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

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

MEMORANDUM IN SUPPORT OF DARDENNE PRESBYTERIAN CHURCH, INC.'S MOTION TO DISMISS COUNTERCLAIM COUNTS II AND III FOR FAILURE TO STATE A CLAIM

Dardenne Presbyterian Church, Inc., appearing now as a counterclaim-defendant, respectfully submits this Memorandum in Support of its "Motion to Dismiss Counterclaim Counts II and III for Failure to State a Claim," further representing as follows:

I. SUMMARY OF RELIEF REQUESTED

In the Presbytery's recent counterclaim, it has passingly alleged that the Dardenne Church's property is subject to a "resulting trust" and/or a "constructive trust" in favor of the Presbytery. However, with respect to each of these distinct claims, the Presbytery has completely failed to plead the essential elements of the claim or any relevant supporting facts. Accordingly, this Court should immediately dismiss the corresponding counts of the counterclaim (Counts II and III).

II. FACTUAL BACKGROUND

Dardenne Presbyterian Church, Inc. ("Dardenne Church" or "the church") is a Missouri non-profit corporation that oversees a 200-year-old Christian ministry from its campus in

Dardenne Prairie, Missouri.[1] Since 1983, Dardenne Church has been a member of a national association of affiliated Presbyterian churches, the Presbyterian Church (U.S.A.) (the "PCUSA").[2] In turn, the PCUSA denomination is organized into regional groups called "presbyteries," with Eastern Missouri (and the Dardenne Church) being within the boundaries of the St. Louis-based "Presbytery of Giddings-Lovejoy, Inc." ("PGL" or the "Presbytery").[3]

On October 3, 2023, the Dardenne Church initiated this matter by filing a petition for declaratory judgment against the Presbytery and the PCUSA. In particular, the Dardenne Church's legal action was in response to the so-called "trust clause" that appears in the PCUSA's self-written administrative manual, the "Book of Order." According to that trust clause, if a church merely joins the PCUSA, the church's assets and property become subject to a trust and must forever be used as the PCUSA instructs.[4] Given the PCUSA's stated position, the Dardenne Church accordingly requested a judicial declaration confirming that the claimed PCUSA trust was invalid.[5]

The Presbytery recently responded to the Dardenne Church's declaratory judgment petition by categorically opposing the church's request and by countersuing the church. Notably, the Presbytery's principal claim is that the Dardenne Church's property is subject to an "express

[1] *See* PGL's Answer and Counterclaim at 2, ¶ 5 ("The Presbytery admits the allegations in paragraph 5 of the Petition.").

[2] *See* PGL's Answer and Counterclaim at 16, ¶ 3 ("Dardenne Church is a member church of the PCUSA denomination.").

[3] *See* PGL's Answer and Counterclaim at 3, ¶ 11 ("[T]he Presbytery is the council that serves as the corporate expression of the denomination in the specific geographical region that includes Dardenne Church.").

[4] *See* PGL's Answer and Counterclaim at 20, ¶ 21 ("By virtue of its election to join the PCUSA, and its affirmative decision to accept the permanent restrictions and trust provisions described previously, Dardenne Church imposed an irrevocable trust (hereinafter the 'Trust') over its assets for the benefit of the PCUSA and the Presbytery.")

[5] So-called "trust clause litigation" between the PCUSA and local churches is not uncommon. *See, e.g.*, *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 588 (Mo. Ct. App. 2012 – W.D.) ("Heartland [Presbytery] also argues that PCUSA's Book of Order, standing alone, establishes the existence of a trust.").

trust"—that is, that the church (a) intended to give up control of its property and (b) appropriately signed a corresponding legal document to do so.[6] For this contention, the Presbytery relies upon a singular 1984 Dardenne Church resolution, which the Presbytery alleges to evince the church's intent to create an "express trust" for the PCUSA. As is typical in these cases,[7] the primary question for the court in this matter will be whether the local church properly and purposefully created an "express" or traditional trust, whether in the 1984 resolution or in some other binding document.

Perhaps foreseeing a weakness in its main claim, the Presbytery has also alternatively asserted two distinct "backup" claims against the Dardenne Church: (1) that all of the church's property is subject to a "**resulting trust**" in favor of the PCUSA/Presbytery, and/or (2) that all of the church's property is subject to a "**constructive trust**" in favor of the PCUSA/Presbyter. But simply reciting these two legal phrases in its pleading is essentially all that the Presbytery has done, as the counterclaim lacks any supporting allegations or facts. Consequently, the Dardenne Church now requests that the Presbytery's corresponding counts (Count II and Count III) be dismissed for failure to state a claim upon which relief can be granted.

III. STANDARD OF REVIEW

Faced with a motion to dismiss for failure to state claim, the question is "whether the [pleading] states a cause of action." *Jordan v. Bi-State Dev. Agency*, 561 S.W.3d 57, 59 (Mo. Ct. App. 2018 – E.D.). Accordingly, the operative pleading is "reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action. In

[6] *See Rouner v. Wise*, 446 S.W.3d 242, 250–51 (Mo. 2014) ("[A]n '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.' Accordingly, a party seeking to establish an express trust must prove the settlor's intent."); PGL's Answer and Counterclaim at 24-26.

[7] *See, e.g.*, *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 195 (Mo. Ct. App. 2012 – W.D.) (noting that only an express trust had been alleged); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 583 (Mo. Ct. App. 2012 – W.D.) (same).

order to avoid dismissal, the petition must invoke 'substantive principles of law entitling plaintiff to relief **and** ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial.'" *Id*. (bold added). Put differently, "[c]onclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted." *A.F. v. Hazelwood Sch. Dist*., 491 S.W.3d 628, 632 (Mo. Ct. App. 2016 – E.D.); *see also Dibrill v. Normandy Assocs., Inc*., 383 S.W.3d 77, 90 (Mo. Ct. App. 2012 – E.D.) ("[W]e disregard conclusory allegations that are not supported by the facts.").

IV. LAW & ARGUMENT

As set forth below, the Presbytery has failed to adequately plead or support the requisite elements of its resulting trust and constructive trust claims. Both claims are thus subject to immediate dismissal.

A. Legal Background

The instant matter is not the first time that a PCUSA church and its associated presbytery have debated the validity of a trust claimed by the PCUSA.[8] Indeed, there are three published decisions in which a Missouri appellate court or the Missouri Supreme Court considered functionally-identical "church property disputes" involving PCUSA churches and presbyteries.[9] In each case, the relevant Missouri court has affirmed that affiliated religious organizations, even when battling each other for control of church property, are governed by the same "neutral principles" of state property law applicable to everyone else (and not notions of doctrine or superior ecclesiastical authority). *See Colonial Presbyterian Church v. Heartland Presbytery*, 375

[8] *See, e.g*., *Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville*, 240 So. 3d 399, 400 (Miss. 2018); *Windwood Presbyterian Church, Inc. v. Presbyterian Church (U.S.A.),* 438 S.W.3d 597, 602 (Tex. App. 2014).

[9] *Presbytery of Elijah Par. Lovejoy v. Jaeggi*, 682 S.W.2d 465, 471 (Mo. 1984); *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 201 (Mo. Ct. App. 2012 – W.D.); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 584 (Mo. Ct. App. 2012 – W.D.).

S.W.3d 190, 196 (Mo. Ct. App. 2012 – W.D.) ("The 'neutral principles' method simply means that we apply Missouri law."). Thus, in order for the Presbytery to maintain a resulting trust or constructive trust claim in this matter, the Presbytery must allege and support the ordinary elemental requirements of such claims.

B. Implied Trusts in Missouri

Resulting trusts and constructive trusts together constitute the two types of "implied trusts" that are cognizable under Missouri law.[10] Unlike the more-conventional "express trust," an implied trust is not the result of an intentional and legally-compliant act by a party owning property. An implied trust, rather, is implied *by a court* to reallocate control of property in very limited circumstances when someone who owns property should indisputably be required to share it or give up control.[11]

Importantly, vague allegations about fairness, equity, or that a trust was intended are not sufficient to support an implied-trust claim. The relevant question is instead whether the very specific and strict elements of the claimed trust at issue have been specified and proven. As stated in dozens of Missouri appellate decisions:

> To establish an implied trust, whether a resulting or constructive trust, an extraordinary degree of proof is required and vague or shadowy evidence or a preponderance of the evidence is not sufficient. The evidence must be so unquestionable in its character, so clear, cogent and convincing that no reasonable doubt can be entertained as to its truth and the existence of the trust.

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[10] *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 195 (Mo. Ct. App. 2012 – W.D.) ("[G]enerally, there are only two types of implied trusts: constructive trusts and resulting trusts."); *Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936) ("Courts have been disposed to recognize two classes of implied trusts designating them as 'resulting trusts' and 'constructive trusts.'").

[11] *See, e.g.*, *Jacobs v. Jacobs*, 272 S.W.2d 185, 188 (Mo. 1954) ("A resulting trust, as distinguished from an express 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 attend the transaction out of which it arises."); *State Auto. & Cas. Underwriters v. Johnson*, 766 S.W.2d 113, 124 (Mo. Ct. App. 1989 – S.D.) ("A constructive trust does not arise as a result of an agreement of the parties, but is implied by law and is a method of the law of equity to rectify a situation where a party has been wrongfully deprived of some right, title or benefit in property.").

Correale v. Hall, 9 S.W.3d 624, 627 (Mo. Ct. App. 1999 – E.D.) (quoting *Ellis v. Williams*, 312 S.W.2d 97, 102 (Mo. 1958)).

C. The Court should immediately dismiss the Presbytery's unsupported resulting trust claim (Count II).

In Missouri and in all other states, a resulting trust is a special type of trust that only arises when the "wrong person" somehow gains title to property that was paid for or gratuitously donated by another party. Or, as defined by the Missouri Supreme Court, "[t]he test of the right to establish a resulting trust is the true ownership of the consideration upon which the title rests." *Davis v. Roberts*, 295 S.W.2d 152, 157 (Mo. 1956) (*en banc*). Thus, as a rule, a party that did not pay for or originally provide the property at issue cannot claim a resulting trust. *See, e.g.*, *Swon v. Huddleston*, 282 S.W.2d 18, 25 (Mo. 1955) ("The cases seem universally to require that, in order to create the usual resulting trust, . . . the beneficiary or cestui must have furnished the consideration.").

Within the stated general rule, it appears that there are only two recognized types of resulting trusts applicable to real property. The first is "the general and most common type of a resulting trust," called a "purchase money resulting trust." *See Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936). As the name suggests, a purchase money resulting trust arises "where a purchase has been made and the legal estate is conveyed or transferred to one party, but the purchase price is paid by *another* party." *Id*. (emphasis added). So framed, the circumstances in which such a resulting trust can arise are severely limited: before the relevant real estate is acquired by the titleholder,[12] the alleged beneficiary (the plaintiff) must pay or promise to pay the consideration

[12] *See Dallas v. Dallas*, 670 S.W.2d 535, 539 (Mo. Ct. App. 1984 – E.D.) ("A resulting trust must arise, if at all, at the instant the deed is taken. Unless the transaction is such that the moment the title passes the trust results from the transaction itself, then no trust results. It cannot be created by subsequent occurrences."); *Ellis v. Williams*, 312 S.W.2d 97, 101 (Mo. 1958) ("The trust must arise at the time the title is acquired."); *Jones v. Anderson*, 618 S.W.2d 252, 255

for the purchase for the buyer,[13] and the amount of contributed or promised funds must be absolutely certain. *Dallas v. Dallas*, 670 S.W.2d 535, 539 (Mo. Ct. App. 1984 – E.D.) ("It is necessary and essential that the money or other consideration furnished for the conveyance shall have been, in part at least, the property of the person who claims to be a beneficiary of a resulting trust.").[14]

The second and only other type of resulting trust recognized in Missouri is what could be called an "anti-lapse resulting trust." In essence, such a trust comes into being only to prevent someone who is appointed as a trustee over certain property, and who pays nothing for the property, from somehow gaining full ownership of the property if the underlying trust fails; in such a scenario, the trust property, though still owned by the trustee, is deemed to revert into a "resulting trust" for the person that originally donated the property to the trust.[15] For instance, if a father

(Mo. Ct. App. 1981 – S.D.) ("The resulting trust must arise from the facts existing at the time title to the land was acquired; and cannot be created subsequently by the expenditure of the claimant's money in improving the property, or by oral declarations of the grantee."); *Correale v. Hall*, 9 S.W.3d 624, 632 (Mo. Ct. App. 1999 – E.D.) ("There must be evidence to support a finding that an agreement existed at the time of closing that he was to acquire, at closing, a defined and specific interest in the real estate because of his existing agreement to pay part of the consideration for the purchase."); *Davis v. Roberts*, 295 S.W.2d 152, 157 (Mo. 1956) ("Respondent's payment of some of the purchase-money notes and the purchase of others after legal title to the property was vested in his parents, under the facts shown, was insufficient to give rise to a resulting trust.").

[13] *See also Correale v. Hall*, 9 S.W.3d 624, 626 (Mo. Ct. App. 1999 – E.D.) ("A person claiming an interest based on a resulting trust must furnish, in part at least, some of the consideration for the conveyance to the title owner. . . . Subsequent payments on a note are relevant only if at the time the note was given as part of the consideration, there was an existing understanding or obligation that the claimant would pay it.").

[14] *Fulton v. Fulton*, 528 S.W.2d 146, 154 (Mo. Ct. App. 1975 - Springfield) ("The different times the monies were given and the differing amounts thereof, could be viewed as more attuned to capriciousness than to a studied steady design of regular payments intended to satisfy a known fixed obligation. A resulting trust does not arise in favor of one who makes only indefinite or general contributions to the purchase price."); *Jones v. Anderson*, 618 S.W.2d 252, 255 (Mo. Ct. App. 1981 – S.D.) ("[S]hould the amount of money contributed by the claimant be uncertain, no trust can result in his favor.").

[15] *See Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936) (identifying second category of resulting trusts as "those where there is a gift by deed or will to a donee or grantee without pecuniary consideration coming from the grantee, but the intention appears, from the instrument itself, that the legal and beneficial estates are to be separated and that the grantee or donee is either to enjoy no beneficial interest or only a part of it."); *Lynch v. Lynch*, 260 S.W.3d 834, 838 (Mo. 2008) (*en banc*) ("If the owner of property gratuitously transfers it and properly manifests an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate upon a resulting trust for the transferor or his estate.").

appoints an attorney to hold farmland for his son, but the son subsequently dies, the attorney (trustee) does not thereby become the fee-simple owner of the farmland and reap a windfall; rather, the farmland is deemed to thereafter be held by the attorney for the father (the original donor of the property), until the title to the farmland can be formally transferred back to the father.[16] By definition, an "anti-lapse resulting trust" can only be claimed by the party who originally donated the property to a trust that later terminates, and only if the recipient trustee paid nothing for the property. *See, e.g.*, *Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936) ("[T]he absence of a consideration is essential.").

Compared to the necessary elements of a "purchase money resulting trust" or an "anti-lapse resulting trust," the Presbytery's claim falls far short. Completely absent from the Presbytery's counterclaim is any allegation that it (or the PCUSA) provided the Dardenne Church with any "purchase money" funds to buy anything, ever. Similarly lacking is any suggestion that the Presbytery or PCUSA was the original donor of any of the disputed property to the Dardenne Church (or to any trust overseen by the church). Thus, the Presbytery has utterly failed to allege the most basic elements of any resulting trust in its favor, or even what kind of resulting trust it claims. *See Shelton v. Harrison*, 167 S.W. 634, 638 (Mo. Ct. App. 1914 - Springfield) ("[A] resulting trust . . . can never arise by the act or agreement of one party who both pays the consideration and takes the title in himself, nor by any act or agreement subsequent to the conveyance.").

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[16] *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS § 7, cmt. (b) (2003) ("Nature and Definition of Resulting Trusts") ("Illustration: S deeds Blackacre to T in trust to hold and administer . . . for the benefit of L for life and upon L's death to distribute the trust estate to R, if living at L's death . . . . If events develop as apparently anticipated by S, the trust will terminate on L's death with full disposition of the trust estate either to R or to issue of R. If, however, none of the designated remainder beneficiaries survives L, S's equitable reversion will have materialized so that T will then hold upon a resulting trust for S."); RESTATEMENT (THIRD) OF TRUSTS § 8, cmt. (a) (2003) ("[W]here the owner of property makes a donative transfer of it inter vivos upon an express trust that fails at the outset, the trustee holds the property on resulting trust for the transferor.").

Ignoring all relevant authority, the Presbytery appears to believe that a resulting trust is simply some kind of vague trust that can be imposed anytime "equity demands," or anytime that an express trust is *almost* created. *See* PGL's Answer and Counterclaim at 27, ¶ 61. However—at least according to the Missouri Supreme Court—a resulting trust is unequivocally not to be used as an alternative means of enforcing an otherwise-unproven or -unenforceable trust.[17] The Presbytery's vague and legally-deficient resulting trust claim must accordingly be dismissed. *See, e.g.*, *Jacobs v. Jacobs*, 272 S.W.2d 185, 188–89 (Mo. 1954) ("The applicable rule for determining the sufficiency of the petition in this case is well stated . . . as follows: 'Where a resulting trust is sought to be established and enforced, the bill, complaint, or petition must allege with distinctness and precision all the essential facts from which the trust is claimed to result, such as the fact that the purchase money, or a portion thereof, of property the title to which was taken in the name of defendant, was paid by plaintiff, or the person through whom he claims, including the amount or proportion of such payment.").

D. The Court should immediately dismiss the Presbytery's unsupported constructive trust claim (Count III).

As with its resulting trust claim, the Presbytery has seemingly sued for a constructive trust without giving any thought to the components of the claim. Importantly, a constructive trust is not truly a trust, but instead a remedy that entitles a party to reclaim specified property that has

[17] *Jankowski v. Delfert*, 201 S.W.2d 331, 335 (Mo. 1947) ("Equity does not pretend to enforce verbal agreements in the face of the statute of frauds, and the person holding the legal title to real estate will not be decreed to be a constructive trustee, unless there is something more in the transaction than the mere violation of a parol agreement."); *Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936) ("A parol agreement for a trust of lands is not transferred into a resulting trust merely for want of legal evidence to enforce it as an express trust."); *Milgram v. Jiffy Equip. Co*., 247 S.W.2d 668, 676 (Mo. 1952) ("[W]here the rights of parties litigant are clearly defined by statutes, legal principles and precedents those statutes and legal principles may not be unsettled or ignored. And not even a court of equity has any discretion as to what the law may be.").

somehow wrongfully become owned by someone else.[18] To be clear, though, only some extreme inequity can justify the imposition of a constructive trust:

> A constructive trust is an equitable device employed by courts of equity to remedy a situation where a party has been wrongfully deprived of some right, title or interest in property as a result of fraud or violation of confidence or faith reposed in another. The touchstone for imposition of a constructive trust is injustice or unfairness, which may be the product of undue influence or abuse of a confidential relationship.

Lynch v. Lynch, 260 S.W.3d 834, 837–38 (Mo. 2008) (*en banc*). In most cases, "[f]raud, either actual or constructive, is the essential element for imposition of a constructive trust." *Rutledge v. Rutledge*, 655 S.W.2d 812, 814 (Mo. Ct. App. 1983 – E.D.); *see also Milgram v. Jiffy Equip. Co*., 247 S.W.2d 668, 676 (Mo. 1952) ("Fraud is an essential element of a constructive trust.").[19] In the absence of some fraud, only an egregious "unjust enrichment" or other **underlying cause of action** can possibly justify the recognition of a constructive trust, which is technically a remedy and not a standalone "claim." *See Brown v. Brown*, 152 S.W.3d 911, 917 (Mo. Ct. App. 2005 – W.D.); *Dean v. Noble*, 477 S.W.3d 197, 206 n.10 (Mo. Ct. App. 2015 – S.D.) (citing proposition that "a constructive trust is dependent upon an underlying claim, such as fraud or breach of fiduciary duty").

In the present case, the Presbytery has not alleged or alluded to any fraud, deception, undue influence, or dishonesty on the part of the Dardenne Church. Far from identifying any societal wrong, injustice, or nefarious action, the Presbytery's constructive claim instead rests on the

[18] *See Murphy v. Olds*, 508 S.W.2d 249, 252 (Mo. Ct. App. 1974 – Kansas City) ("A constructive trust, however, is not a technical trust but a device used by a court of equity to provide a remedy in cases of actual or constructive fraud.").

[19] *Little v. Mettee*, 93 S.W.2d 1000, 1008 (Mo. 1936) ("Fraud, actual or constructive, is an essential element in the creation or existence of a constructive trust."); *Parker v. Blakeley*, 93 S.W.2d 981, 990 (Mo. 1936) ("Nothing is better settled than that, where a trust of this kind (a constructive trust) is sought to be enforced, fraud must be distinctly alleged and clearly proved.").

following allegations:

a. "Dardenne Church made commitments to the PCUSA, . . . including an express agreement in 1984 to be bound by the PCUS Constitution's property provisions.";

b. "Dardenne Church has accepted all the real and substantial benefits that the Presbytery conferred on it from these commitments, at the expense of the Presbytery.";

c. "Dardenne Church would be unjustly enriched were it permitted to accept the benefits of PCUSA membership but be excused from all obligations of such membership."; and

d. "A constructive trust imposed on all property owned and/or legally titled in Dardenne Church's name is required in equity and good conscience."

PGL's Answer and Counterclaim at 27-28, ¶¶ 65-68. For numerous reasons, these allegations are, as a matter of law, legally inadequate to state causes of action or to support a constructive trust remedy.

1. **No Constructive Trust, Reason #1:** *Even if the Dardenne Church failed to fulfill a "commitment" (which is denied), unfulfilled commitments and broken promises are not a basis to create a constructive trust."*

First, the Presbytery's constructive trust claim rests largely on the unfairness of allowing the Dardenne Church to escape non-binding "commitments" the church allegedly made in 1984. The Presbytery's apparent suggestion is that a constructive trust can be imposed if a party merely backs out of an unenforceable promise. However, Missouri law does not support the Presbytery's proposed "broken promise trust" cause of action. Where an alleged trust concerns real estate, but there is no written trust instrument, a constructive trust cannot rest on the basis of a broken promise or unfulfilled "commitment." Indeed, "[a]s to constructive trusts it is stated . . . : 'In order that the doctrine of trusts ex maleficio with respect to land may be enforced under any circumstances, **there must be more than a mere verbal promise**, however unequivocal, otherwise the Statute of Frauds would be virtually abrogated; there must be an element of positive fraud accompanying the

promise.'" *Purvis v. Hardin*, 122 S.W.2d 936, 939 (Mo. 1938) (*en banc*).[20]

Notably, there is no allegation of fraud, undue influence, or that Dardenne Church was in a "confidential relationship" with Presbytery or the PCUSA, such that those entities "surrendered their independence" and were "subservient to the dominant mind and will" of the Dardenne Church.[21] The Dardenne Church is not alleged to have deceived the Presbytery or anyone else, or to have breached any fiduciary duty. Nor does the Presbytery claim that any of the property at issue was paid for by the Presbytery or the PCUSA, or acquired using Presbytery/PCUSA funds. No, the only "improper" thing that the Dardenne Church has allegedly done is deny that a trust exists and/or to attempt to escape any trust that was not appropriately created—which the church is unequivocally free to do under Missouri law. *See Musser v. Gen. Realty Co*., 313 S.W.2d 5, 9 (Mo. 1958) ("[T]he mere refusal of a trustee to execute an expressed trust, or the denial of the existence of the trust by him, does not make a case for raising a constructive trust.").[22] The

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[20] *Jankowski v. Delfert*, 201 S.W.2d 331, 335 (Mo. 1947) ("Equity does not pretend to enforce verbal agreements in the face of the statute of frauds, and the person holding the legal title to real estate will not be decreed to be a constructive trustee, unless there is something more in the transaction than the mere violation of a parol agreement."); *Schultz v. Curson*, 421 S.W.2d 205, 213 (Mo. 1967) ("The 'simple violation of a parol contract' does not give rise to a constructive trust 'for, if such was the law, the statute of frauds would be virtually repealed.'"); *Etheridge v. Hammer*, 450 S.W.2d 207, 210 (Mo. 1970) (same); *Long v. Conrad*, 42 S.W.2d 357, 361 (Mo. 1931) ("As we have already seen, [constructive] trusts do not rest in contract, but in fraud, so that, should we admit that the statement of the petition that the defendant gave plaintiff [a promise], was sufficient, if true, to charge an agreement to that effect, the plaintiff would have taken only the first feeble step in the case he is trying to make, and . . . the statute of frauds, would absolutely bar his further progress."); *Gates Hotel Co. v. C. R. H. Davis Real Est. Co*., 52 S.W.2d 1011, 1013 (1932) (same); *Neal v. Sparks*, 773 S.W.2d 481, 487 (Mo. Ct. App. 1989 – W.D.) ("This was an insufficient factual ground to support imposition of a constructive trust even if it be assumed, as Neal's argument claims, that Girdner breached his oral agreement."); Jones v. Anderson, 618 S.W.2d 252, 255 (Mo. Ct. App. 1981 – S.D.) ("If the transaction is an express oral agreement providing for a conveyance of land, it becomes at once an express trust, and not a resulting trust; it cannot be established by parol evidence due to the prohibition of the Statute of Frauds.").

[21] *Kutz v. Cargill, Inc*., 793 S.W.2d 622, 625 (Mo. Ct. App. 1990 – E.D.) (listing elements of confidential relationship, including that "there must be an automatic or habitual manipulation of the actions of the subservient party by the dominant party.").

[22] The same statement appears verbatim in numerous Missouri Supreme Court decisions. *See, e.g*., *Gates Hotel Co. v. C. R. H. Davis Real Est. Co*., 52 S.W.2d 1011, 1013 (Mo. 1932); *Parker v. Blakeley*, 93 S.W.2d 981, 990 (Mo. 1936); *Strype v. Lewis*, 180 S.W.2d 688, 691 (Mo. 1944); *Jankowski v. Delfert*, 201 S.W.2d 331, 335 (Mo. 1947).

Presbytery's "unfairness" claim is particularly absurd in the present case, where the Presbytery's own counterclaim concedes that the Dardenne Church has vocally and historically denied that the Presbytery had any relevant rights.[23] This is thus—even according to the governing lawsuit—not a case where the plaintiff lost property because it was "tricked," deceived, or fraudulently lulled into some false belief. The Presbytery's "unfulfilled commitment" allegation is thus not enough to survive a motion to dismiss.

2. **No Constructive Trust, Reason #2:** *The Presbytery cannot pursue a constructive trust or unjust enrichment remedy on the basis of having conferred upon the Dardenne Church some unspecified "benefit."*

As for any other extreme inequity that might justify the imposition of a constructive trust, the Presbytery is left with one vague allegation: that the church received "real and substantial benefits that the Presbytery conferred on it at the expense of the Presbytery." PGL Answer and Counterclaim at 28, ¶ 66. While any reader is naturally left wondering what "benefits" the Presbytery has conferred on the Dardenne Church, the answer is nowhere to be found. Importantly, the Presbytery does *not* allege that it ever provided any money or any asset at issue to the Dardenne Church; quite the opposite, according to the Presbytery's own pleading, **it has been unable to find any evidence that the Presbytery or PCUSA ever loaned, granted, or transferred a single dollar to the Dardenne Church**.[24] Similarly, the Presbytery has no "knowledge or information"

[23] *See* PGL Answer and Counterclaim at 21-22, 26, ¶¶ 29, 31, 51, 56 ("[T]he 1990 and 1998 deeds [of the church] state that the Trustees of Dardenne Presbyterian Church and the Real Estate shall in no way or manner by subject to the control, interference or meddling of any Presbytery Synod, General Assembly or other ecclesiastical body."); ("[T]he [church's] 1870 deed states that the property . . . 'shall in no way or manner be subject to the control, interference or meddling of any Presbytery, Synod, General Assembly, or other ecclesiastical body.'"); ("A deed for the remaining five other parcels acquired in 1975 or before, dated June 8, 1982, states that the property conveyed '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.'").

[24] *See* Dardenne Church's Complaint at ¶ 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. Notably, there is no evidence that, at any point in Dardenne Church's 204-year history, any denomination or presbytery ever provided any funds or grants to the church. The Dardenne Church has never borrowed any money from any denomination or presbytery, nor

to refute the allegation that the Dardenne Church alone paid for all of its own property. *See* PGL Answer and Counterclaim at 5, ¶ 21. The Presbytery's vague claim to have nevertheless "benefitted" the Dardenne Church in some unspecified way is thus legally meaningless and not entitled to any weight.

3. **No Constructive Trust, Reason #3:** *A constructive trust and/or unjust enrichment claim cannot be asserted against property that the Dardenne Church indisputably paid for with its own money.*

The Presbytery has lastly suggested that this may be a case of "unjust enrichment," but that conclusory statement also cannot survive any meaningful analysis. As stated in a host of cases, "[u]njust enrichment occurs 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. Ct. App. 1992 – E.D.).[25] Consequently, by definition, a plaintiff cannot state an unjust enrichment claim against any party that actually paid for the property at issue. Or, in the words of binding case law, "[w]here the owner of the property has paid [for the disputed item] there is nothing unjust about the owner's enrichment. Payment or nonpayment by the owner determines the most important element of a claim for quantum meruit—unjust enrichment." *Breckenridge Material Co. v. Allied Home Corp*., 950 S.W.2d 340, 341 (Mo. Ct. App. 1997 – E.D.). Unjust enrichment applies to a party that receives "something for nothing," not to a church that paid for its own property, with its own money, over the course of 200 years. *See, e.g.*,

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has any denomination or presbytery ever guaranteed the Dardenne Church's debt."); PGL Answer and Counterclaim at 5, ¶ 21 ("The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Petition.").

[25] *See, e.g., Webcon Grp., Inc. v. S.M. Properties, L.P.*, 1 S.W.3d 538, 542 (Mo. Ct. App. 1999 – E.D.) ("Unjust enrichment occurs when a person retains the benefit and enjoys the benefit conferred upon him without paying its reasonable value."); *Title Partners Agency, LLC v. Devisees of Last Will & Testament of M. Sharon Dorsey*, 334 S.W.3d 584, 587 (Mo. Ct. App. 2011 – E.D.) (same); *Archway Kitchen & Bath, Inc. v. Lands Dev. Corp*., 838 S.W.2d 13, 14 (Mo. Ct. App. 1992 – E.D.) (same).

Landmark Sys., Inc. v. Delmar Redevelopment Corp., 900 S.W.2d 258, 262 (Mo. Ct. App. 1995 – E.D.) ("Taco Bell is not unjustly enriched because it has paid for what it has received. . . . [E]quity will not require the owner of property to pay twice."). Indeed, a Missouri plaintiff **legally fails to plead** an unjust enrichment claim if he does not specifically allege that the relevant property was received by the defendant for free.[26] The Presbytery's counterclaim in this case contains no such allegation—and even concedes that it cannot support any such allegation.[27] As a matter of law, the presbytery has thus failed to state claim for unjust enrichment (or any remedy that hinges upon unjust enrichment).

4. **No Constructive Trust, Reason #4:** *A constructive trust and/or unjust enrichment entitles a plaintiff to reclaim only the particular property that a defendant received for free, not all of the other assets and property that a defendant owns.*

If the Presbytery's conclusory unjust enrichment/constructive trust allegation can somehow survive the above critical defects, it faces another fatal problem: unjust enrichment (and a constructive trust) entitles a plaintiff to reclaim a specific asset accidentally transferred to a defendant; it does not also allow the plaintiff to seize every other asset, dollar, or item in the

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[26] *See Green Quarries, Inc. v. Raasch*, 676 S.W.2d 261, 266 (Mo. Ct. App. 1984 – W.D.) ("Plaintiff's petition fails to state a claim based on unjust enrichment because it fails to allege that the owners have not paid Anchor and the trustee in bankruptcy."); *Archway Kitchen & Bath, Inc. v. Lands Dev. Corp*., 838 S.W.2d 13, 14 (Mo. Ct. App. 1992 – E.D.) ("We are cognizant that non-payment by the owner . . . must be pleaded by the [plaintiff] in order to state a claim based on unjust enrichment."); *Breckenridge Material Co. v. Allied Home Corp*., 950 S.W.2d 340, 341 (Mo. Ct. App. 1997 – E.D.) ("Non-payment by the owner must be pleaded and proved by the [plaintiff] in order to establish a cause of action for quantum meruit."); *Almat Builders & Remodeling, Inc. v. Midwest Lodging, LLC*, 615 S.W.3d 70, 82 (Mo. Ct. App. 2020 – E.D.) ("Such allegations are required to protect the property owner from being required to pay for the same benefit twice.").

[27] *See* Dardenne Church's Complaint at ¶ 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. Notably, there is no evidence that, at any point in Dardenne Church's 204-year history, any denomination or presbytery ever provided any funds or grants to the church. The Dardenne Church has never borrowed any money from any denomination or presbytery, nor has any denomination or presbytery ever guaranteed the Dardenne Church's debt."); PGL Answer and Counterclaim at 5, ¶ 21 ("The Presbytery is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Petition.").

defendant's possession. In this vein, Missouri courts have explained:

> The elements of unjust enrichment are: (1) **a benefit conferred** upon the defendant by the plaintiff; (2) appreciation of such benefit; and (3) acceptance and **retention of the benefit under circumstances that without payment would be inequitable**. . . . The essence of unjust enrichment is that the defendant has received **a benefit** that it would inequitable for him **to retain**. . . . The measure of damages for an unjust enrichment claim is based upon the **value of the benefit received** by a defendant.

Hoffmeister v. Kranawetter, 407 S.W.3d 59, 61–62 (Mo. Ct. App. 2013 – E.D.) (citations and quotations omitted) (bold added). In simpler terms, a party that has been unjustly enriched by receiving a benefit from the plaintiff must only return that benefit, or an equivalent amount, to the plaintiff. *See* RESTATEMENT (FIRST) OF RESTITUTION § 1, cmt. (a) ("Unjust Enrichment") ("A person obtains restitution when he is restored to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money."); *Patrick V. Koepke Const., Inc. v. Woodsage Const. Co.*, 844 S.W.2d 508, 515 (Mo. Ct. App. 1992 – E.D.) ("Unjust enrichment occurs when a person retains and enjoys the benefit conferred upon him without paying its reasonable value.").

Through the lens of the recited unjust enrichment law, neither logic nor precedent supports the Presbytery's novel position: that, because the Dardenne Church received some "real and substantial [non-monetary] benefits" from the Presbytery, the church must now give the Presbytery control of all assets, land, buildings, accounts, and other items in the church's possession, most of which were acquired before the Presbytery ever existed. *See* PGL Answer and Counterclaim at 28, ¶¶ 66-68. The Presbytery's effort to literally take everything from the Dardenne Church is objectively unfair, especially since the Presbytery cannot even identify any "benefits" that it has allegedly provided to the church. This omission is significant, as a constructive trust is an asset-specific unjust enrichment remedy that can only attach to the specific asset that a defendant

improperly received from the complaining plaintiff. For this reason alone, the Court need look no further than the lack of any specified "benefit" allegation to dismiss the Presbytery's constructive trust claim:

> [T]he very essence of the remedy of a constructive trust is the identification of specific property or funds as the res upon which the trust may be attached. . . . [A] plaintiff wishing to assert a constructive trust cannot satisfy the requirement of identifying a specific res by merely naming . . . "funds and/or assets." The plaintiff must name discrete funds or assets.

Commonwealth Land Title Ins. Co. v. Miceli, 480 S.W.3d 354, 368 (Mo. Ct. App. 2015 – E.D.) (citations omitted) (affirming dismissal of constructive trust count); *see also Taylor-McDonald v. Taylor*, 245 S.W.3d 867, 882 (Mo. Ct. App. 2008 – S.D.) ("The constructive trust can only be imposed upon the specifically identified property . . . into which wrongfully appropriated funds were traced.").

V. CONCLUSION

At the appropriate time, the Court will need to determine whether the Dardenne Church intentionally created an "express trust" by adopting a binding trust instrument. However, this is simply not a case that concerns any "resulting trust," fraud, "constructive trust," or unjust enrichment, and the Presbytery's counterclaim does not alter that fact. Moreover, the shortcomings in the Presbytery's claim are not just evidentiary hurdles; they are fatal *now*, and they require that the Presbytery's resulting trust and constructive trust counts be immediately dismissed. *See, e.g.*, *Jacobs*, 272 S.W.2d at 188–89 (Mo. 1954) ("Where a resulting trust is sought to be established and enforced, the bill, complaint, or petition must allege with distinctness and precision all the essential facts from which the trust is claimed to result, such as the fact that the purchase money, or a portion thereof, of property the title to which was taken in the name of defendant, was paid by plaintiff."); *Commonwealth*, 480 S.W.3d at 368 (Mo. Ct. App. 2015 – E.D.) ("The plaintiff must

name discrete funds or assets. Accordingly, Commonwealth's petition fails to state a claim for a constructive trust, and the trial court did not err by dismissing Count VIII."); *Archway Kitchen*, 838 S.W.2d 13, 14 (Mo. Ct. App. 1992 – E.D.) ("[N]on-payment by the owner . . . must be pleaded by the [plaintiff] in order to state a claim based on unjust enrichment."); *Mays-Maune & Assocs., Inc. v. Werner Bros*., 139 S.W.3d 201, 205 (Mo. Ct. App. 2004 – E.D.) ("[T]he plaintiff must plead non-payment by the defendant to anyone else for the benefit in order to state a claim for unjust enrichment."); *John R. Boyce Fam. Tr. v. Snyder*, 128 S.W.3d 630, 639 (Mo. Ct. App. 2004 – E.D.) ("[I]n the absence of any allegation of the existence of specific property or fund constituting the res upon which the trust might be imposed, their petition failed to invoke equity jurisdiction."); *Siebert v. Peoples Bank*, 632 S.W.3d 461, 471 (Mo. Ct. App. 2021 – S.D.) ("Because Count 4 fails to plead facts showing that [plaintiff] conferred a benefit on the [defendant], the unjust enrichment theory of recovery was properly dismissed."); *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. 2009) (en banc) ("[T]to allow a suit to proceed, without meeting the most minimal level of fact pleading, is a waste to the system and an unjust expense to the parties that cannot be repaired on appeal.").

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

1. GRANT this "Motion to Dismiss Counterclaim Counts II and III for Failure to State a Claim";

2. Dismiss, with prejudice, the Presbytery's claim that the Dardenne Church's property is subject to a resulting trust (counterclaim Count II);

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

4. Dismiss, with prejudice, the Presbytery's claim that the Dardenne Church is otherwise liable for unjust enrichment.

FILED AND SERVED on **January 29, 2024**.

Respectfully submitted,

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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 **29th** day of **January** 2024:

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