

CAUSE NO. 2015-CI-07858

FIRST PRESBYTERIAN CHURCH OF SAN ANTONIO	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	BEXAR COUNTY, TEXAS
	§	
MISSION PRESBYTERY,	§	
	§	
Defendant.	§	73 <sup>RD</sup> JUDICIAL DISTRICT

**DEFENDANT'S PLEA TO THE JURISDICTION,  
MOTION TO DISMISS OR ABATE, AND ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

In response to Plaintiff's Verified Original Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary and Permanent Injunction ("the Petition"), Defendant Mission Presbytery ("Mission" or "Defendant") files this (1) Plea to the Jurisdiction or request for ecclesiastical abstention, (2) in the alternative, Motion to Dismiss or Abate in favor of the parties' agreed upon dispute resolution procedure; and (3) Original Answer and Affirmative Defenses, and would respectfully show the Court as follows:

**PLEA TO THE JURISDICTION/ECCLESIASTICAL ABSTENTION**

1. This case concerns the efforts of certain members of a local church, First Presbyterian Church of San Antonio ("FPC" or "Plaintiff"), to have that church (or a portion thereof) leave the Presbyterian Church (U.S.A.) ("PCUSA"), taking all church property with them. Plaintiff is asking this Court to declare that PCUSA and Mission have no beneficial interest in FPC's property, presumably so that certain individuals who control FPC can leave PCUSA and take all church property with them, ignoring in the process the rules FPC had previously agreed to follow.

2. While Plaintiff attempts to cast this case as a narrow property rights case, in reality this case presents profoundly ecclesiastical issues over which this Court has no subject matter jurisdiction and should abstain from deciding. These issues are governed by the PCUSA constitution and dispute resolution procedures. Moreover, the relief sought by FPC will have no impact on FPC's use of property so long as FPC is a member of PCUSA because FPC is currently allowed to buy, sell, or mortgage its property without obtaining any permission from PCUSA. The property trust issues come into play only if FPC leaves the PCUSA.

3. The Texas Supreme Court has recognized that "deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question." *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d, 594, 606 (2013).

4. FPC agreed, as part of its membership of PCUSA, to a dispute resolution procedure that sets forth a reconciliation process that applies where, as here, a congregation is still a member of PCUSA.

5. The Court should abstain from hearing this matter and dismiss this case because a determination by this Court regarding FPC's requested relief would constitute a wrongful infringement on ecclesiastical issues.

6. Where the right to "control of church property" turns on the "[r]esolution of . . . a religious dispute," the courts cannot get involved because it is the prerogative of "ecclesiastical and not civil tribunals" to resolve such disputes. *The Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976). See also *Masterson*, 422 S.W.3d at 602. This case turns on the resolution of a religious dispute, and thus, Mission requests that this Court grant this Plea to the Jurisdiction and dismiss this lawsuit because the Court lacks subject-matter jurisdiction.

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
ABATE IN FAVOR OF AGREED UPON DISPUTE RESOLUTION PROCEDURE**

7. This case also should be dismissed or abated because FPC agreed to abide by the PCUSA procedure to resolve disputes amongst the church members, including the property disputes.

8. By taking this case to this Court, FPC has elected to ignore the procedures for dispute resolution to which it had previously agreed.

9. Texas courts have “long recognized Texas’ strong public policy in favor of reserving the freedom of contract” by enforcing contractual provisions agreed to by the parties. *El Paso Field Services, L.P. v. Mastec North America, Inc.*, 389 S.W.3d 802, 811-12 (Tex. 2013) (internal quotations and citations omitted). In addition, “Texas public policy permits and encourages parties to enter into agreements to submit disputes to various forms of alternative dispute resolution.” *In re Mabray*, 355 S.W.3d 16, 29 (Tex. App—Houston [1<sup>st</sup> Dist.] 2010, orig. proceeding) (holding that cooperative law agreement was enforceable as an ADR mechanism under contract principles even though not recognized by the Texas legislature). For example, “Federal and state law strongly favor arbitration,” and arbitration clauses are regularly enforced by the courts. *Cantella & Co., Inc. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996). “In determining the validity of agreements to arbitrate,” courts “generally apply principles governing the formation of contracts.” *950 Cobindale, L.P. v. Kotts Capital Holdings Ltd. P’ship*, 316 S.W.3d 191, 195 (Tex. App—Houston [14<sup>th</sup> Dist.] 2010, no pet.). In addition, Texas courts have enforced contractual appraisal provisions in which parties have “agreed that the amount of loss shall be determined in a particular way.” *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888, (Tex. 2009) (“However injudicious it may be for parties to bind themselves by such [an appraisal] agreement, it seems to be well settled that, having done so, they cannot disregard it.”)

(internal quotations and citations omitted). Accordingly, this Court should dismiss or abate this lawsuit and order the parties to comply with the dispute resolution procedure to which they have contractually agreed.

10. Subject to and without waiver of Mission's plea to the jurisdiction and motion to dismiss or alternatively to abate, Mission files the following answer and affirmative defenses.

**GENERAL DENIAL**

11. Mission denies the allegations of Plaintiff's Petition and demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

12. Plaintiff's claims are barred by the following affirmative defenses:

- a. Ratification;
- b. Laches;
- c. Estoppel;
- d. Promissory Estoppel;
- e. Quasi-Estoppel;
- f. Unjust Enrichment;
- g. Waiver;
- h. Unclean Hands; and
- i. Statutes of Limitations.

13. Plaintiff's claims and the relief sought are unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution.

PRAYER

14. For the foregoing reasons, Mission respectfully requests that this Court enter an Order

- a. dismissing the Petition for lack of subject matter jurisdiction and/or abstaining from hearing the case because it concerns ecclesiastical matters;
- b. in the alternative, compelling all parties to follow the agreed-to dispute resolution procedure;
- c. dismissing the case or alternatively staying or abating this case until the PCUSA dispute resolution procedure has been concluded;
- d. ruling that Plaintiff take nothing by reason of its suit and that Mission be awarded its reasonable attorneys' fees under the Texas Declaratory Judgment Act; and
- e. awarding Mission costs and such other and further relief to which it may be entitled.

Respectfully submitted,

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**ATTORNEY FOR DEFENDANT**  
**MISSION PRESBYTERY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following attorneys via the Court's electronic filing system and by electronic mail on this 12<sup>th</sup> day of June, 2015:

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JOSE E. de la FUENTE