

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO
Case No. 07CV349, Division 3

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RULING AND ORDER

Presbytery of Plains and Peaks and Covenant Presbyterian Church of Boulder County,
Plaintiffs

v.

Indian Peaks Community Church and Georges Michael Houssey,
Defendants

A trial to the Court was conducted on April 21 through April 23, 2008. After carefully considering the evidence presented, the applicable law, and the arguments of counsel, the Court enters the following Ruling and Order.

INTRODUCTION

This case involves a dispute over ownership of church property. Plaintiffs filed this action to quiet title seeking injunctive and declaratory relief in their favor and requiring Defendants to relinquish control and possession of the property located in Boulder County known as 9880 Baseline Road in Lafayette, Colorado (the "Property"). Defendants have asserted the following counterclaims: quiet title in the Property in their favor and for declaratory judgment that Presbytery has no right, title or interest in the Property; slander of title; intentional interference with business relations; and injunctive relief.

STIPULATED FACTS

The parties stipulated to the following facts:

1. Jurisdiction and venue are proper in Boulder County pursuant to Rule 98 of the Colorado Rules of Civil Procedure because this action affects real property located in Boulder County, Colorado.
2. This quiet title cause of action is appropriately resolved pursuant to Rule 105.
3. The legal description of the Property is:

That portion of the NW $\frac{1}{4}$ of Section 4, Township 1 South,
Range 69 West of the Sixth P.M., described as follows:
beginning at the point on the North line of NW $\frac{1}{4}$ of

Section 4, from which the North quarter corner of Section 4 bears Easterly 802 feet; then Southerly at right angles to said North line 447.42 feet; then Westerly parallel to said North line 417.42 feet; then Northerly at right angles to said North line 447.42 feet to said North line; then Easterly along said North line 417.42 feet to the point of beginning, County of Boulder, State of Colorado.

4. Presbytery recorded a notice of *lis pendens* in the public records of Boulder County on April 18, 2007.

FINDINGS OF FACT

Dr. Daniel M. Saperstein has been the Executive Presbyter for Presbytery of Plains and Peaks since February, 2004. He has a doctorate of ministry and was ordained as a pastor in the Presbyterian Church (U.S.A.) ("PCUSA") in October, 1983. Since 1983, he has held numerous positions within the church hierarchy, including various positions in the judicial courts of PCUSA.

Dr. Saperstein provided authoritative testimony about the governing structure of PCUSA. PCUSA is the largest body of reformed Christians in the United States. It is the longest regularly meeting constitutionally governed body in the world. PCUSA was formed through the reunion of two predecessor denominations in 1983. PCUSA is governed by a Constitution which is comprised of Part I, the Book of Confessions (the historical record of theological affirmations) and Part II, the Book of Order. The Book of Order consists of the governing structure and rules, the directory for worship, and the rules of discipline which articulate the judicial process for resolving disputes within the church.

PCUSA is a hierarchical church. The hierarchy consists of four governing bodies in ascending order: the session, the presbytery, the synod and the General Assembly. The lowest rung is the session which is the governing board of each particular church. The presbytery is the foundational and central governing body in the system. It is "a corporate expression of the church consisting of all the churches and ministers of the Word and Sacrament within a certain district." Ex. 1, p. 59. Among other responsibilities, the presbytery solely has the right to divide, dismiss, or dissolve churches in consultation with their members; to take special oversight of churches without pastors, and to ordain, receive, dismiss, install, remove and discipline ministers. Ex. 1, pp. 60-61. This means that if the presbytery uses its exclusive powers to divide, dismiss or dissolve a particular church, the church ceases to exist. A particular church cannot be dismissed to independence or non-denominational status. A Presbyterian church only has its existence as such by virtue of the presbytery.

Chapter VII of the Book of Order contains provisions regarding the organization, mission and government of the particular church, which is a defined term. The particular church is the local manifestation of the Presbyterian Church (U.S.A.). A particular

church can be organized only by the authority of the presbytery and “shall function” under the provisions of the Constitution. Ex. 1, p. 29.

In addition, the Constitution requires each particular church to cause a corporation to be formed and maintained whenever permitted by civil law. When the particular church is incorporated, the corporation, or the individual trustees, shall have the power to receive, hold, encumber, manage, and transfer real or personal property for the church; to accept and execute deeds of title to such property; and to hold and defend title to such property and other powers, all of which are subject to the authority of the session and under the provisions of the Constitution.

Chapter VIII of the Book of Order addresses church property. It provides that all property held by or for a particular church, 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 an unincorporated association “is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)” Ex. 1, p. 34. During its existence, Covenant Presbyterian Church never asked to be excused from the provisions of Chapter VIII.

The Constitution specifically prohibits a particular church from selling, mortgaging, or otherwise encumbering its real property without the written permission of the presbytery transmitted through the session of the particular church. Ex. 1, p. 35.

Exhibit 117 is the Companion to the Constitution for PCUSA. It is a handbook for the application of the Constitution and education in local churches and is frequently used as a training manual especially for newly chartered churches. The Companion states clearly that in the PCUSA, property is held in trust by the particular church on behalf of the denomination. When a particular church is dissolved, the real and personal property is held, used, or transferred as directed by the presbytery.

The General Assembly is the highest governing body of the church and is representative of the unity of the synods, presbyteries, sessions, and congregations of PCUSA. According to the constitution, the General Assembly’s interpretation of the Book of Order “shall be binding.” Ex. 1, p. 83.

The Synod is the administrative and judicial entity that coordinates the works of presbyteries in its boundaries. The General Assembly is the most inclusive and representative body of the church with representatives of all presbyteries.

PCUSA has an established process for forming new churches which is described in the Companion to the Constitution as follows:

Before a new church is formed, a site is often chosen. Before chartering the presbytery exercises its responsibility of locating the new church and prepares the way for members to covenant together. The presbytery lends its

own funds or approves mortgages to borrow funds and cooperates in construction. As the new church is chartered, its members accept the trust of the property and take on more and more of the finances. Often, the presbytery will transfer title to the congregation when it assumes full self-support. In the future, if the congregation ceases to exist, the property will be transferred back to the presbytery to keep the trust of those who have contributed for the purpose of establishing and maintaining a Presbyterian church.

Larry Gupton was a founding member of Covenant Presbyterian Church of Boulder County ("Covenant"). He first became involved with Covenant in 1982 when it was renting space in a building. Mr. Gupton was an active member of Covenant from 1982 until the end of 1994. During his membership, he received training as a church elder, and served as a member of Covenant's Session.

The Boulder Presbytery designated the Lafayette, Colorado area as a new church development area. The Boulder Presbytery provided organizational structure, along with spiritual and financial support. The Presbytery chose and purchased the property at 9880 Baseline Road as the location for the church. The Presbytery paid the entire purchase price of \$30,000 in 1982.

As part of Mr. Gupton's training to be an elder, the Book of Order property provisions were emphasized. It was understood that the church land and buildings were owned by PCUSA and that the individual churches served as trustees of the property and were not the final owners. He understood that if the church was dissolved for any reason, the property would go back to PCUSA.

Dr. Janet Davies, a former member of Covenant, and a member of the Indian Peaks Community Church ("IPCC") leadership team, described herself as being born into PCUSA. She had been an active member of PCUSA for many years. "All her life" she had been told that the Presbytery owns the property, not the church.

On October 11, 1983, Covenant became incorporated as a nonprofit corporation with the state of Colorado. Ex. 17. The Articles of Incorporation provide that the church "shall not lease, sell or mortgage its real property ... except by authority of a resolution adopted by the majority of the members present ... and written permission of the Presbytery." Ex. 17.

Although unsigned, the bylaws of Covenant Presbyterian Church (revised edition 1989) were identified by Mr. Gupton as the bylaws that were in place and used to govern the Session. Ex. 22. The bylaws provide that the church was organized by the Presbytery of Boulder on November 28, 1982, and incorporated by the State of Colorado on October 11, 1983. Section 2 provides that the Church is "a particular congregation of the Presbyterian Church (U.S.A.) in the United States of America and is subject to the

guidance and direction of the jurisdiction. These By-laws shall be in conformity with the constitution of the Presbyterian Church (U.S.A.) as interpreted by the judicatories of jurisdiction, and shall set forth the ecclesiastical and corporation structure and method of operation of this particular Church.” The Bylaws further state that they “may not be amended contrary to... the Constitution of Presbytery Church (U.S.A.)” The bylaws could only be amended consistent with the provisions of the Book of Order.

The Covenant church building was constructed in 1986. It was financed through commercial loans and loans from the Presbytery.

At some point, Covenant learned that its registration with the state of Colorado as non-profit corporation lapsed due to administrative oversight. This resulted in the Articles of Incorporation being re-filed with the state of Colorado in 1992. Ex. 20. Mr. Gupton signed the Articles of Incorporation as a director and incorporator. The Articles of Incorporation state that provisions regarding the distribution of assets on dissolution are “set forth in the Bylaws and the Presbyterian Church USA “Book of Order”. It was not Covenant’s intent to change its structure by filing the Articles of Incorporation. Covenant continued to follow the articles and bylaws as well as comply with the Book of Order after the articles of incorporation were re-filed in 1992.

On July 1, 1992, the Boulder Presbytery signed a warranty deed conveying the property at 9880 Baseline Road to Covenant Presbyterian Church.

Covenant never signed a document conveying a trust interest in the property to the Presbytery after July 1, 1992. It was not necessary for the Presbytery to retain its interest in the Property because this was expressly provided for in the Constitution and Covenant’s Articles of Incorporation and bylaws.

Covenant experienced financial difficulties throughout its existence, which became more acute in 1996. In its May, 1996 meeting, the Presbytery Council recommended that its Congregational Services and Development Committee “work with the Lafayette church in exploring options and solutions to its financial picture.” The Presbytery approved this recommendation at its June, 1997 meeting.

To ameliorate its financial condition, Covenant sought the Presbytery’s approval to sell 2 of the 4 acres and to use the sale proceeds to retire the church’s mortgage in April, 1997.

In February, 1998, Covenant requested that the Presbytery list the property with a realtor to lease the property because it could not make the loan payments on the Property.

In May, 1998, Covenant sought the Presbytery’s permission to enter into a lease with another church to use the facilities.

By May, 1999, Covenant lacked a pastor and attendance at Covenant church was desperate with only 13 people, including Dr. Davies and her husband, Bob Davies.

Rev. Georges Houssney was elected as Moderator of Covenant's Session in June, 1999. He is not credentialed as a Presbyterian minister. The statement entitled "Elders Who Direct the Affairs of a Church" dated May, 1999 refers to "Covenant Presbyterian Church, a church belonging to the Presbytery of Plains and Peaks." In July, 1999, Rev. Frank Gibson from the Presbytery began moderating Covenant's Session. Due to increasing conflict with Rev. Gibson, the Covenant Session wanted to be free of the Book of Order that was imposing "undue requirements" on them as described by Dr. Davies.

At its meeting of October 29-30, 1999, the Presbytery passed a motion to establish the Lafayette Administrative Commission to determine the advisability of dissolving Covenant. After consulting with Covenant's Session and congregation, and other Presbytery committees, the commission was authorized to execute the dissolution of Covenant.

In December, 1999 Covenant's Session voted to be dissolved. Covenant's congregation agreed to be dissolved in January, 2000. At this time, Covenant was still operating under the Book of Order.

In February, 2000, the Presbytery voted to dissolve Covenant as a particular church as of January 31, 2000. The Lafayette Administrative Commission also recommended to the Presbytery a new church development for the site as of February, 2000 with the administrative commission acting as the Session temporarily. The Committee voted to commend Rev. Houssney for the work he had done with Covenant from June 1, 1999 to January 31, 2000 and to support his continual work with the new church development "under the authority and supervision" of the Administrative Commission.

At the Presbytery Council meeting in February, 2000, Rev. Houssney was invited to speak. He acknowledged that "there is no old congregation. It's dissolved. It's finished."

The new congregation became known as Indian Peaks Community Church ("IPCC"). IPCC was never designated as a new church development. Instead, the Presbytery chose to focus its development efforts in the Fort Collins area.

Rev. John Dynes, head of the Lafayette Administrative Commission, intended to meet with Rev. Houssney in March, 2000 to determine whether the members of IPCC wanted to continue to use the building, and if so, to consider a leasing arrangement.

During an informal conversation with Rev. Gibson, also in March, 2000, Rev. Houssney indicated that the IPCC attendees were considering planting trees on the property. Rev. Gibson advised him to be respectful of the Presbytery as the property owner and to submit any proposals for property improvement or alteration to the presbytery. Rev. Houssney concurred with this advice.

The Presbytery's New Church Development Group met on April 5, 2000 at which time it was noted that the Presbytery Council/Trustees are the Trustees for the 9880 Baseline property and that the Presbytery is responsible for the indebtedness, maintenance, and care of the property. The Indian Peaks Liaison Group ("IPLG") was formed to monitor the development of the Christian community meeting in the former Covenant facility. The IPLG was the link between the Presbytery and IPCC; it was initially comprised of John Dynes, Bill Kyle, and Stephen Bird.

At its meeting on April 10, 2000 the Presbytery Council was reminded that it now has responsibility for the property, assets, and liabilities of the former Covenant Church. In 2000 and 2001, the Presbytery contributed \$12,000 to IPCC and the Synod contributed \$3,000.

At the Presbytery's meeting on June 2-3, 2000, the Trustees/Council acknowledged that they were the trustees for the 9880 Baseline Road property. They had also begun to negotiate financial arrangements with IPCC and the nursery school for the use of the facilities. Rev. Houssney attended this meeting and did not voice any objections.

Members of the IPLG and Rev. Houssney met regularly to review IPCC's development as a Christian community.

On June 7, 2000, the IPLG advised Rev. Houssney about the need for incorporation and a tax identification number for IPCC. On July 11, 2000, Rev. Houssney filed a Biennial Report of a corporation or limited liability company. The report is a copy of the previous report filed by Covenant, with the names of officers and directors crossed out (except one) and new names added. The IPCC did not hold an election of the new directors and officers. Covenant is listed as the corporate entity with the additional language: "Now Indian Peaks Community Church". There were no IPCC by-laws or articles of incorporation.

At the October 11, 2000 meeting, Rev. Ed Black from the Presbytery proposed that a motion be introduced at the Presbytery meeting that the Presbytery will not sell the church or church property without the agreement of the existing congregation. This motion was never voted upon or passed.

Promise Preschool had leased part of the building from Covenant, and continued to lease the building from IPCC after Covenant was dissolved with the Presbytery's approval. During a meeting on August 23, 2001, as a representative of the Presbytery, Rev. Black explained the relationship between the Presbytery and IPCC, stating that the church is "independent", not Presbyterian, but the building is owned by the Presbytery which is a "caregiver" for the church.

On September 6, 2001, the Presbytery Council approved \$6,600 to repair the building's roof.

The Presbytery's Support and Finance Committee acknowledged that the Presbytery was responsible for the loans from the General Assembly and the commercial loan on the property in Covenant's name on January 29, 2002.

Dave Sutton, IPCC's Assistant Pastor, and a member of the IPCC leadership team, acknowledged that IPCC was "technically now renting the property" on September 6, 2002. The Presbytery asked IPCC what its plans were at that point—whether IPCC intended to become a Presbyterian church or "continue as renters." This question was discussed during a meeting of the IPCC congregation in September 2002.

The Presbytery's Committee on Ministry Minutes dated April 24, 2003 state that the property "is being leased to Indian Peaks Community Church."

In April, 2003, Bob Davies, a member of IPCC's leadership team, wrote a letter to IPCC members and friends in which he stated, "For the past three years, we as an independent church, have been blessed by the privilege of meeting in a building that belongs to Presbyterians."

The IPCC team met on December 4, 2003. The minutes reflect that Georges Houssney "is also planning on writing an inspired letter to the Presbytery asking them to donate the building to our church."

At the end of 2003, IPCC decided to remain nondenominational and not to seek to become a particular church within PCUSA. The Presbytery was informed of this decision. In response, the Presbytery advised IPCC that the future of the property would be discussed at the Presbytery's February, 2004 meeting. In anticipation of this discussion, Rev. Houssney wrote the Presbytery a letter dated February 5, 2004 requesting that the Presbytery consider several options:

1. That IPCC continues to use the property as we have been for a specific period of time past the burning of the debt...;
2. That Presbytery graciously donate the property to IPCC...;
3. That Presbytery and IPCC negotiate other options including allowing us to buy the property at a reasonable price based on our ability to run a capital campaign to mortgage the property with an independent lender.

In March and April, 2004, IPCC postponed investing in a church sign until the Presbytery decided what to do with the property.

On cross-examination, Rev. Houssney admitted that in 2004, IPCC's strategy was to "hang in there" until enough years passed by until they could claim ownership of the property.

In May, 2004, the Presbytery asked IPCC to sign a lease, but IPCC refused. The IPCC meeting minutes of May 18, 2004 state, "If we don't do a lease with them, there are adverse possession laws. In Colorado, there has to be a hostile possession for 7 years."

The Presbytery voted to liquidate the Lafayette property in three to five years at its October 28-29, 2005 meeting.

The Presbytery continued its efforts to get IPCC to sign a lease from 2004 until April 2007, without success.

IPCC has used the Property regularly since February, 2000. No formal financial agreements for IPCC's use of the Property were ever reached between IPCC and the Presbytery. IPCC has never paid the Presbytery rent for the use of the Property. Instead, the Presbytery and IPCC had an informal agreement that the IPCC would pay the monthly mortgage and insurance owed on the Property which totaled \$2300 per month. This amount is less than the fair market rental rate IPCC would have paid otherwise. IPCC received payments from the Promise Preschool and other church groups for their use of the Property. This rental income exceeded the monthly mortgage and insurance payments made by IPCC. IPCC has never paid taxes on the Property.

MERITS

Both sides agree that the Court should follow the "neutral principles" method adopted by the Colorado Supreme Court in *Bishop of Diocese of Colorado v. Mote*, 716 P.2d 85 (1986). Civil courts have the authority to resolve church property disputes; however, the first amendment prohibits civil courts from resolving such disputes by inquiring into and resolving disputed issues of religious doctrine and practice. *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969) (*Blue Hull*).

Mote recognizes that the general church may establish its right of ownership or control over the disputed property by a trust or reverter clause. 716 P.2d 85, 99. *Mote* also permits the court, when using the neutral principles approach, to use other principles from common and statutory law, including the law of voluntary associations as the basis for a determination that a general church has a right, title, or interest in the church property. *Id.* at 100.

It is well-established that voluntary organizations may make their own laws and regulations, and courts ordinarily enforce them. *Golden Lodge No. 13 v. Grand Lodge of Independent Order of Odd Fellows*, 80 P.3d 857, 859 (Colo. App. 2003). Voluntary organizations may seek enforcement of their rules in the civil courts if a dispute involves property rights or is otherwise judicially cognizable. *Id.* Courts must defer to the voluntary association's construction and interpretation of its own rules and resolutions. *Id.* at 860.

The Court agrees with Plaintiffs that the facts of this case fall squarely within the *Golden Lodge* decision. *Golden Lodge* involved a voluntary fraternal organization with a three-tiered hierarchy similar to the PCUSA hierarchy. In *Golden Lodge*, the voluntary association's rules concerning property contained a reverter clause whereby the local lodge's property reverted to the Grand Lodge if the Grand Lodge exercised its authority to revoke the local lodge's charter. The Grand Lodge enforced its rule permitting it to revoke a local lodge's charter and take ownership of the local lodges' property under the reverter clause. The Court enforced the voluntary association's rules concerning property which was upheld on appeal.

Here, PCUSA, a voluntary and religious organization, asks the Court to enforce the provisions of its Constitution concerning church property.

The evidence demonstrates that until February, 2000, Covenant was a particular church of PCUSA. As a particular church, it was bound by the provisions of the PCUSA Constitution. Covenant's bylaws provided that the church "is a particular congregation of the Presbyterian Church (U.S.A.) in the United States of America and is subject to the guidance and direction of the jurisdiction." Covenant's bylaws also stated that they "shall be in conformity with the constitution of the Presbyterian Church (U.S.A.) as interpreted by the judicatories of jurisdiction" and "may not be amended contrary to...the Constitution of Presbyterian Church (U.S.A.)." There is no dispute that when Covenant asked to be and was dissolved by the Presbytery, effective January 31, 2000, Covenant was operating under the Book of Order.

In Colorado, it is well-established that "[t]he relationship between a voluntary association and its members is a contractual one and, by joining such an organization, a member agrees to submit to its rules and regulations and assumes the obligations incident to membership." *Jorgensen Realty, Inc. v. Box*, 701 P.2d 1256, 1257 (Colo. App. 1985). By becoming a particular church of PCUSA, Covenant submitted to PCUSA's Constitution.

Presbytery dissolved Covenant, at Covenant's request, effective January 31, 2000. The evidence establishes that Covenant was bound by the Constitution at the time of dissolution. The Constitution provides that "[w]henever a particular church is formally dissolved by the presbytery," the particular church's property "shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Presbyterian Church (U.S.A.)." Thus, although the Presbytery had conveyed the Property to Covenant by warranty deed in 1992, the Presbytery retained an ownership interest in the Property under the clear and unambiguous terms of its Constitution. When the Presbytery dissolved Covenant, the Constitution gave ownership of the Property to the Presbytery. The Property reverted to PCUSA under the trust clause in the Constitution.

DEFENDANTS' COUNTERCLAIMS AND AFFIRMATIVE DEFENSES

Defendants argue that the Presbytery relinquished its rights to the Property after Covenant was dissolved. The Court does not agree. The record is replete with examples of the Presbytery's and Defendants' acknowledgement of Presbytery's ownership in the Property. The conduct of the parties demonstrates unequivocally that the Presbytery did not subsequently relinquish its rights to the Property after Covenant was dissolved as a particular church. Although there were discussions among the IPCC leadership team in 2004 about trying to "hang on" for seven years to establish adverse possession, the evidence does not support an adverse possession award here.

C.R.S. § 38-4-108 reduces the statutory period of adverse possession from eighteen years to seven years if the defendant can also show:

1. possession under color of title in good faith; and
2. payment of taxes.

It is undisputed that Defendants did not pay taxes on the Property. Moreover, Defendants never possessed the Property under color of title in good faith. The parties' words and conduct demonstrate that IPCC and Rev. Houssney knew that the Presbytery retained an ownership interest in the Property while IPCC used the Property with the Presbytery's permission. Rather than abandoning the Property to a few former members of Covenant, the Presbytery established the IPLG to be the link between it and IPCC to monitor IPCC's activities and progress toward becoming a viable congregation and rejoining PCUSA.

The Presbytery repeatedly tried to formalize the lease arrangements but its efforts were thwarted by IPCC's internal conflict about whether to rejoin PCUSA or remain non-denominational. IPCC's ambivalence about its status and future created a lack of cohesion. Rev. Houssney testified that for IPCC "confusion was our middle name." The Court concludes that the delay in executed a signed lease agreement was part of IPCC's efforts to "hang on" for seven years to establish adverse possession. This is not possession under color of title in good faith.

Finally, Rev. Houssney's letter to the Presbytery dated February 5, 2004 asking the Presbytery to give IPCC the Property demonstrates conclusively that he and IPCC knew that they did not have any good faith right, title, or interest in the Property. This piece of evidence, alone, is sufficient to defeat Defendants' adverse possession claim.

Defendants argue alternatively that Covenant's re-filing of the 1992 Articles of Incorporation changed Covenant's relationship to the Presbytery. In essence, Defendants ask the Court to conclude that the re-filing of the Articles of Incorporation together with the Presbytery's conveyance of the warranty deed to Covenant, render the property provisions of the Constitution inapplicable. This argument is unpersuasive in view of the express language of the 1992 Articles of Incorporation stating that the provisions regarding the distribution of assets on dissolution are "set forth in the Bylaws and the

Presbyterian Church USA "Book of Order." In addition, the unrefuted testimony of Mr. Gupton supports the conclusion that the 1992 Articles did not change Covenant's status as a particular church within PCUSA or its relationship to the Presbytery. All of the evidence submitted demonstrates that Covenant continued to follow the same articles and bylaws that existed before 1992, continued to follow the Book of Order, and continued to submit to the authority of the Presbytery.

Defendants also assert the statute of frauds as an affirmative defense. Defendants claim that there is no written conveyance of a trust interest by Covenant to Presbytery or to PCUSA as required by the statute of frauds. Defendants' argument is flawed because it ignores the express written provision of the dissolution/reversion clause in the Constitution. Covenant agreed to be bound by the Constitution in its written articles and bylaws. Both written provisions are sufficient to overcome the statute of frauds defense.

The heart of IPCC's defense is its claim to be the legal successor in interest to Covenant. The evidence simply does not support this claim and the Court cannot reach this conclusion. Covenant was dissolved by the Presbytery as of January 31, 2000. There was no legal entity for IPCC to succeed. Moreover, even if IPCC were the legal successor in interest to Covenant, Covenant had no authority to dispose of church property upon its dissolution. IPCC could not acquire from Covenant that which Covenant had no right to transfer. This is because upon dissolution, according to the Book of Order, the Presbytery has the exclusive power to determine the use and disposition of church property when the particular church is dissolved.

Defendants assert that Plaintiffs' claim to the Property is barred by the doctrines of waiver, laches, or estoppel. Defendants' argument that more than seven years passed before the Presbytery formally requested a lease arrangement is not supported by the evidence. Rev. Houssney conceded that he was contacted by a lawyer for the Presbytery in 2004 requesting that IPCC sign a lease agreement. Dr. Saperstein also met with Rev. Houssney to make the same request.

IPCC argues that it suffered detriment because it paid the mortgage on the Property for seven years, thereby entitling it to ownership of the Property. IPCC paid the mortgage and insurance which totaled about \$2300 each month in lieu of rent. In exchange, IPCC received the benefit of using the building for less than fair market rental during this time. By deliberately not formalizing the lease arrangements despite Presbytery's repeated requests, IPCC ran the risk that it would no longer be permitted to use the Property after the debt "had been burned." In addition, there is no legal precedent to support IPCC's position that it is entitled to ownership of the Property simply by virtue of having paid the mortgage payments for some period of time.

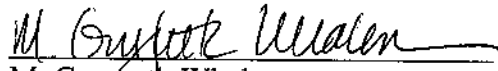
Finally, Defendants' claims of slander of title and intentional interference with business relations are unsupported by the evidence and denied.

CONCLUSION

The Court enters judgment quieting title to the Property in favor of Presbytery of Plains and Peaks. The Court enters a declaratory order that all property owned by Covenant Presbyterian Church of Boulder County belongs to Presbytery of Plains and Peaks. Defendants shall relinquish control and possession of the Property immediately.

Done this 23rd day of July, 2008

By the Court:

A handwritten signature in cursive script, appearing to read "M. Gwyneth Whalen", written over a horizontal line.

M. Gwyneth Whalen
District Court Judge