUS] as that chapter existed on the date of June 10, 1983.

Exhibit 15.

F. The Dardenne Church: 1984 to the present

In 1990 and 1998, the Dardenne Church acquired two more significant parcels of real property, totaling 15 acres, adjacent to the church's facility in Dardenne Prairie. *See* Exhibit 14. Just like the church's other six property deeds, the 1990 and 1998 deeds confirm the church's continuing wariness of the PCUSA, with the transfer instruments stating, "[The Church's representatives] and the Real Estate shall in no way or manner be subject to the control, interference or meddling of any Presbytery[,] Synod, General Assembly or other ecclesiastical

body.” Exhibit 14 at 2, 5.

In 1996, the Dardenne Church finally organized itself into a Missouri non-profit corporation, adopting corporate articles that affirmed the church’s exclusive control over its own affairs. *See* Exhibit 16. Several years later, the Dardenne Church formally deeded most of its real properties from the unincorporated church entity to the statutory corporation. *See* Exhibit 18.

III. DARDENNE CHURCH’S REQUEST FOR DECLARATORY JUDGMENT AND THE PRESBYTERY’S EXPRESS TRUST COUNTERCLAIM

Wanting certainty concerning its property rights, in the Fall of 2023, the Dardenne Church filed a petition for declaratory judgment. The primary determination being sought by the Dardenne Church is a declaration that the church’s property is not subject to an “express trust”—that is, that the church has never taken any of the steps required to legally transfer the beneficial ownership of its property to the PCUSA or the Presbytery.

The Presbytery answered the Dardenne Church’s lawsuit, opposing all of the church’s claims and claiming several different interests in the church’s property.[8] Nevertheless, the Presbytery’s central claim is that all of the Dardenne Church’s property is held in an “express trust” that the church *agreed to* and intentionally created in 1984. *See* Counterclaim, Count I. Despite all appearances, the Presbytery thus claims that the Dardenne Church really *wanted* to be bound by the PCUSA trust clause and so took the necessary steps to legally adopt the trust.

An express trust—the type of trust associated with estate planning—only comes into being when a party intentionally transfers an enforceable property right to someone else. And, like any

[8] In particular, the Presbytery has claimed various rights to control the Dardenne Church’s property by alleging (a) that the church created an “express trust,” (b) that the law deems a “resulting trust” to exist in the instant circumstances, (c) that the law and principles of unjust enrichment require the recognition of a “constructive trust” in the instant circumstances, (d) that the doctrine of estoppel precludes the church from claiming any ownership right, and/or (e) that the Presbytery has a reversionary interest or corporate right to assume control of the Dardenne Church’s governing board and thereafter act as the owner of all property. To be clear, this motion only concerns the first claim (claim (a)).

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other transfer of real estate, the transfer of a trust interest in real estate must be evidenced in a signed writing. Facing these strictures, the Presbytery's express trust claim is thus only valid if there is a written document, signed by the Dardenne Church, that clearly evidences an intention to surrender the church's property rights and create a trust. For the necessary trust instrument, the Presbytery relies exclusively upon the Dardenne Church's 1984 Resolution (Exhibit 13). The Presbytery has summarized its express trust claim as follows:

> By electing on January 15, 1984, to follow and be bound by the PCUS Constitution's property provisions, with notice later given to the Presbytery in writing on January 31, 1984, Dardenne Church intended to permanently place into trust all property titled in its name (or otherwise owned by it) for the benefit of the PCUSA.

Counterclaim, ¶ 48.

In essence, the Presbytery's argument is that the Dardenne Church, amid its efforts to preserve its property rights in 1982-1984, accidentally *gave away* its property. In the Presbytery's view, the Dardenne Church fatally erred when it included the following bolded verbiage in its 1984 Resolution:

> [T]he congregation of the Dardenne Presbyterian Church . . . does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the reunion which established the [PCUSA] and will hold title to its property and exercise its privileges of incorporation under the provisions of the **Book of Church Order, [PCUS] (1982-1983 edition)**.

Exhibit 13 (bold added). According to the Presbytery, the church opted out of the PCUSA rulebook in order to escape the PCUSA's property rules; in so doing, however, the church also technically opted *into* the PCUS rulebook and therefore bound itself to the "old" *PCUS trust clause*.

Were an entire church's livelihood not at stake, the Presbytery's position might be amusing. It claims that the very document that rejects any new property right claimed by the PCUSA was actually designed to transfer a trust interest in all church assets *to* the PCUSA. Almost

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unbelievably, the Presbytery claims that the church meant to do this just months after orchestrating a massive sale-and-buyback transaction designed solely to keep any denomination from ever claiming a trust. *See* Exhibit 11 (1982 repurchase deed stating that property shall never "be deemed to be held in trust or for the benefit of any denomination").

Setting aside the utter implausibility of the Presbytery's theory, there is also not a shred of evidence to support it. More pointedly, no document and no witness backs up the claim that the Dardenne Church agreed to create a trust for the PCUSA in 1984. Nor is it reasonable to interpret the 1984 Resolution in the twisted, self-defeating manner proposed by the Presbytery. As there is also no other written instrument on which an express trust claim could rest, this Court should immediately grant summary judgment and dismiss the express trust count of the Presbytery's counterclaim.

IV. STANDARD OF REVIEW

As the counter-plaintiff and party seeking to enforce an express trust, the Presbytery has the burden of proving that the trust exists. *See Rouner v. Wise*, 446 S.W.3d 242, 251 (Mo. 2014). Moreover, the proponent of a trust must establish each requisite element of the claimed trust by *clear and convincing evidence*.[9]

Because the Presbytery bears the burden of proof, the Dardenne Church is entitled to summary judgment if it can challenge the Presbytery's ability to prove just *one* of the elements on which the Presbytery's trust claim depends. *See* MO. SUP. CT. R. 74.04; *Jackson Revocable Inter Vivos Tr. v. Abeles & Hoffman, P.C.*, 595 S.W.3d 156, 159 (Mo. Ct. App. 2020 – E.D.). To then

[9] *Rouner v. Wise*, 446 S.W.3d 242, 251–52 (Mo. 2014) ("[W]hether a completed express trust is sought to be established by parol or by a written instrument, the evidence relied upon to establish it must be clear and convincing and so full and demonstrative as to remove from the mind of the chancellor any reasonable doubt with respect thereto."). Notably, when the claimed trust property is still held by the alleged creator of the trust, the burden of proof is even greater: the trust proponent must prove "circumstances which *unequivocally disclose* an intent to hold [the disputed property] for the use of another." *Id*. at 251 (emphasis added).

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avoid summary judgment, the Presbytery "must demonstrate that one or more of the material facts asserted by [the church] as not in dispute is, in fact, genuinely disputed." *Id*. And, importantly, "[a] 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous."

V. LAW & ARGUMENT

It is undisputed that the Presbytery's trust claim depends upon proof of a signed trust document that clearly shows an intent to create a trust. *See Rouner v. Wise*, 446 S.W.3d 242, 250–51 (Mo. 2014) ("Neither an express trust nor an amendment thereto can come as a surprise to the settlor. Instead, an 'express trust can come into existence only by the manifestation of an intention to create the kind of relationship known in law as an express trust.' . . . A signed writing is mandatory . . . if the trust pertains to real property."); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 583 (Mo. Ct. App. 2012 – W.D.) ("[A]n express trust in land cannot be created or proved by a parol agreement."); *Rouner*, 446 S.W.3d 242, 251 (Mo. 2014).

In the present case, the alleged trust instrument is deficient in at least four different respects, each of which is an appropriate basis for summary judgment: (1) the 1984 Resolution cannot reasonably be interpreted as creating an express trust; (2) it is undisputed that the 1984 Resolution was not intended to create a trust; (3) any reference to the *PCUS* or its *non*-binding trust clause is not sufficient to create a *binding* trust for the *PCUSA*; and (4) the 1984 Resolution does not sufficiently describe any real estate. Each of these independent arguments is discussed more fully below.

A. MSJ Argument #1: The 1984 Resolution cannot reasonably be read to create a trust.

If possible, a supposed trust instrument should be interpreted only by reference to its own wording, and by looking to "the trust instrument as a whole." *A.G. Edwards Tr. Co. v. Miller*, 59

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S.W.3d 550, 552 (Mo. Ct. App. 2001 – E.D.). Accordingly, "no single clause or word is given undue preference. The court must give the words used their usual, ordinary and natural meaning, unless a contrary meaning appears in the instrument. Furthermore, the court is required to give meaning to the entire trust instrument, avoiding repugnancies, if possible, and to adopt a construction which reconciles rather than creates inconsistencies." As in other written instruments, a disputed provision should not be interpreted in a way that conflicts with other provisions in the same document, and an unclear provision cannot be used to defeat an explicit provision found elsewhere. *See Housman v. Lewellen*, 244 S.W.2d 21, 24 (Mo. 1951) (*en banc*) ("'An intent clearly expressed is not to be defeated by implication from doubtful clauses, though seemingly inconsistent with such intent. It is true doubtful clauses must be considered with all the rest in arriving at the true intent of the whole, but, to modify or change the meaning of clear language by implication from doubtful clauses, 'the implication to have such an effect should be very conclusive.'").[10]

The question in this case is whether the 1984 Resolution clearly operates to create a global trust over all property held by the Dardenne Church. As the Missouri Supreme Court has recognized, a party who intends to create a trust is generally pretty clear about his intent:

> Disputes over the *terms* of express trusts are common, and numerous opinions have been written over the years attempting to divine a settlor's intent with regard to a disputed term. Disputes over whether a settlor intended a particular writing to create or amend a trust at all, on the other hand, are rare. This is likely because, when a settlor uses a document to create or amend an express trust, that document usually will contain an unambiguous statement of what the settlor intends the document to

[10] *See also Pike v. Menz*, 218 S.W.2d 575, 578–79 (Mo. 1949) ("[A]n estate conveyed in one portion of a deed by clear, explicit, and unambiguous words cannot be diminished or destroyed by words in another part of the instrument, unless they are equally clear, decisive, and explicit."); *Abell v. City Of St. Louis*, 129 S.W.3d 877, 881 (Mo. Ct. App. 2004 – E.D.) ("In interpreting contracts, we construe each term and clause of the document to avoid an effect that renders other terms and provisions meaningless."); *Baker v. Baker*, 813 S.W.2d 116, 118 (Mo. Ct. App. 1991 – E.D.) ("The devise of a fee 'cannot be annulled except by later language in the will, which expressly or by necessary implication, arising from words equally as clear and conclusive as those in granting the fee, cuts down the previous grant of the fee.'").

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> be and do. In many instances, one need look no further than the title of the document to find such a statement, *e.g.*, "Trust Agreement," "Declaration of Trust," or "Amendment to Trust."

Rouner v. Wise, 446 S.W.3d 242, 253 (Mo. 2014).

Particularly when viewed through the lens of *Rouner v. Wise*, the 1984 Resolution cannot reasonably be interpreted to establish an express trust. The resolution itself never mentions a trust or purports to grant anyone else any property rights. *See* Exhibit 13. To the contrary, the stated purpose of the resolution is to *reject* the PCUSA denominational rules that "deal with selling, encumbering or leasing the property of [the] congregation." *See* Exhibit 13 at 4, 6. In particular, the Dardenne Church was claiming a supposed "exemption" that would let it freely manage its property *without* ever having to answer to any presbytery or denomination. According to the resolution's own language, its "purpose" was "to notify the Presbytery of Southeast Missouri of Dardenne Church's intention to be exempted from the provisions of the *Book of Order* . . . in the matter of selling, encumbering or leasing church property as provided in the *Book of Order*, . . . under the heading 'Exceptions.'"

In turn, if the referenced PCUSA "exception" provision is consulted, it *also* says nothing about a trust. *See* Exhibit 8 at § G-4.0208.[11] Quite the opposite, the exception provision explicitly assured newly-designated PCUSA churches in 1984 that they could reject any new PCUSA property rules that they were not already "subject to." *See id*. To preserve its property rights, and to escape any new PCUSA property claim, the Dardenne Church accordingly resolved and voted to "be exempt from the provisions of [the property chapter] of the *Book of Order* to which it was not subject prior to the reunion which established the [PCUSA]." Exhibit 13 at 7.

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[11] The Book of Order's provisions have been renumbered since 1984, but the paragraph once designated as § 8.700 ("Exceptions") now appears in the current PCUSA Book of Order as § G-4.0208 ("Exceptions"). *See* Exhibit 8.

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The Dardenne Church's rejection of any new claims to the church's property is unambiguous. Yet, the Presbytery posits that the remainder of the same sentence—where the church referenced *retaining* its property under the provisions of the old PCUS rulebook[12]—was an implicit "backdoor" submission to the PCUSA's trust clause. Practically and factually, this allegation is truly absurd. It is not reasonable to interpret a sentence that (a) explicitly rejects any new property rights claimed by the PCUSA as also (b) implicitly conveying a multi-million-dollar equitable property interest in the same property to the same party. The suggested interpretation only becomes more unreasonable when the Dardenne Church's time-adjacent transactions relating to the same subject matter are also considered, as is appropriate.[13] *See* Exhibit 9 (unanimous congregational resolution, from 19 months earlier) (adopting "restriction that said property never become the property of any denomination or church court").

Because such an interpretation is so unreasonable and would violate numerous interpretive principles, it can be rejected now and as a matter of law. *See Cent. City Ltd. P'ship v. United Postal Sav. Ass'n*, 903 S.W.2d 179, 182 (Mo. Ct. App. 1995 – E.D.) ("The construction and interpretation of a contract is a matter of law . . . .A contract is ambiguous only if its terms are susceptible of more than one meaning so that reasonable persons may fairly and honestly differ in their

[12] For ease of reference, the relevant resolution provision was as follows: "NOW, THEREFORE, BE IT RESOLVED that the congregation of the Dardenne Presbyterian Church, in a meeting properly called and conducted, does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the reunion which established the [PCUSA] and will hold title to its property and exercise its privileges of incorporation under the provisions of the Book of Church Order, [PCUS] (1982-1983 edition), this action having been taken within the period of eight years following the establishment of the [PCUSA]." *See* Exhibit 13 at 7.

[13] *Johnson ex rel. Johnson v. JF Enterprises, LLC*, 400 S.W.3d 763, 767 (Mo. 2013) ("[E]ven where not part of a single contract, courts will consider the [related] instruments together to determine the parties' intent."; *Bridgecrest Acceptance Corp. v. Donaldson*, 648 S.W.3d 745, 752 n.5 (Mo. 2022) (*en banc*) ("Even in the absence of explicit incorporation, 'contemporaneously signed documents relating to one subject matter or transaction are construed together' except when "the realities of the situation indicate that the parties did not so intend."); *Shriners Hosp. for Child. v. Schaper*, 215 S.W.3d 185, 189–90 (Mo. Ct. App. 2006 – E.D.) ("Where a trust and will form parts of the same plan, they must be construed together."); *Affidavit of Jerry Leigh* at ¶ 12 ("The church's 1984 vote was designed to be another extension of what the church had done in the Schuman transactions.").

construction of the terms."); *Davis v. Jefferson Sav. & Loan Ass'n*, 820 S.W.2d 549, 552 (Mo. Ct. App. 1991 – E.D.) ("We read language reasonably not unreasonably."); *Parker v. Pulitzer Pub. Co.*, 882 S.W.2d 245, 250 (Mo. Ct. App. 1994 – E.D.) ("Accordingly, when a contract provision is susceptible to two interpretations, only one of which is reasonable, the reasonable interpretation should be given effect.").[14]

B. MSJ Argument #2: It is Undisputed that the Dardenne Church did not intend its 1984 Resolution to create a trust in favor of the PCUSA.

As a basic rule of Missouri law, a trust arises only upon "a manifestation of an intention to create it." *Rouner*, 446 S.W.3d at 251 n.8 (Mo. 2014). Indeed, "the settlor's intent to create [a trust] must be shown by evidence which is clear and explicit, leaving no room for a reasonable doubt that a trust was intended." *Duncan by Duncan v. Duncan*, 884 S.W.2d 383, 386 (Mo. Ct. App. 1994 – S.D.).[15] Where a trust is claimed to arise from a written document, "the paramount rule of construction is that the grantor's intent is controlling and such intention must be ascertained primarily from the trust instrument as a whole." *Arthaud v. Arthaud*, 600 S.W.3d 882, 888 (Mo.

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[14] *Standard Meat Co. v. Taco Kid of Springfield, Inc.*, 554 S.W.2d 592, 596 (Mo. Ct. App. 1977 - Springfield) ("So in an interpretation (of a contract) which evolves an unreasonable result, when a more probable and reasonable construction can be adopted, every intendment will be against the former construction or one which would operate as a snare."); *Hanna v. Nowell*, 330 S.W.2d 595, 600 (Mo. App. 1959) ("[I]t is obvious that the purpose [of the instrument] was to provide uniformity and secure a certain amount of space, light, and air to the adjoining owners. It is made ambiguous only when the parties attempt to apply unreasonable meanings and bend and strain it to such ends as would defeat its very obvious purpose."); *Rouggly v. Whitman*, 592 S.W.2d 516, 521 (Mo. Ct. App. 1979 – E.D.) ("Where a contract is fairly susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally make, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes it a rational and probable agreement must be preferred to that which makes it an unusual, unfair or improbable contract.").

[15] *Dexter v. MacDonald*, 95 S.W. 359, 364 (Mo. 1906) ("The creation of an express trust must be manifested or proven by a written instrument, and it is elementary that, in the creation of a trust, whether in regard to real or personal property, the acts of the parties in the creation of such trust must be done with that intent. . . . To create a trust, whether in regard to real or personal property, the act must be done with that intent, and must be manifested by clear and unequivocal evidence."); *Haguewood v. Britain*, 199 S.W. 950, 951 (Mo. 1917) ("[N]o trust will arise in the absence of proof that one was intended."); *Heartland Presbytery*, 364 S.W.3d at 582–83 (Mo. Ct. App. 2012 – W.D.) ("[T]he primary consideration is the intention of the settlor or creator [of an alleged trust]."); *Penney v. White*, 594 S.W.2d 632, 639 (Mo. Ct. App. 1980 – W.D.) ("In order to create a trust the settlor must show intention to create a trust.").

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Ct. App. 2020 – E.D.).[16] However, a court may also look to the "circumstances surrounding [a trust instrument's] execution if they are needed to clarify the settlor's true purpose and intent." *Alexander v. UMB Bank, NA*, 497 S.W.3d 323, 327 (Mo. Ct. App. 2016 – W.D.). "Ultimately, the paramount rule in construing a trust is *that the intent of the grantor is supreme*." *In re Gene Wild Ins. Tr.*, 340 S.W.3d 139, 143 (Mo. Ct. App. 2011 – S.D.) (emphasis added).

In the present case, there can be no dispute about what the Dardenne Church intended to accomplish with the chain of transactions it approved between 1982 and 1984. At the first hint that a denomination might try to assert a trust over the church's property, the action of Dardenne Church's membership was unanimous and unequivocal: it approved the conveyance of the property "to a charitable trust to be held for the benefit of the congregation of the Dardenne Presbyterian Church, with the restriction that said property **never** become the property of any denomination or church court." Exhibit 9 (bold added). And in place of the anticipated charitable trust, the property was instead reconveyed back to the church, after being legally inoculated against any future trust claim:

> **[S]aid premises shall remain the property of the Dardenne Presbyterian Church and shall not become the property of any denomination or church court, nor be deemed to be held in trust for the benefit of any denomination or church court.**

Exhibit 11 at 2.

According to the Presbytery, just 18 months later—and only a few months after finding themselves in a denomination they voted against—the same church leaders and members suddenly "changed their minds." As alleged by Presbytery, the Dardenne Church accordingly adopted the

[16] *See also Mercantile Tr. Co. v. Kilgen*, 298 S.W.2d 387, 390 (Mo. 1957) ("It is well settled law in this state that the cardinal rule to be observed in the construction of a trust instrument is to ascertain the settlor's intention from the trust instrument, considered as a whole, and to give effect to such intention, if possible.").

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1984 Resolution to create the very denominational trust it had so desperately tried to escape in 1982 and 1983. Of course, the Presbytery's suggestion is objectively disingenuous; but more importantly, it cannot survive summary judgment.

It is the Presbytery's burden to produce some evidence that the Dardenne Church, using unclear wording and without any discussion, in utter contravention of its contemporaneous statements of intent, as part of an effort to "exempt" itself from PCUSA property rules, and in exchange for receiving nothing, really intended to *give* its property *to* the PCUSA. But there is no document and no witness that supports this narrative or the Presbytery's trust claim. There are, however, eight individuals who have submitted sworn affidavits relating to the intent of the church's actions in the early 1980's.

There is not sufficient space in this brief to fully quote the affidavits, but it is fair to say that they collectively eviscerate the Presbytery's express trust claim. The affiants represent a cross-section of the Dardenne Church's 1983 and 1984 leaders and officers, all of whom have a surprisingly uniform recollection of what the church intended—and did not intend—to do in 1984. For instance, Charles Poe, Jr. was the chief corporate officer who signed and certified the 1984 purported trust resolutions, and his sworn recollection is as follows:

> In late 1983, after the creation of the PCUSA, I was still the Clerk of the DPC Session. I recall that the church again voted to protect its property around this time, in order exercise a PCUSA rule property exemption. In pursuing this action, it was my understanding and the understanding of the other leaders that we were taking the step needed to free ourselves of any possible presbytery interference with our property rights. We presented the exemption vote to the DPC congregation as the step to take to ensure that the PCUSA and presbytery would have no rights whatsoever relating to DPC's property. As the Clerk of Session at the time, it was me who personally certified the church's 1984 property exemption vote, and I signed the letter to notify the presbytery of our action.
>
> I have been advised that the Presbytery of Giddings-Lovejoy now claims that the 1984 DPC exemption resolution was "intended to permanently place into trust all property titled in its name (or otherwise owned by DPC) for the benefit of the

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> PCUSA." That statement is absolutely inaccurate. Indeed, we as the church's leaders at the time, including myself, were attempting to do the exact opposite. We understood that we were going to all lengths possible to protect DPC's property and to try to make sure a presbytery or denomination could not control it.

Affidavit of Charles C. Poe, Jr. at ¶¶ 6-7.

This Court need not base its summary judgment on Mr. Poe's recollection alone. Rather, the Court should also consider the testimony of Pastor Tom Sale, who was pastor at the time, and who formally presided over the 1984 meeting at which the claimed trust was allegedly approved. Pastor Sale has stated:

> Very shortly after the church was moved into the PCUSA, I remember making sure that our church voted to exercise what we understood was a PCUSA property exemption. My specific recollection is that the vote was conducted because we supposedly had a limited time to reject the presbytery's claimed right to say whether we could mortgage or sell our property or borrow money, and we were given the option of saying that we did not agree with that and would be exempt from it. . . . .
>
> When we voted to claim the PCUSA property exemption in 1984, we only understood the resolution as being for the narrow purpose of rejecting the PCUSA's rule that required their approval to enter into property transactions, and that is how I, as the moderator of the congregational meeting, would have explained the exemption. In no way were we at the same time trying to give away any property rights of the church or give up anything in exchange. . . . At no point was it ever suggested in any way to our congregation that the property exemption would do anything other than ensure that we kept our property rights.
>
> . . . .
>
> [O]ur leaders and our members had greater doubts about the PCUSA than we did about the PCUS. It is ridiculous for anyone to now suggest that we were only worried about protecting our property in the PCUS, but then we were OK with giving up property rights to the PCUSA a couple years later. The position that our exemption vote in 1984 was intended to give up any property rights is diametrically opposed to what our actual intent was at the time. There is not a soul who was there who could possibly have that interpretation of what we did.

Affidavit of Tom Sale at ¶¶ 6-9.

Sharing the same recollection, another elected church leader intimately involved in the church's various 1980's property transactions has similarly affirmed:

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> I remember that, after the Schuman transaction, the church's denomination, the PCUS, merged with another denomination to create the PCUSA in 1983. . . . However, I and the other church leaders were not worried about any PCUSA claim to our property due to the steps we had taken with the Schumans.
>
> . . . .
>
> Then, not long after, some of our leaders had a discussion with presbytery representatives, who suggested that whatever we had done in the past was not good enough. Rather, it was reported back to us from the presbytery that, from the denomination's perspective, what we had to do to get away from the PCUSA's property trust was to claim a new PCUSA property "exemption," and that this exemption was needed to make our previous actions effective. We were given to understand that, after the PCUS merger, there was a period of time during which we could act through the exemption to retain our property; and, if we didn't act, the new denomination (the PCUSA) could possibly claim our property.
>
> . . . .
>
> Based on that understanding, the leaders agreed to recommend that the church claim the PCUSA property exemption, which the church did in January 1984. Prior to the 1984 resolution, the DPC congregation was explicitly told that we had do to this to make clear to the presbytery what our rights were so that we would continue to retain our own property and could get our own financing without the presbytery's involvement.
>
> . . . .
>
> The different steps the church took in 1982-1984 were just links in one related chain of events. Everything we did was designed strictly to keep the property out of the hands of any other denomination or ecclesiastical body, which is why we did not use language that was specific to the PCUS or PCUSA.
>
> . . . .
>
> I have been told that the PCUSA presbytery today asserts that DPC's 1984 exemption resolution was intended to give some property rights to the PCUSA. However, that is just craziness. Everything we did was intended to keep the PCUSA from ever having any ability to interfere with our property. The notice we sent to the presbytery was not sent to let the presbytery know that they now could control our property, but exactly the opposite: it was to let them know that our congregation did not in any way want our property to be encumbered by any denominational claim, ever.

Affidavit of Jerry Leigh at ¶¶ 9-15.

Whether current church members or former leaders who have since moved on to other churches, the testimony is the same: every 1984 church leader that can be located shares the same memory of trying to protect the church's property *from* the PCUSA. As those other leaders recall:

> Members of the session discussed the church's property rights at various times in 1983 and 1984. At the time, several of the leaders especially were very vocal about

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> their views and that we always maintain the position that the local membership should be the only people to own or control the property, just like it had always been. Indeed, this view was a known thing by everyone who was a leader in those days, and it was leadership's desire and opinion that no party outside of the local membership should have anything to do with the church's property. This opinion was just as strongly held by church leadership after the formation of the PCUSA, as there were always significant concerns that its politics and views really did not align with ours.
>
> During my term on the session, which included the year 1984, we absolutely did not vote to, and would not have voted to, transfer any property rights to the presbytery or any outside party. I am also certain that nothing we approved at the time was intended to have that effect. . . . I am very confident that the session I served on would not have voted to do anything other than keep all rights to the church's property with the local membership; and I can't imagine anyone back then even suggesting that we do something opposed to that goal.

Affidavit of Baxter Tate at ¶¶ 4-5 (elected to church governing board in 1983).

> At the end of 1983, after DPC had become a member of the PCUSA, I was still a member of the church's session. I recall at around that time that the church voted to use a property exemption provision that was available in the new PCUSA. As our leadership understood its options, a church that did not claim the exemption might be stuck with the PCUSA's property rules, but a church that claimed the exemption would not lose any rights to the PCUSA. Beyond any doubt, the reason we voted to claim the property exemption was because we understood it was a way to escape any PCUSA trust claim. I recall that our church was "up in arms" about property at the time and there was no way that we were going to put DPC's property in jeopardy of anyone else but us controlling it.

Affidavit of Allen Sebaugh at ¶ 7 (four-time member of church governing board, including from 1981-1983).

> [I]n the early 1980's, there was widespread concern in the church about a possible effort by the presbytery and denomination to change the rules governing possession and control of local church property. Our members were opposed to any such changes being allowed and were upset at the possibility.
>
> In response to the congregation's and leaders' concerns, I remember William Schuman—an active member of the church and also my wife's brother—spearheading a real estate transaction to protect the church's property. . . . . William Schuman was an elected session member or trustee of the church on several occasions in the 1970's and 1980's. All of his efforts at all times as a church leader were aimed at keeping the church's property away from any presbytery, synod, or

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denomination. William's views were widely known and widely shared by other church leaders during that time.

> When I was elected to DPC's session in 1983, the church continued to have the same view of its property rights. It was discussed among us during my years on the session (1983-1986) that the church was safe and had complete control of its property due to the steps taken in the preceding years. At no point did we reverse, or would we have ever tried to reverse, the actions that my brothers-in-law had assisted with, and we certainly did not wish to give any presbytery or denomination any rights to our property. Indeed, our subsequent decisions to build and invest in our property during the 1980's were always based on the stated understanding that we completely controlled our own property and that we were legally protected from the presbytery controlling anything.

Affidavit of Jerry Aubuchon at ¶¶ 3-6 (elected to church governing board in 1983).

> In the early 1980's, in both the congregation and the session, and in the view of our pastor Tom Sale, there was a strong desire and consensus to make sure that the presbytery could not obtain or control our property no matter what happened.
>
> I also remember that the property issue came up again after the PCUSA was formed, and there was some designated period of time during which each church in the PCUSA could approve a resolution to protect their property. This property-protection resolution was presented to the congregation, with the entire purpose of it being that we did not want our property to ever, ever be legally part of the PCUSA. The congregation was instructed that we thus either had to vote that our property would never pass to the PCUSA at any point in time in the future, or else it would be set up that, if something happened in the future, the PCUSA could potentially take our property away. On this issue, everyone was in agreement, and we were trying not to become part of the PCUSA's property.
> . . . .
> I have been told that the PCUSA presbytery today asserts that DPC's property exemption resolution was intended to give some property rights to the PCUSA. However, that is not at all consistent with my recollection, and there is no chance at all that we were trying to give anything to the PCUSA at the time.

Affidavit of David Schlansker at ¶¶ 5-8 (church board member from 1979-1982 and 1987-1990).

> Particularly given the tension with the presbytery at the time, the consensus of DPC's leadership in the early 1980's was that the church's property should be protected from the presbytery and denomination. The church generally felt it was improper for any denominational body to claim a trust in DPC's property, as our church had never relied on the presbytery to help us purchase property, and we felt we had received nothing from the presbytery that would warrant us relinquishing any property rights.
> . . . .

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> After I joined the DPC session in or around 1984, we acted and made decisions with the specific understanding that our church had also claimed a PCUSA property exemption that would keep DPC from losing any property rights. Our understanding was that southern (PCUS) churches like DPC could claim an exemption from the PCUSA's property rules, and that we had done this and thus kept our property away from any denominational trust. I recall that there was some concern with making sure that the presbytery was aware we were an "exemption" church, or else our exemption vote might not "count."
>
> I have recently learned that the PCUSA presbytery today asserts that DPC's property-exemption resolution was intended by the church at the time to operate as an acceptance of the PCUSA's trust claim. I thought this must be a joke, as no one who was involved in DPC's leadership and decision-making at that time could possibly take that position.

Affidavit of Steve Collier at ¶¶ 6-8 (elected to church governing board in 1984).

In short, this is not a case in which evidence of intent is lacking, nor is this a case in which the evidence of intent is conflicting. And because the uncontroverted evidence overwhelmingly proves that the Dardenne Church did not intend to create a trust in 1984, the Presbytery's express trust claim must be dismissed. *See Alexander v. UMB Bank, NA*, 497 S.W.3d 323, 327 (Mo. Ct. App. 2016 – W.D.) ("The primary consideration in the interpretation of a trust is the intention of the settlor, and, if it can be ascertained, that intention must govern."); *Busch & Latta Painting Corp. v. State Highway Comm'n*, 597 S.W.2d 189, 198 (Mo. Ct. App. 1980 – W.D.) ("[E]ven if the contract be found to be ambiguous, the court must still declare the meaning of the contract unless the surrounding circumstances or other extrinsic evidence admitted on the ambiguity question raise issues of fact.").[17]

C. MSJ Argument #3: A reference to the "Book of Church Order" of a different denomination (the PCUS) is inadequate to create an express trust in favor of

[17] *See also Com. Tr. Co. v. Howard*, 429 S.W.2d 702, 705–06 (Mo. 1968) ("But where a contract is clear and unambiguous on its face, or where there is no real conflict of evidence upon any of the essential facts properly to be considered is construing the contract, and the true meaning of the words used is made clear by such evidence, it becomes the duty of the Court . . . to construe it."); *Hougland v. Pulitzer Pub. Co.*, 939 S.W.2d 31, 33 (Mo. Ct. App. 1997 – E.D.) ("There is no issue of fact for the jury to decide if the 'facts' alleged to be in dispute are actually differing opinions of the parties of the legal effect of documents or actions which determine their respective rights. Interpretation of provisions within a contract is a matter of law for the trial court to decide, not a factual issue.").

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the PCUSA, particularly when the PCUS made clear that its rulebook did <u>not</u> create an enforceable trust.

In its simplified form, the Presbytery's express trust claim is based upon what it posits was the Dardenne Church's express "adoption" of the PCUS trust clause in 1984. Even if the 1984 Resolution could be twisted in such a manner, and even if the undisputed intent of the alleged settlor is ignored, there is still a gaping hole in the Presbytery's argument: a trust provision that benefitted the PCUS organization does not legally benefit the PCUSA.

To be clear, what the Presbytery suggests was "expressly accepted" by the church was § 6-3 of the PCUS's rulebook, which stated:

> 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 [(PCUS)].

See Exhibit 5 at 225, § 6-3. The Presbytery thus faces a simple and fundamental problem: the PCUSA is **<u>not</u>** the same thing as the PCUS. For its part, the PCUSA is a Pennsylvania corporation, which was until 1983 the legal body of the northern "UPCUSA" denomination. *See* Exhibit 24. In turn, while the PCUSA portrays its formation as a "merger" between the PCUS and the UPCUSA, that is not legally or actually what occurred. Rather, though the PCUS and UPCUSA agreed to "reunite," what occurred afterwards was only a limited merger, with specified PCUS corporate organizations[18] being merged into the surviving UPCUSA, which then changed its name to the PCUSA. *See* Exhibit 24 (UPCUSA merger documents). Consequently, the PCUSA is not a "legal successor" to the PCUS *denomination* and would thus need a deed to claim any real estate interest held by the PCUS.[19] And even if the PCUSA could prove a proper chain of title for some real

[18] For instance, the UPCUSA did formally merge with "The Board of the Church Erection fund of the General Assembly of the [PCUS]" and the "General Board of Education of the [PCUS]." *See* Exhibit 24.

[19] *See, e.g.*, *McDaniel v. Park Place Care Ctr., Inc.*, 918 S.W.2d 820, 826 (Mo. Ct. App. 1996 – W.D.) ("A transfer of an interest in real property must be memorialized in writing.").

estate, such chain of title could not save an attempted transfer of property made to the PCUS *after it was dissolved* in 1983. *See, e.g.*, *In re Marriage of Haugh*, 978 S.W.2d 80, 90 (Mo. Ct. App. 1998 – S.D.) (where attempted transfer was to unincorporated church entity that had no named trustees, deed held invalid as "a conveyance to no one"); BOGERT'S THE LAW OF TRUSTS AND TRUSTEES § 164 ("A trust for a corporation which has been dissolved or whose charter has expired is void.").[20]

Even if the Presbytery could bridge the organizational, title, and dissolved-entity gaps between the PCUS and the PCUSA, the fact remains that the PCUS's trust provision was always and expressly deprived of any legal effect. The Presbytery cannot now claim to enforce a PCUS "trust" provision that was also paired with numerous assurances that it was ineffective and did not legally affect anything. *See, e.g.*, Exhibit 5 at 235-36 ("The beneficial ownership of the property of a particular church of the [PCUS] is in the congregation of such church."); Exhibit 6 ("The language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is understood in connection with real estate."); Exhibit 7 ("These amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property."); Exhibit 7; *see also id*. at 2 ("These amendments do not give Presbytery . . . any jurisdiction over property."); Exhibit 5 at 237 ("The amended Chapter 6 . . . does not represent a change.").

As courts have found, PCUS churches who claimed the PCUSA property exemption to reserve their pre-PCUSA rights did not convey anything *to* the PCUSA. Indeed, the Mississippi Supreme Court has explicitly recognized that the PCUSA's trust clause "was a departure from

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[20] *Tucker v. Diocese of W. Missouri*, 264 S.W. 897, 901 (Mo. 1924) ("If by the articles of association of this particular voluntary association, trustees for the purpose of holding title to property, either real or personal, were provided for, then such articles should have been pleaded, so that the facts would show the legal status of plaintiffs, as the repository of title and the right to possession.") (denying trust claim of church association).

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prior practice," given the promises made by the PCUS about its property rules. Consequently, an "exemption resolution" like the Dardenne Church's can only be construed as rejecting the PCUSA trust clause, even if the resolution specifically references the PCUS's 1982-1983 rulebook. *See Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville*, 240 So. 3d 399, 406 (Miss. 2018) ("[I]t is clear that PCUS disclaimed any interest in church trust property until just before the merger forming PCUSA. Although a trust provision was placed in the constitution when PCUSA was formed, the local churches were granted the right to opt out of that provision.") (affirming summary judgment).[21]

In a similar ruling, a Louisiana court of appeals also analyzed the effect of the PCUSA property exemption. *See Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 2011-0205 (La. Ct. App. 1st 9/14/11), 77 So. 3d 975, 981. Examining the PCUS property rules, the court found that the claimed trust language was inconsistent with the accompanying PCUS assurance that churches could still freely "buy, sell or mortgage" their property without oversight. *See id*. at 980-81. Finding that the exemption operated to block any PCUSA trust claim, the court specifically reasoned: "[T]he unfettered right to dispose of all of one's property is mutually exclusive of any right by a third party to dictate the disposition of that same property. In other words, in allowing [the church] to fall back on [the PCUS freedom-of-disposition provision], G–8.0701 [(the exemption provision)] negated any express trust." *Id*. at 981 (affirming summary judgment).

[21] Significantly, the church resolution in the *Starkville* case contained precisely the same language that the Presbytery now bases its express trust claim upon. *See Starkville*, 240 So.3d at 402 ("[The church] does hereby vote to be exempt from the provisions of Chapter VIII of the Book of Order to which it was not subject prior to the Reunion which established PCUSA and will hold title to its property and exercise its privileges of incorporation under the Book of Church Order, PCUS (1982–1983 edition).")

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If the 1984 Resolution is bent to be an acceptance of a PCUS trust provision, the undisputed evidence is that such trust provision was deprived of any legal effect; and even if it was not, the lack of any cognizable chain of title precludes the PCUSA from claiming any right conveyed to the PCUS in 1984. *See Humphrey v. Sisk*, 890 S.W.2d 18, 21 (Mo. Ct. App. 1994 – S.D.) ("If any links are missing in such chain of title, plaintiffs' case must fail.").

D. MSJ Argument #4: An instrument that completely fails to specify any real estate is inadequate to convey any title.

A fourth and also-fatal flaw in the Presbytery's express trust claim is the complete lack of an adequate legal property description in the supposed trust instrument. *See* Exhibit 13; Exhibit 15. As the court noted in another PCUSA property dispute, "a document purporting to create a trust must contain a *definite description* of the property to be conveyed." *Colonial Presbyterian*, 375 S.W.3d at 195 (emphasis added). In particular, to support a trust, the subject property must be "so sufficiently described or capable of identification that title thereto can pass." *Rouner*, 446 S.W.3d at 251 (Mo. 2014).

As any real estate attorney is aware, transferring title to real property requires a heightened degree of specificity; in particular, "[a]ll deeds, mortgages, conveyances, [and] deeds of trust, must contain a legal description of the lands affected." MO. STAT. § 59.330. And while there is some flexibility, the property must in all cases be specified in some manner: "Although the description need not be technically accurate in order to make an instrument operative as a conveyance, it must identify the property sufficiently to enable a surveyor to locate it. The description must be sufficiently certain to distinguish the land intended to be conveyed from all other land." *First Nat. Bank of Cape Girardeau v. Socony Mobil Oil Co.*, 495 S.W.2d 424, 434 (Mo. 1973); *Wyper v. Camden Cnty.*, 160 S.W.3d 850, 853 (Mo. Ct. App. 2005 – S.D.) ("Sections 59.330.1(1) and 59.330.2 provide that a conveyance of property rights must be recorded and must contain a legal

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description. There has been no conveyance."). Importantly, because the statute of frauds is implicated, the writing itself must contain at least enough information "to enable one familiar with the locality to identify the premises with reasonable certainty." *See Mayes v. Murphy*, 93 Mo. App. 37, 38 (Mo. Ct. App. 1902 – St. Louis); *Byers v. Zuspan*, 264 S.W.2d 944, 950 (Mo. Ct. App. 1954 – St. Louis).[22]

In the present case, the purported trust instrument does not reference any property at all. *See* Exhibit 13. The resolution is so vague, that according to the Presbytery, it must therefore cover "everything," including the properties and assets the church acquired years later. Obviously, such a reference is not adequate to allow a reader to determine what property is purportedly included in the trust, nor is the Presbytery's suggested reading even legally permissible.[23] In the absence of any degree of certainty, formality, or specificity, it is not reasonable to find that the Dardenne Church so easily gave up its right to control everything it ever owned. *See Colonial Presbyterian*, 375 S.W.3d at 196 (Mo. Ct. App. 2012 – W.D.) ("Our laws are based on the reasonable assumption that a party would not intend to convey its property (in this case, worth millions of dollars) in trust without signing the writing purporting to create the trust, identifying the property to be conveyed, and expressing a definite intention to create a trust.").

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[22] In a recent case, a Missouri appellate court commented: "The documents used in the closing of this loan are a textbook case of how NOT to handle any matter involving real property. Most of the documents provide a street address for the property in place of a proper legal description, . . . and use the Jackson County Assessor's parcel ID number in place of a legal description. The lack of a full and proper legal description is obvious on the face of the documents and should have raised red flags for any lawyer, banker, title company representative, realtor or a person with even a modicum of knowledge of real estate transactions. A street address does not amount to a legal description of real property, just as the county assessor's parcel ID number has little, if any, meaning as to the proper legal description of a parcel of land." *US Bank, N.A. v. Smith*, 470 S.W.3d 17, 26 n.7 (Mo. Ct. App. 2015 – W.D.).

[23] *See Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. 1964) (*en banc*) ("'A person cannot create a trust of property which he does not own. It is not enough that he once owned it, and it is not enough that he expects to own it in the future.'").

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VI. CONCLUSION

Whether one or all of the above arguments are accepted, there is no genuine dispute that the Dardenne Church's property is not subject to an express trust under Missouri law. The church is accordingly entitled to an immediate summary judgment rejecting any express trust claim in favor of the Presbytery or the PCUSA.

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WHEREFORE, based upon the above arguments and authority, the Dardenne Church prays that the Court, after due consideration:

1. GRANT this "Motion for Partial Summary Judgment on Counterclaim Count I";

2. Hold that the Dardenne Church's January 15, 1984, resolution and related communications did not create an express trust in favor of the PCUSA or Presbytery under Missouri law;

3. Dismiss, with prejudice, the Presbytery's claim that the Dardenne Church's property is subject to an express trust (counterclaim Count I); and

4. Pursuant to Mo. R.S. § 456.10-1004, upon a determination that the Presbytery's express trust claim lacks any reasonable basis, and because this action concerns the proper administration of trust property titularly held for the benefit of the Dardenne Church's congregation, order the Presbytery to reimburse the Dardenne Church for its costs and reasonable attorneys' fees.

FILED AND SERVED on **April 19, 2024**.

Respectfully submitted,

MCCARTHY, LEONARD & KAEMMERER, L.C.

_/s/_ *Robert L. Striler*___________
Brian E. McGovern, MO Bar #34677
Robert L. Striler, MO Bar #29652

825 Maryville Centre Drive, Suite 300
Town and Country, MO 63017
Tel.: 314-392-5200
bmcgovern@mlklaw.com
rstriler@mlklaw.com

and

Ryan K. French, La. Bar No. 34555 (*pro hac vice* motion forthcoming)
Ryan.french@taylorporter.com
TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
450 Laurel St., 8th Floor
Baton Rouge, Louisiana 70801
Tel.: 225-381-0262

Attorneys for Dardenne Presbyterian Church, Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing filing has been sent, via the indicated e-mail addresses, to the following counsel of record this **19th** day of **April** 2024:

Britton St. Onge
POLSINELLI PC
100 S. Fourth Street, Suite 1000
St. Louis, MO 63102
bstonge@polsinelli.com

Counsel for Presbytery of Giddings-Lovejoy, Inc. and Presbyterian Church (U.S.A.), A Corporation

Jeremy S. Rogers
DINSMORE & SHOHL LLP
101 S. Fifth Street, Suite 2500
Louisville, KY 40202
jeremy.rogers@dinsmore.com

Counsel for Presbyterian Church (U.S.A.), A Corporation

_/s/_ *Robert L. Striler*___________
Robert L. Striler