

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
PROBATE DIVISION**

THE GENERAL BOARD OF CHURCH AND
SOCIETY OF THE UNITED METHODIST CHURCH,

Petitioner,

v.

THE DISTRICT OF COLUMBIA,

Respondent,

and

CLYDE PATRICK CURTIN, et al.,

Respondent Intervenors.

Case No.: TRP-4-07

Judge Rhonda Reid-Winston

Next Event:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
MOTION OF THE DISTRICT OF COLUMBIA
TO ALTER OR AMEND JUDGMENT**

The District of Columbia ("the District"), by and through its Office of the Attorney General, respectfully submits this Memorandum of Points and Authorities in support of its Motion, brought under Rule 59(e) of the District of Columbia Rules of Civil Procedure, to Alter or Amend the Judgment contained in this Court's Order dated October 6, 2010.

I. DISCUSSION

The District moves to have the reformed language contained in Appendix A to the Court's Order amended or altered. If the Court's reformed language were allowed to stand, this would constitute legal error.¹ Under Rule 59(e), the decision of whether to grant such relief lies within the broad discretion of the trial court.²

A. **Assuming that there was a Mistake of Fact in the Inducement, the Court Failed to Adequately Consider What the Settlers' Probable Intention Would Have Been Had it Known About the Mistake.**

In order to support the equitable remedy of reformation, the extrinsic evidence must establish, by clear and convincing evidence, both: (1) that a mistake of fact or law affected the expression, inclusion, or omission of specific terms of the document, and (2) what the settlor's actual intention would have been absent the mistake.³ The question that the Court failed to adequately consider was: but for the mistake in the inducement, for what purposes would the settlers have intended the funds to be used?

Even if the settlers mistakenly believed that every donation made to The Board of Temperance, Prohibition, and Public Morals ("Old Board"), and The Board of Temperance of the Methodist Church ("New Board") (together referred to as "Boards") was accompanied by an express restriction that such money could only be used in the areas of temperance and alcohol problems, then the evidence at trial still establishes that

¹ See Nuyen v. Luna, 884 A.2d 650, 655 (D.C. App 2005), citing Katherine Wallace, et al., v. Warehouse Employees Union #730, 482 A.2d 801, 810 (D.C. App. 1984). ("[I]f the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59(e)"). In addition, the first paragraph of the Order only enters judgment against Respondent-Intervenors on Count 2 of the Complaint. The Order should state that judgment is entered against Respondents.

² Warehouse Employees Union, *supra* note 1, 482 A.2d at 804. citing, Queen v. D.C. Transit Sys., 364 A.2d 145.148 (D.C. 1976).

³ Emphasis added. Restatement 3d Property: Wills and Other Donative Transfers, § 12.1, comment g ("Grounds for Reformation). See also, Court Order, page 4, footnote 5 ("[T]his Court is guided by the UTC, and looks to the Restatement (Second and Third) for interpretation").

the settlors' intention was to continue the historical work of the Boards. The reformed language in the Court's Judgment is not supported by the historical reality of the work that was performed by the Boards.⁴ The reformed language is unduly broad in light of both the trial record and the Court's own findings of fact.

For example, the Court specifically found in its Findings of Fact that:

The settlors of the Declaration of Trust intended to place the assets in the Methodist Building Endowment Fund in trust to be used in the areas of temperance and alcohol problems. They intended to create the trust for those purposes because they believed that the gifts and donations in the form of cash, bequests, and securities had been given for work in the areas of temperance and alcohol problems; that, therefore, they had a moral obligation to the donors of the gifts to the Old Board to use the donations for the purposes for which they were given, and that the trust was necessary to prevent the assets of the Methodist Building Endowment fund from being freely accessed by the Board of Christian Social Concerns and the other two social action boards under its umbrella.⁵

The Court made another very crucial finding. The Court stated: "In the Court's view, the evidence is indisputable that the [sic] most of the work performed by the Old Board and New Board focused on temperance and alcohol problems. However, the exhibits clearly show that, throughout the years, the Boards were also authorized to, and did, perform substantial work on other 'public morals' issues."⁶ Taken together these two findings could reasonably lead to the conclusion that the settlors were seeking to restrict the use of funds to the "public morals" work in which the Boards were historically involved.

Moreover, that the settlors intended to restrict the use of the Trust funds to some purpose more limited than any lawful purpose is evident from the record. The Court found that "the Division was aware that it was not legally obligated to use the funds for

⁴ In addition, the first paragraph of the Order only enters judgment against Respondent-Intervenors on Count 2 of the Complaint. The Order should state that judgment is entered against Respondents.

⁵ Court Order, page 64.

⁶ Id., page 48.

use in the areas of temperance and alcohol problems.”⁷ Presumably, if the settlors were informed by Mr. Raysor, the attorney who drafted the Declaration of Trust, that they could “do anything [they] wanted”⁸ with the funds, yet chose to restrict the funds to work in the areas of temperance and alcohol problems, then they must have intended some limited purpose for the funds’ use.

Contrary to what the reformed language permits, the evidence at trial simply does not support the conclusion that the settlors’ would have intended that the Trustees use the funds for any lawful purpose related to public welfare. At most, the evidence suggests that the settlors’ intention would have been to expand the use of the funds from temperance and alcohol problems to include other “public morals.” There is evidence in the record that the Boards did conduct limited work in these other defined areas.

Moreover, because “public morals” is a term that is defined by the Methodist Church in the Resolutions that are incorporated in the Book of Discipline,⁹ it would have been subject to less discretionary control by the Board of Christian Social Concerns than the undefined term “public welfare.” Clearly, the evidence establishes that the settlors intended to limit the Trustees’ discretion over the purposes for which the Trust Funds could be spent. Therefore, reformed language that limits use of the Trust Fund to issues related to “public morals” would better reflect what the settlors would have intended than reformed language that gives Trustees virtually unfettered discretion.

⁷ Id., page 64.

⁸ Id.

⁹ Id., page 61.

B. The Articles of Incorporation Necessitated Restricting the Trust's Purpose to Nothing Broader than "Public Morals" Issues as Historically Defined.

Even if the Court were to totally disregard the settlors' underlying intent to continue the Boards' historical work, which it should not, the Court's reformed language should not establish a purpose for the Trust that is broader than what the settlors themselves could have accomplished. The articles of incorporation of the New Board omitted any reference to the Old Board's authority to operate in support of the public welfare, and instead refer to "public morals," a term defined in the Book of Discipline.

Moreover, since 1912, donations to the Trust have been commingled. As the Court found, it is no longer possible to account for all the donations received and whether they were expended for their purposes, let alone *when* they were received. Similarly, it was not possible in 1965 to allocate the Trust's funds between support for the Old Board's broad "public welfare" purposes¹⁰ and support for the New Board's more narrowly defined "public morals" purposes.¹¹ Thus, to stay within the authorized purposes of *both* Boards, the settlors would have had to restrict the Trust's purpose to the work of the New Board, which was limited to "public morals."

¹⁰ As stated in its certificate of incorporation, "The particular business and objects for which [the Old Board of Temperance] is organized, shall be as follows, to wit: - To promote the cause of temperance by every legitimate means; to prevent the improper use of drugs and narcotics; to refer aid to such causes as in the judgment of the board of trustees, tend to advance the public welfare."

¹¹ According to the 1949 Amended Certificate of Incorporation of the New Board, "The particular business and objects for which the corporation or society is organized shall be as follows: (1) To make more effectual the efforts of the Methodist Church in the interest of the Christian was of life; in creating a Christian public sentiment; in crystallizing opposition to all public violations of moral law; to promote an intensive educational program relating to the evils growing out of the use and traffic in alcoholic beverages; to publish and distribute literature dealing therewith; to promote observance and enforcement of all constitutional provisions and statutory enactments, national and state which have for their purpose the suppression, regulation, or restriction of traffic in alcoholic liquors and narcotic drugs; to promote in all lawful ways the speedy enactment of such legislation throughout the world; to actively seek the suppression of salacious and corrupting literature, degrading amusements, lotteries, and other forms of gambling and to in every wise and lawful ways promote public morals." *See also* Court Order, Finding of Fact #6, page 61 ("The 1960 Discipline defined the term ['public morals'] as including issues related to gambling, narcotics, tobacco, exploitation of sex, including the elimination of pornographic literature, and Sunday observance laws.")

Presumably, none of the donors would have objected to their donations being used to support “public morals,” which are one aspect of “public welfare.” Limiting the Trust’s purpose to “public morals” would ensure that each expenditure of funds was consistent both with the Old Board’s “public welfare” purposes and the new Board’s “public morals” purposes.

Principles of equity and prudent trust management lead to the conclusion that all funds should be restricted to causes involving “public morals”.¹² For this reason too, the District submits that the Court’s judgment should be amended or altered to contain the reformation language contained in Revised Appendix A, attached to the District’s proposed order.

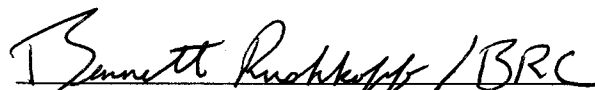
II. CONCLUSION

The District requests the Court to alter or amend its Judgment to reform the Declaration of Trust as set forth in Revised Appendix A of the attached Proposed Order.

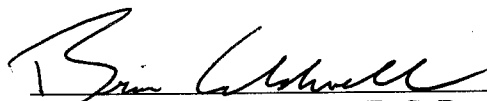
Respectfully submitted,

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¹² For instance, it would be inequitable to reward Petitioner with essentially unfettered discretion over the Funds for its (or its predecessors’) failure to maintain detailed records of donations received by the Boards by simply assuming that all donations went to advance the Old Board’s purpose of advancing the public welfare.



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