

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

DARDENNE PRESBYTERIAN CHURCH,)
INC.,)

CASE NO. 2311-CC01028

Plaintiff)

DIVISION NO. 4

PRESBYTERY OF GIDDINGS-LOVEJOY,)
INC. and PRESBYTERIAN CHURCH)
(U.S.A.), A CORPORATION,)

JUDGE: Hon. Michael J. Fagras

Defendant)

**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 “Motion to Dismiss Counterclaim Counts II and III for Failure to State a Claim,” further representing as follows:

1.

Dardenne Presbyterian Church, Inc. (“Dardenne Church” or “the church”) is a member of a national association of affiliated Presbyterian churches, the Presbyterian Church (U.S.A.) (the “PCUSA”). 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”).

2.

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 requested a judicial declaration confirming that the church’s property was not subject to any type

of “trust” in favor of the PCUSA or Presbytery.

3.

The Presbytery recently responded to the Dardenne Church’s declaratory judgment petition by categorically opposing the church’s request and by countersuing the church. In various ways, the Presbytery seeks to be awarded ownership and/or full control of the Dardenne Church’s property.

4.

In addition to claiming to be the beneficiary of an “express trust” with respect to the Dardenne Church’s property, the Presbytery has also alleged: (a) that all of the church’s property is subject to a “**resulting trust**” in favor of the PCUSA/Presbytery, and/or (b) that all of the church’s property is subject to a “**constructive trust**” in favor of the PCUSA/Presbyter.

5.

The Presbytery has failed to plead appropriate supporting facts in order to pursue its resulting trust and constructive trust claims. Indeed, in several different ways, the Presbytery does not even allege the requisite facts or elements in a conclusory, general, or passing fashion.

6.

As set forth in the accompanying memorandum in support, the Presbytery has simply failed to adequately state or plead a resulting trust, constructive trust, or unjust enrichment claim.

7.

Consequently, the Dardenne Church now requests that the Presbytery’s corresponding counts (Count II and Count III) and claims (resulting trust, constructive trust, unjust enrichment) be dismissed for failure to state a claim upon which relief can be granted.

WHEREFORE, based upon the accompanying 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,

MCCARTHY, LEONARD & KAEMMERER, L.C.

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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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/s/ Robert L. Striler

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