

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

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

Case No. 2311-CC01028

**DEFENDANT PRESBYTERY OF GIDDINGS-LOVEJOY, INC.’S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF’S MOTION TO
DISMISS COUNTERCLAIM COUNTS II AND III FOR FAILURE TO STATE A CLAIM**

The Court should deny Plaintiff Dardenne Presbyterian Church, Inc.’s Motion to Dismiss Counterclaim Counts II and III because Presbytery of Giddings-Lovejoy, Inc. has plead sufficient factual material to state legal claims for a resulting trust (Count II) and for imposition of a constructive trust in order to avoid unjust enrichment (Count III). If the Court finds otherwise, it should grant the Presbytery leave to amend its Counterclaim under Missouri Rule 67.06.

BACKGROUND

Dardenne Church has been a member church of the Presbyterian Church (U.S.A.), or “PCUSA,” denomination in since 1984, when the denomination was formed by the merger of two predecessor Presbyterian denominations. Now, the Dardenne Church leadership is on the verge of calling for a congregational vote on the question whether the church should disaffiliate

from the PCUSA. But before it does so, it wants to ensure that disaffiliating will not trigger the consequences of commitments that Dardenne Church made to the PCUSA in 1984 to hold all property titled in its name in trust for the benefit of the PCUSA denomination. Under those commitments, withdrawing from the PCUSA would place the Presbytery, as the denomination's council in charge of church property, in control of all property titled in Dardenne Church's name, "to be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion, may direct." Counterclaim ¶ 17 (quoting Section 6-4). To avoid that, and to declare itself free of the commitments it made in 1984, Dardenne Church filed this lawsuit.

To satisfy its moral and ecclesiastical obligation to advocate for the rights of *all* of its members and member churches, the Presbytery has asserted the trust's existence and asked the Court to recognize that trust. It has also asked the Court, in the alternative, to recognize certain implied trusts based on equitable principles, should the Court find that no express trust was formed through Dardenne Church's actions and declarations in 1984. Dardenne Church has now moved to dismiss those alternative counts for failure to state a claim.

ARGUMENT

The Court should deny Dardenne Church's motion to dismiss because the Presbytery has stated claims for relief for a resulting trust and for a constructive trust to avoid unjust enrichment.

I. The Presbytery has stated a claim for a resulting trust under Missouri law.

As an alternative to its claim to recognize the express trust over property titled in Dardenne Church's name, the Presbytery asks the Court (in Count II) to declare that a resulting trust exists over that property. The Presbytery has stated a claim for a resulting trust.

Missouri has long recognized the equitable doctrine of a "resulting trust." *See Long v. Kyte*, 340 S.W.2d 623, 627-28 (Mo. 1960). "A resulting trust is one implied by law from the

acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises.” *Leonard v. Leonard*, 112 S.W.3d 30, 35 (Mo. App. W.D. 2003). One arises when necessary “to meet the requirement of justice that a legal status be given to what is the clear intention of the parties.” *Lynch v. Lynch*, 260 S.W.3d 834, 838 (Mo. 2008) (internal quotation marks omitted). The existence of a resulting trust over land need not be proved by a signed writing. *Jankowski v. Delfert*, 201 S.W.2d 331, 334 (Mo. 1947) (following the Restatement (Second) of Trusts § 406 (1959)).

One way a resulting trust comes into existence is where an express trust fails for technical reasons not intended by the parties. *See Lynch*, 260 S.W.3d at 838 & n.9; George Gleason Bogert et al., *Law of Trusts and Trustees* § 468 (3d ed. 2005). More specifically, if, “because of its terms, the applicable law, the nature of the beneficiary, or the purposes of the trust, an ordinary express trust fails, and there is no express or implied gift of the trust property, then a court of equity will decree that the trustee holds the trust property on resulting trust for the benefit of the settlor, his heirs, or devisees, depending upon the actual facts of a particular case.” Francis M. Hanna, *Missouri Practice Series, Trust Code & Law Manual*, Section 456.4-401, Author’s Comment on Resulting Trusts (2014–2015 ed.). So, for example, where a plaintiff’s transfer of funds to the defendant failed to create an express trust because the terms of the transaction were too indefinite and uncertain concerning the *res*, purposes, and beneficiaries, the defendant may be ordered to hold the funds on resulting trust for the plaintiff’s benefit. *Pollock v. Brown*, 569 S.W.2d 724, 730 (Mo. 1978).

Here, if Dardenne Church did not create an express trust despite its clear intentions, the Court may imply a resulting trust, given Dardenne Church’s clear intent to place its property into trust and to name the Presbytery as the beneficiary of that trust. At the very least, a trial is

necessary on whether the Court should imply one under these circumstances in view of Dardenne Church's manifestation of its intent to hold property titled in its name in trust for the PCUSA.

The Indiana Supreme Court's decision in *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099 (Ind. 2012), is instructive. The court there reversed the entry of summary judgment against the Presbytery of Ohio Valley on its resulting-trust claim against a local church. It determined that the local church did not "undisputedly establish the absence of a mutual intent on the part of Olivet and the Presbytery to create the claimed trust." *Id.* at 1113. Evidence of the local church's intent to place its property in trust came from its recognition in its bylaws of the PCUSA Book of Order "as the authority for the governance of the church and its congregations" and its continuance as a member of the PCUSA from 1983 until 2006. *Id.* The court concluded that "a finder of fact could find conflicting inferences from the fact that Olivet remained a member of the PC(USA) for nearly twenty-five years after insertion of the trust provisions," so that summary judgment was not appropriate. *Id.* The same relevant facts exist here, and so the same result should follow: a trial is necessary on the Presbytery's claim for resulting trust. The Presbytery has stated a claim for recognition of a resulting trust.

The Presbytery has stated a claim for a resulting trust in its favor for a second reason, though fewer parcels of property are held in trust for the PCUSA under this alternative theory, specifically the properties identified in the deeds from 1990 and 1998. *See* Petition, Exhibit 14.

A resulting trust may arise through a voluntary conveyance. In *James v. James*, 248 S.W.2d 623 (Mo. 1952), for example, a wife conveyed certain real property, for no consideration, through a straw party to her husband to allow him to qualify to make larger bail bonds in criminal matters. *Id.* at 626. The husband promised to convey the property back to his wife at her later request. *Id.* at 625. When the husband failed to reconvey the property as

promised, the court held that the wife was entitled to a resulting trust in her favor because “the facts and circumstances show no consideration for the transfer of title from plaintiff to defendant or that a gift of the property was intended at the time of the transfer to defendant.” *Id.* at 628.

Here, the 1990 and 1998 deeds do not state that the property voluntarily conveyed thereby was to be held by Dardenne Church in trust for the benefit of the PCUSA, even though Dardenne Church in 1984 had declared that *all* of its property was and would be held perpetually in trust for the benefit of the PCUSA. Those transfers thus were made subject to Dardenne’s declaration of trust in 1984. Accordingly, the Court should recognize a resulting trust in favor of the PCUSA over the property conveyed to Dardenne Church in 1990 and 1998.

II. The Presbytery has stated a claim for unjust enrichment warranting the imposition of a constructive trust.

The Presbytery’s alternative claim for unjust enrichment is based on the inequity that would result to the Presbytery by allowing Dardenne Church to disavow its long-held commitments to hold its property in trust for the benefit of the PCUSA (§ 6–3) and to part with any property titled in its name if its affiliation with the PCUSA ever ceased (§ 6–4). These are commitments that Dardenne Church made, at the very latest, in January 1984. Counterclaim ¶¶ 16–19. Based on, and in reliance upon, these commitments, the PCUSA conferred on Dardenne Church real and substantial benefits during the 40+ years that it has been a PCUSA member church. *Id.* ¶ 66. Dardenne Church has thus been “enriched” by the PCUSA.

The question, then, is whether allowing Dardenne Church to retain those benefits under the present circumstances without recognizing the “burden” of its obligations to the PCUSA would be unjust. If it would be, then a constructive trust is an appropriate remedy. *See Brown v. Brown*, 152 S.W.3d 911, 917 (Mo. App. W.D. 2005) (“The appellate courts of this state have often recognized the doctrine of unjust enrichment as a valid basis for the imposition of a

constructive trust”); *see id.* at 917 (“In particular, where the retention of the property would result in the unjust enrichment of the person retaining it, a constructive trust arises even though the acquisition of the property was not wrongful.”). Under any scenario, the question whether retaining the benefits would be unjust is reserved for the finder of fact at trial. The Presbytery has offered sufficient factual detail in its Counterclaim to state a claim for relief.

Contending otherwise in its Motion, Dardenne Church makes four arguments, none availing. **First**, Dardenne Church mischaracterizes the basis for the remedy sought, claiming that the Presbytery seeks a constructive trust based merely upon “unfilled commitments and broken promises.” Memo at 11. The Presbytery has offered more than “a mere verbal promise,” *id.*, to support the imposition of a constructive trust. It has alleged that, in reliance on Dardenne Church’s promises, the Presbytery conferred on the church real and substantial benefits during the 40+ years that Dardenne Church has been a PCUSA member church, and that Dardenne Church has accepted and retained these benefits such that retaining them under the circumstances would be unjust. Counterclaim ¶¶ 65–66. These commitments are a “circumstance” by which it would be unjust to allow Dardenne Church to retain the benefits without paying for them. That is enough to state a claim for unjust enrichment. *See Howard v. Turnbull*, 316 S.W.3d 431, 436 (Mo. App. W.D. 2010) (“To establish the elements of an unjust enrichment claim, the plaintiff must prove that (1) he conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances.”).

Under this same argument, Dardenne Church also contends that “there must be an element of positive fraud accompanying the promise” to obtain a constructive trust over land. Memo at 11 (quoting *Purvis v. Hardin*, 122 S.W.2d 936, 939 (Mo. banc 1938)). But even

Dardenne Church does not believe that, telling the Court elsewhere in its supporting memorandum that positive fraud is *not* required for a constructive trust. *See* Memo at 10 (noting that “in the absence of some fraud,” an “‘unjust enrichment’ or other underlying cause of action” can justify the recognition of a constructive trust). What’s more, “our courts have long recognized the constructive trust as a fluid, flexible device that may be employed to remedy many different types of injustice,” and a court is “not bound by an unyielding formula” in imposing a constructive trust. *Dougllass v. Dougllass*, 570 S.W.3d 130, 136 (Mo. App. W.D. 2019). “The touchstone” for imposing one is “injustice or unfairness,” which can result from unjust enrichment. *Id.*

Second, Dardenne Church argues that the Presbytery has inadequately alleged the “real and substantial benefits” that the PCUSA conferred and Dardenne Church accepted during its 40-year affiliation with the PCUSA. Memo at 13. Dardenne Church is well aware of these benefits yet feigns otherwise. *Id.* Regardless, a pleader need only state “the ultimate facts and it is not necessary to plead the facts or circumstances by which the ultimate facts will be established.” *Scheibel v. Hillis*, 531 S.W.2d 285, 290 (Mo. 1976). Accordingly, the Presbytery need not now identify the specific benefits conferred and accepted to state a claim for unjust enrichment. But if the Court sees things differently, it should permit the Presbytery leave to identify the benefits that the PCUSA has conferred. *See* Mo. R. Civ. P. 67.06 (“On sustaining a motion to dismiss a claim, counterclaim or cross-claim, the court shall freely grant leave to amend and shall specify the time within which the amendment shall be made or amended pleading filed.”).

Specific benefits that the Presbytery would identify include the following, among others:

- PCUSA has provided legitimacy and credibility to the Dardenne Church as a member of the PCUSA denomination.

- Dardenne Church has participated in the PCUSA’s Board of Pensions Benefits Plan, which provides a pension plan and medical insurance to all pastoral and support staff (and their families) who work 20 or more hours per week.
- PCUSA has fronted the cost of pastor certification for Dardenne Church members.
- PCUSA has guaranteed a minimum salary, family leave, and enrollment in medical and pension programs to attract top talent for member churches.
- PCUSA has assisted Dardenne Church to locate and hire pastoral staff from around the world, perform background checks on candidates, assist in negotiating compensation packages, and assist in firing them when appropriate.
- PCUSA has certified pastors of Dardenne Church so they can perform legal marriage ceremonies.
- PCUSA has provided Dardenne Church with moderators of its meetings when its pastor was unable to function in that capacity.
- PCUSA has provided Dardenne Church members with special training and leadership development needed to become pastoral leaders.
- PCUSA has provided mediator services to mediate disputes between the Dardenne Church congregation and its pastors.

Third, Dardenne Church says that there can be no unjust enrichment or constructive trust over property that the church “paid for with its own money.” Memo at 14. But there is nothing in the pleadings or exhibits that suggest Dardenne Church paid any real consideration for the property titled in its name today. In none of the allegations in the Petition about receiving property does Dardenne Church allege that it paid anything more than minimal consideration (\$1.00 or \$10.00 or in one deed \$100.00), let alone fair consideration, for the property. Pet. ¶¶ 17–20. It is far more likely that Dardenne Church received the property through donations from generous church members for no or minimal consideration. *See* Pet. ¶ 21 (“On information and belief, all funds used to purchase the Dardenne Church’s various real properties were obtained exclusively from the church’s members.”).

But more directly, Dardenne Church reads the caselaw too narrowly in claiming that

unjust enrichment or a constructive trust can never lie under circumstances where Dardenne Church paid for its property.¹ The “fluid” and “flexible” nature of the device exists to “remedy many different types of injustice.” *Douglass*, 570 S.W.3d at 136. It would be error for the Court to conclude at this stage of the proceedings that the remedy is not broad enough ever to apply here, despite the “injustice or unfairness” of permitting Dardenne Church to retain the benefits conferred on it by virtue of its long-held PCUSA membership.

Fourth, Dardenne Church contends that even if there is unjust enrichment here, a constructive trust can extend only to “the particular property that [it] received for free,” not all its property. Memo at 15. The scope of a constructive trust is a remedial inquiry more appropriately considered and decided at the merits stage of this case, not now at the pleadings stage. The precise value of the substantial benefits the PCUSA conferred on the Dardenne Church over the last 40 years will be proved at trial. If shown to exceed the value of Dardenne Church’s property, equity may counsel in favor of imposing a constructive trust over that property to avoid an unjust enrichment, especially given that Dardenne Church itself did not pay for its real property (it having been donated) and has decided to retain its beneficial affiliation with PCUSA since the denomination’s inception 40+ years ago. Equity’s mandate to “do justice” should require nothing less. *See Willman v. Beheler*, 499 S.W.2d 770, 778 (Mo. 1973) (“Equity will not suffer a wrong to be without a remedy, and seeks to do justice and avoid injustice.”). Accordingly, the Court should not dismiss the unjust enrichment claim at this stage of the proceedings.

¹ To be sure, unjust enrichment can occur “when a person retains and enjoys the benefit conferred upon him without paying its reasonable value.” *Patrick V. Koepke Const., Inc. v. Woodsage Const. Co.*, 844 S.W.2d 508, 515 (Mo. App. E.D. 1992) (cited at Memo at 14). But that is not the *sole* circumstance under which it can occur. *See Autumn Lakes Ass’n v. Tran*, 655 S.W.3d 442, 449 (Mo. App. E.D. 2022) (“The essence of unjust enrichment is that the defendant has received a benefit that it would be inequitable for him to retain.”).

CONCLUSION

The Court should deny Dardenne Church's Motion to Dismiss Counterclaim Counts II and III because the Presbytery has stated a claim for a resulting trust and a constructive trust to avoid unjust enrichment. If the Court grants the motion, it should permit the Presbytery leave to amend. *See* Mo. R. Civ. P. 67.06.

Dated: May 31, 2024.

Respectfully submitted,

POLSINELLI PC

By: /s/ Britton St. Onge

BRITTON L. ST. ONGE (#62256)

7676 Forsyth Blvd., Suite 800

St. Louis, MO 63105

Tel. 314.889.8000

Fax: 314.231.1776

bstonge@polsinelli.com

*Attorneys for Defendant / Counterclaimant
Presbytery of Giddings-Lovejoy, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2024, the foregoing in the above styled case was electronically served via Case.Net on all counsel of record.

/s/ Britton St. Onge _____