

Exhibit “3”

**July 18, 2022 Order Regarding Motion to
Exclude and Strike**

Plaintiff/Appellant Michael D. Royal’s Notice of Appeal

Michael D. Royal

v.

*Free Kindergarten Association of Charleston,
The Attorney General of the State of South Carolina,
and the Charleston County School District*

Charleston County Court of Common Pleas Case No. 2018-CP-10-05739
Appellate Case No. 2022-_____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Michael D. Royal,)
)
 Plaintiff,)
)
 v.)
)
 Free Kindergarten Association of)
 Charleston,)
)
 Defendant,)
)
 The Attorney General of the State of)
 South Carolina and The Charleston)
 County School District)
)
 Intervenor)
)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2018-CP-10-5739

ORDER REGARDING MOTION TO EXCLUDE AND STRIKE

RECEIVED
Aug 17 2022
SC Court of Appeals

This matter comes before the Court on Defendant Charleston County School District’s Motion to Exclude and Strike. This case came before me as Master in Equity for trial on December 15, 2021, and concerns real property located at 34 Pitt Street in Charleston, South Carolina (the “Property”). Thereafter, on the afternoon of March 30, 2022, the Court signed a formal order granting nonsuit, dismissing the case pursuant to Rule 41(b), SCRCPP (“Order of Non-Suit”). The Court filed the Order of Non-Suit on March 31, 2022.

On the afternoon of March 30, 2022, Plaintiff’s counsel filed a letter with the Court raising, *inter alia*, certain items that Plaintiff requested the Court consider related to various documents it had filed with the Charleston County Clerk of Court, designated by Plaintiff as “[Plaintiff’s] exhibits admitted at the trial of this action.” Prior, on the morning of March 30, 2022, Plaintiff had filed a letter with the Charleston County Clerk of Court (“Clerk of Court”), filing what he claimed to be “. . . his exhibits admitted at the trial of the action” (“Plaintiff’s

Exhibit Letter”). Plaintiff’s Exhibit letter to the Clerk of Court included an index of those documents being filed as his designated “trial exhibits.”

On April 8, 2022, Charleston County School District (“CCSD”) filed a letter with the Court responding, *inter alia*, to Plaintiff’s counsel’s letters to the Court and the Clerk of Court regarding Plaintiff’s purported trial exhibits (“CCSD’s Exhibit Letter”). Also on April 8, 2022, CCSD filed its Motion to Exclude and Strike (“CCSD’s Motion”) contesting the admission of certain of the purported “exhibits” filed with Plaintiff’s March 30, 2022 letter to the Clerk of Court (“Contested Exhibits”).

On April 21, 2022, Plaintiff filed his Memorandum In Opposition to Defendant Charleston County School District’s Motion to Exclude and Strike.

On May 20, 2022, CCSD filed its Reply to Plaintiff’s Memorandum in Opposition to Defendant Charleston County School District’s Motion to Exclude and Strike.

A hearing was held on May 20, 2022 to consider, *inter alia*, Defendant CCSD’s Motion to Exclude and Strike along with all filings related to this motion as well as oral argument during the hearing. Present at the hearing were Jeffrey S. Tibbals, Esq. for Plaintiff Michael D. Royal (“Royal”); Patrick F. Stringer, Esq., for Defendant Free Kindergarten Association of Charleston (“FKAC”); Mary Frances Jowers, Assistant Deputy Attorney General, for Intervenor South Carolina Attorney General’s Office (“Attorney General” or “SCAG”) and A. Bright Ariail, Esq. for Intervenor Charleston County School District. Also attending were Joseph K. Qualey, Esq., Receiver, and William Zachary Smith, Esq., an attorney in the Receiver’s law firm.

In consideration of CCSD's Motion, the Court conducted a comprehensive review of CCSD's Motion in accordance with the discretion given the trial court on the determination of evidentiary issues. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). The Court's review of CCSD's Motion included a detailed review of CCSD's objections to the contested exhibits enumerated and fully briefed by CCSD in CCSD's Motion and supporting memoranda. Also, the Court reviewed the full certified transcript of the trial held on December 15, 2021, including the certified Index of Exhibits attached thereto.

In addition, the Court reviewed the Plaintiff's Memorandum in Opposition to Defendant Charleston County School District's Motion to Exclude and Strike. Further, the Court reviewed Plaintiff's Exhibit Letter of March 30, 2022 and CCSD's Exhibit Letter of April 8, 2022, both referenced above.

After full review and consideration of CCSD's Motion as set forth above and the exercise of its sound discretion, the Court finds the following:

1. I find that the Index of Exhibits contained within the certified transcript of the trial of this case properly provides a list of documents that were either 1) identified, 2) identified and received as evidence, or 3) identified and accepted as a proffer at trial.

Defendant CCSD indicated during the hearing that it concurred with this finding, as it had asserted in CCSD's Motion. It also reconfirmed that it continued to maintain its objections to the Contested Exhibits as contained in detail in CCSD's Motion.

2. I find that a number of the Contested Exhibits were discussed during the hearing. Oral argument was heard concerning these documents from all counsel, including,

primarily, counsel for CCSD and counsel for Plaintiff. Plaintiff's counsel argued that there were a number of documents that had been mentioned during trial that Plaintiff had proffered or was prepared to proffer, as cumulative authority documents, or other documents that were mentioned in general that Plaintiff wanted to be admitted into evidence which included a 1) stipulation between Plaintiff and FKAC, 2) the transcript of CCSD's Rule 30(b)(6) designee's deposition, and 3) various discovery responses of the parties. Plaintiff's counsel ultimately argued for the admission of all of these documents into evidence in this case during oral arguments. Defendant CCSD continued to maintain its objections as to all contested exhibits as detailed in CCSD's Motion.

3. As part of CCSD's objections, CCSD specifically argued its objections to admission of the transcript of CCSD's Rule 30(b)(6) designee's deposition, as CCSD would be prejudiced if this transcript was admitted into evidence inasmuch as 1) during trial, Plaintiff indicated that he intended to tender excerpts of the transcript to which CCSD objected inasmuch as it had not been provided with a copy of the proposed excerpts per Rule 32(A)(5) SCRPC as required, 2) Plaintiff had then indicated during trial that he would submit the entire transcript to which the Court objected, Tr. 299:24-25, 3) that despite the Court's ruling regarding submission of the entire transcript as evidence, Plaintiff had filed the entire transcript as one of its Contested Exhibits, 4) CCSD had made a standing objection at the start of the deposition to any items listed as objectionable items in CCSD's Motion to Modify Plaintiff's Notice of Rule 30(b)(6), SCRPC, Deposition of Charleston County School District and to Quash Portions Thereof and Motion for

Protective Order¹ (CCSD’s 30(b)(6) Deposition Motion”), 5) that despite the pendency of CCSD’s 30(b)(6) Motion, counsel for Plaintiff asked a plethora of questions related to the items listed as objectionable items in that motion during the deposition of CCSD’s 30(b)(6) designee, 6) that CCSD made numerous objections to those items and others during the deposition of CCSD’s 30(b)(6) deposition, and 7) that the Court granted CCSD’s Rule 30(b)(6) Deposition Motion from the bench on November 29, 2021, with one narrow exception.² The Court has considered and agrees with CCSD’s arguments and sustains its objections to the proffer or admission into evidence of the deposition transcript. I specifically find that the Transcript of the Deposition of CCSD’s Rule 30(b)(6) Designee – Jeffery Thomas Borowy’s (Exhibit 74)³ shall not be admitted as evidence or received as a proffer in this case.

4. I find that the following changes/additions to the Index of Exhibits within the certified transcript of the trial of this case shall be made:
 - a) Exhibits 12 – 15, previously listed as received as proffers, are hereby admitted as evidence in the trial of this case;
 - b) Exhibits 17 – 27, 27A and Exhibit 30 are hereby received as proffers in the trial of this case;

¹ CCSD’s 30(b)(6) Deposition Motion had not been heard at the time that the deposition was taken.

² The Court’s ruling allowed Plaintiff the limited opportunity to reconvene the deposition “. . . solely on the basis of . . . cases, similar to this one, in which [CCSD] ha[s] been the recipient of a gift of property that they’ve got” should Plaintiff be able to identify any such cases. *See Transcript of 11/29/2021 Hearing at 32:19-33-1*. Plaintiff was unable to identify any such cases and the deposition of CCSD’s Rule 30(b)(6) designee was not reconvened.

³ Exhibit Numbers referenced herein refer to Exhibit Numbers contained within Plaintiff’s Exhibit Letter filed March 30, 2022.

- c) Plaintiff's Exhibits 78 and 79 are hereby admitted as evidence in the trial of this case;
- d) Exhibits 80-94 are hereby admitted as evidence in the trial of this case;
- e) Exhibits 5, 6, 54A, 57, 68 and 71 were all marked for identification at trial. However, none of these exhibits were admitted as evidence or received as proffers at trial. The certified Index of Exhibits accurately reflects the status of these exhibits at trial and, therefore, shall remain unchanged. Accordingly, Exhibits 5, 6, 54A, 57, 68 and 71 which were filed by Plaintiff as trial exhibits with the Charleston County Clerk of Court shall not be admitted as evidence or received as proffers in the case. Accordingly, these exhibits, specifically Exhibits 5, 6, 54A, 57, 68 and 71, shall be stricken from the record of this case by the Charleston County Clerk of Court and shall be excluded and not be considered as part of the record in this case.
- f) Exhibits 74, 75, 76, and 77 shall not be admitted as evidence or received as proffers in this case. Accordingly, Exhibits 74, 75, 76 and 77 shall be stricken from the record of this case by the Charleston County Clerk of Court and shall be excluded and not be considered as part of the record in this case;
- g) I find that upon completion of the changes/additions to the Index of Exhibits as set forth in Paragraphs 4. a. – f. above, the original Index of Exhibits shall otherwise remain unchanged; and
- h) I find that upon the striking of Exhibits 5, 6, 54A, 57, 68, 71, 74, 75, 76, and 77 from the record in accordance with this Order, the record in this case shall be closed.

For the foregoing reasons, Charleston County School District's Motion to Strike and Exclude is granted in part and denied in part consistent and in accordance with the findings of the Court set forth herein.

AND IT IS SO ORDERED this _____ day of _____, 2022.

Mikell R. Scarborough
Master-In-Equity

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Michael D Royal VS Free Kindergarten Association Of Charleston ,
defendant, et al
Case Number: 2018CP1005739
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062