

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

DARDENNE PRESBYTERIAN CHURCH, INC.,)	CASE NO.	
)		
Plaintiff)		
)	DIVISION NO.	
v.)		
)		
PRESBYTERY OF GIDDINGS-LOVEJOY, INC. and PRESBYTERIAN CHURCH (U.S.A.), A CORPORATION,)		
)		
Defendant)		

**PLAINTIFF’S VERIFIED PETITION FOR DECLARATORY JUDGMENT
and APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY AND PERMANENT INJUNCTION**

Plaintiff, Dardenne Presbyterian Church, Inc., respectfully submits this Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Preliminary and Permanent Injunction, further representing as follows:

I.

SUMMARY OF CLAIMS

1. This lawsuit presents one simple legal question: whether or not the property of Dardenne Presbyterian Church, Inc. (the “Dardenne Church” or “the church”) is subject to a trust in favor of a national Presbyterian denomination, the PCUSA. Located in St. Charles County, the Dardenne Church is one of the oldest operating churches West of the Mississippi river. Although the church’s membership at one point dwindled to almost nothing, the Dardenne Church now boasts 900 members and serves as a source of fellowship, Christian guidance, and philanthropic services to a large local community.

2. For the last 40 years, the Dardenne Church has been a member of the PCUSA

denomination. The PCUSA and its regional administrative unit, the Presbytery of Giddings-Lovejoy, Inc. (the “Presbytery”) (together the “PCUSA Defendants”), assert that all of the Dardenne Church’s property is legally held “in trust” for the PCUSA. More specifically, the PCUSA Defendants assert that the PCUSA’s rulebook contains a legally-enforceable “trust clause” that permanently transfers control of local church property—including that of the Dardenne Church—to the PCUSA. If the PCUSA Defendants’ legal position is valid, then the Dardenne Church would be prohibited from disposing of its assets or otherwise determining how best to use them.

3. Of course, the Dardenne Church asserts that no trust exists, as the church paid for its own assets, it has never adopted the PCUSA “trust clause”, and it has otherwise never taken any action to create a trust under Missouri law. Quite the opposite, the Dardenne Church historically undertook a series of unprecedented actions to ensure that no denomination and no presbytery could ever interfere with the church’s property in any possible way. The Dardenne Church accordingly seeks a declaratory judgment to confirm that no PCUSA trust exists, and that the Dardenne Church thus owns and controls its own property.

4. In addition to a declaration of its property rights, the Dardenne Church also seeks immediate injunctive relief restraining the Presbytery from seizing or interfering with the church’s property in any way. According to official Presbytery and PCUSA documents, churches like the Dardenne Church are to be dealt with harshly. In fact, the PCUSA’s official position is that presbyteries should respond to a civil lawsuit (such as this one) by seizing local church property, freezing assets, and literally locking the church doors. This Court should accordingly enter a TRO, and in due course, a preliminary injunction, to protect the Dardenne Church’s property and preserve the status quo.

II.

PARTIES

5. Plaintiff, Dardenne Presbyterian Church, Inc., is a Missouri non-profit corporation domiciled at 7400 S. Outer Rd. 364, Dardenne Prairie, MO 63368-7006.

6. Now made a defendant in this matter is Presbytery of Giddings-Lovejoy, Inc., a Missouri non-profit corporation domiciled at 1001 Craig Rd., Suite 170, Saint Louis, MO 63146-5200. The Presbytery may be served with process through its appointed registered agent, PCB Registered Agent, Inc. at 165 N. Meramec Ave., Suite 110, Saint Louis, MO 63105.

7. Now made a defendant in this matter is Presbyterian Church (U.S.A.), A Corporation (the "PCUSA"), a Pennsylvania non-profit corporation domiciled at 425 Lombard St., Philadelphia, PA 19147. The PCUSA's principal office and place of business is located at 100 Witherspoon Street, Louisville, KY 40202.

III.

JURISDICTION AND VENUE

8. This case arises out of opposing claims to the same real and personal property, title to which is held by the Dardenne Church, but the "beneficial ownership" of which is claimed by the PCUSA Defendants. The present dispute thus constitutes a justiciable controversy over which this court has original jurisdiction. *See* MO. CONST. art. V, § 14; MO. STAT. § 478.070.

9. At issue in this action to quiet title is the validity of the PCUSA Defendants' claim to control the use and disposition of specified Missouri real estate. To the extent that the Presbytery and the PCUSA continue to maintain that they hold any interest in the disputed Missouri property at issue (whether a trust interest or otherwise), they are both subject to personal jurisdiction in Missouri. *See* MO. STAT. § 506.500(1)(4).

10. Because the principal cause of action pled by the Dardenne Church is a request to confirm the holder of equitable title to real estate situated in St. Charles County, this Court is the only proper venue to resolve the claims at issue. *See* MO. STAT. § 508.030 (“Suits for the possession of real estate, or whereby the title thereto may be affected . . . shall be brought in the county where such real estate, or some part thereof, is situated.”).

11. In many comparable cases, the applicable presbytery serves as the representative of the PCUSA denomination and the defender of the “PCUSA trust” at issue. Notably, however, the purported beneficiary of the claimed PCUSA trust is not the local presbytery, but the “Presbyterian Church (U.S.A.).” *See* Exhibit 8 at § G-4.0203. In turn, the PCUSA denomination has adopted a corporate form, appropriately named as “Presbyterian Church (U.S.A.), A Corporation.” *See* Exhibit 21 at 11-12. Among other purposes, the legal function of the PCUSA corporate entity is to receive and hold any interest in any real or personal property, “in any state,” that is subject to a trust for the benefit of the PCUSA denomination. *See id.* Accordingly, the PCUSA defendant, as the alleged holder of the subject interest being contested, is an appropriate party to these proceedings.

IV.

FACTUAL BACKGROUND

A. Dardenne Church and its Denominational Associations

12. The founding members of the Dardenne Church held the church’s first service in 1819—before Missouri was admitted as a state, and just after the adjacent United States had elected a fifth president. According to historical church documents, it was at that time that individuals from “an interdenominational society” started what would become the Dardenne Church. Nevertheless, from its beginning, the Dardenne Church identified itself as a “Presbyterian” church,

or a church characterized by certain “Calvinist” beliefs and participation in a decentralized democratic structure.¹ In Presbyterian churches, most administrative support and denominational oversight is provided by regional “presbyteries,” which function as the denominational authority in a given geographic region.

13. At the church’s initial formation, it is unclear whether or to what extent Dardenne Church connected itself to a particular Presbyterian denomination. According to an early church history, “Presbyterianism was still in a pioneer condition this far West in those days, and there was considerable confusion.” However, in the ensuing decade or so, it appears that the Dardenne Church was associated with the Philadelphia-based “Presbyterian Church in the United States of America.”

14. In 1840, the Dardenne Church’s denomination split, and Dardenne thereafter followed the “Old School” branch of Presbyterianism. Following the Civil War, the remaining church congregation joined a new denomination, the southern-leaning Presbyterian Church in the United States (the “PCUS”), which would be the Dardenne Church’s associated denomination for the next 120 years.

15. In 1983, the PCUS merged with a larger Presbyterian denomination to create a dominant new Presbyterian denomination, the PCUSA. As a PCUS church at the time, the Dardenne Church was automatically recognized as a member of the PCUSA denomination. For the last 40 years, and through today, the Dardenne Church has remained a member of the PCUSA.

¹ There are dozens of different Presbyterian denominations in the United States. “Presbyterian” churches are characterized by an inter-church governance structure in which each church in a geographical area elects delegates to a district body called a “presbytery”; the presbytery, in turn, sets limited policy and handles certain administrative matters for all churches within its geographic bounds. *See* MERRIAM-WEBSTER DICTIONARY (2023 ed.) (defining presbyterian as “of, relating to, or constituting a Protestant Christian church that is presbyterian in government and traditionally Calvinistic in doctrine”). In most Presbyterian churches, the elected governing board of the local church body or corporation is called a “session.”

B. Dardenne Church's Property

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

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

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

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

Exhibit 2 (bold added).

19. In 1870, the Dardenne Church acquired the church's next sizable piece of land. On this occasion, however, the relevant deed was even more explicit that the subject property was not

being held for any denominational organization:

[Grantees are] to have and to hold the said tract, with all the rights and privileges thereto belonging . . . in trust that the said tract of land or lot of ground shall be possessed and enjoyed by the association of persons known as “the Dardenne Presbyterian Church” as a place of worship and also as a burial ground; and in trust further that the said lot of ground with the privileges and appurtenances thereto belonging **shall be controlled conveyed and disposed of, as the said trustees or their successors may be directed in writing by a majority of the members of said church.** And the trustees of **said property shall in no way or manner be subject to the control, interference or meddling of any Presbytery, Synod, General Assembly, or other ecclesiastical body.**

Exhibit 3 (bold added).

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

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. The church has also never sought the approval of the denomination or any presbytery to buy, sell, mortgage, or otherwise deal with the church’s real

estate.²

C. The PCUS in 1981 and 1982

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

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

The beneficial ownership³ of the property of a particular church of the [PCUS] is in the congregation of such church The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. . . . Disposition of the property of a particular church rests in the will of the congregation of that church.

Exhibit 5 at 235-36.

24. Acting to assuage the concerns of member churches, the PCUS quickly clarified that its proposed trust language had no legal effect. Indeed, not only did the PCUS again commit to its historical position, but it also provided new assurances that “[t]he language dealing with trust does not in any way establish any kind of an encumbrance on church property as that term is

² It is actually the Dardenne Church that has provided financial support *to* its associated denominations. Just since 2006, the Dardenne Church has donated approximately \$124,274.46 directly to the Presbytery or to PCUSA missions sponsored by the Presbytery.

³ The PCUS’s use of the term “beneficial ownership” is significant, as the term denotes who holds any trust interest, to the extent there is one. *See Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 584 (Mo. Ct. App. 2012 – W.D.) (“The fundamental nature of a trust is a division of title: the trustee holds legal title and the beneficiary holds equitable title.”).

understood in connection with real estate.” Exhibit 6. In a 1981 letter circulated to all churches, the PCUS further promised that “th[e] amendments do not in any way change the fact that the congregation, in the [PCUS], owns its own property.” Exhibit 7; *see also id.* at 2 (“These amendments do not give Presbytery . . . any jurisdiction over property.”); Exhibit 5 at 237 (“The amended Chapter 6 . . . does not represent a change.”); Exhibit 5 at 230 (“[T]he sections in the Chapter do not adopt new policies.”).

25. Parenthetically, it was not absurd for local churches to believe that the legal-sounding PCUS trust language would have no legal effect, as the PCUS had always maintained—and continued to maintain—that it had no authority to intrude upon secular or civil matters. *See, e.g.,* Exhibit 22 at § 1-1 (“The power which Christ has given his Church is wholly moral and spiritual.”); at § 14-1 (“Church courts [(denominational bodies)] . . . possess no civil jurisdiction or power to inflict civil penalties.”); at § 14-2 (“Church courts [(denominational bodies)] have jurisdiction only for the purpose of serving Christ and declaring his will . . . to the good order of the Church and to the exercise of discipline.”).

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

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

28. Unlike the PCUS, the PCUSA immediately began to proclaim that its rulebook contained an enforceable "trust clause," pursuant to which the denomination had the right to control (or just take) the property of member churches. *See* Exhibit 8 (PCUSA BOO excerpts). But—as promised—if a PCUS church did not like the PCUSA's position, a "grandfather clause" would allow the church to "except" itself from any new PCUSA rules. *See id.* at § G-4.0208.⁴

D. The Dardenne Church in 1982

29. Here the story returns to Dardenne Prairie. Not satisfied with the PCUS's promises that the denominational property rules were not changing, the Dardenne Church sought legal counsel in April 1982. Perhaps the most perceptive PCUS church in the country, the Dardenne Church then acted quickly to avoid any PCUS or PCUSA trust clause or any other property-related claim.

30. In the Spring of 1982, the Dardenne Church held six total parcels of property, but only one of the relevant property deeds (the 1870 deed) explicitly prohibited any denomination or presbytery from claiming the property. So, in May 1982, the members of the Dardenne Church

⁴ The so-called "property exception" provision (grandfather clause) states: "The provisions of this chapter shall apply to all congregations of the [PCUSA] except that any congregation which was not subject to a similar provision of the constitution of the church of which it was a part, prior to the reunion of the [PCUS] and the [UPCUSA] to form the [PCUSA], has been excused from that provision of this chapter if the congregation, within a period of eight years following the establishment of the [PCUSA], voted to be exempt from such provision in a regularly called meeting and thereafter notified the presbytery of which it was a constituent congregation of such vote. The congregation voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the [PCUSA]." *See* Exhibit 8.

gathered and voted unanimously to sell the five unprotected parcels to two church families (the “Schumans”)—at their appraised value, so that the sale could not be challenged. To remove any doubt about the purpose of the transaction, the official resolution states:

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

Exhibit 9.

31. On June 8, 1982—a mere week before the PCUS would approve its “non-legal”/spiritual trust provision—the skeptical Dardenne Church completed the transfer of church real estate to the Schumans. Exhibit 10. While the parties had initially contemplated the use of a charitable trust, that plan was scrapped in favor of a “reconveyance-subject-to-reversionary interest.” More particularly, the same day the Schumans purchased the five unprotected parcels, the Schumans re-conveyed the properties *back to* the Dardenne Church, but this time, the properties would be protected from any PCUS or PCUSA claim. In particular, the relevant deed provides that, should any denominational body ever come into possession of the properties, ownership of all properties would “revert” back to the Schumans:

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

Exhibit 11.

32. Not done yet, the Schumans and the Dardenne Church reconvened the following year, in March 1983. As the final step in the parties' seemingly-paranoid property protection plan, the Schumans transferred their reversionary interest in the church's property to the "Session or other ruling body of any Church from time to time using the property." *See* Exhibit 12. Thus, in the event a denomination were to somehow obtain a trust or other interest in the church's property, the full ownership of the property would revert to the local governing body of the church group physically using the property. *Id.*

E. The Dardenne Church: 1983 to the Present

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

34. In 1990 and 1998, the Dardenne Church acquired two more significant parcels of real property, totaling 15 acres, adjacent to the church's facility in Dardenne Prairie. *See* Exhibit 14. According to the PCUSA, when purchasing property, churches should embed explicit trust language in the corresponding deed so as to permanently dedicate the property for PCUSA usage. *See* Exhibit 15 at 2. In 1990 and 1998, however, the Dardenne Church did no such thing. To the contrary, the two underlying deeds confirm the church's continuing wariness of the PCUSA, with the transfer instruments stating, "[The Church's representatives] and the Real Estate shall in no way or manner be subject to the control, interference or meddling of any Presbytery[,], Synod, General Assembly or other ecclesiastical body." Exhibit 14 at 2, 5.

35. Also in the 1990's, the 175-year-old Dardenne Church finally organized itself into

a Missouri non-profit corporation. *See* Exhibit 16. On such occasions, the PCUSA asks that churches adopt “model” articles that quote the PCUSA trust clause, subject the church to PCUSA authority in all possible respects, and irrevocably bind the church to the PCUSA’s “Book of Order” (rulebook). *See* Exhibit 17 at 12-14.⁵ Of course, the Dardenne Church did not comply. Instead, the Dardenne Church approved articles that make no mention of the PCUSA, and which declare corporate property to be held “on behalf of the congregation of Dardenne Presbyterian Church.” Exhibit 16 at 4. Moreover, far from existing as a mere component of the PCUSA, the Dardenne Church’s stated purpose is distinctly *non-denominational*: “to further *all* religious and charitable work of *the Christian faith*.” *Id.* (emphasis added).

36. In 1999 and 2001, the Dardenne Church formally deeded its properties from the unincorporated church entity to the statutory corporation. *See* Exhibit 18. According to a PCUSA memo to churches, such post-incorporation transfers are “an excellent opportunity to . . . make sure that the [PCUSA] property trust clauses are put into the new deeds.” Exhibit 17 at 4. Despite the invitation, the Dardenne Church did not elect to adopt the PCUSA trust clause at this time.

37. In connection with its incorporation, the Dardenne Church adopted corporate bylaws in 1999, and, only in that document, finally acknowledged the church’s affiliation with the PCUSA and a limited use of the PCUSA’s “Book of Order.” *See* Exhibit 19 at 1-6. Importantly, though, the church did not adopt the PCUSA’s model bylaws, which variously declare the supremacy of the PCUSA and its absolute control of local property. *See* Exhibit 17 at 18-23.

38. In 2009, the Dardenne Church adopted a comprehensive new set of bylaws. *See*

⁵ *See* Exhibit 17 at 12-14. Among the provisions that churches are advised to adopt are the following statements: “The Corporation shall support, at all times and in all respects, the Constitution of the [PCUSA]. The Corporation and all of its property, both real and personal, shall be subject to the Constitution of the [PCUSA] as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the [PCUSA] . . . All property, both real or personal, held by or for a congregation, whether legal title is lodged in the Corporation, the Board of Trustees or a trustee, or an unincorporated association . . . is held in trust nevertheless for the use and benefit of the [PCUSA].”

Exhibit 19 at 8-12. At this time, though acknowledging an adherence to the PCUSA Book of Order (for the first time), the church again declined to adopt any trust clause or to otherwise ensure that corporate property was held “for” the PCUSA. Rather, the only property provision in the bylaws provides that the Dardenne Church’s trustees are to hold and manage all property of the corporation “for *the corporation.*” Exhibit 19 at 11. In January 2023, in an abundance of caution, the congregation of Dardenne Church duly amended the church bylaws to remove any reference to the general authority of the PCUSA Book of Order. *See* Exhibit 19.

F. Dardenne Church: the present circumstances

39. At present, the Dardenne Church is still affiliated with the PCUSA, although there is some tension in the relationship and uncertainty concerning the degree to which the church must use its property exclusively for PCUSA purposes. More specifically, whether the Dardenne Church must allow the PCUSA (or the local Presbytery) to direct the church’s use of the property depends entirely on the validity of the PCUSA’s trust claim. The uncertainty is particularly concerning since, several years ago, in response to a church that claimed ownership of its own property, the Presbytery sued the church for breach of contract, breach of fiduciary duty, and constructive fraud.⁶

40. To resolve the uncertainty concerning the control of its real and personal property, the Dardenne Church initiated the instant declaratory judgment action. In approving the filing of this action, the governing board of the Dardenne Church also reiterated the church’s long-demonstrated understanding that membership in the PCUSA does not require that the church surrender its property. *See* Exhibit 20. More importantly, though, given the statutory revocability

⁶ On November 6, 2014, in reliance on the PCUSA trust clause, the Presbytery sued Bonhomme Presbyterian Church, a PCUSA or former-PCUSA church in Chesterfield, Missouri. *See Presbytery of Giddings-Lovejoy, Inc., v. Bonhomme Presbyterian Church*, Case No. 14SL-PR03316 (St. Louis County Circuit Court) at ¶ 92 (“Bonhomme breached its fiduciary duty of loyalty when it disavowed its prior commitments and obligations to the Presbytery.”).

of Missouri trusts created after 2004, the Dardenne Church expressly voted to revoke any PCUSA trust that could be argued to have received the church's approval in the last twenty years. *See id.*⁷

41. As set forth below, under applicable Missouri law, it is clear that the Dardenne Church's property, and especially its real estate, is not subject to a trust in favor of the PCUSA or Presbytery. The Dardenne Church accordingly seeks a declaratory judgment confirming that the church alone owns and controls its property free of any trust or similar interest in favor of the PCUSA or Presbytery.

V.

CAUSES OF ACTION AND REQUESTS FOR RELIEF

A. COUNT 1: REQUEST FOR DECLARATORY JUDGMENT & PERMANENT INJUNCTION

42. Based upon the factual allegations pled above, the Dardenne Church now seeks a declaration from this Court that the church holds and owns its property free and clear of any trust in favor of the PCUSA or Presbytery. *See* MO. STAT. § 527.020 *et seq.*; MO. R. CIV. PROC. 87.02. The specific declaration sought by the Dardenne Church is set forth in the Prayer for Relief, *infra*.

43. To the extent necessary to obtain and enforce the requested declaration, and/or to the extent necessary to enable the Dardenne Church to hold its real property free of any claimed trust or other interest by the PCUSA or the Presbytery, the church expressly asserts a "suit to

⁷ PCUSA presbyteries often argue that any passing reference to the denomination or the Book of Order, or that simply being a member of the PCUSA, signifies an assent to the PCUSA's trust claim. Anticipating such an argument, the Dardenne Church's board specifically resolved that, "to the extent the Corporation has ever taken any action that is deemed to have created a trust in favor of the PCUSA or Presbytery, or that could be argued to be indicative of an intent to create a trust, any such trust is hereby unconditionally and explicitly revoked, and any subject property shall accordingly be returned to the complete control of the Corporation to be held for the Corporation's members. This act of revocation extends to any trust alleged to exist in favor of the PCUSA or the Presbytery, including but not limited to any trust (1) suggested by the Corporation's mere involvement with the PCUSA or (2) arising out of any trust language or reference to the authority of the PCUSA or Book of Order in (a) any prior resolution of the Corporation's Board (session), (b) any prior corporate bylaws approved by the Corporation (or by the Board) in 1999, 2009, 2012, 2013, or 2019; (c) Article I, Article II, or Article IV of any current corporate bylaws approved by the Corporation (or by the Board); or (d) any other communication or action of the Board."

determine interest and quiet title.” See MO. STAT. § 527.150 (providing specifically for actions to resolve disputes over equitable title).

44. In accordance with the requested declaratory judgment, the Dardenne Church also petitions the Court for the permanent and final injunctive relief needed to effectuate this Court’s binding judgment. Specifically, the Dardenne Church seeks an order permanently enjoining the Presbytery and/or the PCUSA from taking any action that might in any way interfere with the church’s exclusive ownership, use, and control of its property as adjudicated by this Court.

B. COUNT 2: APPLICATION FOR TEMPORARY RESTRAINING ORDER and PRELIMINARY INJUNCTION

45. By renouncing the PCUSA’s trust claim and requesting a declaratory judgment against the Presbytery, the Dardenne Church has taken a dangerous step—a step that, in the PCUSA, mandates harsh and immediate retaliation. Indeed, the PCUSA’s officially-sanctioned response to a church that claims its own property is to initiate a hostile takeover of the disputed property. In such cases, the PCUSA has further instructed presbyteries to eject local church leadership, freeze the church’s bank accounts, lock church buildings, and confiscate local church assets. To preclude the Presbytery or the PCUSA from taking any such actions in the present case, the Dardenne Church seeks an appropriate temporary restraining order (“TRO”) and preliminary injunction as set forth below.

46. Under Missouri law, a Court can award preemptive injunctive relief—whether in the form of a short-term “TRO” or a longer-term preliminary injunction—pending the resolution of an accompanying cause of action. To obtain a TRO, however, the party must demonstrate “[1] the probability of irreparable damage coupled with [(2)] the need for immediate action.” See *Worlledge v. City of Greenwood*, 627 S.W.2d 328, 330 (Mo. Ct. App. 1982 – W.D.); MO. R. CIV. PROC. 92.02(a)(1). To extend a TRO into a preliminary injunction, the applicant must demonstrate

more: in particular, the applicant must establish that relief is appropriate in light of a “weighing” of “[1] the movant’s probability of success on the merits, [2] the threat of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and [4] the public interest.” *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996); *State ex rel. Ideker, Inc. v. Grate*, 437 S.W.3d 279, 287 (Mo. Ct. App. 2014 – W.D.) (“Whether an injunction should be granted is a matter of the trial court’s discretion in balancing the equities.”).

47. Together, the issuance of a TRO and preliminary injunction thus requires discussion of five distinct elements or factors, each of which is considered below.

1. Injunctive Relief Element 1 of 5: Probability of Success on the Merits

48. The lone claim and merits question before the Court is whether the Dardenne Church holds its property in trust for the benefit of the PCUSA. In turn, under applicable Missouri law, it is clear that the subject church property is not subject to such a trust.

a. *The Applicable Legal Analysis*

49. The instant matter is not the first time that a PCUSA church and its associated presbytery have debated the validity of the PCUSA’s claimed trust.⁸ Indeed, there are three published decisions in which a Missouri appellate court or the Missouri Supreme Court considered identical “church property disputes” involving PCUSA churches and presbyteries.⁹

50. When first confronted with a Presbyterian denominational trust claim in 1984, the Missouri Supreme Court recognized that such church-denomination property disputes could be

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.).

resolved in one of two competing ways. See *Presbytery of Elijah Par. Lovejoy v. Jaeggi*, 682 S.W.2d 465, 470 (Mo. 1984) (*en banc*). On one hand, out of reverence for a religious hierarchy, a court could simply find that “lower” church bodies were bound by the decisions of “higher” church bodies, and that such denominational deference extended even to secular property matters (the “compulsory deference” approach). *Id.* at 467-69. Or, the *Elijah Parish* court found, a court could resolve a church-denomination property dispute by neutrally applying the same principles of property and trust law that would apply to any other parties fighting over property (the “neutral principles” approach). *Id.*

51. Weighing the two opposing approaches, the *Elijah Parish* court rejected any form of denominational favoritism, declaring instead that the “‘neutral principles of law’ approach [i]s the exclusive method for resolution of church property disputes” in Missouri. *Id.* at 467.¹⁰ Thus, in Missouri, a local church can only lose the legal or equitable title to its property if it has taken the ordinary steps required to create a trust or otherwise transfer property under state law. *See id.*; *see also Colonial Presbyterian*, 375 S.W.3d at 196 (“The ‘neutral principles’ method simply means that we apply Missouri law.”).

52. Since the *Elijah Parish* decision, Missouri appellate courts have twice invalidated the PCUSA’s trust clause, in each case holding that the PCUSA and its presbyteries must strictly comply with Missouri law before claiming the property of a Missouri church. *See Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190, 201 (Mo. Ct. App. 2012 – W.D.) (affirming grant of church’s motion for summary judgment); *Heartland Presbytery v. Gashland*

¹⁰ *See also Elijah Parish*, 682 S.W.2d at 473 (“In applying the neutral principles approach to the instant record, this court . . . must refrain from resolving the dispute on the basis of religious doctrine and practice and must rely exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. Documents, including religious documents, pertinent to the dispute, must be scrutinized in purely secular terms.”).

Presbyterian Church, 364 S.W.3d 575, 584 (Mo. Ct. App. 2012 – W.D.) (affirming grant of church’s motion to dismiss).

b. *The Applicable Missouri Trust and Conveyance Law*

53. Proceeding to consider the relevant neutral principles of Missouri law, there is no colorable argument in this case that the asserted PCUSA trust is valid or enforceable. As two Missouri appellate courts have now held, the PCUSA cannot rely merely on its self-written trust clause to claim an interest in local church property.¹¹ Rather, a denominational trust is valid only if there is also proof that the local church expressly and explicitly **intended** and wanted to create a trust.¹² Going even further, the court in *Gashland Presbyterian* explained that “the evidence to establish a trust must be cogent, clear and convincing, and ordinarily it should dispel all doubt; the court must be completely and fully convinced that a trust was created.” 364 S.W.3d at 588. To be clear, the burden of proving a denominational trust in the present circumstances is truly heightened, because the law presumes that a property-owner who retains possession of his property does not intend to create a trust; accordingly, where a property-owner is alleged to have created a trust *but kept possession of the property*, the circumstances must “*unequivocally* disclose an intent to hold

¹¹ *Gashland*, 364 S.W.3d at 591 (“[U]nder Missouri law the provisions of the PCUSA’s Book of Order are not necessarily binding on *Gashland*, without some effective expression of *Gashland*’s agreement to be bound by those provisions.”); *Colonial Presbyterian*, 375 S.W.3d at 195 (“Under Missouri law, the [PCUSA]’s constitution was insufficient to convey the disputed property in express trust.”); *Edgar v. Fitzpatrick*, 377 S.W.2d 314, 318 (Mo. 1964) (*en banc*) (quoting SCOTT ON TRUSTS, §§ 76 & 86) (“A person cannot create a trust of property which he does not own. . . . It is obvious that a person cannot create a trust of property in which he has no interest.”).

¹² *See, e.g.*, MO. STAT. § 456.4-402 (“[A] trust is created only if: . . . the settlor indicates an intention to create the trust.”); *Rouner v. Wise*, 446 S.W.3d 242, 250–51 (Mo. 2014) (“Neither an express trust nor an amendment thereto can come as a surprise to the settlor. Instead, an ‘express trust can come into existence only by the manifestation of an intention to create the kind of relationship known in law as an express trust.’”); *Gashland Presbyterian*, 364 S.W.3d at 592 (“In order to establish an express trust on that property, fundamental principles of Missouri law required some effective expression of intent by [*the local church*].”); *Colonial Presbyterian*, 375 S.W.3d at 196 (“Missouri trust law is designed to effect the settlor’s [(the property owner’s)] intent.”).

it for the use of another.” *Rouner v. Wise*, 446 S.W.3d 242, 251 (Mo. 2014) (emphasis added).¹³

54. Because the asserted PCUSA trust predominantly consists of real estate, the trust must also be evidenced by a **signed writing**¹⁴ that **specifically identifies**¹⁵ the interest being transferred, and which includes an adequate **legal description**¹⁶ of any realty. Moreover, for any globally-encompassing trust to have been created since the Dardenne Church’s 1996 incorporation, yet more is required: the requisite trust instrument must be signed by a corporate officer acting pursuant to a **vote of two-thirds of the corporation’s members**¹⁷ at a meeting that

¹³ Quoting a past Supreme Court case, the full statement by the *Rouner* court was that, “a party seeking to establish an express trust must prove . . . actual delivery of the corpus . . . or a legal assignment of the same to the trustee actually conveying present title to the trustee; or the retention of title by the owner under circumstances which unequivocally disclose an intent to hold it for the use of another. . . . [W]hether a completed express trust is sought to be established by parol or by a written instrument, the evidence relied upon to establish it must be clear and convincing and so full and demonstrative as to remove from the mind of the chancellor any reasonable doubt with respect thereto.” *Rouner*, 446 S.W.3d at 251-52 (Mo. 2014).

¹⁴ MO. STAT. § 456.4-407 (“Other than for a conveyance by which a trust may arise or result by the implication or construction of law, all declarations or creations of trust of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is, or shall be, by law, enabled to declare such trusts, or by the party’s last will, in writing, or else they shall be void.”); *Gates Hotel Co. v. C. R. H. Davis Real Est. Co.*, 52 S.W.2d 1011, 1013 (Mo. 1932) (“Where it is sought to establish a trust in real estate by agreement of the parties, such agreement must be in writing, else the alleged trust is void. The statute so provides and the decisions so hold. The alleged agreement in this case was not in writing. This being true, the agreement, if made, was void. It is made so by statute.”).

¹⁵ *Colonial Presbyterian*, 375 S.W.3d at 195 (“[A] document purporting to create a trust must contain a definite description of the property to be conveyed.”); *Rouner*, 446 S.W.3d at 251 (Mo. 2014) (“[A] party seeking to establish an express trust must prove the settlor’s intent regarding . . . a trust res so sufficiently described or capable of identification that title thereto can pass to the trustee.”).

¹⁶ 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.”).

¹⁷ See MO. STAT. § 355.656 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property . . . the proposed transaction to be authorized must be approved . . . By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less. . . . [T]he corporation shall give notice to its members of the proposed membership meeting in accordance with section 355.251. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.”); MO. STAT. § 442.060 (requiring land conveyances by corporations to be signed by

was preceded by written notice of the proposed disposition of substantially all corporate assets.

c. Missouri Law as Applied to the Dardenne Church

55. Measured against the requirements of Missouri law, the PCUSA trust alleged to burden the Dardenne Church's property is invalid for numerous reasons. As an initial matter, it is undisputed that the Dardenne Church facially holds full title to all property at issue, and the deeds of acquisition are thus presumed to vest the church with both legal and equitable title.¹⁸

56. The governing deeds aside, there appears to be no published case—in any jurisdiction, ever—in which a church has so explicitly tried to *not* create a trust. In 1870, the Dardenne Church began a 150-year tradition of protecting its real estate from any “presbytery” or denomination. *See* Exhibit 3. In 1982, at the first hint that the church's real estate was being threatened by a denominational trust, the Dardenne Church sold and then re-acquired its property subject to a “poison pill” reversionary clause designed to defeat any trust claim. *See* Exhibits 9-12. A year later, the Dardenne Church, its property already protected, nonetheless expressly declared its property exempt from the PCUSA's property rules. Exhibit 13. And, on both occasions that the Dardenne Church has acquired real estate since the PCUSA's formation, the church made sure to add *anti*-PCUSA language to the relevant property deeds. Exhibit 14.

57. In this case, the proof that the Dardenne Church never intended to create a trust is alone fatal to the PCUSA Defendants' claim. However, it also bears mentioning that there is no

officer that is acting pursuant to a resolution of the governing board); *Grafeman Dairy Co. v. Nw. Bank*, 290 Mo. 311, 235 S.W. 435, 442, 445 (Mo. 1921) (*en banc*) (“[H]aving failed to obtain the authority from the corporation necessary to its validity, [the trust deed] was ineffectual as a conveyance. . . . [W]e hold that the deed of trust in suit, having been made by the president of the [corporation] without authority . . . is inoperative and void.”); *Spirit & Truth Church v. Barnaby*, 428 S.W.3d 764, 769 (Mo. Ct. App. 2014 - E.D.) (“In short, because the Church was incorporated under Missouri nonprofit law, it has submitted to the state courts all matters of a corporate nature.”).

¹⁸ MO. STAT. § 442.460 (“Every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear, or be necessarily implied in the terms of the grant.”).

written trust instrument that could be argued to reference a trust, that specifically identifies the church's property, and that was formally authorized by a vote of two-thirds of the church's members. The PCUSA's asserted trust is thus fatally lacking in at least four different respects. Note that it was these same defects that prompted the *Colonial Presbyterian* court to affirm summary judgment in favor of a local church, holding that the PCUSA could not possibly establish a trust. *See Colonial Presbyterian*, 375 S.W.3d at 197 (“Our laws are based on the reasonable assumption that a party would not intend to convey its property (in this case, worth millions of dollars) in trust without signing the writing purporting to create the trust, identifying the property to be conveyed, and expressing a definite intention to create a trust.”).

58. With no other argument to make, the PCUSA Defendants will predictably claim that the Dardenne Church (unknowingly) created a trust by adopting corporate bylaws in 1999 and 2009 that reference the PCUSA, follow the Book of Order, and show allegiance to the PCUSA. Exhibit 19. However, the relevant bylaws were not signed, say nothing about creating any trust, and do not describe the Dardenne Church's property, and so they cannot be deemed to be trust instruments. *See id.* Indeed, in both the *Gashland Presbyterian* and *Colonial Presbyterian* cases, the courts found equivalent bylaw provisions to be inadequate—as a matter of law—to create a trust. *See Gashland Presbyterian*, 364 S.W.3d at 588 (“[W]e would be hard-pressed to find that the By-Laws' general statements concerning subordination to the PCUSA's Constitution establish a trust by clear, cogent and convincing evidence.”); *Colonial Presbyterian*, 375 S.W.3d at 195 (“Here, the articles of incorporation and the bylaws express no intention to convey anything, nor do they even mention the property.”).

59. There are yet more obstacles that preclude the recognition of any PCUSA trust. For

instance, most of the Dardenne Church’s property deeds contain valid¹⁹ reversionary clauses that legally bar the PCUSA (or Presbytery) from holding any interest. *See* Exhibits 11-12. The reversionary clauses aside, *all* of the church’s property deeds expressly denounce any trust clause and formally declare Dardenne Church’s intent to hold its property in fee simple; and, because the recordation of the deeds served as notice to the PCUSA Defendants, the denomination has lost the right to challenge the Dardenne Church’s adverse possession.²⁰ Moreover, to the extent the PCUSA Defendants were to base their trust claim upon on any bylaw or other document appearing after December 31, 2004—when Missouri trusts became revocable²¹—the Dardenne Church has validly revoked and canceled the trust. *See* Exhibit 20. Finally, the PCUSA Defendants must also somehow overcome the provision of their own rulebook that, as noted by the *Colonial Presbyterian* court, made clear (until 2011) that denominational authority was “only ecclesiastical” and did not allow it to impose any “civil penalties.”²²

¹⁹ *See Schee v. Boone*, 295 Mo. 212, 243 S.W. 882, 886 (Mo. 1922) (“Whenever a fee is created which is determinable upon a condition subsequent, in this case a failure of issue, there is always a possibility of a reverter in the donor. The possibility of reverter has, in this country, always been held not subject to the rule against perpetuities.”); *Robertson v. N. Inter-River Drainage Dist.*, 842 S.W.2d 544, 546 (Mo. Ct. App. 1992 – S.D.) (“A reversion is the residue of an estate left in a grantor when he has transferred a lesser estate than he owned. Reversions are created by operation of law, vested but sometimes defeasible, and subject to transfer by deed, will or intestate descent.”).

²⁰ *See* MO. STAT. § 516.010 (“No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be commenced, had or maintained by any person . . . unless it appear that the plaintiff . . . was seized or possessed of the premises in question, within ten years before the commencement of such action.”); MO. STAT. § 442.390 (“Every such instrument in writing, certified and recorded in the manner herein prescribed, shall, from time of filing the same with the recorder for record, impart notice to all persons of the contents thereof.”); *Cash v. Gilbreath*, 507 S.W.2d 931, 935 (Mo. Ct. App. 1974 - Springfield) (“The recording of the quitclaim deed and the collector’s deed gave the defendants notice by record as to the nature and extent of plaintiff’s claim.”).

²¹ *See* MO. STAT. § 456.6-602 (“Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.”).

²² In refusing to uphold an identical PCUSA trust claim, the Missouri Court of Appeals noted that the PCUSA’s 2009-2011 constitution contained a provision disclaiming that the denomination had any civil authority over local churches. *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.’”). After an Indiana court in 2010 refused to uphold the PCUSA trust clause in light of the quoted language, the no-civil-jurisdiction provision suddenly

60. Having established that the PCUSA Defendants cannot possibly establish an express trust, it bears noting that the PCUSA Defendants also cannot establish a so-called “implied trust”—*i.e.*, a trust imposed by the law to prevent injustice.²³ In particular, the Dardenne Church’s property is not subject to a “resulting trust,” because such a trust would require that the PCUSA Defendants have contributed funds towards the purchase of specified property (which they did not).²⁴ Nor could the Court impose a “constructive trust” in this matter, as the Dardenne Church did not obtain title to any particular piece of property through fraud or in some unjust manner.²⁵ Notably, if the PCUSA Defendants were to desperately allege some kind of fraud, they would have to support that allegation with “an extraordinary degree of proof, . . . unquestionable in character. . . [and] so clear, cogent, and convincing as to exclude every reasonable doubt in the mind of the trial court.” *Fix v. Fix*, 847 S.W.2d 762, 765 (Mo. 1993) (*en banc*).

2. Injunctive Relief Element 2 of 5: Probability of Immediate Damage

61. The second prerequisite to a TRO and preliminary injunction is proof that, absent

disappeared from the ensuing 2011-2013 edition of the PCUSA’s rulebook. *See Presbytery of Ohio Valley, Inc. v. Olivet Presbyterian Church, Inc.*, Vanderburgh County Circuit Court, Indiana, Cause No. 82C01-0707-MF-343 (Heldt, J.).

²³ *Heartland Presbytery*, 364 S.W.3d at 583 n.9 (“Missouri recognizes two varieties of implied trust: a constructive trust, and a resulting trust.”); *Parker v. Blakeley*, 93 S.W.2d 981, 988 (Mo. 1936) (“[A]n implied trust results or arises by operation of law from the facts of the transaction, not from an agreement, and . . . it results or arises, if at all, ‘at the instant the deed is taken.’ It must result or arise from facts which occur ‘at the time of or anterior to’ the execution of the conveyance by which the title passes and ‘cannot be created by subsequent occurrences. Courts have been disposed to recognize two classes of implied trusts designating them as ‘resulting trusts’ and ‘constructive trusts.’”).

²⁴ *See 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.”). Another type of resulting trust can arise to ensure that a party who attempts to create a trust retains the equitable title to property if the trust fails (rather than the equitable title vesting in a third-party trustee). *See, e.g., Lynch v. Lynch*, 260 S.W.3d 834, 838 (Mo. 2008) (*en banc*). Such a trust is irrelevant in this case, as the purported trustee is the settlor of the trust.

²⁵ *Lynch v. Lynch*, 260 S.W.3d 834, 837 (Mo. 2008) (“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.’”); *Milgram v. Jiffy Equip. Co.*, 362 Mo. 1194, 1205, 247 S.W.2d 668, 676 (Mo. 1952) (“Fraud is an essential element of a constructive trust.”).

an injunction, the defendant is likely to engage in the conduct sought to be enjoined. In this case, the problematic conduct is not only possible, but it is the standard operating procedure for PCUSA presbyteries faced with civil actions by local churches. In fact, the PCUSA has issued two “legal strategy memos” for use by presbyteries faced with church property litigation. *See* Exhibit 23; Exhibit 24. Of particular concern is the denomination’s instructions to implement a device called an “administrative commission” to seize all local church assets and take control of local church property. *See* Exhibit 23 at 5-14.

62. An administrative commission is a small group of presbytery representatives to whom the presbytery can purportedly grant unlimited powers to “deal with” a troublesome local church. *See* Exhibit 23. Although the use of administrative commissions is ordinarily intended to address spiritual matters, PCUSA presbyteries have repurposed them to unilaterally take local church property. The PCUSA has even officially endorsed such presbytery “takeovers,” advising that, if a church is “reported to be affected with disorder,” the local presbytery should immediately form an administrative commission with the authority to “assume original jurisdiction over”—fire and replace—the entire governing board of a church. Exhibit 23 at 6-9.

63. The threat of unlawful property expropriation is quite real. In a heavy-handed attempt to discourage congregations from confirming their property rights, the PCUSA’s instructional memos make the following recommendations to presbyteries faced with litigation:

- a) *use administrative commissions specifically for church property disputes, and in conjunction therewith remove the local pastor and/or governing board of the local church;*
- b) *freeze local church assets, “change the locks,” physically seize property, and “secure grounds if necessary”;*
- c) *place a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;*

- d) mail letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters “order” that no assets be released to the local church; and
- e) “use spiritual language” in their pleadings in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as “schismatic.”

See Exhibit 23 at 5-7, 12; Exhibit 24 at 3-4.

64. Significantly, the initiation of a legal action does nothing to dissuade presbyteries from trying to confiscate local church property. Quite the opposite, one of the troubling PCUSA instructional memos is titled “A resource for those representing [PCUSA] presbyteries and true churches in the civil courts.” See Exhibit 24 at 1. Despite being narrowly focused upon cases in which civil court jurisdiction has already been invoked, the memo encourages presbyteries and their administrative commissions to act fast, “secure the property (both real and personal) of the local church,” and advise all financial institutions that “the presbytery”—not the court—“has jurisdiction over the local church and its assets.” See Exhibit 24 at 3. Should a presbytery fail to sufficiently enforce the trust clause, the PCUSA has further made clear, it can take over the presbytery and force it to take “appropriate action.” See Exhibit 25 at 3-4 (“Presbyteries are responsible for upholding the trust clause If a presbytery fails to carry out its constitutional responsibilities, the synod may be required to intervene.”).

65. In truth, sometimes even an injunction is not an adequate measure. In one Louisiana case, a TRO only prompted the relevant PCUSA presbytery to contrive a new way to take a local church’s property. See Exhibit 26, *Carrollton Presbyterian Church v. Presbytery of South Louisiana*, Suit No. 565482, 19th Judicial District Court, East Baton Rouge Parish, Louisiana, Written Findings and Reasons for Judgment Imposing Sanctions, July 18, 2013 (pp. 5, 6, 23-25, 42-45). In *Carrollton*, after granting a TRO, the court found that the relevant presbytery and its

supervising PCUSA entity conspired to violate the TRO and take control of local church property by “dissolving” the church. *See id.* In fact, the *Carrollton* court found the presbytery’s efforts to circumvent the court’s injunction to be so egregious that the court imposed \$390,000.00 in sanctions against the presbytery, which ruling was later affirmed on appeal. *See id.* at 5-6, 23-25, 42-45; *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (U.S.A.)*, 172 So. 3d 1, 9 (La. Ct. App. 2015).

66. For its part, the Presbytery in this matter has heartily embraced the use of administrative commissions. *See* Exhibit 27. In particular, according to its own official policy statement, the Presbytery will—“when circumstances so require”—unilaterally (a) re-determine the membership of a local church corporation, (b) remove and substitute itself as the corporate board of a local church, (c) give control of all local church property to people determined to be loyal, and (d) hold church property hostage until the local church pays an indeterminate ransom. *See id.* at 5-7.

67. In the present case, the Dardenne Church is now openly disputing the Presbytery’s trust claim. Consequently, by involving this Court and daring to claim its own property, the church has taken the precise action that officially justifies the next step: the seizure of its property. *See* Exhibit 24. Finally, the Presbytery’s own policy indicates that it stands ready to implement a hostile, physical takeover of the Dardenne Church’s property. The evidence thus sufficiently establishes that the harmful conduct feared is both likely and imminent.

3. Injunctive Relief Element 3 of 5: The Likely Damages are Irreparable

68. The third consideration in crafting preliminary injunctive relief is the possibility of an irreparable injury for which monetary compensation would be inadequate.

69. Because the Dardenne Church uses its property for multiple weekly services, and

as the physical base of its ministries, the harm potentially caused by losing that property for any period of time is incalculable. With nowhere else to go, the church's congregation and the heart of its ministry would be scattered for weeks or months. In the interim, the Presbytery may sell, alter, or neglect the property, as the Presbytery's own policy and PCUSA operating procedures purportedly empower it to. *See* Exhibit 23 at 14; Exhibit 27 at 6-7. In turn, if the Dardenne Church must wait for a final judgment to have its property restored, its membership may have dwindled so much that its finances and ministries cannot recover.

70. Of course, the irreparable injury to the Dardenne Church is not limited to its property. Worse, the Presbytery's actions, if not enjoined, would also interrupt the daily ministry of the church. Such an interruption would mean that the Dardenne Church could no longer support its own members or its care ministries—ministries that include structured youth mentoring (Dardenne Church Students), meal deliveries (Angel Meals), Alzheimer's support counseling (Alzheimer's Faith Ambassador), cancer patient outreach (Cancer Companions), group grief navigation (GriefShare), homebound member companionship (Home Alone Ministry), children's comfort toys (Teddy Bear Ministry), and various other educational, fellowship, and prayer services.

71. Any interference with or takeover of the Dardenne Church's property would also impact the outside organizations and other ministries to which the church contributes time and money, including financial assistance programs (Helping Hands), food banks (The Hope Ministries Food Pantry), charitable fundraising organizations (Mary Martha Thrift Store), holiday gift-giving programs (Operation Christmas Child), home repair services for the needy (Restore St. Charles), and educational/fellowship camps for at-risk children (Strong Tower Ranch). A Presbytery takeover of the Dardenne Church's property would thus harm not only church

members, but also the poor, the needy, the lonely, and the marginalized of St. Charles County, and, just as importantly, those seeking God.

72. Where the interruption of a business might result in lost profits, the interruption of the Dardenne Church's operations will halt the flow of support to church members and community members alike. Because such consequences are not quantifiable in dollars, a TRO and preliminary injunction are appropriate to ensure that the church's ministry continues undisturbed.

73. Significantly, due to the above concerns, other courts have not hesitated to enter preliminary injunctive relief against local PCUSA presbyteries and in favor of local churches. Indeed, the injunctive prohibitions sought in this case are substantially identical to those contained in TRO's and preliminary injunctions entered against the PCUSA in at least ten other cases (including one in Greene County, Missouri). *See* Exhibit 28 (including ten TRO's and six preliminary injunctions against PCUSA presbyteries). Note that the same PCUSA injunction was additionally affirmed as constitutional and justified by a Louisiana court of appeals in 2015. *See Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 77 So. 3d 975, 984 (La. Ct. App. 2011) ("The prohibited actions enumerated in the injunction are specifically limited to instances affecting the instant church property dispute. Thus, we find no error.").

4. Injunctive Relief Element 4 of 5: The Balance of the Equities

74. The fourth factor to be considered before granting interim injunctive relief is whether the hardship imposed by the injunction outweighs the harm sought to be prevented. In the present case, however, the requested injunction seeks only to maintain the status quo, and it will therefore not cause any hardship to the Presbytery or the PCUSA. Significantly, it is only the Dardenne Church that uses and maintains the church's property. The PCUSA will thus suffer no

practical harm from an injunction precluding interference with *Dardenne Church's* property—property that the PCUSA and Presbytery do not own, do not use, do not maintain, and are unequipped to manage. Consequently, the PCUSA Defendants' purported interest in taking the church's property (retaliation and/or to improperly force a monetary settlement) does not remotely compare to the injury facing the church.

5. Injunctive Relief Element 5 of 5: The Public Interest

75. Before this Court can grant the requested injunction, the fifth and final factor to be considered is the public interest. Beyond any doubt, the public interest will not be harmed—and indeed will be advanced—by the requested injunction. The public has an interest in the orderly and neutral adjudication of legal disputes, and in the continued functioning of organizations that employ local citizens and serve the local community. To grant the requested relief is merely to ensure that the Dardenne Church's ministries are not interrupted and that the church's 900 members can continue to gather as they always have. A denial of the injunction, however, will simply allow a third party, as a show of force, to cripple a thriving church and seize property that it cannot immediately use. Thus, the public interest, like all of the other relevant factors, militates in favor of the requested preliminary injunction.

VI. JURY DEMAND

76. To the extent that the PCUSA Defendants oppose the declaratory judgment and quiet-title action pled herein, Dardenne Church requests a trial by jury.

VII. PRAYER

Based upon the foregoing allegations and causes of action, the Dardenne Church requests the entry of judgment as follows:

1. Declaratory Judgment:

A declaration recognizing that the Dardenne Church alone is the absolute, full, exclusive, fee simple owner of all real or personal property that is owned by the Dardenne Church, held for the Dardenne Church, or titled in its name; further, that the PCUSA and the Presbytery have no right to or interest in any of the real or personal property so owned by the Dardenne Church; and further, that neither the PCUSA nor the Presbytery has any trust, equitable, or beneficial interest in any of the real or personal property so owned by the Dardenne Church. The Dardenne Church requests that the judgment be accompanied by permanent injunctive relief protecting and enforcing the declaratory judgment of the Court.

2. Temporary Restraining Order:

A temporary restraining order, in the form submitted herewith, immediately prohibiting the PCUSA or the Presbytery from taking any action that would directly or indirectly interfere with the Dardenne Church's use, ownership, or control of the Dardenne Church's property.

3. Preliminary Injunction:

Following the requisite notice and any necessary hearing on the matter, a preliminary injunction to the same extent and upon the same terms as the requested temporary restraining order. The Dardenne Church requests that the preliminary injunction be entered and binding until a final judgment on the merits of the instant Complaint.

4. All Other Appropriate Relief:

All other general and equitable relief to which the Dardenne Church may be entitled, including an award of reasonable attorneys' fees and a judgment that, in the event of any determination that the PCUSA or the Presbytery has any interest in the property of the church, that the Dardenne Church is entitled to compensation and/or an unjust enrichment award for the improvements made to any subject property at the Dardenne Church's expense.

FILED this 3rd day of October, 2023.

Respectfully submitted,

MCCARTHY, LEONARD & KAEMMERER, L.C.

/s/ Brian E. McGovern

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Attorneys for Dardenne Presbyterian Church, Inc.

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

DARDENNE PRESBYTERIAN CHURCH,
INC.,

Plaintiff

v.

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

Defendant

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CASE NO:

SWORN VERIFICATION

I hereby affirm under oath the following:

1. My name is Martin Provin. I am currently serving as an elected member of the session, or Board of Directors, of Dardenne Presbyterian Church, Inc. (the “Dardenne Church”). I have attended church at the Dardenne Church for the past 24 years, and I began to hold leadership positions at the church approximately eight years ago.
2. I have gathered and reviewed the Dardenne Church’s historical records relating to the church’s formation, its incorporation and governing documents, its association with the “PCUSA” denomination, and its real property dealings, all of which records have been maintained and catalogued by the church in the ordinary course of its business.
3. I have reviewed the document captioned “Plaintiff’s Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary Injunction” (the “Petition”). I understand that this document is the final lawsuit filed or to be filed by the Dardenne Church against the Presbytery of Giddings-Lovejoy, Inc. in an effort to obtain a firm declaration of the Dardenne Church’s property rights.
4. To the best of my knowledge and belief, the factual allegations of the Petition are entirely true and correct, and the Petition reliably summarizes the relevant events and documents as evidenced by the official records of the Dardenne Church.
5. I hereby declare that the Petition is submitted by the Dardenne Church, through me as its representative, under penalty of perjury.



MARTIN PROVIN

October 2, 2023

DATE