

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 )	

**DARDENNE PRESBYTERIAN CHURCH, INC.’S ANSWER AND REPLY  
TO COUNTERCLAIM OF PRESBYTERY OF GIDDINGS-LOVEJOY,  
INC.**

Dardenne Presbyterian Church, Inc. (the “Dardenne Church” or the “church”) appearing now as a counterclaim-defendant, respectfully submits this Answer and Reply to the Counterclaim filed by Defendant, Presbytery of Giddings-Lovejoy, Inc. (the “Presbytery”), further responding to the corresponding numbered paragraphs of that Counterclaim as follows:

1. The allegation that the Presbytery is only governed by representatives of local congregations is denied. The allegation that the Presbytery necessarily has any “rights with respect” to local church congregations is denied. All other allegations are admitted.
2. The allegation that the PCUSA is “hierarchical” is denied. All other allegations are admitted.
3. Admitted.
4. To the extent that this paragraph suggests in any way that the membership of Dardenne Church is in any way not determined solely by the church and/or not exclusively governed by the church’s duly-adopted corporate governing documents, such allegation is denied.

All other allegations are admitted.

5. The allegation that the Dardenne Church maintains facilities in St. Charles County for the worship and ministry of its congregation is admitted. All other allegations are denied.

6. It is admitted that the PCUSA is the present corporate form and name of a denomination once known as the UPCUSA. All other allegations are denied.

7. Admitted.

8. Admitted.

9. It is admitted that the Dardenne Church was, for a period of time that ended in 1983, a church affiliated with the PCUS denomination. All other allegations are denied.

10. Denied. No relevant rights of the PCUS were legally assigned to the PCUSA denomination, whether by written deed or pursuant to a legitimate, legally-cognizable corporate merger. It is admitted that the present PCUSA denomination is the current iteration of what was formerly known as the UPCUSA denomination. All other allegations are denied.

11. Denied. According to the official PCUSA rules then in place, a simple majority vote (in favor of leaving the PCUSA) was supposedly not an adequate basis to exit the denomination.

12. Denied. The Dardenne Church has indisputably never “formally elected to stay within the PCUSA.”

13. Denied. The relevant facts concerning the referenced “exemption,” and the effect of invoking that exemption, are set forth in the Dardenne Church’s original petition, which is hereby incorporated by reference.

14. Admitted, based upon the assumption that the referenced document is accurately quoted.

15. Denied. The relevant facts concerning the PCUS's "trust clause" and its effect are set forth in the Dardenne Church's original petition, which is hereby incorporated by reference.

16. It is admitted that, on January 15, 1984, the Dardenne Church voted to reject any property provisions of the PCUSA constitution. All other allegations are denied.

17. It is denied that the Dardenne Church ever agreed to bind itself to the PCUS Constitution. The remaining allegations are admitted, based upon the assumption that the referenced document is accurately quoted.

18. It is admitted that, on January 15, 1984, the Dardenne Church voted to reject any property provisions of the PCUSA constitution, and to notify the Presbytery accordingly. All other allegations are denied.

19. Admitted, based upon the assumption that the referenced document is accurately quoted.

20. Denied.

21. Denied.

22. Denied.

23. It is admitted that past iterations of the Dardenne Church's corporate bylaws contained the quoted statements or similar statements thereto. It is denied that these statements were intended to, or are sufficient to, constitute multi-million-dollar trust conveyances under Missouri law. All other allegations are denied.

24. It is admitted that the Dardenne Church recently and properly amended its corporate bylaws to remove any references to the PCUSA or Book of Order. All other allegations are denied.

25. Admitted.

26. Admitted.

- 27. Admitted.
- 28. It is admitted that the Dardenne Church acquired two parcels of real estate in 1990 and 1998, respectively. All other allegations are denied.
- 29. Admitted, based upon the assumption that the referenced document is accurately quoted.
- 30. Denied.
- 31. Admitted, based upon the assumption that the referenced document is accurately quoted.
- 32. Admitted, based upon the assumption that the referenced document is accurately quoted, although any legal characterizations or conclusions are denied.
- 33. Denied.
- 34. It is admitted that the term "Session" is widely understood as referring to the membership of the locally-elected governing body of presbyterian churches, and what in other churches or corporations might be called a "church council," "Board of Trustees," or "Board of Directors." While the quoted provisions are assumed to be accurate, all other allegations are denied.
- 35. Denied.
- 36. While it is assumed that the quoted definition of "presbytery" is accurately taken from the referenced document, all other allegations are denied.
- 37. It is admitted that the Presbytery *claims* the authority and legal right to effect a hostile corporate takeover of local PCUSA churches, and that the referenced "administrative commission" and "original jurisdiction" mechanisms are euphemisms for trying to accomplish such takeovers under the guise of spiritual authority. All other allegations are denied.

38. Denied.

39. It is admitted that the Presbytery *claims* to have given itself permission to implement a hostile and illegal takeover of the Dardenne Church's governing corporate body. All other allegations are denied, particularly the notion that the Presbytery's self-awarded rights are valid or even remotely comply with established Missouri law.

40. Admitted, although it is expressly denied that the referenced "authority" exists in any legal sense.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Admitted, based upon the assumption that the referenced statute is accurately quoted.

46. Admitted, based upon the assumption that the referenced statute is accurately quoted.

47. Admitted, subject to the clarification that only a two-third supermajority of the members of a Missouri non-profit corporation can create a trust over substantially all assets of the corporation.

48. Denied.

49. Denied.

50. Denied.

51. Admitted, based upon the assumption that the referenced document is accurately quoted.

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52. Denied.

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53. Admitted.

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54. Denied.

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quoted.

56. Admitted, based upon the assumption that the referenced document is accurately

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57. Denied.

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58. Admitted.

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67. Denied.

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68. Denied.

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69. Denied.

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70. Denied.

71. It is admitted that, on January 15, 1984, the Dardenne Church voted to reject any

property provisions of the PCUSA constitution, and to notify the Presbytery accordingly. All other

allegations are denied.

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72. Denied.

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73. Denied.

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74. Denied.

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75. Denied.

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76. Denied.

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77. Denied.

78. Admitted, based upon the assumption that the referenced statute is accurately quoted.

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79. Admitted, based upon the assumption that the referenced document is accurately quoted.

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80. Denied.

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81. Denied.

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82. Denied.

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83. Denied.

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84. Admitted, based upon the assumption that the referenced statute is accurately quoted.

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85. Admitted.

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86. Denied.

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In further response to the Presbytery's Counterclaim, the Dardenne Church additionally

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87. **Disclaimer:** Any and all other allegations appearing in the Presbytery's Counterclaim, unless explicitly admitted herein, are denied. Any admission or implicit concession

herein that is inconsistent with any other statement or express denial herein is inadvertent, and should be construed as a denial.

88. **Incorporation of Complaint:** The Dardenne Church has previously filed a Petition for Declaratory Judgment and accompanying application for injunctive relief in this matter. All allegations, positions, and authority included in that pleading are incorporated by reference herein, and any statement or allegation included in that pleading shall prevail over any inconsistent admission made or implied herein.

89. **Affirmative Defense I:** The Presbytery's express trust claim is invalid because there is no evidence that the Dardenne Church ever intended to create a trust in favor of the Presbytery or the PCUSA.

90. **Affirmative Defense II:** The Presbytery's express trust claim is invalid because the alleged trust encompasses real estate, but there is no corresponding written trust instrument as required by the Statute of Frauds.

91. **Affirmative Defense III:** To the extent that the Presbytery's express trust claim rests upon the January 1984 "exemption resolution" approved by the Dardenne Church and the corresponding alleged adoption of the PCUS property trust provisions, the Presbytery's position is unsupported, as the stated intent of the resolution is clearly to escape any PCUSA property obligations or rules.

92. **Affirmative Defense IV:** To the extent that the Presbytery's express trust claim rests upon the January 1984 "exemption resolution" approved by the Dardenne Church and the corresponding alleged adoption of the PCUS property trust provisions, the Presbytery's position is unsupported, as the stated intent of the resolution is to ensure that the church could continue to freely buy, sell, and mortgage its property without any PCUSA interference. The Presbytery's

suggestion that, while acting to preserve its property rights and autonomy, the Dardenne Church also forever gave up control of all property—to the party it was avoiding—is absurd.

93. **Affirmative Defense V:** To the extent that any trust language could be deemed to be incorporated into the Dardenne Church’s January 1984 “exemption resolution” or any past corporate bylaw, the document contains an obvious mistake or error and/or should be reformed.

94. **Affirmative Defense VI:** To the extent that any trust language could be deemed to be incorporated into the Dardenne Church’s January 1984 “exemption resolution” or any past corporate bylaw, the document would still be insufficient to constitute a trust instrument, as there is no reference whatsoever to any particular property as is required to establish a trust.

95. **Affirmative Defense VII:** To the extent that any trust language could be deemed to be incorporated into the Dardenne Church’s January 1984 “exemption resolution” or any past corporate bylaw, the document would still be insufficient to constitute a trust instrument, as there is no **legal** description of the real property allegedly conveyed. *See, e.g.*, MO. STAT. § 59.330 (“All deeds, mortgages, conveyances, [and] deeds of trust, must contain a legal description of the lands affected.”); *First Nat. Bank of Cape Girardeau v. Socony Mobil Oil Co.*, 495 S.W.2d 424, 434 (Mo. 1973) (“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.”); *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 description. There has been no conveyance.”).

96. **Affirmative Defense VIII:** To the extent that any trust language could be deemed to be incorporated into the Dardenne Church’s January 1984 “exemption resolution,” the document

would still be insufficient to constitute a trust in favor of the PCUSA, as the alleged trust language is only in favor of the PCUS. However, the PCUS never transferred or conveyed any property rights—at least not any interest in the Dardenne Church’s property—to the PCUSA. Nor was any PCUS corporate entity duly merged, in any legal sense, into the UPCUSA corporate entity that became the PCUSA.

97. **Affirmative Defense IX:** To the extent that the Presbytery’s express trust claim rests upon the January 1984 “exemption resolution” approved by the Dardenne Church and the corresponding alleged adoption of the PCUS property trust provisions, the Presbytery’s position is unsupported, as the PCUS’s trust clause was not legally binding (according to the PCUS).

98. **Affirmative Defense X:** To the extent that the Presbytery’s express trust claim rests upon the January 1984 “exemption resolution” approved by the Dardenne Church and the corresponding alleged adoption of the PCUS property trust provisions, and/or any other corporate resolution, the relevant resolution was not explicitly approved by two-thirds of the Dardenne Church’s members, making the resolution ineffective to create a trust over substantially all corporate assets.

99. **Affirmative Defense XI:** To the extent that the Presbytery’s express trust claim rests upon the January 1984 “exemption resolution” approved by the Dardenne Church and the corresponding alleged adoption of the PCUS property trust provisions, the church’s approval of the resolution was based upon misrepresentations, contradictory assurances, and false inducements made by the PCUS denomination (and later ratified by the PCUSA)—particularly, that the relevant trust language did not alter anything, did not affect property rights, and did not deprive church congregations of the beneficial interest in church assets. Any inconsistent claim now is precluded by estoppel (equitable or otherwise), waiver, forfeiture, unclean hands, in pari delicto, and any

other doctrine that precludes a party from benefitting from false statements or bad acts.

100. **Affirmative Defense XII:** Since the 1820's, and again since 1984, the Dardenne Church invested in and improved its real property, and continued to amass personal property, on the reasonable assumption that it had exclusive title to its property. In light of the conduct and silence of the Presbytery, and its failure to take any action in response to the Dardenne Church's repeated declarations that its property was not subject to any trust, its present claim to exclusively own and control the church's property is barred by the doctrines of waiver, laches, acquiescence, and estoppel.

101. **Affirmative Defense XIII:** In the same vein, the Presbytery cannot rely on vague and passing references to the Book of Order (particularly through 2012) when, prior to 2012, the same Book of Order disavowed any purported civil effects. *See Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 195 n.3 (Mo. Ct. App. 2012) (“The constitution of the national church also states that ‘governing bodies of the church . . . have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction.’”).

102. **Affirmative Defense XIV:** Under neutral principles of law, the Dardenne Church has never contractually or knowingly consented to the PCUSA's trust claim. In the absence of a mutual assent to be legally bound and an exchange of consideration, there can be no contract-based claim. To find that the Dardenne Church is subject to a trust provision that it never consented to or adopted, and which provides no substantive benefit or consideration to the church—on the mere basis of a religious affiliation would constitute an impermissible and unconstitutional disparate application of law on the basis of religious doctrine or identity.

103. **Affirmative Defense XV:** To the extent that the Presbytery's express trust claim rests upon the January 1984 “exemption resolution” approved by the Dardenne Church and the

corresponding alleged adoption of the PCUS property trust provision, the claimed trust by law cannot extend to any **future** unspecified property not yet acquired by the church.

104. **Affirmative Defense XVI:** To the extent that beneficial title to the Dardenne Church's real estate has somehow, despite the stated intent of the Dardenne Church, become held by the Presbytery or PCUSA, neither of which paid for the property, such title should truly be held by the Dardenne Church, as the Presbytery and/or PCUSA would otherwise be unjustly enriched. In the event of such a wrongful vesting of real estate title in the Presbytery and/or PCUSA, and if the other affirmative non-equitable defenses stated herein are not applicable, then the Dardenne Church has no other adequate remedies at law.

105. **Affirmative Defense XVII:** The PCUSA (purporting to "stand in the shoes of" the PCUS) is the explicit beneficiary of the claimed trust language that the Presbytery relies upon. However, the PCUSA has disclaimed that interest.

106. **Affirmative Defense XVIII:** The PCUSA (purporting to "stand in the shoes of" the PCUS) is the explicit beneficiary of the claimed trust language that the Presbytery relies upon. To the extent that the PCUSA corporate entity is not the designated beneficiary, the referenced "PCUSA" beneficiary is vague, not sufficiently identifiable, and/or is too unclear to be the beneficiary of an enforceable trust.

107. **Affirmative Defense XIX:** The PCUSA (purporting to "stand in the shoes of" the PCUS) is the explicit beneficiary of the claimed trust language that the Presbytery relies upon. Absent some explicit chain of title or authorization that has not been alleged, the Presbytery has no standing to claim or enforce trust interests on behalf of the PCUSA, a separate and distinct party.

108. **Affirmative Defense XX:** Any trust that the Dardenne Church arguably ever

created in favor of the PCUSA or Presbytery was duly, expressly, and fully revoked by a super-majority of the church's members on or about October 22, 2023.

109. **Affirmative Defense XXI:** The underlying deed to each parcel of real estate owned by the Dardenne Church unambiguously disclaims any trust in favor of any presbytery or denomination, and has served as formal notice to the Presbytery of the church's claim to hold full, fee-simple title to its various properties. Moreover, the Presbytery has at all relevant times had possession of the resolutions reflecting the Dardenne Church's effort to shield themselves from any PCUSA trust. Thus, any beneficial interest that might ever have been conveyed to the Presbytery or the PCUSA has re-vested in the Dardenne Church pursuant to adverse possession. Additionally and/or alternatively, the Presbytery's various other claims are barred by the applicable statute of limitations.

110. **Affirmative Defense XXII:** The underlying deed to each parcel of real estate owned by the Dardenne Church precludes the property from in any way being interfered with or controlled by any presbytery or denomination (at least while still owned by the Dardenne Church). These restraints are valid deed restrictions, covenants, or obligations that negate, void, or preclude any claimed trust in favor of the Presbytery or PCUSA.

111. **Affirmative Defense XXIII:** With respect to five of the parcels of real estate owned by the Dardenne Church, any recognition of any trust interest in favor of the Presbytery or PCUSA results in the fee-simple ownership of the property reverting to the occupying Dardenne Church's governing body, which is represented as the plaintiff in this matter, not the Presbytery or the PCUSA.

112. **Affirmative Defense XXIV:** To the extent that the Presbytery's arguments or claims hinge in any way on the contention that the Dardenne Church's current bylaws were

improperly adopted, the Presbytery has no standing, right, or ability to contest the contents or manner of adoption of the Dardenne Church's corporate documents.

113. **Affirmative Defense XXV:** The Presbytery cannot prevail on its implied trust claims because it cannot remotely satisfy the heightened evidentiary standard applicable to such claims. Nor can the Presbytery satisfy the still-heightened standard applicable to any express trust claim, *see Gashland Presbyterian*, 364 S.W.3d at 588, or the “unequivocal” standard required to impose a trust on an alleged donor who retained possession of the relevant property. *See Rouner v. Wise*, 446 S.W.3d 242, 251 (Mo. 2014).

114. **Affirmative Defense XXVI:** The Presbytery cannot prevail on its unjust enrichment or “benefit reclamation” claim because it and the PCUSA provided any relevant benefits to the Dardenne Church voluntarily, with full knowledge of all relevant facts (the voluntary payment doctrine), and without seeking any agreement or consideration in return.

115. **Affirmative Defense XXVII:** The Presbytery cannot prevail on its equitable claims—including but not limited to any claim of resulting or constructive trust—because it has not properly invoked the Court's equity jurisdiction and has not alleged that the Presbytery has no other adequate remedy at law.

116. **Affirmative Defense XXVIII:** The Presbytery cannot prevail on its constructive trust claim, because a constructive trust is not a claim as the Presbytery has framed it; rather, a constructive trust is simply a special remedy that is available to a plaintiff that adequately pleads and proves some underlying cause of action, usually fraud or unjust enrichment. Because the Presbytery has not adequately asserted any corresponding claim, it cannot request a constructive trust. *See Dean v. Noble*, 477 S.W.3d 197, 206 n.10 (Mo. Ct. App. 2015 – S.D.) (citing another case for proposition that “a constructive trust is dependent upon an underlying claim, such as fraud

or breach of fiduciary duty”).

117. **Affirmative Defense XXIX:** At all relevant times and during all relevant time periods, the Dardenne Church has provided financial support and material assets to the Presbytery (far in excess of \$100,000) without receiving meaningful or equivalent benefits in return. Any “benefits” allegedly provided by the Presbytery or the PCUSA are thus either irrelevant or easily outweighed by the contributions made by the Dardenne Church, which can be used set-off any possible obligation now claimed by the Presbytery, including but not limited to attorneys’ fees.

118. **Affirmative Defense XXX:** In the event that the Dardenne Church is required to surrender any assets or interest, particularly in any real estate, to the Presbytery or PCUSA, the church is entitled to reasonable and equitable compensation for the investments made and value added in good faith to the relevant property at the church’s expense. For instance, if a 1984 resolution is somehow found to have vested the Presbytery with a trust interest on existing assets at that time, (a) the Dardenne Church is still entitled to the reasonable value of the improvements it made to any relevant real estate since then, and (b) the Dardenne Church is entitled to retain all assets, money, and funds that it has acquired since then.

119. **Affirmative Defense XXXI:** The Dardenne Church has filed or is contemporaneously filing a Motion to Dismiss Counterclaim Counts II and III for Failure to State a Claim, together with a supporting memorandum. To the extent any arguments, positions, and/or authority included in that filing support or constitute an affirmative defense to the claims made by Presbytery, such allegations and positions are expressly re-incorporated herein by reference.

120. **Affirmative Defense XXXII:** The Dardenne Church has previously filed a Petition for Declaratory Judgment and accompanying application for injunctive relief in this matter. To the extent any allegations, positions, and/or authority included in that pleading support or constitute

an affirmative defense to the claims made by Presbytery, such allegations and positions are expressly re-incorporated herein by reference.

121. **Attorneys' Fees:** As the Presbytery argues, this dispute does consider the administration of a trust, with the Presbytery pursuing various claims to enforce a trust that is legally invalid. Perhaps more importantly, the Presbytery is acting to interfere with the administration of the actual trust at issue, which is the corporate members' beneficial interest in the assets held by the non-profit Dardenne Church corporation. This local-membership trust is expressly acknowledged in the PCUS's statements, the Dardenne Church's deeds, and in the Presbytery's own counterclaim. *See* PGL Answer and Counterclaim at 16, ¶ 4 ("Dardenne Church is simply the legal embodiment, for civil purposes, of the religious congregation that worships at the facility, responsible for holding and maintaining property on behalf of the congregation."). Particularly given the extreme lack of support for the Presbytery's position, the Dardenne Church is entitled to its reasonable attorneys' fees for being forced to litigate the scope and terms of the relevant trust. *See* Mo. R.S. § 456.10-1004 ("In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party . . ."); *Rouner v. Wise*, 446 S.W.3d 242, 260 (Mo. 2014) ("This statute does not limit awards only to trustees or others whose actions benefitted a trust. Though fee awards normally will be limited to such parties, the statute imposes no such limitation. Instead, it leaves the award to the trial court's determination of what 'equity and justice' require.").

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WHEREFORE, the Dardenne Church prays that the Court, after due consideration:

1. Dismiss all claims for relief and causes of action asserted by the Presbytery against the Dardenne Church;

- 2. Deny any and all relief requested by the Presbytery in its relevant pleadings;
- 3. Order that the Presbytery be required to pay for the reasonable attorneys' fees, expert fees, and other litigation expenses incurred by the Dardenne Church in connection with this matter;
- 4. Order that the Presbytery pay for any other expenses and court costs that are taxable in such matters; and
- 5. Award to the Dardenne Church all such other relief as is appropriate and supported by facts pled by Dardenne Church and/or proven at the trial of this matter.

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

Respectfully submitted,  
MCCARTHY, LEONARD & KAEMMERER, L.C.

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*Attorneys for Dardenne Presbyterian Church, Inc.*

**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 29<sup>th</sup> day of **January** 2024:

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/s/ Robert L. Striler

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