

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
DeAndrea G. Benjamin, Circuit Court Judge

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Case No. 2009-CP-40-0189

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George M. Lee, III, and Elizabeth Sims, ..... Plaintiffs,  
Of Whom, George M. Lee, III is the, ..... Appellant,

v.

University of South Carolina and the  
University of South Carolina Gamecock Club, ..... Respondents.

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**BRIEF OF RESPONDENTS**

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## STATEMENT OF THE CASE

This is a declaratory judgment action filed by the Appellant George M. Lee, III against the Respondents University of South Carolina and University of South Carolina Gamecock Club.<sup>1</sup> In his complaint, the Appellant Lee seeks a declaratory judgment to determine if he is entitled to receive tickets at various University of South Carolina sporting events under the terms of a Memorandum of Agreement dated March 9, 1990, without the payment of any seat donation or license fees. (R. 10).<sup>2</sup>

The Appellant Lee's action was tried non-jury before Circuit Court Judge DeAndrea G. Benjamin on May 9, 2012. By order filed June 20, 2012, Judge Benjamin ruled that the Memorandum of Agreement (hereafter referred to as "Agreement") was unambiguous on its face and that Lee had not been denied "the opportunity to purchase tickets" as required by the Agreement. (R. 4-5). She further ruled that the Respondents did not breach or otherwise violate any terms of the Agreement by requiring Lee to pay all fees and costs, including the seat

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<sup>1</sup> The complaint includes Elizabeth Sims as an additional party-Plaintiff. In her order, Judge DeAndrea Benjamin ruled that Sims abandoned her claims. (R. 1). In his brief, the Appellant, who is Sims' brother, states that Sims was dismissed from the suit by agreement. *See*, Appellant's Brief, p. 1

<sup>2</sup> In his brief, Lee refers to his claim as alleging a breach of contract. *See*, Appellant's Brief, p. 1.

donation or license fees, in order to purchase season tickets, just as every other Gamecock Club member must do. (R. 5).

No post-trial motions were filed. Instead, the Appellant Lee filed an appeal to this Court.

## ARGUMENTS

The Appellant George M. Lee, III entered into a Memorandum of Agreement with the Gamecock Club on March 9, 1990, which required him to irrevocably assign to the Gamecock Club, as sole owner and beneficiary, a whole life insurance policy valued at a minimum of \$100,000 in return for which he received a Lifetime Full Scholarship membership in the Gamecock Club. (R. 100).<sup>3</sup> Lee was required to pay the premium payments of at least \$1,000.00 annually for eight years and then make an election, which he did. (R. 100). Lee elected to continue paying \$500.00 annually to maintain the Lifetime Full Scholarship membership. (R. 114). According to the Agreement, as a Lifetime Full Scholarship member of the Gamecock Club, Lee would "have the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held." (R. 101). The Agreement further read "[t]here will be no guarantee as to where ticket assignments will be located. Assignments will be made according to membership priority in accordance with the Gamecock Club By-laws." (R. 101).

In 2009, the University initiated the Yearly Equitable Seating (YES) program. As part of the program, a season ticket holder was required to pay a seat

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<sup>3</sup> Prior to March 9, 1990, the Appellant Lee had been a member of the Gamecock Club at the Full Scholarship membership level. In order to maintain Gamecock Club membership at the Full Scholarship level, he was required to pay \$1,000.00 in dues annually. (R. 50-51).

donation or license fee for each seat in addition to the ticket price in order to purchase each season ticket at Williams-Brice Stadium. As Judge Benjamin found, "the seat donation was implemented in lieu of raising ticket prices because the donation format was more fan-friendly in that it provided certain tax benefits." (R. 3).

The Appellant Lee objects to the requirement that he pay the seat donation or license fee. He argues that such a fee is in violation of the Agreement he reached with the Gamecock Club in 1990. Lee's breach of contract claim focuses on the language in the Agreement giving Lee "the opportunity to purchase tickets entitled to the Gamecock Level or membership presently held." (R. 101).

South Carolina law provides that the "cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties." *South Carolina Department of Transportation v. M&T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7, 12 (Ct. App. 2008). "To determine the intention of the parties, the court must first look at the language of the contract." *Id.* "When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court." *Laser Supply & Services, Inc. v. Orchard Park Associates*, 382 S.C. 326, 676 S.E.2d 139, 143 (Ct. App. 2009). In addition, "[w]hether an ambiguity exists in the language of a contract is also a question of law." 676 S.E.2d at 144. This Court has further explained that "[a] contract is ambiguous when it is capable of more than one meaning when viewed objectively

by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business." *Id.* It is well settled that extrinsic evidence is not admissible to create an ambiguity or to show the intent of the parties. *Bellamy v. Bellamy*, 292 S.C. 107, 111, 355 S.E.2d 1, 3 (Ct. App. 1987) (holding that "[e]xtrinsic evidence is admissible to resolve ambiguities, not to create them where none exists").

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 571, 574 (2009). Furthermore, "[w]here an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it." *South Carolina Department of Transportation v. M&T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7, 13 (Ct. App. 2008). The courts are "are without authority to alter an unambiguous contract by construction or to make new contracts for the parties." *Id.*

In her adjudication of Lee's breach of contract claim, Judge Benjamin correctly applied these rules of contract interpretation. She focused on the language of the Agreement and concluded that the Agreement is unambiguous on its face. (R. 4). She ruled:

The Plaintiff clearly retains the opportunity to purchase tickets. He concedes he has continuously, without interruption, received his tickets in exchange for his payment of the seat donation and the face value of the season tickets. The implementation of the YES Program does not interfere with the Plaintiff's "opportunity to purchase tickets," which remains fully intact.

(R. 5). Judge Benjamin further explained her reasoning as follows:

At the time the Agreement was executed, the Plaintiff was a Full Scholarship level member. Thus, by executing the Agreement, he became a Lifetime Full Scholarship member. He was entitled to no more and no less than any other Gamecock Club member at the Full Scholarship level. It is without dispute that all Gamecock Club members, including all Full Scholarship level members, are required to pay the applicable seat donation prior to receiving their tickets.

(R. 5).

In effect, Judge Benjamin determined that the "opportunity to purchase tickets" language was intended by the parties to require Lee, like other Gamecock Club members, to pay the required fees and costs associated with the purchase of season tickets to certain sporting events. Lee was only entitled to "the opportunity to purchase tickets," and with the initiation of the YES program, that opportunity has not been denied to Lee. Lee, like other Gamecock Club members at the same level of membership, is required to pay the seat donation or license fee as part of the costs of purchasing season tickets. Accordingly, as Judge Benjamin correctly concluded, the University and the Gamecock Club has continued to provide Lee with the opportunity to purchase season tickets, and indeed he has continued to

purchase season tickets. As a result, as Judge Benjamin ruled, the University and the Gamecock Club have not breached any terms of the Agreement.

At trial, Lee agreed that the contract language was unambiguous. (R. 29). In fact, Judge Benjamin noted in her order the parties agreed that the Agreement is unambiguous on its face. (R. 4). On appeal, Lee now argues that the "opportunity to purchase tickets" language is ambiguous. He argues that the "opportunity to purchase tickets" only requires the payment of the ticket price on the face of the ticket and not any additional fees. Lee, however, is attempting to add terms that do not appear in the Agreement. The Agreement does not limit the specific fees required to be paid to purchase season tickets. Instead, the Agreement grants the "opportunity to purchase tickets," and the intent of the parties required Lee to pay all applicable fees and costs like every other Gamecock Club member must do.

Nonetheless, Judge Benjamin does note in her order that, even if she were to find the Agreement to be ambiguous and were to consider the extrinsic evidence offered by Lee, her ultimate decision would not change. (R. 4). She would still conclude that the intent of the parties required Lee to pay all fees and costs required of other Gamecock Club members, including the seat donation or license fee, in order to purchase season tickets for sporting events. Under the applicable

standard of review, that alternative ruling is unassailable absent an error of law, which in this case has not been shown.<sup>4</sup>

Further, as Judge Benjamin explained, Lee clearly received the benefit of his bargain. In addition to receiving the opportunity to purchase tickets, Lee "was able to receive the benefits of a higher level of membership in the Gamecock Club and not have to pay Gamecock Club dues yearly." (R. 3).

In sum, Judge Benjamin ruled correctly in finding that the Agreement is unambiguous on its face and that the Appellant Lee has not been denied "the opportunity to purchase tickets" as required by the Agreement. Thus, the University and Gamecock Club complied with the requirements of the Agreement, and the judgment in their favor on Lee's declaratory judgment/breach of contract claim is supported by the evidence. That judgment should therefore be affirmed.

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<sup>4</sup> In *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31 (Ct. App. 2010), this Court addressed the applicable standard of review where a contract is deemed ambiguous. This Court explained that "if a contract is deemed ambiguous, the fact finder must ascertain the parties' intentions from the evidence presented." 694 S.E.2d at 34. Furthermore, "[i]n an action at law, tried without a jury, the trial court's findings of fact will not be disturbed unless there is no evidence that reasonably supports the court's findings." *Id.*

**CONCLUSION**

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the order of Circuit Court Judge DeAndrea G. Benjamin dated June 20, 2012, entering judgment for the Respondents.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

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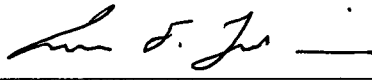
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**CERTIFICATE OF COMPLIANCE**

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The undersigned counsel for the Respondents certifies that the Brief of Respondents complies with the Supreme Court's Order of August 13, 2007, regarding personal identifiers and sensitive information.

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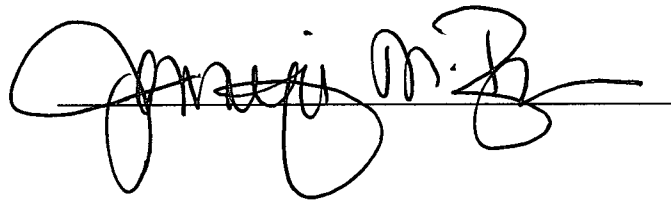
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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents, does hereby certify that service of the **Brief of Respondents** was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 15th day of May 2013:

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A handwritten signature in black ink, appearing to read "Mark W. Hardee", written over a horizontal line.

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