

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>DESERT SOUTHWEST ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, an Arizona nonprofit corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>CAMP VERDE UNITED METHODIST CHURCH, an Arizona nonprofit corporation, CAMP VERDE COMMUNITY CHURCH, an Arizona nonprofit corporation; KELLY HOLLAMON and MARY HOLLAMON, husband and wife; DENNY RUST and STEPHANIE RUST, husband and wife; RICK ANDERSON and DEBRA ANDERSON, husband and wife; CONNIE RICHARDS; WES GIRARD and NANCY GIRARD, husband and wife; BILL STAFFORD and LAURIE ATAFFORD, husband and wife; LARRY TURNIPSEED and REBECCA TURNIPSEED, husband and wife; ERIC HAYNIE and JESSICA HAYNIE, husband and wife; THE ESTATE OF JIM STOWELL and FRAN STOWELL, husband and wife; RUTH BOHANNON; ALAN EMORY and NAOMI EMORY, husband and wife; RICK CARLING and LORRAINE CARLING, husband and wife,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. V1300CV201780207</p> <p style="text-align: center;">UNDER ADVISEMENT RULING</p>
<p>HONORABLE KRISTA M. CARMAN</p> <p>DIVISION 4</p>	<p>BY: Jennifer Kuns, Judicial Assistant</p> <p>DATE: December 26, 2019</p>

Before the Court is Individual Defendants' Motion for Summary, Plaintiff's Motion for Partial Summary Judgment Based on Arizona Corporate Law, Plaintiff's Motion for Partial Summary Judgment Re: Trust Clause, Defendants' Cross Motion for Summary Judgment Based on Arizona Corporate Law and Re: Trust Clause, and Plaintiff's Motion to Amend the Complaint. This Court does not allow cross motions for summary judgment.¹ However, in the interest of judicial economy, the Court will consider the cross motion. The Court has read the Motions, Responses and Replies as well as the accompanying Statements of Facts and attached exhibits. Oral argument was heard on December 16, 2019.

¹ See Yavapai County Superior Court, Division 4, Standing Orders. Likewise, Judge Napper's standing orders prior to this judge also stated the Court will not allow any "cross motions for summary judgment."
<http://courts.yavapai.us/superiorcourt/Divisions/Superior-Court-Division-4/Standing-Division-Orders>

Individual Defendants' Motion for Summary Judgment

The Individual Defendants are various officers, directors, and agents of Camp Verde United Methodist Church (CVUMC) and/or Camp Verde Community Church (CVCC) and their respective spouses. The Individual Defendants move for summary judgment on the basis that all their actions were taken in their representative capacities for the corporations and that none of them exercised possession and control over the property in their personal capacity and none have been personally enriched by any of the disputed property.

The evidence presented through deposition testimony of the Plaintiff's representative was that the actions taken by the Individual Defendants were not taken in their personal capacities but rather in their roles as officers or directors or trustees of one of the corporate church entities. Additionally, the Plaintiff's representative conceded that the Individual Defendants were not exercising personal dominion or control over the personal property.

In deciding a motion for summary judgment, a court must view the evidence and reasonable inferences from the evidence, in a light most favorable to the party opposing the motion, and the inferences must be construed in favor of that party. *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 38 P.3d 12,20 (Ariz. 2002). Summary judgment is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. Rule 56(c); *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

I. Conversion

“Corporate directors are not personally liable for conversion committed by the corporation or one of its officers merely by virtue of the office they hold. To be held liable, the directors must participate or have knowledge amounting to acquiescence or be guilty of negligence in the management and supervision of the corporate affairs causing or contributing to the injury.” *Jabczenki v. S. Pac. Mem'l Hosp.*, 119 Ariz. 15, 20 (App. 1978).

Defendants assert that they are not liable for conversion because they took no wrongful action in their individual capacities. Further, Plaintiff has not alleged in the Complaint that the Individual Defendants have acted negligently in management or supervision of the corporations. The evidence presented is that CVCC is the entity that is in possession and control of the subject property. Plaintiff argues the Individual Defendants were the ones who transferred property from the United Methodist Church to CVCC. However, the evidence is clear that these Individuals did so in their capacities as officers in a corporation. Even viewing the evidence in a light most favorable to Plaintiff the Court **finds** there is no question of material that Individual Defendants were not acting in their individual capacities and there is no allegation of negligence in the management of the corporation by the individuals.

II. Unjust Enrichment

To recover under a theory of unjust enrichment, a plaintiff must demonstrate five elements: (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the

absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy provided by law. *Freeman v. Sorchych*, 226 Ariz. 242, 251, 245 P.3d 927, 936 (Ct. App. 2011).

There is no question of fact that the Individual Defendants have not been personally enriched because of the alleged actions in this case. Plaintiff argues that the Individual Defendants were enriched because they didn't have to fund the new church or assist in paying rent for the new church – essentially the enrichment was that the Individuals did not have to increase their tithing. This argument is a stretch and not accepted by the Court and not evidence of personal enrichment. The Court **finds** that the Individual Defendants were not unjustly enriched in this case.

III. Breach of Fiduciary Duty

Breach of Fiduciary Duty is alleged as to Defendants Carling, Hollamon, Rust, Stafford, and Turnipseed. The Plaintiff alleges that the Individual Defendants not only took membership vows, but also undertook positions and actions as trustees and one in case, the pastor, of the local church.

The parties agree on the law. A fiduciary duty exists when there is “something approximating business agency, professional relationship, or family tie impelling or inducing the trusting party to relax the care and vigilance he would ordinarily exercise.” *In re McDonnell's Estate*, 179 P.2d 238, 241 (Ariz. 1947). An Individual Defendant may accept a trusteeship by words or by conduct. Restatement 3d of Trusts § 35(1) (2012). “A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of that property.” A.R.S. §10-3830(E).

Plaintiff alleges that the fiduciary duty of these specific Individual Defendants arises from the membership vow they took with the church as well as the positions and actions they took as trustees of the church which was shown by voting on actions in corporate meetings. Whether or not these Individual Defendants had a relationship with this Plaintiff is a material question for this claim. Plaintiff alleges that there is a business-type relationship between the parties. The argument is that Plaintiff oversees individual churches, the churches hold the property in trust, through their trustees, for the entire denomination. This, says Plaintiff, links the parties in a fiduciary relationship. Defendants argue there is no relationship since Plaintiff admits these Defendants did not hold any direct legal relationship with the Plaintiff; they never served as corporate directors or officers of the Conference; they did not hold a role in any committee or other body within the Plaintiff; and they did not sign any agreements with the Plaintiff.

Plaintiff also argues that Defendants' accepted trusteeship by conduct. Defendant Holloman testified that he was a trustee and attended the Annual Conference as a trustee. He used this position to incorporate CVUMC. Further, Defendant Carling was a pastor of the church and the allegation is the breaches of his duty occurred prior to his termination date. Viewing the evidence in favor of the non-moving party, the Court **finds** material questions of fact as to this claim.

Plaintiff's Motion for Partial Summary Judgment Based on Arizona Corporate Law and Defendants' Cross Motion Re Arizona Corporate Law

The Plaintiff moves for summary judgment based on Arizona corporate law regarding the issues of 1) whether *The Book of Discipline of the United Methodist Church (Discipline)* was incorporated by reference into Camp Verde United Methodist Church's Articles of Incorporation; 2) whether the Special Warranty Deed, dated April 6, 2017, recorded as Instrument Number 2017-0022385 (Deed #2), is a void instrument, in violation of The United Methodist Church Trust Clause, such that Defendants have no rights to property under the deed; and 3) whether Defendants' purported transfer of the Plaintiff's personal property to Defendants violated the United Methodist Church Trust Clause and therefore was null and void. Further, Plaintiff seeks a ruling that it is entitled to take possession of the Church Real Property and the Church Personal Property. Defendant Cross moves but simplifies the issue as whether Corporate Defendants acted with appropriate authority in receiving and transferring property (real and personal).

The Ecclesiastical Abstention Doctrine "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice," *Jones v. Wolf*, 443 U.S. 595, 602 (1979). Beyond those matters, a civil court may resolve secular disputes between religious organizations. This Court and Arizona has adopted the neutral-principles of law approach. In applying state law, the court may consider, "the language of the deeds, the terms of the local church charters, the statute statutes governing the holding of the church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." *Jones*, 443 U.S. at 603.

I. Factual Background Relevant to This Motion

Personal property and real property are at issue in this case. In April 2017, CVUMC executed a bill of sale conveying all its real and personal property to CVCC. The real property involves several lots that were deeded to the local Camp Verde Church over many, many years. On May 1, 2017, CVUMC, which was dissolved in 2010, conveyed by warranty deed all the real property to the new CVUMC corporation. The new CVUMC corporation's Articles of Incorporation initially incorporated the Book of Discipline and then were amended to remove the Book of Discipline and any such reference. A new corporation was then formed, CVCC. CVCC's Articles did not reference the Book of Discipline or the UMC in any way. Then on May 5, 2017, CVUMC conveyed all the real property to CVCC.

II. Legal Analysis

When applying neutral principles of law to resolve church property disputes, courts generally examine the deeds to the church property, the charter of the local church, the book of order or discipline of the general church organization, and the state statutes governing the holding of the church property so that they may give effect to the intentions of the parties with respect to the property. *St. Paul Church, Inc. v. Bd. of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541, 553 (Alaska 2006).

A.R.S. § 10-3180 provides: "If religious doctrine governing the affairs of a corporation organized primarily for religious purposes is inconsistent with the provisions of chapters 24 through 40 of this title on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the constitution of this state or both."

Under Arizona law, Articles of Incorporation are a contract. Arizona utilizes a four-prong test to determine if another document is incorporated by reference into a contract. *Weatherguard Roofing Co. v. D.R. Ward Const. Co.*, 214 Ariz. 344 (App. Div. 1 2007). The prongs are: 1) the reference must be clear and unequivocal; 2) the reference must be called to the attention of the parties; 3) the parties must consent; and 4) the terms must be known and made easily available.

The Book of Discipline is clearly incorporated into the Articles for CVUMC, Article V and Article VI. Articles VII and VIII also reference the Book of Discipline. The reference is clear and there is no question of fact that the parties did know about the existence of the reference to the Book of Discipline. The Defendants signed or voted in favor of the Articles, thereby consenting. Additionally, the terms of the referenced document were known and easily available. The facts demonstrate that the Defendants were aware of and had access to the Book of Discipline based on their meetings and communications with one another.

The Defendants argue that CVUMC's Articles were validly amended to remove reference to the Discipline. However, the Court finds this argument lacks merit given that the 2017 Articles incorporated the Discipline by reference. By doing so, CVUMC was bound to follow the rules of the Discipline in amending its Articles. The parties certainly have a right to rescind the contract pursuant to Arizona law, however, by incorporating the Discipline, the parties were required to follow the Discipline in amending the contract.

The Court finds that the contract, or Articles of Incorporation of CVUMC, incorporated the Book of Discipline by reference. The remaining issues of Trust will be addressed in the MPSJ Re: Trust Clause.

Plaintiff's Motion for Partial Summary Judgment Re: Trust Clause

Plaintiff moves for summary judgment regarding the issues of 1) whether the Special Warranty Deed, dated April 6, 2017 (Deed Number 1) and the Special Warranty Deed, dated April 6, 2017 (Deed Number 2), are void instruments, in violation of the United Methodist Church (UMC) Trust Clause and Defendants have no property rights under those Deeds; and 2) whether the transfer of the Church's Personal Property to Defendants violated to UMC Trust Clause and was null and void. Plaintiff requests a ruling that it is entitled to take possession of the Church Real and Personal Property. Defendant cross moves for partial summary judgment.

At issue are several deeds that transferred property over the years – all of which now comprise of the CVCC campus. The church purchased the parsonage in 2005. Some of the deeds explicitly stated the United Methodist Church Trust Clause. The rest of the deeds did not.

The Book of Discipline provides for a trust for “all real, personal, tangible and intangible property owned or held by [the Church].” Discipline ¶ 2501.1. The Discipline details how the trust may be stated in deeds of conveyance and, if the deed is silent, how the trust still exists for the property. *Id.* at ¶ 13. Finally, the Discipline provides that the “trust is and always has been irrevocable by a local church except as provided in the Discipline.” *Id.* at 2501.2.

The Discipline provides that “Local churches...acquire, hold, maintain, improve, and sell property for

purposes consistent with the mission of the [United Methodist] Church.” Discipline ¶2501.3

Defendants cite to Arizona statute that Arizona law presumes that trusts are revocable. However, here, the Articles incorporated the Discipline which provides that this specific trust is irrevocable. The statutory presumption is not necessary if the incorporated document provides explicitly otherwise.

For over 141 years, the Camp Verde “Church” has been in existence. Several people transferred property to the local church over the years. The property was held in trust for the local UMC. The history of the local church in Camp Verde demonstrates that it has held all real property in trust for the UMC. The role of the Book of Discipline was even affirmed as central to the local Methodist church by Defendant Carling, its former pastor. The Discipline provides for a mechanism to transfer property which was not followed in this case.

The Court **finds** the Trust Clause of the Book of Discipline applies to the subject property and was not followed by CVUMC in transferring the property to CVCC; thereby voiding the deeds (1 and 2) as well as the transfer of personal property.

Plaintiff’s Motion to Amend the Complaint

Plaintiff moves to amend its Complaint to add the legal theory Piercing the Corporate Veil. While a motion to amend should be freely granted where it merely advances a new legal theory, here the Plaintiff seeks to add a claim that alleges that the Defendants’ “actions were for the benefit of the individual Defendants...” Motion, pg 3. The Court has ruled that the Individual Defendants were not acting for their own personal benefit and has dismissed the claims for Conversion and Unjust Enrichment. Therefore, the Motion to Amend the Complaint is denied.

IT IS ORDERED granting summary judgment in favor of the Individual Defendants as to Count III: Conversion and Count IV: Unjust Enrichment.

IT IS FURTHER ORDERED denying the Individual Defendants Motion for Summary Judgment as to Count V: Breach of Fiduciary Duty.

IT IS FURTHER ORDERED granting Plaintiff’s Motion for Partial Summary Judgment Re: Arizona Corporate Law and Plaintiff’s Motion for Partial Summary Judgment Re: Trust Clause.

IT IS FURTHER ORDERED Plaintiff is entitled to take possession of the Church Real and Personal Property.

IT IS FURTHER ORDERED Plaintiff’s Motion to Amend the Complaint is **denied**.

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IT IS FURTHER ORDERED attorney's fees will be addressed at the conclusion of the case.



eSigned by CARMAN, KRISTA M 12/26/2019 11:10:46 k69GFosY

Honorable Krista M. Carman

cc: Marilee Miller Clarke- Clarke Law Firm, PLC (e)
Mark W. Drutz/Jeffrey D. Gautreaux- Musgrove Drutz Kack & Flack, PC (e)
Whitney Cunningham/Elizabeth J. Christy- Aspey Watkins & Diesel, PLLC (e)