

No. 1-11-1002

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstance allowed under Rule 23 (e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| ADMINISTRATIVE COMMISSION of The |) | APPEAL FROM THE |
| MIDWEST HANMI PRESBYTERY Acting As |) | CIRCUIT COURT OF |
| Session Of The Canaan Presbyterian |) | COOK COUNTY |
| Church and CANAAN PRESBYTERIAN |) | |
| CHURCH, an Illinois Not-For-Profit Corporation, |) | |
| Plaintiffs-Appellees, |) | |
| |) | No. 07 CH 05052 |
| v. |) | |
| |) | |
| YONG SAM RHEE, HYUNG YUNG CHOI, |) | HONORABLE |
| SEUNG PYUNG JUN, PAN TAE KIM, and |) | MICHAEL B. HYMAN, |
| GYU HO LEE, |) | JUDGE PRESIDING. |
| Defendants-Appellants. |) | |

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

¶ 1 *HELD:* In a church property dispute, the circuit court did not err in refusing to vacate a settlement order entered into between a minister and elders who were directors of the church corporation. The circuit court did not err in refusing to rescind the settlement on the grounds of material breach, failure of consideration, or a breach of the implied covenant of good faith and fair dealing. The minister and directors forfeited the argument that the circuit court erred by not granting them leave to file an amended counterclaim. The judgment of the circuit court is affirmed.

¶ 2 Defendants Yong Sam Rhee (Rev. Rhee) and Hyung Young Choi, Seung Pyung Jun, Pan Tae Kim and Gyu Ho Lee, the directors of Canaan Presbyterian Church, an Illinois not-for-profit corporation (directors), appeal from orders of the circuit court of Cook County: (1) denying their motion to vacate a settlement order entered into with the plaintiff Administrative Commission of the Midwest Hanmi Presbytery (Presbytery AC) acting as the session of the Canaan Presbyterian Church and the Canaan Presbyterian Church, an Illinois not-for-profit corporation; and (2) entering a final judgment on the Presbytery AC's verified amended complaint. On appeal, Rev. Rhee and the directors contend the circuit court erred in refusing to vacate the settlement because the Presbytery AC: (1) lacked authority to sue on behalf of the corporation; (2) fraudulently induced the settlement; and (3) coerced the settlement. Defendants also contend the circuit court should have rescinded the settlement on the grounds of material breach, failure of consideration, or a breach of the implied covenant of good faith and fair dealing. Lastly, Rev. Rhee and the directors argue the circuit court erred in refusing to allow them leave to file a proposed amended counterclaim. For the following reasons, we reject defendants' arguments and affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 The record on appeal discloses the following facts. Canaan Presbyterian Church (Canaan) is a religious congregation in Glenview, Illinois. Canaan, an Illinois not-for-profit corporation, was originally incorporated in 1977 by Rev. Rhee and others as the Korean Presbyterian Church of Niles (KCPN). The stated purpose of the corporation was "to hold

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religious exercise based on the Constitutions and Doctorines [sic] of the United Presbyterian Church in the U.S.A."

¶ 5 According to Rev. Rhee, KCPN conducted religious activities for several families who began worshipping with Rev. Rhee at his house in 1976 and later rented space from Niles Community Church in Niles, Illinois. KCPN followed the constitution and church law of the Korean Presbyterian Church in Korea and did not affiliate with any general denominational church. However, in May 1978, Rev. Rhee's Presbyterian Church affiliation was transferred to the Presbytery of Chicago. In 1979, the congregation petitioned the Presbytery of Chicago to be organized as a church according to the constitution of the United Presbyterian Church in the United States of America. The Presbytery of Chicago subsequently chartered the church for membership.

¶ 6 In 1982, by means of loans and the purchase of property through the Church Extension Board of the Presbytery of Chicago, KCPN built a church in Glenview. At that time, the church changed its name to Canaan.

¶ 7 In 1983, the United Presbyterian Church in the United States of America merged with the Presbyterian Church in the United States to form the Presbyterian Church (U.S.A.) (PCUSA). The PCUSA is governed by a constitution comprised of two books: the Book of Confessions and the Book of Order. The Book of Order sets forth the structure of the PCUSA and prescribes the authority for each of the PCUSA's governing bodies: the session; the presbytery; the synod; and the General Assembly. Each church within the PCUSA has its own session, consisting of active pastors or elders within a church, which is responsible for the mission and governance of each

church. Every session is subject to the review of a presbytery, which is the corporate expression of the PCUSA, consisting of all the pastors and churches within a certain district. Each presbytery is then subject to the review of a synod, which consists of no fewer than three presbyteries within a geographic region, governed by commissioners elected by the presbyteries. In turn, the synods are subject to the review of the General Assembly, the PCUSA's highest governing and judicatory body, comprised of equal numbers of ministers for each presbytery.¹

¶ 8 In 1994, Canaan transferred from the Presbytery of Chicago to the newly-formed, non-geographic, Korean language Midwest Hanmi Presbytery. In 1996, Canaan's articles of incorporation were amended to change the name of the corporation to Canaan, matching the common name of the church.

¶ 9 Between 1981 and 2005, Canaan purchased eight parcels of property currently valued in excess of \$10 million. The corporation had a fee simple interest in all of these parcels, including the aforementioned parcel in Glenview, which was conveyed by the Church Extension Board of the Presbytery of Chicago in 1995.

¶ 10 In 2006, a conflict arose within Canaan, between a faction opposed to Rev. Rhee (CaSoMo) and Rev. Rhee's supporters within Canaan. A group of elders from the Canaan

¹ This internal structure, or polity, may be considered hierarchical, as opposed to congregational polities, in which the autonomy of the local congregation is the central principle. See *Kelley v. Riverside Boulevard Independent Church of God*, 44 Ill. App. 3d 673, 681 (1976).

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session requested mediation from the Midwest Hanmi Presbytery. The presbytery concluded the session was unable to manage its affairs and appointed the Presbytery AC to manage Canaan's affairs.

¶ 11 In October 2006, the Presbytery AC issued a plan which in part provided for the March 2007 retirement of Rev. Rhee and his replacement by a new pastor. Some of Canaan's elders objected and questioned the Presbytery AC's authority to become involved in Canaan's pastoral selection. In February 2007, the Presbytery AC submitted a report to the Midwest Hanmi Presbytery contending that Rev. Rhee and other elders had renounced PCUSA jurisdiction by various acts under the Book of Order. The Midwest Hanmi Presbytery, approved the report. Consequently, Rev. Rhee could no longer exercise his pastoral duties at Canaan and his memberships in Canaan, the Midwest Hanmi Presbytery, and the PCUSA were purportedly terminated.

¶ 12 The Presbytery AC served Rev. Rhee with an eviction notice. The Presbytery AC also filed the instant lawsuit on behalf of Canaan, claiming Rev. Rhee was trespassing on church property and seeking: (1) an injunction barring Rev. Rhee from Canaan's premises; (2) an accounting; and (3) damages for breach of fiduciary duty. On February 27, 2007, the circuit court entered a temporary restraining order allowing both factions and their pastors to share Canaan's facilities pending resolution of the litigation.

¶ 13 In March 2007, Rev. Rhee appealed the actions of the Presbytery AC to the Synod of Lincoln Trails, arguing he had not renounced PCUSA jurisdiction. After initial deliberations, the proceedings before the synod were held in abeyance.

¶ 14 In April 2007, Rev. Rhee moved to dismiss the Presbytery AC's complaint pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2006)), arguing in part the Presbytery AC lacked standing to sue on behalf of the Canaan corporation because the corporation's directors had not authorized filing the lawsuit. In June 2007, the Canaan corporation and its directors moved to intervene in this lawsuit arguing the Presbytery AC was not authorized to bring suit and could not adequately represent their interests. In November 2007, the circuit court denied Rev. Rhee's motion to dismiss. In May 2008, the circuit court denied the Canaan corporation and its directors leave to intervene in the lawsuit.

¶ 15 Meanwhile, in April 2008, the Synod of Lincoln Trails decided Rev. Rhee's appeal. While ruling in Rev. Rhee's favor on some issues, the synod ultimately ruled the Midwest Hanmi Presbytery and the Presbytery AC had not erred in finding Rev. Rhee had renounced PCUSA jurisdiction. Rev. Rhee appealed this decision to the General Assembly.

¶ 16 In October 2008, the General Assembly set aside the decision of the synod. The General Assembly ruled that the Presbytery AC lacked authority to decide whether Rev. Rhee renounced PCUSA jurisdiction under the Book of Order and that the record was unclear regarding whether the Midwest Hanmi Presbytery had so found. The General Assembly remanded the matter to the synod for a new trial. On remand, the synod created its own administrative commission (Synod AC), which had jurisdiction over the Presbytery AC.

¶ 17 In January 2009, the Presbytery AC filed a verified amended complaint, seeking a declaration that it had sole and exclusive authority to control and manage all Canaan property. The verified complaint also sought a declaration that Rev. Rhee and the directors of the Canaan

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corporation were not trustees of the Canaan church and held no office in the church or the corporation. Further, the Presbytery AC sought to enjoin Rev. Rhee and the directors from acting contrary to any such orders.

¶ 18 On February 23, 2009, the circuit court entered an order disposing of several pending motions in the litigation. The circuit court denied the parties' cross-motions for summary judgment and judgment on the pleadings regarding the claim that Rev. Rhee was trespassing. The circuit court also denied Rev. Rhee's motions to dismiss the claims for an accounting and breach of fiduciary duty, ruling these claims were property disputes subject to neutral legal principles, rather than ecclesiastical claims for which judicial relief was unavailable. Lastly, the circuit court denied a motion to voluntarily dismiss the complaint by an attorney purportedly representing Canaan, ruling that this was another attempt by Rev. Rhee to challenge the Presbytery AC's standing to bring suit.

¶ 19 On April 25, 2009, the Synod AC announced the prior renunciation action as against Rev. Rhee were void and he was a minister member in good standing of the Midwest Hanmi Presbytery. The Synod AC also confirmed the membership and ordination of Rev. Rhee and the directors in the PCUSA. However, the Synod AC emphasized that Rev. Rhee remained subject to discipline, including his removal as a pastor. The Synod AC admonished Rev. Rhee, stating it had "for now elected to forbear taking certain administrative actions against him," including dissolving the pastoral relationship or declaring him involuntarily retired. However, the Synod AC noted Rev. Rhee's status as a member of the presbytery opened the door for disciplinary cases to be filed against him. The Synod AC further relied on representations from Rev. Rhee that he

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would not interfere with the orderly selection of his successor and would cooperate with the speedy and just resolution of the court case, in particular that Canaan property stay in the PCUSA. The Synod AC directed the attorneys to draft a settlement agreement that must provide for the property to be held in PCUSA standard format consistent with PCUSA law. The Synod AC also directed that the settlement agreement must not take any action against Rev. Rhee inconsistent with his position as pastor.

¶ 20 The parties then drafted an agreed settlement order. The order recognizes that the principal result of the decisions of the General Assembly and the Synod AC is that Canaan, its property, pastors, elders, and members are governed by the Book of Order. The order required Rev. Rhee and the directors of Canaan corporation to adopt amended and restated bylaws attached to the order. Rev. Rhee and the directors were required to resign as the corporation's officers and directors.

¶ 21 The agreed settlement order also provided that all Canaan property would be held in trust for PCUSA. Further, the Synod AC appointed its own replacements for the members of the Presbytery AC. The session, currently the Presbytery AC, is responsible for the management of the church property, including the proper use of church facilities. After complying with the order, the parties were to present an agreed order dismissing the lawsuit in the circuit court. The accompanying final order would incorporate the settlement. The final order would also enter judgment in favor of Rev. Rhee and other defendants on the trespass claim, based on the fact that Rev. Rhee was the currently installed pastor at Canaan. The counts of the complaint seeking an accounting and damages for breach of fiduciary duty would be dismissed. Furthermore, the

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circuit court would enter judgment for the Presbytery AC on the amendment seeking declaratory relief, on the ground that the parties and Canaan were subject to and governed by the Book of Order.

¶ 22 On May 15, 2009, the circuit court entered the agreed settlement order. The case was continued while an accounting and an audit required by the settlement order was to be performed and a facility usage agreement negotiated.

¶ 23 In October 2009, Rev. Rhee and the directors filed a motion to vacate the settlement order, arguing the Presbytery AC: (1) coerced or fraudulently induced them into approving the settlement; (2) acted in bad faith in negotiating the settlement; and (3) breached material terms of the settlement order. In January 2010, Rev. Rhee and the directors renewed their motion, adding claims that the Presbytery AC refused to recognize Rev. Rhee as Canaan's installed pastor and lacked authority to file the lawsuit or agree to the settlement order.

¶ 24 On September 8, 2010, the Synod AC issued a declaration of schism in Canaan and formally divided Canaan into two churches. The next day, the Presbytery AC moved for the entry of the final order. On September 28, 2010, Rev. Rhee and the directors sought leave to file an amended counterclaim alleging that the Synod AC would dissolve Canaan as early as October 1, 2010, and transfer the claimed church property to third parties. The proposed counterclaim sought a declaration that the Midwest Hanmi Presbytery and the Presbytery AC had no enforceable trust in Canaan's corporate property and to enjoin them from exercising control over said property. Rev. Rhee and the directors alleged the attempt to seize the property was part of a larger PCUSA legal strategy to seize local church property through administrative commissions.

¶ 25 On September 29, 2010, the circuit court continued the case for reassignment to another judge. The order continuing the case declined to address defendants' motion to file the counterclaim until after disposition of the already pending motions.

¶ 26 On October 1, 2010, the Synod AC dissolved Canaan, transferring its membership to the Midwest Hanmi Presbytery, and stating Rev. Rhee was a member-at-large on the rolls of the presbytery. On October 21, 2010, the Presbytery AC filed an amended motion for the entry of the final order, arguing Rev. Rhee and the directors had no basis for vacating the settlement order and that the schism declaration marked the fulfillment of its terms. On October 28, 2010, Rev. Rhee and the directors renewed their motion to vacate the settlement order, with the additional argument that the dissolution of Canaan violated the settlement order's express terms and negated its purpose.

¶ 27 On January 26, 2011, following further briefing, the circuit court entered an order denying the motion to vacate the settlement. Rev. Rhee and the directors moved for reconsideration. On March 8, 2011, the circuit court denied the motion for reconsideration and granted the Presbytery AC's motion for entry of the final order based on the settlement. The circuit court entered judgment for Rev. Rhee and the directors on the trespassing claim. The Presbytery AC was granted declaratory relief, while the remaining counts of its complaint were dismissed. On April 4, 2011, Rev. Rhee and the directors filed a timely notice of appeal to this court.

¶ 28

DISCUSSION

¶ 29 At the outset, we note Illinois courts have generally refused to adjudicate cases requiring a judicial interpretation of religious doctrine or church law. *Steppek v. Doe*, 392 Ill. App. 3d 739, 754 (2009). However, where doctrinal controversy is not involved in a church dispute, mandatory deference to religious authority is not required by the first amendment (U.S. Const., amend. I) and the court may choose from a variety of approaches to resolve the dispute. *Id.* at 754-55. Thus, in disputes over church property, Illinois courts have applied a "neutral principles of law" approach, objectively examining pertinent church characteristics, constitutions and bylaws, deeds, state statutes, and other evidence to resolve the matter as it would a secular dispute. *Id.* at 755.

¶ 30 On appeal, Rev. Rhee and the directors contend the circuit court erred in refusing to vacate the agreed settlement order. They also contend the circuit court erred in refusing to rescind the settlement order. Lastly, Rev. Rhee and the directors argue the circuit court erred in refusing to permit them to file and litigate their amended counterclaim. We address their arguments in turn.

¶ 31

I. The Motion to Vacate the Agreed Settlement Order

¶ 32 An agreed or consent order is tantamount to a contract; a judgment by consent derives its validity from the consent of the parties, not from adjudication by the court, and is treated as a contract. *Village of Mundelein v. Village of Long Grove*, 219 Ill. App. 3d 853, 861-62 (1991). A consent decree is based upon the agreement of the parties, and may supersede both the pleadings and the evidence. *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 760 (1997). Generally, a

consent decree is conclusive upon the parties and cannot be amended or vacated without the consent of the parties. *Id.*

¶ 33 However, a court will vacate a consent decree on the motion of only one party upon a showing of fraudulent misrepresentation or coercion in the making of the agreement, the incompetence of one of the parties, gross disparity in the position or capacity of the parties, errors of law apparent on the face of the record, or newly discovered evidence. *Id.* In addition, as a general matter, "[i]f a court lacks either subject matter jurisdiction over the matter or personal jurisdiction over the parties, any order entered in the matter is void *ab initio* and, thus, may be attacked at any time." *In re Dar. C.*, 2011 IL 111083, ¶ 60 (quoting *In re M.W.*, 232 Ill. 2d 408, 414 (2009)); see also *Filosa v. Pecora*, 18 Ill. App. 3d 123, 128 (1974). Where the issue is the interpretation of the consent order, we employ a *de novo* standard of review. *People v. R.J. Reynolds Tobacco Co.*, 2011 IL App (1st) 101736, ¶ 17. Otherwise, decisions involving petitions to vacate a consent order under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)) generally will not be disturbed on review absent abuse of sound legal discretion by the circuit court. *Thompson v. IFA, Inc.*, 181 Ill. App. 3d 293, 296 (1989).

¶ 34 A. The Presbytery AC's Authority to Sue

¶ 35 First, Rev. Rhee and the directors first maintain the circuit court erred in failing to vacate the agreed settlement order on the grounds the Presbytery AC had no authority to file the lawsuit or enter into the settlement. Defendants' contention is not that the circuit court lacked jurisdiction over the parties. Rather, it is the argument that the Presbytery AC lacked standing to

sue on behalf of Canaan corporation, which Rev. Rhee and the directors raised in their first motion to dismiss the lawsuit under section 2-619.1 of the Code.

¶ 36 Under Illinois law, issues of standing do not implicate the court's subject matter jurisdiction. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253 (2010). Indeed, lack of standing in a civil case is an affirmative defense subject to forfeiture. *Lebron*, 237 Ill. 2d at 252-53. Moreover, since the settlement agreement is treated as a contract, the validity of the court's order is a matter of the consent of the parties and is not dependent upon whether the court had jurisdiction over the parties. *Village of Mundelein*, 219 Ill. App. 3d at 862. Rev. Rhee and the directors fail to show the agreed settlement order was void for lack of jurisdiction. They also fail to argue or cite to authority showing the Presbytery AC's alleged lack of standing is a basis to vacate an agreed settlement order.

¶ 37 **B. Fraudulent Inducement**

¶ 38 In the alternative, Rev. Rhee and the directors argue the settlement was fraudulently induced by the Presbytery AC. Fraud in the inducement of a contract is a defense that renders the contract voidable at the election of the injured party. *Jordan v. Knafel*, 378 Ill. App. 3d 219, 229 (2007). In order for a representation to constitute fraud permitting a court to set aside a contract, the party seeking such relief must establish the representation was: (1) one of material fact; (2) made for the purpose of inducing the other party to act; (3) known to be false by the maker, or not actually believed by him on reasonable grounds to be true, but reasonably believed to be true by the other party; and (4) relied upon by the other party to his detriment. *Id.*

¶ 39 Rev. Rhee and the directors assert the Presbytery AC misrepresented the nature of the cost sharing that would occur under the settlement agreement. In the first instance, Rev. Rhee and the directors fail to identify any statement of material fact on this issue that induced them to enter into the agreed settlement order. The settlement order states in relevant part:

"The use of Church buildings and other facilities by the two groups presently using them and the payment of Church expenses shall be in accordance with the prior orders of this Court until directed otherwise directed by the Joint Facility Use Task Force of the Synod AC ('Task Force'), at which time said use and payment of expenses shall be as directed from time to time by the Task Force or the Synod AC. The Presbytery AC, after consideration of financial information provided by the parties and of other information available to it, such as auditors' reports, shall determine the amount, if any, owed by Plaintiffs to Defendants as shared expenses for the use of the Church buildings and facilities for the period prior to the new plan to be instituted by the Task Force."

This language on its face does not guarantee any particular cost sharing arrangement or that any amount will be paid to the defendants for the period prior to the new plan.

¶ 40 Rev. Rhee and the directors also maintain the Presbytery AC misrepresented its intention regarding the continuation of Canaan with Rev. Rhee as pastor and the directors' status as elders. Prior to settlement, the Synod AC confirmed the membership and ordination of Rev. Rhee and the directors in the PCUSA, and directed the attorneys to draft a settlement agreement that did not take any action against Rev. Rhee inconsistent with his position as pastor. However, the Synod AC emphasized that Rev. Rhee remained subject to discipline, including his removal as a

pastor. The Synod AC admonished Rev. Rhee, stating it had "*for now* elected to forbear taking certain administrative actions against him," including dissolving the pastoral relationship or declaring him involuntarily retired. (Emphasis added.) The Synod AC made no representations regarding the future status of the church, Rev. Rhee or the directors. Indeed, the Synod AC stated it partially relied on Rev. Rhee's representation that he would not interfere with an orderly succession. For these reasons, we conclude the circuit court did not err in ruling the settlement was not fraudulently induced.

¶ 41

C. Duress

¶ 42 Rev. Rhee and the directors further argue the settlement was coerced. Duress and coercion have basically the same meaning. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 341 Ill. App. 3d 438, 446 (2003). Duress occurs where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one's own free will. *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 173 (2010). The term "wrongful" is not limited to acts that are criminal, tortious, or in violation of a contractual duty, but extends to acts that are wrongful in a moral sense as well. *Id.* "The person asserting duress has the burden of proving, by clear and convincing evidence, that he was bereft of the quality of mind essential to the making of the contract." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 215 (1994). We review a trial court's finding on the issue of duress under a manifest weight of the evidence standard. See *Wermers Floorcovering, Inc. v. Santanna Natural Gas Corp.*, 342 Ill. App. 3d 222, 224 (2003).

¶ 43 In this case, Rev. Rhee and the directors maintain they were coerced into settlement by the threat of disciplinary action by the PCUSA. The circuit court ruled there was no evidence showing defendants were forced to accept certain terms of the settlement or were prevented from negotiating the terms of the agreement. Indeed, the court noted defendants were represented by counsel. Although legal representation does not preclude a finding of duress as a matter of law (see *Holzman v. Barrett*, 192 F.2d 113, 118 (7th Cir. 1951)), it is a factor for the circuit court to consider in ruling on the issue. See, e.g., *Continental Illinois National Bank & Trust Co. of Chicago v. Sax*, 199 Ill. App. 3d 685, 695 (1990). The Synod AC confirmed the membership and ordination of Rev. Rhee and the directors in the PCUSA prior to settlement. Rev. Rhee and the directors failed to show that the consequences of disassociating from PCUSA were sufficient to coerce a settlement. Given the record in this case, we do not find that the circuit court's ruling is against the manifest weight of the evidence.

¶ 44 II. Rescission of the Agreed Settlement Order

¶ 45 Moreover, Rev. Rhee and the directors argue the circuit court erred in failing to rescind the settlement. They argue rescission was warranted because: (1) the Presbytery AC breached the settlement agreement; (2) consideration for the settlement failed when Canaan was dissolved; and (3) the Presbytery AC violated the agreement's implied covenant of good faith.

¶ 46 A. Breach

¶ 47 Where one party breaches such an agreement, the other party may be entitled to rescission and restoration to his or her status before the agreement was reached. *Solar v. Weinberg*, 274 Ill. App. 3d 726, 733 (1995). However, not every breach entitles a party to rescission, and the

decision whether to rescind a settlement agreement is left largely to the discretion of the trial court. *Id.* A party may be entitled to rescission only where there has been a substantial nonperformance or breach by the other party. *Id.* Substantial nonperformance occurs where the matter not performed is of such a nature and importance that the agreement would not have been entered into without it. *Id.*

¶ 48 Rev. Rhee and the directors maintain it is "apparent" from the terms of the settlement that Canaan was supposed to remain a particular church in the PCUSA, Rev. Rhee was to remain the installed pastor, and the directors were to remain ordained elders. However, defendants do not rely upon the terms of the settlement agreement, but upon the Synod AC's decision and the "final order" attached as exhibits to the settlement order. As noted earlier, the Synod AC's decision confirmed the membership and ordination of Rev. Rhee and the directors in the PCUSA. The settlement order also provides that "[a]fter the parties have complied with this [settlement] Order, and upon direction of the Synod AC, the parties shall present to the Court an agreed order dismissing this case in the form attached as Exhibit E." That exhibit refers to Rev. Rhee and the directors being the installed pastor and elders in Canaan as a particular church of the PCUSA.

¶ 49 Contracts which specifically incorporate other documents by reference are to be construed as a whole with those other documents. *E.g., Kirschenbaum v. Northwestern University*, 312 Ill. App. 3d 1017, 1029 (1999). To be construed as incorporating an entire second document, a contract must display an intention to completely adopt that document. *Hayes v. M & T Mortgage Corp.*, 389 Ill. App. 3d 388, 390-91 (2009). The rules of contract construction include a strong presumption against adding conditions or provisions that could have been easily included by the

parties as terms of the contract, but were not. *Peterson v. Residential Alternatives of Illinois, Inc.*, 402 Ill. App. 3d 240, 245 (2010).

¶ 50 In this case, as previously noted, although the Synod AC confirmed the membership and ordination of Rev. Rhee and the directors in the PCUSA and directed the attorneys to draft a settlement agreement that must not take any action against Rev. Rhee inconsistent with his position as pastor, it also emphasized that Rev. Rhee remained subject to discipline, including his removal as a pastor. Additionally, the decision made no representations regarding the future status of the church, Rev. Rhee or the directors. Thus, even if we assumed *arguendo* the Synod AC decision is incorporated into the settlement, defendants' argument fails.

¶ 51 The circuit court ruled the language of exhibit E was not incorporated into the settlement for two reasons. First, the settlement required only an order "in the form of" exhibit E, rather than one containing the identical terms. Rev. Rhee and the directors call this language irrelevant, although the primary rule of contract interpretation is to ascertain and give effect to the parties' intent as evidenced by the plain language used in the agreement. See *In re Doyle*, 144 Ill. 2d 451, 468 (1991). Rev. Rhee and the directors claim the circuit court seized on a hyper-technical definition of "form," but the definition of a form as an "example" or "sample" seems anything but technical. See *Black's Law Dictionary* at 723 (9th ed. 2009).

¶ 52 Second, the circuit court noted the language of the settlement provides for submission of the final order "[a]fter the parties have complied with this [settlement] Order." (Emphasis added.) It logically follows that compliance with the settlement does not depend on the exact contents of the final order. Rev. Rhee and the directors do not contest this reasoning in their

appellate brief. Accordingly, we conclude the circuit court did not abuse its discretion in refusing to rescind the settlement on these grounds.

¶ 53 B. Consideration

¶ 54 A settlement may be rescinded based on a failure of consideration. *E.g.*, *Wilkinson v. Yovetich*, 249 Ill. App. 3d 439, 445 (1993). Consideration is defined as "a bargained-for exchange of promises or performance." *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1027 (2007). Forbearance, including the compromise of a disputed claim or a promise to forgo legal action, is also consideration. *Id.*

¶ 55 Rev. Rhee and the directors claim the preservation of their status and Canaan's status was the consideration for the settlement. However, the circuit court ruled the promises to forgo further legal actions supported the agreement. We also note the settlement required performance by all parties regarding an audit and accounting. Rev. Rhee and the directors claim the circuit court confused want of consideration and failure of consideration:

"These are distinct concepts and lead to quite different results. If there be a want of consideration, there can be no contract and hence no complaint sounding in contract could stand. Failure of consideration, on the other hand, necessarily admits the contract, but then refers to transactions in which consideration was anticipated but did not materialize." *Worner Agency, Inc. v. Doyle*, 121 Ill. App. 3d 219, 222 (1984).

However, under Illinois law, it is a *total* failure of consideration that warrants rescission. See *TMF Tool Co. v. Siebengartner*, 899 F.2d 584, 587 (7th Cir. 1990) (citing *Finke v. Woodard*, 122 Ill. App. 3d 911, 916 (1984)). Indeed, *Finke* relies on the aforementioned basic rule regarding

rescission for material breach. *Finke*, 122 Ill. App. 3d at 916. We do not find a total failure of consideration in this case. Accordingly, we conclude the circuit court did not abuse its discretion in refusing to rescind the settlement on these grounds.

¶ 56 C. The Implied Covenant of Good Faith and Fair Dealing

¶ 57 A settlement agreement, like all contracts, contains an implied covenant of good faith and fair dealing. See *Spircoff v. Spircoff*, 74 Ill. App. 3d 119, 127 (1979). Rev. Rhee and the directors again claim that the Synod AC's dissolution of Canaan, with the resulting change in defendants' status, constituted a material breach of the settlement. For the reasons previously stated, we disagree. Rev. Rhee and the directors argue in the alternative that "a party vested with contractual discretion must exercise that discretion reasonably and with proper motive, and may not do so arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectations of the parties." *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 991 (1984). In this case, the Synod AC was not vested with contractual discretion. Rather, the Synod AC's power derived from the structure and rules of PCUSA. Moreover, the Synod AC announced prior to the settlement that further disciplinary action might be taken, including declaring Rev. Rhee involuntarily retired or dissolving the pastoral relationship based on the acts that led to the 2006 renunciation action. Nothing in the settlement order barred the Synod AC from taking such action. Accordingly, we conclude the circuit court did not abuse its discretion in refusing to rescind the settlement on this ground.

¶ 58

III. The Proposed Amended Counterclaim

¶ 59 Lastly, Rev. Rhee and the directors argue the circuit court erred in refusing to allow them leave to file a proposed amended counterclaim. The record shows the circuit court denied this motion (along with all other pending motions) as moot. From the outset, we note that Rev. Rhee and the directors fail to address the mootness issue in their brief, which results in forfeiture on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Sept.1, 2006) (points not argued are waived). However, even if defendants had not waived the issue, defendants' argument would have failed. The proposed amended counterclaim sought a declaration that the Midwest Hanmi Presbytery and the Presbytery AC had no enforceable trust in Canaan's corporate property and no right to exercise control over said property. The Presbytery AC asserted the right to control the church property in its initial and amended verified complaints. The circuit court's entry of judgment in favor of the Presbytery AC on the verified amended complaint decided the issue. Accordingly, we hold that the circuit court did not abuse its discretion when it denied the defendants' motion to file an amended counterclaim.

¶ 60

CONCLUSION

¶ 61 In sum, the circuit court did not err in refusing to vacate the agreed settlement order based on the Presbytery AC's alleged lack of standing. The circuit court did not err in ruling the settlement was not fraudulently induced. The circuit court's ruling that the settlement was not coerced is not against the manifest weight of the evidence. The circuit court did not abuse its discretion in refusing to rescind the settlement on the grounds of material breach, failure of consideration or a breach of the implied covenant of good faith and fair dealing. Lastly, Rev.

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Rhee and the directors forfeit the issue of whether the circuit court erred in refusing to allow them leave to file a proposed amended counterclaim by failing to address the issue of mootness upon which the ruling was based in their appellate brief. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 62 Affirmed.