

## **Exhibit “9”**

**August 22, 2019 Order Granting Motion of  
Charleston County School District to Intervene**

**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, )  
 )  
 vs. )  
 )  
 )  
 Free Kindergarten Association of )  
 Charleston, the Attorney General of the )  
 State of South Carolina and the Charleston )  
 County School District, )  
 )  
 Defendants. )

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IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

Civil Action No.: 2018-CP-10-5739

**ORDER GRANTING MOTION OF  
 CHARLESTON COUNTY SCHOOL  
 DISTRICT TO INTERVENE**

**RECEIVED**  
**Aug 17 2022**  
**SC Court of Appeals**

2019 AUG 22 AM 11:06  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

FILED

**BACKGROUND**

This matter came before the Court on June 4, 2019 on the Motion of the Charleston County School District to Intervene and the Motion of the Attorney General of the State of South Carolina to Intervene. Plaintiff Michael D. Royal (“Royal”) opposed both motions. Defendant Free Kindergarten Association of Charleston (“Free Kindergarten”) and the Attorney General of the State of South Carolina consented to both motions. Based on the pleadings, memoranda, documents and oral arguments presented to the Court, the Court granted the Attorney General’s (“AG’s”) Motion to Intervene, as a matter of right, pursuant to Rule 24(a)(1), SCRCP and granted the Motion of the Charleston County School District (“CCSD” and/or the “District”) to Intervene, as permissive intervention, pursuant to Rule 24(b)(2), SCRCP, from the bench and issued a form order granting intervention of both parties, also on June 4, 2019.

CCSD filed a Memorandum in Support of Charleston County School District’s Motion to Intervene on May 29, 2019 under both SCRCP 24 (a)(2) and 24 (b)(2). Under SCRCP 24(a)(2),

CCSD asserted it was entitled to intervene as of right on the following grounds: 1) CCSD's Motion to Intervene was timely; 2) CCSD has an interest relating to the real property and real estate transaction which is the subject of the lawsuit; 3) disposition of the lawsuit without CCSD's intervention may impair or impede its ability to protect its interests; and 4) the other parties in the lawsuit cannot adequately represent CCSD's interests. Under SCRPC 24 (b)(2), CCSD asserted it was entitled to permissive intervention on the following grounds: 1) CCSD's Motion to Intervene was timely; and 2) CCSD's claims and/or defenses and the main action have a question of law or fact in common.

Royal filed a Memorandum in Opposition of CCSD's Motion to Intervene on June 3, 2019. Royal opposed Charleston County School District's Motion to Intervene on the grounds that Charleston County School District #20 is a legally distinct entity from the Charleston County School District ("CCSD") and asserting that 1) the disposition of Royal's action can in no way impair or impede CCSD's ability to protect an interest insofar as it has no interest in the property or transaction which is the subject of the action, and 2) CCSD lacks standing in the case and accordingly has no claims or defenses that have common questions of law or fact in common with Royal's action for specific performance. Royal also argued that Ms. June Wells had authority to act on behalf of Free Kindergarten.

The following constitutes the Court's findings of fact and conclusions of law. To the extent one is deemed to be the other, they are incorporated into each other.

#### **FINDINGS OF FACT**

1. This is an action for breach of contract, damages and specific performance of a contract for the purchase of real property and improvements located at 34 Pitt Street in Charleston owned by the defendant Free Kindergarten.

2. Free Kindergarten was established as a nonprofit corporation on January 24, 1901 under the name “South Carolina Kindergarten Association.”
3. Free Kindergarten’s charter was amended to its current name on January 20, 1931.
4. The mission of Free Kindergarten was to provide a free kindergarten education to students whose parents could not afford to pay for a kindergarten program during a time when kindergarten programs cost money. Over time, public schools took over this role and offered free kindergarten programs to the public.
5. Free Kindergarten has not operated as a kindergarten since the 2000s.
6. On February 5, 1971, upon petition of Free Kindergarten, the South Carolina Secretary of State certified an amendment to the charter of Free Kindergarten pursuant to a Resolution (the “Resolution”) passed by a majority of the Board of Directors of Free Kindergarten, whereby it resolved that “[i]n the event of dissolution, the residual assets of the Free Kindergarten will be turned over to Charleston School District #20, part of the South Carolina State School System for general use in this said Charleston School District #20.”
7. Aside from miscellaneous personal property of de minimus value, the only known asset of Free Kindergarten is the real property and improvements located at 34 Pitt Street, downtown near the College of Charleston.
8. The Real Estate Purchase and Sales Agreement (“Agreement”) which is the subject of this action involves the sale of 34 Pitt Street, and effectuates the sale of all or substantially all of Free Kindergarten’s property.
9. On April 4, 2018, Free Kindergarten’s attorney Rick Stringer notified the AG’s office of the proposed sale of the Pitt Street property, as required by S.C. Code Ann. § 33-31-1202(f), and sent the AG a copy of the Agreement.

10. The Agreement is dated April 23, 2013 and was executed by Ms. June Wells on behalf of Free Kindergarten. Neither the AG nor CCSD received notice of the Agreement prior to Ms. Wells entering into it.
11. Ms. June Wells is a former kindergarten teacher at Free Kindergarten and is in her eighties. She previously ran the organization when it last functioned as a school. In the Affidavit of June Murray Wells dated November 23, 2010 and filed in Case No. 2010-GC-1090 in the Probate Court of Charleston County, Mrs. Wells states she has been an advisory member of Free Kindergarten for at least forty years. In an Order issued in Case No. 2010-GC-1090 on December 9, 2010, the Probate Court, relying on Ms. Wells' affidavit as evidence, recognized her as the last living advisory board member.<sup>1</sup> Her authority to unilaterally execute the Agreement on behalf of Free Kindergarten is in dispute in this case.
12. The purchase price in the Agreement is \$315,200, which is the appraised value as of December 19, 2012 as reflected in an appraisal performed by Charleston Appraisal Services.
13. The Agreement states the closing date is: April 9, 2018 "or on such prior date chosen by the Seller upon reasonable notice to the purchaser."
14. The AG requested evidence of the current fair market value of the real property and improvements at 34 Pitt Street, but no appraisal or other evidence was provided.
15. By letter of June 1, 2018, Mr. Stringer notified CCSD that Free Kindergarten had given notice to the AG of the pending sale.

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<sup>1</sup> In the Order Granting Motion of the Attorney General of the State of South Carolina to Intervene filed on July 10, 2019 in this case, C.A. No. 2018-CP-10-5739, this Court stated that Ms. Wells "was recognized as a *director* in a prior action by the Probate Court of Charleston County". (*emphasis added*).

16. The AG obtained an updated appraisal from the same appraiser reflecting the fair market value was \$522,500 as of June 7, 2018.
17. The AG subsequently advised the parties that he would not consent to the sale because the purchase price is substantially below current fair market value and further expressed concerns regarding certain provisions in the Agreement.
18. Neither Ms. Wells nor the Free Kindergarten was represented by counsel during the Agreement negotiations, although Mr. Royal contends he encouraged her to do so.
19. Mr. Stringer was not retained as counsel for Free Kindergarten until shortly before he provided notice of the Agreement to the AG.
20. Prior to the institution of this action, the AG advised the parties he wanted to be made a party to any legal action to enforce the Agreement or, alternatively, be provided with notice of the action so he could intervene.
21. Counsel for Free Kindergarten provided the AG with notice of the institution of this action and a copy of the pleadings in December 2018.
22. In 1967, the South Carolina General Assembly enacted Act 340, 1967 S.C. Acts 340. Act 340 created the Charleston County School District, which encompassed all of Charleston County.
23. Act 340 consolidated the eight existing school districts located in Charleston County (including Charleston County School District #20) into the single and newly created county wide school district to be known as the Charleston County School District.
24. Act 340 designated the Charleston County School District a body of politic and corporate as provided in Section 21-111 of the Code of Laws of South Carolina, 1962, and vested

Charleston County School District “with all of the powers, duties, and assets” of the eight school districts.

25. In addition to being vested with the assets, including real property assets, of the eight school districts, the Charleston County School District was expressly empowered to authorize the purchase or sale of land, the planning and construction of new school facilities, the maintenance and repair of existing buildings and grounds, and the development of long range planning for physical facilities and the educational program in the county.
26. The eight districts continued their existence as special districts for administrative purposes only as expressly set forth in Act 340 and were labeled “constituent districts”, including Charleston County School Constituent District #20, which covers downtown Charleston and encompasses the schools located on the Charleston peninsula.
27. Under Sections 1, 6, 7 and 8 of Act 340, the constituent districts retained their independent boards of trustees and independent administrative authority, subject in certain instances to the approval of the CCSD, over the very distinct and limited functions expressly delegated to the constituent districts in the Act. These limited functions include: (1) employment and assignment of teachers or other professional employees; (2) employment of constituent district personnel; (3) pupil assignments and student discipline; and (4) limited oversight over school bus transportation. Act 340, Sections 6, 7, and 8.
28. In this action, CCSD claims that it is the legal beneficial and/or equitable owner of all assets owned by Free Kindergarten pursuant to, *inter alia*, the Resolution filed on February 5, 1971 in the Office of the Secretary of State of South Carolina.
29. This action commenced on December 4, 2018.
30. CCSD filed its motion to intervene on February 7, 2019.

## CONCLUSIONS OF LAW

### Permissive Intervention Under South Carolina Rule of Civil Procedure 24(b)(2).

South Carolina Rule of Civil Procedure 24(b) states in relevant part:

Upon timely application anyone may be permitted to intervene in an action:...(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

South Carolina applies a two-part test for determining if an applicant should be allowed to intervene by permission. Permissive intervention under Rule 24(b)(2) should be allowed when: (1) the applicant's motion is timely and (2) the applicant's claim or defense and the main action have a question of law or fact in common. *S.C. Tax Commission v. Union City Treasurer*, 295 S.C. 257, 368 S.E. 2d 72 (Ct. App. 1988). Under this standard, neither the inadequacy of representation, nor a legally sufficient interest in the subject matter of the action, need be shown. Rule 24(b)(2), SCRCP. In exercising its discretion, the Court must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b)(2), SCRCP.

Rule 24(b)(2) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions. *See TPI Corp. v. Merchandise Mart of South Carolina, Inc.*, 61 F.R.D. 684 (D.S.C. 1974); *S.C. Tax Commission v. Union City Treasurer*, 295 S.C. at 257, 368 S.E.2d at 75 (Ct. App. 1988).

Charleston County School District's Motion to Intervene is Timely and its Intervention will not Delay or Prejudice the Adjudication of the Rights of the Other Parties.

Concerning timeliness, South Carolina Courts have adopted a four-part test for determining timeliness: (1) the time that has passed since the applicant knew or should have known of his or

her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. *Ex Parte State Ex Rel. Wilson*, 391 S.C. 565, 707 S.E. 2d 402 (2011); *Ex Parte Reichlyn: In Re: SCDHEC v. Columbia Organic Chemical Co.*, 310 S.C. 495, 427 S.E. 2d 661 (1993); *see also Davis v. Jennings*, 304 S.C. 502, 405 S.E. 2d 601 (1991). Applying these factors, the District's motion to intervene is timely.

The present case is still at the earliest stages of litigation. Royal filed this case on December 4, 2018. CCSD filed its motion to intervene on February 7, 2019, barely two months after Royal filed the Complaint in this action. During this brief two-month period, the District acted prudently learning of the filing of this action, reviewing Royal's Complaint, securing legal counsel and filing its Motion to Intervene to protect its interests in this matter. Up to June 4, 2019, the parties have not engaged in written discovery nor scheduled or taken any depositions in this matter. No scheduling orders have been entered. No factual or legal issues have been litigated.

Given the early stage of these proceedings and the timing of the filing of the District's motion, the parties will not be prejudiced by the District's intervention. While the parties will not be prejudiced by the District's intervention, the District will be prejudiced if its request for intervention is denied. The District's ability to protect its claimed interests in the Pitt Street property and the real estate transaction which are the subject of this action would be substantially impaired if it is not permitted to intervene in this action.

The District claims a real, actual, material, substantial, and legally protectable interests in the real property that is the subject of this action. The disposition of this action will substantially impact the District's claimed interest in that property. Specifically, the relief Royal seeks – sale of the Pitt Street property for less than fair market value (FMV) and recovery of alleged lost rents

and interest from Free Kindergarten – greatly affects the interest that the District claims in that property and all proceeds of sale of the property. Thus, the District will suffer great prejudice if denied the right to intervene in this case.

For the above-stated reasons, the District has satisfied the timeliness factor.

The Claims and Defenses of the Charleston County School District Share  
Common Questions of Law and Fact.

The District has claimed a direct and substantial interest in the sole remaining asset of Free Kindergarten, i.e. - the Pitt Street property and/or all proceeds of sale of the property based on its current fair market value (FMV). The District's claimed interest is a legally protectable interest of its own.

The District's claimed interest is directly challenged in this litigation and will be permanently lost, misapplied, devalued, wasted, forfeited or otherwise restricted as a result of declarations of the Court if Royal is successful. For this reason alone, the District's claims and defenses will raise questions of law and fact common with those raised in the main action between Royal and Free Kindergarten.

Moreover, since the District's claimed interest is a direct and legally protectable interest of its own, it serves as the basis of causes of action the District could assert in a separate proceeding that would substantially duplicate the one in question. If required to file a separate action to protect its interest, the District would assert that its legally protectable interest in the Pitt Street property entitles it to receive fee simple ownership of the property and/or all proceeds of sale of the property based on its current fair market value (FMV).

The District would further assert in a separate action that the alleged contract of sale, the terms of which would result in the nullification, forfeiture, devaluation and/or restriction of the District's interest, is null and void as a matter of law.

Finally, the District would assert in a separate action that the purported real estate transaction and attendant alleged contract of sale were not in compliance with certain requirements of various applicable nonprofit and charitable trust/tax laws. Consequently, the District would assert that the sale of the Pitt Street property under the terms of the alleged contract of sale would result in the misapplication, loss, devaluation and/or wasting of the sole remaining asset of Free Kindergarten, and the legal, beneficial and/or equitable interest of the District in that asset.

These assertions are interwoven with the issues in the present action and would require the Court to resolve questions of fact and law that are common to questions raised in this action between Royal and Free Kindergarten.

Here, intervention contributes to the just and equitable adjudication of the legal questions presented in this matter. Furthermore, judicial economy is best served by avoiding multiple lawsuits and disposing of all interested parties' claims and interests in the Pitt Street property in one action. The efficient and economic use of judicial resources and proceedings encourages the disposition of all of the claims and defenses of such parties in this action rather than a multiplicity of actions.

For the above stated reasons, the District meets the requirements of permissive intervention.

**Charleston County School District is the Proper Party to Intervene Inasmuch as 1967 S.C. Acts 340 Consolidated and Vested the Powers, Duties and Assets of the Then Existing Eight Independent School Districts Within Charleston County Into One School District Known as Charleston County School District.**

Charleston County stretches roughly 100 miles along the Atlantic coast, comprising approximately 938 square miles. *United States II v. Charleston County School District*, 960 F.2d 1227 (4<sup>th</sup> Cir. 1992). Prior to 1951, twenty-one independent school districts operated within the

county. *Id.* In 1951, the South Carolina General Assembly consolidated the twenty-one districts into eight districts. *Id.*

Until 1967, the eight districts existed as totally separate entities, with each district responsible for its own fiscal and administrative operations. *Id.* In 1967, the South Carolina General Assembly enacted Act 340, 1967 S.C. Acts 340. Act 340 created the Charleston County School District (CCSD), which encompassed all of Charleston County. *Id.*

Act 340 consolidated the eight school districts into the single and newly created county wide school district to be known as the Charleston County School District. *Id.* The Supreme Court of South Carolina has expressly declared that, except as to Section 11 therein<sup>2</sup>, Act 340 is constitutional and legally valid in all respects. *Smythe v. Stroman*, 251 S.C. 277, 162 S.E. 2d 168 (S.C. 1968).

Act 340 designated the Charleston County School District a body of politic and corporate as provided in Section 21-111 of the Code of Laws of South Carolina, 1962, and vested Charleston County School District “with all of the powers, duties, and assets” of the eight school districts. *Id.*

In addition to being vested with the assets, including real property assets, of the eight school districts, the Charleston County School District was expressly empowered to authorize the purchase or sale of land, the planning and construction of new school facilities, the maintenance

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<sup>2</sup> Section 11 of Act 340 provides as follows: SECTION 11. Not to assume bonded indebtedness of present school districts—The Charleston County School District shall not assume any bonded indebtedness incurred prior to July 1, 1968, by any of the present school districts. The bonded debt of the present school districts incurred prior to July 1, 1968 shall remain the obligations of the respective constituent districts after July 1, 1968 which shall continue to be taxed accordingly.

The *Smythe* Court held that South Carolina case law and Section 21-114.3 of the Code of Laws of South Carolina, 1962 [now codified as §59-17-70 of the 1976 Code] invalidated the provisions of Section 11 of Act 340 on the grounds that a consolidated school district which succeeds to all of the assets and properties of the constituent districts must likewise assume their bonded debt. Thus, the *Smythe* Court ordered that the outstanding bonded debt of the existing eight school districts of Charleston County shall be assumed on July 1, 1968, by the newly formed Charleston County School District. The *Smythe* Court declared Act 340 to be valid in all respects after the striking of Section 11.

and repair of existing buildings and grounds, and the development of long range planning for physical facilities and the educational program in the county. *Id.*, Section 5. (10).

The eight districts continued their existence as special districts for administrative purposes only as set forth in Act 340 and were labeled “constituent districts.” *Id.*, Section 1. Charleston County School District #20 is one of the eight constituent school districts. Charleston County School District #20 covers downtown Charleston and encompasses the schools located on the Charleston peninsula. Under Section 1 of Act 340, the constituent districts retained their independent boards of trustees and independent administrative authority, subject in certain instances to the approval of the CCSD, over the very distinct and limited functions expressly delegated to the constituent districts in the Act. This very limited and specific authority reserved to the eight Constituent School Districts, including, Charleston County School District #20, is expressly set forth in Sections 6, 7 and 8 of Act 340 and include: (1) employment and assignment of teachers or other professional employees; (2) employment of constituent district personnel; (3) pupil assignments and student discipline; and (4) limited oversight over school bus transportation.<sup>3</sup>

In summary, pursuant to Act 340, all fiscal and administrative powers and duties, as well as all assets held by the eight school districts were absorbed by and vested in the CCSD, saving only those narrow administrative functions for the constituent districts cited above. *United States II*, 960 F.2d 1227; Act 340. None of these limited functions reserved to the eight Constituent School Districts retain or grant property rights to the constituent school districts. Instead, all assets of the constituent school districts, including all real and personal property, pass to and become the property of the Charleston County School District.

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<sup>3</sup> Since Act 340’s enactment, the powers of the constituent districts have been reduced; ultimately, in 2007 Sections 6 and 8 of the Act were deleted, and the CCSD Board was vested with complete power to employ and assign teachers and personnel for the efficient operations of schools as well as the complete control over the appointment of principals. *Act No. 131, 2007 S.C. Acts 1390-91.*

Therefore, with respect to the issue before this Court, Act 340 divests Charleston County School District #20 of any ownership in the residual assets of Free Kindergarten. Act 340. Instead, upon dissolution, the residual assets of Free Kindergarten shall pass to the Charleston County School District pursuant to Act 340.

In addition to Act 340, the general law in South Carolina supports the proposition that upon a consolidation of school districts whereby the consolidated district succeeds to all of the assets of the former districts, then in that event the consolidated district likewise assumes all liabilities and obligations of the constituent districts. *Smythe*, 251 S.C. at 285, 162 S.E. 2d at 171. “A sense of fair play recommends this result because the taxpayers of the former school districts, as such, are divested of their property, which passes to the consolidated district, and it would seem to follow that the consolidated district should assume their obligations, most of which have been incurred for the construction of school facilities.” *Id.*

The *Smythe* Court cited other cases on this point, including the following: *Walker v. Bennett*, 125 S.C. 389, 118 S.E. 779 (S.C. 1923) (considering legislation by which five school districts of Greenville County were consolidated into a single school district, the South Carolina Supreme Court held that upon the consolidation of the districts by the legislative act, the entity of the districts as such was destroyed. So far as the fiscal authority of the constituent districts was concerned, that was absolutely destroyed by the consolidation. The result was, however, not that the debts were not still subsisting obligations, but that they became obligations of the consolidated district, which likewise succeeded to the property of the constituent districts. The result is that the bondholders of the constituent districts have as security for their debts, not the separate property of the old school districts, but the entire property of the consolidated debts.).

*Boatwright v. McElmurray*, 247 S.C. 199, 146 S.E. 2d 716 (S.C. 1966) (In finding that a consolidation of several school districts had taken place, the South Carolina Supreme Court held that upon such consolidation, the consolidated school district, retaining the name of the School District of Aiken County, succeeded to all of the property, rights and obligations of the constituent districts and the existence of the latter as separate entities was terminated.).

Finally, the long-standing rule and precedent stated above has been codified as part of the general law in §59-17-70 of the South Carolina Code (1976), which reads as follows:

SECTION 59-17-70. Effect of consolidation

Upon consolidation of any two or more school districts, all property, real and personal, and all assets of the districts forming the consolidated school district shall become the property of the consolidated district and all liabilities of the consolidating districts shall become the obligations of such consolidated district. Each such consolidated district shall be a body politic and corporate and its board of trustees shall have such powers as are provided by law.

*See also S.C. Op. Atty. Gen. (March 6, 2015) 2015 WL 1266150.*

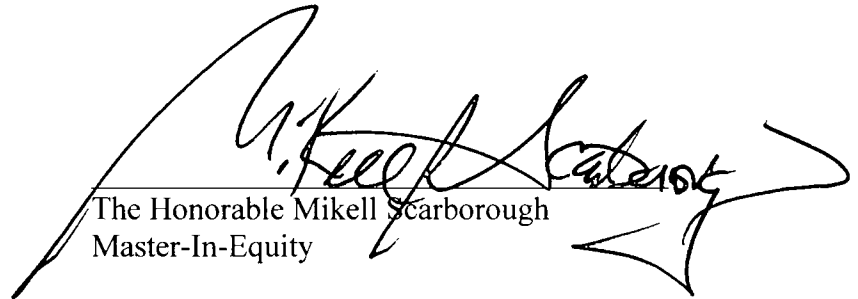
Based on the foregoing legal authorities and the Court's Findings of Fact and Conclusions of Law, Charleston County School District #20's interest in the Pitt Street property, and the property and/or all proceeds of sale therefrom, shall inure to the benefit <sup>of the</sup> Charleston County School District. Accordingly, this Court concludes the Charleston County School District has the legal authority to protect and enforce its interest in this property and/or all proceeds of sale therefrom, in the courts of the State of South Carolina. Accordingly, the Charleston County School District is the proper entity to intervene in this action.

*MSG*

**Conclusion**

For the reasons set forth herein, it is ORDERED that Charleston County School District's Motion to Intervene is GRANTED as permissive intervention, pursuant to Rule 24(b), S.C.R.C.P.

AND IT IS SO ORDERED.



The Honorable Mikell Scarborough  
Master-In-Equity

Charleston, South Carolina

8/15, 2019