

Exhibit “10”

**July 10, 2019 Order Granting Motion of the Attorney
General of the State of South Carolina 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,)
)
 v.)
)
 Free Kindergarten Association of)
 Charleston,)
)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-10-5739

Order Granting Motion of the Attorney
 General of the State of South Carolina
 to Intervene

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Aug 17 2022

SC Court of Appeals

FILED
 2019 JUL 10 PM 3:25
 JULIE J. ANASTASIO
 CLERK OF COURT

I. Background

This matter came before the Court on June 4, 2019 on the Motion of the Attorney General of the State of South Carolina to Intervene under Rule 24, SCRCP, filed January 28, 2019 (“Motion to Intervene”). Plaintiff Michael D. Royal (“Royal”) opposed the Attorney General’s (hereinafter the “AG”) Motion to Intervene and filed a Memorandum in Opposition on June 3, 2019. Royal opposes the AG’s Motion to Intervene on the grounds the motion is not sufficiently definite and certain, the Free Kindergarten Association of Charleston (“Free Kindergarten”) is not a public charity, the case does not involve a charitable trust and the AG lacks statutory, common law and/or *parens patriae* authority to intervene. The Defendant Free Kindergarten consented to the AG’s Motion to Intervene.

Present at the hearing were Plaintiff Michael D. Royal, pro se; Mary Frances Jowers, Assistant Deputy Attorney General; Annemarie B. Mathews, Assistant Attorney General; Rick Stringer, Esq. attorney for the Free Kindergarten and Bright Ariail Esq. attorney for Charleston County School District, which also filed a motion to intervene.

Based on the pleadings, documents, and arguments of counsel presented to the Court, the Court overrules Royals' objections and grants the AG's Motion to Intervene as a matter of right under Rule 24(a)(1) on the grounds S.C. Code Ann §§1-7-130, 62-7-405, and the common law of South Carolina, give the AG an unconditional right to intervene in this matter. Further, the Court finds the Motion is sufficiently definite under the South Carolina Rules of Civil Procedure. 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.

II. 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. The Free Kindergarten was established as a nonprofit corporation on January 24, 1901 under the name "South Carolina Kindergarten Association."
3. The Free Kindergarten's charter was amended to its current name on January 20, 1931.
4. The mission of the Free Kindergarten was to provide a free kindergarten education to students whose parents could not afford to pay for one 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. The Free Kindergarten has not operated as a kindergarten since the early 2000s.
6. On February 5, 1971, upon the petition of Free Kindergarten, the South Carolina Secretary of State certified an amendment to the charter of Free Kindergarten

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pursuant to a 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 the Free Kindergarten is the real property and improvements thereon 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 the Free Kindergarten’s property.
9. On April 4, 2018, the 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, dated April 23, 2013, was executed by Ms. June Wells on behalf of the Free Kindergarten. Neither the AG nor Charleston County School District received notice of the Agreement prior to Ms. Wells entering into it.
11. Ms. June Wells is a former kindergarten teacher at the Free Kindergarten and is in her eighties. She previously ran the organization when it last functioned as a school and was recognized as a director in a prior action by the Probate Court of Charleston County. Her authority to unilaterally execute the Agreement on behalf of the Free Kindergarten is in dispute in this case.

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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. The AG obtained an updated appraisal from the same appraiser reflecting the fair market value was \$522,500 as of June 7, 2018.
16. 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.
17. Neither Ms. Wells nor the Free Kindergarten was represented by counsel during the Agreement negotiation, although Mr. Royal contends he encouraged her to do so.
18. Mr. Stringer was not retained as counsel for the Free Kindergarten until shortly before he provided notice of the Agreement to the AG.
19. 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.
20. Counsel for the Free Kindergarten provided the AG with notice of the institution of this action and a copy of the pleadings in December 2018.
21. This action commenced on December 4, 2018.



III. Conclusions of Law

The Free Kindergarten was established for the charitable purpose of offering a free kindergarten education to poor children at a time when kindergarten programs cost money. Accordingly, the AG contends the Free Kindergarten is a public charity and the property which it owns at 34 Pitt Street in Charleston is impressed with a charitable trust.

“No general rule can be laid down as to what benefits constitute a public charity, and each case must be judged on its own facts”. *Evangelical Lutheran Charities Soc. Of Charleston v. SCNB*, 329 SC 16, 495 S.E.2d 199, 200 (1997), citing *Medical Society of South Carolina v. SC National Bank of Charleston*, 197 S.C. 96, 14 S.E.2d 577 (1941). A “Charity” is generally defined as “Aid given to the poor, the suffering, or the general community for religious, educational, economic, public-safety, or medical purposes.” *Black Law Dictionary* (10th ed. 2014). The law relating to discerning the drafters’ intent is identical for wills and trusts, so cases interpreting testamentary provisions are applicable to this case. *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710, 715 (2005).

In South Carolina, properties conveyed to a public charity are impressed with a charitable trust. *South Carolina Dept. of Mental Health v. McMaster, et al.* 372 S.C. 175, 642 S.E.2d 552 (2007). A charitable trust is defined as:

[A] fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose. Restatement (2nd) Trusts §348 (1959)...The settlor must manifest an intention to create a charitable trust. It is not necessary that any



particular words or conduct be manifest to create a trust, and it is possible to create a trust without using the words “trust” or “trustee.”

Id. at 555, citing *Scott on Trusts* §24-25(2d Ed. 1956); *Restatement (2nd) Trusts* §24.

South Carolina courts take a sympathetic view of attempts to create a charitable trust and will go to great lengths to sustain those attempts and effectuate the intention of the donor. *Epworth Children's Home, supra*; *Evangelical Lutheran Home, supra*. In *Evangelical Lutheran Home*, the historic preservation of the exterior of the buildings involved conveyed a sufficient public benefit to constitute a charitable trust, even though the interior (of the properties) was rented and not open to the public. The Court observed the fact that the rental income was used to achieve the trust’s purpose, did not convert the public benefit to a private benefit. The purpose is charitable as long as societal interests are furthered. *See also: Colin McK. Grant Home v. Medlock*, 292 S.C. 466, 349 S.E. 2d 655 (S.C. App. 1986). Similarly in *Porcher v. Cappelman*, 187 S.C. 491, 198 S.E. 8, 10 (1938) a trust to provide medical and surgical attention for crippled children was for a public charity and was thus a charitable trust. In a charitable trust, the beneficiaries are a class of persons who fluctuate and are described in general language. *Id.* Also in *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956) a provision in a will directly that surplus funds be used to aid the poor and indigent in obtaining medical care and hospitalization was for a charitable purpose and sufficiently definite to create a charitable trust.

The Free Kindergarten was formed for the charitable purpose of providing a free kindergarten education to children whose parents could not afford to pay for one. The AG argues it is a public charity and the property it owns at 34 Pitt Street in Charleston is impressed with a charitable trust. As a public charity in the business of operating a



kindergarten, the sale of all or substantially all of its assets is other than in the usual and regular course of its business activities. S.C. Code Ann. § 33-31-1202(f) provides: “A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.” On April 4, 2018, pursuant to §33-31-1202, the Free Kindergarten’s attorney Rick Stringer notified the AG of the proposed sale of the Pitt Street property and sent the AG a copy of the Agreement.

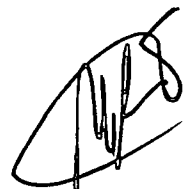
The AG’s role in supervising public charities and charitable trusts is well established in South Carolina. S.C. Code Ann §1-7-130 provides “The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof....”*South Carolina Dept. of Mental Health v. McMaster, supra.* SC Code §62-7-405 governs charitable trusts and provides in relevant part: “(a) A charitable trust may be created for the.... advancement of education....or other purposes, the achievement of which purposes is beneficial to the community.... (c) The settlor of a charitable trust, the trustee and the Attorney General, among others may maintain a proceeding to enforce the trust.” The AG is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. *Epworth Children's Home, supra; W. C. Watson v. W. F. Wall, supra.*

In *Watson*, the court found the AG was authorized to intervene as a party at the appellate stage and prior orders were not res judicata as to him. The *Watson* court observed the AG had only recently been given notice of the action and the AG had a common law and statutory duty to “enforce the due application of funds given or appropriated to public



charities within the State” in accordance with common law as well as statutory authority to protect the interest of the public in the charitable trust. Similarly in *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865 (1961) the court stated the AG was the only proper and necessary party defendant to a proceeding by a public university to determine the effect of language in deeds in its chain of title because the AG is a proper party to protect the interests held by members of the public at large in matters involving the administration or enforcement of charitable trusts.

There are also several South Carolina cases discussing the AG’s role in protecting the interests of the public at large in matters involving the sale of all, or substantially all, of the assets of a nonprofit corporation operating as a public charity if the transaction is not in the usual and regular course of its activities *See: Sisters of Charity Providence Hospital v. Alan Wilson, Attorney General of South Carolina, and The Sisters of Charity of St. Augustine Health System, Inc.*, Case No. 2016-CP-40-00087. In *Sisters of Charity*, Providence Hospital, a nonprofit, sought to sell substantially all of its assets outside the ordinary course of business and obtained a contemporaneous appraisal which it provided to the AG along with notice of the sale as required by S.C. Code § 33-31-1202. The AG advised the parties it required court approval of the sale at the proposed price, although it fell within the range of values in the appraisal. The *Sisters of Charity* court stated: “The Attorney General is a party in this matter pursuant to hiscommon law and statutory authority to protect the public interest and enforce the due application of those funds given or appropriated to any charitable trusts and to protect the interests of the public at large in the matter of administering or enforcing charitable trusts.” citing *SC Dept. Mental Health v. McMaster, supra; Epworth Children’s*

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Home, supra; Furman University v. McLeod, supra; and S.C. Code Ann. §§1-7-130 and 62-7-405(c).

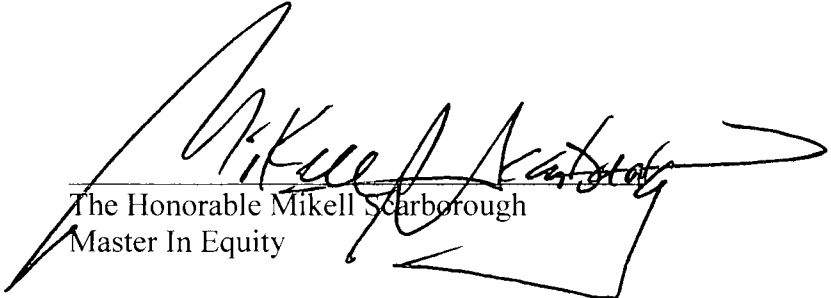
Also in *South Carolina Dept. of Mental Health v. McMaster*, the Department of Mental Health petitioned for a determination as to whether the property on Bull Street in Columbia (conveyed to it for the charitable purpose of operating the State mental hospital) could be sold and named the AG as a defendant pursuant to his authority under S.C. Code Ann. § 1-7-130. The *South Carolina Dept. of Mental Health* court held that the property was conveyed for a public, charitable purpose and was impressed with a charitable trust for the benefit of the Department of Mental Health. As a result, the sale of the property had to be approved by the court. The court approved the sale on the grounds that changes in care and treatment of the mentally ill made operation of the mental hospital unnecessary, but held that the sales proceeds must remain in trust for the benefit of the Department of Mental Health for the care and treatment of the mentally ill.

IV. Conclusion

For the reasons set forth herein, it is ORDERED the Attorney General's Motion to Intervene as a matter of right under Rule 24(a)(1) based on his statutory authority under S.C. Code Ann. § 1-7-130 and § 62-7-405 and common law authority is hereby GRANTED.

AND IT IS SO ORDERED.

July 2, 2019
Charleston, South Carolina


The Honorable Mikell Scarborough
Master In Equity