IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR BRADFORD COUNTY, FLORIDA
CIVIL DIVISION

GRACE UNITED METHODIST CHURCH, INC., et al.

Plaintiffs,

v. CASE NO.: 22-CA-000279

THE BOARD OF TRUSTEES OF THE FLORIDA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, INC., et al,

Defendants.
_____/

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Plaintiffs allege in their Amended Complaint that Defendants have claimed ownership of Plaintiffs' property pursuant to an unlawful trust clause. In their Motion to Dismiss, Defendants hide behind the Ecclesiastical Abstention Doctrine to persuade this Court that it may not even consider the unlawfulness of their secular conduct. But, while the Ecclesiastical Abstention Doctrine protects churches from court interference with religious issues, it does not shield them from scrutiny for violation of secular laws. Because analysis of the trust clause does not involve entanglement in religious issues, the Ecclesiastical Abstention Doctrine is not implicated and Defendants' Motion to Dismiss should be denied.

MEMORANDUM IN OPPOSITION

On Defendants' motion to dismiss, this Court must accept the allegations in Plaintiffs' Amended Complaint as true, construing them in a light most favorable to Plaintiffs. *Pohl v. Se. Airlines, Inc.*, 880 So. 2d 766, 766-767 (Fla. 2d DCA 2004). A motion to dismiss is intended to test the legal sufficiency of the complaint. *Reyes v. Roush*, 99 So. 3d 586, 589 (Fla. 2d DCA 2012).

It is not intended to determine issues of ultimate fact, and the Court may not speculate as to what facts may eventually be proven. *Id.*; *Parker v. Parker*, 916 So. 2d 926, 928 (Fla. 4th DCA 2005). "[A] claim should not be dismissed for insufficiency unless it appears to a certainty that the plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim." *Martin v. Hwy. Equip. Supply Co.*, 172 So. 2d 246, 248 (Fla. 2d DCA 1965).

Generally, on a motion to dismiss, a court must confine its review to the four corners of the complaint, accepting the allegations therein as true. *Pohl*, 880 So. 2d at 766-767. There are a few exceptions, however. On a motion to dismiss for improper venue, a court *must* consider the moving party's extraneous affidavit and if none is provided, the motion must be denied. *Am. Vehicle Ins. Co. v. Goheagan,* 35 So. 3d 1001, 1003 (Fla. 4th DCA 2010). Extraneous material may also be considered on a motion to dismiss for lack of subject matter jurisdiction, but only to determine issues of law. If issues of fact must be decided to determine subject matter jurisdiction, the motion must be denied. *Mancher v. Seminole Tribe*, 708 So. 2d 327, 328-329 (Fla. 4th DCA 1998); *see also Courtney v. R.L. Schmeckpeper, Inc.*, 442 So. 2d 294, 295 (Fla. 2d DCA 1983) (dismissal for lack of subject matter jurisdiction reversed where contract was ambiguous as to whether it met amount-in-controversy jurisdiction).

1. Plaintiffs do not ask this Court to decide ecclesiastical questions, so the Ecclesiastical Abstention Doctrine does not apply.

The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, contains two clauses concerning religion: the Free Exercise Clause and the Establishment Clause. U.S. Const. amend. I; *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 301-302 (2000). The Free Exercise Clause guarantees the right to believe and profess one's chosen religion. *Malicki v. Doe*, 814 So. 2d 347, 354 (Fla. 2002). The Establishment Clause prevents the government from passing laws that "'aid one religion, aid all religions, or prefer one

religion over the other.'" *Id.* at 354-55 (quoting *School Dist. v. Schempp*, 374 U.S. 203, 216 (1963)). Florida's Constitution also embodies both principles in article I, section 3.

It is from the First Amendment that the Ecclesiastical Abstention Doctrine was born. *Bilbrey v. Myers*, 91 So. 3d 887, 890 (Fla. 5th DCA 2012). The Doctrine protects religious organizations by prohibiting courts from resolving internal church disputes involving religious questions. *Malicki*, 814 So. 2d at 355. Such internal disputes generally involve church discipline or faith, internal organization, or ecclesiastical rule, custom, or law. *Id.* at 357.

While the freedom to believe is absolute, the freedom to act is not. *Id.* at 354. "[T]he First Amendment has never been interpreted to mean that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from government regulation." (Internal quotation omitted.) *Id. at* 354.

> The First Amendment does not categorically insulate religious relationships from judicial scrutiny, for to do so would necessarily extend constitutional protection to the secular components of these relationships. . . . Instead, the Free Exercise Clause protects religious relationships . . . by preventing the judicial resolution of ecclesiastical disputes turning on matters of "religious doctrine or practice."

Sanders v. Casa View Baptist Church, 134 F.3d 331, 335-36 (5th Cir. 1998). As the United States Supreme Court recently reiterated, religious institutions do not "enjoy a general immunity from secular laws." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

It is entirely proper, then, for a state to regulate a church's secular conduct through secular laws that are evenly applied. *Malicki*, 814 So. 2d at 354. Property and trust laws are classic examples: "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Courts not only have the authority to resolve such disputes, they have an obligation to do so:

> [T]he courts when so called on must perform their functions as in other cases. Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.

Watson v. Jones, 80 U.S. 679, 714 (1872). "The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). Such a determination is only prohibited if it involves a religious controversy. *Id*. at 604.

In the current case, the Ecclesiastical Abstention Doctrine is not implicated. Plaintiffs do not ask this Court to delve into questions of discipline, faith, internal organization, or ecclesiastical rule, custom, or law, *Malicki*, 814 So. 2d at 357, nor do they want this Court to do so. The primary question here is whether the trust clause relied upon by The United Methodist Church ("The UMC") violates Florida law, and if it does, what that means for Plaintiffs' properties. Florida's Trust Code serves a secular purpose that neither advances nor inhibits religion and requires no excessive entanglement in religious affairs. *Malicki*, 814 So. 2d at 364. In fact, it requires no entanglement whatsoever. Plaintiffs ask this Court to consider the validity of The UMC trust clause in light of the Florida Trust Code; a law that governs the secular conduct of The UMC just as much as any other person or entity.

The cases cited by Defendants in support of their ecclesiastical abstention argument are distinguishable. The current case does not implicate the ministerial exception doctrine (*Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020)), or challenge The UMC's employment or placement of personnel (*Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), *Napolitano v. St. Joseph Catholic Church*, 308 So. 3d 274 (Fla. 5th DCA 2020)); it does not call upon this Court to interpret church doctrine (*Townsend v. Teagle*, 467 So. 2d 772 (Fla. 1st DCA 1985)), or to decide which, if either, side has departed therefrom (*St. John's*

Presbytery v. Cent. Presbyterian Church, 102 So. 2d 714 (Fla. 1958), *Mills v. Baldwin,* 362 So. 2d 2 (Fla. 1978); *Hull Mem'l Presbyterian Church,* 393 U.S. 440); and it does not involve an unconstitutional statute purporting to regulate church affairs (*Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94 (1952)). None of the cases cited by Defendants are controlling because they all involved, in one way or another, the "excessive entanglement" with religious doctrine that the First Amendment prohibits. This case does not.

At minimum, Defendants' argument that this Court lacks subject-matter jurisdiction due to "excessive entanglement" with doctrinal issues cannot be decided here because the question involves disputed factual issues that are not amenable to resolution on a motion to dismiss, as is evident by Defendants' reliance on factual matters outside the pleadings. *See, e.g., Mancher*, 708 So. 2d at 328-329. Defendants' motion to dismiss on this basis must be denied.

2. Plaintiffs have not conceded that the First Amendment bars their claims, but if this Court were to hold that it does, then Florida law violates the Establishment Clause and must be reevaluated on appeal.

2.1 Pleading in the alternative is not a "concession" that one argument loses.

Defendants contend that Plaintiffs have "conceded" application of the Ecclesiastical Abstention Doctrine by pleading at paragraph 120 of the Amended Complaint: "To the extent Plaintiffs' claims are limited by the application of the Ecclesiastical Doctrine, Plaintiffs specifically bring this action for the purpose of seeking appellate relief advocating for the modification or reversal of existing law that would limit Plaintiffs' claims." Defendants' argument here ignores well-settled law.

Florida Rule of Civil Procedure 1.110(b) provides that "Relief in the alternative or of several different types may be demanded." That is so even if the claims or demands are mutually exclusive. *Payas v. Adventist Health System/Sunbelt*, 238 So. 3d 887, 894 (Fla. 2d DCA 2018). "Simply, when a party pleads an action in the alternative, the party is merely electing different

claims or remedies that stem from the same cause of action." (Emphasis omitted.) *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 375 (Fla. 2013).

As alleged, Plaintiffs do not believe the Ecclesiastical Abstention Doctrine bars this Court's consideration of their claims. (Amended Complaint ("Am. Comp.") at ¶ 86.) However, were this Court to disagree, then Plaintiffs alternatively alleged that such application of law violates the Establishment Clause and must be reexamined on appeal.

2.2 If this Court determines that Florida requires deference under the Ecclesiastical Abstention Doctrine in this circumstance, then that application of Florida law violates the Establishment Clause.

The First Amendment's Establishment Clause states that government "shall make no law respecting an establishment of religion." U.S. Const. Amend. I. That "means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Bd. of Edn.*, 330 U.S. 1, 15 (1947); *see also Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2105 (2019) (government may not favor one religion over another, or religion over irreligion).

In *Jones v. Wolf*, 443 U.S. 595 (1979), the United States Supreme Court noted that the First Amendment prohibits courts "from resolving church property disputes <u>*on the basis of religious doctrine and practice*</u>," and that courts must defer to the highest court of a hierarchical church to resolve issues "<u>*of religious doctrine or polity*</u>." (Emphasis added.) *Id*. at 602. Subject to those limitations, the Court held that "'a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters.'" *Id.* (quoting *Md. & Va. Eldership of Churches v. Church of God, Inc.*, 396 U.S. 367, 368 (1970) (BRENNAN, J., concurring) (emphasis in original)).

Defendants argue that Florida has adopted a deferential approach to hierarchical churches and, therefore, this Court must blindly defer to The UMC's secular decisions without any analysis

as to whether those decisions violate Florida law. But that is not what Florida law says. Florida law holds that civil courts must defer to the decisions of hierarchical churches "in matters of 'discipline or of faith, or ecclesiastical rule, custom or law.'" *Townsend v. Teagle*, 467 So. 2d 772, 775 (Fla. 1st DCA 1985) (quoting *Watson v. Jones*, 80 U.S. at 727). The question in this case involves Florida trust law, not religious discipline, faith, ecclesiastical rule, custom, or law.

To be sure, *Jones* did not prohibit a state from adopting a deference approach, but it did not expressly authorize states to defer to *secular* decisions made by churches that, when examined under neutral principles, would violate secular law, as doing so "would necessarily extend constitutional protection to the secular components of these relationships." *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 335-36 (5th Cir. Tex. 1998). The *Jones* Court further did not authorize a state to apply one analysis to one kind of church while applying a different analysis to another kind of church.

If Defendants were correct that The UMC is owed blind deference on any *secular* decision it makes because it is a hierarchical church, then hierarchical churches can ignore property law, trust law, and contract law, and courts must defer to them regardless of secular laws and documentation that contradict their position, while congregational churches (and all other persons and organizations) must comply with secular laws and support their non-ecclesiastical decisions with documentation. Such blind deference favors hierarchical churches over congregational churches (and everyone else) and in so doing, runs afoul of the Establishment Clause of the First Amendment.

Indeed, any such deference in the instant case will substantially improve Defendants' balance sheets despite their failure to comply with Florida law—something no other church or legal entity could accomplish. That sort of "aid" to hierarchical churches is exactly what the Establishment Clause prohibits. *Everson,* 330 U.S. at 15.

If this Court agrees with Defendants' statement of Florida law that it must defer to The UMC's invalid trust clause merely because it is a hierarchical church, then that law is unconstitutional and must be reexamined. Thus, as alternatively alleged in their Amended Complaint: "To the extent Plaintiffs' claims are limited by the application of the Ecclesiastical Doctrine, Plaintiffs specifically bring this action for the purpose of seeking appellate relief advocating for the modification or reversal of existing law that would limit Plaintiffs' claims." (Am. Comp. at ¶ 120.)

It is neither unusual nor inappropriate for a plaintiff to plead in the alternative. Doing so is in no way a concession that one claim loses. Defendants' argument here fails.

3. The claims of the unincorporated Plaintiffs should not be dismissed.

Defendants cursorily argue that seven Plaintiffs are unincorporated associations and therefore lack standing to bring this action.[1] That argument's surface-level appeal gives way upon deeper analysis that reveals it as an elevation of form over substance.

Defendants do not contend that the unincorporated Plaintiffs could *never* bring this action due to their unincorporated status. Rather, Defendants argue the unincorporated Plaintiffs must bring their claim through individuals in a representative capacity—form over substance. Defendants' argument, if accepted, would result not in dismissal, but rather a modification to the case caption. Plaintiffs would be entitled to amend the Complaint to name the Trustees of the unincorporated Plaintiffs rather than the individual churches. *Ross v. Gerung*, 69 So. 2d 650, 651 (Fla. 1954) (recognizing the right of the leaders of a church to represent the church in the lawsuit); *Mt. Olive Primitive Baptist Church of Jacksonville v. Harris*, 860 So. 2d 520, 522 (Fla. 1st DCA 2003) (same). Therefore, dismissal on this basis should be denied.

[1] While Defendants do not make it clear, this argument would not apply to Count I of the Amended Complaint, which is brought only by one incorporated Plaintiff.

4. The Local Action Rule does not preclude this Court from exercising jurisdiction.

The local action rule pertains to a court's subject matter jurisdiction to decide cases relating to real property located outside the court's physical jurisdiction. *Bauman v. Rayburn*, 878 So. 2d 1273, 1274 (Fla. 5th DCA 2004). But the simple involvement of real property in an action does not constitute an *in rem* action that implicates the local action rule. *See, e.g., Greene v. A.G.B.B. Hotels, Inc.*, 505 So. 2d 666, 667-668 (Fla. 5th DCA 1987). Rather, an action is *in rem* only if it asks the court to act *directly* on the legal status of real property or on the title to it, such as a quiet title or foreclosure action. *See, e.g., id*.; *Bauman*, 878 So. 2d at 1274. Thus, whether the rule applies depends on the underlying major question in the case. *Seven Hills, Inc. v. Bentley*, 848 So. 2d 345, 350 (Fla. 1st DCA 2003); *Bauman*, 878 So. 2d at 1274.

Here, the only claim that directly affects title to real property is the quiet title claim brought by Grace United Methodist Church ("Grace"), whose real property is within this Court's territorial jurisdiction. (Am. Comp. at Count I.) The remaining Plaintiffs do not ask this Court to act directly on their properties or titles. Rather, the underlying major question here is whether the trust clause is legal and enforceable under the Florida Trust Code. The remedy sought is a declaration that it is not. While such a declaration may incidentally affect the titles to Plaintiffs' properties, it does not directly affect them. *See, e.g., Ruth v. Dep't of Legal Affairs*, 684 So. 2d 181, 186 (Fla. 1996) (local action rule did not preclude court from declaring who was entitled to property); *Royal v. Parado,* 462 So. 2d 849, 854 (Fla. 1st DCA 1985) (action for rescission of deed to real property due to fraud not subject to local action rule); *Greene*, 505 So.2d 666 (Fla. 5th DCA 1987) (action for monetary damages for fraudulent inducement to purchase real property and for reformation of promissory note attached to land did not involve the actual property or title to it, so local action rule not implicated).

Apart from the quiet title claim brought only by Grace, neither Plaintiffs' properties nor title to them are directly involved here. The local action rule does not apply.

5. Bradford County is the proper venue for bringing this action.

Defendants contend that this case was filed in an improper forum and should be dismissed under Fla. R. Civ. P. 1.140(b)(3). Defendants fail to provide any sworn testimony supporting their motion and that alone requires that it be denied. Furthermore, they are incorrect.

"It is the plaintiff's prerogative to initially select the venue in accordance with the applicable venue statute; the burden of pleading and proving that venue is improper is upon the defendant." *Eth-Wha, Inc. v. Blankenship*, 483 So. 2d 872, 873 (Fla. 2d DCA 1986). If the complaint does not affirmatively show that venue is lacking under the statute, the court may not disturb plaintiff's choice. *Goheagan,* 35 So. 3d at 1002; *see also Davis v. Fla. Power Corp.,* 492 So. 2d 829, 830 (Fla. 2d DCA 1986).

An unsworn complaint is sufficient to establish venue unless a defendant challenges it "*by filing an affidavit controverting the plaintiff's venue allegations*." (Emphasis added.) *Goheagan,* 35 So. 3d at 1003. If a defendant sufficiently challenges venue with sworn testimony, then, and *only* then, does the burden shift to the plaintiff to establish the propriety of its choice. *Id. See also Kustom US, Inc. v. Herry, LLC,* 303 So. 3d 1281, 1282 (Fla. 1st DCA 2020) (citing *Polackwich v. Fla. Power & Light Co.*, 576 So. 2d 892, 894 (Fla. 2d DCA 1991)).

Defendants did not provide any sworn testimony supporting their argument that Bradford County is an improper venue; therefore, nothing in Defendants' motion controverts Plaintiffs' presumptively correct venue selection. Because Defendants have not carried their burden, the burden does not shift to Plaintiffs and the unsworn, uncontradicted venue allegations in the Amended Complaint are presumptively correct and may not be disturbed.

But nonetheless, Plaintiffs did establish that Bradford County is a proper venue. Under Fla. Stat. § 47.011, an action may be brought "in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located." Section 47.041 provides that if a complaint asserts causes of action that arose in more than one county, the "action may be brought in any county where any of the causes of action arose."

Here, Grace asserts a quiet title action. (Am. Comp. at Count I.) The Amended Complaint alleges that Grace is located in Lawtey, Florida. (Am. Comp. at ¶ 1.) Lawtey is in Bradford County. Thus, Bradford County is not merely a proper venue, but the only claim to which the local action rule does apply makes Bradford County the only proper venue.

Moreover, Fla. R. Civ. P. 1.010 requires the civil rules to be construed to "secure the just, speedy, and inexpensive determination of every action." If Rule 1.140(b)(3) is read to require each Plaintiff to bring their claims individually, then there would be over 100 separate litigations filed all over the state of Florida, each asserting the same claims and each asking a court to determine the legality of The UMC trust clause. That approach is neither speedy nor inexpensive, and nearly guarantees inconsistent results. Plaintiffs have taken the more efficient approach by bringing their claims in one, proper, venue.

The venue selected by Plaintiffs is presumptively correct. In the absence of any evidence from Defendants to the contrary, there "is no legal basis for upsetting this venue choice." *Am. Thermoplastic Extrusion Co. v. Tackett Plastics, Inc.*, 527 So. 2d 953, 954 (Fla. 3d DCA 1988).

6. Defendants cannot move to dismiss claims in a prior pleading that were not made in the amended pleading.

Defendants move to dismiss Counts I through V of Plaintiffs' Amended Complaint to the extent they are asserted against certain individuals named as Defendants in Plaintiffs' original

Complaint. (Motion at ¶¶ 32-33.) Plaintiffs' Amended Complaint dropped those individuals, however, so no further response is necessary to this section of Defendants' motion.[2]

7. Plaintiffs alleged sufficient facts to survive dismissal of their claims.

7.1 Grace alleged sufficient facts which, taken as true, survive dismissal of its quiet title claim.

Under Fla. Stat. § 65.061(1), courts have jurisdiction to determine an action brought by any person or corporation claiming legal or equitable title to land against any other person or corporation, not in actual possession, claiming an adverse interest. If a court determines the plaintiff has legal or equitable title, it "shall enter judgment removing the alleged cloud from the title to the land and forever quieting the title in plaintiff. . . and adjudging plaintiff to have a good fee simple title to said land or the interest thereby cleared of cloud." § 65.061(4), Fla. Stat.

To state a cause of action to quiet title, Grace needed to allege that (1) it has title to the subject property; (2) a cloud on the title exists; and (3) the cloud is invalid. *D'Alessandro v. Fid. Fed. Bank & Trust*, 154 So. 3d 498, 499 (Fla. 4th DCA 2015). Grace alleged that it has title (Am. Comp. at ¶ 122), that The UMC's trust clause creates a cloud on that title (Am. Comp. at ¶ 124), and that The UMC's cloud is invalid because the trust clause is invalid (Am. Comp. at ¶¶ 125-127). Taking those allegations as true and making all reasonable inferences in Grace's favor, as this Court must do on Defendants' motion, Grace has sufficiently pled its claim for quiet title, and in fact, Defendants do not argue otherwise. This claim must survive dismissal.

7.2 Plaintiffs alleged sufficient facts which, taken as true, survive dismissal of their declaratory judgment claim.

Chapter 86 of the Florida Statutes authorizes a court to render a declaratory judgment on the existence or nonexistence of any right, or of any fact upon which the existence or nonexistence

[2] Plaintiffs asked Defendants to agree to amend the case caption to remove the individuals therefrom, but to date there has been no response.

of such right may depend. § 86.011, Fla. Stat. Any person claiming to be interested, or who may be in doubt about his or her rights, may obtain a declaration of rights. § 86.021, Fla. Stat. "[T]he purpose of a declaratory judgment is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations." *Santa Rosa Cnty. v. Admin. Comm'n*, 661 So. 2d 1190, 1192 (Fla. 1995). Given its purpose, the declaratory judgment statute should be liberally construed. "*X" Corp. v. "Y" Person*, 622 So. 2d 1098, 1100 (Fla. 2d DCA 1993).

The standard for testing the sufficiency of a declaratory judgment complaint is set out in *May v. Holley*, 59 So. 2d 636 (Fla. 1952). A complaint must allege:

> that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest[s] in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Id. at 639. "With these requirements met there is almost no limit to the number and type of cases that may be heard under this statute." *Id*.

Here, Plaintiffs alleged that they have a legal and equitable interest in their own property; that Defendants claim an adverse interest by way of the trust clause that casts doubt on Plaintiffs' interest; that the trust clause by which Defendants claim their interest is of questionable validity for a host of reasons; and that there is thereby created a bona fide, actual, present, practical need to have Plaintiffs' uncertainty and insecurity removed. (Am. Comp. at ¶¶ 130-141.) Plaintiffs have alleged sufficient facts to survive dismissal of this claim and Defendants have not argued otherwise. This claim must survive dismissal.

7.3 Plaintiffs alleged sufficient facts which, taken as true, survive dismissal of their alternative judicial modification of trust claim.

As set forth above, Plaintiffs pleaded that they are the owners of their respective properties and that The UMC trust clause is invalid under Florida law and cannot bestow any ownership on Defendants. Alternatively, however, should this Court find the trust clause valid, Plaintiffs pleaded that this Court has jurisdiction to reform it under § 736.04113(2)(a).

Defendants' dearth of analysis regarding Plaintiffs' alternative modification of trust claim is telling. Defendants acknowledge that § 736.04113 permits this Court to grant the relief requested, but then simply restate their ecclesiastical abstention argument and claim relief should be denied. Their cursory statement that Plaintiffs "did not plead any facts" showing entitlement to relief ignores the well-pleaded allegations in the Amended Complaint.

In *Reid v. Temple Judea*, 994 So. 2d 1146 (Fla. 3d DCA 2008), the trustee of a trust brought a claim against the purported beneficiaries for reformation under § 736.04113(1)(b). *Reid* at 1147. Because the trustee pleaded: "the trust as written did not reflect [the settlor's intent]," the Third District found the claim sufficient and reversed dismissal. *Id.* at 1148.

As Defendants note, for this claim to survive, Plaintiffs need only plead that "because of circumstances not anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust." § 736.04113(1)(b). As in *Reid*, Plaintiffs pleaded that at the time of settling the trust, they did not anticipate that Defendants would interpret (or amend) the trust to permit Defendants to take possession of Plaintiffs' property without paying for it, or that Defendants would use the trust to hold Plaintiffs' property hostage. (Am. Comp. at ¶¶ 158, 161.) These are circumstances not anticipated by the settlors (Plaintiffs) at the time of the trust that "defeat or substantially impair the accomplishment of a material purpose of the trust." § 736.04113(1)(b).

Plaintiffs believe the trust clause is invalid and this Court should never reach the judicial modification claim. Nonetheless, they have sufficiently pled the claim so the motion to dismiss should be denied.

7.4 Plaintiffs alleged sufficient facts which, taken as true, survive dismissal of their alternative breach of fiduciary duty claims.

Also alternative to their claim that the trust clause is invalid, Plaintiffs asserted breach of fiduciary duty claims in Counts IV and VI. Plaintiffs pleaded that if the trust clause is valid under Florida law, then Defendants are the true trustees because they retain all control of the property, and they have breached their fiduciary duties. (Am. Comp. at ¶¶ 94, 167, 189.)

If Defendants are, as Plaintiffs alleged, the true trustees managing the sprawling trust, then Florida Trust Code does not allow them to escape scrutiny for their financial mismanagement. Chapter 736 of Florida's Trust Code outlines specific, nonoptional duties that must be performed. Plaintiffs alleged that Defendants disregarded those duties by failing to: (1) keep clear, distinct, and accurate records of the administration of the trust; (2) keep trust property separate from the trustee's own property; and (3) provide a trust accounting at least annually. (Am. Comp. at ¶ 170.) Those allegations are sufficient to survive a motion to dismiss. *Gasperoni v. Strauss*, No. 6:19-cv-01308-PGB-EJK, 2019 WL 12473437, at *4 (M.D. Fla. Oct. 4, 2019) (denying motion to dismiss where plaintiff pleaded a breach of the duties owed under Chapter 736 and rejecting attempt to weigh facts at the motion to dismiss stage).

Rather than confront Plaintiffs' actual allegations, Defendants interpose a straw man argument under Chapter 617.07401, which governs shareholder derivative actions. Plaintiffs have not brought a shareholder derivative action; they have alleged breach of fiduciary duty under the Florida Trust Code. Defendants rely on an irrelevant statute. Their motion to dismiss Counts IV and VI should be denied.

7.5 Plaintiffs alleged sufficient facts which, taken as true, survive dismissal of their alternative accounting claim.

Also in the alternative, Plaintiffs asserted an accounting claim. The facts alleged are sufficient to survive dismissal.

Plaintiffs alternatively pleaded that Defendants made themselves trustees of the trust property, and that Plaintiffs are qualified beneficiaries under Florida Trust Code. (Am. Comp. at ¶¶ 181-182.) Defendants concede those are the only two allegations needed to establish a right to an accounting. (Motion at ¶ 39.) §§ 736.0813, 736.08135 Fla. Stat.

Defendants argue that Plaintiffs failed to plead they are qualified beneficiaries (Motion at ¶ 39), but that is demonstrably incorrect (Am. Comp. at ¶ 182). Further, despite Plaintiffs' clear assertion that this claim is alternative, Defendants point to allegations from separate portions of the Amended Complaint in an effort to negate this claim. This tactic must fail, as alternative pleading is perfectly acceptable. (*See* § 2, *supra*.)

Defendants also make a passing argument that Plaintiffs seek an accounting of their own income and expenditures. (Motion at ¶ 40.) But that argument also fails, since Plaintiffs pleaded an accounting regarding the millions of dollars Defendants have in their possession for which they, to date, refuse to provide transparency. The Court should not dismiss this claim.

7.6 Plaintiffs alleged sufficient facts which, taken as true, survive dismissal of their alternative unjust enrichment claim.

In Count VII (inadvertently titled Count V), Plaintiffs alternatively assert an unjust enrichment claim. Plaintiffs alleged sufficient facts to survive dismissal and Defendants do not argue otherwise.

The elements of an unjust enrichment claim are that (1) the plaintiff conferred a benefit on the defendant, who has knowledge thereof; (2) the defendant voluntarily accepts and retains that benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the

plaintiff for it. *Hillman Constr. Corp. v. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994). Plaintiffs alleged that they conferred a benefit on Defendants by depositing their property into a trust that Defendants are clearly aware of and have accepted, and it would be inequitable under the current circumstances for Defendants to keep that property without paying for it. (Am. Comp. at ¶¶ 202-203.) Those allegations, taken as true as this Court must, sufficiently state a claim for unjust enrichment. Again, Defendants do not contend otherwise. This claim must survive dismissal.

CONCLUSION

For all the foregoing reasons, Plaintiff Churches respectfully request that Defendants' Motion to Dismiss be denied in its entirety.

DATED: February 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 2023, the foregoing was filed electronically using the Florida Courts E-Filing Portal and will be electronically served upon all counsel of record.

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