

**COURT OF APPEALS, STATE OF COLORADO**  
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Denver, Colorado 80203

Appeal from the District Court,  
Boulder County, Colorado  
Honorable M. Gwyneth Whalen, Presiding  
Case Number 2007 CV 349

**Plaintiffs/Appellees:**

PRESBYTERY OF PLAINS AND PEAKS  
and COVENANT PRESBYTERIAN  
CHURCH OF BOULDER COUNTY

v.

**Defendants/Appellants:**

INDIAN PEAKS COMMUNITY CHURCH  
and GEORGES MICHAEL HOUSSNEY

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Case Number 2008 CA 1828

**APPELLANTS' REPLY BRIEF**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This reply brief complies with C.A.R. 28(g).

Choose one:

- It contains 5,181 words.
- It does not exceed 18 pages.

This reply brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. \_\_\_\_, p. \_\_\_\_), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

No new issues are raised in this reply brief.

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## ARGUMENT

In the Opening Brief, Defendants/Appellants Indian Peaks Community Church (“IPCC”) and Georges Michael Houssney (“Houssney”) argued that IPCC’s property was not conveyed to a valid trust in favor of the Presbyterian Church (U.S.A.) (“PCUSA”). Even if there was a valid trust, PCUSA, acting through the Plaintiff/Appellee Presbytery of Plains and Peaks (“Presbytery”) and pursuant to the PCUSA constitution, directed upon dissolution of the local congregation known as Covenant Presbyterian Church that IPCC’s property should remain titled in the IPCC corporation and used for a new church development project. After this new church development project was abandoned by Presbytery, neither PCUSA nor Presbytery had any right to redirect usage or ownership of the property. IPCC and Houssney alternatively argued that if the property did revert to Presbytery, or if a continuing trust existed, the trial court should have heard evidence on a setoff pursuant to Rule 105(e) for the value of permanent improvements to the property paid for by IPCC when it possessed the property under color of title.

In the Answer Brief, Presbytery argued that a valid trust could be created and imposed unilaterally by the beneficiary, here PCUSA, without further assent by the settlor, IPCC. *See Answer Brief at 23-24.* Presbytery also claimed that

PCUSA and/or Presbytery had a reversionary interest in IPCC's property, and that this reversionary interest must be enforced pursuant to the law of voluntary associations, as set forth in *Golden Lodge No. 13, Independent Order of Odd Fellows v. Grand Lodge of the Independent Order of Odd Fellows of Colorado*, 80 P.3d 857 (Colo.App. 2003). See Answer Brief at 24-37. Presbytery then argued that the alleged trust was valid because IPCC consented to it by virtue of the articles of incorporation and bylaws of a distinct 1983 corporation known as Covenant Presbyterian Church of Boulder County ("Covenant 1983 Corporation"). See Answer Brief at 38-42. Finally, Presbytery argued that IPCC is not a legal successor to Covenant Presbyterian Church (the ecclesiastic PCUSA church entity, referred to herein as "Covenant") in that Houssney usurped Covenant's corporate shell rather than forming a new corporation after the dissolution of Covenant. See Answer Brief at 42-44.

Presbytery did not respond at all to IPCC's argument that, upon dissolution of Covenant, Presbytery directed that the property would remain with IPCC and used for a new church development project, which was later abandoned.

Presbytery also did not respond to IPCC's argument that the United States and Colorado Constitutions prohibited further control of the property by Presbytery after it abandoned the new church development project. Presbytery did answer



IPCC's arguments about the claim for a Rule 105(e) setoff, arguing that the trial court's acts striking the claim and excluding evidence were justified because the claim was new, and other facts show the claim would not have succeeded. [Answer Brief at 44-47](#).

**I. IPCC's Property Was Not Conveyed to a Valid Trust For PCUSA's Benefit.**

**A. Neutral Principles of Law Require Reversal of the Trial Court's Ruling.**

Presbytery has acknowledged and agreed that neutral principles of law, not Presbyterian polity, must be applied to determine whether a trust was created. [See Answer Brief at 21](#). Nevertheless, Presbytery argued, contrary to neutral principles of law and consistent only with Presbyterian polity, that it could unilaterally create a trust on IPCC's property for PCUSA's and its own benefit. [See Answer Brief at 23-24](#) (arguing that an enforceable trust or reverter may be created solely by amending the denomination's constitution), and [25-26](#) (arguing that a voluntary association's rules, alone, may impose a reversionary interest for the governing body in property owned by a subordinate local chapter).

Presbytery has misconstrued [Jones v. Wolf, 443 U.S. 595 \(1979\)](#). In *Jones*, the Court did state that religious organizations may create trusts or reversionary interests by modifying deeds, by establishing trusts or rights of reversion in their

corporate charters, or by reciting express trust language in their constitutions. *Id.* at 606. However, the Court also noted as a general requirement that such interests must be created only in conformity with “objective, well-established concepts of trust and property law familiar to lawyers and judges.” *Id.* at 603. Thus, the alleged beneficiary may not unilaterally create a trust interest in its own favor, but only the settlor may create such an interest. *See Restatement (Third) of Trusts § 13 (2003)* (“A trust is created only if the settlor properly manifests an intention to create a trust relationship”). Nothing in *Jones* suggests a departure from this general rule.

Presbytery has ignored, and thus conceded, the framework of neutral principles of law that govern the determination of whether a trust existed here:

- The settlor, not the beneficiary, must create the trust;
- The settlor must objectively manifest an intention to create the trust;
- The settlor’s intent must be manifested in clear, explicit, definite, unequivocal and unambiguous terms;
- If the trust involves real property, the trust conveyance must be in writing, signed by the settlor;
- In the absence of a signed writing, the beneficiary’s possession and use of the property is free of an enforceable trust;

- Conveyance by warranty deed establishes that property is transferred free and clear from any enforceable trust, reverter or other encumbrances, except as expressly stated in the deed.

See [Opening Brief at 28-29](#) and authorities cited therein.

Applying these same neutral principles of law, courts in other jurisdictions have flatly rejected the notion that the PCUSA trust clause, standing alone, is sufficient to create a trust interest in real property. A New York court, reviewing enforceability of the PCUSA trust clause over property owned by a local church congregation, recognized that conveyance of the property to a trust required a written instrument, signed by the person creating, granting or assigning the trust interest. *The Presbytery of Hudson River of the Presbyterian Church (U.S.A.) v. The Trustees of the First Presbyterian Church and Congregation of Ridgeberry*, 13 Misc.3d 707, 710, 821 N.Y.S.2d 834, 837 (N.Y. Sup. Ct. 2006). Only the owner of the property can convey the interest. *Id.*, 13 Misc.3d at 711, 821 N.Y.S.2d at 837. In the absence of language in the deed or elsewhere stating that title is held subject to the laws or discipline of the national church, the PCUSA trust clause “does not affect title to the realty held by the local church.” *Id.* Even where the local church remained affiliated with PCUSA for twenty-five years after the trust clause was adopted, such silence and continued membership in the

denomination was an insufficient expression of intent to create a trust. *Id.*, 13 Misc.3d at 713, 821 N.Y.S.2d at 839. The New York court rejected the idea that a trust may be created upon the subjective belief of local church officials, requiring instead an “external expression of intention as distinguished from an undisclosed intention” and a certain description of the terms of the trust. *Id.* (citing Restatement (Third) of Trusts §13).

The Pennsylvania Supreme Court also has held that in determining whether a local church’s property may be taken by PCUSA, “the primary focus must be on the intent of the settlor at the time of the creation of the alleged trust.” *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, 489 A.2d 1317, 1324 (Pa. 1985). To avoid elevating Presbyterian polity over neutral principles of law, the denomination must show objective evidence that the local church intended to convey its property interests:

The Commonwealth Court’s reliance on selected passages from the Book of Order was misplaced in that the court ignored the overall intent of that book as a means of overseeing the *spiritual* development of member churches. In addition, these selected provisions, which at most evidence the putative trustee’s desired interpretation, are far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.

*Id.* at 1325 (emphasis in the original).

Here, the trial court found, and it is undisputed, that IPCC never signed a document conveying a trust interest in the property to the Presbytery after it acquired the property by warranty deed, free and clear from all unrecorded encumbrances, on July 1, 1992. [Ruling<sup>1</sup> at 5](#). Thus, any possession or use of the property by PCUSA or Presbytery after July 1, 1992, was not pursuant to any enforceable trust, and Presbytery had no right to direct the possession, control or use of the property at the time it dissolved Covenant.

**B. Presbytery Had No Ownership or Reversionary Interest in the Property.**

Presbytery assumes without basis that a reverter provision in its constitution divested IPCC of its property, and Presbytery repeatedly invokes this alleged reverter without ever answering IPCC’s challenge to explain the basis of the reverter. *See e.g.*, [Answer Brief at 4, 5, 22, 25-26, 26, 32](#). A reversionary interest is a future interest left in a transferor at the time property is conveyed.

[Restatement \(First\) of Property § 154\(1\) \(1936\)](#). A possibility of reverter is a reversionary interest which is subject to a condition precedent. *Id.* § 154(3).

Presbytery’s deed to IPCC contains no reverter language whatsoever. [ROA 381/1356](#). Instead, Presbytery appears to rely solely on Book of Order § G-8.0400,

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<sup>1</sup> As in the Opening Brief, the trial court’s Ruling and Order dated July 23, 2008, is referred to as “Ruling.”

which is not a reverter, but states only that upon dissolution of a particular church, any property that it held in trust for PCUSA may be used or disposed of “as the Presbytery may direct.” [ROA 1083/1356](#). If this provision applied (which IPCC denies), Presbytery has not refuted or otherwise answered IPCC’s arguments that Presbytery affirmatively directed that the property would remain titled in the IPCC corporation after Covenant’s dissolution. Thus, there is no basis for determining that the property reverted or otherwise was transferred to Presbytery, even if the property had been held in trust for PCUSA.

Presbytery argues that conveyance under the alleged reverter is supported by the subjective understanding of one former member of Covenant, who testified that he thought the Book of Order gave the denomination an interest in local church property. [Answer Brief at 33-34](#). Similarly, Presbytery relies on the subjective beliefs of others, as determined by misconstruing their conduct *after* the dissolution of Covenant. [Id. at 35-38](#). Subjective thoughts and beliefs are not relevant to determine whether a trust or reverter exists. [In re Estate of Daniels, 665 P.2d 594, 595 \(Colo. 1983\)](#). Post-conveyance conduct also is irrelevant to determining whether a valid conveyance took place in January 2000, upon dismissal of Covenant.

In discussing irrelevant post-conveyance conduct, Presbytery takes issue

with IPCC’s statement that “Presbytery did nothing to manifest an intent to own or control the property after the dissolution.” See [Answer Brief at 35](#). Presbytery has taken IPCC’s statement out of context. IPCC noted that Presbytery did nothing, *on or before January 31, 2000—the time of the Covenant dissolution*, to manifest an intent to own or control the property after the dissolution. IPCC was not addressing post-dissolution conduct, and Presbytery’s reliance on such post-dissolution conduct illustrates only irrelevant subjective beliefs with no bearing on the issue of whether Presbytery obtained ownership of the property.

**C. Colorado Law Governing Voluntary Associations is Consistent With IPCC’s Position, and *Golden Lodge* is Misconstrued and Inapposite.**

In *Mote*, the Colorado Supreme Court ruled that church property disputes shall be determined on the basis of neutral principles of law governing property ownership (such as deeds and other documents affecting formal legal title), express trusts (by reviewing the organic documents of the parties, including the local articles of incorporation and bylaws, and the national denomination’s constitution), and “other principles” from the law of voluntary associations, corporations, contracts or other relevant topics that might necessitate “a more extensive inquiry.” [Bishop and Diocese of Colorado of Colorado v. Mote](#), 716 P.2d 85, 101 (Colo. 1985). Presbytery incorrectly argues that the *Golden Lodge*

case “establishes the relevant law for voluntary associations.” [Answer Brief 25](#), citing *Golden Lodge No. 13, Independent Order of Odd Fellows v. Grand Lodge of the Independent Order of Odd Fellows of Colorado*, 80 P.3d 857 (Colo.App. 2003). IPCC disagrees.

**1. Property Disputes Within Voluntary Associations, Like Church Property Disputes, Are Resolved by Determining Whether Property Was Held in Trust.**

The most comprehensive and instructive discussion of property disputes within voluntary associations is in [Bressler v. American Federation of Human Rights](#), 44 Fed. Appx. 303 (10<sup>th</sup> Cir. 2002). The law relating to voluntary associations is identical to the law for church property disputes—locally owned property reverts to or is retained by the general organization only if it was lawfully subjected to a trust. *See generally Id. at 318-29.*

In determining whether a local chapter of the Order of International Co-Freemasonry could disaffiliate and retain property held in its corporate name, the Tenth Circuit Court of Appeals, applying Colorado law, inquired as to whether the property had been held in trust for the larger organization. *Id. at 318.* Like Presbytery here, the International Order argued for a general rule based on hierarchical principles that members of a voluntary association may withdraw, but they thereby give up any continuing interest in the association’s property. *Id.* The



court rejected this argument, holding that in light of the local chapter's incorporation under the laws of the State of Colorado, property rights must be determined by review of the corporate documents. *Id.* at 320. The court noted that it would be simple to include explicit trust language not only in the International Order's constitution, but necessarily in the local corporation's charter, articles of re-incorporation and bylaws. *Id.* Since the incorporators did not adopt any language of express trust or reverter, *Id.* at 322, the trial court's ruling that no trust existed was upheld. *Id.* at 323.

In *Bressler*, the court expressly compared the dispute to the church property dispute in *Mote*. *See generally, id.* at 323-29. It carefully distinguished the facts from those in *Mote*, where the local church's articles and bylaws expressly acceded to the denomination's constitution. *Id.* at 324. In *Bressler*, as here, there was no objective evidence establishing that the International Order had rights of ownership or control by reason of a trust. *Id.* at 325, 328-29.

The *Bressler* court further examined "other principles" of the law of property, contracts, corporations or voluntary associations, as suggested by *Mote*. *See id.* at 329. These other principles included claims of breach of fiduciary duty and breach of contract, arguments that were not raised by Presbytery here, and rejected in any event in *Bressler*. What is important in this discussion is the

reinforcement of the principle first laid down in *Horst v. Traudt*, 43 Colo. 445, 96 P. 259 (1908), that once incorporated, a society is governed by the civil law of the State of Colorado, not by some higher authority. *Bressler*, 44 Fed. Appx. at 330. The court had noted that formation of a Colorado corporation does not create an organization subject to the control of the International Order, and any enforcement of Masonic hierarchical control would necessarily and inappropriately “disregard the reality of the corporate organization, its articles, bylaws, and ultimately, Colorado law.” *Id.* at 323. Here, IPCC should be governed only by Colorado law, not by Presbyterian polity.

**2. *Golden Lodge Does Not Support the Erroneous Conclusion That IPCC’s Property Reverted to Presbytery.***

More importantly, as a response to arguments asserted by Presbytery in reliance on the *Golden Lodge* case, *Bressler* confirms that the revocation of a local charter or dissolution of a local chapter of a voluntary association does not automatically or necessarily operate to divest the local entity of its property rights, particularly where the local entity is a legal corporation. *Id.* at 337. A corporation can be dissolved only in a manner prescribed by state law, therefore revocation of the charter of a local member of a voluntary association has “not the slightest effect upon the legal existence of the corporation.” *Merrill Lodge No. 299*,

*I.O.G.T. v. Ellsworth*, 20 P. 399, 400 (Cal. 1889). Where a subordinate lodge is incorporated:

its legal existence is not affected by the fact that the supreme authority suspends or dissolves it or declares its charter forfeited, and in such case it is entitled to retain its funds and property as against the supreme body.

*Bressler*, 44 Fed.Appx. at 337, quoting 10 C.J.S. Beneficial Associations § 58 (1995); see also *Franklin v. Parallel Lodge No. 77*, 119 S.W.2d 1033, 1034 (Ark. 1938) (upon revocation of charter of incorporated subordinate lodge, property remains with existing corporation, and any contrary rule would promote void confiscation of property without due process and would violate public policy).

*Golden Lodge* does not alter the general rule that property remains with its legal owner after disaffiliation from a voluntary association. While corporate property generally remains with its owner, members of the voluntary association may establish a trust or reverter in the organic documents of the general and local entities. *Bressler*, 44 Fed.Appx. at 320 (trust or reverter may be established by explicit language in general constitution, local charter, articles of incorporation and bylaws); accord *Mote*, 716 P.2d at 104. In *Golden Lodge*, unlike here, the parties simply did that.

In *Golden Lodge*, this Court noted that the code of laws and constitution of

the association “expressly provide a grand lodge with a right of reversion” in the event of revocation of the local chapter’s charter. *Golden Lodge No. 13, Independent Order of Odd Fellows v. Grand Lodge of the Independent Order of Odd Fellows of Colorado*, 80 P.3d 857, 859 (Colo.App. 2003). Moreover, the local chapter *did not dispute that the reverter was valid* if the revocation action followed proper procedures. *Id.* at 859-60. These facts distinguish *Golden Lodge* from the case at bar. IPCC does not agree that a valid reverter or trust exists here. Thus, the issue presented here is whether a valid trust or reverter exists, not merely whether procedures were followed so that an undisputed reverter is triggered. As such, *Golden Lodge* is inapposite and provides no guidance whatsoever in this case.

Nor do the other cases cited by Presbytery have any bearing on the issues at hand. In *Jorgensen Realty*, there was no dispute that the parties, arguing over a real estate commission, were governed by the association’s rule requiring arbitration before litigation. *See Jorgensen Realty, Inc. v. Box*, 701 P.2d 1256, 1257 (Colo.App. 1985) (plaintiff itself had submitted the dispute to the association for arbitration and “agreed to be bound by the rules and regulations” of the association). In *Allander*, a union member who had been fined and expelled failed to exhaust remedies within the union, and there was no dispute that he had

consented to be bound by the union's constitution and rules. *Allander v. Carpenters District Counsel of Denver and Vicinity*, 358 P.2d 8, 10 (Colo. 1960).

In addition to the fact that neither case involves a dispute about whether the association's rules apply, neither case involves a property dispute, which requires additional inquiry, since trusts, reverters and other conveyances of property require a signed writing.

**D. IPCC Had No Articles of Incorporation or Bylaws That Created a Trust Interest.**

As expected, Presbytery argued that IPCC is bound by a trust arising out of the articles of incorporation and bylaws of the Covenant 1983 Corporation. *See Answer Brief at 40-41*. These articles and bylaws are the organic documents of a corporation that is separate and distinct from IPCC. Covenant 1983 Corporation was suspended in 1985 and dissolved in 1989. *ROA 795/1356*. IPCC was formed in 1992. *See ROA 787/1356*. IPCC had its own separate articles of incorporation. *ROA 753/1356*.

To sidestep this inconvenient truth, Presbytery argues that IPCC should not be treated as a new and separate corporation because the incorporator, Larry Gupton, subjectively intended to merely reinstate the Covenant 1983 Corporation through a "technical reincorporation." *Answer Brief at 41*. As a matter of law, he

had the right to reinstate the Covenant 1983 Corporation. See *Dominion Oil Co. v. Lamb*, 201 P.2d 372, 375 (Colo. 1948) (reinstatement revives a defunct corporation as though it had a continuous existence); *Ski Time Square Condominium Ass'n. v. Ski Time Square Enterprises*, 119 P.3d 588, 590-91 (Colo.App.2005) (administrative dissolution does not permanently terminate a corporation—it may be reinstated). But he did not reinstate the Covenant 1983 Corporation. He formed a new corporation. Even Mr. Gupton had to admit this on cross-examination. Supp ROA 32/86 Gupton Tr. at 96:3-6.

**1. IPCC's Articles of Incorporation Do Not Create a Trust.**

IPCC's articles of incorporation are different than the articles of incorporation of the Covenant 1983 Corporation. They contain only one reference to the PCUSA Book of Order, but limit its application solely to a corporate dissolution event. ROA 753/1356. No corporate dissolution has occurred; indeed, Presbytery's official records acknowledge that the dissolution of Covenant [a distinct ecclesiastic entity that was dissolved under ecclesiastic rules] was performed with the express understanding that "the [IPCC] corporation will continue to exist in its present form . . . and may subsequently be renamed." ROA 628/1356. Thus, nothing in IPCC's articles of incorporation provided for a trust over the property.

Even the 1983 articles of incorporation do not provide an explicit trust. They state that the corporate purpose is to maintain “religious worship” according to the “standards, customs and usages” of PCUSA. [ROA 789/1356 art. II](#). Officers are bound by PCUSA “guidelines.” [ROA 791/1356 art. IV\(a\)](#). The 1983 articles prohibit the sale, lease or mortgage of corporate property without permission of the Presbytery. [ROA 792/1356 art. IV\(e\)](#). These provisions, unlike the provisions reviewed in *Mote*, do not suggest an explicit, unambiguous intent to allow PCUSA or Presbytery to possess, control or own the property, nor do they generally accede to the PCUSA Book of Order. They are limited provisions that do not amount to manifestation of an intent to place corporate property into a general trust.

**2. IPCC Had No Bylaws, and the 1983 Bylaws Do Not Create a Trust.**

Colorado corporations *may* enact bylaws, but bylaws are not required. *See* [C.R.S. § 7-102-106](#) (the code revision committee comment notes that incorporators may adopt bylaws, but there is “no requirement that a corporation have bylaws”). IPCC did not enact bylaws. The unsigned 1989 revised bylaws explicitly state that they apply only to the Covenant 1983 Corporation. [ROA 755/1356 art. I Section 1](#). As such, they provide no basis for imposition of trust on

IPCC's property.

Like the 1983 articles of incorporation, the 1983 bylaws also do not impose an explicit trust sufficient under the tenets described in *Mote*. They provide for conformity with the PCUSA constitution, *see id. art. I Section 2*, but, unlike the bylaws reviewed in *Mote*, they also provide separately for exercising authority independently under the corporation laws of the State of Colorado “in addition to” functions dictated by PCUSA. *Id. art. I Section 3*. Specifically, the 1989 bylaws permit the corporation to “own and maintain or to lease available real estate and buildings.” *Id. art. II Section 1(C)*. IPCC's property is titled to *the corporation*, not to any trustees, and the property was conveyed by warranty deed without any other trust language. This manifests an intent to hold the property pursuant to the corporation's “additional” powers, not those imposed by PCUSA.

**E. IPCC Has Not Claimed to Be a Successor to Covenant.**

The trial court demonstrated its misunderstanding of the legal status of the various entities involved here by stating, “The heart of IPCC's [statute of frauds] defense is its claim to be the legal successor in interest to Covenant.” [Ruling at 12](#). The trial court further stated that, once Covenant was dissolved by Presbytery in January 2000, there was no entity to succeed. *Id.* The Ruling opines that Covenant had no authority to dispose of the property, and therefore, to the extent



IPCC was Covenant's successor, it could acquire no right of transfer. *Id.*

These statements ignore that Covenant was an ecclesiastic entity, formed by Presbytery in 1983 and dissolved in 2000. [Vol. I Tr. at 92:8-20](#). Covenant never owned the property. The property was conveyed to the separate and distinct corporate entity formed in 1992 and now known as IPCC. Therefore, whether IPCC is Covenant's successor is irrelevant. IPCC itself has owned the property since 1992.

Presbytery asserts a slightly different argument; it seems to concede that the property was conveyed to a distinct corporate entity, but challenges the election of Houssney as an officer of the corporation and his subsequent action in changing the corporate name to IPCC and continuing operation of the corporation after January 2000. *See* [Answer Brief at 42-44](#). These challenges fail.

First, Houssney was duly elected as a corporate officer, then called "moderator." [ROA 407/1356](#); [Vol. II Tr. at 90:5-20](#); [Vol. III Tr. at 3:15-21](#). In his official capacity, he subsequently filed a biennial report indicating changes in the corporate officers and directors. [ROA 776/1356](#). There is nothing unusual about the manner in which the corporate officers were changed; it was done exactly as other corporate officers and directors did so in the past. *See e.g.*, [ROA 777 \(1994 biennial report\)](#), [778 \(1996 biennial report\)](#), and [779 \(1998 biennial report, naming](#)

as officers and directors the same persons who elected Houssey). The 2000 biennial report states that the corporation changed its name to IPCC. Presbytery's assertions that it did not know of Houssey's actions are belied by: (1) its own participation in the discussions regarding the name change, [ROA 414/1356](#) (Presbytery Clerk participated in initial meetings regarding name change); (2) its express acknowledgment that the corporation would continue to exist after Covenant's dissolution and may change its name, [ROA 628/1356](#); and (3) its express acknowledgment that Houssey would leading the new church development project on a "continuing" basis after January 31, 2000, [ROA 623/1356](#). Houssey's comments about: starting a new church; there is no old congregation; it is dissolved; it is finished; and discussions about a new incorporation and tax identification number, *see Answer Brief at 43*, all are taken out of context. The parties were making a fresh start in terms of spiritual matters with a new nondenominational congregation. Nothing in those comments alters the legal reality that IPCC was a Colorado corporation as of 1992, duly changed its name in 2000, and continues to exist today as the owner of the property.

**II. If a Valid Trust Existed, Presbytery Directed that the Property Would Remain With IPCC and Be Used for a New Church Development Project.**

Presbytery did not respond to IPCC's opening arguments: (1) that upon dissolution of Covenant, Presbytery failed to direct that the property be conveyed to PCUSA, Presbytery or to any trust, or otherwise sold or disposed; (2) that Presbytery affirmatively directed that the property would remain titled in IPCC and used for a new church development project, which was later abandoned; and (3) that once the new church development project was abandoned, any remaining trust interest was extinguished; and (4) Presbytery had no further right to own, possess or control the property, and the trial court's ruling to the contrary violated the United States and Colorado Constitutions. As such, even if this Court rules that a valid trust was imposed on the property, Presbytery should be deemed to have admitted that it relinquished the property to IPCC and has no further rights.

**III. If the Property Was Correctly Awarded to Presbytery, a New Trial is Required to Determine IPCC's Rule 105(e) Recovery.**

In the Opening Brief, IPCC argued that this action was adjudicated pursuant to Rule 105, which required the trial court to make a complete adjudication of the parties' rights and which mandated that the value of improvements made while IPCC possessed the property under color of title "shall" be allowed as a setoff or

counterclaim. *See* C.R.C.P. 105(e). The trial court erroneously refused to hear IPCC's evidence of sums paid and contributions to the value of the property. Vol. II Tr. at 142:14-143:2.

As anticipated, Presbytery answers first by arguing that the claim was new, which justified striking it. *Answer Brief at 45*. But Presbytery failed to answer any of the arguments raised in the opening brief:

- IPCC's general assertion of a claim under Rule 105 was sufficient to put Presbytery on notice of a claim under Rule 105(e);
- IPCC's pleadings specifying that it repaid loans and undertook other financial obligations regarding the property were sufficient to put Presbytery on reasonable notice of the Rule 105(e) claim;
- The Rule 105(e) claim was expressly included in the trial management order, without objection;
- Exhibits supporting the claim not only were provided to Presbytery in advance of the trial, but Presbytery actually stipulated to their admission prior to moving to strike the claim; and
- The trial judge struck the claim and excluded evidence without any explanation or rationale.

*See Opening Brief at 41-43*.

Presbytery complained that IPCC's "prior disclosure of damages" stated a small amount, only \$2,000.00. [Answer Brief at 45](#). Presbytery's assertion is misleading. Presbytery is referring to IPCC's answer to an interrogatory that was interpreted as seeking discovery of the amount of damages for IPCC's counterclaims for intentional interference with contracts and slander of title.<sup>2</sup> These counterclaims were withdrawn prior to trial. The interrogatory answer had nothing to do with IPCC's equitable claim pursuant to Rule 105.

Finally, Presbytery argues that the exclusion of evidence was not erroneous because *other* "evidence submitted at trial established that [the Rule 105(e)] claim would fail." [Answer Brief at 45](#). Such evidence includes evidence of IPCC's attempt to assert adverse possession as a defense to Presbytery's claim of ownership (a red herring that has nothing to do with the value contributed by IPCC); IPCC made mortgage payments in lieu of rent; IPCC had notice of Presbytery's claim of ownership; and the total payments by IPCC "were much less than the fair market rental value." *Id.* at 46. The mere fact that the trial court made findings regarding the amounts paid by IPCC in comparison to rental value without even hearing IPCC's evidence seems to underscore the need for a new

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<sup>2</sup> The interrogatory answer is not part of the record, but the correct scope of IPCC's answer was pointed out to the trial court. [See IPCC's Response to Motion to Strike Claim Pursuant to Rule 105\(e\) at 2, ¶ 5](#), Filing ID 19483485.

trial. Findings of fact on issues for which IPCC's evidence was erroneously excluded without explanation support the conclusion that IPCC's substantial rights have been affected. A new trial should be granted.

### CONCLUSION

For the reasons stated in the Opening Brief and this Reply Brief, IPCC respectfully requests that the trial court's Ruling be reversed, and the case remanded with instructions to quiet title to the property in IPCC, free and clear of any and all trust and other interests asserted by Presbytery and PCUSA. If the trial court's ruling regarding ownership or possession of the property is upheld, IPCC requests remand for a new trial to determine the amount of compensation owed for IPCC's contributions to the value of the property and improvements pursuant to Rule 105(e).

Dated: September 25, 2009.

Respectfully submitted,

*LiPuma Law Associates, llc*

/s/ Richard T. LiPuma

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**CERTIFICATE OF SERVICE**

I certify that on September 25, 2009, I served a copy of the foregoing **APPELLANTS' REPLY BRIEF** by United States Mail, postage prepaid, addressed to:

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DISTRICT COURT, BOULDER COUNTY, COLORADO  
Boulder Justice Center  
1777 6<sup>th</sup> Street  
Boulder, Colorado 80302

/s/ Richard T. LiPuma

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Richard T. LiPuma