

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 MEMORANDUM IN
OPPOSITION TO PCUSA’S MOTION TO DISMISS**

Dardenne Presbyterian Church, Inc. (the “Dardenne Church” or the “church”), appearing herein as Plaintiff, respectfully submits this Memorandum in Opposition to the PCUSA Corporation’s Motion to Dismiss for Lack of Personal Jurisdiction. The Dardenne Church further represents as follows:

I. BACKGROUND

The Dardenne Church, at present, maintains an affiliation with a national Presbyterian denomination, the Presbyterian Church (U.S.A.) (“PCUSA”). At a regional level, the PCUSA denomination divides itself into “presbyteries,” or locally-focused corporate divisions.¹ However, presbyteries ultimately answer to—and are bound to follow the instructions of—the PCUSA’s central national body, the General Assembly.²

¹ See Exhibit 1, PCUSA Book of Order, § G-3.0301 (“The presbytery is the council serving as a corporate expression of the church within a certain district.”). The relevant presbytery in this matter is the Presbytery of Giddings-Lovejoy, which oversees and is composed of approximately 70 churches in southeastern Missouri.

² See Exhibit 1, PCUSA Book of Order, § G-3.0501 (“The General Assembly is the council of the whole church.”); § G-3.0101 (“The [PCUSA] is governed by councils composed of presbyters elected by the people. These councils are

The Dardenne Church instituted this action to confirm that it exclusively owns and controls its own property in St. Charles County, Missouri. Importantly, the principal relief sought by the church is a declaration that it is not subject to or bound by the so-called “PCUSA trust clause” that appears in the denomination’s self-adopted rulebook, the “Book of Order.” *See* Petition at ¶¶ 22-38, 55-59, Prayer. As it is written in the Book of Order, the trust clause states:

All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association . . . **is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).**

See Exhibit 1 at § G-4.0203 (bold added)

The local presbytery is frequently the nominal defender of the PCUSA trust clause, and typically claims the right to enforce the trust clause for the PCUSA.³ However, there is no clear legal basis for a presbytery’s authority to do so. Significantly, the declared beneficiary of the relevant trust clause is not all presbyteries (or a presbytery), but the PCUSA *denomination* as a whole. *See* Exhibit 1 at § G-4.0203. Presbyteries, in contrast, are nowhere designated as trustees, legal custodians, or beneficiaries of the PCUSA trust.

Nevertheless, because the Presbytery *claims* a right to enforce the PCUSA trust, the Dardenne Church named it as a defendant in this quiet-title action. And because the PCUSA denomination is the named *beneficiary* of the trust, the Dardenne Church also properly named its corporate body (the “PCUSA Corporation”) as a defendant. *See* Petition at ¶ 11.

called the session, the presbytery, the synod, and the General Assembly. . . . The jurisdiction of each council is limited by the express provisions of the Constitution, with the acts of each subject to review by the next higher council.”); § G-3.0108(c) (“The higher council may direct the lower council to reconsider and take corrective action if matters are determined to be out of compliance.”); § D-2.0201 (“Through remediation, actions or omissions contrary to the Constitution by a lower council . . . may be corrected by a higher council.”).

³ *See, e.g., Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575 (Mo. Ct. App. 2012 – W.D.); *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190 (Mo. Ct. App. 2012 – W.D.).

II. THE PCUSA CORPORATION'S MOTION TO DISMISS

In response to the Dardenne Church's suit, the PCUSA Corporation has filed a motion to dismiss; in essence, the PCUSA Corporation simply disputes that *it* is the entity that holds any beneficial interest of the PCUSA "denomination" as it relates to property in Missouri. According to the PCUSA Corporation, while the trust is in favor of the PCUSA, the PCUSA *Corporation* does not represent or stand in for the PCUSA or the PCUSA *denomination* (the unincorporated Presbyterian Church (U.S.A.)). *See* PCUSA Corp. Br. at 2-3 ("[D]espite their names being quite similar, the [PCUSA] Corporation and the Denomination are not the same thing."). "Thus," the PCUSA Corporation represents:

[T]he [PCUSA] Corporation does not claim to be the beneficiary of the trust or to be the proper entity to litigate the trust question in this case. . . . Rather, consistent with the Book of Order, the right and responsibility to enforce and seek recognition of all property rights held by the Denomination with respect to the property titled in the name of Dardenne Presbyterian Church lies solely and wholly with the Presbytery of Giddings-Lovejoy.

PCUSA Corp. Br. at 3.

III. STANDARD OF REVIEW

Faced with a personal jurisdiction objection, a plaintiff need only make a *prima facie* showing that jurisdiction over the non-resident defendant is proper. In this analysis, any questionable facts should be construed in favor of the plaintiff,⁴ and statements in a defendant's affidavits need not be credited,⁵ particularly where the proffered statements are conclusory,

⁴ *See Moore v. Christian Fid. Life Ins. Co.*, 687 S.W.2d 210, 211 (Mo. Ct. App. 1984 – W.D.) ("The motion to quash for want of personal jurisdiction over the defendant casts the burden on the plaintiff to a *prima facie* proof that the court is empowered to render a judgment against the person of the defendant. In the assessment of that proof, the allegations of the petition are given an intendment most favorable to the existence of the jurisdictional fact.") (cited with approval by *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. 2010) (*en banc*)).

⁵ *Consol. Elec. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 776 (Mo. Ct. App. 2006 – E.D.) ("When a motion to dismiss for lack of personal jurisdiction is made on a matter not appearing on the record, the trial court may hear it on affidavits presented by the parties, or the court may direct the matter be heard wholly or partly on oral testimony

hearsay, or legal conclusions. *Scott v. Ranch Roy-L, Inc.*, 182 S.W.3d 627, 635 (Mo. Ct. App. 2005 – E. D.) (“An affidavit’s proper function is to state facts, not conclusions. . . . To the extent that the affidavits contained inadmissible hearsay and/or conclusory statements, the trial court erred in not . . . strik[ing] such inadmissible material from the affidavits.”).

IV. LAW & ARGUMENT

In a property action such as this one, personal jurisdiction may be constitutionally exercised over any entity that has any legal interest in the real estate. *See* MO. STAT. § 506.500(1)(4). In this case, the PCUSA trust clause purportedly vests equitable title to the Dardenne Church’s Missouri real estate in the “Presbyterian Church (U.S.A.)” *See* Exhibit 1 at § 4.0203. Consequently, jurisdiction is not just proper over the PCUSA, but the PCUSA is also a *necessary* party to this case. *See Roth v. Lehmann*, 741 S.W.2d 860, 862 (Mo. Ct. App. 1987 – E.D.) (“As a general rule in suits involving trust property both the trustees and the beneficiaries are necessary parties. The former are the legal owners of the trust and the latter have the beneficial or equitable interest.”); *Pauli v. Spicer*, 445 S.W.3d 667, 677 (Mo. Ct. App. 2014 – E.D.) (“[It is] well-established law that a trust lacks the legal capacity to be sued and that the proper parties to name are a trust’s trustee and beneficiaries.”).

To confirm its property rights, the Dardenne Church sued the PCUSA Corporation, alleging that any beneficial interest of the PCUSA denomination is legally held by the PCUSA Corporation. For its part, the PCUSA Corporation disputes this allegation, first denying that the PCUSA denomination exists in any legal sense. PCUSA Corp. Br. at 2.⁶ As for the trust interest

or deposition. When affidavits are presented, the trial court may believe or disbelieve any statements made within those affidavits.”).

⁶ The PCUSA Corporation’s brief posits that “The Presbyterian Church (U.S.A.) (the ‘Denomination’) is not a corporation or other legal entity capable of being sued.”

held by the (non-existent) PCUSA, the PCUSA Corporation suggests that the Presbytery legally controls that interest. *See id.* at 3.

In light of the above positions, the question left for this Court to resolve is whether, despite the Presbytery's willingness to be involved, the *PCUSA Corporation* is nevertheless the ultimate holder of any PCUSA rights—and thus an essential and proper party. In turn, if the PCUSA Corporation does potentially hold any interest, it may disclaim it and be dismissed, but not in the vehicle of a non-preclusive personal jurisdiction motion.⁷ Rather, it must agree to a dismissal that is (a) with prejudice and (b) based on a binding disclaimer, to and in favor of the Dardenne Church, of any interest, authority, or right of control of the PCUSA Corporation in any real or personal property of the Dardenne Church.

A. If there is any trust that arises out of the PCUSA trust clause, that trust is legally in favor of, and controlled by, the PCUSA Corporation.

The foundational contention of the PCUSA Corporation's motion is that it has no claim to or authority to control the PCUSA's interest in the Dardenne Church's property. *See* PCUSA Corp. Br. at 3-4. However, this pivotal conclusion is based only upon the following conclusory statements in the affidavit of Ms. Laurie Griffith:

18. The *Book of Order* does not give any rights or responsibilities to the General Assembly or to its principal corporation, the [PCUSA] Corporation, regarding the property held by a local congregation or "session."
19. The [PCUSA] Corporation does not have a corporate ownership interest in, or corporate right to control or maintain, the property of Dardenne Presbyterian Church.
20. The right and responsibility to enforce and seek recognition of all property rights held by the Denomination with respect to the

⁷ *See Laususe v. Normandy Osteopathic Hosp.*, 918 S.W.2d 953, 956 (Mo. Ct. App. 1996 – E.D.) (“Here, *Richie I* was a paternity action which was dismissed for lack of personal jurisdiction over Michael, a dead person. . . . Therefore, a judgment on the merits has never been entered regarding Michael's alleged paternity. As a result, *res judicata* does not apply.”).

property titled in the name of Dardenne Presbyterian Church lies solely and wholly with the Presbytery of Giddings-Lovejoy.

Affidavit of Laurie Griffith (submitted by PCUSA Corporation).

If the above statements were supported or accurate, the PCUSA Corporation's motion might have some merit. But, strictly speaking, the quoted assertions simply are not true. As set forth below, the PCUSA Corporation, in fact, wields *absolute* legal control over any trust right of the PCUSA.

1. *The PCUSA Corporation's direct authority over PCUSA trust property: its explicit designation as the holder of the PCUSA's property rights.*

It is undisputed that the PCUSA Corporation is the corporate entity that the PCUSA General Assembly formed to hold and control any of its property rights. As stated in Laurie Griffith's affidavit: "The [PCUSA] Corporation is the principal corporation of the highest council, the General Assembly, of the Denomination, established pursuant to G-4.0101." *Affidavit of Laurie Griffith*, ¶ 11.

Ms. Griffith denies that the PCUSA Corporation has any rights or role in this matter. However, the foundational document that controls the PCUSA Corporation's purposes and powers is not Ms. Griffith's hearsay statements, but the entity's articles of incorporation.⁸ Regarding the purposes, property rights, and authority possessed by the PCUSA Corporation, its controlling charter is unambiguous:

WHEREAS, the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America did on June 10, 1983 reunite to form the Presbyterian Church (U.S.A.) (the "Church") . . . ;

....

⁸ *Jefferson Grocery Co. of Pittsburgh v. Sch. Dist. of Pittsburgh*, 145 A.2d 720, 722 (Pa. 1958) ("[C]orporate articles signify both a corporation's birth and its purposes.").

WHEREAS, it is intended by the General Assembly of the Presbyterian Church (U.S.A.) that **this corporation (the “Corporation”) shall be . . . the principal corporate embodiment of the Church**;

....

NOW, THEREFORE, the Corporation does . . . hereby accept this instrument as the Articles of Incorporation thereof.

....

Article I.

The name of the Corporation is PRESBYTERIAN CHURCH (U.S.A.), A CORPORATION.

....

Article III.

The purpose or purposes for which the Corporation is incorporated are:

- (a) to be an integrated auxiliary and a part of the Presbyterian Church (U.S.A.) and to act as the principal corporation which the General Assembly of the Presbyterian Church (U.S.A.) has caused to be formed . . . [and]
- (b) To take, receive, hold and administer and dispose of **all manner of lands, tenements, rents . . . income and property, real and personal**, of any kind **in any state** . . . which at any time and from time to time shall hereafter be given, granted, bargained . . . or delivered by any person or persons, corporations, associations, trusts, foundations or other forms of organization, to the General Assembly of the Presbyterian Church (U.S.A.), **to the Presbyterian Church (U.S.A.)**, to the predecessors of either, **or to this corporation** or its predecessors, to their use or to the use of any of them, **or in trust for them**, or any of them, or to them or any of them for the support of any work, activity, purpose, project or interest of the Presbyterian Church (U.S.A.) or of the General Assembly of the Presbyterian Church (U.S.A.), in which **property of any kind** the General Assembly of the Presbyterian Church (U.S.A.), **the Presbyterian Church (U.S.A.)**, **or this corporation**, or the predecessors of any of them, have or are intended to have any legal or equitable interest, present or future, vested or contingent.

Exhibit 2 at PDF pages 10-12.

The governing articles of the PCUSA Corporation stand in stark contrast to the affidavit it has submitted. Despite the assertion that the PCUSA Corporation has no connection to the property or rights of the PCUSA, and that the two bodies/entities should not be confused, there is nothing unclear about the PCUSA Corporation’s charter. The corporation’s defining purpose is to be the

“corporate embodiment” of the entire denomination. *See id.* at 10. But more pointedly, the PCUSA Corporation’s governing document very carefully acknowledges the distinction between the (1) PCUSA *denomination*, (2) the PCUSA *General Assembly*, and (3) the PCUSA *Corporation*. *Id.* at 12. After drawing this three-fold distinction, the charter then vests the PCUSA Corporation alone with authority over the property rights of *all three* bodies/entities—including any property “in any state in trust for them, or any of them.” *Id.*

In the present case, the alleged trust at issue purports to grant an equitable interest to “the Presbyterian Church (U.S.A.)” Exhibit 1, § 4.0203. Pursuant to the PCUSA Corporation’s charter, it is thus the PCUSA Corporation that holds the alleged trust interest (to the extent it exists) in this case. Certainly, the PCUSA’s highest body could amend the Book of Order and/or establish presbyteries as the ultimate beneficiary of the PCUSA trust, but it has not done so.⁹ Instead of approving a document that gives control of trust property to presbyteries, the PCUSA’s highest body approved the PCUSA Corporation’s charter and *its* authority over all denominational property rights. *See* Exhibit 2 at PDF page 3 (“Th[is] Plan of Division was adopted . . . at the direction and with the approval of another body, namely the General Assembly of the Presbyterian Church (U.S.A.)”).

So, despite the PCUSA Corporation’s protests, it legally holds the claimed trust interest at issue in this case, as well as the authority over that interest. To the extent the bald assertions offered with the PCUSA Corporation’s motion conflict with its own governing document, those assertions must be ignored. *See, e.g., Hosp. Utilization Project v. Com.*, 487 A.2d 1306, 1319 (Pa. 1985) (“Although [Defendant] now seeks to define itself as a publisher of books, newspapers, magazines

⁹ *See also* Exhibit 4 at 1 (PCUSA Corporation bylaws) (“The General Assembly may alter, amend, expand, revoke or otherwise change any authority granted to the Presbyterian Church (U.S.A.), A Corporation.”).

and other periodicals and printing, we must accept its corporate purpose as set out in the Articles of Incorporation.”); *Conoy Twp. Sup’rs v. York Haven Elec.*, 71 A. 207, 209 (Pa. 1908) (“[T]he powers, privileges, and duties of a corporation are fixed by its charter, and in a legal proceeding must be determined by the requirements of the charter.”).¹⁰ See also Exhibit 3 (Manual of the PCUSA General Assembly) (“The Presbyterian Church (U.S.A.), A Corporation is a corporate entity of the General Assembly. It holds funds and title to property in accordance with . . . its Articles of Incorporation.”).

2. *The PCUSA Corporation’s alternate authority over PCUSA trust property: it’s ultimate control over any actions or rights of the Presbytery.*

Setting aside the direct Articles-based control over trust property discussed above, the PCUSA Corporation also separately wields (alleged) control over the property at issue through the “Book of Order.” The PCUSA Corporation’s contrary suggestion is, quite frankly, demonstrably untrue.

Yes, the PCUSA Book of Order does give certain limited authority to presbyteries, such as: (a) the disposition of PCUSA-owned property used by churches that leave the PCUSA, (b) the liquidation of the property of a church that “has become extinct,” or (c) the approval of a church’s request to sell or lease trust property. See *Affidavit of Laurie Griffith*, ¶¶ 13-16 (quoting Book of Order, §§ G-4.0204, G-4.0205, and G-4.0206). However, the Book of Order nowhere gives presbyteries any other authority or absolute control of local church property,¹¹ a fact that the

¹⁰ *Komanetsky v. Missouri State Med. Ass’n*, 516 S.W.2d 545, 553 (Mo. Ct. App. 1974 – St. Louis) (“In the modern view, a corporation possesses all those powers reasonably necessary for the accomplishment of its proper purposes. What these proper purposes are is stated in the charter of the corporation . . . When the state accepts the corporate charter for filing, it thereby approves the purposes stated in that charter.”).

¹¹ Quite the opposite, the Book of Order makes clear that it is the corporate embodiment of every PCUSA body that has the control over that body’s/council’s property rights. See Exhibit 1, § G-4.0101 (“[E]ach presbytery, synod, and the General Assembly shall cause a corporation to be formed and maintained The corporation so formed . . . shall

PCUSA Corporation glosses over. Rather, based only upon the limited authorizations listed, the Griffith affidavit summarily concludes that *all* PCUSA power over local church property, by default, belongs “solely and wholly” to presbyteries. *Affidavit of Laurie Griffith*, ¶ 20. To remove any remaining doubt, Ms. Griffith’s affidavit then asserts that “the Book of Order does not give *any rights* to the General Assembly or to its principal corporation, the [PCUSA] Corporation.” *Affidavit of Laurie Griffith*, ¶ 18. These are not true statements.

Whether presbytery’s powers are limited or all-encompassing, it is undisputed that presbyteries do not wield *final or binding* authority of any type. Rather, as the PCUSA often emphasizes, the PCUSA is a “hierarchical” denomination in which any action by a lower “council” or presbytery is not ever binding or final; rather “[t]he jurisdiction of each council is limited by the express provisions of the constitution, with the acts of each subject to review by the next higher council.” Exhibit 1, § G-3.0101. Indeed, multiple overlapping provisions of the Book of Order make it clear that the General Assembly—and only the General Assembly—has the final say on any decisions or actions of any subordinate presbytery, including a presbytery’s oversight of property.¹² For instance, the Book of Order states:

- “A higher council shall have the right of review **and control** over a lower one.” (§ F-3.0206);
- “The **higher council may direct the lower council** to reconsider and take corrective action.” (§ G-3.0108(c));
- “Th[e] councils are sessions, presbyteries, synods, and the General Assembly. . . . The larger part of the church, or a representation thereof, shall govern the smaller.” (§ F-3.0203);

have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for and *at the direction of the council.*”) (emphasis added).

¹² *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 578 (Mo. Ct. App. 2012 – W.D.) (“Individual churches are governed by sessions Multiple sessions are governed by a district governing body known as a presbytery, which is in turn governed by a regional body, the synod. Synods are governed by the General Assembly, the highest governing body within the PCUSA.”).

- “The presbytery has a responsibility to maintain regular and continuing relationship to synod and General Assembly by . . . seeing that the guidance and communication of synod and General Assembly are considered and that any binding actions are observed and carried out.” (§ G-3.0302);
- “Each council shall recognize and enforce the judgments, decisions, and orders of higher councils which have jurisdiction over them under the provisions of the Constitution of the Presbyterian Church (U.S.A.).” (§ D-4.0207(a));
- “**Only the General Assembly** [dispute resolution] commission has the power to render decisions that are authoritative interpretations **binding on the entire church.**” (§ D-4.0207(c)).

See Exhibit 1 (bold added).¹³

In addition to the above rules, the Book of Order’s property chapter is careful to explicitly protect the General Assembly’s ultimate control over all local property decisions. Indeed, though Ms. Griffith elected not to quote it, Section G-4.0202 of the Book of Order, titled “Decisions Concerning Property,” leaves no doubt about who really controls local church property in the PCUSA:

The provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property.

Exhibit 1, § G-4.0202.

But perhaps it was best stated in another affidavit submitted by Ms. Griffith on behalf of the PCUSA in a Washington matter several years ago. *See Presbytery of Seattle v. Schulz*, 449 P.3d 1077, 1085 (Wash. 2019). In that matter, the PCUSA argued that the authority of higher PCUSA bodies (*i.e.*, the General Assembly) is so absolute that lower denominational bodies have no legal right to do anything with property other than follow the command of the highest

¹³ See also Exhibit 1, § D-2.0201 (“Remediation is the process by which councils are held accountable Through remediation, actions or omissions contrary to the Constitution by a lower council . . . may be corrected by a higher council.”).

denominational body. *See* Exhibit 5. In particular, Ms. Griffith’s testimony in *Schulz* concerning local church property was as follows:

I am the Manager of Judicial Process and Social Witness . . . within the Office of the General Assembly, one of six entities of the highest council in the Presbyterian Church (U.S.A.) (“the Church”), the General Assembly. . . .

The congregations within the Church are governed by a hierarchy of councils. The lowest level is the session The next level is the presbytery. . . . The third level is the synod The top level is the General Assembly “The larger part of the church, or a representation thereof, shall govern the smaller” F-3.0203. Section F-3.0206 of the Book of Order states “A higher council shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal.” For this reason, secular courts have historically identified the polity of the Presbyterian Church (U.S.A.) as being hierarchical in nature.

I have reviewed the Declaration of Parker T. Williamson in support of [the local church’s property protection injunction request]. **Mr. Williamson contends that the Church is not hierarchical for civil matters but only for ecclesiastical and spiritual matters. He is wrong. Chapter 4 of the Book of Order unequivocally establishes that civil matters impacting church property proceed through the polity as set forth within the other parts of the Book of Order.**

. . . .
The acts of the presbytery are subject to review by the next highest governing council. (G-9.0103) Matters affecting the real property of a congregation may be challenged using the judicial process of the church and may be appealed all the way up to the permanent judicial commission of the General Assembly. The decisions of the General Assembly Permanent Judicial Commission are final, binding and authoritative.

Exhibit 5, ¶¶ 2, 5-6, 10 (bold added).

Relatedly, whatever powers a presbytery does have, those powers are restricted and are not exercised on its own behalf. In fact, according to the PCUSA, a presbytery does not have the authority to waive a trust claim.¹⁴ Rather, when a presbytery deals with local church property, it does so only in an interim representative capacity, “for the benefit of the PC(U.S.A.), the

¹⁴ *See also* Exhibit 6 (PCUSA General Assembly publication, “Implementing the Trust Clause for the Unity of the Church”) (“There are also significant restrictions on how and under what circumstances a presbytery may release a congregation [from the PCUSA trust clause]. . . . Presbyteries are responsible for enforcing the trust clause . . . [but] if a presbytery fails to carry out these constitutional responsibilities, the synod may be required intervene.”).

beneficiary of the Trust Clause.” *See* Exhibit 5, PDF p. 11. According to the PCUSA, a presbytery’s property decisions are merely “entitled to deference” and will only be affirmed by a higher PCUSA body if that body agrees the presbytery’s decision is “reasonable.” *See* Exhibit 5, PDF p. 21.

Thus, a “higher” PCUSA body (or one of its corporate entities) may at anytime intervene and assert its property rights if it feels the presbytery is not doing a “reasonable” job. *See, e.g., Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (U.S.A.)*, 2014-1214 (La. Ct. App. 1st 3/9/15), 172 So. 3d 1, 9 (“The Synod formed an administrative commission known as the Synod AC, which the Presbytery admitted had a ‘shared, common interest’ with respect to the property dispute between [the local church] and the Presbytery.”) (affirming trial court ruling describing synod’s effort to take control of disputed local church property as “a slap in the face of the court”).

In sum, any assertion that the Book of Order does not assign any relevant right to its highest council, the General Assembly (Griffith Affidavit, ¶ 18), is not entirely true. Nor is it accurate to say that the General Assembly has not claimed any “right to control” local church property (Griffith Affidavit, ¶ 19), or that presbyteries are the authoritative PCUSA entities with “sole” responsibility for local church property (Griffith Affidavit, ¶ 20). Rather, there is one final and authoritative entity in the PCUSA structure, and it is the General Assembly, which is incorporated as and through the PCUSA Corporation.¹⁵ The PCUSA Corporation is accordingly a contingent interest-holder—if not the ultimate interest-holder—in this case, and thus a necessary party. *See Cohen v. Normand Prop. Assocs., L.P.*, 498 S.W.3d 473, 479 (Mo. Ct. App. 2016 – W.D.) (“A

¹⁵ *See* Exhibit 5, Affidavit ¶ 4 (“Each council . . . , including the General Assembly, is required under our constitution to be incorporated.”).

‘person having an interest’ also includes any person who is vested, and any person in being *who might or will become vested*, with an estate in the property.”); *Edwards v. Harrison*, 236 S.W. 328, 330 (Mo. 1921) (“[A]s a general rule, the contingent remaindermen are necessary parties.”).¹⁶

B. The PCUSA Corporation can escape this case, but only by seeking a dismissal with prejudice, and by quitclaiming any interest or right it has to the Dardenne Church.

To be fair, the PCUSA Corporation can be dismissed from this case by disclaiming any interest in the Dardenne Church’s property that it might have or control. However, the relevant dismissal must not be on jurisdictional grounds and/or deprived of any preclusive effect.¹⁷ Rather, the PCUSA Corporation should only be dismissed if it consents to the title declaration sought, as the quiet-title statute contemplates to be the appropriate means of disclaiming title (and which would entitle the PCUSA Corporation to payment of its costs). *See* MO. STAT. § 527.170 (“If the defendant . . . shall make default, or appearing, shall by answer admit the fact as stated in the petition and consent to judgment as prayed for, the plaintiff shall be adjudged to pay all costs of the suit.”).

Alternatively, the PCUSA Corporation could simply submit an order or stipulation that, without warranting or representing any interest in or authority over the Dardenne Church’s property, formally quitclaims, waives, releases, and terminates any such interest or authority controlled or held by the PCUSA Corporation. Unlike the relief the PCUSA Corporation currently

¹⁶ *See also Allen v. St. Louis-San Francisco Ry. Co.*, 90 S.W.2d 1050, 1054 (Mo. 1935) (“[T]he minor children likewise have the right . . . to assert their claim—even though it may be of a contingent nature—as being entitled to such benefit upon the happening of the contingency therefor.”).

¹⁷ *See Laususe v. Normandy Osteopathic Hosp.*, 918 S.W.2d 953, 956 (Mo. Ct. App. 1996 – E.D.) (“Here, *Richie I* was a paternity action which was dismissed for lack of personal jurisdiction over Michael, a dead person. . . . Therefore, a judgment on the merits has never been entered regarding Michael’s alleged paternity. As a result, *res judicata* does not apply.”).

seeks, such an order would be binding and would ensure that the PCUSA Corporation cannot later assert any direct or indirect claim or right of control of any type.

To the extent the PCUSA Corporation will not agree to the preclusive alternative orders suggested by the Dardenne Church, its position is telling. The PCUSA Corporation is free to walk away from this case at any time; however, when it does so, it must take nothing with it, and it does not get to force the Dardenne Church to litigate-by-proxy through the Presbytery.

V. CONCLUSION

The alleged trust in this matter concerns the Missouri property of the Dardenne Church. The alleged trust is based upon a trust clause written by the PCUSA General Assembly—not the Presbytery—and only the General Assembly has the power to waive or amend it. *See* Exhibit 1, § G-6.04(c). Moreover, that alleged trust is supposedly in favor of the whole church, yet there is only one entity that can speak for “the whole church” or dispose of its supposed interest: the General Assembly. *See* Exhibit 1, § G-3.0501 (“The General Assembly is the council of the whole church.”). The General Assembly, through its corporate form, is thus subject to personal jurisdiction in Missouri unless and until it agrees to the relief sought.

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

1. DENY the “Motion to Dismiss for Lack of Personal Jurisdiction” filed by the PCUSA Corporation; and
2. ORDER that the PCUSA Corporation, by a specified date, answer the Dardenne Church’s Petition or consent to the relief requested.

FILED AND SERVED on **May 31, 2024**.

Respectfully submitted,

MCCARTHY, LEONARD & KAEMMERER, L.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing filing has been sent, via the indicated e-mail addresses, to the following counsel of record this **31st** day of **May** 2024:

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