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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2022-001165

Michael D. Royal, Appellant,

v.

Free Kindergarten Association of Charleston, Respondent,

The Attorney General of the State of South Carolina and
The Charleston County School District, Intervenors/Respondents.

RECORD ON APPEAL – VOLUME 1

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¹ Exhibits to the Notice of Appeal, designated to be included by CCSD, are contained in the Orders section of this Record (Entry numbers 1-3, 5-12) and were previously filed with this Court.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	C.A. No.: 2018-CP-10-5739
)	
Michael D. Royal,)	
)	
Plaintiff,)	
)	
v.)	
	)	ORDER DENYING PLAINTIFF’S
	)	MOTION TO RECONSIDER
)	
Free Kindergarten Association of)	
Charleston,)	
)	
Defendant,)	
)	
The Attorney General of the State of)	
South Carolina and The Charleston)	
County School District)	
)	
Intervenors)	
)	

This matter comes before the Court on Plaintiff’s Motion to Reconsider and Amended Motion to Reconsider the Court’s March 31, 2022 Order granting a nonsuit of this case. 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), SCRPC (the “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*, various items that Plaintiff requested the Court consider related to several substantive issues addressed in proposed orders of nonsuit that had been submitted by Intervenors, the Attorney General of the State of South Carolina and Charleston County School District, as well as correspondence from counsel for Charleston County School District related thereto.

On April 8, 2022, Plaintiff filed his Motion to Reconsider. On April 10, 2022, Plaintiff filed his Amended Motion to Reconsider. Plaintiff filed both motions pursuant to Rule 59(e), SCRPC (collectively, “Plaintiff’s Motions to Reconsider”).

On May 20, 2022, Charleston County School District filed its Memorandum in Opposition to Plaintiff’s Amended Motion to Reconsider.

A hearing was held on May 20, 2022 to consider, *inter alia*, Plaintiff’s Motions to Reconsider, along with all filings related to these two motions 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.

The Supreme Court of South Carolina has recognized “two basic situations in which a party should consider filing a Rule 59(e)[SCRPC] motion.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 722, 780 (2004). Under the rule, “[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id. But “[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Id. In his Rule 59(e) motions, Plaintiff asks the Court to reconsider and alter or amend its Order dated March 31, 2022, based upon the grounds set forth in his motions, including alleged errors of omitted rulings on certain motions made prior to and/or during trial and alleged errors in the Court’s findings of facts and conclusions of law.

In consideration of Plaintiff's requests for consideration, the Court conducted a comprehensive review of Plaintiff's Motions to Reconsider under the standards of Rule 59(e), SCRPC. The Court's review of Plaintiff's Motions to Reconsider included a detailed review of each alleged error as enumerated and fully briefed by Plaintiff in both motions. Also, the Court reviewed Charleston County School District's Memorandum in Opposition to Plaintiff's Amended Motion to Reconsider. Further, the Court reviewed the full certified transcript of the trial held on December 15, 2021. Finally, the Court considered oral arguments at the hearing related to certain items contained in Plaintiff's Motions to Reconsider. In conducting its full review, the Court reviewed all matters properly encompassed in its decision, including its Pre-Trial Rulings, Findings of Fact, and Application of Fact and Conclusions of Law thus allowing the Court the opportunity to alter or amend its judgment after consideration of all relevant facts, law and arguments if errors were found. *See Id.*; Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) (purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits).

After full review and consideration of Plaintiff's Motions to Reconsider as set forth above, the Court finds the following:

1. I find that Plaintiff's Motions to Reconsider are timely made.
2. Plaintiff's Motions to Reconsider assert that the Order omitted rulings on the following motions made prior to and/or during trial; specifically, a) CCSD's discovery Motion to Reconsider and to Alter or Amend filed December 10, 2021; and b) CCSD's trial Motion in Limine with Respect to Plaintiff's Pre-Trial Brief Claims of a Lack of Standing and the Non-Existence of a Justiciable Controversy

Involving Charleston County School District filed December 13, 2021. I find that this Court's rendering of a nonsuit of the Plaintiff's case at trial consistent with the findings and conclusions set forth in its Order of Non-Suit renders these motions moot.

3. Plaintiff's Motions to Reconsider assert that the Order contains erroneous findings of fact and conclusions of law. I find that the Court's full review of the enumerated grounds for reconsideration asserted by Plaintiff in Plaintiff's Motions to Reconsider did not disclose any errors in the findings of fact or conclusions of law contained in the Court's Order of Non-Suit.
4. In sum, Plaintiff has not articulated any basis or grounds for reconsideration, alteration or amendment of the Court's Order of Non-Suit. Exercising its sound discretion, the Court reaffirms its prior Order of Non-Suit and the Pre-Trial Rulings, Findings of Fact and Application of Fact, and Conclusions of Laws set forth therein. Plaintiff's Motion to Reconsider and Amended Motion to Reconsider are therefore DENIED.

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

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	C.A. No.: 2018-CP-10-5739
)	
Michael D. Royal,)	
)	
Plaintiff,)	
)	
v.)	
	)	ORDER REGARDING MOTION TO
	)	EXCLUDE AND STRIKE
)	
Free Kindergarten Association of)	
Charleston,)	
)	
Defendant,)	
)	
The Attorney General of the State of)	
South Carolina and The Charleston)	
County School District)	
)	
Intervenors)	
_____)	

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

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	C.A. No.: 2018-CP-10-5739
)	
Michael D. Royal,)	
)	
Plaintiff,)	
)	
v.)	
	)	ORDER
Free Kindergarten Association of Charleston,)	
)	
Defendant,)	
)	
The Attorney General of the State of South Carolina and The Charleston County School District)	
)	
Intervenors)	
)	

This matter came before me as the Master in Equity for trial on December 15, 2022, and concerns real property located at 34 Pitt Street in Charleston, South Carolina (the “Property”). Present at the hearing were Jeffrey S. Tibbals, Esq., and Evan P. Williams, Esq., for Plaintiff Michael D. Royal (“Royal”); Patrick F. Stringer, Esq., for Defendant Free Kindergarten Association of Charleston (“FKAC”); A. Bright Ariail, Esq., and Warren W. Ariail, Esq., and Mercedes Pinckney Reese, Esq. (General Counsel for the Charleston County School District), all for Intervenor the Charleston County School District (“CCSD”); and Mary Frances Jowers, Assistant Deputy Attorney General, and Kristin Simons, Assistant Attorney General, for the South Carolina Attorney General’s Office (“Attorney General” or “AG”). Also attending were Joseph K. Qualey, Esq., Receiver, and William Zachary Smith, Esq., an attorney in the Receiver’s law firm. After considering the testimony received and the documentary exhibits admitted into evidence, the Court makes the following findings of fact and conclusions of law.

Pre-Trial Rulings

Prior to the trial, the Court considered several pending Motions. The Court ordered as follows regarding these motions:

- Royal’s Motion for Partial Summary Judgment, filed November 18, 2021, is denied.
- CCSD’s Motion for Summary Judgment, filed December 5, 2021, is denied.
- On December 3, 2021, CCSD filed a Motion to Strike Plaintiff’s Expert Designation and Petition for Expedited Review and Motion for Sanctions and Motion for Protective Order (“CCSD’s Motion to Strike Royal”). CCSD’s Motion to Strike Royal sought, *inter alia*, to strike Royal’s designation of himself as an expert witness and prohibit the testimony of Royal as an expert witness on damages. In addition, on December 13, 2021, CCSD filed a Motion in Limine with Respect to Plaintiff’s Alleged Damages Expert Witness Designee Michael D. Royal. Upon consideration of CCSD’s motions herein, I held, prior to trial, that Royal as the Plaintiff can testify as a witness, but not as an expert, on the issue of damages.
- On December 6, 2021, CCSD filed a Motion to Strike Plaintiff’s Second Expert Designation and Testimony of Pledger M. “Jody” Bishop, III, MAI, SRA, AI-GRS, CRE (“Bishop”) and Petition for Expedited Review and Motion for Sanctions and Motion for Protective Order (“CCSD’s Motion to Strike Bishop”). CCSD’s Motion to Strike Bishop sought, *inter alia*, to strike Bishop’s designation as an expert witness, to prohibit the testimony of Bishop as an expert witness on damages and prohibit further oral testimony by Bishop in any deposition, hearing or trial in this matter, specifically excluding any testimony beyond that contained within his deposition testimony taken on November 4, 2021. In addition, on December 13, 2021, CCSD filed a Motion in Limine with Respect to Plaintiff’s Alleged Damages Expert Witness Designee Pledger M. “Jody” Bishop, III, MAI, SRA, AI-GRS, CRE. Upon consideration of CCSD’s

motions herein, I held, prior to trial, that the Court would not exclude Bishop as a witness and would hold CCSD's motions in abeyance until such time that he was actually called as a witness in this action.

- On December 14, 2021, Royal filed a Motion in Limine to Exclude Defendant CCSD's Expert Witness, Robert J. McGahey, III. This Motion was denied.
- On December 14, 2021, CCSD filed a Motion in Limine with Respect to Expert Witness Designee Michael Robinson, MAI, SRA. There were no objections to this Motion and the Court granted the Motion.

Findings of Fact

FKAC was established as a nonprofit corporation on January 24, 1901. The mission of the FKAC was to provide a free kindergarten education to students whose parents could not afford to pay for a kindergarten program at a time when kindergarten programs cost money. On February 5, 1971, upon petition of a majority of the Board of Directors of the FKAC, the South Carolina Secretary of State certified an amendment to the charter of FKAC pursuant to a Resolution, authorized and certified by a majority of the Board of Directors of FKAC, whereby FKAC 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." During the 20th century, public schools took on the role of providing kindergarten education to children in S.C.

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. 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. 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. 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. 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. 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.

FKAC has not operated as a kindergarten since the early 2000’s. Aside from miscellaneous personal property of *de minimis* value, the only known asset of the Free Kindergarten is real property and improvements located at 34 Pitt Street (the Property). The sale of this Property will be the sale of all or substantially all of FKAC’s assets.

Plaintiff Royal testified that he first became aware of and interested in the Property at 34 Pitt Street on December 3, 2011, when he was driving along Pitt Street and observed that the Property did not appear to be occupied or in active use. Royal set out to determine who owned and controlled the Property and a staff person at the City of Charleston led him to June Murray Wells (“Wells”). Thereafter, sometime between December 2011 and November 2012, Royal contacted Wells. The first time Royal visited the 34 Pitt Street Property with Wells occurred on November 4, 2012. The November 4, 2012 on site meeting with Wells was the first time Royal ever entered the Property.

Royal testified he believed Wells was the sole person with authority to act on behalf of the Property owner, the FKAC. He testified he relied on the fact that she was the only person with access to the Property and a key to the building. Royal further testified he relied on documents he believed indicated Wells had authority for FKAC. The documents Royal testified he relied upon and introduced into evidence included:

1) a letter dated November 12, 2010 from Mary Frances Jowers, Assistant Attorney General of the State of South Carolina to Wells and addressed to her home at Folly Beach. Royal testified this letter impressed him as evidence the State of South Carolina was standing behind Ms. Wells’ authority to do business on behalf of FKAC;

2) an affidavit of Wells signed November 23, 2010 filed in Charleston County Probate Court action 2010-GC-10-0090 that same date in which Wells stated she was “the last living advisory member of the [FKAC] with “capacity” [not authority] to act on behalf of the [FKAC];

3) a Probate Court Order from the Charleston County Probate Court action 2010-GC-10-0090, dated December 7, 2010 (“Probate Court Order”). The Probate Court Order stated Wells was “the last living advisory board member of the [FKAC] with capacity [not authority] to act on

behalf of the [FKAC] . . . [and that] she is the only known person with capacity [not authority] to act on behalf of the [FKAC]. Royal testified he had relied upon the Probate Court Order in his belief that Wells was authorized to act on behalf of FKAC.

In addition, Royal introduced as an exhibit a resolution of the FKAC he believed to contain multiple signatures of Wells, including her signature as Director of the FKAC. However, Royal did not testify that he relied upon this document in his understanding or belief as to Wells authority to act on behalf of FKAC.

The Court notes the affidavit of Wells relates to the status of operations and funding of the FKAC as of November 2010. The affidavit does not address the authority of Wells to sell the last remaining asset of the FKAC. Likewise, the Court notes the Charleston County Probate action and resulting Probate Order concern the equitable deviation of the Marion Stuart Hanckel Trust and not the sale of FKAC's remaining assets or Wells' authority to enter into a contract for the sale of such asset. Finally, the Court notes the resolution of the FKAC relates to the opening of a bank account for the FKAC and the establishment of signatory authority thereunder with Wells signing as the "Director" of the FKAC. There is no indication Wells signed this document as a member of the Board of Directors of FKAC and the resolution does not concern or authorize the sale of the Pitt Street Property as the remaining asset of the FKAC.

On April 23, 2013, Royal and Wells, as "authorized agent" of the FKAC, signed a Real Estate Purchase and Sale Agreement ("Agreement"), drafted by Royal, for the real Property at 34 Pitt Street, Charleston.¹ The purchase price in the Agreement is \$315,200. The Agreement stated the closing date was to be April 9, 2018 "or on such prior date chosen by the Seller upon

¹ Royal's drafting of the Agreement included, *inter alia*, the drafting of FKAC's signature block designating Wells as "authorized agent" of the FKAC.

reasonable notice to the purchaser.” In the spring of 2013, Wells also received a Notice of Intent to purchase the Property for \$400,000.00 from another party other than Royal.

On April 23, 2013, Royal recorded a Memorandum of Purchase and Sale Agreement at the Charleston County Register of Deeds Office. This Memorandum stated that the parties entered into an agreement for the purchase and sale of the Pitt Street Property. The Memorandum did not include the sales price nor was it enrolled in the name of nor otherwise provided to the Attorney General of South Carolina or Charleston County School District.

Royal testified about his activity related to the Property from April 2013 to March 2018. He communicated with Wells, and in 2015, he began to communicate more with her son, Bill Wells.² During this time, Royal noticed that the Property appeared to be taxable by Charleston County, and he took steps to make sure the Property remained tax-exempt. Wells used the building on the Property for storage, and Royal offered to assist with packing and moving. At one point, he began using the Property as his mailing address, but when he realized that the closing would not occur as soon as he thought, he stopped using it as his mailing address. He communicated in writing with Wells that he desired to close on the Property. Throughout this time, FKAC was never ready to close.

By March 2018, FKAC retained Patrick Stringer as its closing attorney, and Royal had retained Treadwell Josey. Prior to the proposed closing date, by letter of April 4, 2018, Stringer provided notice to the Attorney General’s Office of the proposed sale, including a copy of the Purchase and Sale Agreement, as required by S.C. Code Ann. § 33-31-1202(f). This was the first

² “Wells” continues to refer to June Murray Wells. Bill Wells is referred to in this Order as “Bill Wells.”

notice the Attorney General received of the sale. Thereafter, Royal and Wells executed two addenda extending the closing date.

After receiving notice of the proposed sale in April 2018, the Attorney General inquired about the sale and was provided the 2012 appraisal of Michael Robinson, MAI, SRI, of Charleston Appraisal Services,³ which valued the Property at \$315,200 as of December 19, 2012. The Attorney General contacted Robinson who completed another appraisal at the request of the Attorney General. He determined the fair market value of the Property as of June 7, 2018, was \$522,500. At trial, he explained his opinion that the building had no value, and he took the cost of demolition into consideration in valuing the Property. Despite its location in the downtown Charleston area, he did not believe that the building would be classified as a historic structure. He testified that the highest and best use of the Property would be residential. Regarding how long an appraisal can be considered valid, he stated that lending institutions don't like to use anything more than six months old, though sometimes other users will go up to a year, and sometimes a little more time can be acceptable.

FKAC was never in a position to close as it would not agree to close without the Attorney General's consent. By letter of May 11, 2018, FKAC notified Royal that it would not close on the Property. Royal filed this complaint against FKAC on December 4, 2018, alleging claims for specific performance and breach of the Agreement. FKAC filed an answer on January 7, 2019. The Attorney General moved to intervene on January 28, 2019, and the CCSD moved to intervene on February 7, 2019. A Form 4 Order was entered on June 7, 2019, granting both motions to intervene. The Form Orders were followed by formal Orders entered on July 10, 2019, granting the AG's Motion, and August 22, 2019, granting CCSD's Motion. On June 24, 2019, CCSD filed

³ At the trial, Mr. Robinson was qualified as an expert in the area of real estate appraising.

its Answer, Counterclaim and Crossclaim. FKAC filed its Reply to Crossclaim and its Reply to Request for Declaratory Judgment of School District both on July 1, 2019. The AG filed its Answer to Royal's Complaint, and Answer/Reply to CCSD's Request for Declaratory Judgment on July 25, 2019, and Royal filed Plaintiff's Reply to Intervenor Charleston County School District's Counterclaim on August 16, 2019.

Application of Facts and Conclusions of Law

Motion for Nonsuit

Following the testimony of Royal, as Plaintiff's final witness in Plaintiff's case in chief, the Attorney General moved for a nonsuit pursuant to Rule 41(b) of the SCRPC. Rule 41(b) SCRPC allows a defendant to move for dismissal of any action on the ground that, upon the facts and the law, Plaintiff has shown no right to relief.

As this is a motion for nonsuit in a nonjury action, the Court does not consider the evidence in the light most favorable to Royal in ruling upon the Attorney General's Rule 41(b) motion. See *Johnson v. J.P. Stephens & Co., Inc.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) (holding that in ruling upon a Rule 41(b) motion, it is not an error for the trial judge to fail to consider the evidence in the light most favorable to the non-moving party.) Instead, Rule 41(b) of the S. C. Rules of Civil Procedure allows the trial judge as the trier of fact to weigh the evidence, determine the facts and render a judgment against the Plaintiff if justified.

As the trier of fact in this non-jury action, I have weighed the evidence presented by the Plaintiff, determined the facts, and hereby find that based upon the facts and the law, the Plaintiff has shown no right to relief. Accordingly, I grant the Attorney General's motion for nonsuit. The court's findings of fact and conclusions of law are detailed below as required when ruling upon the merits. Rule 52 (a), SCRPC.

1. Authority of June Murray Wells

The Court finds that Wells had some authority but not absolute authority to act on behalf of the FKAC. To the extent Wells had some authority to act on behalf of FKAC, it was not statutory authority. Instead, it arose because of her sole remaining position as somebody with knowledge about the FKAC. Furthermore, the extent of Wells limited authority does not constitute actual, implied or apparent authority to enter into the Agreement on behalf of the FKAC for the sale of the Pitt Street Property. Whatever authority Wells had to sign the Agreement on behalf of FKAC, due to FKAC's non-profit status as a public benefit corporation, her authority is subordinate to the public interest.

2. Notice to Attorney General and Authority of Attorney General

Pursuant to Section 33-31-1202(f), “[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.” I find that the Attorney General received proper notice of the proposed sale on April 4, 2018, when counsel for the FKAC provided written notice to the Attorney General's Office. This was the first notice provided to the Attorney General and it was the first time the Office was made aware of the Agreement.

Section 33-31-141 governs notice under the South Carolina Nonprofit Corporation Act and applies to the written notice requirement of section 33-31-1202(f). Section 33-31-141(b) states as follows: “Notice may be communicated in person; by telephone, telegraph, teletype, facsimile transmission (FAX), or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated

by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communications.”

Royal argues that adequate notice was provided when a Memorandum of Purchase and Sale Agreement, which did not include the sale price or the contract itself, was filed with the Charleston County Register of Deeds on April 23, 2013. I find that this did not provide notice, as the Attorney General was not aware of the proposed sale until April 4, 2018. Moreover, this filing did not provide effective or statutory notice to the Attorney General because it did not meet the requirements of section 33-31-141(b). Also, CCSD was not listed on the 2013 document recorded with the Charleston County Register of Deeds nor was the document sent to the CCSD or the Attorney General at the time of the filing.

As stated in the Order granting the Attorney General’s Motion to Intervene, filed July 10, 2019, “[t]he 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 . . .” S.C. 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 Attorney General 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 v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956).

Regarding section 33-31-1202(f), “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Chem–Nuclear Sys., LLC v. S.C. Bd. of Health and Env’tl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). “The Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act.” *Duvall v. S.C. Budget and Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008); see *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (“In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing.”). The legislature intended S.C. Code Ann. § 33-31-1202(f) to have a purpose, and the logical conclusion is that this purpose was to notify the Attorney General and provide him with an opportunity to be heard. An interpretation that does not allow the Attorney General to be heard would render the statute meaningless and would be contrary to rules of statutory interpretation.

There are 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. In *South Carolina Dept. of Mental Health v. McMaster*, 372 S.C. 175, 642 S.E.2d 552 (2007), the Supreme Court accepted in its original jurisdiction an action as to whether certain property owned by the Department of Mental Health was held in trust, and whether and under what conditions it could be sold. The subsequent circuit court action seeking approval of the sale was *South Carolina Department of Mental Health, as Trustee, v. Alan Wilson, Attorney General, et al.*, 2011-CP-40-00875. In this action, the Department sought court approval of the sale of the property impressed with a charitable trust that had been the subject of the Supreme Court action of 2007. The Court approved the sale of the property after expert testimony from an

appraiser which showed that the sale price was consistent with his opinion about the value of the property.

In *Sisters of Charity v. Alan Wilson, Attorney General of South Carolina, et al.*, No. 2016-CP-40-00087, 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 section 33-31-1202(f). The AG advised the parties it required court approval of the sale at the proposed price, although the price fell within the range of values in the appraisal. The *Sisters of Charity* court stated as follows: “The Attorney General is a party to this matter in his *parens patriae* capacity in accordance with his common law and statutory authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and to protect the interests of the public at large in the matter of administering or enforcing charitable trusts.” See Order of January 27, 2016, in *Sisters of Charity, supra* (citing *S.C. Dept. Mental Health v. McMaster*, 372 S.C. 175, 642S.E.2d 552 (2007); *Epworth Children's Home, supra*; *Furman University v. McLeod*, 238 S.C. 475, 120 S.E.2d 865 (1961); and S.C. Code Ann. §§ 1-7-130 and 62-7-405(c)).

The Plaintiff contends that the Attorney General’s authority pursuant to section 33-31-1202(f) is “detrimental to the public benefit” and means that “the public will never be able to rely upon or attempt to enforce any real estate contract entered into with a nonprofit corporation.” I disagree. I find that the Attorney General is protecting the public interest and has the authority to do so. I also note that the statute only applies to the sale, lease, exchange, or other disposal of “all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities[.]” Accordingly, notice is only required in these limited situations, not all transactions involving a nonprofit. Further, the notice must be given 20 days before a sale, unless the Attorney

General has given the corporation a written waiver. This indicates that the nonprofit can either get a waiver or provide sufficient information, and this needs to be done only 20 days prior to any sale. Contrary to the Plaintiff's contention, the statute does not hurt the public or nonprofits, but rather helps ensure that charitable assets stay within the charitable stream and protects the interest of the public.

There have been several actions involving the sale of assets of a nonprofit which involved the Attorney General. In *Sloan Brothers v. Resurrected Treasure Ministries*, the Attorney General was named as a party in a foreclosure action because, as the Plaintiff explained in the Complaint filed on October 14, 2020, the party being foreclosed upon was a nonprofit and the action involved the sale of all, or substantially all, of its assets. See *Sloan Brothers v. Resurrected Treasure Ministries*, 2020-CP-23-04725, Complaint, paragraph 10.

Courts have approved the sale of assets of a nonprofit in other instances that did not specifically relate to notice pursuant to section 33-31-1202(f). Although these actions were not specifically related to the statute at issue in the present case, they show the importance of notice to the Attorney General and court approval in connection with a nonprofit sale of assets. The cases also show that the Attorney General is the appropriate party to protect the public interest in connection with the sale of nonprofit assets. These cases include the following:

- *Calhoun County Museum and Cultural Museum v. St. Matthew's Parish Episcopal Church and Alan M. Wilson, Attorney General of South Carolina*, 2010-ES-09-00029. This Plaintiff requested the Court confirm whether a Museum and Church had authority to sell their interests in a tract of land. In its Order for Declaratory Judgment regarding the Sale of Real and Personal Property, filed January 25, 2021, the Probate Court found that the nonprofit could sell certain property and ordered that the proceeds be "held in Trust for the benefit of the Church [and] shall be used to further the purposes of the Church's said trust."
- *Baptist Foundation of South Carolina, as Trustee, v. Baptist Foundation of South Carolina, et al.*, 2014-GC-26-22, 2013-ES-26-00279, In its Order

Construing Will and Codicil, Declaration of Endowment, Modification of Trust, and Authorization to Sell Real Property, filed April 1, 2014, the Court found that the nonprofit was able to sell certain real estate “subject to Court approval of the ultimate sales price[.]”

- In its Order Approving Purchase and Sale Agreement and Authorizing and Directing Sale of Real Property, filed September 30, 2019, in the above Baptist Foundation case, the Court reviewed a proposed real property transaction where there were two contracts under consideration. Regarding one contract, the court stated that it “cannot find support for the acceptance and approval of the [contract] where there is no appraisal or evidence that can support such a low purchase price.” In the case, the proposed price of \$120,000.00 was less than two appraisals finding the fair market value at \$195,000 and \$197,000. The Court approved another sale at a higher price. The Court noted that it had accepted and approved prior sales of Trust real property at 88% of fair market value and 125% of fair market value.

Regarding the sale of nonprofit assets, the Attorney General is concerned with whether the fair market value of the assets is maintained in the “charity stream” - so that the full value of the assets continues to be perpetually dedicated for charitable purposes. Ensuring that a proper valuation of the assets is accomplished is vitally important to protect this interest. An undervaluation, as would be the case involving a sale for less than fair market value, provides a benefit to private interests to the detriment of the public. For example, a sale following an undervaluation of a non-profit’s assets results in a “gift” to the buyer of the difference between market value and the consideration based on an improper valuation. Such a “gift” to a private individual or for-profit entity may also constitute illegal “private inurement” under federal tax laws, for which the IRS assesses severe penalties and possible revocation of the entity’s federal tax exemption. *See* John W. Vinson, *The Charity Oversight Authority of the Texas Attorney General*, 35 St. Mary’s L.K. 243 (2004) (discussing the importance of valuation in the Attorney General’s review of a nonprofit conversion/sale).

For these reasons, I find that the Attorney General received the required notice, and he had a right to be heard and object to the sale of the nonprofit’s assets at issue in this action.

3. The Agreement is contrary to public policy and therefore void.

I find that the sales price is less than fair market value and is contrary to public policy. The Attorney General had a reasonable basis to object to the sale, and he did so appropriately. Given these facts, the proposed sale under the terms of the 2013 Agreement is denied.

The fair market value is the price that a seller is willing to accept, and a buyer is willing to pay on the open market and in an arm's-length transaction; it is the point at which supply and demand intersect. *Black's Law Dictionary* 11th ed. 2019. In the Agreement signed April 23, 2013, the sale price was \$315,200. Royal testified that this was consistent with the appraisal of Mr. Robinson of December 19, 2012. Significantly, the parties did not give notice to the AG until April 2018, and FKAC did not indicate any willingness to close until that time. In fact, once notice was provided to the AG and he declined to consent, then FKAC declined to proceed with the sale. Accordingly, there was never a willing seller, authorized by law, in connection with the Agreement.

Regarding fair market value, Robinson testified that the “shelf life” of an appraisal could vary depending on the needs of a client. He explained that lending institutions do not like to use anything more than six months old, though sometimes other users will go up to a year or a bit longer. Here, the Agreement was signed approximately four months after the appraisal. However, per the terms of the Agreement, the closing date to be April 9, 2018, or on “such prior date chosen by the Seller upon reasonable notice to the Purchaser.” I find that the sale price of \$315,200 was not fair market value by the time the Seller began to take steps to proceed with closing, such as hiring counsel. I also note there was testimony that Wells received another offer of \$400,000 to purchase the Property around the same time as the Royal offer, significantly more than the Agreement price. Further, by the time the Attorney General received notice and the

parties were moving toward closing, the original appraisal was five years old. By the time the parties were seeking to schedule the closing, the same appraiser determined the fair market value was \$522,500.00 - **a 65% increase over the 2013 sales price!**

In the present case, the FKAC is a nonprofit corporation registered with the South Carolina Secretary of State. The Nonprofit Corporation Act explains that a “corporation” means a public benefit, mutual benefit, or religious corporation. This means that the entity cannot provide a private benefit. However, selling an asset for less than fair market value provides a private benefit to the buyer. In the present case, Royal, a private citizen, would receive as a benefit the difference in the fair market value and the purchase price. This benefit is a loss to the FKAC and ultimately a loss to the public, as it prevents the assets from remaining in the “charity stream.”

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), the U.S. Tax Court provided a definition of private benefit: “nonincidental benefits conferred on disinterested persons that serve private interests.” In the present case, the sale of the Property for less than fair market value would provide a nonincidental benefit to Michael Royal, a disinterested person, and thus serve his private interest rather than any public interest of FKAC. The Tax Court noted that a nonprofit’s conferral of benefits on disinterested persons may cause it to serve a private interest rather than a public one, as required by section 1.501(c)(3) of the Internal Revenue Code.⁴ See also *Anclote Psychiatric Ctr., Inc. v. Comm’r*, 76 T.C.M. (CCH) 175 (T.C. 1998), *aff’d sub nom*, *Anclote Psychiatric v. Comr. of IRS*, 190 F.3d 541 (11th Cir. 1999), (finding that a sale for less than fair market value resulted in a “prohibited inurement”). The fact that the contract is less than fair market value is an indicator that the sale itself is against public policy, as value would be lost to the public.

⁴ The authority governing 501(c)(3) organizations provides guidance about nonprofits. The FKAC is not a 501(c)(3) entity at this time.

In addition to the fact that the sale price was below fair market value, I find the totality of the circumstances indicates that the Agreement was void as against public policy. Another area of concern for the Court is the unequal bargaining position of the parties to the Agreement, especially related to real estate. Royal has a law degree and is a licensed attorney in New York State. He holds a JD and MBA from the University of Virginia and a Masters in Real Estate Finance from the University of Cambridge. Wells, born in 1934, was a College of Charleston graduate. She taught kindergarten for 40 years at the FKAC, and she was the Director of The Confederate Museum in Charleston for 40 years. Royal's real estate and educational background appeared to put him in an unequal bargaining position to Ms. Wells.

The Court notes several unusual provisions in the contract. First, paragraph 6 provides that if the seller were unable to provide documentation of Wells' authority to sell the Property, the parties agreed to petition the Court to establish her authority, with purchaser bearing any court costs. This indicates that Plaintiff had questions as to her authority at the time he authored the Agreement, as the language would not be needed if her authority was clear.

Another unusual provision, in paragraph 7 of the Agreement, states that if the "Purchaser, in his sole discretion, determines that a purchase of the Property is not suitable for himself financially, he shall not have any obligation to close the Agreement, and the Agreement shall terminate." This allows the Purchaser to get out of the contract, but there is no comparable provision for the seller. Royal, author of the Agreement, admitted that this was "almost like an option" but said "it is not exactly the same." He agreed it created a great deal of discretion for himself as the purchaser.

Other provisions noted in the testimony included the following: (1) pursuant to paragraph 4, the seller was to convey title by limited warranty deed, rather than general warranty deed; and

(2) pursuant to paragraph 5, should title to the property be defective, the Seller would not be in default of the Agreement.

“Determining whether a contract is void as against public policy is generally a question of law for the Court.” *Palmetto Mortuary Transp., Inc. v. Knight Sys., Inc.*, 424 S.C. 444, 459, 818 S.E.2d 724, 733 (2018). In the present case, the contract is void because it is against public policy. Most significantly, the fact that a nonprofit is selling property for significantly less than fair market value is a sufficient reason to find that the contract cannot be enforced. The above aspects of the contract also provide additional reasons for the court to find the contract is against public policy. Even if any one individual factor would not be sufficient, the totality of the circumstances indicate that the contract is against public policy. See 30 S.C. Jur. *Contracts* § 4 (“As a general rule, agreements or contracts against established public policy are also illegal and will not be enforced.”).

While two private individuals may agree to a price that is less than fair market value and may have unusual provisions in their contract, the situation is different for a nonprofit. This is why notice to the Attorney General is important and required by statute. “Freedom of contract is subordinate to public policy, and agreements that are contrary to public policy are illegal.” *Nationwide Mut. Ins. Co. v. Rhoden*, 398 S.C. 393, 728 S.E.2d 477 (2012). While private parties are free to contract as they desire, when the public interest is involved, such as here in the sale of all of a nonprofit’s remaining assets, public policy trumps the freedom of contract.

Our Supreme Court has recognized “the general rule that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution.” *W & N Const. Co. v. Williams*, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996). The Court explained as follows in *Wiggins v. Postal Telegraph Co.*, 130 S.C. 292, 125 S.E. 568 (1924): “We know of no principle

of law based upon comity or interstate commerce transactions, which would require a state court to recognize the validity of a contract which under its laws is declared to be against public policy, immoral and void.” The Court explained in *Berkebile v. Outen*, 311 S.C. 50, 54, 426 S.E.2d 760, 762 (1993), as follows: “South Carolina law is well established on this point. The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.”

Because the Agreement violates public policy, it is contrary to law. As explained in *Hinnant v. S. Ry. Co.*, 113 S.C. 19, 100 S.E. 709, 709 (1919), “[n]either the conductor, the engineer, nor the defendant itself can make a contract in violation of law, or waive the requirements of the law.” Similarly in the present case, the parties cannot make a contract in violation of law. In *Ricks v. Ficken*, 280 S.C. 294, 295, 312 S.E.2d 715, 715–16 (1984), the Court found that a contract entered into pursuant to an unconstitutional statute was “repugnant to public policy and void.”

The Residual Assets of FKAC Shall Inure to Charleston County School District Upon Its Dissolution

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 known as the Charleston County School District. *Id.* The Supreme Court of South Carolina has expressly declared that, except as to Section 11 therein⁵, Act 340 is

⁵ 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.

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 CCSD “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 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 and it 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 is expressly set forth in Sections 6, 7 and 8 of Act 340 and includes: (1) employment and assignment of teachers or other professional

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.

employees; (2) employment of constituent district personnel; (3) pupil assignments and student discipline; and (4) limited oversight over school bus transportation.⁶

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. See e.g., *Stewart v. Charleston County School District*, 386 S.C. 373, 688 S.E. 2d 579 (Ct. App. 2009) and 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.

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. Instead, upon dissolution, the residual assets of Free Kindergarten shall pass to the Charleston County School District pursuant to Act 340. The Receiver, upon conclusion of this matter, shall be authorized to provide the residual funds to the CCSD and shall see that the funds are used by the School District for their original intended benefit – for the use and benefit of the children of Charleston County who attend its kindergarten schools.

⁶ 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.*

Attorney's Fees

Both CCSD and FKAC asked for an award of attorney's fees in this action. "The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238, 616 S.E2d 431, 434 (Ct. App. 2005). "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." *Id.*

As to CCSD, Royal moved to strike CCSD's request for attorney's fees. I find that there is no contract or statutory basis, including any equitable basis under the South Carolina Declaratory Judgment Act, to award attorney's fees to CCSD. Accordingly, I grant the motion to strike the request for attorney's fees.

As to FKAC, counsel submitted an attorney's fee affidavit, with billing records of counsel attached. As stated in his affidavit, Patrick F. Stringer, Esq., was counsel to FKAC in this action. To date, the legal fees and costs for FKAC are \$46,956.79 which this court finds reasonable. FKAC was required to defend this action and incur attorney's fees as a result of its refusal to close without the consent of the Attorney General- a point repeatedly made by FKAC's counsel and which position has prevailed herein. I find that counsel for FKAC provided competent representation throughout this matter, is well-known by this court which finds him highly qualified and that his services meet the criteria of the 6-prong test set forth in *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E. 2d 296 (1989). Accordingly, Mr. Stringer is entitled to be paid his fees by his client from the proceeds of the sale of 34 Pitt Street.

I further find the Receiver, Joseph K. Qualey, shall be paid his Receiver's fees from the proceeds of the sale of the Property, as stated in accordance with this Court's Order of Appointment filed February 22, 2021.

Sale of Property

I authorize the Receiver to market and sell the Property, for a price that must be approved by the Court after notice to the Attorney General pursuant to section 33-31-1202(f). I note that bond will need to be posted by Plaintiff if there is an appeal of this action on his behalf. As ordered in the Order Appointing the Receiver, the Receiver cannot sell the Receivership Property without the express approval of this Court. As also noted in that order, the sale, any contract for sale, and any closing statement shall be subject to express approval by this Court; and the sale of the Receivership Property shall be free and clear of all liens and encumbrances. Upon receipt of the proceeds of the sale of the Property, the Receiver shall deposit all funds in his firm's trust account for distribution as indicated herein.

Dissolution of FKAC

Upon sale of the Property, the Receiver shall execute and file documents necessary with the South Carolina Secretary of State for the dissolution of FKAC. Upon completion of the dissolution of FKAC, the Receiver shall provide a final report and accounting to the Court for approval prior to discharge of the receiver pursuant to the terms of the Order Appointing Receiver for Defendant Free Kindergarten Association of Charleston.

Proceeds of the Sale of the Property

Upon dissolution of the FKAC and approval of the final report and accounting by the Court, the Receiver shall pay the residual proceeds of the sale of the Property, less all deductions from the sales proceeds as allowed herein, to the Charleston County School District as the proper

and lawful recipient of the residual assets of FKAC. Further, the Receiver shall be authorized to see that the funds are used by the School District for their original intended benefit – for the support and benefit of the children of Charleston County who attend its kindergarten schools.

AND IT IS SO ORDERED this _____ day of March, 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

Electronically signed on 2022-03-30 16:06:50 page 26 of 26

Michael D Royal
PLAINTIFF(S)

Free Kindergarten Association Of Charleston et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This Court's July 23, 2021 Order provided that an email with the specific catalogue of documents that are considered privileged would be delivered to the parties. This email and referenced catalogue of documents was distributed to the parties on July 23, 2021. Plaintiff Royal hereby has ten (10) days to produce the documents which are deemed "NOT PRIVILEGED" as provided in the spreadsheet attached to the Motion to Approve Privilege Log. Plaintiff Royal is also to pay the \$1,000.00 sanction to Ms. Ariail within ten (10) days and is to sit for his deposition upon notice of the CCSD.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/10/2021 .

Robert Bratton Varnado for Charleston Chapter No. 4 & Confederate Museum
Joseph Kevin Qualey for Free Kindergarten Association Of Charleston
Case Party Info Protected for Case Party Info Protected,Charleston County School District
Annemarie Belanger Mathews for South Carolina Attorney General
Case Party Info Protected for Case Party Info Protected,Free Kindergarten Association Of Charleston
Patrick F. Stringer for Free Kindergarten Association Of Charleston
Mary Frances G. Jowers for South Carolina Attorney General
Michael D Royal for Michael D Royal
Michael D Royal for Michael D Royal

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michael D Royal VS Free Kindergarten Association Of Charleston ,
defendant, et al
Case Number: 2018CP1005739
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-08-10 12:25:20 page 3 of 3

Michael D Royal
PLAINTIFF(S)

Free Kindergarten Association Of Charleston et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on the UDC's Motion to Intervene. The Court GRANTS the UDC's Motion and hereby orders the Receiver to transfer documents and property to the UDC. Any documents remaining in the Receiver's possession which belong to the Free Kindergarten should be delivered to Rick Stringer, Esq.
CCSD'S Motion to Quash the Plaintiff's Subpoena for this hearing is GRANTED. All parties shall provide this Court with a short memoranda regarding the authority of June Wells to enter into the agreement for sale in this case within fifteen (15) days of completion of Plaintiff's rescheduled deposition.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/10/2021 .

Michael D Royal for Michael D Royal
Michael D Royal for Michael D Royal

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Michael D Royal VS Free Kindergarten Association Of Charleston ,
defendant, et al
Case Number: 2018CP1005739
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-08-10 12:22:30 page 3 of 3

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.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Civil Action No.: 2018-CP-10-05739

**ORDER DENYING
 PLAINTIFF’S MOTIONS FOR
 CLARIFICATION AND
 RECONSIDERATION AND
 SETTING HEARING ON
 MOTION TO INTERVENE**

I. MOTION TO CLARIFY

Plaintiff’s Motion to Clarify this court’s order of June 7, 2021 was filed on June 17, 2021. The motion addresses the court’s basis for its Order granting Defendant School Board’s (CCSD) motion for sanctions and setting a sanction of \$1,000.00 on Plaintiff to be paid to attorney for CCSD. To be clear, Plaintiff Royal’s conduct in this case is the basis for the court’s sanctions and includes his dilatory and obstructive conduct at his deposition. The court reaffirms the sanction and will address additional conduct hereinbelow. Plaintiff’s Motion to Clarify is DENIED.

II. MOTION TO RECONSIDER JUNE 21 ORDER

Plaintiff’s Motion to Reconsider this court’s Order of June 21, 2021 was filed on July 12, 2021. While this motion does not appear to be timely, this court addresses the issues raised therein. First, Plaintiff Royal takes issue with the court’s limitation of his scope of damages; however, Royal acknowledges that he consented to limiting his expert witness to one witness who will opine on “lost rents that might have come from renting parking spaces.” While this statement suggests

that Plaintiff's expert will be asked to speculate as to the amount of his damages, that issue is not yet before the court. Royal goes on to assert that he "first and foremost seeks specific performance of a real estate agreement;" the court awaits Plaintiff's proof on this issue. This will be gleaned from the facts of this case, but the court notes that, so far, Plaintiff has sought to drag out discovery in this 2018 case by objecting at his deposition and his claim of privilege to over 600 documents. The privilege log will be addressed separately and only after this court has twice reviewed the documents to which Plaintiff asserts - and has the burden to establish - any privilege.

Next, Royal asserts that sanctions are not appropriate as the court has failed to rule on his June 17, 2021 Motion to Clarify addressed above (See Section I). Then, Royal challenges the court's authority to amend its June 7, 2021 Order as more than 10 days had expired since the June 7 Order was issued. Clearly, Mr. Royal can read the rules of procedure, but does not properly apply them. His final argument exhibits just that, as a "pro se party who has never appeared as an individual in litigation prior to ... the instant action," Plaintiff seeks relief from this court when, despite consultation with several lawyers, he has repeatedly stated he represents himself.

The Motion is without merit and is DENIED.

III. **MOTION TO RECONSIDER JUNE 25 ORDER**

Plaintiff Royal submitted to the court a list of 602 documents to which he claimed privilege. The court reviewed the entire list of documents (many were repetitive email chains) and found that more than half were not privileged. Royal then filed his blanket objection to the court's findings, again alleging that all documents produced were privileged. The court denied all the objections, finding that Plaintiff's arguments were not persuasive and the documents were not protected. Plaintiff has now submitted to the court a list of 110 specific documents for which he individually asserts the privilege.

Plaintiff contends the court has not followed the authority of State v. Doster, 276 S.C. 647, 284 S.E. 2d 218 (1981), in making its decision that the documents are not privileged. Once again, Plaintiff has failed to properly apply the law as it relates to his case. The burden is on the party asserting the privilege to establish the basis for the privilege. Despite repeated requests and this court's efforts to review the multitude of documents, the court has found that, as to a majority of the documents to which the privilege is asserted, Plaintiff has not satisfied the Doster test.

Notwithstanding this ruling, there are 227 documents to which the court has ruled the privilege applies and, further, the court reiterates its June 25 ruling that, if a document is deemed privileged, it can be redacted from any subsequent document or communication chain (e.g., emails) which only makes reference to the document; i.e., the document itself remains privileged but reference to it is not. The court disagrees with Royal's assertion that every communication with his lawyer is privileged; e.g., the numerous emails with his counsel Mr. Tibbals about where they should meet for breakfast do not qualify as a privileged communication to this court.

The court will send an email with the exhibits listed specifically addressing which documents are deemed privileged and which documents Plaintiff is ordered to produce within ten (10) days. On this basis, the Plaintiff's Motion to Reconsider the June 25, 2021 Order is DENIED.

IV. UDC'S MOTION TO INTERVENE

In preparing this Order, the court found a Motion to Intervene to which the current interveners have consented, but raised issues regarding the status and authority of June Wells. The court hereby sets an in-person evidentiary hearing on this Motion to Intervene for August 9, 2021 at 2 p.m.

IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW



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

Electronically signed on 2021-07-23 12:33:31 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
	)	Civil Action No.: 2018-CP-10-5739
Michael D. Royal)	
)	
Plaintiff,)	
	)	ORDER CONCERNING VARIOUS
vs.	)	DISCOVERY MOTIONS MADE
	)	BY CHARLESTON COUNTY
	)	SCHOOL DISTRICT AND PLAINTIFF
Free Kindergarten Association of	)	ROYAL’S MOTION FOR
Charleston, the Attorney General of the	)	PROTECTIVE ORDER
State of South Carolina and the Charleston)	
County School District,)	
)	
Defendants.)	
)	

THIS MATTER concerns the last known remaining substantial asset of Defendant Free Kindergarten Association of Charleston (“Free Kindergarten”). At issue in this action is the Real Estate Purchase and Sale Agreement executed on April 23, 2013 (the “Agreement”) for the sale of real property located at 34 Pitt Street, Charleston, South Carolina, 29401 (TMS 457-04-01-129) (the “Pitt Street Property”) owned by Free Kindergarten. Mrs. June Murray Wells (“Mrs. Wells”) executed the Agreement as the purported “Authorized Agent” of Free Kindergarten. Plaintiff Michael D. Royal (“Plaintiff Royal” or “Royal”) executed the Agreement as the alleged purchaser of the Pitt Street Property.

After the real estate transaction did not close, Plaintiff Royal initiated this civil action alleging breach of contract seeking damages and specific performance. Issues raised by Defendant the Attorney General of the State of South Carolina (“AG”) and Defendant Charleston County School District (the “District”) in this civil action include, *inter alia*, whether Mrs. Wells had legal authority to execute the Agreement on behalf of Free Kindergarten and whether Free Kindergarten

complied with the requirements of Title 33 of the South Carolina Code and various nonprofit and charitable trust/tax laws in connection with the real estate transaction.

Discovery is ongoing in the case. The District has filed a number of motions related to discovery. Plaintiff Royal filed a motion related to his deposition. This Order addresses the following motions which were considered during the pre-trial hearing held on May 17, 2021 and ruled on during a hearing held on June 7, 2021.

- Charleston County School District Notice of Motion and Fourth Motion to Compel filed May 7, 2021;
- Charleston County School District's Notice of Motion and Motion to Compel Deposition Testimony and Address Other Issues Raised During the Deposition of Plaintiff filed May 12, 2021;
- Charleston County School District's Notice of Motion and Motion for Sanctions for Failure to Cooperate in Discovery filed May 13, 2021; and
- Plaintiff Michael D. Royal's Notice of Motion and Motion for Protective Order as to the Deposition of Himself filed May 14, 2021.

Charleston County School District's Notice of Motion and Fourth Motion to Compel

Charleston County School District has filed four Motions to Compel requesting, *inter alia*, that Plaintiff produce a privilege log sufficient to allow for review and assessment of same with a right to challenge Plaintiff Royal's withholding of the documents and/or claim of privilege or other protection for the documents at a later date. Those four motions include:

1. Charleston County School District's Notice of Motion and Motion to Compel and Address Outstanding Discovery Matters filed on January 20, 2021 and discussed during the February 1, 2021 status conference;

2. Charleston County School District's Notice of Motion and Second Motion to Compel and Address Outstanding Discovery Matters filed on March 18, 2021 and considered during a hearing held on April 12, 2021; and
3. Charleston County School District's Notice of Motion and Third Motion to Compel ("District's Third Motion to Compel") filed on April 16, 2021 and considered during a hearing held on April 26, 2021.
4. Charleston County School District Notice of Motion and Fourth Motion to Compel ("District's Fourth Motion to Compel") filed May 7, 2021 considered during the pre-trial conference held on May 17, 2021.

In each motion, the District alleged that the information provided by Royal in prior privilege logsⁱ was not adequate to challenge the claimed privileges and protections. By Order of this Court filed on April 26, 2021, on the District's Third Motion to Compel, the Court ordered that "Plaintiff is to provide additional information as to the subject matter and number of pages as to the documents not produced by Plaintiff. This shall be done within 10 days." By its Fourth Motion to Compel, the District requested that it be reimbursed for expenses related to the four motions. Plaintiff Royal provided his final privilege log to the parties and the Court on May 17, 2021, the date of the pre-trial hearing. Plaintiff Royal's privilege log consisted of 528 pages and listed 604 documents that he claimed were privileged and/or otherwise protected. During the pre-trial hearing, the Court requested that Defendant District prepare a listing of documents appearing on the privilege log that it still challenged. The District submitted this list to the Court as requested by letter on June 1, 2021. By Order filed May 17, 2021, this Court also required that "Plaintiff is required to provide copies of the documents to which the privilege is asserted to the Court for in camera review as soon as possible for the Court to make its determination – no later than May 27,

2021.” Plaintiff Royal provided the documents to the Court on May 27, 2021. He also filed Plaintiff Michael D. Royal’s Memorandum in Opposition to Intervenor Charleston County School District’s Fourth Motion to Compel and June 1, 2021 Letter to the Court on June 5, 2021.

The Court has completed its in camera review of the documents withheld from production by Plaintiff Royal and finds that approximately 50% of those documents are not attorney-client privileged or otherwise protected. Accordingly, the Court has provided a list of those documents not deemed privileged or otherwise protected to all parties for review. Any challenges to the Court’s findings related to these documents shall be made not later than July 1, 2021.

Charleston County School District’s Notice of Motion and Motion to Compel Deposition Testimony and Address Other Issues Raised During the Deposition of Plaintiff and Plaintiff Michael D. Royal’s Notice of Motion and Motion for Protective Order as to the Deposition of Himself

On April 17, 2021, the District served a Notice of Deposition upon Plaintiff Royal in this action. After consulting with Plaintiff Royal and all parties, the Notice of Deposition scheduled Plaintiff Royal’s deposition for May 5 and May 6, 2021.

Plaintiff Royal’s deposition commenced at 10:36 a.m. on May 5, 2021 as scheduled. However, due to Mr. Royal’s conduct during the deposition, counsel for CCSD suspended Mr. Royal’s deposition to be re-noticed for a future date. On May 12, 2021, the District filed a Motion to Compel Deposition Testimony and Address Other Issues Raised During the Deposition of Plaintiff, seeking affirmative relief from the Court ordering Mr. Royal to discontinue his improper behavior and comply with the applicable rules of conduct in oral depositions.

In turn, Plaintiff Royal moved for a protective order in connection with his deposition. Specifically, Mr. Royal filed Plaintiff Michael D. Royal’s Notice of Motion and Motion for Protective Order as to the Deposition of Himself with the Court on May 13, 2021.

On June 7, 2021, the District filed its Memorandum in Support of Charleston County School District’s Motion to Compel Deposition Testimony and Address Other Issues Raised During the Deposition of Plaintiff and In Opposition to Plaintiff Michael D. Royal’s Motion for Protective Order as to the Deposition of Himself.

The Court considered both the District's Deposition Motion and Plaintiff Royal's Deposition Motion during the pre-trial hearing held on May 17, 2021. By its Order dated May 17, 2021, the Court ruled that the District's Deposition Motion would be determined subject to a subsequent hearing on Plaintiff's privilege log, received May 17, 2021, which hearing was to be held on June 7, 2021. The Court granted Plaintiff's Motion for Protective Order to the extent that the deposition will commence after the Court's ruling on the privilege log.

The Court further considered the District's Deposition Motion and Plaintiff Royal's Deposition Motion related to his deposition during a hearing held on June 7, 2021 and ruled that 1) the District's Motion to Compel Deposition Testimony is granted, 2) Plaintiff Royal's Motion for a special receiver is denied, 3) the Court orders Plaintiff Royal's legal counsel (Bybee & Tibbals) appear at the continuation of his deposition, such counsel being present for purposes of representation and empowered to lodge any and all objections to be made on behalf of Plaintiff Royal, 4) Royal will properly respond to all questions presented during the continuation of his deposition to allow for meaningful inquiry of the other parties, 5) no time limit will be placed on the duration of the deposition, and 6) the District's Motion for Sanctions is granted and Royal will be sanctioned with an award of fees to the District's counsel due to his misbehavior during the first day of his deposition and for costs related to the number of motions filed by the District due to Plaintiff Royal's failure to comply with the South Carolina Rules of Civil Procedure concerning discovery issues.

Charleston County School District's Notice of Motion and Motion for Sanctions for Failure to Cooperate in Discovery filed May 13, 2021

The District has filed multiple motions to compel requesting, *inter alia*, that Plaintiff Royal provide complete and non-evasive answers to written discovery, specifically addressing damages allegedly suffered by Plaintiff Royal. Concerning Plaintiff Royal's alleged damages claimed, the District:

- 1) filed Charleston County School District's Notice of Motion and Motion to Compel and Address Outstanding Discovery Matters ("District's Original Discovery Motion") on January 20, 2021 which was discussed during a status conference held on February 1, 2021 during which the Court indicated that certain items addressed in the District's Original Discovery Motion were to be produced by Plaintiff no later than March 15, 2021; and

2) filed Charleston County School District's Notice of Motion and Second Motion to Compel and Address Outstanding Discovery Matters which was heard on April 12, 2021 with a related order issued that date.

On November 3, 2020, counsel for the District provided Plaintiff Royal with a written request for, *inter alia*, complete and non-evasive answers to interrogatories and requests for production pursuant to SCRCP 11. Since then, four motions to compel have been filed by the District to compel discovery, including the two cited above which included requests for alleged damages information so that Plaintiff Royal's deposition could be taken.

To address the specific issue related to damages information, by the Master In Equity's Order dated April 12, 2021, the Court ordered "Plaintiff Royal has agreed to attend a damages deposition to be held by May 31, 2021. To facilitate this, Mr. Royal has 15 days to name an expert witness who will have 15 days to submit their report to the parties."

Royal did serve supplemental written discovery naming two expert witnesses on April 27, 2021, specifically, by Plaintiff Michael D. Royal's Third Amended Answers to Intervenor Charleston County School District's First Set of Interrogatories to Plaintiff. As for damages reports, defendants received an email from Mr. Royal dated May 12, 2021 with a single page of information which Plaintiff states is ". . .information from my expert, Jody Bishop." During the pre-trial hearing held on May 17, 2021 and the hearing held on June 7, 2021, Royal indicated that no further damages reports would be forthcoming and that his monetary damages claimed would only include damages related to the document provided on May 12, 2021; specifically, his monetary damages claimed would only include damages for lost income from parking spaces at the Pitt Street Property.

In consideration of the above, and for the foregoing reasons,

I, THEREFORE ORDER that Defendant Charleston County School District's Notice of Motion and Fourth Motion to Compel and Address Outstanding Discovery Issues which requests that documents listed on Plaintiff Royal's privilege log be produced, is GRANTED IN PART AND DENIED IN PART with a separate order forthcoming to identify the documents to be produced.

I FURTHER ORDER that Defendant Charleston County School District's Notice of Motion and Motion to Compel Deposition Testimony and Address Other Issues Raised During the Deposition of Plaintiff is GRANTED and that Plaintiff Royal shall properly respond to all questions presented during the continuation of his deposition to allow for meaningful inquiry of the other parties.

I FURTHER ORDER that Plaintiff Royal's Motion for Protective Order as to the Deposition of Himself is DENIED as to the request for a special referee and as to the request that a time limit be placed on his deposition.

I FURTHER ORDER that, Plaintiff Royal's counsel Jeff Tibbals or another member of his firm shall appear at the continuation of Mr. Royal's deposition for purposes of representation and is solely empowered to make any and all objections on behalf of Plaintiff Royal.

I FURTHER ORDER that Plaintiff Royal be sanctioned in the amount of \$1000.00ⁱⁱ to be paid to the Law Office of A. Bright Ariail, LLC, attorney for the District, for failure to comply with the South Carolina Rules of Civil Procedure related to his misconduct during his deposition and other costs expended by the District to compel discovery.

I FURTHER ORDER that Plaintiff Royal's purported damages expert's report(s) in this action shall be limited to the expert's document produced to all parties by Royal's email on May

12, 2021 and that any claim for monetary damages by Plaintiff Royal in this action shall be limited to alleged damages for lost income from parking spaces at the Pitt Street Property.

AND IT IS SO ORDERED this _____ day of June, 2021.

The Honorable Mikell R. Scarborough
Master-In-Equity

Charleston, South Carolina
June ____, 2021

ⁱ Royal has provided three different versions of his privilege logs dated November 24, 2020, April 12, 2021 and May 17, 2021.

ⁱⁱ Ms. Ariail indicated during the hearing on June 7, 2021 that her billing rate for this matter is \$250/hour. Accordingly, the sanctions were computed as two additional hours during Plaintiff Royal's deposition and two additional hours related to the costs and expenses related to the various discovery motions filed by the District in this case.



Charleston Common Pleas

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

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-06-21 10:20:07 page 9 of 9

Michael D Royal
PLAINTIFF(S)

Free Kindergarten Association Of Charleston et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant CCSD's Motion to Compel Deposition Testimony is GRANTED. CCSD's Motion for Sanctions is GRANTED in the amount of \$1,000 to be paid to Bright Ariail, attorney for CCSD. Plaintiff's Motion for Protective Order is DENIED as to the special referee request. The Court orders that Jeff Tibbals, Esq. or another member of his firm shall appear at Mr. Royal's deposition for purposes of representation and any objections to be made. On CCSD's Motion to Compel Plaintiff's Privilege Log, the Court grants in part and denies in part the Motion and will enter a separate order on the privilege log. Formal Order to follow.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/07/2021 .

Michael D Royal for Michael D Royal
Michael D Royal for Michael D Royal

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Michael D Royal VS Free Kindergarten Association Of Charleston ,
defendant, et al
Case Number: 2018CP1005739
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-06-07 12:57:01 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
	)	Civil Action No.: 2018-CP-10-5739
Michael D. Royal)	
)	
Plaintiff,)	
	)	ORDER APPOINTING
vs.	)	RECEIVER FOR DEFENDANT
	)	FREE KINDERGARTEN
	)	ASSOCIATION OF CHARLESTON
Free Kindergarten Association of)	
Charleston, the Attorney General of the)	
State of South Carolina and the Charleston)	
County School District,)	
)	
Defendants.)	
)	

THIS MATTER concerns the last known remaining substantial asset of Defendant Free Kindergarten Association of Charleston (“Free Kindergarten”), which is the subject of the above captioned civil action. At issue in this action is a Real Estate Purchase and Sale Agreement executed on April 23, 2013 (the “Agreement”) whereby Plaintiff Michael D. Royal (“Royal”) agreed to purchase real property located at 34 Pitt Street, Charleston, South Carolina, 29401 (TMS 457-04-01-129) (the “Receivership Property”) owned by Free Kindergarten. Mrs. June Murray Wells (“Mrs. Wells”) executed the Agreement as the purported “Authorized Agent”. After the real estate transaction did not close, Royal initiated this civil action alleging breach of contract seeking specific performance. Issues raised by Defendant the Attorney General of the State of South Carolina (“AG”) and Defendant Charleston County School District (the “District”) in this civil action include, *inter alia*, whether Mrs. Wells had legal authority to execute the Agreement on behalf of Free Kindergarten and whether Free Kindergarten complied with requirements of Title 33 of the South Carolina Code and various nonprofit and charitable trust/tax laws in connection with the real estate transaction. Ms. Wells passed away on November 29, 2020.

Patrick F. Stringer of Stringer and Stringer represents Free Kindergarten in this matter. On January 29, 2021, Free Kindergarten, through its counsel Stringer and Stringer, filed Defendant Free Kindergarten Association of Charleston Notice of Motion and Motion to Appoint Receiver (the "Motion"). After discussions regarding the Motion during a status conference held on February 1, 2021, the parties have agreed that appointment of a receiver is appropriate with the powers and responsibilities further described herein and have consented to the Court selecting the receiver.

I, THEREFORE FIND that Joseph K. Qualey, Esquire be appointed Receiver for the Free Kindergarten Association of Charleston as it relates to this litigation and to its dissolution, and that the Receiver's fee shall be \$ 250.00 per hour for the services that he/she provides with payment being deducted from the proceeds of the sale of the Receivership Property.

I FURTHER FIND that the Receiver shall take possession of the real property located at 34 Pitt Street, Charleston, SC 20401 (TMS 457-04-01-129) (the "Receivership Property") and any personal property contained therein.

I FURTHER FIND that the Receiver is given full powers, pursuant to 1976 SC Code of Laws § 33-31-1432, to make decisions for Free Kindergarten related to this litigation and to its dissolution, subject to the conditions contained herein.

I FURTHER FIND that, based on the current condition of the Receivership Property, that no repairs or maintenance shall be made thereto, without express approval of this Court.

I FURTHER FIND that the Receiver cannot sell the Receivership Property without the express approval of this Court and that:

- 1) the sale, any contract for sale, and any closing statement shall be subject to express approval by this Court; and

2) the sale of the Receivership Property shall be free and clear of all liens and encumbrances.

I FURTHER FIND that the Receiver shall file monthly reports with this Court beginning on April 1, 2021 and thereafter on a monthly basis until the Receiver is discharged and that upon termination of the Receivership, that a final report and accounting be submitted to the Court for approval prior to discharge of the Receiver.

I FURTHER FIND that the Receiver shall act in such capacity until resolution of this civil action and dissolution of the Free Kindergarten Association of Charleston.

I FURTHER FIND, that notwithstanding the above paragraph, the Receiver may be relieved at his request at any time and, further, that he shall serve without the need to post a bond.

AND IT IS SO ORDERED!

The Honorable Mikell R. Scarborough
Master-In-Equity

Charleston, South Carolina
February ____, 2021



Charleston Common Pleas

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

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-02-19 13:08:27 page 4 of 4

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

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

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

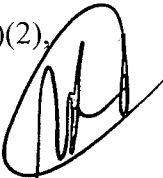
**ORDER GRANTING MOTION OF
 CHARLESTON COUNTY SCHOOL
 DISTRICT TO INTERVENE**

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

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),



R. p. 78

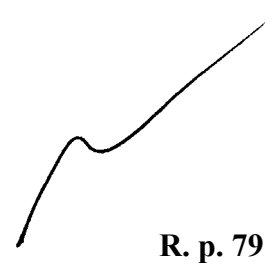
CCSD asserted it was entitled to intervene as of right on the following grounds: 1) CCSD's Motion to Intervene was timely; 2) CCSD has an interest relating to the real property and real estate transaction which is the subject of the lawsuit; 3) disposition of the lawsuit without CCSD's intervention may 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.



R. p. 79

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.¹ 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.

¹ 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 (4th 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 therein², 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

² 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.³

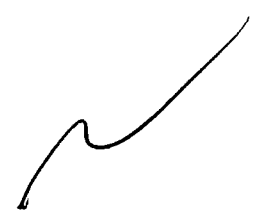
In summary, pursuant to Act 340, all fiscal and administrative powers and duties, as well as all assets held by the eight school districts were absorbed by and vested in the CCSD, saving only those narrow administrative functions for the constituent districts cited above. *United States II*, 960 F.2d 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.

³ 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:

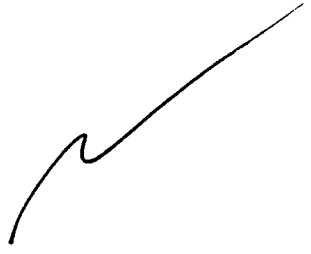
SECTION 59-17-70. Effect of consolidation

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 ^{of the} 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.

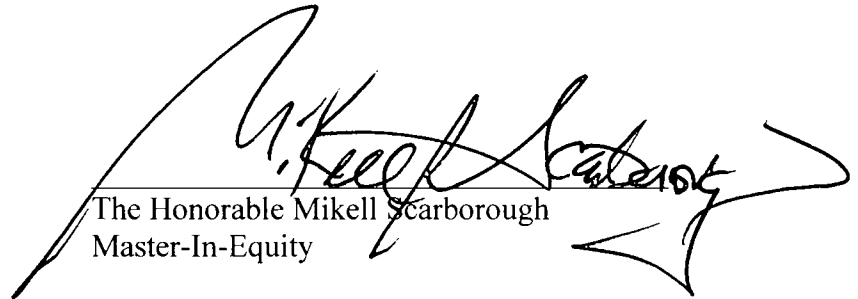
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Conclusion

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	C.A. No.: 2018-CP-10-5739
)	
Michael D. Royal,)	
)	
	)	Order Granting Motion of the Attorney
Plaintiff,	)	General of the State of South Carolina
	)	to Intervene
v.)	
)	
Free Kindergarten Association of)	
Charleston,)	
)	
Defendant.)	

FILED
 2019 JUL 10 PM 3:25
 JULIE J. AMMISTON
 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, SCRPC, 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



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.

A handwritten signature in black ink, appearing to be 'JW', enclosed within a circular scribble.

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.

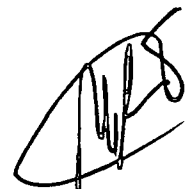
The AG’s role in supervising public charities and charitable trusts is well established in South Carolina. S.C. Code Ann §1-7-130 provides “The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration 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*

A handwritten signature in black ink, appearing to be 'MPS', enclosed within a hand-drawn oval shape.

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

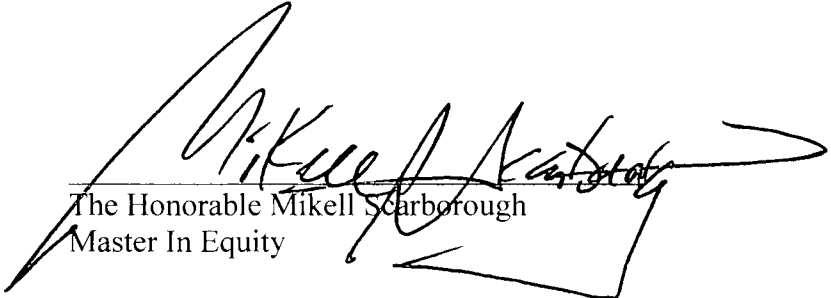
Also in *South Carolina Dept. of Mental Health v. McMaster*, the Department of Mental Health petitioned for a determination as to whether the property on Bull Street in Columbia (conveyed to it for the charitable purpose of operating the State mental hospital) could be sold and named the AG as a defendant 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

Michael D. Royal

Free Kindergarten Association of Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2019 JUN -7 AM 10:10
FILED
JULIE J. ARMSTRONG
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: After the Court's review of the the parties' memoranda and oral arguments, the Attorney General's Motion to Intervene is GRANTED, as a matter of right, pursuant to Rule 24(a)(1), SCRPC. The Charleston County School District's Motion to Intervene is GRANTED, as permissive intervention, pursuant to Rule 24(b), SCRPC. Formal order to follow.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

3062

Judge Code

6/4/2019

Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
_____ JUDICIAL CIRCUIT

CASE NO.: 2018CP-10-5739

MICHAEL D. ROYAL)

Plaintiff)

vs.)

FREE KINDERGARTEN)

ASSOCIATION OF CHARLESTON)
Defendant)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____
Bar No. PRO SE
Address: 14 LOCKWOOD DR., APT 12D
CHARLESTON SC 29401
Phone: _____ Fax _____
E-mail: _____ Other: Michael@pareto.gs

Defendant's Attorney: RICK STRINGER
Bar No. _____
Address: 753 FOLLY RD.
CHARLESTON, SC
Phone: _____ Fax _____
E-mail: _____ Other: stringer@yahoo.com

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Michael D. Royal
Signature of Attorney for Plaintiff / Defendant

Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court, or,
redacted to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Michael D. Royal,

Plaintiff,

vs.

Free Kindergarten Association of Charleston,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2018-CP-10-5739

CONSENT ORDER OF REFERENCE

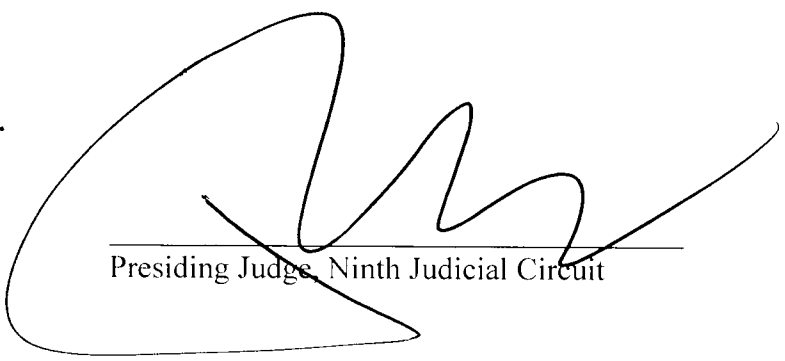
BY _____
JULIE A. HOFFMAN
CLERK OF COURT
10:59 MAR 21 PM 3:21
3/21/2019

IT APPEARING TO THE COURT that the parties wish to refer the above-entitled action to the Master-In-Equity for Charleston County, in accordance with Rule 53(b), SCRPC;

NOW, THEREFORE, pursuant to Rule 53, SCRPC, and by and with consent of the parties by counsel;

IT IS HEREBY ORDERED that the above-entitled action is referred to the Honorable Mikell Ross Scarborough, Master-in-Equity for Charleston County, with finality, to make findings of fact and conclusions of law, dispose of any and all issues, enter a final judgment in the case, and hear any issues after judgment. Any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina Court of Appeals or South Carolina Supreme Court, as appropriate.

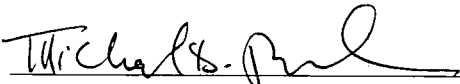
AND IT IS SO ORDERED.



Presiding Judge, Ninth Judicial Circuit

3/19, 2019
Charleston, SC

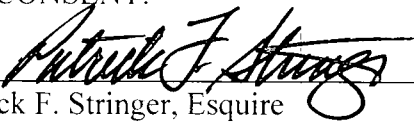
WE CONSENT:



Michael D. Royal
14 Lockwood Drive, Apt. 12D
Charleston, SC 29401
843.202.0604
michael@pareto.gr

PRO SE PLAINTIFF

WE CONSENT:



Patrick F. Stringer, Esquire
753 Folly Road
P.O. Box 12370
Charleston, SC 29422-2370

ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Michael D. Royal,

Case No. 2018-CP-10- 5 739

Plaintiff,

vs.

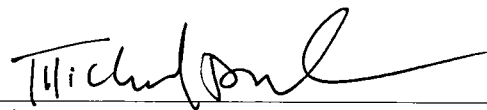
**SUMMONS
(Breach of Contract/Specific Performance)**

Free Kindergarten Association of Charleston,

Defendant.

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at his address of 14 Lockwood drive, Apartment 12D, Charleston, South Carolina 29401 within thirty (30) days after the date of such service, exclusive of the day of service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Michael D. Royal
14 Lockwood Drive, Apt. 12D
Charleston, SC 29401
(843) 202-0604
michael@pareto.gr

PRO SE PLAINTIFF

December 4, 2018
Charleston, South Carolina

2018 DEC -4 PM 1:06
JULIA J. WILSON
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Michael D. Royal,

Case No. 2018-CP-10- **5739**

Plaintiff,

vs.

Free Kindergarten Association of Charleston,

Defendant.

**COMPLAINT
(Non-Jury Trial)**

2018 DEC -4 PM 1:07
JUDGE: [illegible]
CLERK: [illegible]

NOW COMES Plaintiff Michael D. Royal, complaining of Defendant Free Kindergarten Association of Charleston, and avers and alleges as follows:

INTRODUCTION

1. This Complaint presents an action for breach of contract and specific performance of a contract to sell real property located in Charleston County, South Carolina, brought on behalf of the Plaintiff, the buyer under the contract, against the Defendant, the seller under the contract.

PARTIES

2. Plaintiff Michael D. Royal ("Royal") is a citizen and resident of the State of South Carolina and resides in Charleston County, South Carolina.

3. Defendant Free Kindergarten Association of Charleston (the "Association") is a nonprofit corporation organized and existing under the laws of the State of South Carolina.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the parties hereto and has subject matter jurisdiction over this action, and venue is proper in this forum as the real property at issue is located in Charleston County, South Carolina.

FACTUAL BACKGROUND

5. On April 23, 2013 (the “Effective Date”), Royal and the Association entered into a real estate purchase and sale agreement (the “Agreement”) for certain real property bearing the address of 34 Pitt Street, Charleston, Charleston County, South Carolina 29401 and identified by Charleston County as TMS No. 457-04-01-129 (the “Property”). A copy of the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

6. The purchase price for the Property pursuant to the Agreement was three hundred fifteen thousand two hundred and 0/100 dollars (\$315,200.00) (the “Purchase Price”), matching the fair market value of the Property determined by an MAI-designated appraiser in December 2012, four months prior to the Effective Date. A copy of the appraisal report is attached hereto as **Exhibit B** and incorporated herein by reference.

7. Section 4 of the Agreement requires the Association to convey marketable title to the Property to Royal.

8. Pursuant to the requirements of section 2 of the Agreement, Royal paid to the Association a down payment in the amount of five thousand and 0/100 dollars (\$5,000.00).

9. The Association expressed to Royal a need for maximum flexibility around the timing of its vacating of the Property. After multiple discussions, Royal agreed to provide for that maximum flexibility by, in section 7 of the Agreement, allowing the Association to choose its own closing date within the period from the Effective Date until April 9, 2018, a period of almost five years.

10. Because of Royal’s uncertainty about the timeframe for the closing, the parties agreed that if the Agreement were not to close in the near term (by May 31, 2013, 38 days after the Effective Date), Royal would have the right to cancel the Agreement if he was not in a financial

position to close when the Association eventually called for a closing. Under those circumstances, the parties agreed that Royal would forfeit, and the Association would retain, the down payment of five thousand and 0/100 dollars (\$5,000.00).

11. The structuring of a flexible closing timeframe was created solely to suit and benefit the Association. Royal did not desire to wait for a closing and was ready, willing, and able to close on the Property by May 31, 2018. Royal agreed to the possibility of an extended closing only to accommodate the Association's stated needs.

12. Besides allowing the Association great flexibility in choosing a closing date, the Agreement contained other terms that were favorable for the seller, including:

- a. The parties agreed that no brokerage fees would apply to the closing (typically the selling party pays brokerage commission out of sale proceeds);
- b. Royal agreed to pay all closing costs;
- c. Royal agreed to reimburse the Association for its legal expenses up to \$1,000;
- d. Royal was not entitled to an "initial look" or "due diligence" period, but rather was immediately bound and obligated to purchase the Property upon signing the Agreement (at least until May 31, 2013, at which point Royal had the option to terminate the Agreement, as discussed above, but would have to forfeit the down payment).

13. Throughout the period from the Effective Date until the beginning of 2018, Royal politely but persistently contacted the Association seeking to close the Agreement so that Royal could occupy the Property. Royal offered on multiple occasions to provide assistance to the Association to facilitate closing, but the Association would not commit to a closing date.

14. On or around April 5, 2018, counsel for the Association requested that Royal agree to an amendment to the Agreement to extend the closing to April 26, 2018. Royal assented, and the parties executed an addendum to the Agreement on April 11, 2018. A copy of the addendum is attached hereto as **Exhibit C** and incorporated herein by reference.

15. However, the Association was not willing to close by April 26, 2018, and requested an additional closing extension from Royal. Royal agreed to the second extension, but had not received the executed second addendum from the Association by the amended closing date. Consequently, Royal sent the Association's counsel an email on April 26, 2018, tendering performance, and stating that he had the necessary funds available to close. Royal further requested that the Association either send the signed second addendum, or advise Royal of where to meet for closing and to provide wiring instructions. A copy of this email is attached hereto as **Exhibit D** and incorporated herein by reference.

16. On April 27, 2018, Royal received a copy of the executed second addendum to the Agreement, signed April 24, 2018 by the Association, which extended the closing to May 25, 2018. A copy of the second addendum is attached hereto as **Exhibit E** and incorporated herein by reference.

17. Thereafter, the Association sent a letter to Royal, dated May 11, 2018, refusing to close on the Property "without approval of the Attorney General." A copy of this letter is attached hereto as **Exhibit F** and incorporated herein by reference. Approval by the Attorney General was not an express or implied condition to closing under the Agreement.

18. On May 14, 2018, the date that Royal received the letter attached as **Exhibit F**, Royal sent an email to the Association's counsel, stating that the letter of May 11, 2018 amounted

to anticipatory breach of the Agreement. A copy of this correspondence is attached hereto as **Exhibit G** and incorporated herein by reference.

19. Subsequently, on May 18, 2018, Mary Frances Jowers, Assistant Deputy Attorney General (“Jowers”), sent an email to Royal, wherein she stated, “The position of the Attorney General in this sale, as in all sales under section 33-31-1202, is that the sale cannot be completed until the Attorney General completes our review.” A copy of this email is attached hereto as **Exhibit H** and incorporated herein by reference.

20. The only sentence of S.C. Code Ann. § 33-31-1202 that refers to the Attorney General is the sentence which comprises the whole of subparagraph (f), which states, “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.” (The Association had already complied with the requirement for nonprofit corporations to give the Attorney General the above-described notice, a copy of which is attached hereto as **Exhibit I** and incorporated herein by reference.) No language at all within § 33-31-1202, in part or taken as a whole, empowers the Attorney General, or makes reference to any power of the Attorney General, to review, approve, disapprove, invalidate, prolong, terminate, inquire about, or in any way directly or indirectly interfere with a contract between a nonprofit corporation, such as the Association, and any other party.

21. On May 18, 2018, Royal gave notice to the Association and the Attorney General that the statutory provision cited by Jowers provided no basis for the Attorney General’s claim of authority over the Agreement and that it provided no basis whatsoever for the Association’s failing

to close the sale under the terms of the Agreement. A copy of Royal's email is attached hereto as **Exhibit J** and incorporated herein by reference.

22. On June 28, 2018, more than a month after the second amended closing date, the Association's counsel notified Royal via email that the Association refused to close on the Agreement and convey the Property to Royal under the terms of the Agreement, indicating that such conveyance required approval from the Attorney General, and such approval would not be forthcoming because the value of the Property had increased since the time of the Effective Date. A copy of this email is attached hereto as **Exhibit K** and incorporated herein by reference.

23. On the same day, Royal sent a reply notice to the Association advising the Association that it was in default of the Agreement and demanding that the parties close on the Agreement. A copy of this email is attached hereto as **Exhibit L** and incorporated herein by reference.

24. Despite Royal's attempts to perform under the Agreement, the Association has failed and/or refused to comply with its obligations pursuant to the Agreement to convey the Property to Royal.

25. Royal has remained, and currently stands, ready, willing, and able to convey the funds necessary and perform any and all necessary ancillary duties to fulfill completely his obligations pursuant to the Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Agreement/Specific Performance)

26. Royal incorporates the allegations of the preceding paragraphs of this Complaint as if set forth herein verbatim.

27. Royal and the Association entered into a valid and enforceable agreement.

28. The Agreement included the essential material terms of an offer and acceptance of the offer, a mutual meeting of the minds on all terms contained in the Agreement attached as Exhibit A, the payment of partial consideration, and a willingness and duty to pay the entire consideration. Royal, under these facts, has an equitable interest in title to the Property.

29. The Association's failure and refusal to convey marketable title constitutes a material breach of the Agreement.

30. The Association's actions evidence an intention to breach the Agreement and constitute breaches of the covenant of good faith and fair dealing inherent in all contracts.

31. Royal has suffered consequential and incidental damages as a result of the Association's breach of the Agreement.

32. Such damages include, but are not limited to, lost rental income that the Property could have generated for Royal from May 25, 2018 to the date of judgment, plus interest.

33. Because of the unique nature of real property, Royal cannot be fully compensated monetarily for the Association's material breaches of the Agreement.

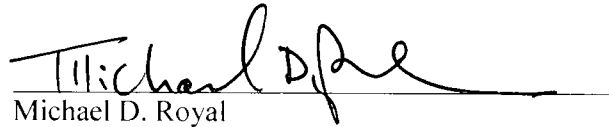
34. The Agreement has been partly carried into execution by Royal with the approbation of the Association as Royal took steps required to close on the Property pursuant to the Agreement.

35. Royal stands ready, willing, and able to perform his obligations pursuant to the terms of the Agreement and has not breached the terms of the Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael D. Royal prays for an Order of this Court granting judgment in favor of the Plaintiff against the Defendant Free Kindergarten Association of Charleston, granting specific performance to Royal and ordering the Association to convey

marketable fee simple title to the Property to Royal, and awarding consequential and incidental damages with prejudgment and post-judgment interest, together with such other and further relief as the Court deems just and proper.

A handwritten signature in black ink, appearing to read "Michael D. Royal", written over a horizontal line.

Michael D. Royal
14 Lockwood Drive, Apt. 12D
Charleston, SC 29401
(843) 202-0604
michael@pareto.gr

PRO SE PLAINTIFF

December 4, 2018
Charleston, South Carolina

EXHIBIT A

Real Estate Purchase and Sale Agreement
Dated April 23, 2013

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**"), entered into by Michael D. Royal, whose address is 59-A King Street, Charleston, SC 29401 (the "**Purchaser**") and the Free Kindergarten Association of Charleston, whose address is c/o June M. Wells, PO Box 547, Folly Beach, SC 29439 (the "**Seller**"), shall become binding upon the parties hereto or their assigns on the date signed by both parties (the "**Effective Date**").

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and the Downpayment paid to the Seller, the Purchaser and the Seller agree as follows:

WITNESSETH

1. **THE PROPERTY.** The Seller agrees to sell and convey, and the Purchaser agrees to buy, all of the Seller's estate, right, title and interest in the following described property (the "**Property**"), in its present condition:

ALL that certain piece, parcel or lot, together with all improvements thereon, situate, lying and being on the East side of Pitt Street, in the City of Charleston, County of Charleston, State of South Carolina, and known in the present numbering of streets as No. 34 Pitt Street.

SAID NO. 34 PITT STREET, measuring and containing Fifty-Six (56) feet Six (6) inches, more or less, in front on Pitt Street, and One Hundred Seventy (170) feet, more or less, on the North and South lines.

BUTTING AND BOUNDING to the North on lands now or late of W. M. McCormack; East on lands now or late of Oswald Reeder, I. Jennings and Gertrude M. Touhey; South on lands now or late of Gertrude M. Touhey; and West on Pitt Street.

TMS No.: 457-04-01-129

2. **PAYMENT OF PURCHASE PRICE.** The Purchaser agrees to pay as the full purchase price of the Property the total sum of **Three Hundred Fifteen Thousand Two Hundred and 00/100 Dollars (\$315,200.00)** (the "**Purchase Price**"), payable as follows:

a. **Downpayment.** The sum of **Five Thousand and 00/100 Dollars (\$5,000.00)** on the Effective Date as a binder, hereinafter referred to as the "**Downpayment.**" The Seller's signature below acknowledges receipt of the Downpayment. The Seller is entitled to keep the Downpayment, and the Downpayment shall not be

refundable to the Purchaser unless the circumstances in the following sentence arise. If the Seller (a) is unable to show authority for its agent to act on its behalf, (b) is otherwise unable to convey good and marketable title to the Property as 100% fee simple owner, free from any educational use restriction, or (c) defaults under this Agreement, then, and only then, shall the Purchaser be entitled to a refund of the Downpayment, and only if the Purchaser, for one of the three reasons stated above, decides not to close the Agreement.

- b. **Balance.** The balance of the Purchase Price shall be due at Closing and payable in cash, certified funds or cashier's check.

3. **PAYMENT OF CLOSING COSTS, TAXES AND ASSESSMENTS, AND OTHER FEES.** The Purchaser shall be responsible for paying or reimbursing to Seller those closing costs customarily paid by sellers and purchasers of real property in Charleston County, South Carolina. In particular, Purchaser shall be responsible for the payment of the deed recording fee and any property taxes in the year of the Closing. Purchaser and Seller agree that there shall not be any real estate agency or brokerage fees. In addition, Purchaser agrees to reimburse Seller for any of Seller's attorney fees up to **One Thousand and 00/100 Dollars (\$1,000.00)**. In addition, the parties anticipate that the Seller may wish that prior to the Closing Date the Purchaser bear certain other costs and expenses on behalf of the Seller associated with the Property and the Seller's transition out of it, such as the organization and disposition of the contents of the Property. Such costs and expenses, if requested or approved by the Seller in writing and if borne by the Purchaser, shall be reimbursed to the Purchaser out of the sale proceeds at the Closing.

4. **TITLE.** At Closing, the Seller shall convey to Purchaser in fee simple, by limited warranty deed, good and marketable title to the Property, together with any and all easements and other property interests incidental or appurtenant thereto, and shall convey the Property clear of all liens and encumbrances with the exception of the lien of Charleston County taxes for the current year. The Property shall be conveyed subject to any easements, equitable restrictions, limitations on use and affirmative obligations as specified in any covenants and restrictions, or on any plat, recorded in the R.M.C. Office for Charleston County, South Carolina as of the Effective Date.

5. **TITLE DEFECT NOT TO BE CONSIDERED A DEFAULT BY SELLER.** Should the title to the Property prove to be defective, the Seller shall not for that reason be in default of this Agreement and shall not be required to incur any expense to render title to the Property marketable. Should title research reveal, and should Seller acknowledge in writing, that Seller owns only a partial interest in the Property, the Purchaser shall be entitled to buy such partial interest from the Seller, and under those circumstances, the Purchase Price shall be reduced to an amount equivalent to the percentage of ownership owned by the Seller multiplied by the amount of the Purchase Price as initially defined above in Paragraph 2. For example, if Seller were to

acknowledge in writing that Seller owns a fifty percent (50%) interest in the Property, Purchaser could opt to purchase Seller's interest in the Property for fifty percent (50%) of the initially described Purchase Price, or **One Hundred Fifty-Seven and 00/100 Dollars (\$157,600.00)**.

6. **FURTHER ASSURANCES.** The Seller shall use reasonable and timely efforts to take any actions and execute and deliver such further documents as may be reasonably required in good faith to consummate the transaction contemplated by this Agreement; however, the parties do not intend for Seller to bear any expenses arising from such further actions, and Purchaser agrees to bear any such expenses. For example, if Seller is unable to provide documentation of June M. Wells' authority to dispose of the Property on behalf of the Seller, the Seller and Mrs. Wells agree to petition the Court of Common Pleas of Charleston County to establish her authority, and Purchaser shall bear any court costs.

7. **CLOSING.** The closing of this Agreement (the "**Closing**") shall be held at the location of the Property, or at such other location mutually agreed to by the parties, on April 9, 2018 or on such prior date chosen by the Seller upon reasonable notice to the Purchaser (the "**Closing Date**"). If for any reason the Seller's authorized agent changes to a person other than June M. Wells, the Seller shall notify the Purchaser, and the Closing Date shall be within sixty days after such change unless otherwise agreed by the parties.

8. **CONDITIONS TO CLOSING.** If the Seller chooses a Closing Date after May 31, 2013, then if by the Closing Date the Purchaser, in his sole discretion, determines that a purchase of the Property is not suitable for himself financially, he shall not have an obligation to close the Agreement, and the Agreement shall terminate.

9. **SELLER'S EXCLUSIVE POSSESSION AND USE OF PROPERTY.** The Seller is assured that the Seller shall continue to have exclusive rights to possession and use of the property until the Closing Date, but agrees not to encumber the Property until that time.

10. **APPLICABLE LAW AND ENTIRE AGREEMENT.** This Agreement shall be governed, enforced and construed in accordance with the laws of the State of South Carolina, and shall be binding on the parties hereto, and their respective heirs, devisees, executors, administrators, successors, and assigns. The parties further covenant and agree that this written instrument supersedes any and all others, and constitutes and expresses the entire agreement between the parties and there is no other agreement, oral or otherwise, varying or modifying the terms of the same.

11. **FACSIMILE COPIES.** The parties agree that the offer, any counteroffer, and any acceptance of any offer or counteroffer pursuant to this Agreement may be communicated by use of facsimile or scanned copy, and may be signed in counterparts, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and

binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

12. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under proper authority:

SELLER

Free Kindergarten Association of Charleston

By: June Murray Wells
June M. Wells, Authorized Agent

Date: April 23, 2013

**STATE OF SOUTH CAROLINA
NOTARY PUBLIC
DONNA TRAPP OOSTDYK**

STATE OF SOUTH CAROLINA §
§
COUNTY OF CHARLESTON §

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the 23rd day of April, 2013 by June M. Wells, as Authorized Agent for the Free Kindergarten Association of Charleston.

Donna Trapp Oostdyk
Notary Public, State of South Carolina
My commission expires: 9-22-21

PURCHASER

Michael D. Royal
Michael D. Royal

Date: April 23, 2013

**STATE OF SOUTH CAROLINA
NOTARY PUBLIC
DONNA TRAPP OOSTDYK**

STATE OF SOUTH CAROLINA §
§
COUNTY OF CHARLESTON §

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the 23rd day of April, 2013 by Michael D. Royal.

Donna Trapp Oostdyk
Notary Public, State of South Carolina
My commission expires: 9-22-21

Charleston County RMC

101 Meeting Street, Suite 200 <> Charleston, SC 29401
 PO Box 726 <> Charleston, SC 29402
 V: 843.958.4800 <> F: 843.958.4803
 www.charlestoncounty.org

Charlie Lybrand, RMC
Elaine Bozman, Deputy RMC



RECORDER'S RECEIPT

Received From:

COUNTER CUSTOMER
 MICHAEL ROYAL
 59-A KING STREET
 CHARLESTON, SC 29401

DATE: 23-Apr-13
INVOICE #: X000155490
DRAWER: Drawer 1
CLERK: KLH
TIME: 01:38:13 PM

Description	#		Ex / Tr		Pstg	Value in 000	Unit Price	Extra Ref Cost	County Fee	State Fee	Item Total
	Total Pgs	Bill'd Pgs	Page Cost	# Refs Chat							
Contr/Sale	3	2			\$ 0.50	\$10.00		\$ -	\$ -	\$ 10.50	
PhotoCopies						\$1.50		\$ -	\$ -	\$ 1.50	
								\$ -	\$ -	\$ -	
								\$ -	\$ -	\$ -	
								\$ -	\$ -	\$ -	
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								\$ -	\$ -	\$ -	
								\$ -	\$ -	\$ -	
TOTAL										\$ 12.00	

Paid:

Check #	Amount
Check Total	\$ -
Cash Total	\$ 12.00

Total Paid: \$ 12.00


Balance: \$ -

***Please note:**
 The RMC Office retains any recording fee overages of \$5 or less. If you would like to request a refund for an overage that applies to this transaction, you may do so by contacting the RMC Office, in writing, at the address above.

It is our pleasure to serve you!

EXHIBIT B

Appraisal of 34 Pitt Street
Effective Date of December 19, 2012



**SUMMARY APPRAISAL REPORT OF
THE PROPERTY LOCATED AT**

34 Pitt Street

Charleston, SC 29401

as of

December 19, 2012

for

Michael D. Royal
59A King Street
Charleston, SC 29401

by

Charleston Appraisal Service, Inc.

304 Meeting Street, Suite 201
Charleston, SC 29401

Charleston Appraisal Service, Inc.
304 Meeting Street, Suite 201
Charleston, SC 29401
843-723-6256

January 11, 2013

Michael D. Royal
59A King Street
Charleston, SC 29401

Property - 34 Pitt Street
Charleston, SC 29401
Borrower - Michael D. Royal
File No. - 12-149
Case No. -

Dear Mr. Royal:

In accordance with your request, I have prepared an appraisal of the real property located at 34 Pitt Street, Charleston, SC

The purpose of the appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the Summary Report which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of December 19, 2012 is .

\$315,200

The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,
Charleston Appraisal Service, Inc.

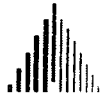
Michael C. Robinson, MAI, SRA
SC Certification #CG-76

COPY

Client File #:

Appraisal File #:

12-149


**Appraisal
Institute®**
*Professionals Providing
Real Estate Solutions*

Summary Appraisal Report - Residential

Appraisal Company: Charleston Appraisal Service, Inc.

Address: 304 Meeting Street, Suite 201, Charleston, SC 29401

Phone: 843-723-6256 Fax: 843-723-4676 Web:

AI Reports™ Form
AI-100.01

Appraiser: Michael C. Robinson, MAI, SRA

Co-Appraiser:

AI Membership: SRA MAI SRPA Associate member None AI Membership: SRA MAI SRPA Associate member None

E-mail: mrobinson@charlestonappraisal.com

E-mail:

Client: Michael D. Royal

Contact: Mr. Michael D. Royal

Address: 59A King Street, Charleston, SC 29401

Phone: 803-284-9258

Fax:

Email: michael@ofrontier.com

REAL ESTATE IDENTIFICATION

Address: 34 Pitt Street

City: Charleston

County: Charleston

State: SC

Zip: 29401

Legal Description: 34 Pitt Street

Tax Parcel #: 457-04-01-129

RE Taxes: Exempt

Tax Year:

SUBJECT PROPERTY HISTORY

Owner of Record: City of Charleston (Per Tax Map)

Description and analysis of sales within 3 years (minimum) prior to effective date of value: NONE

Description and analysis of agreements of sale (contracts), listings, and options: NONE

RECONCILIATIONS AND CONCLUSIONS

Indicator of Value by Sales Comparison Approach \$ 315,200

Indicator of Value by Cost Approach \$ N/A

Indicator of Value by Income Approach \$ N/A

Final Reconciliation of the Methods and Approaches to Value: The Cost Approach is not necessary since the building on the site does not contribute value. Its cost to demolish and remove would typically be a purchaser's expense; so that cost must be deducted for the vacant land value estimate. The Sales Comparison Approach provides the best indication of market value in appraisals of vacant sites. The Income Capitalization Approach is of no use since vacant lots are not typically traded for their income producing characteristics.

Opinion of Value as of: December 19, 2012 **\$** 315,200

Subject to any hypothetical conditions or extraordinary assumptions stated in the Assignment Parameters section.

AIReports™

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11/08/05

Charleston Appraisal Service, Inc.
 *NOTICE: The Appraisal Institute publishes this form for use by appraisers where the appraiser deems use of the form appropriate. Depending on the assignment, the appraiser may need to provide additional data, analysis and work product not called for in this form. The Appraisal Institute plays no role in completing the form and disclaims any responsibility for the data, analysis or any other work product provided by the individual appraiser(s).

Client:	Michael D. Royal	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	12-149

ASSIGNMENT PARAMETERS

Intended User(s): Michael C. Royal

Intended Use: For consideration in submitting an offer to purchase the property.

This report is not intended by the appraiser for any other use or by any other user.

Type of Value: Market Value Effective Date of Value: December 19, 2012

Interest Appraised Fee Simple Leasehold Other:

Hypothetical Conditions: (A hypothetical condition is that which is contrary to what exists, but is asserted by the appraiser for the purpose of analysis. Any hypothetical condition may affect the assignment results.) NONE

Extraordinary Assumptions: (An extraordinary assumption is directly related to a specific assignment and presumes uncertain information to be factual. If found to be false this assumption could alter the appraiser's opinions or conclusions. Any extraordinary assumption may affect the assignment results.) For purposes of this appraisal, I assume the subject site has no wetlands; that there is no groundwater contamination; and that there are no hazardous materials or contaminated soils present. I assume the site to contain 9,435 square feet as represented on the attached tax map. Should a subsequent survey indicate this to be incorrect, my value estimate could be impacted.

In accordance with Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP), this is a summary appraisal report.

SCOPE OF WORK

Definition: The scope of work is the type and extent of research and analysis in an assignment. Scope of work includes the extent to which the property is identified; the extent to which tangible property is inspected; the type and extent of data researched; and the type and extent of analysis applied to arrive at opinions or conclusions. The specific scope of work for this assignment is identified below and throughout this report.

<p>Inspection of Subject:</p> <p>Appraiser: <input type="checkbox"/> None <input type="checkbox"/> Interior <input checked="" type="checkbox"/> Exterior <input checked="" type="checkbox"/> Date of Inspection 11/28/12</p> <p>Co-Appraiser: <input checked="" type="checkbox"/> None <input type="checkbox"/> Interior <input type="checkbox"/> Exterior <input type="checkbox"/> Date of Inspection</p> <p>Living Area Measured: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other:</p>	<p>Data Sources Used:</p> <input checked="" type="checkbox"/> MLS <input checked="" type="checkbox"/> Public Records <input checked="" type="checkbox"/> Office Files <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Plans & Specifications <input type="checkbox"/> Purchase Agreement <input checked="" type="checkbox"/> Other: Tax Map	<p>Approaches to Value Developed:</p> <p>Cost Approach: <input type="checkbox"/> Is necessary and developed in this analysis <input type="checkbox"/> Is applicable but not necessary and omitted in this analysis <input checked="" type="checkbox"/> Is not applicable or necessary and omitted in this analysis</p> <p>Sales Comparison Approach: <input checked="" type="checkbox"/> Is necessary and developed in this analysis <input type="checkbox"/> Is applicable but not necessary and omitted in this analysis <input type="checkbox"/> Is not applicable or necessary and omitted in this analysis</p> <p>Income Approach: <input type="checkbox"/> Is necessary and developed in this analysis <input type="checkbox"/> Is applicable but not necessary and omitted in this analysis <input checked="" type="checkbox"/> Is not applicable or necessary and omitted in this analysis</p>
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Additional Scope of Work Comments: NONE

Significant Real Property Appraisal Assistance: None Disclosure Name(s) and contribution:

Client:	Michael D. Royal	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	12-149

MARKET AREA ANALYSIS

Location <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural	Built Up <input type="checkbox"/> Under 25% <input type="checkbox"/> 25-75% <input checked="" type="checkbox"/> Over 75%	Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Supply & Demand <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	Value Trend <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Decreasing	Typical Marketing Time <input type="checkbox"/> Under 3 Months <input type="checkbox"/> 3-6 Months <input checked="" type="checkbox"/> Over 6 Months
Neighborhood Single Family Profile Price _____ Age _____		Neighborhood Land Use		Neighborhood Name: <u>Harleston Village</u>	
300,000 _____ Low _____ 100	_____ High _____ 250	1 Family _____ 80.0%	Commercial _____ 5.0%	PUD <input type="checkbox"/> Condo <input type="checkbox"/> HOA: \$ <u>N/A</u> / _____	
3,000,000 _____	750,000 _____ Predominant _____ 150	Condo _____ 5.0%	Vacant _____ %	Amenities: <u>None</u>	
_____	_____	Multifamily _____ 10.0%	Other _____ %	_____	

Market area description and characteristics: Neighborhood markets are seen on some corners, and residential uses are most predominant. The site is located in the Old and Historic District of Charleston with strict zoning and development approval process. Within walking distance of the College of Charleston, the central business district, the Medical University /hospitals. Very convenient and desirable residential area.

SITE ANALYSIS

Dimensions: <u>56' x 170' x 55' x 170'</u>	Area: <u>9,435 Square Feet</u>
View: <u>Interior</u>	Shape: <u>Rectangular</u>
Drainage: <u>Appears Adequate</u>	Utility: <u>Good/Average</u>

Site Similarity/Conformity To Neighborhood		Zoning/Deed Restriction	
Size: <input type="checkbox"/> Smaller than Typical <input checked="" type="checkbox"/> Typical <input type="checkbox"/> Larger than Typical	View: <input type="checkbox"/> Favorable <input checked="" type="checkbox"/> Typical <input type="checkbox"/> Less than Favorable	Zoning: <u>General</u> Business _____ <input checked="" type="checkbox"/> Legal <input type="checkbox"/> No Zoning <input type="checkbox"/> Legal, non-conforming <input type="checkbox"/> Illegal	Covenants, Condition & Restrictions: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown Documents Reviewed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Ground Rent: \$ <u>N/A</u> / _____

Utilities		Off Site Improvements	
Electric <input checked="" type="checkbox"/> Public <input type="checkbox"/> Other _____	Gas <input checked="" type="checkbox"/> Public <input type="checkbox"/> Other _____	Street <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private _____	Alley <input type="checkbox"/> Public <input type="checkbox"/> Private <u>None</u>
Water <input checked="" type="checkbox"/> Public <input type="checkbox"/> Other _____	Sewer <input checked="" type="checkbox"/> Public <input type="checkbox"/> Other _____	Sidewalk <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private _____	Street Lights <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private _____

Site description and characteristics: Functional site improved with a one story, brick veneer structure built for use by a kindergarten in the mid 1950's. It contains 2,820 square feet. It has a concrete slab floor, metal frame windows and a composition shingle roof. It is in fair condition and has not been occupied in more than 10 years. Schools are prohibited in residentially zoned districts. Conversion of existing building to residential use that would be fitting in this market would be extremely problematic. One major issue would be that the first floor of the occupied area would have to be elevated some height above the grade of the land in order to comply with Federal flood zone requirements. For these reasons, it is my opinion that the building does not contribute to value.

Client:	Michael D. Royal	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	12-149

SITE VALUATION

Site Valuation Methodology

Sales Comparison Approach: A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, then applying appropriate units of comparison and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when an adequate supply of comparable sales are available.

Market Extraction Method: A method of estimating land value in which the depreciated cost of the improvements on the improved property is estimated and deducted from the total sale price to arrive at an estimated sale price for the land; most effective when the improvements contribute little to the total sale price of the property.

Alternative Method: (Describe methodology and rationale)

SITE VALUATION

ITEM	SUBJECT	SALENO.1	SALENO.2	SALENO.3
Address	34 Pitt Street Charleston	26 Smith Street 457-08-03-064	0 Barre Street 457-02-04-064	61 Gadsden Street 457-02-04-006
Proximity to Subject		Three Blocks	Five Blocks	Five Blocks
Sales Price	N/A	250,000	280,000	675,000
Price / SF	N/A	28.46	35.71	26.07
Data Source/ Verification	Inspection	Office Files	Office Files	Office Files
Sale Date	12/12	2/10/12	2/23/12	3/28/10
Location	Harleston Village	Harleston -Inf.	+20% Harleston Village	Harleston Village
Site Size	9,435 SF	8,787 SF	7,841 SF	25,888 SF +10%
Site View	Interior	Interior	Interior	Interior
Site Improvements	Building/no value	None	None	Building +10%
Corner	No	No	No	Portion
Zoning	Residential	Residential	Residential	Residential Subject to Flood +15%
Net Adjustment		-20%	0%	+35%
Indicated Value		\$ 34.15/SF	\$ 35.71/SF	\$ 675,035
Net Adjustment		0.01 %	%	5.19 %
Gross Adjustment		0.01 %	%	5.19 %

Site Valuation Comments: The real estate market has been flat for several years. Sales activity does not indicate any movement in prices, up or down, recently. No market condition adjustments were made to any of the sales. All sales are within five blocks of the subject site. Sale 3 has a brick veneer office building that required demolition. That cost was estimated at \$50,000(+/-) or 10%(+/-). The cost was borne by the purchaser; therefore, it must be added to the site cost. Sale 3 also included TMS 457-03-01-036 and 119. The site is subject to flooding. Sale 1 is contiguous to the municipal housing project, and a positive adjustment was required.

Site Valuation Reconciliation: Sales 1 and 2 are the most recent sales. All sales have similar highest and best uses. All sales have been given consideration. Based on the above analysis, it is my opinion that the value of the subject site is \$35 per square foot. Since the brick veneer building on the site does not contribute value to the property, the cost to remove this building must be deducted from the value estimate of the site as though vacant. This cost estimate was obtained from the Marshall Valuation Service cost manual.

$$9,435 \text{ SF} \times \$35/\text{SF} \text{ minus } \$15,000 \text{ Demolition Cost} = \$315,225$$

Opinion of Site Value **\$ 315,200**

LOCATION MAP

Borrower or Owner	Michael D. Royal		
Property Address	34 Pitt Street		
City	Charleston	County	Charleston
		State	SC
Client	Michael D. Royal	Zip Code	29401

I am aware of the FNMA guidelines stating that the comparable properties should not exceed six months in age, the net adjustment should not exceed more than 15%, the gross adjustment should not exceed 25% and the lot value should not exceed 30% of the appraised value.

This value estimate is based upon the assumption that the property is not negatively affected by the existence of hazardous substance or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

I have not performed a previous appraisal of the subject property within three years prior to this assignment.

I certify that to the best of my knowledge and belief, the statements and opinions contained in this report are full, true and correct. I certify that I have no interest in the subject tract, and that neither the employment to make this appraisal nor the compensation is contingent upon the value estimate.

I further certify that this appraisal was made in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation effective January 1, 2012 as well as the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

This appraisal assignment was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation or an amount which would result in approval of a loan.

This appraisal is intended to meet the requirements of Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989, Public Law.

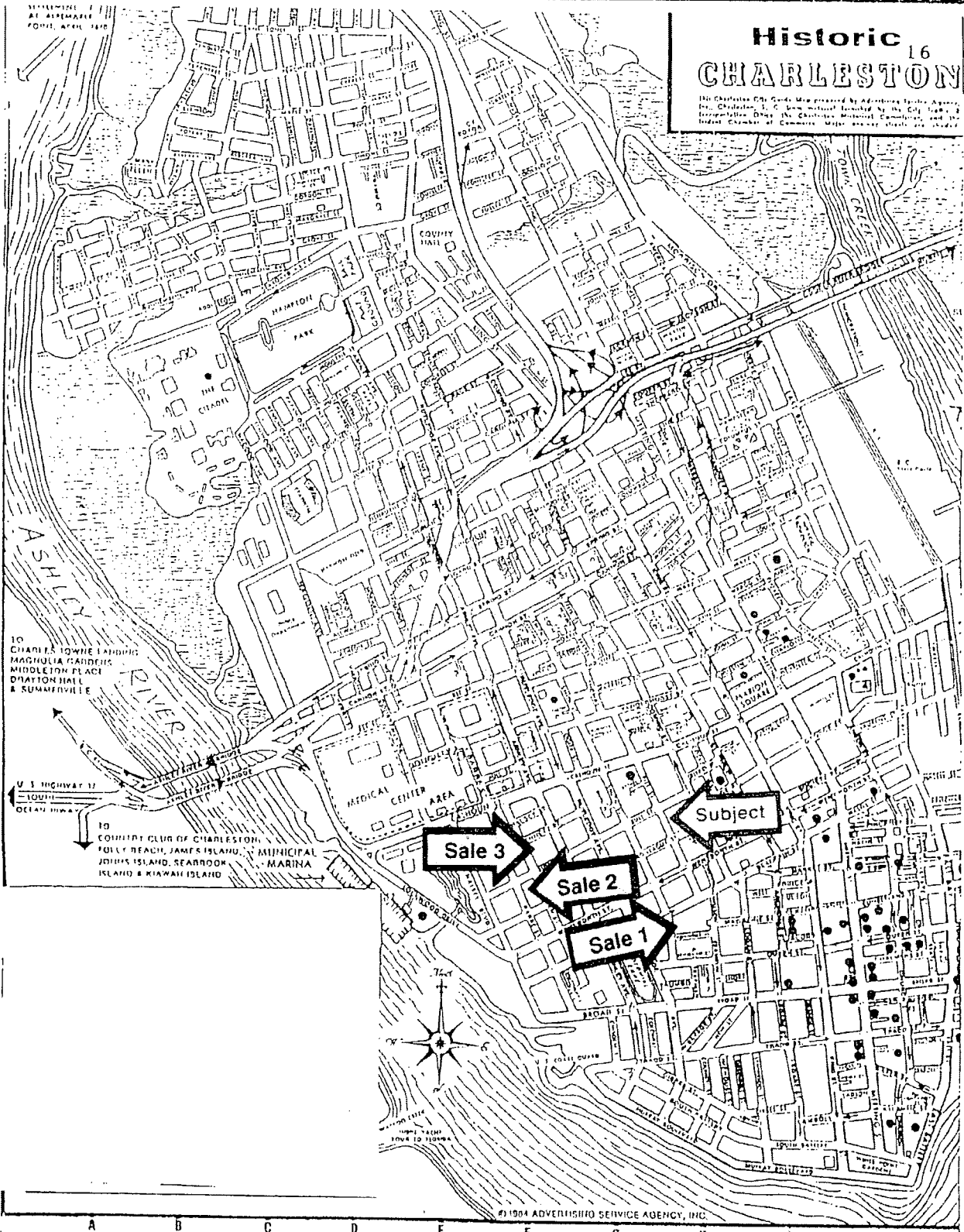
This appraisal was prepared for the exclusive use of the client. The information and opinions contained in this appraisal set forth the appraiser's best judgment in light of the information available at the time of the preparation of this report. Any use of this appraisal by any other person or entity, or any reliance or decisions based on this appraisal are the sole responsibility and at the sole risk of the third party. Charleston Appraisal Service, Inc. accepts no responsibility for damages suffered by any third party as a result of reliance on or decisions made or actions taken based on this report.

As of the date of this report, I, Michael C. Robinson, MAI, SRA, have completed the requirements under the continuing education program of the Appraisal Institute and also the continuing education program of the South Carolina Real Estate Appraiser's Board.

REPRINTED AT ALBEMARLE POINT, APRIL 1940

Historic 16 CHARLESTON

This Charleston City Guide Map prepared by Advertising Service Agency, Inc., Charleston, S. C. was published through the City of Charleston, S. C. in connection with the Charleston Historical Campaign, and the Historic Chamber of Commerce. Major sources: Historic Charleston Foundation.



TO CHARLES TOWNE LANDING, MAGNOLIA GARDENS, MIDDLETON PLACE, DUNN HALL & SUMMITVILLE

U.S. HIGHWAY 17
TO
OCEAN DRIVE

TO COUNTRY CLUB OF CHARLESTON, FULLY BEACH, JAMES ISLAND, JOHN'S ISLAND, SEABROOK ISLAND & KIWANAI ISLAND

Sale 3

Sale 2

Sale 1

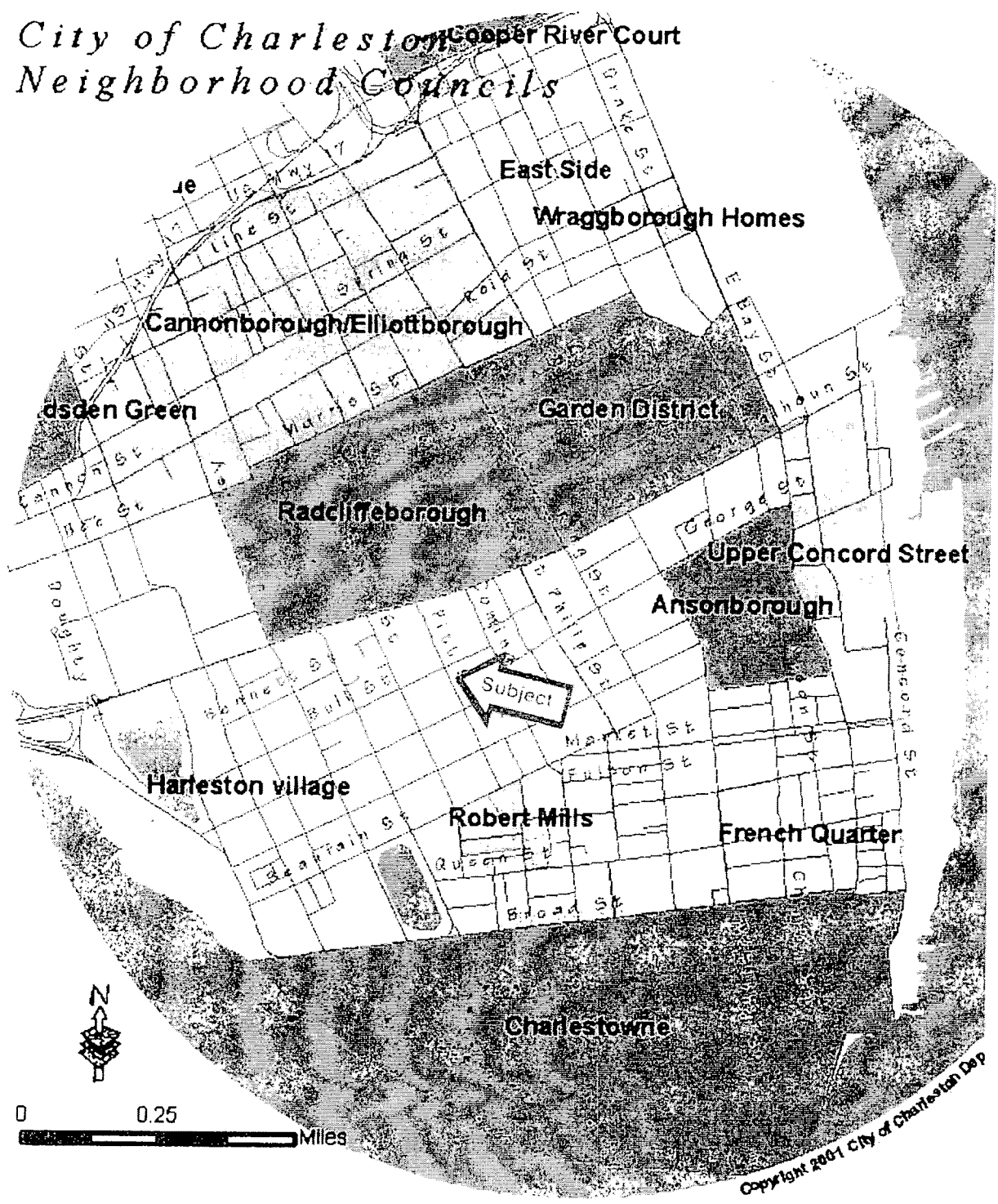
Subject

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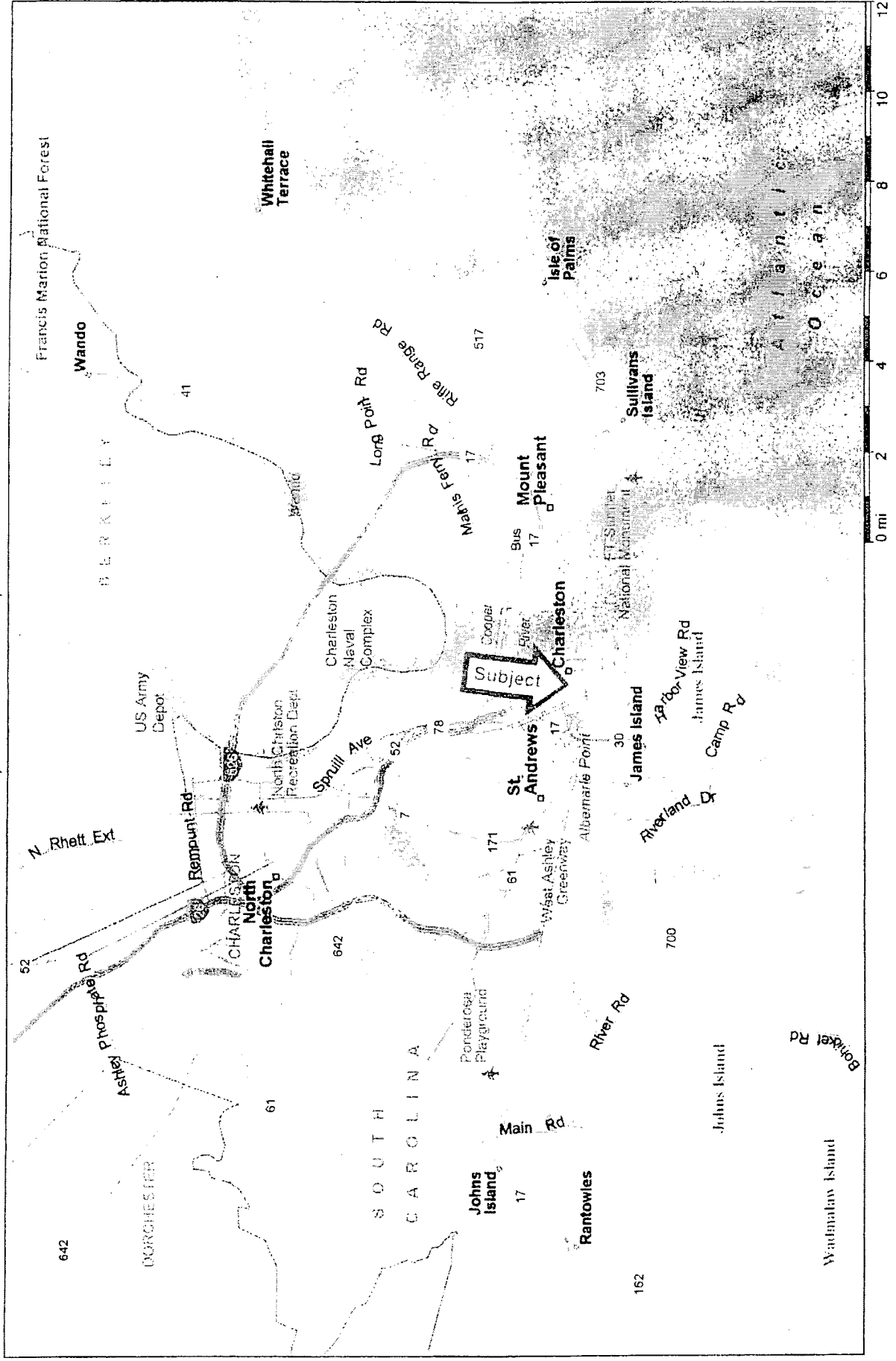
America's Most Historic City

VISITOR INFORMATION CENTER (V.I.C.)
85 Calhoun St., in front of Municipal Auditorium
Open daily. Our trained staff is on duty to answer questions, furnish information and brochures on all attractions, recent restaurants available at no charge. The Charleston Advertising orientation film, is also shown daily.

City of Charleston Cooper River Court Neighborhood Councils



South Carolina, United States, North America



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Client:	Michael D. Royal	Client File #:	
Subject Property:	54 Pitt Street	Appraisal File #:	12-149

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following assumptions and limiting conditions:

- This report is prepared using forms developed and copyrighted by the Appraisal Institute. However, the content, analyses, and opinions set forth in this report are the sole product of the appraiser. The Appraisal Institute is not liable for any of the content, analyses, or opinions set forth herein.
- No responsibility is assumed for matters legal in character or nature. No opinion is rendered as to title, which is assumed to be good and marketable. All existing liens, encumbrances, and assessments have been disregarded, unless otherwise noted, and the property is appraised as though free and clear having responsible ownership and competent management.
- I have examined the property described herein exclusively for the purposes of identification and description of the real property. The objective of our data collection is to develop and opinion of the highest and best use of the subject property and make meaningful comparisons in the valuation of the property. The appraiser's observations and reporting of the subject improvements are for the appraisal process and valuation purposes only and should not be considered as a warranty of any component of the property. This appraisal assumes (unless otherwise specifically stated) that the subject is structurally sound and all components are in working condition.
- I will not be required to give testimony or appear in court because of having made an appraisal of the property in question, unless specific arrangements to do so have been made in advance, or as otherwise required by law.
- I have noted in this appraisal report any significant adverse conditions (such as needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) discovered during the data collection process in performing the appraisal. Unless otherwise stated in this appraisal report, we have no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and have assumed that there are no such conditions and make no guarantees or warranties express or implied. We will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because we are not experts in the field of environmental hazards, this appraisal report must not be considered as an environment assessment of the property. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable public and/or private sources that I believe to be true and correct.
- I will not disclose the contents of this appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice and/or applicable federal, state or local laws.
- The Client is the party or parties who engage an appraiser (by employment or contract) in a specific assignment. A party receiving a copy of this report from the client does not as a consequence, become a party to the appraiser-client relationship. Any person who receives a copy of this appraisal report as a consequence of disclosure requirements that apply to an appraiser's client, does not become an intended user of this report unless the client specifically identified them at the time of the assignment. The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.
- A true and complete copy of this report contains ___ pages including exhibits which are considered an integral part of the report. The appraisal report may not be properly understood without access to the entire report.
- If this valuation conclusion is subject to satisfactory completion, repairs, or alterations, it is assumed that the improvements will be completed competently and without significant deviation.

VALUE DEFINITION

Market Value Definition (below)

Alternate Value Definition (attached)

MARKET VALUE is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto, and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: Appraisal Institute Dictionary of Real Estate Appraisal

Client:	Michael D. Royal	Client File #:	
Subject Property:	34 Pitt Street	Appraisal File #:	12-149

CERTIFICATION

I certify that, to the best of my knowledge and belief:

- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Standards of Professional Appraisal Practice* (USPAP).
- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- unless otherwise specified in the report, I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- any personal inspection of the property that is the subject of this report is indicated in the Scope of Work.
- unless otherwise specified in the Scope of Work, no one provided significant real property appraisal assistance to the person signing this certification.

APPRAISAL INSTITUTE CERTIFICATION

Appraisal Institute Member Certify:

- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

Designated Appraisal Institute Member Certify:

- As of the date of this report, I have / have not completed the continuing education program of the Appraisal Institute.

Designated Appraisal Institute Member Certify:

- As of the date of this report, I have / have not completed the continuing education program of the Appraisal Institute.

APPRAISER:

Signature _____

Name Michael C. Romano, MAI, SRA Report Date 01/11/2013

or Certification # CG-76 ST SC

or License # _____ ST _____

Expiration Date 6/30/2014

CO-APPRAISER:

Signature _____

Name _____ Report Date _____

or Certification # _____ ST _____

or License # _____ ST _____

Expiration Date _____

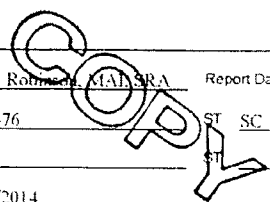


EXHIBIT C

First Addendum to the Real Estate Purchase and Sale Agreement
Signed on or Around April 11, 2018

ADDENDUM TO CONTRACT

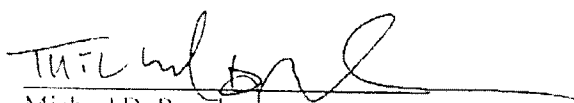
WHEREAS, **Michael D. Royal** (the "Buyer") and the **Free Kindergarten Association of Charleston**, a South Carolina non-profit corporation (the "Seller") are parties to that certain Real Estate Purchase and Sale Agreement for the purchase and sale of the property known as **34 Pitt Street, Charleston, SC 29401** (the "Property") dated **April 23, 2013**, and that certain Memorandum of Real Estate Purchase and Sale Agreement dated **April 23, 2013** and recorded on **April 23, 2013**, in **Book 0325, Page 703**, in the RMC Office for Charleston County, South Carolina (collectively, the "Contract").

NOW THEREFORE, Buyer and Seller, for valuable consideration, each to the other the receipt whereof is hereby acknowledged, desire to amend the Contract as follows:

- 1) The "Closing Date" of April 9, 2018, shall be changed to April 26, 2018 in each instance such date appears throughout the Contract, such that the closing shall occur on or before April 26, 2018; and
- 2) Except as specifically amended herein, all other terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have signed this Addendum this ____ day of April, 2018.

BUYER:


Michael D. Royal

SELLER:

Free Kindergarten Association of Charleston,
a South Carolina non-profit corporation

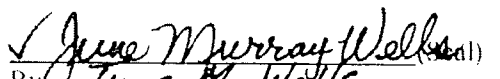

By: June M. Wells
Its: Sole Surviving Member

EXHIBIT D

Email from Michael D. Royal to Patrick F. Stringer and Other Parties
Dated April 26, 2018

From: Michael D. Royal
To: [Treadwell Josey](mailto:Treadwell.Josey); [Janet Davis](mailto:Janet.Davis); pfstringer@yahoo.com; gretchen@stringerlaw.us
Subject: 34 Pitt Street Closing
Date: Thursday, April 26, 2018 11:18:00 AM
Attachments: [Contract - Extension Fully Executed - 34 Pitt st \(01097669xA3465\).pdf](#)

Hello Mr. Stringer,

Our addendum to the purchase and sale agreement for 34 Pitt Street makes today the final day for closing. I believe Tread has sent over an additional addendum to further extend closing date of the agreement, but we have not yet received back a signed copy. If the seller is not willing to extend, I want to make sure that you know I am ready to close today and have the purchase money waiting to be wired. I can meet anywhere and at any time today for closing. Please either send a signed contract extension, or instructions on where to meet for closing and wire instructions.

Thank you,

Michael

Michael D. Royal
Managing Member - Pareto Group LLC
1541 Sylvania Road Suite 100A, WAB 615 | Charlotte, NC 28407
Cell: (843) 297-0604 | Fax: (407) 204-7255 | Email: michael@pareto.gr

EXHIBIT E

Second Addendum to the Real Estate Purchase and Sale Agreement
Dated April 24, 2018

ADDENDUM TO CONTRACT


WHEREAS, **Michael D. Royal** (the "Buyer") and the **Free Kindergarten Association of Charleston**, a South Carolina non-profit corporation (the "Seller") are parties to that certain Real Estate Purchase and Sale Agreement for the purchase and sale of the property known as **34 Pitt Street, Charleston, SC 29401** (the "Property") dated **April 23, 2013**, and that certain Memorandum of Real Estate Purchase and Sale Agreement dated **April 23, 2013** and recorded on **April 23, 2013**, in **Book 0325, Page 703**, in the RMC Office for Charleston County, South Carolina, as amended by Addendum to Contract dated April 9, 2018 (collectively, the "Contract").

NOW THEREFORE, Buyer and Seller, for valuable consideration, each to the other the receipt whereof is hereby acknowledged, desire to amend the Contract as follows:

- 1) The "Closing Date" of April 9, 2018, shall be changed to May 25th, 2018 in each instance such date appears throughout the Contract, such that the closing shall occur on or before May 25th, 2018; and
- 2) Except as specifically amended herein, all other terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have signed this Addendum this 24th day of April, 2018.

BUYER:



Michael D. Royal

SELLER:

Free Kindergarten Association of Charleston,
a South Carolina non-profit corporation

✓ June Murray Wells (Seal)
By: June Murray Wells
As: Sole Surviving Member

{01103940.DOCX}

EXHIBIT F

Letter from Patrick F. Stringer to Michael D. Royal
Dated May 11, 2018

Patrick F. Stringer

Gretchen@Stringerlaw.us

PATRICK F. STRINGER

ATTORNEY AT LAW

753 Folly Road (Zip 29412)
Post Office Box 12370
Charleston, S.C. 29422-2370
(843) 795-1331
Fax (843) 762-0144

May 11, 2018

Michael D. Royal
59-A King Street
Charleston SC 29401

Re: 34 Pitt Street Property

Dear Michael:

In speaking to my client, we are not agreeable to your proposal in which a closing is held without approval of the Attorney General. That proposal would require me to hold the proceeds check in escrow and deal with both the Attorney General as well as the Charleston School District relative to issues of which you are aware.

We believe that there is a real issue as to the authority of the sole surviving member of this non-profit to sell the remaining asset, 34 Pitt Street. Also, there are Attorney General requirements relative to the sale of any or all of the assets, which requirements need to be met.

Finally, the distribution of the proceeds to the Free Kindergarten Association and/or the Charleston County School District are needing adjudication.

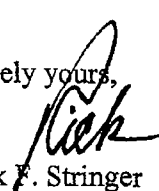
My feeling is the only way to handle all of this is with a Common Pleas action to establish the validity of Mrs. Wells to sign on behalf of the Free Kindergarten and a completion of the Attorney General's requirements as well as direction regarding the disposition of the proceeds upon dissolution of the Free Kindergarten Association of Charleston.

Short of such an action, we are prepared to refund you the \$5,000.00 down payment and declare the contract null and void.

We look forward to your response.

Thanking you in advance, I am

Sincerely yours,


Patrick F. Stringer

PFS/gsr

cc Ms. June Wells
Mr. William Wells
Treadwell Josey, Esq. ✓

EXHIBIT G

Email from Michael D. Royal to Patrick F. Stringer
Dated May 14, 2018

From: [Michael D. Royal](#)
To: [rick.stringer](#)
Cc: [Treadwell Josey](#)
Subject: 34 Pitt Street
Date: Monday, May 14, 2018 3:22:00 PM

Dear Mr. Stringer:

I was saddened to receive a letter from you dated May 11, through Tread Josey, which amounts to notice of anticipatory breach of contract. I strongly disagree with a number of the facts stated in your letter and feel that I am being forced to proceed with legal action to enforce specific performance on this contract which I have been patiently waiting to close now for over 5 years. I will not allow the State of South Carolina to renegotiate the contract. The AG has no authority to do so. As to Ms. Wells' authority, she demonstrably has been, is, and has continuously held herself out to be the authorized agent of the Association and had the power to bind the Association in a contract for the sale of the asset in 2013. I don't know how any reasonable person could possibly come to any other conclusion.

Please understand and communicate to June Wells and Bill Wells that I do not take this breach personally, and I know they need to follow your counsel. Please also let them know that since they are being represented by you, I will assume that going forward I will not be speaking with them directly unless you tell me otherwise. I harbor no ill will for them or for you. My patience vis-à-vis this contract has run out, though, and I must proceed.

I will be representing myself for the time being. I'm copying Tread because you copied him on your letter, but as we are not now moving toward a closing on May 26, Tread will not need to be copied on further communication.

Also, please note that my address is the one in the signature block below. The King Street address was where I lived in 2013.

Thank you,

Michael

Michael D. Royal
Managing Member - Pareto Group LLC
1541 Storage Point Blvd, 107A, P.O. Box 1541, Charleston, SC 29407
678-437-7694 | cell 803-204-9234 | e michael@pareto.gr

EXHIBIT H

Email from Mary F. Jowers to Michael D. Royal and Other Parties
Dated May 18, 2018

From: [Mary Frances Jowers](#)
To: [Treadwell Josey](#)
Cc: [Michael D. Royal](#); [pfstringer@yahoo.com](#); [gretchen@stringerlaw.us](#); [Sonny Jones](#); [Chantelle Neese](#)
Subject: RE: Pitt Street property
Date: Friday, May 18, 2018 12:02:55 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Tread,

Thank you for the email below. I wanted to follow-up with everyone after talking to Rick Stringer this morning. The position of the Attorney General in this sale, as it is in all sales under section 33-31-1202, is that the sale cannot be completed until the Attorney General completes our review. Since we have not received all of the materials requested (a current appraisal), our position is that the sale cannot go forward at this time. We are glad to work with the parties to bring this matter to a conclusion, including involvement in any action to confirm Ms. Wells' authority to sell the property. My understanding is that this matter may proceed to a court action, and we would request to be named as a party to any action. In the alternative, if the Plaintiff/Petitioner does not name the Attorney General, we would request a copy of the pleadings so that the Office can determine whether to file a Motion to Intervene.

Thanks in advance, and we are glad to talk with anyone regarding next steps.

Mary Frances

Mary Frances Jowers
Assistant Deputy Attorney General
803-734-3996

From: Treadwell Josey [<mailto:treadwell.josey@buistbyars.com>]
Sent: Thursday, May 10, 2018 1:59 PM
To: Mary Frances Jowers; [pfstringer@yahoo.com](#); [gretchen@stringerlaw.us](#)
Cc: Chantelle Neese; Sonny Jones
Subject: RE: Pitt Street property

Mary Frances,

I wanted to let each of you know that you have my permission to speak directly to Mr. Royal about matters concerning 34 Pitt moving forward. Thank you.

J. Treadwell Josey
Partner
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488



EFax: 843.647.6141



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From: Mary Frances Jowers [mailto:mfjowers@scag.gov]
Sent: Wednesday, April 25, 2018 3:50 PM
To: Treadwell Josey <treadwell.josey@buistbyars.com>; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <SJones@scag.gov>; Michael D. Royal <michael@pareto.gr>; Blair Mumma <blair.mumma@buistbyars.com>
Subject: RE: Pitt Street property

Thanks.

From: Treadwell Josey [mailto:treadwell.josey@buistbyars.com]
Sent: Wednesday, April 25, 2018 3:49 PM
To: Mary Frances Jowers; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese; Sonny Jones; Michael D. Royal; Blair Mumma
Subject: RE: Pitt Street property

I will call Michael and then call Sonny's line at 9am tomorrow. Thanks.

J. Treadwell Josey
Partner
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488
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From: Mary Frances Jowers [mailto:mfjowers@scag.gov]
Sent: Wednesday, April 25, 2018 3:48 PM
To: Treadwell Josey <treadwell.josey@buistbyars.com>; pfstringer@yahoo.com; gretchen@stringerlaw.us

Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <SJones@scag.gov>; Michael D. Royal <michael@pareto.gr>

Subject: RE: Pitt Street property

That works. We are glad to call you, or if it would be easier for both of you to get on a line and call us, that works too – let us know. If you want to call us, use Sonny's line, 803-734-3654.
Thanks.

From: Treadwell Josey [<mailto:treadwell.josey@buistbyars.com>]
Sent: Wednesday, April 25, 2018 3:47 PM
To: Mary Frances Jowers; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese; Sonny Jones; Michael D. Royal
Subject: RE: Pitt Street property

Mary Frances,
How about 9am tomorrow? That would work for me and my client.

J. Treadwell Josey
Partner
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488
EFax: 843.647.6141



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From: Mary Frances Jowers [<mailto:mfjowers@scag.gov>]
Sent: Wednesday, April 25, 2018 1:56 PM
To: Treadwell Josey <treadwell.josey@buistbyars.com>; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <SJones@scag.gov>
Subject: Pitt Street property

Good afternoon,
Do you have time tomorrow or Friday morning for a call with Sonny, Chantelle, and me regarding the Pitt Street property? We are available tomorrow from 8:30 to 10:00 am, and Friday from 8:30 to 11:00 am. Your clients are welcome to join the call.
This is mainly about the appraisal issue. Rick, I believe this is more of an issue for Tread's client, but I wanted to include you in case you would like to participate.

If our proposed times do not work, we are glad to look for another time.

Thanks!

Mary Frances

Mary Frances Jowers

Assistant Deputy Attorney General

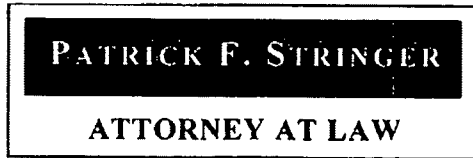
803-734-3996

EXHIBIT I

Letter from Patrick F. Stringer to Chelsea Kot
Dated April 4, 2018

Patrick F. Stringer

Gretchen@Stringerlaw.us



753 Folly Road (Zip 29412)
Post Office Box 12370
Charleston, S.C. 29422-2370
(843) 795-1331
Fax (843) 762-0144

April 4, 2018

Ms. Chelsea Kot
Constituent Services Coordinator
Office of the Attorney General
State of South Carolina
PO Box 11549
Columbia SC 29211-1549

By USPS and by email

Re: Free Kindergarten Association of Charleston
Notice of sale of assets: 34 Pitt Street, Charleston SC

Dear Chelsea:

Please find enclosed Notice of Sale in reference to the above captioned, per the requirements of §33-31-1202. Please let me know if you need anything further in reference to this Notice. We will dissolve the entity after the sale.

With best regards, I am

Very truly yours,

Patrick F. Stringer

PFS/gsr
Enc.


cc Ms. June Murray Wells

State of South Carolina)
)
County of Charleston)

NOTICE OF SALE

Please take notice that the Free Kindergarten Association of Charleston is selling all assets, to wit: 34 Pitt Street, Charleston, South Carolina pursuant to the attached Memorandum of Real Estate Purchase and Sale Agreement; this Notice is given pursuant to §33-31-1202 of the Code of Laws of South Carolina.

Dated: April 4, 2018



Patrick F. Stringer
Attorney for
Free Kindergarten Association of Charleston

EXHIBIT J

Email from Michael D. Royal to Mary F. Jowers and Other Parties
Dated May 18, 2018

From: [Michael D. Royal](#)
To: [Mary Frances Jowers](#)
Cc: [pfstringer@yahoo.com](#); [gretchen@stringerlaw.us](#); [Sonny Jones](#); [Chantelle Neese](#)
Bcc: [Treadwell Josey](#)
Subject: RE: Pitt Street property
Date: Friday, May 18, 2018 1:26:00 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Dear Ms. Jowers:

Thank you for the message.

Please know that I understand and very much appreciate the role of the AG's office in protecting charitable beneficiaries in South Carolina. For many reasons, which I will not go into here, I am a big supporter of your mission.

However, I also need to protect my own interests in the matter of the 34 Pitt Street purchase, and on a plain reading of the text of Section 33-31-1202 (and other related parts of the South Carolina Nonprofit Corporation Act), I cannot find even a hint of support for what you're describing as the AG's position that "the sale cannot be completed until the Attorney General completes our review." I am giving the text the most sympathetic possible reading. Your conclusion appears to be wrong in at least three important ways:

1. Nowhere does Section 33-31-1202 indicate that the nonprofit's notice to the AG involves sending any documents to the AG other than the notice itself. Where do you find in the law the requirement that the nonprofit send the AG any materials at all, other than a simple notice of a sale?
2. Nowhere does Section 33-31-1202 speak of any approval or review right of the AG. Where are you finding in the law any power to approve or disapprove a transaction? Creating such a right for the AG would be to strip rights of donors given to them under the law to appoint a trustee to make decisions related to trust assets.
3. More fundamentally, the South Carolina Nonprofit Corporation Act is an Act that governs the management of nonprofits. It does not appear to govern me or a contract between me and a nonprofit, and it does not empower the AG to interfere with, invalidate, prolong, or terminate this real estate purchase agreement, regardless of whether the AG likes the deal or doesn't like it.

I am by no means an expert in this area of the law, and I am asking the questions above not to seek legal advice from you, but to give you the opportunity to convince me not to file an action for specific performance. I am open to being convinced, and it could save us all valuable resources. But if you have no support at all for the AG's position stated above, I am forced to seek judicial relief.

I will provide you with copy of the pleadings as soon as I have filed. I do need to do further research on the question of whether to name the AG.

If you prefer to talk through any of these matters on the phone, I can make myself available.

Sincerely,

Michael

PS Please note that Tread was working with me on closing documents, but as Seller has notified me that a closing will not occur this month, Tread is no longer representing me in the matter of 34 Pitt Street. I will be filing an action pro se, so please direct future communications to me directly.

Michael D. Royal
Managing Member | Pareto Group LLC
1241 S. 17th Street, Suite 101A, Pompano Beach, FL 33062
Cell: 954-372-0804 | Fax: 954-372-0802 | michael@pareto.gr

From: Mary Frances Jowers [mailto:mfjowers@scag.gov]

Sent: Friday, May 18, 2018 12:03 PM

To: Treadwell Josey <treadwell.josey@buistbyars.com>

Cc: Michael D. Royal <michael@pareto.gr>; pfstringer@yahoo.com; gretchen@stringerlaw.us; Sonny Jones <SJones@scag.gov>; Chantelle Neese <CNeese@scag.gov>

Subject: RE: Pitt Street property

Tread,

Thank you for the email below. I wanted to follow-up with everyone after talking to Rick Stringer this morning. The position of the Attorney General in this sale, as it is in all sales under section 33-31-1202, is that the sale cannot be completed until the Attorney General completes our review. Since we have not received all of the materials requested (a current appraisal), our position is that the sale cannot go forward at this time. We are glad to work with the parties to bring this matter to a conclusion, including involvement in any action to confirm Ms. Wells' authority to sell the property.

My understanding is that this matter may proceed to a court action, and we would request to be named as a party to any action. In the alternative, if the Plaintiff/Petitioner does not name the Attorney General, we would request a copy of the pleadings so that the Office can determine whether to file a Motion to Intervene.

Thanks in advance, and we are glad to talk with anyone regarding next steps.

Mary Frances

Mary Frances Jowers
Assistant Deputy Attorney General
803-734-3996

From: Treadwell Josey [<mailto:treadwell.josey@buistbyars.com>]
Sent: Thursday, May 10, 2018 1:59 PM
To: Mary Frances Jowers; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese; Sonny Jones
Subject: RE: Pitt Street property

Mary Frances,

I wanted to let each of you know that you have my permission to speak directly to Mr. Royal about matters concerning 34 Pitt moving forward. Thank you.

J. Treadwell Josey
Partner
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488
EFax: 843.647.6141



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From: Mary Frances Jowers [<mailto:mfjowers@scag.gov>]
Sent: Wednesday, April 25, 2018 3:50 PM
To: Treadwell Josey <treadwell.josey@buistbyars.com>; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <Sonny@scag.gov>; Michael D. Royal <michael@pareto.gr>; Blair Mumma <blair.mumma@buistbyars.com>
Subject: RE: Pitt Street property

Thanks.

From: Treadwell Josey [<mailto:treadwell.josey@buistbyars.com>]
Sent: Wednesday, April 25, 2018 3:49 PM
To: Mary Frances Jowers; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese; Sonny Jones; Michael D. Royal; Blair Mumma
Subject: RE: Pitt Street property

I will call Michael and then call Sonny's line at 9am tomorrow. Thanks.

J. Treadwell Josey
Partner

Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488
EFax: 843.647.6141



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From: Mary Frances Jowers [<mailto:mfjowers@scag.gov>]
Sent: Wednesday, April 25, 2018 3:48 PM
To: Treadwell Josey <treadwell.josey@buistbyars.com>; pfstringer@yahoo.com;
gretchen@stringerlaw.us
Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <SJones@scag.gov>; Michael D. Royal <michael@pareto.gr>
Subject: RE: Pitt Street property

That works. We are glad to call you, or if it would be easier for both of you to get on a line and call us, that works too – let us know. If you want to call us, use Sonny’s line, 803-734-3654.
Thanks.

From: Treadwell Josey [<mailto:treadwell.josey@buistbyars.com>]
Sent: Wednesday, April 25, 2018 3:47 PM
To: Mary Frances Jowers; pfstringer@yahoo.com; gretchen@stringerlaw.us
Cc: Chantelle Neese; Sonny Jones; Michael D. Royal
Subject: RE: Pitt Street property

Mary Frances,
How about 9am tomorrow? That would work for me and my client.

J. Treadwell Josey
Partner
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: treadwell.josey@buistbyars.com
Direct Line: 843.284.1402
Main Office: 843.856.4488
EFax: 843.647.6141



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From: Mary Frances Jowers [<mailto:mfjowers@scag.gov>]

Sent: Wednesday, April 25, 2018 1:56 PM

To: Treadwell Josey <treadwell.josey@buiستbyars.com>; pfstringer@yahoo.com;
gretchen@stringerlaw.us

Cc: Chantelle Neese <CNeese@scag.gov>; Sonny Jones <Slones@scag.gov>

Subject: Pitt Street property

Good afternoon,

Do you have time tomorrow or Friday morning for a call with Sonny, Chantelle, and me regarding the Pitt Street property? We are available tomorrow from 8:30 to 10:00 am, and Friday from 8:30 to 11:00 am. Your clients are welcome to join the call.

This is mainly about the appraisal issue. Rick, I believe this is more of an issue for Tread's client, but I wanted to include you in case you would like to participate.

If our proposed times do not work, we are glad to look for another time.

Thanks!

Mary Frances

Mary Frances Jowers
Assistant Deputy Attorney General
803-734-3996

EXHIBIT K

Email from Patrick F. Stringer to Michael D. Royal and Other Parties
Dated June 28, 2018

From: [rick.stringer](#)
To: [Michael D. Royal](#)
Cc: [Mary Frances Jowers](#); [Gretchen Stringer-Robinson](#); [Treadwell Josey](#); [Lynn Crooks](#)
Subject: 34 Pitt St.
Date: Thursday, June 28, 2018 10:27:36 AM

Dear Mr. Royal, We have been informed by the Secretary of State that the Appraisal by Mr. Robinson values the property at 522,500.00. As a result, they are not approving the sale to you for the 315,200.00 amount, as I am sure you understand.

As I said previously, we are unwilling to proceed to closing without full approval by the Secretary of State in accordance with all Non Profit Corporate law.

Please advise whether you agree to void the contract, sign a mutual release and accept repayment of the downpayment.

Stringer

Sincerely, Rick

EXHIBIT L

Email from Michael D. Royal to Patrick F. Stringer and Other Parties
Dated June 28, 2018

From: [Michael D. Royal](mailto:Michael.D.Royal)
To: [rick stringer](mailto:rick.stringer)
Cc: [Mary Frances Jowers](mailto:Mary.Frances.Jowers); [Gretchen Stringer-Robinson](mailto:Gretchen.Stringer-Robinson); [Treadwell Josey](mailto:Treadwell.Josey); [Lynn Crooks](mailto:Lynn.Crooks)
Subject: RE: 34 Pitt St.
Date: Thursday, June 28, 2018 10:36:00 AM

Hello Mr. Stringer,

Can you tell me what is meant by "the Appraisal by Mr. Robinson"? Is it Michael Robinson, the same person who did the 2013 appraisal? Will you please send me a copy of this appraisal?

To answer your question, no, the contract is not voided. The seller is in breach, and I again demand that we close on the contract, which is a valid and enforceable contract. Your indication below that a sale must be approved by the Secretary of State is incorrect and has no legal basis, as we've discussed before.

Regards,

Michael

Michael Royal
Managing Member, Pareto Group LLC
1941 Savage Road, Suite 100A, PAB #15 | Charleston, SC 29407
o. (843) 302-0604 | m. (407) 254-7458 | e. michael@pareto.gr

From: rick stringer [mailto:pfstringer@yahoo.com]
Sent: Thursday, June 28, 2018 10:27 AM
To: Michael D. Royal <michael@pareto.gr>
Cc: Mary Frances Jowers <[mfjowers@scag.gov](mailto:mjfjowers@scag.gov)>; Gretchen Stringer-Robinson <gretchen@stringerlaw.us>; Treadwell Josey <treadwell.josey@buistbyars.com>; Lynn Crooks <lcrooks@crookslaw.net>
Subject: 34 Pitt St.

Dear Mr. Royal, We have been informed by the Secretary of State that the Appraisal by Mr. Robinson values the property at 522,500.00. As a result, they are not approving the sale to you for the 315,200.00 amount, as I am sure you understand.

As I said previously, we are unwilling to proceed to closing without full approval by the Secretary of State in accordance with all Non Profit Corporate law.

Please advise whether you agree to void the contract, sign a mutual release and accept repayment of the downpayment.

Stringer

Sincerely, Rick

MICHAEL D. ROYAL

14 Lockwood Drive, APT 12D
Charleston, SC 29401

(843) 202-0604 O
michael@pareto.gr E

December 4, 2018

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Michael D. Royal v. Free Kindergarten Association of Charleston

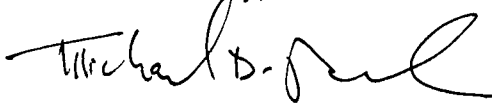
Dear Ms. Armstrong:

Enclosed please find for filing the original and one copy of the Civil Action Coversheet, Summons and Complaint in the above-referenced matter. Also enclosed is the \$150.00 filing fee. Also, for your information and administrative purposes, enclosed is a copy of a related Lis Pendens, filed on November 30, 2018, bearing Lis Pendens number 2018-LP-10-1226.

Please file the original and return a clocked-in copy to the bearer of this correspondence.

Thank you for your assistance and with kind regards, I am

Yours Sincerely,



Michael D. Royal

Enclosures

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CASE NO: 2018-CP-10-5739
)
 Michael D. Royal,)
)
 Plaintiff,)
)
 vs.) **ANSWER**
)
 Free Kindergarten Association)
 Of Charleston,)
)
 Defendant.)
)
 _____)

2019 JAN -7 PM 3:19
 JULEE J. ARMSTRONG
 CLERK OF COURT
 BY _____ JB
 FILED

The Defendant Free Kindergarten Association of Charleston Answers Plaintiff's Complaint as follows:

FIRST: That your Defendant denies each and every allegation of Plaintiff's Complaint except that which is specifically hereinafter admitted.

SECOND: Your Defendant admits the allegations of Paragraphs One, Two, Three, Four, Five with the provision that your Defendant questions the validity of such contract, so much of Paragraph Six that states, "The purchase price for the Property pursuant to the Agreement was three hundred fifteen thousand two hundred and 0/100 dollars (\$315,200.00) (the "Purchase Price")," Paragraph Seven, Paragraph Eight, so much of Paragraph Nine as states that "...in section 7 of the Agreement, allowing the Association to choose its own closing date within the period from the Effective Date until April 9, 2018, a period of almost five years", Paragraphs Fourteen, Fifteen, Sixteen, Seventeen, Eighteen, Nineteen, Twenty-One, so much of Paragraph Twenty-Two as expressed in Exhibit K which speaks for itself, Paragraph Twenty-Three; and denies all remaining allegations of Plaintiff's Complaint.

FOR A FIRST DEFENSE

THIRD: Your Defendant restates and realleges the allegations of its Answer as though restated herein in their entirety.

FOURTH: That your Defendant questions the validity of the Agreement noted as Exhibit A in Plaintiff's Complaint and in particular the conditions to closing in Paragraph Eight which states that "If the Seller chooses a Closing Date after May 31, 2013, then if by the Closing Date the Purchaser, in his sole discretion, determines that a purchase of the Property is not suitable for himself financially, he shall not have an obligation to close the Agreement, and the Agreement shall terminate." As a result of this clause, it is hard to conceive how this contract mutually obligates the parties thereto.

FOR A SECOND DEFENSE

FIFTH: Your Defendant restates and realleges the allegations of its Answer and First Defense as though restated herein in their entirety.

SIXTH: That the only asset remaining in the Free Kindergarten Association of Charleston is 34 Pitt Street, the property that is the subject of the within litigation. The sale of same upon information and belief requires the approval of the Attorney General in accordance with the common law and statutory authority to protect the public interest. The Attorney General's Office has not approved the sale after receiving Notice under the South Carolina Non-Profit Corporation Act of 1994. The reason for the lack of approval is that the price on the contract is substantially less than the fair market value of the property. As a result, your Defendant is unwilling to proceed with any sale pursuant to the Agreement in question unless and until the Attorney General's Office approves such sale under the law.

SEVENTH: Your Defendant believes that the Court should make a Declaration as to the rights with regard to the sale of substantially all of the assets of the said non-profit corporation, the Free Kindergarten Association of Charleston, pursuant to this Agreement and declare whether the sale is consistent with the charitable trust statutory and common law and further should make a determination as to whether the sole surviving member of Defendant Free Kindergarten Association of Charleston is June Murray Wells and is therefore authorized to sell the aforesaid property. (See Defendant's Exhibit A).

EIGHTH: That the Attorney General's Office in granting or not granting the approval of the within sale is also mindful of the fact, under a Declaration filed February 5, 1971 with the Secretary of State's Office, "In the event of dissolution, the residual assets of the Free Kindergarten Association will be turned over to Charleston School District Number 20, part of the South Carolina state school system, for general use in this said Charleston School District Number 20." (See Defendant's Exhibit B).

FOR A FIRST CAUSE OF ACTION

NINTH: Your Defendant restates and realleges the allegations of its Answer and First and Second Defenses as though restated herein in their entirety.

TENTH: That Plaintiff has filed the within action together with a Lis Pendens, placing a cloud on the title to Defendant's property at 34 Pitt Street and the Defendant is now unable to sell its only sole asset and therefore has suffered consequential and other damages, including Attorney's fees.

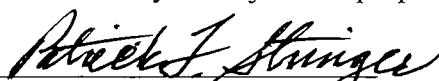
FOR A SECOND CAUSE OF ACTION

ELEVENTH: Your Defendant restates and realleges the allegations of its Answer, First and Second Defenses, and First Cause of Action as though restated herein in their entirety.

TWELFTH: That under the Agreement, Paragraph Six provides for Attorney's fees and expenses as reasonably required to consummate the transaction. Upon information and belief the Attorney's fees and expenses incurred by your Defendant as a result of this litigation and as a result of the lack of Attorney General's approval of sale of substantially all of the assets has incurred such Attorney's fees and expenses which under the Agreement are the responsibility of the Plaintiff.

WHEREFORE, Defendant, Free Kindergarten Association of Charleston, prays as follows:

1. That the Complaint be dismissed with costs;
2. For consequential damages, incidental damages, and Attorney's fees'
3. For a determination by the Court and approval or non-approval of the sale of substantially all assets of the Defendant Free Kindergarten Association of Charleston with proceeds, if any, being paid to Charleston County School District Number 20; and,
4. And for such other and further relief as the Court may deem just and proper.




Patrick F. Stringer, Attorney for Defendant
Free Kindergarten Association of Charleston
753 Folly Road
P.O. BOX 12370
CHARLESTON, S.C. 29422-2370

CHARLESTON, S.C.

Date: Jan 4, 2019

I HEREBY CERTIFY that I have mailed a copy of the above and foregoing to counsel of record in said proceeding to counsel's office address with sufficient postage attached.

Charleston, S.C. this 4th day of Jan, 20 19

By: 

Defendant Free Kindergarten Association of Charleston
Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON	)	CASE NO. <u>2010-GC-10-90</u>
)	
WELLS FARGO BANK, N.A., as)	
Trustee of the Marion Stuart Hanckel)	
Trust,)	
)	
Petitioner,)	
)	
vs.	)	ORDER
)	
HENRY DARGAN MCMASTER, the)	
Attorney General of the State of South)	
Carolina, and THE FREE)	
KINDERGARTEN ASSOCIATION)	
OF CHARLESTON,)	
)	
Respondents.)	
)	

This matter is before the Court upon the June 2, 2010 amended petition (the "Petition") of Wells Fargo Bank, N.A., as Trustee (the "Trustee") of the Marion Stuart Hanckel Trust (the "Trust"), a charitable trust that was organized under Item IV of the Last Will and Testament of Marion Stuart Hanckel dated April 8, 1937 (the "Will"), a copy of which is attached to the Petition.

Item IV of the Will established the Trust "to keep the same invested and use the income therefrom for the purpose of establishing and maintaining a free kindergarten or kindergartens as a part of the public school system of the City of Charleston."

Following an action to construe the Will in 1958, pursuant to a settlement agreement among the parties to the action, as approved by decree of the Charleston County Court of Common Pleas dated November 18, 1958, a copy of which is attached to the Petition, it was agreed that certain funds would be held in Trust with the Trustee to pay over the net income therefrom, to the Free Kindergarten Association of Charleston (the "Free Kindergarten Association"), which was to apply the funds to provide free kindergarten training for so many of the children of Charleston as can be given such training.

At the present time, and as described in greater detail in the Petition, as a result of the decreased value of the Trust's assets and the increased percentage of such assets represented by operating and administrative expenses, including annual fees for accounting and tax services, the Trustee believes that it is impractical to continue the Trust. The value of the Trust's assets as set forth in the Petition was \$96,421.22 on May

25, 2010. The value of the Trust's assets as of November 22, 2010 was \$104,498.59, prior to the payment of outstanding Trust expenses.

June Murray Wells is the last living advisory board member of the Free Kindergarten Association with capacity to act on behalf of the Association. She is the only known person with capacity to act on behalf of the Association. The evidence, as set forth in the affidavit of Ms. Wells, is that the last time the Free Kindergarten Association was actively operated was at least 5 years ago when approximately 40 children attended the school. The Free Kindergarten Association has approximately \$250.00 in its only bank account, and the sole source of income in the past few years, and for the foreseeable future, has been and would continue to be the funds provided by the Marion Stuart Hanckel Trust. The building most recently used by the Free Kindergarten Association is located on Pitt Street in downtown Charleston. This property is in need to major repairs, including a new roof and many interior repairs. Funds received in the last five years have been used for utilities for Free Kindergarten's building on Pitt Street, including water and electricity, and occasional repairs to the building. The Free Kindergarten Association is not currently operating, and there are no current plans to being operating again.

The Court notes that on file with the Secretary of State is a Resolution adopted by the Board of Directors of the Free Kindergarten Association and filed with the South Carolina Secretary of State on February 5, 1971. The Resolution states as follows: "In the event of dissolution [of the Free Kindergarten Association], the residual assets of the Free Kindergarten Association 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." This Resolution was adopted many years after Ms. Hanckel died in 1937, many years after her will was drafted in 1937 creating the trust, and also many years after the 1958 consent order. While the Resolution shows the intent of the Free Kindergarten Association, it does not show or provide evidence of the intent of Ms. Hanckel.

SC Code Ann. § 62-7-413 enacts the doctrine of equitable deviation previously applied by South Carolina courts. This doctrine allows flexibility in the details of the execution of a trust to adapt it to changed conditions not known or anticipated by the settlor in order to accomplish the benevolent purposes of the trust's settlor. See Mars v. Gibert, 93 S.C. 455, 466, 77 S.E. 131, 135 (1913); Epworth Children's Home v. Beasley, 365 S.C. 157, 169, 616 S.E. 2d 710, 716-717 (2005); Colin McK. Grant Home v. Medlock, 292 S.C. 466, 473, 349 S.E.2d 655, 659 (Ct. App, 1986); S.C. Dep't of Mental Health v. McMaster, 372 S.C. 175, 642 S.E.2d 552, 557 (2007). The Court in Epworth, quoting Colin McK. Grant Home, explained as follows: "our appellate courts have approved of and applied the doctrine of equitable deviation, which 'permits deviation from a term of the trust if, owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust. Under these circumstances a court may direct or permit a trustee to accomplish acts that are unauthorized or even forbidden by the terms of the trust.'"

Ms. Hanckel's Will provides funds for the "purpose of establishing and maintaining a free kindergarten or kindergartens as a part of the public school system of the City of Charleston." "As with a will, the primary consideration in construing a trust is to discern the settlor's intent." Epworth Children's Home v. Beasley, 365 S.C. 157, 616 S.E.2d 710 (2005) (citing Bowles v. Bradley, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995))

The Trustee has proposed that the Court authorize and order the termination of the Trust and the distribution of the Trust's property remaining after the payment of final operating and administrative expenses (including reasonable attorneys' fees and costs), in whole to the Coastal Community Foundation to be administered as a separate fund to be known as the Marion Stuart Hanckel Fund (or a similar designation determined by the Coastal Community Foundation), and dedicated to supporting early childhood education services for children from low income families in the Charleston area. In her affidavit, Ms. June Murray Wells expressed her consent on behalf of the Free Kindergarten Association to the relief requested and described herein, as more fully described in the affidavit of Ms. June Murray Wells filed with the Court in this matter.

This Court finds that Ms. Hanckel did not anticipate that there would be free public school kindergarten for all children as part of the public school system, nor did she anticipate that the Hanckel Trust would become the sole source of funds for the Free Kindergarten Association as it has in recent years.

The Court finds that equitable deviation is appropriate in this case because of the changed conditions not known or anticipated by Ms. Hanckel. Equitable deviation is required in order to accomplish the benevolent purposes of Ms. Hanckel in providing free kindergarten for the children of Charleston.

It is, therefore, ORDERED, ADJUDGED, and DECREED that:


1. All parties necessary to the proceeding are properly before the court; all appropriate parties have been noticed or given the opportunity to be heard; and the court has proper jurisdiction and is an appropriate venue for this action.

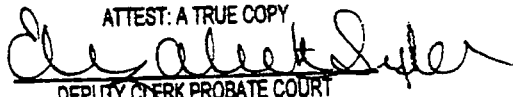
2. The court authorizes and orders the termination of the Trust and directs that all of the Trust's property remaining after the payment of final operating and administrative expenses (including reasonable attorneys' fees and costs) be distributed in whole to the Coastal Community Foundation to be administered as a separate fund to be known as the Marion Stuart Hanckel Fund (or a similar designation determined by the Coastal Community Foundation), and dedicated to supporting early childhood education services for children from low income families in the Charleston area. The court finds that the distribution is consistent and in accordance with the desires of the late Marion Stuart Hanckel as set forth in the Will.

AND IT IS SO ORDERED.



Probate Judge, Charleston County, SC

12/7th, 2010
Charleston, South Carolina 

ATTEST: A TRUE COPY


DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

Defendant Free Kindergarten Association of Charleston
Exhibit B

533

THE STATE OF SOUTH CAROLINA
EXECUTIVE DEPARTMENT

By the Secretary of State

Whereas,

Mrs. Harry H. Lindstadt, Mrs. Fred N. Thom, Mrs. Vince Noseley,
Miss Ann E. Morse, Mrs. Wade Murray

a majority of the Board of Directors of

FREE KINDERGARTEN ASSOCIATION OF CHARLESTON
(Charleston)

a corporation created under and pursuant to the laws of South Carolina, by certificate issued by the

Secretary of State on the 24th day of January, A. D. 19 01.

HAVE CERTIFIED, over their signatures, Resolutions authorizing in behalf of the aforesaid

Corporation

In the event of dissolution, the residual assets of the Free Kindergarten Association 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.

(authorized and set forth in the certificate aforesaid), which Resolutions were adopted pursuant to law, at a meeting of the stockholders of the aforesaid Corporation, of which thirty days' notice was given, which notice stated the purpose of the aforesaid meeting, and further, that said Resolutions were adopted by a majority vote, and that in all respects there has been complied with the provisions of Title 12, Chapter 7, Article 1, Code of Laws of South Carolina, 1952, and all amendments thereto.

NOW, THEREFORE, I O. Frank Thornton Secretary of State, by virtue of the authority in me vested by Chapter aforesaid, of the Code of Laws of South Carolina, 1952, and amendments thereto, do hereby certify that the requirements of law for said amendment have been complied with, and for good and sufficient reasons to me appearing, do hereby certify that the charter of the aforesaid Company has been so amended.

GIVEN under my hand and the seal of the State at Columbia,
this 5th day of February, 1901
in the year of our Lord One Thousand nine hundred and 71
and in the one hundred and 95th
year of the Independence of the United States of America.

O. FRANK THORNTON,
Secretary of State.

PATRICK F. STRINGER

ATTORNEY AT LAW

753 Folly Road (Zip 29412)
Post Office Box 12370
Charleston, S.C. 29422-2370
(843) 795-1331
Fax (843) 762-0144

January 4, 2019

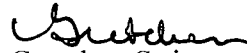
Chas. Clerk of Court

Re: Michael D. Royal v Free Kindergarten Association of Charleston
Case no: 2018-CP-10-5739

Please file the within Answer, returning 2 certified copies to me.

Thanking you, I am

Sincerely yours,



Gretchen Stringer-Robinson
Paralegal for Patrick F. Stringer, Esq.

Enc.

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.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

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

**ANSWER, COUNTERCLAIM,
 CROSSCLAIM AND REQUEST
 FOR DECLARATORY JUDGMENT
 OF CHARLESTON COUNTY
 SCHOOL DISTRICT**

FILED
 2019 JUN 24 PM 12:53
 JULIE J. ARNISTON
 CLERK OF COURT

Defendant Charleston County School District (“District”), in answer to the Complaint, as a Counterclaim against Plaintiff Michael D. Royal (“Royal”), as a Crossclaim against Defendant Free Kindergarten Association of Charleston (“Association”) and in seeking declaratory relief to determine the rights of the parties, alleges and states as follows:

FOR A FIRST DEFENSE

1. Each and every allegation which is not hereinafter specifically admitted, modified or explained is hereby denied.
2. Paragraph 1 contains no allegations relevant to the District; accordingly, no response is required of this Defendant. However, to the extent that the allegations of Paragraph 1 can be construed against the District, it denies same and demands strict proof thereof.
3. The allegations of Paragraphs 2 and 3 are admitted, upon information and belief.
4. The allegations of Paragraph 4 are admitted.

5. The allegations of Paragraph 5 are denied and strict proof thereof demanded. Further answering Paragraph 5, the District affirmatively alleges that the Real Estate Purchase and Sale Agreement (the “Agreement”) for sale of property located at 34 Pitt Street, Charleston SC 29401 (TMS No. 457-04-01-129 or the “Property”) that is the subject of this matter, is null and void and unenforceable as a matter of law inasmuch as the purported “Authorized Agent” of Defendant Free Kindergarten Association of Charleston (the “Association”) that signed the Agreement was without authority to execute such a contract on behalf of the Association.
6. Answering Paragraph 6, concerning the purchase price listed on the Agreement, the District craves reference to the express terms of the Agreement and denies any inconsistencies therewith. However, further answering Paragraph 6 regarding the purchase price, the District affirmatively alleges that the Agreement is void and unenforceable as a matter of law. Concerning the purported fair market value of the Property at the time of the making of the Agreement, the District denies same and demands strict proof thereof. All other allegations contained within Paragraph 6 are denied and strict proof thereof is demanded.
7. Answering Paragraph 7, the District craves reference to the express terms of the Agreement and denies any inconsistencies therewith. However, further answering Paragraph 7, the District affirmatively alleges that the Agreement is null and void and unenforceable as a matter of law.
8. The District is without sufficient knowledge and information to respond to Paragraphs 8 through 19; accordingly, it denies same and demands strict proof thereof.

9. The allegations of Paragraph 20 state a legal conclusion; accordingly, no response is required of this Defendant. However, to the extent that it does require a response of the District, it denies same and demands strict proof thereof.
10. The District is without sufficient knowledge and information to respond to Paragraphs 21 through 23; accordingly, it denies same and demands strict proof thereof.
11. The District is without sufficient knowledge and information to respond to Paragraphs 24 and 25, accordingly, it denies same and demands strict proof thereof. Further answering Paragraphs 24 and 25, the District affirmatively alleges that the Agreement is void and unenforceable as a matter of law.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance)

12. In answering the allegations of Paragraph 26, the District realleges and reaffirms its responses to Paragraphs 1 through 25 above.
13. Answering Paragraphs 27 through 35, the District denies same and demands strict proof thereof. Further answering the allegations of Paragraphs 27 through 35, the District affirmatively alleges that the Agreement is void and unenforceable as a matter of law.

RESPONDING TO PLAINTIFF'S PRAYER FOR RELIEF

14. The District denies that the Plaintiff is entitled to recovery as prayed for in Plaintiff's Prayer for Relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, the Complaint should be dismissed pursuant to SCRCP 12(b)(6) for failure to state facts sufficient to constitute a claim against Defendants.

FOR A THIRD DEFENSE
(Waiver, Estoppel, Laches)

16. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, the Complaint is barred by the doctrines of waiver, estoppel and/or laches.

FOR A FOURTH DEFENSE
(Incorporation of Defenses of Other Defendants)

17. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, the District hereby incorporates by reference, as if fully set forth herein, and reserve their rights to rely upon, any and all defenses, affirmative and otherwise, raised, pleaded, or otherwise asserted by any and all other defendants to this action, to the extent that such defenses are not inconsistent with the District's positions herein.

FOR AN FIFTH DEFENSE
(Reservation of Additional and Further Defenses)

18. The District hereby reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF
MICHAEL D. ROYAL, CROSSCLAIM AGAINST DEFENDANT FREE
KINDERGARTEN ASSOCIATION OF CHARLESTON AND BY WAY OF
REQUEST FOR DECLARATION OF THE RIGHTS OF ALL PARTIES TO
THIS ACTION

JURISDICTION AND VENUE

19. Defendant Charleston County School District (the "District") is a body corporate and politic established under the laws of the State of South Carolina.

20. Upon information and belief, Plaintiff Michael D. Royal (“Royal”) is a citizen and resident of the State of South Carolina and resides in Charleston County, South Carolina.
21. Upon information and belief, Defendant Free Kindergarten Association of Charleston (the “Association”) is a nonprofit public benefit corporation organized and existing as a under the laws of the State of South Carolina.
22. This Court has jurisdiction over the persons and subject matter of this case.
23. Venue is proper in the Charleston County Court of Common Pleas.

FACTS

24. The Association was organized as a non-profit corporation on January 24, 1901 for the purpose of providing free kindergarten to the children of the City of Charleston, South Carolina insomuch as kindergarten classes were not provided by the public schools during that era.
25. Sometime after formation of the Association, public schools in Charleston began providing kindergarten classes to children within their jurisdiction.
26. On or about November 18, 1958, the Marion Stuart Hanckel Trust (the “Trust”) began providing funds to the Association for the purpose of providing free kindergarten training to children in Charleston.
27. On February 5, 1971, the South Carolina Secretary of State issued an amendment to the charter of the Association pursuant to a Resolution passed and certified by a majority of the Board of Directors of the Association, whereby it resolved that “[i]n the event of dissolution, the residual assets of the Free Kindergarten Association 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.”

28. Upon information and belief, all corporate powers of the Association were exercised by and under the authority of its board and the affairs of the corporation were managed under the direction of its board. Upon further information and belief, the Association's governing documents did not authorize any person or persons to exercise any of the powers which would otherwise be exercised by the board.
29. Upon information and belief, in the early 1970's, the last remaining board member of the Association died.
30. Upon information and belief, despite the fact that the Board of Directors ceased to function and no longer existed after the death of the last remaining board member in the early 1970's, the Association continued to operate teaching kindergarten classes to children in Charleston on some basis until approximately 2005. Thereafter, upon further information and belief, the Association ceased operations on a permanent basis.
31. Upon information and belief, during the early 1950's and up until the Association ceased operations in approximately 2005, Ms. June Murray Wells ("Ms. Wells") taught kindergarten on a part-time basis at the Association. Upon further information and belief, while Ms. Wells has remained affiliated with the Association to some degree up to the present, she has never been a duly appointed board member and has never been authorized to exercise any of the powers which would otherwise be exercised by the board of directors.
32. Upon information and belief, at some point prior to late December 2010, the Trust funds became the sole source of income of the Association. On December 29, 2010, the Charleston County Probate Court ordered an equitable deviation of the Trust. The Court ordered that the Trust be terminated and its remaining assets be distributed to the Coastal

Community Foundation. The Court's order, in effect, terminated the sole remaining source of income of the Association. See Order, dated December 29, 2010.

33. Despite the death of all board members as of the early 1970's, the non-existence of a duly appointed Board of Directors thereafter, the cessation of active operations by the Association in approximately 2005, the termination of the Association's sole source of income in 2010, and the Association's Resolution and amended charter mandating the distribution of its residual assets to the District upon dissolution, the Association entered into a Real Estate Purchase and Sale Agreement (the "Agreement") for the sale of its sole remaining asset, the real property located at 34 Pitt Street, Charleston, S.C. to the Plaintiff on April 23, 2013. Ms. Wells executed this Agreement on behalf of the Association as its purported "Authorized Agent." However, Ms. Wells lacked the legal authority to execute this Agreement on behalf of the Association.
34. Royal and the Association, knew or should have known, that the District held an interest in the Property and the subject real estate transaction and that it held lawful status as the recipient organization of the Association's residual assets upon dissolution based on the corporate Resolution /Amended Charter and/or as a matter of public record at the time of execution of the Agreement.
35. Neither Royal nor the Association notified the District of the Agreement at the time of execution of the Agreement. At no time has the District consented to the Agreement, nor the terms of sale of the Property contained therein.
36. Royal and the Association were aware of a question concerning Ms. Wells legal authority to execute the Agreement on behalf of the Association and the potential for a declaratory judgment action on this issue at the time of execution of the Agreement. Specifically,

Paragraph 6 of the Agreement contemplates and expressly raises this issue by stating “..., if Seller is unable to provide documentation of June M. Wells authority to dispose of the Property on behalf of the Seller, the Seller and Mrs. Wells agree to petition the Court of Common Pleas of Charleston County to establish her authority, and Purchaser shall bear any court costs.”

37. Pursuant to S.C. Code Ann. §33-31-1202 (1976), the Association is required to give written notice to the South Carolina Attorney General (“Attorney General”) twenty days before it sells all, or substantially all, of its property being sold other than in the regular course of its activities. The Association gave the Attorney General written notice of the impending sale of the Property on April 4, 2018. The Association, however, has not obtained the required approval of the Attorney General for the sale of the Property. Upon information and belief, the Attorney General will not approve the sale of the Property under the Agreement inasmuch as the sales price therein is not based on the current fair market value (FMV) of the Property.

38. Pursuant to S.C. Code Ann. §33-31-1403 (1976), the Association is required to give written notice to the Attorney General that it intends to dissolve at or before the time it delivers articles of dissolution to the South Carolina Secretary of State. On April 4, 2018, the Association gave written notice to the Attorney General that it intended to dissolve after the sale of the Property that is the subject of this action.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

39. The District re-alleges the allegations of the paragraphs above as if repeated herein verbatim.

40. As a result of the foregoing, the District is the legal, beneficial and/or equitable owner of all assets owned by the Association and/or all proceeds of sale of such assets based on their current fair market value (FMV) and the lawful designated nonprofit recipient organization entitled to receive distribution of the residual assets of the Association upon dissolution.
41. Under both state nonprofit and charitable trust laws and federal tax laws, the Association, as a public benefit corporation, holds among other duties, the following duties, to wit:
- a. Not to exceed or abuse the authority conferred upon it by law;
 - b. Not to misapply or waste the assets of the corporation;
 - c. To maintain its operations and functions such that it is able to continue to carry out its charitable purposes;
 - d. To hold the corporation's assets in charitable trust for the charitable beneficiaries the trust was organized to serve;
 - e. To use the corporation's assets for the charitable purposes for which the trust was organized;
 - f. To sell, convey or otherwise dispose of its property for fair market value and in accordance with its governing instruments and applicable law;
 - g. To designate a recipient organization to receive the corporation's residual assets in the event of dissolution;
 - h. To distribute the corporation's residual assets to the recipient organization as part of the dissolution process; and
 - i. To obtain the appropriate authorizations and approvals for the sale of all, or substantially all, of its assets outside of the usual and regular course of its activities.

42. The Agreement provided for the closing on the Property to occur within the period between April 23, 2013 and April 9, 2018. The contract provision contained in the Agreement allowing approximately five years to close on the Property placed the sole remaining asset of the Association, and the legal, beneficial and/or equitable interest of the District in that asset, at risk resulting in the potential misapplication, loss, devaluation, and/or wasting of the asset.
43. The sales price under the terms of the Agreement is Three Hundred Fifteen Thousand Two Hundred and 00/100ths (\$315,200.00) Dollars. The value of the Property appreciated significantly during the five (5) year closing period, such that the fair market value of the Property as of June 7, 2018 was Five Hundred Twenty-Two Thousand Five Hundred and 00/100ths (\$522,000.00) Dollars. As a result, the sale of the Property under the Agreement would result in the misapplication, loss, devaluation and/or wasting of the sole remaining asset of the Association, and the legal, beneficial and/or equitable interest of the District in that asset.
44. The sales price under the terms of the Agreement is for substantially less than the current fair market value (FMV) of the Property.
45. The sales price under the terms of the Agreement was not set nor authorized and approved in accordance with the requirements of South Carolina nonprofit law governing the sale of all, or substantially all, of the Association's property.
46. The real estate transaction and attendant Agreement for the sale of the Property was not authorized and approved in accordance with the requirements of South Carolina nonprofit law governing the sale of all, or substantially all, of the Association's property.

47. The Agreement was executed on behalf of the Association by an individual who did not have legal authority to sign the Agreement on its behalf.
48. The Agreement was executed by a purported “Authorized Agent” of the Association in breach of certain of those legal duties and obligations held by nonprofit public benefit corporations in South Carolina as stated in Paragraph 41 above.
49. Based on the foregoing, and as a result of the Agreement and pending sale of the Property under the subject real estate transaction, the District’s legal, beneficial and/or equitable ownership of all assets of the Association, and/or all proceeds of sale of such assets based on their current fair market value (FMV), as well as the right to distribution of those residual assets upon the Association’s dissolution have been jeopardized and subjected to potential misapplication, loss, devaluation, and waste.
50. As a result of the foregoing, the Agreement that is the subject of this matter is null and void and unenforceable as a matter of law.

WHEREFORE, Charleston County School District prays that the Complaint against them be dismissed in its entirety, that the Court award Charleston County School District their costs, including reasonable attorneys’ fees, incurred in defending Plaintiff’s Complaint in this action, and that the Court award such further equitable and legal relief as the Court deems just and proper for the defense of Plaintiff’s Complaint in this action, and that the Court inquire into these matters and declare that:

- a. The Charleston County School District is the legal, beneficial and/or equitable owner of all assets, including the real property and improvements located at 34 Pitt Street, Charleston, SC 29401, owned by the Free Kindergarten Association of

- Charleston, a South Carolina public benefit corporation, and/or all proceeds of sale of such assets based on their current fair market value (FMV) at the time of sale;
- b. The Real Estate Purchase and Sale Agreement (the “Agreement”) for sale of the real property and improvements located at 34 Pitt Street, Charleston SC 29401 (TMS No. 457-04-01-129 or the “Property”) that is the subject of this matter, is null and void and unenforceable as a matter of law;
- c. All assets, including the real property and improvements located at 34 Pitt Street, Charleston, SC 29401, owned by the Free Kindergarten Association of Charleston, a South Carolina public benefit corporation, and/or all proceeds of sale of such assets based on their current fair market value (FMV) at the time of sale, shall transfer to the Charleston County School District upon dissolution of the Free Kindergarten Association of Charleston; and
- d. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

A Bright Ariail, Esq. SC BAR #69570

125 Wappoo Creek Drive

Building E - Suite 202

Charleston, SC 29412

Phone: 843/814-8805

bright@brightariailaw.com

Attorney for Charleston County School District

Law Office of A. Bright Ariail, LLC

June 21, 2019

VIA US MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

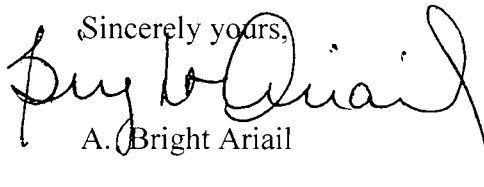
RE: Michael D. Royal v. Free Kindergarten Association of Charleston
C/A No. 2018-CP-10-5739

Dear Julie;

Enclosed, please find the original and one copy of Charleston County School District's (the "District's") Answer, Counterclaim, Crossclaim and Request for Declaratory Judgement attached and a Certificate of Service for same. Please be advised that the only modifications to the Answer, Counterclaim, Crossclaim and Request for Declaratory Judgment that have been made from the proposed version attached to the District's Motion to Intervene were addition of parties in the caption and removal of the request for jury trial. Please return the clocked copy to me in the enclosed self-addressed stamped envelope.

The pro se plaintiff and all counsel of record are being served by copy of this letter and all enclosures.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Michael D. Royal
All Counsel of Record

bright@brightariailaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CASE NO: 2018-CP-10-5739

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.)
)
 _____)

REPLY TO CROSSCLAIM

FILED
 2019 JUL - 1 PM 3: 15
 JUDGE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Defendant Free Kindergarten Association of Charleston replies to Defendant Charleston County School District’s Crossclaim as follows:

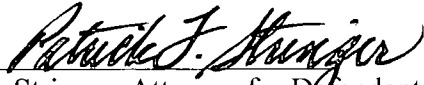
FIRST: Your Defendant admits Paragraphs Nineteen, Twenty, Twenty-One, Twenty-Two, Twenty-Three, Twenty-Four, Twenty-Five, Twenty-Six, Twenty-Seven, Thirty-Two, Thirty-Five, Thirty-Seven, and Thirty-Eight and denies the allegations of Paragraphs Twenty-Eight, Twenty-Nine, Thirty, Thirty-One, Thirty-Three, Thirty-Four and Thirty-Six.

SECOND: Further in Reply, your said Defendant would allege that Ms. June Murray Wells (“Ms. Wells”) was and is the duly authorized director and last surviving member of the Free Kindergarten Association of Charleston and that as such she has authority and had authority since approximately 1990 to represent the Free Kindergarten Association of Charleston. That, further, upon any sale of the last remaining asset, 34 Pitt Street, all costs of maintenance of that property and attorney’s fees regarding the sale and this litigation

should be deducted prior to any disposition of residual assets, which disposition should be to Charleston School District #20.

WHEREFORE, your Defendant Free Kindergarten Association of Charleston prays:

- a) that the Crossclaim against them be dismissed in its entirety;
- b) that the Court award costs including reasonable attorney's fees together with maintenance costs and any other costs incurred in defending both Plaintiff's Complaint and the School District's Crossclaim in this action;
- c) that the Court award such other further and equitable or legal relief as the Court deems just and proper; and,
- d) for such other relief as the Court may deem just and proper.



Patrick F. Stringer, Attorney for Defendant
Free Kindergarten Association of Charleston
753 Folly Road
P.O. BOX 12370
CHARLESTON, S.C. 29422-2370

CHARLESTON, S.C.

Date: June 26, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CASE NO: 2018-CP-10-5739

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.)
)
 _____)

**REPLY TO REQUEST FOR
 DECLARATORY JUDGMENT OF
 SCHOOL DISTRICT**

2019 JUL -1 PM 3:15
 FILED
 CLERK OF COMMON PLEAS COURT
 CHARLESTON, SOUTH CAROLINA
 DR

The Defendant Free Kindergarten Association of Charleston (“Association”) replies to Defendant Charleston County School District’s Request for Declaratory Judgment as follows:

FIRST: Your Defendant admits the allegations of Paragraphs Forty-One, so much of Forty-Three as states “The sales price under the terms of the Agreement is Three Hundred Fifteen Thousand Two Hundred and 00/100ths (\$315,200.00) Dollars. The value of the Property appreciated significantly during the five (5) year closing period, such that the fair market value of the Property as of June 7, 2018 was Five Hundred Twenty-Two Thousand Five Hundred and 00/100 (\$522,000.00) Dollars....” Defendant admits Paragraphs Forty-Four and Forty-Six. Your Defendant denies the allegations of Paragraphs Thirty-Nine, Forty, Forty-Two, so much of Forty-Three as states that, “As a result, the sale of the Property under the Agreement would result in the misapplication, loss, devaluation and/or wasting of the sole remaining asset of the Association, and the legal, beneficial and/or

equitable interest of the District in that asset....” Defendant further denies Paragraphs Forty-Five, Forty-Seven, Forty-Eight, Forty-Nine and Fifty.

SECOND: Your Defendant Association filed a resolution with the Secretary of State in 1971 that stated the following:

In the event of dissolution, the residual assets of the Free Kindergarten Association 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.

As a result the Association is informed and believes that any residual assets, after deducting Association costs of maintenance or any other costs and attorney’s fees, should be paid to “Charleston School District #20” and only “for general use in this said Charleston School District #20.”

WHEREFORE, your Defendant Free Kindergarten Association of Charleston prays that the Court make a determination as to Plaintiff’s Complaint and in any event Order that any sale of the last remaining asset of the Free Kindergarten Association of Charleston deduct all maintenance and other costs, costs of litigation including reasonable attorneys fees incurred in the sale of such property and in defense of both Plaintiff’s Complaint and Defendant Charleston County School District’s Crossclaim, and award such further equitable and legal relief as the Court deems just and proper for the defense of Plaintiff’s Complaint and the School District’s Crossclaim and declare that any present or future sale of the property in question be subject to the foregoing deductions for maintenance and other costs, costs of litigation, and reasonable attorney’s fees prior to payment to Charleston

School District #20; and, for such other and further relief as the Court may deem just and proper.

Patrick F. Stringer

Patrick F. Stringer, Attorney for Defendant
Free Kindergarten Association of Charleston
753 Folly Road
P.O. BOX 12370
CHARLESTON, S.C. 29422-2370

CHARLESTON, S.C.

Date: *June 26, 2019*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	C.A. No.: 2018-CP-10-5739
)	
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)	
)	
Intervenors.)	
)	

FILED
 2018 JUL 25 AM 11:57
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

**South Carolina Attorney General Alan Wilson’s
Answer to Complaint**

Intervenor Alan M. Wilson, Attorney General of the State of South Carolina (“Attorney General”), responds to Plaintiff’s Complaint filed December 4, 2018 as follows:

1. Except as hereinafter admitted, the Attorney General denies each and every allegation contained in the Complaint, including those contained in the Prayer for Relief.
2. In response to paragraph 1, the allegations in the Complaint and the terms of the real estate purchase agreement attached as Exhibit A to the Complaint speak for themselves and the Attorney General denies any inconsistent allegations. The Attorney General denies Plaintiff is entitled to the relief sought in the Complaint.

3. The Attorney General lacks specific knowledge or information to form a belief as to the truth of the allegations in paragraph 2 and therefore denies them.

4. The Attorney General admits the allegations in paragraph 3 upon information and belief.

5. The Attorney General admits the allegations in paragraph 4 upon information and belief.

6. In response to paragraph 5, the Attorney General craves reference to the public record and Exhibit A of the Complaint, and denies any allegations inconsistent with the public record and Exhibit A.

7. In response to the allegations in paragraph 6 as to the purchase price, the Attorney General craves reference to Exhibit A and denies any allegations inconsistent with Exhibit A. The Attorney General admits that an appraisal report is attached as Exhibit B to the Complaint and asserts that the document speaks for itself. The Attorney General denies the remaining allegations in paragraph 6.

8. In response to the allegations in paragraph 7, the Attorney General craves reference to the Agreement attached as Exhibit A, which speaks for itself. The Attorney General denies any allegations in paragraph 7 inconsistent with Exhibit A.

9. The Attorney General lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 8 and 9 and therefore denies the same. In further response to paragraph 9, the Attorney General asserts that Exhibit A speaks for itself and denies any allegations inconsistent with its terms.

10. The Attorney General lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraphs 10 and 11 and therefore denies the same.

11. Responding to the allegations in paragraph 12, the Attorney General craves reference to the Agreement attached as Exhibit A to the Complaint and asserts the terms of the Agreement speak for themselves. The Attorney General denies any allegation in paragraph 12 inconsistent with the Agreement. The Attorney General denies the remaining allegations in paragraph 12 due to lack of information.

12. The Attorney General denies the allegations in paragraph 13 due to lack of information.

13. Responding to the allegations in paragraph 14, the Attorney General asserts the document attached as Exhibit C speaks for itself. The Attorney General denies any allegations in paragraph 14 inconsistent with the terms of Exhibit C and denies the remaining allegations in paragraph 14 due to lack of information.

14. The Attorney General denies the allegations in paragraphs 15 and 16 based on lack of information. The Attorney General asserts the terms of Exhibits D and E speak for themselves and denies any allegations inconsistent with their terms.

15. Responding to the allegations in paragraph 17, the Attorney General admits that a letter is attached as Exhibit F to the Complaint and asserts the terms of Exhibits A and F to the Complaint speak for themselves. The Attorney General denies the remaining allegations in paragraph 17.

16. Responding to the allegations in paragraph 18, the Attorney General admits an email is attached to the Complaint as Exhibit G and asserts it speaks for itself. The Attorney General denies the allegations in paragraph 18 due to lack of information.

17. Responding to the allegations in paragraph 19, the Attorney General admits the Office sent Plaintiff the email attached as Exhibit H to the Complaint, which the Attorney General asserts speaks for itself.

18. Responding to the allegations in paragraph 20, the Attorney General admits the Defendant sent this office the letter attached as Exhibit I to the Complaint and asserts the terms of Exhibit I speak for themselves. The remaining allegations in paragraph 20 are conclusions of law, to which no response is required. To the extent they are deemed to be conclusions of fact, the Attorney General denies them.

19. The Attorney General admits the email identified in paragraph 21 and attached as Exhibit J to the Complaint was sent by Plaintiff and received by this Office and asserts it speaks for itself. The Attorney General denies any inconsistent allegations. To the extent a response is required to the remaining allegations in paragraph 21, the Attorney General denies them.

20. The Attorney General admits the email identified in paragraph 22 which is attached as Exhibit K was received by this Office and asserts it speaks for itself. The Attorney General denies any allegations in paragraph 22 which are inconsistent with Exhibit K.

21. In response to paragraph 23, the Attorney General admits the email attached as Exhibit L was received by this Office. The Attorney General denies any allegations in paragraph 23 inconsistent with Exhibit L.

22. In response to paragraph 24, the Attorney General admits the property has not been conveyed to Plaintiff. The Attorney General denies the remaining allegations in paragraph 24 of the Complaint.

23. The Attorney General denies the allegations in paragraph 25 based on lack of information.

24. Paragraph 26 appears to be a paragraph to which no response is required. To the extent a response is required; the Attorney General incorporates by reference its prior responses in their entirety.

25. The Attorney General denies the allegations in paragraph 27.

26. Responding the allegations in Paragraph 28, the Attorney General craves reference to Exhibit A to the Complaint, which speaks for itself. The Attorney General denies the remaining allegations in paragraph 28.

27. The allegations in paragraphs 29 and 30 are conclusions of law to which no response is required. To the extent they are deemed to be conclusions of fact or a response is required, the Attorney General denies them.

28. The Attorney General denies the allegations in paragraphs 31, 32 and 33 based on lack of information.

29. The Attorney General denies the allegations in paragraphs 34 and 35 based on lack of information.

WHEREFORE, Defendant Alan Wilson, Attorney General of the State of South Carolina prays that the Court inquire into this matter and protect the interest of the nonprofit charitable corporation and its beneficiaries and for such other relief that the Court deems appropriate.


ALAN WILSON
Attorney General

C. HAVIRD JONES, JR.
Senior Assistant Deputy Attorney General

MARY FRANCES JOWERS
Assistant Deputy Attorney General

ANNEMARIE B. MATHEWS
Assistant Attorney General

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3680


ATTORNEYS FOR RESPONDENT
ALAN WILSON,
ATTORNEY GENERAL OF THE
STATE OF SOUTH CAROLINA

July 23, 2019



ALAN WILSON
ATTORNEY GENERAL

July 23, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401-2210

Re: *Michael D. Royal v. Free Kindergarten Association of Charleston*
C/A No.: 2018-CP-10-5739

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of the South Carolina Attorney General's Answer to Complaint, along with the Certificate of Service. I appreciate your filing the originals and returning clocked-in copies to me. By copy of this letter, I am serving Mr. Royal and counsel of record.

Yours very truly,

Mary Frances Jowers
Assistant Deputy Attorney General

enclosures
cc (w/ enclosures):

Michael D. Royal
Patrick F. Stringer
A. Bright Ariail

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)
Intervenors)

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

FILED
2019 JUL 25 AM 10:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**Answer/Reply of Intervenor The
Attorney General of the State
of South Carolina to the
Charleston County School
District’s Request for
Declaratory Judgment**

Intervenor Alan M. Wilson, Attorney General of the State of South Carolina (“The Attorney General”), responds to Charleston County School District’s Request for Declaratory Judgment filed June 24, 2019 (“Request”) as follows.

1. Except as hereinafter admitted, the Attorney General denies each and every allegation contained in the Request, including those contained in the Prayer for Relief.
2. The allegations of paragraphs 19, 20, 21, 22, and 23 are admitted upon information and belief.
3. In response to paragraph 24, the Attorney General craves reference to the public record and denies any allegations inconsistent with the public record.
4. In response to paragraph 25, the Attorney General admits that the public schools of Charleston began providing kindergarten classes to children within their

jurisdiction. The remaining allegations of paragraph 25, including the timing of the offering of the kindergarten classes, is denied upon lack of sufficient information to form a belief.

5. In response to paragraph 26, the Attorney General craves reference to the terms of Marion Stuart Hanckel Trust and the public record, and denies any allegations inconsistent with the terms of the Marion Stuart Hanckel Trust or the public record.

6. In response to paragraph 27, the Attorney General craves reference to the filings of the South Carolina Secretary of State's Office, and denies any allegations inconsistent with these filings.

7. Responding to the allegations of paragraphs 28, the Attorney General craves reference to the filings of the Secretary of State and the Association's governing documents and denies any allegations inconsistent with them.

8. The Attorney General admits the allegation in paragraph 29 upon information and belief.

9. Responding to the allegations in paragraph 30, the Attorney General admits upon information and belief that that Association continued to teach kindergarten classes on some basis until approximately 2005 and thereafter ceased operations. The Attorney General denies the remaining allegations in paragraph 30 based on lack of information.

10. Responding to the allegations in paragraph 31, the Attorney General admits Ms. Wells taught kindergarten on a part time basis at the Association and has remained affiliated with the Association. The Attorney General denies the remaining allegations in paragraph 31 based on lack of information..

11. In response to paragraph 32, the Attorney General craves reference to the Order of the Charleston County Probate Court of December 29, 2010 and denies any allegations inconsistent with the Order. The Attorney General lacks sufficient knowledge or information to form a belief as to the truth of the allegation that prior to December 2010 the Trust funds became the sole source of income of the Association, and therefore denies it.

12. In response to paragraph 33, the Attorney General craves reference to the Association's governing documents and the Agreement and denies any allegations inconsistent with them. The Attorney General denies the remaining allegations in paragraph 33 based on lack of information.

13. To the extent the allegations in paragraphs 34 and 35 are directed at the Attorney General, they are denied upon lack of sufficient information to form a belief.

14. In response to paragraph 36, to the extent the allegations are directed at the the Attorney General, the Attorney General craves reference to the Agreement and denies any allegations inconsistent with the Agreement. The Attorney General denies the remaining allegations in paragraph 36 based on lack of information.

15. The Attorney General admits the allegations in paragraphs 37 and 38 upon information and belief.

16. Paragraph 39 appears to be a paragraph to which no response is required. To the extent a response is required, the Attorney General incorporates by reference its prior responses to these allegations.

17. The allegations of paragraph 40 are legal conclusions to which no response is required. To the extent a response to paragraph 40 is required, the Attorney

General incorporates the terms of the Agreement herein in their entirety and denies any allegations inconsistent with the terms of the Agreement and South Carolina law..

18. The allegations of paragraph 41 are legal conclusions to which no response is required. To the extent a response to paragraph 41, is required. The Attorney General denies any allegations inconsistent with the state nonprofit and charitable trust laws and federal tax laws.

19. In response to paragraph 42, the Attorney General craves reference to the Agreement and denies any allegations inconsistent with the Agreement.

20. In response to paragraph 43, the Attorney General craves reference to the Agreement and denies any allegations inconsistent with the Agreement. In further response to paragraph 43, the Attorney General craves reference to the Summary Appraisal Report of the Property located at 34 Pitt Street in Charleston, dated June 7, 2018.

21. The Attorney General admits the allegations in paragraph 44 upon information and belief.

22. In response to the allegations in paragraph 45, the Attorney General admits it did not authorize or approve the sales price in the Agreement. Responding to the remaining allegations in paragraph 45, the Attorney General craves reference to the Agreement and the requirements of South Carolina law, and denies any allegations inconsistent with them.

23. In response to the allegations in paragraph 46, the Attorney General admits it did not authorize or approve the Agreement. Responding to the remaining allegations in p. 46, the Attorney General craves reference to the Agreement and the requirements of South Carolina law, and denies any allegations inconsistent with them.

24. The Attorney General denies the allegations in paragraph 47 based on lack of information.

25. In response to paragraph 4849, and 50, the Attorney General craves reference to the Agreement and the requirements of South Carolina law, and denies any allegations inconsistent with them.

WHEREFORE, Intervenor Alan Wilson, the Attorney General of the State of South Carolina prays that the Court inquire into this matter and protect the interest of the nonprofit charitable corporation and its beneficiaries and for such other relief that the Court deems appropriate.

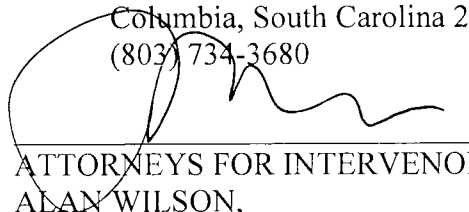
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ALAN WILSON,
ATTORNEY GENERAL OF THE
STATE OF SOUTH CAROLINA

July 23, 2019



ALAN WILSON
ATTORNEY GENERAL

July 23, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401-2210

Re: *Michael D. Royal v. Free Kindergarten Association of Charleston*
C/A No.: 2018-CP-10-5739

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of the Answer/Reply of Intervenor The Attorney General of the State of South Carolina to Charleston County School District's Request for Declaratory Judgment, along with the Certificate of Service. I appreciate your filing the originals and returning clocked-in copies to me. By copy of this letter, I am serving Mr. Royal and counsel of record.

Yours very truly,

Mary Frances Jowers
Assistant Deputy Attorney General

enclosures
cc (w/ enclosures):

Michael D. Royal
Patrick F. Stringer
A. Bright Ariail

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Michael D. Royal,)
)
 Plaintiff,)
)
 vs.)
)
 Free Kindergarten Ass'n of Charleston,)
)
 Defendant.)
)
 and)
)
 The Attorney General of the State of South)
 Carolina, the Charleston County School)
 Board, Charleston Chapter No. 4, United)
 Daughters of the Confederacy and the)
 Confederate Museum)
)
 Intervenor.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2018-CP-10-5739

**STIPULATION OF DISMISSAL OF
 CHARLESTON CHAPTER NO. 4, UDC
 and the CONFEDERATE MUSEUM
 AS INTERVENORS
 (without prejudice)
 (CASE WILL CONTINUE)**

COMES NOW THE Intervenor, Charleston Chapter No. 4, United Daughters of the Confederacy and the Confederate Museum (“these Intervenor”), by and through their undersigned counsel, together with counsel for the other parties, who would STIPULATE that these Intervenor be DISMISSED from the case, pursuant to Rule 41, South Carolina Rules of Civil Procedure, without prejudice. All of the parties are to bear their own attorneys’ fees and costs with respect to these Intervenor’s participation in the case. AND IS SO STIPULATED.

WE CONSENT:

/s Jeffrey S. Tibbals

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Attorneys for Plaintiff

WE CONSENT

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WE CONSENT

/s Joseph K. Qualey

Joseph K. Qualey, Esquire
Qualey Law Firm, LLC
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Court Appointed Receiver

WE CONSENT

/s Mary Frances Jowers

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Attorney for CCSD

WE CONSENT

/s Robert B. Varnado

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***Attorney for Charleston Chap. No. 4
UDC & Confederate Museum***

1 STATE OF SOUTH CAROLINA
 2 IN THE COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON
 4 FOR THE NINTH JUDICIAL CIRCUIT

5 MICHAEL D. ROYAL,)
 6)
 7 Plaintiff,) Case No.
 8) 2018-CP-10-5739

9 -versus-)

10 FREE KINDERGARTEN ASSOCIATION OF)
 11 CHARLESTON,)
 12)
 13 Defendant,)

14 THE ATTORNEY GENERAL OF THE STATE)
 15 OF SOUTH CAROLINA AND THE)
 16 CHARLESTON COUNTY SCHOOL)
 17 DISTRICT,)
 18)
 19 Intervenor,)

20 -----
 21 Hearing before the Honorable Mikell R.
 22 Scarborough, reported by Jennifer M. Huggins,
 23 Court Reporter and Notary Public, at 10:00 a.m.
 24 on December 15, 2021 at 100 Broad Street,
 25 Courtroom 2A, Charleston, South Carolina.

26 Jennifer M. Huggins, Court Reporter
 27 Master-in-Equity
 28 P.O. Box 80711
 29 Charleston, SC 29416

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1 THE COURT: All right, folks. Are
2 you ready for the case captioned, Michael Royal
3 vs. The Free Kindergarten Association of
4 Charleston, and then we've added to this case,
5 the Attorney General of the State of South
6 Carolina. We're happy to have y'all in the
7 matter -- as well as the Charleston County School
8 District. We've got y'all as well.

9 We've got the matter set for trial
10 today. I was reviewing the pretrial briefs and
11 memoranda over the last two nights, and I know
12 that we've got a number of motions that we need
13 to take up, and I plan to blitzkrieg through
14 those so we can start taking testimony.

15 But the first thing I'm going to do, I
16 took the plaintiff's motion for summary judgment
17 under consideration. I'm going to deny that
18 motion right off the bat.

19 Ms. Ariail, you had a motion for summary
20 judgment as well?

21 MS. ARIAIL: Yes, sir.

22 THE COURT: I'm going to deny that.
23 Are we ready for trial? What other motions do we
24 got? A motion to make Mr. Royal an expert? In
25 what capacity is he supposed to be an expert?

1 MR. TIBBALS: Your Honor, the
2 history of this case --

3 THE COURT: No, no, no. In what
4 matter is he supposed to be an expert?

5 MR. TIBBALS: Lost profit damages.

6 THE COURT: All right. Denied.
7 He's the plaintiff.

8 MR. TIBBALS: Right.

9 THE COURT: That's denied. Y'all
10 had another motion? Any further motions from the
11 plaintiff?

12 MR. TIBBALS: We did. We had a
13 motion to eliminate -- to exclude Charleston
14 County School District's expert witness, Robert
15 McGahey.

16 THE COURT: Okay. And the basis
17 for that?

18 MR. TIBBALS: The basis for that,
19 Your Honor, is that there is no --

20 THE COURT: He's the 30(b)(6) --
21 wasn't he the 30(b)(6) guy?

22 MR. TIBBALS: He's the Charleston
23 County School --

24 THE COURT: No?

25 MR. TIBBALS: No. He's the expert

1 appraiser that was hired by the school district.

2 THE COURT: Appraiser. Okay.

3 MR. TIBBALS: The problem is that
4 his date of valuation -- you know, he has two
5 dates of valuation. One is April 26, 2021. The
6 second is August 5th, 2021.

7 Both of those dates are so far outside
8 any relevant evidence as to the property's value,
9 that there would be no probity in hearing
10 testimony on his opinions. The relevant date of
11 valuation in this case is the date of the
12 contract.

13 THE COURT: Denied. That's denied
14 as well. He can go forward. He can testify.
15 You have a motion as well, correct?

16 MS. ARIAIL: Yes, sir. We also had
17 a motion to exclude additional testimony from
18 Mr. Bishop. He was renamed as an expert. I had
19 already deposed him.

20 THE COURT: Jody Bishop, yeah.
21 Okay.

22 MS. ARIAIL: Mr. Royal had been
23 given a date by orders back in, I believe it was,
24 March or April, to provide experts' names. And I
25 took his deposition accordingly, and they've

1 renamed him.

2 THE COURT: Okay.

3 MS. ARIAIL: I've also filed a
4 motion in limine to restrict his testimony
5 specific to what he did testify to during his
6 deposition.

7 THE COURT: At the time of the
8 deposition and was that the time -- did he have a
9 time frame for his opinion as to what the opinion
10 of value was?

11 MS. ARIAIL: He did not. He told
12 me he had no opinions. He sold Ms. Royal some
13 data, and his deposition was taken in November.

14 THE COURT: Gotcha. Okay.

15 MR. TIBBALS: Your Honor, if we
16 could --

17 THE COURT: Was he listed? I see
18 Mr. Robinson back there. You've got a very --
19 somebody has got a very competent appraiser
20 somewhere.

21 MR. TIBBALS: Yes, sir. Your
22 Honor, Mr. Bishop will not testify inconsistently
23 with his deposition, and I think if we can
24 stipulate that both experts -- if you're going to
25 let Mr. McGahey testify, that he doesn't testify

1 inconsistently with his deposition. Fair is
2 fair.

3 And so if we both have that stipulation
4 that they will testify to, you know -- and
5 Mr. Bishop did say, he didn't have an opinion,
6 but he did produce the parking data.

7 THE COURT: Okay.

8 MR. TIBBALS: So in the event that
9 that becomes necessary to show that, then we want
10 the right to call him. And so, you know,
11 consistent with the deposition testimony, yes.

12 The other question is, because they
13 identified their expert witness, Robert McGahey
14 so late, we asked that -- we identified Jody
15 Bishop as a rebuttal expert because McGahey gives
16 opinions of value that we may need to rebut.

17 And so in the event that we have to call
18 a rebuttal witness, Jody Bishop is our guy, and
19 there's no -- I don't see how there can be any
20 complaints about that given that they sat on
21 their reports, you know, for many months.

22 THE COURT: Gotcha. Any problem
23 with that, if they limit their testimony to what
24 they --

25 MS. ARIAIL: You know, we had named

1 Mr. McGahey as soon as we were served with
2 discovery.

3 THE COURT: Okay.

4 MS. ARIAIL: We received discovery
5 that was dated in April, but we didn't receive it
6 until the end of August. And we timely, within
7 30 days, because we knew trial was eminent, we
8 responded.

9 THE COURT: Okay. All right. So
10 the -- I'm not going to exclude him as a witness,
11 and we will cross that bridge when we get to it
12 is what it sounds like. Okay?

13 Any other matters that we need to take
14 up before we start?

15 MS. ARIAIL: Yes, sir. There was
16 one other motion filed, and it was -- I was a bit
17 confused because Mr. Robinson was named again as
18 an expert in the last couple of days, and I just
19 want to restrict -- there's a motion in limine to
20 restrict his testimony to the four corners of his
21 two reports.

22 THE COURT: Okay. Any objection to
23 that?

24 MS. JOWERS: No, sir, Your Honor.

25 THE COURT: Okay. All right.

1 MR. TIBBALS: No objection on our
2 end, Your Honor. As a preliminary matter,
3 Mr. Robinson is sitting here in the courtroom
4 today.

5 THE COURT: Yeah.

6 MR. TIBBALS: I don't know whether
7 or not the plaintiff will call him as a witness
8 in this case.

9 Some of that will depend on whether or
10 not the AG calls him, which I believe that they
11 will. And so I would like to not have him sit
12 around, you know, all day waiting for his
13 opportunity to testify when he's got other things
14 to do.

15 THE COURT: Does that mean that
16 you're paying for him to be here, sitting here?

17 MR. TIBBALS: No, no.

18 THE COURT: Ms. Jowers?

19 MR. JOWERS: We're going to join in
20 that. We had also asked him to be here. We're
21 going to call him, but then they subpoenaed him
22 as well. And so I'm glad to call him, and then
23 if they call him, but certainly we don't want him
24 to sit here all day.

25 THE COURT: He's here. You-all

1 want to -- I don't know if you plan to call him,
2 but he is here. We are about to start taking
3 testimony.

4 MR. TIBBALS: My plan was not to
5 call him unless nobody else did, and then I might
6 call him in rebuttal. But my plan is not to call
7 him.

8 THE COURT: Didn't he do an initial
9 appraisal?

10 MR. TIBBALS: He did two
11 appraisals.

12 MS. JOWERS: That's correct.

13 MR. TIBBALS: He did one in 2012.

14 THE COURT: Right.

15 MR. TIBBALS: And that 2012
16 appraisal formed the basis of the purchase price,
17 and then the AG asked him to do a second
18 appraisal at the time that they received notice
19 of the sale from Mr. Stringer.

20 THE COURT: Okay.

21 MR. TIBBALS: So he did another
22 appraisal in 2018.

23 THE COURT: All right.

24 MS. JOWERS: We're glad to go out
25 of order, but I guess we would be later.

1 THE COURT: Well, he's sitting
2 here. Why don't have we have him testify, put
3 those two opinions of value in the record, and
4 then we will go on from there. We'll start
5 getting into the merits of the case.

6 Y'all have done a pretty good job on the
7 briefing of the matter. I think the question is,
8 what's the capacity of Ms. Wells to enter into
9 the agreement. Two, when, where, why, and how
10 was the AG's Office to be notified because they
11 have to be notified. And what does that do to
12 the contract?

13 Because this is not a contract between
14 individual, private parties. It's a contract
15 between one private party and a bunch of --
16 essentially a public benefit corporation. So you
17 get into a different statutory criteria when you
18 do that.

19 But there are some other issues in the
20 case, but those are the ones that I think are
21 principal and those are the ones that I intend to
22 try today. I don't intend to get into lost
23 profits today. That's one of the reasons why I
24 made the denial of that motion. It's not
25 necessary unless and until he can establish that

1 he's got a valid contract.

2 So Mr. Robinson is sitting here ready to
3 go. That would be my preference. We just get
4 him in, get him up, get him out, and then he can
5 go on with himself and the rest of us can sit
6 around here and fight all day long. You want to
7 call him?

8 MS. JOWERS: That works for me.

9 THE COURT: Would you like to call
10 him?

11 MS. JOWERS: Yes, sir, I'm glad to.

12 THE COURT: Yeah, that's the
13 benefit of being a nonjury. Okay?

14 MS. JOWERS: All right. I'll call
15 Mike Robinson. I'm Mary Frances Jowers from the
16 Attorney's General's Office, and I call Mike
17 Robinson.

18 THE COURT: All right. Let's do
19 that right off the bat so we've got a record of
20 who all is here today. I'm going to start with
21 the plaintiff's table.

22 And, Mr. Tibbals, I'll have y'all run
23 through all the presentations for the benefit of
24 the record. I will do the defense table. I'll
25 start with the Kindergarten, and then we'll go

1 from there. The receiver is here. Make a note
2 of that. And then Mr. Robinson will put the
3 testimony up. So, Jeff, if you'll go ahead and
4 just -- for the record, y'all just go ahead and
5 just your announcements of who is here. Okay?

6 MR. TIBBALS: Yes, Your Honor.
7 Jeff Tibbals, on behalf of the plaintiff, Michael
8 Royal, and with me today is Evan Williams,
9 associate of Bybee & Tibbals, and Lisa Caldwell,
10 paralegal. And Mr. Royal.

11 THE COURT: And Mr. Royal, of
12 course. Good morning, Mr. Royal.

13 MR. ROYAL: Good morning.

14 THE COURT: Let me start with -- in
15 order. Mr. Stringer?

16 MR. STRINGER: Yes, Patrick. I go
17 by Rick, but it's Patrick S. Stringer for the
18 Free Kindergarten Association of Charleston.

19 THE COURT: Very good.

20 MR. ARIAIL: Good morning, Your
21 Honor, Warren Ariail, for the Charleston County
22 School District as cocounsel with my sister,
23 Bright Ariail.

24 THE COURT: All right. Ms. Ariail
25 has been here a lot. You have not, but we're

1 happy to have you.

2 MS. ARIAIL: Yes, sir. We have
3 Ms. Mercedes Pinckney Reese. She's general
4 counsel for Charleston County School District.

5 THE COURT: And I'm sorry, I did
6 not catch your last name.

7 MS. PINCKNEY REESE: Pinckney
8 Reese, two words, no hyphen.

9 THE COURT: Pinckney Reese?

10 MS. PINCKNEY REESE: Yes, sir.

11 THE COURT: R-double E-S-E?

12 MS. PINCKNEY REESE: Yes, sir.

13 THE COURT: Okay. Very good.

14 All right. Ms. Jowers?

15 MS. JOWERS: And Mary Frances
16 Jowers for the Attorney General's Office, and
17 also Kristin Simons, Attorney General's Office.

18 THE COURT: All right, Ms. Simons,
19 very good.

20 All right. Mr. Receiver?

21 MR. QUALEY: Joe Qualey, Zach
22 Smith, receiver.

23 THE COURT: Very good. All right.
24 Appreciate y'all's help. We've got tarps on the
25 building right now?

1 MR. QUALEY: We've got a beautiful
2 tarp there, Your Honor. A number of people have
3 actually seen it.

4 THE COURT: Very good. All right.
5 Well, then let's get moving forward.

6 Ms. Jowers, I'm going to allow you to
7 call Mr. Robinson to the stand and let's just get
8 his testimony. We can get him in and out of
9 here, and he can go about making a living rather
10 than sitting here testifying.

11 All right. Come on up, Mr. Robinson,
12 happy to have you. He's been qualified before as
13 an expert.

14 Anybody got any problems with his
15 expertise?

16 (MICHAEL ROBINSON, having first
17 been duly sworn, testified as follows:)

18 THE COURT: Please have a seat and
19 when you get comfortable, sir, would you give us
20 your full name and address for the record.

21 THE WITNESS: My name is Michael C.
22 Robinson, 32 Hazel Street, Charleston, South
23 Carolina.

24 THE COURT: All right. Thank you,
25 sir.

1 All right. Ms. Jowers?

2 MS. JOWERS: And, Judge, we're
3 going to offer Mr. Robinson as an expert in the
4 field of real estate appraising. I was going to
5 add some questions to qualify him, but based on
6 your comment, nobody has any objection to that.

7 THE COURT: He has testified many
8 times in this courtroom, and I find him to be
9 well qualified. Any objection to that?

10 MR. TIBBALS: I have no objection,
11 Your Honor.

12 THE COURT: Charleston County real
13 estate in particular, in this particular matter.
14 All right.

15 Anything you'd like to add to that,
16 Mr. Robinson?

17 THE WITNESS: That says it all, I
18 believe, Your Honor.

19 THE COURT: Okay. All right. Very
20 good.

21 MS. JOWERS: Thank you, Your Honor.

22 THE COURT: All right. Ms. Jowers?

23 MS. JOWERS: I'm going to ask the
24 court reporter to mark this as Exhibit A to get
25 started.

1 THE COURT: Let's do numbers. We
2 like doing numbers.

3 MS. JOWERS: Okay. Numbers is
4 fine.

5 (AG DFT EXH. 1, was marked for
6 identification.)

7 DIRECT EXAMINATION

8 BY MS. JOWERS:

9 Q. All right. Mr. Robinson, I'm going to
10 ask you to identify this document that's been
11 marked as Exhibit 1. If you can identify that,
12 please.

13 A. That is an appraisal that I prepared for
14 34 Pitt Street on June 7, 2018.

15 MS. JOWERS: Okay. And at this
16 time, I would move that this document be admitted
17 into evidence.

18 MR. TIBBALS: Your Honor,
19 there's -- she's got to form the foundation.
20 Usually appraisal reports are not admitted into
21 evidence, but he can testify consist with his
22 opinion.

23 THE COURT: Yeah. Lay a little
24 more foundation for that, Ms. Jowers.

25 MS. JOWERS: All right.

1 THE COURT: Let's go into what he
2 did.

3 BY MS. JOWERS:

4 Q. So, Mr. Robinson, if you will tell us
5 what you did, how you first came to appraise
6 this -- how you first came to prepare this
7 appraisal? Who contacted you?

8 A. This particular appraisal?

9 Q. Yes, sir.

10 A. I was contacted by Mr. Jones from the
11 Attorney General's Office, and he asked if I
12 would be interested in preparing an appraisal on
13 34 Pitt Street.

14 Q. And had you ever prepared an appraisal
15 on 34 Pitt Street before?

16 A. Yes, ma'am, I have.

17 Q. Okay. And when was that?

18 A. That was in 2012.

19 Q. And was this an updated -- this second
20 appraisal of June, 2018, was this an updated
21 appraisal or a new appraisal?

22 A. It was a brand new appraisal.

23 Q. All right. And have you ever prepared
24 an appraisal at the request of the Attorney
25 General's Office before?

1 A. No, ma'am.

2 Q. Okay. All right. And if you'll tell
3 us, once he contacted you, what was your next
4 step? How did you prepare this appraisal?

5 A. My recollection is that I was told to go
6 to Mr. Stringer's office to pick up a key to the
7 building that's on 34 Pitt, which I did after a
8 period of time, and I went over and made an
9 inspection.

10 Q. I'm sorry. What was the last thing?

11 A. I went to the property and made an
12 inspection of the building and the site.

13 Q. Okay. And I believe there -- what type
14 of process did you use for this appraisal?

15 A. In appraisal jargon, it's known as a
16 sales comparison approach. I compared sales from
17 other properties, similar properties in the
18 neighborhood and in the market area to this
19 property.

20 Q. And if you will tell us about the
21 different comps you used.

22 A. Well, they were all lots suitable for a
23 single family development, which I determined to
24 be the highest and best use for this property,
25 and they were all relatively close by, anywhere

1 from four to eight blocks away.

2 Q. All right. And what did you conclude
3 was the fair market value of this property?

4 A. It was my opinion, as of the date of
5 this particular appraisal, which was June 7,
6 2018, the value of the property was \$522,500.

7 MS. JOWERS: Okay. And, Your
8 Honor, we would ask this be marked as an exhibit.
9 I mean, moved into evidence as an exhibit -- or
10 moved into evidence. I apologize. I guess it's
11 Exhibit No. 1.

12 THE COURT: Attorney General
13 Defendant's Exhibit No. 1. Any objection?

14 MR. TIBBALS: Yes, Your Honor, I
15 object. It's full of hearsay. So, yes, I
16 object.

17 THE COURT: All right. Any other
18 objections?

19 MS. ARIAIL: No objection.

20 MR. STRINGER: No objection.

21 THE COURT: Overruled. It can come
22 into evidence. All right. In evidence as
23 Exhibit 1.

24 (AG DFT. EXH. 1, was admitted into
25 evidence.)

1 MS. JOWERS: Your Honor, I don't
2 have any more questions for Mr. Robinson. Thank
3 you. If you'll answer any questions the other
4 attorneys may have.

5 THE COURT: All right. Let's
6 start -- I'm going to start on the defense side,
7 and we'll come this way.

8 Mr. Stringer, do you have any questions?

9 MR. STRINGER: I don't have any
10 questions, Your Honor.

11 THE COURT: All right. Ms. Ariail,
12 do you have any questions?

13 MS. ARIAIL: Your Honor, is there
14 any chance we can get the WiFi password? I'm
15 sorry, but I was told yesterday.

16 THE COURT: I think the courthouse
17 is the public one. Okay?

18 MS. ARIAIL: Thank you.

19 THE COURT: Sure.

20 CROSS-EXAMINATION

21 BY MS. ARIAIL:

22 Q. Mr. Robinson, my name is Bright Ariail,
23 and I represent Charleston County School District
24 in this litigation. I just have a couple
25 questions for you today. Regarding your

1 valuation, that -- did you consider the building
2 that was on the site as part of your valuation?

3 A. It was considered, yes, ma'am.

4 Q. And how did you treat that?

5 A. It was my opinion the building had no
6 value.

7 Q. Okay. And did you do any research into
8 what type of efforts would have to be made as far
9 as demolishing that building?

10 A. I took the cost of demolition into
11 consideration in the value -- the valuation of
12 the property.

13 Q. All right. So this is essentially a
14 land value only appraisal?

15 A. Yes, ma'am.

16 Q. Is that correct?

17 A. Correct.

18 Q. All right.

19 THE COURT: Let me make sure I
20 understood you right. You did take the cost of
21 demolition into effect, or you did not?

22 THE WITNESS: I did.

23 THE COURT: You did?

24 THE WITNESS: Yes, sir.

25 THE COURT: That would be an

1 expense?

2 THE WITNESS: That was deducted
3 from the estimate of value of the Royal land as a
4 vacant -- in order to make it vacant, I deducted
5 an estimated demo cost.

6 THE COURT: Okay. Thank you.

7 BY MS. ARIAIL:

8 Q. The document that you've prepared, the
9 estimate on this appraisal institute form, is
10 that something that you typically use for
11 appraisals?

12 A. It is.

13 Q. And is that what you publish out to your
14 clients when you perform an appraisal?

15 A. On properties such as this.

16 Q. Okay. Why that clarification?

17 A. Well, if the property is very involved,
18 if it's a large office building or shopping
19 center or something of that sort that requires
20 additional discussion, we use -- we do a
21 narrative appraisal report, a lengthy report.

22 Q. So would that be on another appraisal
23 institute form?

24 A. No, ma'am.

25 Q. Okay. That would just be a custom form?

1 A. It would be a custom design for the
2 property.

3 Q. Okay. All right. But this is something
4 that's typically used in your business and for
5 this type of property?

6 A. It's normally customary. It's used by
7 all lending institutions and other users of this
8 type -- of appraisals for this type of property.

9 MS. ARIAIL: That's all I have.
10 Thank you.

11 THE COURT: Okay. Mr. Tibbals?

12 MR. TIBBALS: All right.

13 CROSS-EXAMINATION

14 BY MR. TIBBALS:

15 Q. Mr. Robinson, Jeff Tibbals for the
16 plaintiff, Michael Royal, in this case. First of
17 all, when were you first involved with this
18 property?

19 A. In 2012, the latter part of 2012.

20 Q. Why did you come to know about 34 Pitt
21 Street?

22 A. Michael Royal called and asked to come
23 by and chat about it. He came to the office, and
24 we spoke about it.

25 Q. All right. And did Michael ask you to

1 do anything with respect to 34 Pitt Street?

2 A. He asked that I prepare an appraisal of
3 the property at the time.

4 Q. Did he tell you for what purpose he
5 needed an appraisal?

6 A. It was my recollection that he said that
7 he was interested in purchasing the property.

8 Q. Did he give you any specific
9 instructions relating to your appraisal?

10 A. No, he did not. He just said, give me
11 your estimate of value.

12 Q. Did you subsequently make an appraisal
13 of 34 Pitt Street property for Mr. Royal?

14 A. I did.

15 MR. TIBBALS: I going to mark -- I
16 don't know, Your Honor, if you want to do
17 Plaintiff's 1 and Defendant's 1 or if you want to
18 do a master list or what you want to do in terms
19 of --

20 THE COURT: How did you intend to
21 do documents today? Do y'all got a notebook
22 or did you --

23 MR. TIBBALS: We have a binder.

24 THE COURT: A binder. Is this one
25 in your binder?

1 MR. TIBBALS: This one is not, I
2 don't think.

3 THE COURT: I'm assuming this is
4 your 2012 appraisal.

5 MR. TIBBALS: Yes, yeah.

6 THE COURT: Yeah. Let's call it
7 Plaintiff's 1 then, and we will work from there.

8 MR. TIBBALS: Yes, sir.

9 THE COURT: Or you can do it at the
10 last number of your binder, whichever one you
11 want to call it.

12 MR. TIBBALS: Okay. May I
13 approach?

14 THE COURT: Sure.

15 (PLF. EXH. 1, was marked for
16 identification.)

17 BY MR. TIBBALS:

18 Q. I'm handing you a document that's been
19 marked as Plaintiff's Exhibit 1. Can you
20 identify that document?

21 A. This is an appraisal at 34 Pitt Street
22 that I prepared for Michael Royal on December 19,
23 2012.

24 Q. All right. Did you reach an opinion as
25 to market value of the property at that time?

1 A. Yes, sir, I did.

2 Q. What was the value that you attributed
3 to 34 Pitt Street?

4 A. It was my opinion that the value as of
5 that date was \$315,200.

6 Q. Did you provide that appraisal report to
7 Mr. Royal?

8 A. I did.

9 MR. TIBBALS: Your Honor, since the
10 other one is in evidence, I would go ahead and
11 move to admit this one. What's good for the
12 goose, right?

13 THE COURT: Any objection?

14 MS. ARIAIL: No objection.

15 MR. STRINGER: No objection.

16 THE COURT: Very good. In
17 evidence, Plaintiff's 1.

18 (PLF. EXH. 1, was admitted into
19 evidence.)

20 BY MR. TIBBALS:

21 Q. Mr. Robinson, your appraisal report in
22 2012, Plaintiff's Exhibit 1, also assumes a
23 highest and best value for the property as
24 residential; is that right?

25 A. Yes, sir.

1 Q. And the appraisal report also did value
2 the building and deducted for cost of demo,
3 correct?

4 A. That's correct.

5 Q. Okay. Do you know -- you're familiar,
6 generally, with city ordinances relating to
7 historic structures?

8 A. Yes, sir.

9 Q. And so did you undertake any effort to
10 determine the age of the building when you did
11 your appraisal report in 2012?

12 A. Yes, sir. At that time I met with
13 Ms. Wells, who was alive at the time, and she
14 gave me the age and construction of the building.

15 Q. What did she tell you about the age and
16 construction of the building?

17 A. It's in here somewhere. I think I
18 remember somewhere in the 1950's.

19 Q. Okay.

20 A. It's in the report, if you want me to
21 dig it out.

22 Q. Would 1965 be consistent with your
23 recollection?

24 A. Well, no, it was 2012. That is a while
25 ago. And it said, brick veneer structure built

1 for use by Kindergarten in the mid 1950's.

2 Q. Okay.

3 A. That's what the report says.

4 Q. And do you know where you got that
5 information?

6 A. From Ms. Wells.

7 Q. And then are you familiar with the
8 ordinance that passed in the city in 2017 that
9 preserved historic buildings over 50 years old?

10 A. Yes, sir, I am familiar with that.

11 Q. All right. So that ordinance had not
12 been enacted at the time of your 2012 report,
13 right?

14 A. Correct.

15 Q. All right. So at the time of your 2018
16 report, that ordinance had been enacted?

17 A. Correct.

18 Q. Did you do any research or investigation
19 as to whether or not a demolition permit could be
20 issued for that building in 2018?

21 A. No, sir. I did not do any research as
22 to that, but it was my opinion this building was
23 such a character, it -- and condition that that
24 would not -- I made the decision it would not be
25 an issue.

1 Q. Was that decision reflected in your
2 report in 2018? In other words, did you identify
3 that issue in your report?

4 A. I did state that I thought demolition
5 was possible.

6 Q. Okay. But did you talk to any zoning
7 officials about whether or not demolition would
8 be possible in 2018?

9 A. No, sir. But I do have an association
10 with the zoning department in the City of
11 Charleston.

12 Q. Who do you have an association with?

13 A. I'm on the board.

14 Q. Okay. And so what are the standards for
15 determining whether or not a building can be
16 exempt from the 50-year preservation?

17 A. Well, it's contribution, architectural
18 contribution that might make to a neighborhood,
19 being one, and this was obviously not anything
20 like the construction in the neighborhood.

21 Q. Okay. Are there any factors that --
22 well, let me ask you this. Who makes a
23 determination as to whether or not a building can
24 be demolished despite the protection under the
25 50-year ordinance?

1 A. The BAR does.

2 Q. And do you know the standards or factors
3 for the BAR to make that decision?

4 A. Generally, but not a hundred percent,
5 no, sir.

6 Q. All right. So you believe that
7 architectural significance is one of those
8 factors, right?

9 A. Definitely.

10 Q. And do you know whether or not historic
11 or cultural features are also considered?

12 A. That would be an issue. That would be
13 an issue.

14 Q. All right. At the time that you issued
15 your 2018 report, there was no demolition permit
16 that had been issued; is that right?

17 A. To my knowledge, there were none.

18 Q. And so based upon the existing
19 conditions, there was a building on the property,
20 and there was no demolition permit issued,
21 correct?

22 A. Correct.

23 Q. So you were making a projection as to
24 what may happen in the future with respect to a
25 demolition permit?

1 A. Correct.

2 Q. And that demolition permit has its own
3 standards under the city ordinance, right?

4 A. Correct.

5 Q. Okay. If, in fact, the owner applied
6 for a demolition permit and was denied, that
7 would affect your opinion of value, wouldn't it?

8 A. It possibly could, possibly.

9 Q. Because your valuation is based upon
10 that lot being developable, right?

11 A. Yes, sir.

12 Q. Okay. And you didn't undertake an
13 analysis of what the value would be if the
14 demolition permit were not to be issued?

15 A. That's correct.

16 MR. TIBBALS: I have no further
17 questions.

18 THE COURT: Anything else,
19 Ms. Jowers?

20 MS. JOWERS: No, sir, Your Honor,
21 thank you.

22 THE COURT: Okay. I've got some
23 questions for you. In both instances, you
24 indicated the highest and best use would be
25 residential. Any indication that you would --

1 you could or would put a commercial-type building
2 there or use it for any type of commercial use?

3 THE WITNESS: Well, I think if
4 there's been any misuse issue for such a period
5 of time that the nonconforming use, that it was
6 as Kindergarten, that had been at -- that
7 expired.

8 So it -- they would have had to come
9 back and go through the whole process of being
10 able to make any use other than what the
11 (inaudible) is.

12 THE COURT: Okay. Did Ms. Wells
13 indicate to you how long it had been in -- the
14 building had been in disuse? It was built in the
15 mid '50s.

16 THE WITNESS: My recollection is,
17 she said something like 10 years.

18 THE COURT: Okay. All right. Been
19 a while.

20 THE WITNESS: It's in fair
21 condition. It's not been occupied in more than
22 10 years.

23 THE COURT: Okay. All right. And
24 then, as to the building itself, it seems to be
25 fairly unique in its appearance in the rest of

1 the neighborhood. Is that part of your basis for
2 your opinion that it's probably more likely to be
3 demolished, to get approval for demolition than
4 not?

5 THE WITNESS: I think it -- my
6 opinion is that the demolition of the building
7 would be loudly applauded.

8 THE COURT: Okay. All right. It's
9 a single story brick structure?

10 THE WITNESS: Built on grade.

11 THE COURT: On grade. Which is
12 another problem we've got in this town right now,
13 is it not?

14 THE WITNESS: It's another problem,
15 yes, sir.

16 THE COURT: There was a structure
17 that fell down over behind -- off of St. Phillips
18 Street, and I think it may have been connected
19 with Memminger Elementary, if I'm not mistaken,
20 or it was next door to that. Are you familiar
21 with that one?

22 THE WITNESS: On Archdale.

23 THE COURT: Archdale Street?

24 THE WITNESS: Right close to
25 Wentworth, yes, sir.

1 THE COURT: Yeah, yeah. Whatever
2 happened with that particular one? Do you know?

3 THE WITNESS: A little bit. They
4 had intended to sell it and put it in office use.
5 And it -- the real portion fell down. They
6 retained the facade, and it's being redeveloped
7 now with the existing facade and all of the --
8 behind the facade, brand new construction.

9 THE COURT: Okay. So similar to
10 that Bennett facade that sets out there in the
11 Port Authority lot, it's just going to sit there
12 for a while unless and until somebody does
13 something with it?

14 THE WITNESS: Well, I think
15 somebody -- I think it's underway now. On this
16 particular thing, it's underway.

17 THE COURT: Okay. All right.
18 Could I take a look at those reports? I guess my
19 question to you on the comparables was how
20 difficult it was to locate or find any. Was that
21 not difficult at all to find either empty lots
22 or --

23 THE WITNESS: Vacant land or land
24 suitable for a new single family construction is
25 not an easy task, but there -- there are some

1 available.

2 THE COURT: Okay. You can find
3 lots around the city?

4 THE WITNESS: It depends on the
5 time period. Sometimes it's more difficult than
6 others. It goes in waves, but we were able to
7 find some that were -- that we felt were good
8 indicators both times.

9 THE COURT: I noticed on what's
10 been marked as Defendant AG's Exhibit 1, the map
11 showing the subject and the comparables is on a
12 historic Charleston sheet. It's says, America's
13 most historic city. Anything historic about this
14 particular structure?

15 THE WITNESS: I don't believe that
16 it -- it would be classified as a historic
17 structure.

18 THE COURT: Okay. Was that also
19 used on the Plaintiff's Exhibit 1, that same
20 diagram?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Actually, you
23 found subjects fairly close by, in each instance,
24 it looks like. And the latter, Defendant's 1,
25 15 Smith Street and the early one, Plaintiff's,

1 you had 26 Smith Street. Sale number 2 was 61
2 Gadsden. That was used also in this same comp,
3 61 Gadsden and the earlier comp. And Marion and
4 Beaufain were the other two.

5 How often would you do an appraisal and
6 for how long would that appraisal be considered
7 valid in your opinion? What period of time?

8 THE WITNESS: Well, it depends upon
9 the shelf life of the appraisal. It varies
10 depending on the needs of the client.

11 But in properties such as this, lending
12 institutions, I really don't like to use anything
13 more than six months old. Sometimes other users
14 will go up to a year; sometimes a little bit more
15 than a year.

16 THE COURT: Would you -- do you
17 consider them to be stale after that time period?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. All right. So
20 these -- the most recent one here was an '18.
21 It's now December 2021. So that most recent one
22 we've got here is three and a half years old.
23 So, in your opinion, those would be stale at this
24 point in time?

25 THE WITNESS: That's my opinion.

1 THE COURT: And the market in
2 Charleston has gone haywire?

3 THE WITNESS: It's a totally
4 different market.

5 THE COURT: All right. Any
6 follow-up questions?

7 MR. TIBBALS: I just have a couple
8 questions, Your Honor.

9 THE COURT: Sure.

10 RECROSS-EXAMINATION

11 BY MR. TIBBALS:

12 Q. Exhibit 1 and 2, both of them you used,
13 I think it's 61 Gadsden as a comp. And if you
14 could just look at those two for me?

15 There were a couple of discrepancies
16 that maybe -- that was just related to changes in
17 the property, but I'd like for you to look at
18 those two comps and tell me sort of what changed.
19 I believe it's sale number 2 in the 2018
20 appraisal.

21 A. It shows a difference in -- to be
22 honest, I don't know. Of course, it's a
23 resale --

24 Q. Right. It's a second sale.

25 A. -- of the second property.

1 Q. Yes, sir.

2 A. And apparently, it looks like it -- it
3 must have been combined with another property on
4 the resale, but I -- I can't speak to that. I
5 don't know the reason for the difference in the
6 size.

7 Q. Okay.

8 A. I don't recall.

9 Q. For the 2018 appraisal, did you receive
10 any specific instructions from the Attorney
11 General?

12 A. They asked me to estimate -- give an
13 estimate of fair market value.

14 Q. Did they give you any instructions or
15 requests on the date of valuation?

16 A. I don't recall, but I'm assuming that
17 the date of valuation was the date of inspection.
18 I can -- I don't specifically -- I don't remember
19 any specifics on that, but it's typically the
20 date of inspection.

21 Q. Okay.

22 A. That's all I remember.

23 Q. And so you don't have any record or
24 recollection of any specific instructions on the
25 date of valuation --

1 A. No, sir, I don't.

2 Q. -- by the AG?

3 A. I don't.

4 Q. Okay. Do you think it's proper to list
5 listing as comps?

6 A. I think listings are interesting pieces
7 of information, but I think generally the Court
8 doesn't like to see listings used as the main
9 support for a valuation.

10 Q. Okay. Are you familiar with the old gas
11 station property on Gadsden, the -- I think it
12 was the -- did you say you're on the BAR?

13 A. BZA.

14 Q. You're on the BZA. Okay. So are you
15 familiar with the property that was attempted to
16 be converted? I think it was on Ashley Avenue.

17 A. Ashley and Wentworth.

18 Q. Ashley and Wentworth, yes. Are you
19 familiar with that property?

20 A. Yes, sir.

21 Q. Okay. And tell me about what was going
22 on with that property. Somebody wanted to sell
23 it and develop it, right?

24 A. Yeah. The owner had it under contract
25 sale to sell to someone that was going to convert

1 it to -- into a line bar and sandwich store.

2 Q. All right. And that plan was rejected
3 by the City, right?

4 A. It was -- the Board of Zoning Appeals
5 turned it down.

6 Q. Right. Okay. Let me ask you about
7 demolition permits, specifically demolition
8 permits on the subject property, 34 Pitt. Is it
9 your opinion that if there was a demolition
10 permit that was issued, it would have to be in
11 connection with the plan of redevelopment for the
12 property?

13 A. Yes, sir. I don't think you could
14 receive a demo permit unless the BAR knew what
15 was coming back in its place.

16 Q. Right. And so that is subject itself to
17 other concerns that an owner might have, such as
18 getting a development plan approved, right?

19 A. Well, yes. They would have to have that
20 contingency in the agreement to purchase.

21 Q. Okay. And so a reasonable purchaser
22 wouldn't close on the sale if they intended to
23 demolish the building without having that
24 redevelopment plan approved, right?

25 A. I don't believe so.

1 Q. You agree with me or not?

2 A. I do agree with you.

3 Q. Okay.

4 A. I'm saying that people do funny things
5 sometimes, but I don't believe so.

6 Q. Right.

7 A. I would not do it.

8 Q. But a prudent buyer wouldn't -- wouldn't
9 buy it as a vacant lot value without some
10 approval of a demolition permit and the
11 redevelopment plan, right?

12 MS. ARIAIL: Objection, Your Honor.
13 Definition of prudent buyer.

14 MR. TIBBALS: Well, they deal in
15 prudent, reasonable buyers all the time.

16 THE COURT: Okay. I'm going to
17 overrule it. You can answer the question.

18 THE WITNESS: Well, of course,
19 that's subject to the opinion of the BAR, and
20 we -- none of us have any control over how they
21 feel about things, but generally speaking, it's
22 been my experience that that's how they go about
23 their business.

24 MR. TIBBALS: Okay. All right.
25 Thank you. I don't have any further questions.

1 THE COURT: Okay. Any follow-up?

2 RECROSS-EXAMINATION

3 BY MS. ARIAIL:

4 Q. Mr. Robinson, did you do any
5 investigation as to trying to -- any
6 investigation related to getting a demolition
7 permit for that property?

8 A. On cases such as this, we do make a
9 phone call just to make a cursory call, and we're
10 politely told that they can't give an opinion
11 without knowing what's going to go back in its
12 place. So the BAR will not -- the BAR staff will
13 not give you any indication.

14 Q. For either of your clients, the AG's
15 Office or Mr. Royal, did either of them provide a
16 redevelopment type plan for you to consider?

17 A. No, ma'am.

18 MS. ARIAIL: Thank you.

19 THE COURT: Anything else?

20 MR. STRINGER: No questions, Your
21 Honor.

22 THE COURT: All right.

23 MS. JOWERS: No, sir, Your Honor.

24 THE COURT: And just to follow-up,
25 we did use the -- you did use the 61 Gadsden

1 Street comparables in both instances, but it does
2 look like it was a resale -- subsequent resale of
3 the property?

4 THE WITNESS: Yes, sir.

5 THE COURT: The older appraisal
6 showed it being -- selling for \$675,000, and it
7 was almost 26,000 square feet, and then
8 comparable number 2 on a more recent appraisal
9 sold for \$600,000 and was just under 15,000
10 square feet so...

11 THE WITNESS: It must have been
12 combined in the interim period, but I don't -- I
13 don't know.

14 THE COURT: Yeah. I wondered about
15 that. My first question was the date, but there
16 was the first one -- sale was in on the Gadsden
17 was March of '10, and the other one was in August
18 of '14. So clearly it was a separate sale.

19 THE WITNESS: Yes, sir.

20 THE COURT: Got it. Okay. All
21 right. Mr. Robinson, thank you very much for
22 coming in. I thought we'd just go ahead -- I
23 needed to hear from you one way or the other, so
24 let's get it done.

25 THE WITNESS: Yes, sir. It's

1 always a pleasure.

2 THE COURT: Thank you and good to
3 see you again, sir.

4 May he be excused from any subpoena that
5 he may be under at this point in time?

6 MR. TIBBALS: Yes, Your Honor.

7 MS. JOWERS: Yes, sir, Your Honor.

8 MR. TIBBALS: Thank you,
9 Mr. Robinson.

10 MS. JOWERS: Thank you,
11 Mr. Robinson.

12 THE COURT: Very good. All right.
13 Mr. Tibbals, that puts the ball back in your
14 court. All right.

15 MR. TIBBALS: All right, Your
16 Honor. I'm assuming that we're dispensing with
17 opening arguments.

18 THE COURT: Absolutely.

19 MR. TIBBALS: Okay. I hear you. I
20 do have exhibit binders, and I've got one for
21 opposing counsel. I've got one for your
22 convenience, so I will provide those to you now.

23 THE COURT: Thank you, sir.

24 MR. TIBBALS: Now, they're not
25 numbered because I didn't -- well, they are

1 numbered by tabs, but we don't have exhibit
2 stickers on them. So you can follow along, and
3 then we can see if we can --

4 THE COURT: Whatever comes in, it
5 comes in.

6 MR. TIBBALS: Yes, sir.

7 THE COURT: We can do it that way.
8 That's fine.

9 MR. TIBBALS: Okay.

10 THE COURT: And I don't really care
11 what the numbers are, just that they -- they're
12 all -- the tabs will say they're marked for
13 identification purposes, and then, when they come
14 in, they will do whatever they are. And one we
15 can call 1A, if you would like, so we don't have
16 to renumber everything. How about that?

17 MR. TIBBALS: Okay. All right.
18 The plaintiff calls Michael Royal to the stand.

19 THE COURT: All right. Mr. Royal,
20 come on up. Watch your step over there, sir.

21 (MICHAEL ROYAL, having first been
22 duly sworn, testified as follows:)

23 THE COURT: Thank you, sir. And
24 please give us your full name and address.

25 THE WITNESS: Michael D. Royal, and

1 I live at 14 Lockwood Drive, Apartment 12D,
2 Charleston, South Carolina 29401.

3 THE COURT: Thank you, sir.

4 DIRECT EXAMINATION

5 BY MR. TIBBALS:

6 Q. Mr. Royal, good morning.

7 A. Good morning.

8 Q. You've stated your full name for the
9 record. Could you tell you me where you're from?
10 Is your family from Charleston?

11 A. Yes. Charleston is where I did most of
12 my growing up, and I consider it my home.

13 Q. Where did you attend high school?

14 A. I attended Bishop England High School.

15 Q. For some periods of time since
16 graduating from high school, have you lived in
17 Charleston?

18 A. Yes, sir.

19 Q. Do you consider Charleston to be your
20 home?

21 A. Yes, sir.

22 Q. How did you become aware of the property
23 known as 34 Pitt Street in Charleston?

24 A. I was living in Texas in 2011, and I was
25 planning a move back to Charleston, South

1 Carolina.

2 I was 34 years old at the time, and I
3 was eager to find a place in Charleston where I
4 could live and hopefully work at the same
5 location. And when I was traveling back to
6 Charleston, I was making time to visit
7 properties, and -- as I scouted around the city.

8 On this particular occasion in December
9 of 2011, I made a trip back to Charleston. And
10 that same week or within a few days, I had
11 scheduled appointments to look at two buildings
12 in downtown Charleston that were similar to this
13 property, 34 Pitt Street. And in this regard,
14 they were properties which had been used for
15 non-residential purpose but were inside of a
16 residential neighborhood.

17 One of them was a church that wasn't
18 being used, and one of them was a property with
19 commercial on the bottom and residential on the
20 top. It was on, I believe, December the 3rd,
21 2011 that I happened to be driving along Pitt
22 Street -- which is very close to where I had gone
23 to high school -- when I noticed the building at
24 34 Pitt Street.

25 And I believe Mr. Robinson said a minute

1 ago that the neighborhood would loudly applaud
2 it's demolition, but for me, it was love at first
3 sight. I saw this building, and I wanted to have
4 my future there. Maybe I just like the ugly
5 ducklings, but this was -- immediately, I knew
6 that this was a property that I deeply wanted to
7 pursue, and it looked like it was not being used.

8 It looked like it had undergone some
9 distress, and I began within hours or days trying
10 to find out who owned it and who controlled it.
11 But December 3rd, 2012, is the date that I first
12 noticed it.

13 Q. All right. Did you take photos on that
14 date?

15 A. Yes, sir. The building impressed me so
16 much that I immediately got out of my vehicle. I
17 took three pictures of it.

18 Q. All right. I'm going to hand you what's
19 been marked as Exhibits No. 1, 2 and 3 for trial.
20 I will ask you to identify Exhibits 1, 2 and 3,
21 once I find the right place to put the stickers.

22 (PLF. EXH. 1A, 2 and 3, were marked
23 for identification.)

24 MR. TIBBALS: And, Your Honor,
25 following along, these should be under tabs 1, 2

1 and 3 in your binder.

2 THE COURT: All right. Okay.

3 MR. TIBBALS: And then in the
4 binder I've provided to counsel.

5 BY MR. TIBBALS:

6 Q. Do you recognize 1, 2, and 3?

7 A. Yes, sir. These are the pictures that I
8 took on December of 2011, just over ten years ago
9 from today.

10 THE COURT: 2011 or 2012?

11 THE WITNESS: 2011.

12 THE COURT: Okay.

13 MR. TIBBALS: Your Honor, I move to
14 admit 1, 2 and 3 into evidence.

15 THE COURT: Any objection?

16 MS. ARIAIL: No, sir.

17 THE COURT: Without objection, very
18 good. In evidence.

19 (PLF. EXH. 1A, 2 and 3, were
20 admitted into evidence.)

21 BY MR. TIBBALS:

22 Q. So once you observed the property and
23 took the photos and fell in love with the
24 property, what did you do next?

25 A. Mr. Tibbals, I tried to determine who

1 owned the property, but I can't --

2 Q. Okay. Let me ask you this.

3 A. Yes, sir.

4 Q. When you first saw the property that
5 day, was anyone there?

6 A. There was no one there.

7 Q. Was it occupied?

8 A. It did not appear to be occupied, and it
9 did appear to be somewhat deteriorated and out of
10 active use.

11 Q. And did you know who owned the property
12 at that time?

13 A. I did not.

14 Q. Did you later come to learn the owner of
15 the property?

16 A. Yes, sir.

17 Q. And how did you go about researching the
18 owner of the property?

19 A. I believe that my first step was simply
20 to go to the Charleston County GIS website
21 because that's the quick way of finding out who
22 is the title owner of the properties. It
23 indicated that the owner was the City of
24 Charleston.

25 I contacted the City of Charleston

1 staff. It was a lady called Colleen Carducci who
2 lived in the Charleston Department of Property
3 Management. And I believe it was five days after
4 the day I took these photographs that I spoke
5 with Ms. Carducci. We traded e-mails, and she
6 told me that, notwithstanding --

7 MS. ARIAIL: Objection, hearsay.

8 THE COURT: Sustained.

9 MR. TIBBALS: Your Honor?

10 THE COURT: Just have him tell me
11 what he did after that conversation.

12 MR. TIBBALS: Your Honor -- okay.

13 BY MR. TIBBALS:

14 Q. Michael, what did you do after that
15 conversation?

16 A. After the conversation with?

17 Q. So first of all, let me ask you: Did
18 you ever contact the Secretary of State --

19 A. Yes, sir.

20 Q. -- about this property?

21 A. Yes, sir.

22 (PLF. EXH. 4, was marked for
23 identification.)

24 Q. All right. I'm going to hand you what's
25 been marked as Exhibit No. 4 and ask whether you

1 can identify this document?

2 A. Yes, sir.

3 Q. All right. What is Exhibit No. 4?

4 A. This is an e-mail from me to Stephanie
5 Jones at the South Carolina Secretary of State
6 Office dated December 7th, 2011. So this would
7 have been four days after I took these
8 photographs.

9 Q. Okay.

10 MR. TIBBALS: Your Honor, we're
11 going to come back to this issue again and again
12 and again, so I would like to go ahead and get
13 some clarity on this.

14 THE COURT: Okay.

15 MR. TIBBALS: There are going to be
16 statements that were made by third parties to
17 Mr. Royal. Those statements may have been made
18 by people from the City.

19 Those people may have been made -- those
20 statements may have been made by people from the
21 Secretary of State. They're not offered for the
22 truth of what the people are saying to him.
23 They're offered for the purpose of showing his
24 reliance upon these statements.

25 As Your Honor may recall, we have

1 alternative theories of authority in this case.
2 One is actual authority; in other words, that
3 June Wells was indeed the authorized agent for
4 Free Kindergarten Association of Charleston.

5 The second theory is apparent authority,
6 which means that all of the research and due
7 diligence that he does prior to entering into the
8 contract and subsequent to that, relate to his
9 belief, understanding statements made to him that
10 Ms. Wells was in fact an authorized agent.

11 He is entitled to put forth evidence of
12 statements that he relied upon in reaching that
13 decision, that he believed -- it's part of
14 implied authority or apparent authority. A
15 reasonable person has to believe that that person
16 is an agent for the principal. The principal
17 here is the FKAC. The agent is June Wells.

18 If the City is telling him about June
19 Wells being the person to talk to, that's -- he's
20 relying upon that. It's not whether or not it's
21 true. It's, he's relying upon it to form an
22 understanding.

23 THE COURT: Well, if he's relying
24 on it, he's -- you're telling me that he's saying
25 it's true, which tells me it's hearsay.

1 MR. TIBBALS: Well --

2 THE COURT: It's just a backwards
3 way to go around hearsay.

4 MR. TIBBALS: It could be false.
5 All of these statements could be false. But the
6 question is not whether or not it's false or not,
7 it's whether or not -- and again, that's the
8 difference between actual authority and implied
9 authority.

10 THE COURT: Gotcha. I agree with
11 you there.

12 MR. TIBBALS: Implied authority
13 means that, hey, you know, this person really
14 wasn't the authorized agent, but the
15 manifestations made it appear --

16 THE COURT: But these are his
17 perceptions, correct?

18 MR. TIBBALS: This -- you have to
19 examine the reasonable reliance of the hearer.

20 THE COURT: Let me ask this
21 question, and let me get this right out of the
22 way: Do you have any documentation to show that
23 she had actual authority?

24 MR. TIBBALS: Yes, lots.

25 THE COURT: Okay. All right.

1 Well, I'm going to allow you to put that into
2 evidence that you have.

3 MR. TIBBALS: Okay.

4 THE COURT: But it's not going to
5 come from some third party. Now, if his
6 impression is that she had the authority; i.e.,
7 it's implied authority, that's going to be his
8 perception of what happened and any statements --
9 out of court statements would be hearsay.

10 So we can go through however many
11 documents you want to go through to get to what
12 his subjective opinion was, but his subjective
13 opinion is whatever his subjective opinion was.

14 Do you have actual authority
15 documentation? Well, despite -- well, we'll
16 cross the bridge, but I'm sure it will be
17 objected to. We'll just have to make that
18 decision based on that. But anything that the
19 City person told him, the Secretary of State's
20 Office told him, you need to bring those people
21 in here.

22 MR. TIBBALS: If that's your
23 ruling, I understand. I don't agree with it, but
24 that's --

25 THE COURT: That's fine. You don't

1 have to.

2 MR. TIBBALS: Yes, sir. Okay.

3 BY MR. TIBBALS:

4 Q. So Mr. Royal, tell me what your
5 communication was with the Secretary of State.

6 THE COURT: Objection. I just
7 ruled on that. What did he do as a result of his
8 conversation?

9 MR. TIBBALS: Well, now, this was
10 his communication. This is his --

11 THE COURT: What did he say?

12 MR. TIBBALS: Yes. Yes, Your
13 Honor.

14 THE COURT: All right. Well, go
15 ahead.

16 THE WITNESS: I was seeking
17 information from the Secretary of State at this
18 time in December of 2011 to determine who the
19 owner of 34 Pitt Street was. And from my
20 interactions earlier with Ms. Carducci, I found
21 out that Free Kindergarten Association of
22 Charleston --

23 MR. ARIAIL: Objection, hearsay.

24 "I found out."

25 THE WITNESS: May I rephrase?

1 MR. TIBBALS: Sure.

2 THE COURT: Yeah. I will let you
3 rephrase it. Go ahead.

4 THE WITNESS: From my interactions
5 with Ms. Carducci, it was my understanding in
6 December -- early December 2011 that the owner of
7 the property was Free Kindergarten Association of
8 Charleston.

9 Yet, at that time, I didn't know much
10 about this legal entity or who controlled it at
11 that moment; therefore, I was seeking further
12 information from the Secretary of State's Office,
13 which I gained.

14 MR. TIBBALS: All right. And the
15 e-mail, which is Exhibit No. 4 to --

16 MS. ARIAIL: Your Honor, may I
17 interject? What's he -- he is reading from a
18 document?

19 THE WITNESS: This is Exhibit No.
20 4.

21 THE COURT: Yeah.

22 MS. ARIAIL: Okay. Thank you.

23 BY MR. TIBBALS:

24 Q. So to summarize Exhibit 4 --

25 A. Yes, sir. So, again, this is my e-mail

1 to the Secretary of State's Office in which I was
2 seeking -- I was stating that I -- as far as I
3 understood, this association was in good
4 standing, but that I was not yet able to
5 determine the contact information or even the
6 names of people associated with this entity. And
7 that was the purpose of this communication is, I
8 was seeking more information.

9 Q. All right. Did you receive any
10 documents from the Secretary of State?

11 A. Yes, sir.

12 (PLF. EXH. 5, was marked for
13 identification.)

14 Q. All right. I've got Exhibit No. 5.
15 I've marked it and will hand it up.

16 MR. TIBBALS: I would move to admit
17 Exhibit 4.

18 MS. ARIAIL: I object. Your Honor,
19 this document clearly is submitted for the proof
20 of the matter asserted here. It talks about
21 conversations with Ms. Carducci and what she said
22 to him.

23 MR. TIBBALS: This is a writing
24 that Mr. Royal made to the Secretary of State,
25 where he was trying to investigate the owner of

1 the property. I'm not admitting it for the
2 purpose of whether or not what Ms. Carducci said
3 was true. It's not hearsay.

4 THE COURT: I'm going to allow it.
5 It's in evidence, 4. It can come in.

6 (PLF. EXH. 4, was admitted into
7 evidence.)

8 BY MR. TIBBALS:

9 Q. All right. Can you identify Exhibit No.
10 5?

11 A. Yes, sir. This is an e-mail message
12 from Jody Steigerwalt to Michael Royal. Jody is
13 director of business filings at the office of the
14 Secretary of State. It's dated December 7, 2011.

15 Q. Is there an attachment to that?

16 A. Yes, sir.

17 Q. What is the attachment?

18 A. This attachment shows some corporation
19 details for the Free Kindergarten Association of
20 Charleston.

21 Q. All right.

22 A. And it shows three filings that had been
23 made with the Office of the Secretary of State by
24 the association; one in 1901, one in 1931, and
25 one in 1971.

1 Q. All right. Did this communication
2 assist you in your understanding of the ownership
3 of the property?

4 A. Yes, sir.

5 MR. TIBBALS: I move to admit No.
6 -- excuse me, 5.

7 MS. ARIAIL: I'm going to object to
8 this one as being an unauthenticated public
9 document.

10 MR. TIBBALS: He's provided the
11 foundation, Your Honor. He's provided the fact
12 that this was a response to his inquiry, and this
13 is an e-mail that's coming from the Secretary of
14 State to him. It's an official public record
15 that's coming to him.

16 THE COURT: It's not certified as
17 such, though, is it? Is it just this one sheet
18 is all they had?

19 THE WITNESS: This is -- as far as
20 I understand, Your Honor, this is the attachment
21 that was made to the e-mail.

22 MR. TIBBALS: Again, Your Honor, we
23 can spend a lot of time on all of these things.

24 THE COURT: Yeah.

25 MR. TIBBALS: The issue, again, is

1 what he did to determine who owned the property.
2 It's not about whether or not Free Kindergarten
3 Association owned the property, although I'm
4 surprised to understand that that is somehow
5 disputed. You know, we connected this real, long
6 and hard. We can go through it.

7 THE COURT: Yeah. I'm with you on
8 that. But it's purported to be an official
9 record of the State of South Carolina, but it's
10 not been authenticated by the State of South
11 Carolina. That's the objection, as I understand
12 it.

13 MS. ARIAIL: Yes, sir.

14 THE COURT: I'm going to sustain
15 the objection.

16 MR. TIBBALS: All right.

17 BY MR. TIBBALS:

18 Q. Did you make any notes of your efforts
19 during this timeframe?

20 A. Notes of my efforts?

21 Q. Yes. Did you make any notes relating to
22 the issues that you were --

23 A. Yes.

24 Q. -- researching for?

25 A. Yes.

1 (PLF. EXH. 6, was marked for
2 identification.)

3 Q. All right. I'm going to hand you
4 Exhibit No. 6 and ask you if you can identify
5 Exhibit No. 6?

6 A. Yes, sir. This is a document that I
7 authored.

8 Q. All right. What -- do you know when you
9 authored that document?

10 A. I have an indication, but the document
11 is not dated on its face. But in the way that I
12 keep documents in my electronic filing system, I
13 tend to date documents with the file name, and
14 the file name for this document indicates that it
15 was around December the 9th, 2011.

16 Q. All right. And so what do your notes
17 reflect, or is that -- how would you characterize
18 Exhibit 6?

19 A. This document, I vaguely remember
20 authoring this. I actually don't know exactly
21 what its intended purpose was, but it's basic
22 purpose was to find out more about the owner of
23 34 Pitt Street.

24 I can't remember if I left this document
25 at the property or if I sent it to someone at

1 Charleston County, but this was part of my effort
2 in determining who was the owner and who
3 controlled the property.

4 It does recite my previous connection
5 with Ms. Carducci and it says that I've looked up
6 the Association of the Secretary of State's
7 Office website and spoken with Ms. Jody
8 Steigerwalt.

9 Q. Okay. Are those recordings of your
10 activities prior to entering into -- before you
11 submitted any offer on the property?

12 A. Yes, sir.

13 MR. TIBBALS: All right. I would
14 move to admit No. 6.

15 MS. ARIAIL: Your Honor, same
16 objection. It's a hearsay document. It's got
17 hearsay information on it.

18 THE COURT: I'm going to sustain
19 it.

20 MR. TIBBALS: Again, Your Honor,
21 the object is not to --

22 THE COURT: He says he prepared the
23 document and left it in the front door of the
24 place. He prepared the document. Okay. You're
25 trying to establish his -- he's looking into who

1 this was.

2 Why don't we get to where he got there?

3 Okay. We can lay this foundation all day long,
4 but let's get there. Okay? I will sustain the
5 objection.

6 BY MR. TIBBALS:

7 Q. Okay. So you -- so you testified after
8 you -- after you identified the property, you
9 then did some research with the Secretary of
10 State; is that right?

11 A. Yes, sir.

12 Q. Did some research with the City of
13 Charleston; is that right?

14 A. Yes, sir.

15 Q. All right. Did you attempt at some
16 point in time to contact Free Kindergarten
17 Association of Charleston?

18 A. Yes, sir. I was very eager to make
19 contact with the owner of the property, but I did
20 not have any contact information that I could
21 find. At some point, I believe it was, some
22 person at the City of Charleston that led me
23 to --

24 MS. ARIAIL: Objection, Your Honor.
25 Hearsay.

1 MR. TIBBALS: There's no hearsay
2 because he didn't even state a statement that
3 somebody made. So we're going to go through this
4 again and again and again.

5 I don't understand. There's a hearsay
6 objection. We're not talking about the truth of
7 the statement of the third party. We're talking
8 about what he did, and we're talking about how he
9 reacted, and that's not hearsay.

10 THE COURT: I'm going to allow you
11 leeway on that one, but go ahead.

12 THE WITNESS: It was, I believe, a
13 staff person at the City of Charleston who led me
14 to the name of June Murray Wells. It may have
15 been Ms. Carducci, but I'm not sure. It was
16 someone -- some interaction with the City, I
17 believe, is where I got her name.

18 BY MR. TIBBALS:

19 Q. All right. So did you attempt to
20 contact June Wells?

21 A. Yes, sir. I did not -- I wasn't able to
22 find any phone or e-mail contact information, but
23 I was able to find an address, a home address for
24 Ms. Wells.

25 Q. All right. Where did you find out that

1 Ms. Wells lived?

2 A. She lived at Folly Beach.

3 Q. When did you first make contact with
4 June Wells?

5 A. It was sometime in 2012. So, again, I
6 first became aware of this property in December
7 of 2011. I believe it was November of 2012 when
8 I have evidence that I visited the property with
9 Ms. Wells.

10 So it sometime between December '11 and
11 November 2012 when I, you know, found out that
12 she was -- she controlled the organization and
13 that she lived at Folly Beach. And so I'm not
14 sure exactly where in that time span it was.

15 Q. All right. So did you do some research
16 on June Wells prior to meeting her?

17 A. Yes, sir.

18 (PLF. EXH. 7, was marked for
19 identification.)

20 Q. All right. I'm going to hand you what's
21 been marked as Plaintiff's Exhibit 7. Can you
22 identify Exhibit 7 for me?

23 A. Yes, sir. This is an article from the
24 Charleston News and Courier dated October -- it's
25 hard to read -- 18, 1990, I believe, and it's an

1 article about Ms. Wells.

2 Q. All right. And did you review that?
3 And when did you find that article?

4 A. Yes, sir. I'm pretty sure that I found
5 this just through internet research not long
6 after I discovered the name June Murray Wells and
7 that connection with the owner of 34 Pitt Street.

8 Q. All right. Did it form part of the
9 basis of your belief that June Wells was a
10 representative with authority for FKAC?

11 A. Yes, sir.

12 MR. TIBBALS: I move to admit 7
13 into evidence.

14 THE COURT: That's the newspaper
15 article?

16 MR. TIBBALS: Yes, sir.

17 THE COURT: Any objection there?

18 MS. ARIAIL: No objection.

19 THE COURT: All right. I'll allow
20 it.

21 (PLF. EXH. 7, was admitted into
22 evidence.)

23 BY MR. TIBBALS:

24 Q. All right. And so you've referenced in
25 your earlier testimony a calendar appointment; is

1 that right?

2 A. Yes, sir.

3 (PLF. EXH. 8, was marked for
4 identification.)

5 Q. I'm handing you what's been marked as
6 Exhibit No. 8. Can you identify Exhibit No. 8
7 for the record, please?

8 A. Yes, sir. This is a calendar event for
9 my calendar for an event on Sunday, November 4th,
10 2012, at 1 o'clock p.m.

11 Q. And what does that memorialize?

12 A. This indicates that I met with Ms. Wells
13 at the subject property, 34 Pitt Street, on this
14 day.

15 Q. All right.

16 MR. TIBBALS: I move to admit 8.

17 THE COURT: This is past
18 recollection recorded? Is that what this is?

19 MR. TIBBALS: Yes, Your Honor.

20 THE COURT: It's just a notation in
21 a book, is it not?

22 MR. TIBBALS: It is.

23 MS. ARIAIL: No objection.

24 THE COURT: Without objection.

25 (PLF. EXH. 8, was admitted into

1 evidence.)

2 BY MR. TIBBALS:

3 Q. So tell me about your meeting with
4 Ms. Wells.

5 A. I don't specifically remember what all
6 happened during this meeting, but by this point,
7 I would have been speaking with Ms. Wells for
8 some time.

9 Again, I met her in her neighborhood at
10 Folly Beach and that began a conversation about
11 this property. She knew that I had a deep
12 interest in it, but we had not, you know,
13 discussed terms of a sale agreement in depth.

14 But at this point, I believe this is the
15 first time I ever entered the property, and so
16 she was there to show me the property.

17 Q. All right. What was your impression of
18 Ms. Wells when you met her?

19 A. My impression was that she was very
20 sharp, friendly. I felt that we got along very
21 well. My impression was that she understood that
22 this property was in some use and that she
23 intended to sell it. I also had the
24 impression --

25 MS. ARIAIL: Your Honor, hearsay.

1 THE COURT: Sustained. Sustained.

2 MR. TIBBALS: Okay. Well, there's
3 going to be a lot of statements of June Wells
4 that I'm going to introduce into the record, and
5 here's why: They're party admissions, and, you
6 know, we have --

7 THE COURT: Well, you've got a Dead
8 Man's Statute problem all of a sudden now. She's
9 dead. But you've got an exhibit? Have you got a
10 deposition?

11 MR. TIBBALS: We have an
12 organization that has admitted that -- we have an
13 organization that has admitted that she was in a
14 representative capacity for FKAC.

15 It's in their answer. They admit and
16 acknowledge that she was the sole member with
17 authority, and we can find the pleading itself.
18 This is a reply to cross-claim, and this is the
19 second paragraph to the reply to cross-claim.

20 THE COURT: Cross-claim from whom
21 to?

22 MR. TIBBALS: This looks it was the
23 Free Kindergarten Association's reply to
24 defendant, Charleston County School District's
25 cross-claim.

1 THE COURT: All right.

2 MR. TIBBALS: Your said defendant
3 would allege -- your said defendant being Free
4 Kindergarten Association of Charleston -- would
5 allege that Ms. June Murray Wells was and is the
6 duly authorized director and last surviving
7 member of the Free Kindergarten Association of
8 Charleston, and that as such, she has authority
9 and had authority since approximately 1990 to
10 represent the Free Kindergarten Association of
11 Charleston. These are party admissions when she
12 speaks.

13 THE COURT: Okay. The date of that
14 document is what?

15 MR. TIBBALS: The date of the
16 document is June 26, 2019.

17 THE COURT: Okay. Was she --

18 MS. ARIAIL: Your Honor, I --

19 THE COURT: Was she still alive at
20 that time?

21 MR. TIBBALS: Yes.

22 MR. STRINGER: Yes, Your Honor.

23 THE COURT: Okay. All right. Go
24 ahead.

25 MS. ARIAIL: For it to be used as a

1 party admission, it has got to be used against
2 Free Kindergarten. Here, they're obviously
3 trying to use it for the plaintiff.

4 THE COURT: Well, yeah, they're
5 trying to enforce the contract. I'm going to
6 allow it. I'll allow it. Okay?

7 MR. TIBBALS: Thank you.

8 THE COURT: Yep. Go ahead.

9 MR. TIBBALS: All right.

10 THE COURT: And it might stave off
11 a witness over there sitting in that chair.

12 MR. TIBBALS: All right. So --

13 THE WITNESS: Can you repeat the
14 question, Mr. Tibbals?

15 BY MR. TIBBALS:

16 Q. Yes, sure. Did you ask Ms. Wells about
17 her role in FKAC?

18 A. Yes, sir.

19 Q. And what did she tell you about her
20 position or her job duties?

21 MS. ARIAIL: Objection, hearsay.

22 THE COURT: I'm going to sustain
23 that objection as to what she said. All right.
24 You've already established, and it's been
25 admitted; so it's in. All right? You got it.

1 She claims to be the sole authority for it.

2 Okay?

3 MR. TIBBALS: Okay.

4 THE COURT: I don't need cumulative
5 evidence to that effect, if that's what we're
6 doing. Okay?

7 MR. TIBBALS: Yeah, but that -- but
8 the problem is that he's relying upon that.

9 THE COURT: Well, then have him say
10 that. Ask him the question.

11 MR. TIBBALS: Okay. All right.

12 THE COURT: He will tell you that
13 he's relying on it.

14 MR. TIBBALS: All right.

15 THE COURT: That's how we got here.

16 BY MR. TIBBALS:

17 Q. Did you rely upon any statements by
18 Ms. Wells in -- that led you to believe that she
19 had authority for FKAC?

20 A. Yes, sir. I relied on statements
21 directly from Ms. Wells. I relied on all of the
22 conduct that I observed from her.

23 I relied on the fact that she was the
24 only person who had access to the property and a
25 key to the building, and I relied on all of the

1 other circumstances surrounding that, including
2 statements by staff from the City and others.

3 Q. All right. At some point in time, did
4 June Wells show you the property?

5 A. Yes. She did on this date, November the
6 4th, 2012. I believe that's the first time that
7 she showed me the property. And by the way, if I
8 may just add another item of reliance was the
9 documents that she gave me, which testified to
10 her authority of the organization.

11 Q. All right. We'll look at those
12 documents in a few minutes. I'm going to --
13 let's see. I'll ask you if you spoke with -- how
14 did you coordinate a visit with Mike Robinson at
15 the property?

16 A. At some point, I believe in late 2012,
17 I --

18 Q. That's 2012. So let me skip that for a
19 minute. All right. Did Ms. Wells -- did you
20 receive any indication from Ms. Wells as to
21 whether or not FKAC would be willing to sell the
22 property?

23 A. Yes, I did.

24 Q. All right. Did you believe that FKAC
25 was willing to sell the property?

1 A. Yes, sir.

2 Q. Did you perform a title search?

3 A. Yes, sir.

4 Q. Did you advise Ms. Wells that you would
5 be performing a title search?

6 A. Yes. I -- and I can't remember if I
7 advised her before I started the title search or
8 not, but I certainly gave her the consequences of
9 the title search. I gave her the results of the
10 title search.

11 Q. All right. Did you find any issues with
12 the title?

13 A. Yes.

14 Q. What did you see?

15 A. What I saw was the -- according to the
16 title record, it appeared that the property was
17 purchased by Free Kindergarten Association of
18 Charleston in 1963. And it appeared from the
19 deeds that there had been a house in 1963 and
20 that the building was built likely soon after the
21 purchase in 1963.

22 And also in 1963, after the Association
23 had 100 percent ownership of the property, there
24 was an agreement entered into with the City of
25 Charleston in which the City of Charleston

1 acquired a reversionary interest and a 50 percent
2 undivided interest in the property. And that was
3 still a part of the title record when I did my
4 research.

5 Q. All right. So how did -- what did you
6 think about that when you were looking into
7 purchasing this property?

8 A. Well, obviously, it was bad news from a
9 purchaser's point of view, and I was hopeful to
10 be able to clear that up. I did discuss it with
11 Ms. Wells. My understanding from those
12 conversations --

13 MS. ARIAIL: Objection, hearsay.

14 MR. TIBBALS: To responses to that,
15 Your Honor, again --

16 THE COURT: Yeah. He can say what
17 his understanding was or what he did. That would
18 be more appropriate, I think.

19 THE WITNESS: Yes, sir. My
20 understanding was that Free Kindergarten
21 Association had actually acquired that undivided
22 one-half interest back from the City,
23 notwithstanding the fact that that did not appear
24 to have happened in the title search.

25 BY MR. TIBBALS:

1 Q. All right. During your -- and you
2 had numerous -- did you have numerous
3 conversations with Ms. Wells?

4 A. I did.

5 Q. For a period of how long?

6 A. Well, so I met her at some point in
7 2012, and I think of my conversations with
8 Ms. Well as polite and persistent. I think she
9 understood that I had a --

10 MS. ARIAIL: Objection, hearsay.

11 THE COURT: Go ahead. So far it's
12 not objectionable. Go ahead.

13 THE WITNESS: Yes, I did have
14 regular conversations with Ms. Wells.

15 BY MR. TIBBALS:

16 Q. All right. Over a long period of time?

17 A. Yes, sir.

18 Q. From the time that you first saw the
19 property until you submitted the contract?

20 A. Yes, sir.

21 Q. Okay. Did you ever receive any
22 indication from Ms. Wells that -- well, let me
23 rephrase that. Did you ever believe that
24 Ms. Wells was not the right person to talk with
25 relating to the sale of the property?

1 A. No. I always had the impression from
2 the time that I learned her name that she was not
3 only the right person but the only person in the
4 world who had any affiliation with the
5 Association and the property that it held.

6 Q. In connection with the discussions that
7 you had with Ms. Wells, did you ever advise
8 Ms. Wells or ask her to seek legal counsel for
9 FKAC?

10 A. Yes, I did.

11 Q. And did she ever do so, to your
12 knowledge?

13 A. No, she did not.

14 Q. At least not until when?

15 A. She did retain counsel in 2018.

16 Q. All right. But until then, nobody told
17 you to deal with a lawyer for FKAC?

18 A. Can you repeat the question?

19 Q. Yeah. Before you were aware that
20 Mr. Stringer was involved, no one had informed
21 you that you should be dealing with an attorney
22 for FKAC?

23 A. No.

24 Q. And at some point in time, you discussed
25 a potential purchase of the property with

1 Ms. Wells?

2 A. Yes, sir. From the first time that I
3 met her.

4 Q. All right. Did you ever receive a
5 price?

6 A. No.

7 Q. How was a purchase price determined?

8 A. The purchase price and the sales
9 contract, which was eventually executed, came
10 from the appraisal of Mr. Robinson, who testified
11 this morning.

12 Q. Who suggested performing an appraisal?

13 A. That was my idea.

14 Q. And how did you select an appraisal --
15 appraiser?

16 A. I believe that, prior to that time, I
17 had worked with Mr. Robinson before. He was -- I
18 knew he was an MAI qualified appraiser. He had a
19 reputation in Charleston and he, you know, was
20 based in downtown Charleston. And he was the
21 only person that I thought of.

22 Q. All right. What did you -- did
23 Mr. Robinson visit the property?

24 A. Yes, sir.

25 (PLF. EXH. 9, was marked for

1 identification.)

2 Q. All right. I'm going to hand you what's
3 been marked as Exhibit No. 9 and ask you to
4 identify Exhibit No. 9.

5 A. Yes. This is an e-mail from
6 Mike Robinson to me dated November 21, 2012.

7 Q. All right. Does it indicate that
8 Mr. Robinson visited the property?

9 A. Yes. It indicates the intention to
10 visit the property probably shortly after this
11 e-mail was written.

12 Q. All right. Did Mr. Robinson, in fact,
13 visit the property?

14 A. Yes, sir.

15 Q. Were you with him that day?

16 A. Both Ms. Wells and I were with him. She
17 opened the property up to him. I'm not sure that
18 I was in the building with him when he did his
19 work. I don't remember being in the building.
20 But, yeah, I was at the property to introduce
21 them.

22 MR. TIBBALS: All right. I'm going
23 to move to admit 9.

24 THE COURT: Any objection to that?

25 MS. ARIAIL: No objection.

1 THE COURT: Without objection, very
2 good.

3 (PLF. EXH. 9, was admitted into
4 evidence.)

5 BY MR. TIBBALS:

6 Q. So did Mr. Robinson produce an appraisal
7 report?

8 A. Yes, sir.

9 Q. What was the fair market value that
10 Mr. Robinson determined?

11 A. \$315,200.

12 Q. And this appraisal report, what was the
13 date of valuation?

14 A. I believe it was December 19, 2012.

15 Q. Did you give any instructions to
16 Mr. Robinson regarding the appraisal's date of
17 valuation?

18 A. No.

19 Q. Did you prepare a contract?

20 A. Yes.

21 (PLF. EXH. 10, was marked for
22 identification.)

23 Q. I'm going to hand you what's been marked
24 as Exhibit No. 10 and ask you to identify Exhibit
25 No. 10.

1 A. Yes, sir. Exhibit No. 10 shows a cover
2 sheet authored by myself. It's a cover letter
3 from me to Ms. Wells dated January 14, 2013 and
4 attached to it is a real estate purchase and sale
5 agreement.

6 Q. All right. And so was this -- did you
7 mail this letter and draft agreement to
8 Ms. Wells?

9 A. I did. I mailed it to her address at
10 Folly Beach.

11 Q. Why did you mail the agreement and not
12 meet with her in person about it?

13 A. I'm sure that I would have wanted her to
14 have time to read it and consider it and seek
15 counsel for it, if she felt the need.

16 Q. So in that letter, you were making an
17 offer; is that right?

18 A. Yes, sir.

19 Q. Okay. And did you, by that letter, give
20 notice to Ms. Wells as to the results of the
21 appraisal report?

22 A. Yes. I began by stating that I was
23 enclosing the appraisal from Mr. Robinson and
24 then let her know that I was still eager to enter
25 into a contract with the landowner. And I knew

1 that -- well, I will let you ask the question.

2 Q. Well, no. Go ahead and tell me what's
3 significant about that letter to you.

4 A. What jumps out to me is a few things.
5 First of all, I included the appraisal. And I'm
6 going to jump down to the fourth paragraph for a
7 moment because it's connected to the appraisal.

8 I said, regarding the appraisal, please
9 note that Mr. Robinson concluded that due to
10 residential zoning restrictions and flood zone
11 regulations and requirement of elevations of the
12 building's first floor.

13 If it were converted for residential
14 use, a normal investor would most likely remove
15 the building and start over with a new, modern
16 (inaudible) structure, thus his value is \$315,200
17 as a land value price.

18 So here, I was trying to be very
19 straightforward with Ms. Wells. I had been
20 somewhat concerned because I knew that she had a
21 very long history with this property and teaching
22 children in this building.

23 Through my conversations with her, I
24 gathered that she had kind of a deep emotional
25 connection, and that newspaper article that we

1 talked about earlier, talks about her working
2 with the Association since 1958, and here we are
3 in 2012.

4 So I had been somewhat concerned about
5 her reaction to the notion that the building that
6 she had spent so much time in would be regarded
7 by an appraiser as not having value. But I
8 wanted her to understand that that was one of his
9 assumptions in the appraisal so that she wouldn't
10 be surprised or miss that.

11 In the second paragraph, I can remember
12 that, by this time, I was beginning to understand
13 Ms. Wells' anxiety about being under any pressure
14 to move out of the property. So I think that she
15 wanted the Association to sell the building since
16 it wasn't being used for kindergarten anymore.

17 MS. ARIAIL: Objection,
18 speculation.

19 THE COURT: I'll sustain that.

20 BY MR. TIBBALS:

21 Q. Okay. Try to stay away from what you
22 think she wanted.

23 A. Yes, sir. Given my impressions of how
24 Ms. Wells felt about the property, I was
25 including some explanation about this version of

1 the contract that I sent her saying that the
2 Kindergarten Association, under the terms of the
3 contract, would be permitted to exclusive use and
4 possession of the property until June 30 of 2013.

5 Q. All right. Was this the first proposed
6 agreement that you sent to Ms. Wells on behalf of
7 FKAC?

8 A. Yes, sir.

9 Q. Had you previously made any other offer?

10 A. No.

11 Q. Can we look together at the draft
12 purchase and sale agreement that's attached to
13 the letter?

14 A. Yes.

15 Q. And I would like for you look at the
16 second sentence of paragraph 6, please.

17 A. The second sentence of paragraph 6?

18 Q. Yes.

19 A. For example?

20 THE COURT: Under further
21 assurances?

22 MR. TIBBALS: Yes, section 6.
23 Let's see.

24 BY MR. TIBBALS:

25 Q. Yes. It was the one -- the sentence

1 beginning, for example.

2 A. For example, if the seller is unable to
3 provide documentation of June M. Wells' authority
4 to dispose of the property on behalf of the
5 seller, the seller and Ms. Wells agree to
6 petition the Court of Common Pleas of Charleston
7 County to establish her authority and purchaser
8 shall bear any court costs.

9 Q. All right. Why did you include that
10 language in the draft?

11 A. I knew that it was important for
12 Ms. Wells to have authority on behalf of the
13 Association in order to sell the property. And
14 all of her -- my impression of all of her
15 representations to me and statements to me led me
16 firmly to believe that she was, in fact, the
17 authorized agent.

18 But I felt it was -- let me add to that.
19 I had asked her, I think, previously for sort of
20 direct documentation of this authority. She had
21 told me that a lot of the --

22 MS. ARIAIL: Objection, hearsay.

23 THE WITNESS: My understanding,
24 from Ms. Wells, was that a lot of corporate
25 records had been burned in a fire.

1 MS. ARIAIL: Objection,
2 speculation.

3 THE COURT: I'm going to allow it.
4 Overruled. Go ahead.

5 THE WITNESS: My understanding is
6 that corporate records had been burned in a fire.
7 I had been receiving documents from Ms. Wells,
8 but I didn't have everything that I wanted.

9 So I was eager to keep establishing her
10 authority for any documentation that she had. I
11 knew that that might be important at some point
12 for, you know, third-party lenders, title
13 commitment, and so forth.

14 BY MR. TIBBALS:

15 Q. All right. Prior to sending Ms. Wells
16 this draft agreement in January, did you believe
17 that she had the authority to act on behalf of
18 the Association?

19 A. Absolutely.

20 Q. Okay. Sections 8 and 9 relate to
21 closing and exclusive possession, and I think
22 you've testified as to your reasons why you put
23 those in there?

24 A. Yes, sir.

25 Q. I would like to identify, though, for

1 the Court the closing date under this particular
2 draft contract.

3 A. It was in 2013.

4 Q. How long between the period, if she had
5 executed the agreement, would it have been
6 between execution and the closing date?

7 A. Well, if she had executed it on the day
8 that I gave it to her, it would have been
9 December, 12 months. I was hopeful that that
10 would have been time to correct the title issues
11 that we had discussed before.

12 Q. All right. But you weren't seeking a
13 long, drawn out period between the contract date
14 and execution, were you?

15 A. No. I was very eager to purchase the
16 property as quickly as possible and close on it.

17 Q. All right. Did you ever hear back from
18 Ms. Wells after you sent her the proposed
19 agreement?

20 A. I don't specifically remember her
21 speaking with me, specifically rejecting this,
22 but I did not get an agreement from her, and I
23 considered it to have been rejected.

24 Q. So the FKAC didn't sign that version
25 provided in January of 2013?

1 A. Correct.

2 Q. After that January draft wasn't signed,
3 did you continue to stay in contact with
4 Ms. Wells?

5 A. Yes.

6 Q. Did you discuss with her potential
7 provisions to the agreement?

8 A. Well, I certainly discussed with her
9 the -- you know, the possible purchase of the
10 building, and those discussions led me to believe
11 more and more that she was uncomfortable with
12 facing any specific deadlines and losing
13 possession of the building.

14 I also knew, at this point in time, that
15 her husband was ailing from illness, that he
16 eventually died from, and that was taking a lot
17 of her time and adding pressure to her situation.

18 And so my impression was that she was
19 anxious, very anxious about getting under
20 contract, notwithstanding the fact that I believe
21 the landowner was ready to sell based on other
22 representations she made.

23 Q. All right. Did you hear about any
24 criticisms or concerns in regards to the proposal
25 from the FKAC?

1 A. No. I didn't hear specific criticisms
2 or proposals except that I just had -- my
3 interactions with Ms. Wells continued. I have a
4 deeper and deeper impression that it would be
5 difficult to enter into an agreement if it
6 required her to close in the near future.

7 Q. All right. Well, we have that as 11?

8 A. 10.

9 Q. 10.

10 MR. TIBBALS: I move to admit 10.

11 THE COURT: Do you want the cover
12 letter and the --

13 MR. TIBBALS: Yes, please.

14 THE COURT: -- draft, the purchase
15 and sale agreement?

16 MS. ARIAIL: No objection.

17 THE COURT: Without objection.

18 (PLF. EXH. 10, was admitted into
19 evidence.)

20 THE WITNESS: Your Honor, I
21 wouldn't call this a draft, if I may.

22 THE COURT: What would you call it
23 if it ain't signed?

24 THE WITNESS: It was an offer.

25 THE COURT: It was an offer. All

1 right.

2 THE WITNESS: It was an official
3 offer.

4 THE COURT: All right. Well, I
5 would call it a draft, but that's okay. Go
6 ahead.

7 MR. TIBBALS: I think you'd better
8 go with what the Judge calls it.

9 THE WITNESS: Yes, sir.

10 BY MR. TIBBALS:

11 Q. All right. The --

12 A. By the way, if I may, the only reason I
13 say that is, I believe we will be looking at some
14 drafts later today, and I just wanted to make
15 the --

16 THE COURT: I'll tell you what,
17 we're going to move quickly to the contract
18 itself; so that's what we're going to do. Okay?

19 MR. TIBBALS: Yes, sir.

20 THE COURT: We're going to do that
21 very quickly, as a matter of fact.

22 (PLF. EXH. 11, was marked for
23 identification.)

24 BY MR. TIBBALS:

25 Q. So let me hand you what's been marked as

1 Exhibit No. 11. Can you identify Exhibit No. 11,
2 please?

3 A. Yes. This is the contract.

4 Q. All right.

5 A. Just in time.

6 Q. So tell me about the contract, please.
7 Can you tell me who is listed as the seller in
8 the agreement?

9 A. Yes. The seller is Free Kindergarten
10 Association of Charleston signed by June Murray
11 Wells, as authorized agent. The purchaser is
12 Michael D. Royal. The contract is signed by both
13 parties on April 23rd, 2013, and it was notarized
14 by Donna (inaudible).

15 Q. Who drafted this contract?

16 A. I did.

17 Q. Who signed the agreement on behalf of
18 FKAC? You said June Wells, right?

19 A. Ms. Wells.

20 Q. And you said her title is listed as
21 what?

22 A. Authorized agent.

23 Q. All right. Why was it prepared that
24 way?

25 A. I had drafted the contract and put under

1 her name, authorized agent because by that point,
2 my conversations with Ms. Wells -- my
3 understanding is that she had had multiple roles
4 with Free Kindergarten Association of Charleston.

5 My intention here, very plainly, was to
6 capture each and every source of her authority
7 with respect to the organization as she signed
8 the contract.

9 Q. All right. What's the property that's
10 the subject of the agreement?

11 A. This is 34 Pitt Street.

12 Q. What's the price?

13 A. \$315,200.

14 Q. That's consistent with the Robinson
15 appraisal?

16 A. Yes.

17 Q. Is that the only consideration that you
18 were to provide under the contract?

19 A. No, sir.

20 Q. What else?

21 A. Well, there are a number of unusual
22 provisions in this contract, which are
23 favorable -- unusually favorable to the seller.

24 THE COURT: All right. Let's take
25 a break right there. I just want to take a

1 break. Just five minutes, and we'll come right
2 back. Okay? You're planning to put it in
3 evidence, I'm sure?

4 MR. TIBBALS: Yes, sir.

5 THE COURT: I just want to take
6 five minutes.

7 MR. TIBBALS: Yes, sir.

8 (A recess transpired.)

9 THE COURT: Back on the record, and
10 we were on Plaintiff's Exhibit No -- I think it's
11 either 11 or 12, whichever one the contract is.

12 MR. TIBBALS: Your Honor, before I
13 forget, I'm just going to go ahead and move this
14 exhibit into evidence as the signed contract.

15 MS. ARIAIL: No objection.

16 MR. STRINGER: No objection.

17 THE COURT: Without objection, very
18 good. Thank you.

19 (PLF. EXH. 11, was admitted into
20 evidence.)

21 BY MR. TIBBALS:

22 Q. So we were -- we had gone through a few
23 questions about -- and you had testified that the
24 purchase price was consistent with the appraised
25 value. Did the contract require you to pay

1 earnest money or a down payment?

2 A. Yes, sir. And matter of fact, those
3 dollars are nonrefundable except under very few
4 circumstances.

5 Q. Did you make that payment?

6 A. Yes, I did.

7 Q. Did the contract require any -- did the
8 contract say anything about paying the closing
9 costs or other costs?

10 A. Yes. In paragraph 3, the contract says
11 that the seller will be -- sorry, the purchaser
12 shall be responsible for paying or reimbursing
13 the seller those costs that are currently paid by
14 the seller and purchasers in Charleston County.

15 The purchaser would also be responsible
16 for paying fee recordings and other things. The
17 intention -- underlying language here was to put
18 basically all of the burdens of this transaction
19 on the purchaser myself.

20 Q. All right. So was there a cap on
21 attorney's fees?

22 A. A cap? Well, there was a sentence in
23 the contract that said that seller -- purchaser
24 and seller agree that there shall not be any real
25 estate agency or brokerage fees. Typically, 6

1 percent of the fee, around \$19,000 for this
2 value. There would be no brokerage fees.

3 In addition, the purchaser agrees to
4 reimburse seller for any of seller's attorney's
5 fees for up to \$1,000. That was a provision that
6 was also in the first offer that I made to
7 Ms. Wells that I sent to her by mail. That was
8 also in this offer.

9 Q. What did paragraph 4 require of the
10 seller?

11 A. To convey marketable title.

12 Q. And at the time that they contracted to
13 do that, did you believe that they could?

14 A. I believe Ms. Wells, when she said that
15 the Association had purchased back the interest
16 that --

17 MS. ARIAIL: Objection, hearsay.

18 THE COURT: I'm going to sustain
19 that one.

20 THE WITNESS: I was still concerned
21 at this time that the City of Charleston may have
22 an interest in the property, though. I was
23 hopeful that I would be able to overcome that
24 eventually.

25 BY MR. TIBBALS:

1 Q. All right. Even though -- well, let's
2 take a look at paragraph number 6, and, again, it
3 has some provisions regarding Ms. Wells'
4 authority; is that right?

5 A. Yes, sir.

6 Q. When you signed that agreement, did you
7 believe that June Wells had the authority to
8 execute the agreement?

9 A. Absolutely.

10 Q. When you signed that agreement, had you
11 been provided documentation, June Wells'
12 authority to sign the contract and dispose of the
13 property on behalf of Free Kindergarten?

14 A. Well, by documentation -- I received
15 many, many documents from Ms. Wells. In fact, so
16 many that I haven't seen all of them. I don't
17 know exactly a timeline of the receipt of all of
18 those documents. She gave them to me over a
19 period of time.

20 I can't say with specificity which
21 documents I received at the time of drafting this
22 contract, but I did have many, many documents
23 from her, which I believe constituted very good
24 evidence of her authority.

25 Q. You relied upon those documents?

1 A. Yes.

2 Q. You've relied upon those documents in
3 entering into the contract, to some degree?

4 A. Yes.

5 Q. And then, did you rely upon the
6 documents that you received after you executed
7 the contract?

8 A. Yes.

9 Q. And how was that? How could you have
10 relied upon documents that you received
11 afterwards?

12 A. Well, after the effective date of the
13 contract, I went on to -- I think I put forward a
14 great deal of time and effort and resources and
15 continuing communications and other activities.

16 I'm not sure if we will have time to get
17 into them today, but trying to resolve the title
18 issue and other matters, actually trying to
19 prevent this property from going to a tax sale,
20 which I was able to accomplish.

21 Everything that I did after the
22 effective date was, of course, in reliance on the
23 fact, that Ms. Wells was actually the right
24 person to be doing business with.

25 Q. All right. So 11 is in evidence. Do

1 you want to tell the Court about the closing date
2 on that one?

3 A. Yes. The paragraph number 7 is unusual.
4 It says, the closing agreement shall be held at
5 the location of property or such other location
6 mutually agreed to by the parties on April 9,
7 2018, or on such prior date chosen by the seller
8 upon reasonable notice to the purchaser.

9 Q. So the seller could choose any date
10 between April 23rd, 2013 and April 9th, 2018 to
11 close the transaction?

12 A. Yes, sir.

13 Q. Why was that?

14 A. So optically, you know, this sentence
15 says on its face, April 9th, 2018, or prior date.
16 The way that it works functionally in this
17 contract, that the economic substance here is
18 that the closing date is today or any day after
19 today chosen by the seller up until April 9,
20 2018.

21 The intention here was to give Ms. Wells
22 a kind of extreme, extreme flexibility because I
23 had not been able to get her agreement to enter
24 into -- have her enter into an agreement under
25 sort of a normal closing.

1 And I had an intuitive that this was the
2 issue for Ms. Wells in selling the property, the
3 anxiety about being trapped by a deadline. So
4 when I offered this version of the agreement to
5 her, I tried to completely eliminate that anxiety
6 by creating a flexibility that was almost absurd.

7 Now, I don't -- I certainly didn't
8 believe that it would actually take five years.
9 I was very hopeful that the closing was eminent.
10 I'm not allowed to apparently testify what I
11 thought about what Ms. Wells believed, but I felt
12 that this contract would close eminently.

13 Q. All right. You certainly wanted to
14 close as fast as you could, right?

15 A. Yes.

16 Q. It wasn't your intent to have the
17 closing date stretch out five years?

18 A. Correct.

19 Q. That provision was a benefit for the
20 buyer or for the seller?

21 A. This is a benefit for the seller.

22 Q. All right. And you put it in there
23 based upon your perception of her needs?

24 A. That's correct. And, of course, it did
25 not appear in the earlier version, which had been

1 rejected. That's why it appears in this
2 contract.

3 Q. All right.

4 MR. TIBBALS: Your Honor, I would
5 ask for your guidance on this next issue. I have
6 a stack of documents that Mr. Royal received, and
7 these are all documents that he relied upon in
8 believing that June Wells was the authorized
9 agent for FKAC.

10 These documents are -- we can go through
11 each one by one. It's going to take a long time
12 to do that. Almost all of the documents qualify
13 for admission under the ancient documents because
14 they're more than 20 years old, and they're found
15 where they would normally be kept -- be kept,
16 which is with June Wells at FKAC.

17 So we can bypass. I don't want to sit
18 here all afternoon and go objection, rule on
19 objection. I would also again state, Your Honor,
20 that these documents are not -- if I introduce a
21 check from June Wells that she signed on behalf
22 of FKAC, I'm not trying to show that she actually
23 paid the money.

24 I'm trying to show the effect on the
25 hearer. That's not hearsay. That's what my --

1 THE COURT: All right. But are
2 they all documents that she created or that she
3 executed or --

4 A. They all are addition of her authority
5 upon which Mr. Royal relied.

6 THE COURT: Give me some ideas.
7 He's going to rely on some check she wrote to
8 some bank, I wouldn't think. You tell me.

9 MR. TIBBALS: Well, it's on a
10 number of -- there's a number of issues, and we
11 can go through them one by one. There's a letter
12 from Larry Dodds, who send her a draft lease.
13 There's a withholding tax check filed with the
14 South Carolina Department of Revenue.

15 There's a letter from the South Carolina
16 Tax Commission to her. There's a letter from the
17 Department of Revenue with a refund check to her.
18 There's a resolution designating a bank
19 depository addressed -- well, that she signs, I
20 guess.

21 There's a South Carolina tax filing
22 notice sent to her. There is an IRS return form
23 send to her. There's bank documents that were
24 sent to her with the company, Corporate
25 Resolutions.

1 There are checks to SCDOR signed -- you
2 know, checks for tax payments by FKAC signed by
3 June Wells. So there's all of this -- the
4 documentation, the information that was relied
5 upon by Mr. Royal in believing that June Wells
6 had the authority to act on behalf of FKAC.

7 MS. ARIAIL: Your Honor, we've
8 first got to get them authenticated. I know how
9 painful it would be to go through each one of
10 them, but if they listed 105 potential exhibits
11 for today, the list I received, you know, late
12 Monday afternoon. I can't just do a broad sweep,
13 oh, yeah, they're okay. I got to -- we've got to
14 go through this process.

15 MR. TIBBALS: This is why we tried
16 to get --

17 THE COURT: Yeah, some agreements?

18 MR. TIBBALS: -- some agreement,
19 yes, and we didn't get anything from them.

20 THE COURT: I'm with you.

21 MR. TIBBALS: We didn't get any --

22 THE COURT: All right. What -- is
23 one of the documents the Probate Court order?

24 MR. TIBBALS: Yes.

25 THE COURT: Is that one of the

1 documents?

2 MR. TIBBALS: Yes.

3 THE COURT: Why don't you just put
4 that one in? I'll let you proffer all of the
5 other ones, but you can put that one in.

6 MR. TIBBALS: Because it's the
7 accumulation of the documents and the evidence.

8 THE COURT: Well, he can -- he can
9 testify to that. He can testify to what he did
10 and what he saw. Okay? Just proffer them.

11 I don't need -- that's just cumulative
12 evidence. He's already saying, he thinks she had
13 the authority. All of this is just cumulative
14 stuff. I don't know that it's necessary. Okay.

15 THE WITNESS: Mr. Tibbals, may I
16 make a quick summary that may help solve the
17 problem?

18 THE COURT: I think you need to do
19 that in response to a question from your
20 attorney --

21 THE WITNESS: Yes, sir, sorry.

22 THE COURT: -- is what I would
23 suggest you do there. But I'm telling you,
24 you've got a court order that says something.
25 You've got multiple documents, you know. Go

1 ahead and ask the question. But I don't see the
2 need to go through 100 documents if you've got --
3 he's already testified to what he believes. He
4 can state the basis for his belief. I don't have
5 a problem with that.

6 MR. TIBBALS: Okay.

7 BY MR. TIBBALS:

8 Q. So, Mr. Royal, I'm going to hand you a
9 number of exhibits, and what I think I would like
10 to do is have you identify the exhibit, tell
11 me -- tell the Court whether or not you relied
12 upon it in your belief that Ms. Wells had
13 authority and then we'll move on. So here's --
14 just to get you started while I'm marking them,
15 here's 12, 13, 14.

16 (PLF. EXH. 12, 13 and 14, were
17 marked for identification.)

18 A. Yes, sir. I will identify Exhibit No.
19 12 as Department of Revenue withholdings tax, a
20 form that was sent to Free Kindergarten
21 Association, care of June Wells at her home
22 address. I would say this is a document that, in
23 my mind, helped get to her authority.

24 Document -- sorry, Exhibit 13. Do you
25 want me to just go in material order?

1 Q. I want you to identify the document for
2 the record and state whether or not you relied
3 upon it in your belief that Ms. Wells was the
4 authorized agent for Free Kindergarten
5 Association.

6 A. Yes, sir. Plaintiff's Exhibit No. 13 is
7 a letter dated March 4, 1997, from Theresa Miller
8 to Cheryl Ramsey at South Carolina Tax
9 Commission. It indicates that the person who had
10 been treasurer at the Association -- it said,
11 Ms. Bell will no longer be handling finances for
12 this organization.

13 June M. Wells will now take over the
14 finances. I took this to be an indication that,
15 in 1997, Ms. Wells was taking over all power and
16 authority of the treasurer position. So I viewed
17 it as an indication of her authority.

18 Plaintiff's Exhibit No. 14 is a letter
19 from the State of South Carolina Department of
20 Revenue to Free Kindergarten Association dated
21 March 19, 1997. And it is specifically --

22 MS. ARIAIL: Your Honor, I hate to
23 interrupt, but our exhibits are not matching what
24 you guys are putting up.

25 THE COURT: Yeah. I'm a little --

1 my numbers seem to be off.

2 MR. TIBBALS: All right. I may
3 have screwed up the numbers.

4 THE COURT: Yeah.

5 MR. TIBBALS: All right. Let's
6 see.

7 THE COURT: Yeah. You put your
8 numbers numerical, and these tabs are different,
9 right?

10 MS. ARIAIL: Yeah. I'm not
11 following it at all. Sorry to interrupt, but --

12 MR. TIBBALS: No, that's all right.
13 We'll get it straight. So we have 11. Can
14 you --

15 THE COURT: 11 was the contract.

16 MR. WILLIAMS: And if I may, the
17 binders have some non-numbered tabs as well
18 because we realized we left some out. So I do
19 apologize.

20 THE COURT: 11 was the contract
21 that came in.

22 MR. TIBBALS: All right. What do
23 you have as No. 12?

24 THE COURT: 12 in the booklet is a
25 Dodds and Hennessy letter pertaining to some kind

1 of lease.

2 MR. TIBBALS: Okay. Let me see if
3 I can fix this.

4 THE COURT: Okay.

5 MR. TIBBALS: All right. I'm going
6 to mark that as 12 so that we can all follow
7 along together. What's 13 in your book?

8 THE COURT: Check behind me, but
9 that's Department of Revenue withholding tax
10 change of records slash reorder form.

11 MR. TIBBALS: Okay. All right. I
12 think I'm going to get this straight. Sorry
13 about that.

14 THE COURT: And 14, I think, was
15 the one that he was just testifying to, a March
16 4, '97 letter from the Tax Commission.

17 MR. TIBBALS: Letter from the Tax
18 Commission is 14?

19 THE COURT: I think it's to the Tax
20 Commission from Ms. Wells. I can't tell. Some
21 of this -- signed Theresa Miller. Thank you,
22 Theresa Miller.

23 (PLF. EXH. 15 and 16, were marked
24 for identification.)

25 MR. TIBBALS: And is -- yes. Is 15

1 then the South Carolina Department of Revenue?

2 THE COURT: On their letterhead,
3 yes, sir.

4 MR. TIBBALS: And is 16 an
5 employer's --

6 THE COURT: Resolution of some
7 sort.

8 BY MR. TIBBALS:

9 Q. Okay. All right. So that we have a
10 reviewable record, please go through what I've
11 marked now as 12, 13 and 14. Identify the
12 number, identify the document and let the Court
13 know as to whether or not this is a document that
14 you relied upon relating to June Wells'
15 authority?

16 A. Plaintiff'S Exhibit No. 12 is a letter
17 to Ms. Wells from Lawrence A. Dodds dated
18 November 22, 1993, and my understanding of this
19 letter is this is the Association's attorney.

20 He was communicating with Ms. Wells
21 about a lease agreement between the Association
22 and the Confederate Museum. I note that -- my
23 understanding was that Ms. Wells was affiliated
24 with both of the entities, and the attorney was
25 sending this to Ms. Wells at 34 Pitt Street, not

1 at her address at the Confederate Museum.

2 But, to me, this document created the
3 impression that Ms. Wells was the appropriate
4 person at the Association to be dealing with real
5 estate transactions. And in this letter, he also
6 asked that she -- she should feel free to modify
7 the contract.

8 Plaintiff's Exhibit No. 13 --

9 THE COURT: All right. Do you want
10 to -- are you going to offer that one?

11 MR. TIBBALS: I would like to offer
12 all of these, but --

13 THE COURT: Any objection to that?

14 MS. ARIAIL: Yes, sir, Your Honor.

15 THE COURT: All right. I'm going
16 to sustain the objection. It'll be a proffer.
17 All right?

18 MR. TIBBALS: Okay.

19 THE COURT: That's going to be a
20 proffer.

21 MR. TIBBALS: That's fine.

22 (PLF. EXH. 12 was marked as a
23 proffer.)

24 MS. ARIAIL: Your Honor, can I also
25 note that this is an incomplete document that

1 references a lease attached to it?

2 THE COURT: Sure, sure. It's not
3 in evidence. It's a proffer.

4 MR. TIBBALS: Is this the --

5 THE COURT: That's the Larry Dodds
6 letter.

7 MR. TIBBALS: All right. And
8 that's the document that they actually included
9 in their exhibit list; so I don't know.

10 THE COURT: It is what it is.

11 MR. TIBBALS: Okay.

12 THE COURT: It's not in evidence.
13 It's a proffer. Okay?

14 MR. TIBBALS: All right.

15 THE WITNESS: Plaintiff's Exhibit
16 13 is a form from South Carolina Department of
17 Revenue to Free Kindergarten Association. I just
18 note that it is addressed to Ms. Wells on behalf
19 of the Association at her home address, 25 Smith
20 Street, Charleston.

21 MS. ARIAIL: Your Honor, I request
22 that -- I object and request that he not read
23 from these documents.

24 THE COURT: All right. I'm going
25 to sustain the objection. You can proffer that

1 one. Okay? That would be another proffer.

2 MR. TIBBALS: Yes, okay.

3 THE COURT: 13 it was. I'm with
4 you. It's proffered.

5 MR. TIBBALS: All right.

6 (PLF. EXH. 13 was marked as a
7 proffer.)

8 THE WITNESS: Plaintiff'S Exhibit
9 No. 14 is a letter dated March 4, 1997 from
10 Theresa Miller to Cheryl Ramsey. And my
11 impression of this document was that, in 1997, it
12 indicates that the Office of the Treasury was
13 effectively being transitioned from Ms. Bell to
14 Ms. June Wells.

15 THE COURT: Is there an objection
16 to that was one?

17 MS. ARIAIL: Yes, sir.

18 THE COURT: All right. I'm going
19 to sustain the objection, and you can proffer it.

20 MR. TIBBALS: Okay.

21 (PLF. EXH. 14 was marked as a
22 proffer.)

23 BY MR. TIBBALS:

24 Q. What's the next one?

25 A. That's all I have right now.

1 MR. TIBBALS: What's the next in
2 your binder, just I can make sure that we're --

3 THE COURT: 15 is Department of
4 Revenue letter to June Wells.

5 MR. TIBBALS: And 16? I think
6 we're almost back on track.

7 THE COURT: 16 is the resolution.

8 MR. TIBBALS: Okay.

9 BY MR. TIBBALS:

10 Q. And 15?

11 A. Plaintiff's Exhibit No. 15 is a document
12 from the State of South Carolina Department of
13 Revenue to Free Kindergarten Association and also
14 addressed to Ms. Wells at her home address. And
15 I viewed this as further minutia of Ms. Wells'
16 authority and capacity with respect to the
17 Association.

18 MS. ARIAIL: Objection.

19 THE COURT: All right.

20 MR. TIBBALS: Well, can we just go
21 ahead and agree that they have a standing
22 objection --

23 THE COURT: Sure.

24 MR. TIBBALS: -- and that these are
25 proffered?

1 (PLF. EXH. 15 was marked as a
2 proffer.)

3 THE COURT: Well, try the next one.
4 The next one is the resolution.

5 MR. TIBBALS: All right.
6 Resolution of school, church, club or lot is 16?

7 THE COURT: Right.

8 BY MR. TIBBALS:

9 Q. All right. 16.

10 A. Thank you.

11 Q. Can you identify 16?

12 A. Yes, sir. This is Plaintiff's Exhibit
13 No. 16, and it's a resolution. At the top, it
14 says, Marion Hankel Kindergarten -- Free
15 Kindergarten Association, but --

16 MS. ARIAIL: Objection to the
17 reading on the record.

18 THE COURT: All right. This is a
19 resolution of the Free Kindergarten Association,
20 is it not? Mr. Tibbals, I'm speaking to you.

21 MR. TIBBALS: Yes.

22 THE COURT: All right. Are they
23 your party opponent?

24 MR. TIBBALS: Yes.

25 THE COURT: All right. This one

1 comes in. Okay? Bingo.

2 MR. TIBBALS: Okay.

3 THE COURT: Signed by Ms. Wells at
4 the bottom?

5 THE WITNESS: Sir, this document is
6 signed by Ms. Wells in multiple -- in multiple
7 areas, and if I may, the first time Ms. Wells --

8 THE COURT: It also shows other
9 directors, does it not?

10 THE WITNESS: Yes, sir.

11 THE COURT: This looks like to be
12 an official corporate document?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. It comes
15 into evidence. It's in.

16 MR. TIBBALS: Okay.

17 (PLF. EXH. 16 was admitted into
18 evidence.)

19 THE COURT: That's enough. Do you
20 want to put the other ones in as a cumulative, or
21 do you want to just proffer the rest of them?

22 MR. TIBBALS: I'll -- I can proffer
23 the rest of them.

24 THE COURT: Whatever you want to
25 do, but we'll clean that up later, not right now.

1 Y'all can work on that over lunch. Okay?

2 MR. TIBBALS: Okay.

3 THE COURT: This is a document with
4 Ms. Wells' signature on it, the best we know --

5 MR. TIBBALS: Yes.

6 THE COURT: -- saying she's a
7 director --

8 MR. TIBBALS: Right.

9 THE COURT: -- amongst other
10 directors.

11 MR. TIBBALS: Yes.

12 THE COURT: It's a corporate
13 document. It's comes into evidence.

14 MR. TIBBALS: Yes, sir.

15 THE COURT: It's a business record.

16 MR. TIBBALS: Yes, sir.

17 THE COURT: Got it. Okay.

18 MR. TIBBALS: Any objection?

19 MS. ARIAIL: No.

20 THE COURT: All right.

21 MR. TIBBALS: The next one in your
22 binder, I think I --

23 THE COURT: That was No. 16, was it
24 not?

25 MS. ARIAIL: 16.

1 MR. TIBBALS: Now, we're on 17.

2 THE COURT: That one was 16?

3 MR. TIBBALS: Yes, sir.

4 THE COURT: I'm not going to let
5 you go anymore. You can do the rest of them
6 later. Okay?

7 MR. TIBBALS: Okay.

8 THE COURT: I had enough.

9 MR. TIBBALS: Yes, sir. So we're
10 going to move on to pass-through use authority
11 documents, and we will proffer these later.

12 BY MR. TIBBALS:

13 Q. All right. We talked about the date of
14 the closing. Was this -- did the contract
15 require you to perform within a certain period of
16 time once the seller chose to close?

17 A. Yes, sir. The contract stated that if
18 the seller chose a closing date within, I think
19 it was, 38 days. There's no special reason for
20 38. I think I just put down May 31st and was
21 hoping to get the agreement signed up.

22 But whenever it was actually signed, it
23 happened to be 38 days away. If the contract was
24 closed within 38 days of the effective date, then
25 I was completely bound. I did not have any due

1 diligence period. I didn't have any inspection
2 rates. I was agreeing in this contract,
3 absolutely and wholeheartedly, to purchase the
4 property. I was ready, willing, and able and
5 within that 38 days.

6 Now, because of the -- what I described
7 as the unusual provision in allowing flexibility
8 for the Association to close at a time of its own
9 determination, I was concerned that, if the
10 Association took a long -- a long time to close,
11 then I might, in the future, not be in a good
12 financial position to close on the contract.

13 So after a period of what I consider to
14 be a normal closing period, if the contract
15 remained unclosed, then there was a provision
16 that allowed me, if I determined in my discretion
17 that I was not in a financial position to close
18 at that time in the future, that I would not have
19 to close.

20 Q. All right. Did you think that Free
21 Kindergarten Association could have vacated the
22 property within 38 days?

23 A. Yes, absolutely.

24 Q. All right.

25 A. And I was very willing and offered on

1 many occasions to help in that transition
2 process.

3 MR. TIBBALS: All right. Your
4 Honor, I would ask that you turn in your
5 binder -- we've got a number of documents that we
6 were going to proffer, but we're going to deal
7 with those later. But what I want you to get to
8 is the 2010 letter from Mary Frances Jowers to
9 June Murray Wells.

10 THE COURT: Now, what number would
11 that one be? Is that No. 28?

12 MR. TIBBALS: Just flip until you
13 find it, I think.

14 THE COURT: I think I just found
15 it.

16 MR. TIBBALS: Okay.

17 THE COURT: It's 28 in my -- tab 28
18 in my book.

19 MR. TIBBALS: All right. I will
20 mark it as 28.

21 THE COURT: That would be great.

22 (PLF. EXH. 28 was marked for
23 identification.)

24 BY MR. TIBBALS:

25 Q. I'm handing you what's been marked as

1 Plaintiff's Exhibit No. 28. Can you identify 28,
2 please?

3 A. Yes, sir. Plaintiff's Exhibit 28 is a
4 letter dated November 12, 2010 from Mary Frances
5 Jowers, Assistant Attorney General of the State
6 of South Carolina to Ms. June Murray Wells and
7 addressed to her home address at Folly Beach, her
8 po box at Folly Beach.

9 Q. All right. Is this a document that you
10 relied upon in your belief that Ms. Wells was the
11 authorized agent for FKAC?

12 A. Yes, sir.

13 Q. And what did -- why did it give you that
14 impression?

15 A. This impressed me as evidence that the
16 State of South Carolina was standing behind
17 Ms. Wells' authority to do business on behalf of
18 the Association.

19 (PLF. EXH. 29 was marked for
20 identification.)

21 MR. TIBBALS: All right. I'm going
22 to move to admit 28.

23 THE COURT: Okay.

24 MS. ARIAIL: Your Honor, to this
25 witness, this is hearsay.

1 THE COURT: Okay. Well, you've got
2 the author right over here.

3 Ms. Jowers, was this prepared by you?

4 MS. JOWERS: I wrote this letter.

5 THE COURT: You wrote this letter?

6 MS. JOWERS: Yes, sir.

7 THE COURT: All right. Was it done
8 in your official capacity with the Attorney
9 General's Office?

10 MS. JOWERS: Yes, sir.

11 THE COURT: Okay. All right.

12 MS. JOWERS: What he may have --

13 THE COURT: Go ahead.

14 MS. JOWERS: What he meant or what
15 he may have inferred may be different, but --

16 THE COURT: Sure.

17 MS. JOWERS: -- yes, sir, I
18 certainly wrote the letter, yes, sir.

19 THE COURT: I'm with you. And it
20 accompanied an affidavit that is probably the
21 next document?

22 MR. TIBBALS: That's No. 29.

23 MS. JOWERS: There was one in here.
24 I can't say for certain that this is the one, but
25 there was one in the action before.

1 THE COURT: Okay.

2 MS. JOWERS: I don't know for sure
3 which one it was.

4 THE COURT: Gotcha. All right.
5 And then Mr. Stringer?

6 MR. STRINGER: Your Honor, the --
7 I'm confused again on the numbering. Isn't that
8 29, the letter?

9 MR. TIBBALS: 28 is the letter; 29
10 is the affidavit, I think.

11 THE COURT: Well, let me just tell
12 you, in my book, 28 is the letter; 29A is the
13 affidavit, and it looks likes 29 is the order,
14 which I believe to be of the Probate Judge --

15 MR. STRINGER: Okay.

16 THE COURT: -- is what I'm showing.
17 I think that's Irv Condon's scratching on there.

18 MR. TIBBALS: Okay. So you've got
19 the affidavit as what number?

20 THE COURT: 29A I have as the
21 affidavit of June Wells.

22 (PLF. EXH. 29A was marked for
23 identification.)

24 BY MR. TIBBALS:

25 Q. All right. So I'm going to hand you

1 what's been marked as 29A. Can you identify 29A?

2 A. This is the affidavit of June Murray
3 Wells in connection with case number
4 2010-GC-10-0090.

5 Q. And is that a document that formed part
6 of the basis of your reliance?

7 A. Yes, sir. When I came into possession
8 of this affidavit, it was with the letter of
9 November 12, 2010, which we've identified as
10 Plaintiff's Exhibit No. 28.

11 So, to me, they were a pair, and this
12 impressed me as an affidavit from Ms. Wells in
13 which she is asserting her capacity to act on
14 behalf of the Free Kindergarten Association of
15 Charleston in front of the Court.

16 Q. All right. And this is an affidavit
17 that's filed with public record?

18 A. To my knowledge, yes.

19 Q. It's online, and you can access it on
20 the court online system?

21 A. Yes.

22 MR. TIBBALS: I move to admit 29A.

23 THE COURT: Okay. Any objection on
24 that one?

25 MS. ARIAIL: Yes, sir.

1 THE COURT: All right.

2 MR. ARIAIL: Object under hearsay.

3 Also, we've got Dead Man's Statute issues.

4 There's no ability to cross-examine Ms. Wells.

5 There's res judicata and collateral estoppel

6 issues related to this.

7 The proceeding that this document was
8 used in, there's res judicata and collateral
9 estoppel issues with that. There's no exception
10 to the hearsay rule that applies to this.

11 MR. TIBBALS: That's because it's
12 not hearsay. It's because it's not offered for
13 the proof of June Wells being the authorized
14 agent, which is already admitted in this Court.
15 It's already been admitted by Free Kindergarten
16 Association of Charleston in its reply to
17 cross -- to the counter-claims.

18 THE COURT: All right.

19 MR. TIBBALS: But nevertheless,
20 it's -- the purpose of it is to show that
21 Mr. Royal relied upon it in his understanding of
22 who was authorized to act on behalf of FKAC.

23 THE COURT: I'm going to allow it
24 in. Do you want the letter?

25 MR. TIBBALS: And the order.

1 (PLF. EXH. 28 and 29A were admitted
2 into evidence.)

3 BY MR. TIBBALS:

4 Q. I'll hand it up to the -- if you will
5 identify 29 for me, please.

6 A. Before I do answer, may I just
7 supplement my answer from a moment ago?

8 Q. Yes.

9 A. To the best of my memory and
10 understanding, I did not get these documents from
11 internet research. I believe these are documents
12 that I received from Ms. Wells directly. I just
13 wanted to make sure that that was known.

14 Plaintiff's Exhibit No. 29 is the order
15 in case 2010-GC-10-0090, and it's signed by Judge
16 Condon.

17 Q. All right.

18 A. On December, I believe, 7, 2010.

19 Q. Did you rely upon that order in your
20 believing that Ms. Wells was authorized to act on
21 behalf of Free Association -- Free Kindergarten
22 Association?

23 A. Yes, sir. In particular, the sentence
24 on page 2 --

25 MS. ARIAIL: Your Honor, if he's

1 going to read, I'm going to object.

2 THE COURT: Where are we?

3 MR. TIBBALS: This is an order of
4 the Court, and it's a certified copy.

5 THE COURT: All right. What are
6 you having him point to? The second paragraph
7 in --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- Judge Condon's
10 order?

11 MR. TIBBALS: You can take judicial
12 notice of this, Your Honor.

13 THE COURT: Yeah. I can take
14 judicial notice. The Court noticed on file with
15 the State; is that what you're trying to get to?

16 MR. TIBBALS: Yes.

17 THE COURT: I got it. I've already
18 read it. All right.

19 MS. ARIAIL: Your Honor, I'm going
20 to object under the public records objection.

21 THE COURT: Okay.

22 MS. ARIAIL: There is case that
23 says, any public records that contain opinions,
24 judgments, or conclusions that are outside of the
25 scope of Rule 803(8)'s public record exception.

1 THE COURT: Okay. Overruled.

2 MR. TIBBALS: Thank you, Your
3 Honor.

4 THE COURT: Very good.

5 MS. ARIAIL: And I want to renew my
6 collateral estoppel and my res judicata.

7 THE COURT: Noted. Res judicata,
8 collateral estoppel. That's a whole separate
9 action.

10 This is a guardianship, a
11 conservatorship or whatever having to do with the
12 funds in the Hankel Trust, right?

13 MR. TIBBALS: Correct.

14 THE COURT: That's what this is all
15 about.

16 MR. TIBBALS: Correct. And --

17 THE COURT: And the Attorney
18 General's Office was previously involved, was it
19 not?

20 MR. TIBBALS: The Attorney
21 General's Office was previously involved,
22 prepared an affidavit for Ms. Wells --

23 THE COURT: Okay.

24 MR. TIBBALS: -- to show that she
25 had authority to -- in fact, if you want to talk

1 about -- the Hankel Trust was the funding
2 mechanism for Free Kindergarten Association.

3 Once Free Kindergarten Association
4 stopped operating, then they had to divert those
5 Hankel Trust funds somewhere else. They needed
6 somebody to authorize that on behalf of Free
7 Kindergarten Association of Charleston.

8 THE COURT: Right.

9 MR. TIBBALS: That person was June
10 Wells. The affidavit was drafted by the AG's
11 Office and sent to Ms. Wells. There was an order
12 confirming that she's the last and only -- what
13 does it say?

14 THE WITNESS: Well, the sentence
15 that struck me and impressed me the most is, she
16 is the only known person with capacity to act on
17 behalf of the Association, and that confirmed
18 kind of everything that I had heard from
19 Ms. Wells and all behaviors that I had relied on
20 until I received this.

21 MR. TIBBALS: All right. So we've
22 got that admitted.

23 (PLF. EXH. 29 was admitted into
24 evidence.)

25 BY MR. TIBBALS:

1 Q. Tell me about the circumstances of the
2 execution of the contract.

3 A. The day that the contract was executed,
4 Ms. Wells was working at the Confederate Museum
5 downtown. She was the director there, I believe,
6 until 2018, and that's where she spent a lot of
7 her time.

8 And I visited with her there. I must
9 have had some idea that there was a possibility
10 of getting the agreement signed that day because
11 I brought with me my assistant colleague, Donna
12 Oostdyk, who is in that Republic.

13 And I believe we spent around 40 minutes
14 or so -- 30 to 45 minutes at the Confederate
15 Museum visiting with Ms. Wells. I gave her the
16 agreement that eventually she executed that day.
17 I believe that there was -- she had at least one
18 colleague with her that day, and there were also
19 some people visiting the Confederate Museum that
20 day.

21 But I do remember speaking with
22 Ms. Wells a little bit, giving her the contract
23 to review, and, of course, made myself open to
24 any questions that she had. But it seemed that
25 the insertion of this provision around the

1 flexibility of the closing was -- I am certain
2 the thing that brought the signature to that
3 fourth page.

4 Q. All right. Were you with Ms. Wells when
5 she signed the document?

6 A. Yes, sir.

7 Q. So you saw her sign it?

8 A. Yes.

9 Q. Were there other people in the room when
10 you met with her there?

11 A. Yes, sir.

12 Q. Who was there?

13 A. At least one of her colleagues was
14 working with her that day. I was with her. My
15 assistant, Donna Oostdyk, was there present in
16 the room. And I remember there were several
17 people sort of visiting the museum that day.

18 Q. All right. Did Ms. Wells ask you any
19 questions about the proposed agreement?

20 A. She may have. I don't remember any
21 specific questions.

22 Q. Based upon your interactions that day,
23 did you have any concerns about June Wells'
24 capacity?

25 A. Not at all.

1 Q. Before the agreement was signed, did you
2 suggest to Ms. Wells that she retain legal
3 counsel for assistance?

4 A. Yes, I had. We had had that
5 conversation before. I don't know if we had it
6 on this particular occasion, but I had certainly
7 encouraged her in that direction, and also, that
8 was the reason why I added language assuring her
9 of reimbursement for legal costs.

10 Q. Did you record a memorandum of real
11 estate purchase and sale agreement?

12 A. Yes.

13 Q. Relating to the purchase and sale
14 agreement between you and Free Kindergarten
15 Association of Charleston?

16 A. Yes, sir.

17 MR. TIBBALS: Before I write on
18 this exhibit, I want to make sure that it's
19 consistent with your binder, Your Honor. This is
20 what we're looking for here.

21 THE COURT: Memo of the contract?

22 MR. TIBBALS: This is the memo of
23 real estate purchase and sale agreement.

24 MS. ARIAIL: What number is it?

25 THE COURT: It looks likes 31.

1 That's the file memorandum?

2 MR. TIBBALS: Yes.

3 THE COURT: Got it.

4 (PLF. EXH. 31 was marked for
5 identification.)

6 BY MR. TIBBALS:

7 Q. Can you identify 31 for me, please?

8 A. Yes, sir. Plaintiff's Exhibit 31 is a
9 memorandum of real estate purchase and sale
10 agreement.

11 Q. All right. Is that a document that you
12 prepared?

13 A. Yes, sir.

14 Q. And did you record that document?

15 A. Yes, sir.

16 Q. How did you record it?

17 A. I believe I just went to the RMC. Back
18 then it was called RMC -- and had it recorded.

19 MR. TIBBALS: Okay. Move to admit
20 31.

21 BY MR. TIBBALS:

22 Q. Is that a true and correct copy of the
23 memorandum for purchase and sale agreement that
24 you prepared and recorded?

25 A. Yes.

1 MR. TIBBALS: All right. Move to
2 admit 31.

3 MS. ARIAIL: No objection.

4 THE COURT: Without objection.

5 (PLF. EXH. 31 was admitted into
6 evidence.)

7 BY MR. TIBBALS:

8 Q. Why did you record a memorandum of the
9 purchase and sale agreement?

10 A. From my communications and interactions
11 with Ms. Wells over some period of time at this
12 point, I understood that there were other people
13 who had approached Ms. Wells and expressed an
14 interest in the property. And I was wanting to
15 put the world on notice that the property at this
16 point was now under contract.

17 Q. What's the date that you recorded it?

18 A. It was the same date as the effective
19 date of the contract, April 23, 2013.

20 Q. Who signed on behalf of Free
21 Kindergarten Association?

22 A. Ms. June Wells signed as authorized
23 agent.

24 Q. Two witnesses also signed?

25 A. Yes.

1 Q. Were they present when Ms. Wells signed
2 the contract as well?

3 A. Yes.

4 Q. All right. Let's talk about
5 post-contract events. Mr. Royal, did you do
6 anything to benefit the property for Free
7 Kindergarten after the contract was signed?

8 A. Yes, sir.

9 Q. All right. First of all, with respect
10 to title, were there issues relating to title to
11 the property?

12 A. Yes. As I had mentioned in earlier
13 testimony today, there was a cloud on title, a
14 1963 reversionary interest that the City had
15 which Ms. Wells had told me had --

16 MS. ARIAIL: Objection.

17 THE WITNESS: Sorry. I'm going to
18 retract that. The title still had a cloud on it.
19 The City of Charleston had an apparent interest
20 in the property.

21 I wanted to resolve that cloud on title
22 for the Association; so I contacted the City of
23 Charleston and worked with several staff members
24 at the City of Charleston, including the attorney
25 for the mayor's which, office ultimately resulted

1 in a quitclaim deed that the city offered and to
2 record in the RMC -- or I recorded it in the RMC
3 on behalf of the City.

4 BY MR. TIBBALS:

5 Q. Did you write to the City of Charleston
6 about this title issue?

7 A. Yes.

8 THE COURT: I saw that. Why don't
9 you -- let's just move forward with it. Let's
10 just see. What was the resolution of that?

11 MR. TIBBALS: Okay. Can I get
12 the --

13 THE COURT: The exhibit is 32. Any
14 objection to 31?

15 MS. ARIAIL: No objection.

16 (PLF. EXH. 32 was marked for
17 identification.)

18 THE COURT: You're filling up the
19 record with all kinds of extraneous stuff, but --

20 MR. TIBBALS: Well, Your Honor, I'm
21 not trying to -- what I'm really trying to do is
22 to show that he continued to act --

23 THE COURT: Sure.

24 MR. TIBBALS: -- in furtherance of
25 the contract.

1 THE COURT: I don't think there's
2 any question about that. Is that an issue? We
3 wouldn't be here if he wasn't trying to act in
4 furtherance of the contract. This thing has been
5 going on for about nine years now.

6 THE WITNESS: Ten years from
7 December the 3rd that I saw the property.

8 THE COURT: There you go. All
9 right. I don't think there's any doubt that
10 Mr. Royal is pursuing this thing.

11 MR. TIBBALS: Okay.

12 THE COURT: Extremely diligently, I
13 might add. With competent counsel, I might add.

14 MR. TIBBALS: Thank you, Your
15 Honor. I appreciate that.

16 BY MR. TIBBALS:

17 Q. Can you identify 32 for the record,
18 please?

19 A. Yes, sir. This is a letter from me to
20 Ms. Colleen Carducci dated May 29, 2013, and it
21 discusses the title issues that I've just
22 mentioned.

23 Q. Okay. And why don't you just summarize,
24 please, for me what -- what were your --

25 THE COURT: Better than that, why

1 don't you tell me what happened?

2 MR. TIBBALS: Yes.

3 THE COURT: Okay?

4 MR. TIBBALS: Thank you.

5 THE COURT: What happened with the
6 City's interest in the property? I'll be
7 interested to know that.

8 THE WITNESS: Yes, sir. This took
9 several months to get resolved, but eventually,
10 the major of Charleston, Joe Riley signed a
11 quitclaim deed in favor of the Free Kindergarten
12 Association and said that they had paid \$15,000.

13 THE COURT: Okay. Very good.

14 MR. TIBBALS: I move to admit 32.

15 THE COURT: Yeah, that's fine.

16 MS. ARIAIL: Exhibit 32?

17 THE COURT: That was the one we
18 were talking about, right, his letter?

19 MR. TIBBALS: Yes.

20 (PLF. EXH. 32 was admitted into
21 evidence.)

22 THE COURT: Do we have the deed
23 from the City?

24 MR. TIBBALS: Yes, Your Honor.

25 THE COURT: Do you want that into

1 the record?

2 MR. TIBBALS: Yes, Your Honor.

3 THE COURT: All right. Is that
4 contested at all?

5 MS. ARIAIL: No, sir.

6 THE COURT: The City is not a
7 party? I was scratching my head earlier, I don't
8 need to anymore, right?

9 MR. TIBBALS: Right.

10 THE COURT: All right. We're all
11 in agreement on that one.

12 MR. TIBBALS: Is it 37 in your
13 binder, Your Honor?

14 THE COURT: Yes, sir. I've got a
15 37, which is an e-mail from Mr. Royal to Jaime
16 Borden.

17 MR. TIBBALS: Okay. You've got a
18 quitclaim deed that's the next one?

19 THE COURT: Quitclaim deed from the
20 City?

21 MR. TIBBALS: Yes, sir.

22 THE COURT: Do you want to put that
23 one in?

24 MR. TIBBALS: Yes, sir.

25 THE COURT: Any objection to that?

1 MS. ARIAIL: No objection.

2 MR. TIBBALS: What do you have that
3 numbered?

4 THE COURT: 38 was the quitclaim
5 deed. City relinquished any interest in the
6 property.

7 (PLF. EXH. 38 was marked for
8 identification and admitted into evidence.)

9 BY MR. TIBBALS:

10 Q. All right. Can you identify 38? 38 is
11 the quitclaim deed.

12 A. Yes, sir. This is the quitclaim deed.

13 Q. All right. So that quitclaim deed was
14 procured by your efforts?

15 A. Yes, sir.

16 Q. All right. If you hadn't done anything,
17 would there still be a cloud on title?

18 A. Yes, unless somebody else had done
19 something signed by Ms. Wells on the affidavit
20 for taxable exempt transfers attached to the
21 back.

22 Q. What else did you do to benefit the
23 property?

24 A. I also worked for some time in order to
25 prevent the property from going to the tax sale.

1 Q. Okay. Tell me about that. What
2 happened with the tax sale?

3 A. There was some glitch that occurred in
4 the Charleston County's tax system where the
5 property became taxable, even though it was owned
6 by a nonprofit organization, and I actually was
7 notified by the City attorney about this issue
8 because she had dealt with me previously. And so
9 I worked with Ms. Toy Glennon, who was the
10 assessor.

11 THE COURT: She's with Charleston
12 County?

13 THE WITNESS: Yes, sir.

14 THE COURT: Yeah, okay.

15 THE WITNESS: And she, in turn,
16 worked with the Department of Revenue for the
17 State of South Carolina.

18 And for some reason, it took a lot of
19 time and a lot of e-mails, but eventually, they
20 were able to turn the records back so that the
21 tax sale didn't happen and the Association
22 property was again recognized as tax exempt.

23 BY MR. TIBBALS:

24 Q. All right. So without your
25 intervention, what would have happened?

1 A. Well, I'm not sure, but I did my best to
2 make -- you know, ensure that the Association
3 didn't lose the property, and I believe that my
4 actions were helpful and favorable to the
5 Association.

6 Q. If you had not intervened, could the
7 property have been sold in a tax sale?

8 A. Yes, sir.

9 Q. Anything else that you did to benefit
10 the property?

11 A. Well, you know, what leads to mind right
12 now is just my sort of schematic and repeated
13 offers to help the Association transition out of
14 the property. Ms. Wells, my impression of her
15 position is that she was eager to transition out
16 of (inaudible).

17 And I called her, you know, somewhat --
18 I didn't want to be burdensome, but I called her
19 somewhat regularly to see if I could be helpful.
20 I believe I mentioned in an e-mail that I could
21 borrow my father's truck.

22 And I eventually came up with a scheme
23 to consolidate the storage of items that were in
24 her possession, which I believe would save money
25 for the Association and for Ms. Wells because I

1 believe she was storing both Association content
2 and her own in various places, including 34 Pitt
3 Street.

4 I did research and tried to come up with
5 a strategy that would not only help transition
6 the property so that I could close on the
7 contract but also save her and the Association
8 money.

9 Q. All right. And all of these acts were
10 done in furtherance of our performance of the
11 contract?

12 A. Yes, sir.

13 Q. Did you continue to stay in touch with
14 Ms. Wells after the contract was signed?

15 A. Yes. There was a point in time where I
16 was beginning to communicate more with her son,
17 Bill Wells, I believe around 2015, maybe the end
18 of 2015.

19 Q. All right. So I can probably refresh
20 your recollection in a minute, but did you ever
21 do anything to delay closing?

22 A. No.

23 Q. Was it your intention to delay closing?

24 A. No.

25 Q. Were you ready, willing, and able to

1 close on May 31st, 2013, which would have been
2 the last date that the seller could compel you to
3 close?

4 A. Yes, and every day, really, from the
5 effective date. To my knowledge, understanding,
6 and memory, every day from the effective date
7 until today.

8 Q. Did you ever tell June Wells that you
9 wanted to wait to close?

10 A. No.

11 Q. Did you inquire as to when Free
12 Kindergarten Association of Charleston would be
13 ready to close?

14 A. Yes.

15 Q. What was your impression as to the cause
16 of delay in closing?

17 A. Ms. Wells would often tell me that she
18 had made --

19 MS. ARIAIL: Objection.

20 THE COURT: Sustained. What did
21 you do?

22 THE WITNESS: My impression was
23 that progress was being made continually, and
24 yet, there was a great -- more work to be done.
25 I also knew that Ms. Wells' husband was suffering

1 from an illness, and that was taking a lot of her
2 attention. But I -- at some point, I began
3 wondering when the contract would actually close.

4 I just also note here that, in the
5 beginning, I felt so optimistic about a quick
6 closing, that I had asked Ms. Wells if I could
7 start using the address at 34 Pitt Street as a
8 mailing address and begin forwarding mail there
9 to my own address, which she had no problem with.

10 MS. ARIAIL: Objection.

11 THE WITNESS: She said -- sorry. I
12 was allowed to do that. Eventually, I realized
13 that we may not be closing quickly as expected,
14 and so I no longer used that. I dropped off the
15 forwarding from 34 Pitt Street.

16 But it was, for some time, right after
17 the effective date or maybe -- I can't remember
18 exactly when it started. But I was actually
19 using that because I was expecting to be able to
20 own the property very shortly after the -- after
21 the effective date.

22 BY MR. TIBBALS:

23 Q. All right. Did you ever offer to assist
24 with packing or moving the contents out of the
25 building?

1 A. Many times.

2 Q. Did you communicate in writing with
3 Ms. Wells regarding your desire to close?

4 A. Yes, I did.

5 MR. TIBBALS: Your Honor, I'm going
6 to move through the exhibits a little bit,
7 pursuant to your request.

8 THE COURT: That would be
9 wonderful.

10 MR. TIBBALS: Then we'll get on
11 with it here. And I just need to confirm that
12 we've got the right number. So I'm now at a
13 November 10, 2014 letter from Mr. Royal to June
14 Wells.

15 THE COURT: Does it have a graph on
16 the first page of it?

17 MR. TIBBALS: Yes, sir.

18 THE COURT: All right. It's number
19 46 in my book, tab 46.

20 (PLF. EXH. 46, was marked for
21 identification.)

22 BY MR. TIBBALS:

23 Q. I'm handing you the document that's been
24 marked Plaintiff's Exhibit 46. Can you identify
25 46 for the record, please?

1 A. Yes, sir. This is a letter authored by
2 me and sent to Ms. Wells dated November 10, 2014.

3 Q. Is this one of the times that you pushed
4 for closing, as you testified?

5 A. Yes, sir.

6 Q. All right. So tell me, just summarize
7 what your communication is on November of 2014
8 with Ms. Wells.

9 A. The main part of this letter is this
10 full -- first full paragraph on the second page,
11 in which I'm expressing my desire to be able to
12 own and possess and use the property as quickly
13 as possible and also expressing what I believe to
14 be my financial interest to own the property as
15 soon as possible.

16 There have been at least intents in this
17 case that I have a financial interest in delaying
18 the closing. This letter, I think, shows the
19 exact opposite, but I was thinking about interest
20 rates at the time.

21 And I was trying to express to Ms. Wells
22 that I had an interest in actually closing as
23 quickly as possible to be able to obtain the
24 advantage of historically low mortgage rates in
25 case I wanted to get financing on the building.

1 MR. TIBBALS: All right. I move to
2 admit 46.

3 MS. ARIAIL: No objection.

4 (PLF. EXH. 46, was admitted into
5 evidence.)

6 MR. TIBBALS: All right. Hopefully
7 47, Your Honor, is a letter dated January 26th,
8 2015.

9 THE COURT: These all go to say
10 he's trying to move forward with the sale, right?

11 MR. TIBBALS: He's not
12 intentionally delaying, Your Honor.

13 THE COURT: Okay.

14 MR. TIBBALS: He doesn't want to
15 try to push his five years out. He's not banking
16 on appreciation of the property. He's just
17 trying to get it closed.

18 THE COURT: All right.

19 (PLF. EXH. 47 was marked for
20 identification.)

21 BY MR. TIBBALS:

22 Q. 47, is that another letter that you
23 wrote to Ms. Wells?

24 A. Letter from me to Ms. Wells dated
25 January 26, 2015.

1 Q. And you're again pushing to close?

2 A. Yes. I -- if I may, I think what's
3 important of this letter is that I was actually
4 turning down an offer made -- that was made to me
5 by Ms. Wells.

6 And the first paragraph discusses an
7 offer that she made to me, which I'm not sure
8 would be admissible here. But if I may, I would
9 like to describe what that first paragraph refers
10 to.

11 THE COURT: Which document are we
12 in now? I'm sorry.

13 THE WITNESS: This is Exhibit 47,
14 Your Honor, a letter dated January 26, 2015.

15 THE COURT: All right. She wanted
16 to -- all right. Go ahead. Just say what it is.

17 THE WITNESS: Yes, sir. She had,
18 prior to this time, offered to -- she knew how
19 badly I wanted to close, and she offered to go
20 ahead and close the contract with me, provided
21 that she could rent the property back from me. I
22 said, absolutely not.

23 I'm not going to put the Association in
24 a position where it's increasing its financial
25 obligations. That wouldn't make sense, and I

1 rejected that offer.

2 But then this letter goes on to propose
3 an arrangement whereby I would be able to get
4 peace of mind to close on the property, not
5 putting the Association in a worse financial
6 position, but essentially creating seller
7 financing that would match a rental rate so that
8 no cash would pass.

9 And the Association would still be
10 entitled to stay in the building for the duration
11 of the time allowed under the contract, even
12 though I would be paying, you know, a down
13 payment of \$30,000, paying property taxes and so
14 forth. That was what this letter was about.

15 THE COURT: All right.

16 MR. TIBBALS: All right. I move to
17 admit 47.

18 MS. ARIAIL: No objection.

19 THE COURT: Without objection. All
20 right.

21 (PLF. EXH. 47, was admitted into
22 evidence.)

23 BY MR. TIBBALS:

24 Q. All right. So at some point in time in
25 2015, did you also communicate with Bill Wells,

1 June Wells' son --

2 A. Yes, sir.

3 Q. -- related to this property? Why did
4 you communicate with Bill?

5 A. I believe that there was an occasion
6 when I wanted to enter the building again. I
7 can't -- at various points, I talked with an
8 architect, a contractor, and I wanted to get
9 access to the building again.

10 And I believe that's maybe why we had an
11 initial in-person meeting. Eventually because he
12 had an e-mail address and was easier to
13 communicate with, I ended up directing most of
14 my -- or all of my communications eventually to
15 him rather than to Ms. Wells.

16 Q. All right. Do you know whether or not
17 Bill kept his mother informed of your
18 communications?

19 MS. ARIAIL: Objection,
20 speculation.

21 Q. Do you know or not?

22 THE COURT: How would he know?
23 Okay. I will sustain it. Let's move forward.

24 BY MR. TIBBALS:

25 Q. All right. Did you frequently visit the

1 property while you were under the contract?

2 A. Yes. I've driven by and looked at the
3 property easily over a hundred times.

4 Q. All right. Under the contract, without
5 any amendments, when was the last date that the
6 parties could close?

7 A. Well, without amendment, would have been
8 April 9, 2018.

9 Q. Okay. Did you move forward to close in
10 early 2018?

11 A. Yes. I realized that we were coming up
12 on the absolute deadline under the terms of the
13 contract. I was as eager as ever to close.

14 Knowing that there was no further sort
15 of runway, I contacted, I believe -- I must have
16 gotten through to Bill Wells, you know, asking, I
17 believe, if he had -- or if the Association had
18 an attorney. And I remember advising him to
19 get -- make sure that the Association had a bank
20 account of its own.

21 Q. All right. And you recall, you
22 communicated that to Mr. Wells?

23 A. I believe it was Mr. Wells because I
24 don't believe I had direct contact with Ms. Wells
25 for some time at that point.

1 Q. All right. You're going to flip a
2 little bit over.

3 THE COURT: Correspondence to Bill
4 Wells?

5 MR. TIBBALS: Yes. It's just in
6 anticipation for closing.

7 THE COURT: Okay. Any objection to
8 that one?

9 MS. ARIAIL: Which number are we
10 on?

11 THE COURT: I don't know.

12 MR. TIBBALS: That's what we're
13 going to look at.

14 THE COURT: I don't know, but I'll
15 be interested in seeing when he starts talking to
16 Mr. Stringer.

17 MS. ARIAIL: Yeah, I'd like to see
18 what it is.

19 THE COURT: Mr. Stringer is the one
20 that got the ball rolling here. Is it 54 maybe?
21 What's the date on that?

22 MR. TIBBALS: The date is January
23 11th, 2018.

24 THE COURT: That's 54. All right.

25 MS. ARIAIL: No objection.

1 MR. STRINGER: No objection.

2 (PLF. EXH. 54, was marked for
3 identification and admitted into evidence.)

4 BY MR. TIBBALS:

5 Q. All right. I'm going to hand you what's
6 been marked as 54. Can you identify 54, please?

7 A. Thank you. This appears to be an e-mail
8 from Michael Royal to Bill Wells dated January
9 11, 2018.

10 Q. All right. And does -- did you receive
11 any indication from that that you -- that Bill
12 was communicating to his mother about these
13 issues?

14 A. Yes.

15 Q. What indication was that?

16 A. Well, in the chain, there -- starting
17 with January 11, I was advising that the
18 Association prepare for closing and said, okay,
19 call you next week. Now, I knew that Mr. Wells
20 didn't himself have authority over the
21 Association; so the implication is that the
22 seller --

23 MS. ARIAIL: Objection,
24 speculation.

25 THE COURT: Sustained.

1 BY MR. TIBBALS:

2 Q. Did FKAC eventually retain an attorney
3 for the transaction?

4 A. Yes, sir.

5 Q. Who was that?

6 A. Mr. Rick Stringer.

7 Q. Did FKAC advise you that it was going to
8 timely close?

9 A. Yes.

10 Q. And who said that they would close?

11 A. Mr. Stringer.

12 MR. TIBBALS: All right. Your
13 Honor, is this next one 55, the March 13, 2018
14 e-mail?

15 THE COURT: Actually, that's one of
16 the ones that didn't have a number.

17 MR. TIBBALS: Okay.

18 THE COURT: Do you want to call it
19 54A or 55 and make 55 something else? This is an
20 e-mail from Rick Stringer to Michael Royal and
21 copying Treadwell Josey.

22 MR. TIBBALS: Yes, sir.

23 THE COURT: It's March 13 of '18?

24 MR. TIBBALS: Yes, sir.

25 THE COURT: Mine has just got an

1 empty number on it.

2 MR. TIBBALS: All right.

3 MS. ARIAIL: Mine too.

4 THE COURT: All right.

5 MS. ARIAIL: What did we put on it?

6 THE COURT: 54A.

7 (PLF. EXH. 54A was marked for
8 identification.)

9 BY MR. TIBBALS:

10 Q. All right. Can you identify Exhibit 54A
11 for me?

12 A. Yes. This is an e-mail from Rick
13 Stringer to Michael Royal, copying Tread Josey
14 and Bill Wells, dated March 13, 2018 and
15 responding to, it appears to be, an e-mail from
16 me.

17 Q. All right. And tell me your
18 understanding of that e-mail.

19 A. I believe the purpose of this e-mail was
20 primarily to introduce Tread Josey who was the
21 closing attorney that I had hired, introduce him
22 to Mr. Stringer so they could do their business.
23 And I also attached some items to this e-mail
24 that I thought would be helpful.

25 Q. All right. What were the items?

1 A. I attached the purchase and sale
2 agreement, and I attached the quitclaim deed that
3 Mayor Riley had signed, a copy of the cashier's
4 check that showed that I had indeed made the
5 \$5,000 deposit as part consideration, and I also
6 attached Judge Condon's order that we discussed
7 earlier.

8 Q. All right. So after that e-mail, did
9 the parties close on April 9th?

10 A. No.

11 THE COURT: All right. Let's stop
12 right there for now.

13 MR. TIBBALS: Okay.

14 THE COURT: Let's just stop right
15 there. I know you're getting close.

16 MR. TIBBALS: Okay.

17 THE COURT: Let's go ahead and
18 break for lunch. It's 1 o'clock. We'll come
19 back at about 2:15. Okay?

20 MR. TIBBALS: Yes, sir. Do you
21 mind if we grab your binder so that we can get
22 all this straight?

23 THE COURT: Be my guest.

24 (A recess transpired.)

25 THE COURT: Okay. Mr. Tibbals,

1 informed me that y'all had gone over some
2 documents. We'll get to that. Let's do that
3 after the conclusion of Mr. Royal's testimony.
4 So we're back on the record. Mr. Royal, back on
5 the stand, and we're still on direct examination
6 by Mr. Tibbals.

7 MR. TIBBALS: Yes. And I'm not
8 exactly sure where we stopped.

9 Madam Court Reporter, is there a way you
10 could read me the last question?

11 (The last question was read back.)

12 MR. TIBBALS: All right. Thank
13 you.

14 THE COURT: Thank you.

15 BY MR. TIBBALS:

16 Q. After the e-mail that we looked at --
17 which was Exhibit 66 -- did the parties close?

18 A. No, sir.

19 Q. Why not?

20 A. I was --

21 THE COURT: Maybe 56? Did you say
22 66?

23 MR. TIBBALS: Let's see. I've got
24 two e-mails, and I thought we had all of these --
25 I think it is 66. Let me -- you know what?

1 THE COURT: It can't be 66.

2 MR. TIBBALS: Yeah. 66 is the
3 answers to the interrogatories.

4 THE COURT: Right.

5 MR. TIBBALS: Okay. Your Honor, I
6 would like to go ahead and admit this into
7 evidence at this time. Obviously answers to
8 interrogatories are admissible evidence, and
9 particularly in this --

10 THE COURT: All right. The 66 I've
11 got is a response to a request for admissions.

12 MR. TIBBALS: Yes. And No. 3 is --
13 the defendant admitted that FKAC, as of March 29,
14 2018, intended to close on the sale of the
15 property to Royal for \$315,200, and the answer
16 is, Defendant FKAC admits number 3 of plaintiff's
17 request for admission.

18 THE COURT: Okay.

19 MR. TIBBALS: So I would like to
20 enter this admission into evidence.

21 THE COURT: That's for
22 Mr. Stringer. Mr. Stringer, you've seen that?
23 Are you in agreement with that?

24 MR. STRINGER: If we admitted it,
25 we admitted it.

1 THE COURT: All right. Got it.

2 MR. STRINGER: I haven't found it
3 yet.

4 THE COURT: It's tab 66 in my book.

5 MR. TIBBALS: 66.

6 THE COURT: But they intended to
7 close.

8 MR. STRINGER: Right, we did.

9 THE COURT: Okay.

10 MR. STRINGER: Correct, Your Honor.

11 MR. TIBBALS: All right. So we'll
12 enter 66, and now we're back to 55.

13 THE COURT: Okay. All right.

14 (PLF. EXH. 66 was marked for
15 identification and admitted into evidence.)

16 (PLF. EXH. 55 was marked for
17 identification.)

18 BY MR. TIBBALS:

19 Q. Exhibit No. 55, I'm going to show you,
20 and I'm going to ask you whether or not you can
21 identify 55?

22 A. Plaintiff's Exhibit 55 is an e-mail from
23 Rick Stringer to Michael Royal dated March 29,
24 2018.

25 Q. And what does -- what were you informed

1 as a result of that e-mail?

2 A. This e-mail is in response to a question
3 that I have for Mr. Stringer asking if a bank
4 account had been set up on behalf of the
5 Association, and his answer was that, yes, there
6 is a bank account and also that he's -- they had
7 prepared a deed.

8 Q. Okay. So a deed had been prepared, to
9 your understanding?

10 A. Yes.

11 Q. All right. And then you said after that
12 e-mail, the parties did not close on April 9th?

13 A. Correct.

14 Q. Why not?

15 A. I had hired Mr. Tread Josey as the real
16 estate closing attorney. Mr. Tread Josey was
17 under the understanding that in order -- that the
18 nonprofit corporation needed to make notice to
19 the Attorney General's Office 20 days prior to
20 selling the asset.

21 He was looking, I believe, at section
22 33-31-1202, South Carolina codes, and informed
23 Mr. Stringer about the notice requirement, and
24 Mr. Stringer then asked for an extension, to
25 which we agreed.

1 Q. All right. So Mr. Stringer provided the
2 Attorney General with the notice of sale?

3 A. Yes, sir.

4 (PLF. EXH. 56 was marked for
5 identification.)

6 Q. All right. I'm handing you what's been
7 marked as Plaintiff's Exhibit 56. Can you
8 identify 56?

9 A. Yes. The Plaintiff's Exhibit 56 is a
10 letter from Mr. Patrick Stringer to Ms. Chelsea
11 Knott, and there's a cover letter in which he's
12 enclosed the notice of sale.

13 Q. All right. Before April 4, 2018, did
14 Mr. Stringer ever tell you that -- excuse me, did
15 you ever understand that June Wells didn't have
16 authority to act for FKAC from its attorney?

17 A. I, at all times, had the understanding
18 that she had the authority to close.

19 Q. Did you extend the closing date with
20 FKAC?

21 A. Yes.

22 Q. When you agreed to the extension, did
23 you think that FKAC still intended to close?

24 A. Yes.

25 Q. All right. And you entered into a

1 couple of contract -- well, you entered into a
2 first contract addendum, correct?

3 A. Yes.

4 (PLF. EXH. 57 was marked for
5 identification.)

6 Q. I'm going to hand you what's been marked
7 as Exhibit 57. Can you identify Exhibit 57 for
8 me, please?

9 A. Yes, sir.

10 THE COURT: Did you want 56 in or
11 55?

12 MR. TIBBALS: Yes. I'll move to
13 admit both 55 and 56.

14 THE COURT: All right. Any
15 objection?

16 MS. ARIAIL: No objection.

17 (PLF. EXH. 55 and 56 were admitted
18 into evidence.)

19 THE WITNESS: Plaintiff's Exhibit
20 57 is an addenda to contract in which the seller
21 and purchaser agreed to move the closing date out
22 to April 26, 2018.

23 BY MR. TIBBALS:

24 Q. Who signed on behalf FKAC?

25 A. Ms. Wells signed as sole surviving

1 member.

2 Q. Why as sole surviving member?

3 A. I was not in direct contact with
4 Ms. Wells at this point; so I was not a party to
5 any conversations around how she was signing
6 there.

7 Q. Did you have an understanding as to
8 whether or not she was the sole surviving member?

9 A. Yes.

10 Q. What was your understanding?

11 A. My understanding was that she was the
12 sole surviving member, and in fact, the only
13 person affiliated with the organization.

14 Q. What was your understanding to her roles
15 and sources of authority?

16 A. My understanding was that she, again,
17 held multiple roles within the Free Kindergarten
18 Association of Charleston, including as a member
19 of the board of directors, as a director of the
20 kindergarten, although in my mind, at that point,
21 I don't know if I was distinguishing much between
22 director -- the administrative role and director
23 on the board of directors.

24 I had seen documents that indicated that
25 director meant board of directors because those

1 words were on documents that she signed as
2 director and as a member of the Association, of
3 course and also as an officer or effectively
4 officer. So that's four different roles that I
5 did believe and still believe she played in the
6 Association.

7 Q. All right. As a part of your research
8 into Free Kindergarten Association of Charleston
9 and some of the documents that have been produced
10 in this case, have you had an opportunity to
11 review corporate records of Free Kindergarten
12 Association of Charleston?

13 A. Yes.

14 Q. And does that include the 1901
15 constitution charter?

16 A. Yes.

17 Q. And the 1901 certificate of
18 incorporation?

19 A. Yes.

20 Q. And a 1931 resolution to amend the
21 charter?

22 A. Yes.

23 Q. And a 1971 application for amendment to
24 the charter?

25 A. Yes.

1 Q. A 1971 certification of amendment to
2 FKAC's charter?

3 A. Yes.

4 MR. TIBBALS: All right. And, Your
5 Honor, I don't think we have any objection to
6 these documents being admitted into evidence.
7 They are corporate records. I will have the
8 witness identify them, but these are FKAC
9 corporate documents.

10 (PLF. EXH. 58 through 62 were
11 marked for identification.)

12 BY MR. TIBBALS:

13 Q. These are Exhibits 58 through 62. Can
14 you identify 58 for me, please?

15 A. Yes. 58 is the constitution and charter
16 of the South Carolina Kindergarten Association
17 dated 1901.

18 Q. All right. And Exhibit 59?

19 A. Plaintiff's Exhibit 59 is the
20 certificate of incorporation for Free
21 Kindergarten Association of Charleston.

22 Q. Exhibit 60?

23 A. Exhibit 60 is a certified copy or a copy
24 of a certified copy of a letter regarding
25 resolution to change the name of the Association

1 to the Free Kindergarten Association of
2 Charleston.

3 Q. All right. 61?

4 A. Exhibit 61 is an application for
5 amendment to the association's charter.

6 Q. And finally Exhibit 62?

7 A. Exhibit 62 is the certification by the
8 Secretary of State of South Carolina certifying
9 the resolution made by the members of Free
10 Kindergarten Association of Charleston and signed
11 by their directors or authorized managing board
12 including Ms. Murray signing as director.

13 Q. All right. So have you received copies
14 of all of those documents in connection with your
15 research looking into the property and your
16 litigation involved in this case?

17 A. Yes, sir.

18 MR. TIBBALS: Your Honor, I would
19 like to move to admit 58 through 62, please.

20 THE COURT: Any objection there?

21 MR. STRINGER: No objection.

22 MS. ARIAIL: No, Your Honor.

23 THE COURT: Without objection.

24 Very good. Thank you.

25 (PLF. EXH. 58 through 62 were

1 admitted into evidence.)

2 BY MR. TIBBALS:

3 Q. Did the parties close by April 26, 2018?

4 A. No, sir.

5 Q. Why not?

6 A. My understanding is that they had not
7 yet procured the approval from the Attorney
8 General, which they believe that they needed in
9 order to close.

10 Q. All right. And before I go to the
11 second addendum and the correspondence, let me
12 ask you: When you entered into the contract,
13 around the time that you entered into the
14 contract, did you contact the Secretary of
15 State's Office?

16 A. Yes.

17 Q. And did you obtain any certificate from
18 the Secretary of State?

19 A. Yes. I obtained a certificate of
20 existence.

21 (PLF. EXH. 63 was marked for
22 identification.)

23 Q. All right. And I'm going to hand you
24 Plaintiff's Exhibit 63. 63 is what?

25 A. This is Secretary of State of South

1 Carolina's certificate of existence dated August
2 23rd, 2013, providing the certification that Free
3 Kindergarten Association did exist and had not
4 filed -- or the State had no knowledge of
5 dissolution activity.

6 Q. And did you rely upon that to understand
7 that -- well, let me ask you this: Did you rely
8 upon that in any way?

9 A. Yes.

10 Q. How did you -- what was your reliance on
11 that document?

12 A. I was aware, going back to, I think,
13 2012, that a certificate of existence meant that,
14 under South Carolina law, that the entity in
15 question was able to transact business and that
16 third parties could rely on that.

17 MR. TIBBALS: All right. I'll move
18 to admit 63.

19 THE COURT: Certificate of
20 existence?

21 MR. TIBBALS: Yes, sir.

22 THE COURT: No objection to that,
23 is there?

24 MR. STRINGER: No objection.

25 THE COURT: All right.

1 (PLF. EXH. 63 was admitted into
2 evidence.)

3 BY MR. TIBBALS:

4 Q. All right. So when you didn't close
5 again, did you enter into another amendment or
6 addendum?

7 A. Yes, sir. It was requested for us to
8 extend one more time, and we agreed to do so.
9 When I say, "we", I just mean Tread Josey and I
10 initially said I agree to extend it.

11 (PLF. EXH. 65 was marked for
12 identification.)

13 Q. All right. I'm handing you what's been
14 marked as Plaintiff's Exhibit 65. Can you
15 identify 65 for me, please?

16 A. Yes, sir. Plaintiff's Exhibit 65 is the
17 second addendum to the contract which extended
18 the closing date further out to a final date of
19 May 25, 2018.

20 Q. You said final?

21 A. I meant by that, that there were no
22 other addenda to this contract; so that became
23 the very final date upon which the contract could
24 close under its terms.

25 Q. All right. Who signed the document for

1 Free Kindergarten?

2 A. Ms. Wells.

3 Q. In what capacity?

4 A. Sole surviving member.

5 Q. Under the addendum, the closing date was
6 what?

7 A. May 25, 2018.

8 Q. And when you received the signed
9 addendum, did you think it intended to close on
10 the sale?

11 A. Yes.

12 Q. Did you, at any time between April of
13 2013 through the end of May 2018, doubt
14 Ms. Wells' authority to sign the contract to
15 convey the property on behalf of Free
16 Kindergarten?

17 A. Never.

18 MR. TIBBALS: All right. I move to
19 admit 65.

20 THE COURT: The addendum to --

21 MR. TIBBALS: Yes, sir.

22 MS. ARIAIL: No objection.

23 THE COURT: Without objection.

24 (PLF. EXH. 65 was admitted into
25 evidence.)

1 BY MR. TIBBALS:

2 Q. Did FKAC convey title to the property to
3 you on or before May 25, 2018?

4 A. No, sir.

5 Q. Were you ready, willing, and able to
6 close at all times from April 23rd, 2013 through
7 May 25th, 2018?

8 A. Yes.

9 Q. And then, after May 25th, 2018, did you
10 remain ready, willing, and able to close?

11 A. Yes.

12 Q. If the Court were to order a specific
13 performance of the contract today, do you have
14 funds available to close?

15 A. Yes.

16 Q. Did Free Kindergarten Association of
17 Charleston convey title to the property to you
18 after May 25th, 2018?

19 A. No.

20 Q. What was your understanding as to why
21 Free Kindergarten would not close?

22 A. The explanation that was given to me was
23 that the Association needed the approval of the
24 Attorney General in the State of South Carolina
25 and had not received it, and therefore, refused

1 to close.

2 Q. Did you agree with the contention that
3 the Attorney General had to approve the sale?

4 A. No, sir.

5 Q. Why not?

6 A. Well, my several conversations with
7 folks at the Attorney General's Office, I was
8 pointed to a provision within the South Carolina
9 Code, section 33-31-1202 and subsection F, which
10 requires the Association provide notice to the
11 Attorney General before selling its last
12 significant remaining property. I'm
13 paraphrasing.

14 That, to my mind, said nothing about
15 powers of the Attorney General to terminate,
16 modify, void, or otherwise disturb my contract
17 with the Association. So I could not make any
18 sense of the Attorney General's insistence that
19 they had such a power.

20 Q. Did you ever communicate with the AG's
21 Office about the transaction?

22 A. Yes, several times.

23 Q. What was the substance of those
24 communications?

25 A. The communications from the AG was very

1 simple. We have the right to approve this.

2 We're ordering an appraisal.

3 When the appraisal materialized, they
4 said the fair market value of the property today
5 does not equal the 2018 appraised value, and
6 therefore, we will not approve the contract under
7 its existing terms.

8 They did not say -- or give me any
9 analysis for why they got from A to B and how
10 their premises led to any conclusion. But they
11 just said that, on its face, the fair market
12 value in 2018 does not equal the contract price,
13 and we're not approving it.

14 Q. All right. Were some of those
15 communications made between the AG's Office and
16 your attorney?

17 A. Yes. I believe that there were some
18 communications that were happening apart from me
19 that I was not copied on.

20 Q. Who was your attorney at the time?

21 A. Tread Josey was the closing attorney.

22 Q. All right. Do you know whether or not
23 he had communicated directly with the AG's
24 Office?

25 A. I believe he did.

1 (PLF. EXH. 67 was marked for
2 identification.)

3 Q. All right. And I'm going to hand you an
4 exhibit marked as Exhibit 67. Can you identify
5 Exhibit 67?

6 A. Exhibit 67 is the e-mail from Mary
7 Frances Jowers to Tread Josey, copying Chantelle
8 Neese dated April 19, 2018.

9 Q. And have you seen this document before?

10 A. Yes.

11 Q. Did it set forth the AG's position in
12 this matter as you understood it?

13 A. What it did was, Ms. Jowers apparently
14 had received the 2013 appraisal, commented that
15 it was out of date, and stated that the Attorney
16 General would be seeking to have a new appraisal
17 done.

18 MR. TIBBALS: All right. Move to
19 admit 67.

20 THE COURT: 67. Any objection?

21 MS. ARIAIL: No, Your Honor.

22 MR. STRINGER: No.

23 THE COURT: Without objection.

24 (PLF. EXH. 67 was admitted into
25 evidence.)

1 BY MR. TIBBALS:

2 Q. Did you subsequently write a letter to
3 the Attorney General's Office?

4 A. Yes.

5 Q. And when was that letter written? Do
6 you remember?

7 A. It would have been April of 2018.

8 (PLF. EXH. 68 was marked for
9 identification.)

10 Q. All right. I'm going to hand you a
11 document marked as Plaintiff's Exhibit 68, and I
12 ask you to identify 68, please?

13 A. Plaintiff's Exhibit 68 is a letter from
14 me to Ms. Mary Frances Jowers dated April 20,
15 2018.

16 Q. Tell me the substance of the letter. If
17 you can, just summarize and not go -- read the
18 whole thing, but just tell me what the gist of it
19 was.

20 A. Yes, sir. I'm just going to refresh
21 myself for one second if I may.

22 Q. Sure.

23 A. The substance of this letter was my
24 disagreement that I was lodging with the Attorney
25 General's Office, that their focus on the 2018

1 fair market value of the property was misplaced,
2 and that, if they wanted to understand sort of
3 the fairness of the contract, they needed to look
4 at the rights and obligations of each of the
5 parties at the date of the contract and not take
6 a 20/20 hindsight view, looking back in time
7 retrospectively, and determining that there was
8 something wrong with the contract.

9 And I was lodging this disagreement and
10 trying to detail my -- my issues with what I
11 viewed to be the analysis that they were dealing
12 with.

13 Q. Did you speak with anybody at the AG's
14 Office after you sent the letter?

15 A. Yes.

16 Q. With whom did you speak?

17 A. I had a conference call. I believe that
18 was also in April 2018. On the call was Tread
19 Josey, myself, Ms. Jowers, Chantelle Neese from
20 the AG's Office and Sonny Jones. Sonny is not
21 his given name. I can't remember his first name.

22 Q. All right. What was discussed on the
23 call?

24 A. What was discussed on the call was the
25 same sort of reiterated, quote, unquote

1 "analysis", which in my opinion, it was not an
2 analysis.

3 It was simply a conclusion that, A, the
4 Attorney General's Office had the power to stop
5 the contract, and, B, that the way forward was to
6 increase the price to basically force me to
7 renegotiate the terms of the contract and pay
8 more, so that my obligation of the contract would
9 mean that I would pay another \$200,000 for a
10 property that I negotiated in 2013.

11 Q. Did the AG -- anybody from the AG's
12 Office explain how they had authority to prevent
13 the closing?

14 A. I asked very explicitly on that phone
15 call. I think it was April 26, 2018 or somewhere
16 around there. I asked Mr. Jones very
17 specifically, how do you have this authority that
18 you're claiming?

19 He cited me to, again, section 1202, and
20 I said, Mr. Jones, that sounds like a
21 non-sequitur to me. You are telling me that the
22 AG has power to stop my contract, and yet you're
23 citing me to a provision of the law that says
24 absolutely nothing about the power of the AG.
25 And his answer to me was, that's the way we do

1 it.

2 MS. ARIAIL: Objection.

3 MR. TIBBALS: Party admission.

4 THE COURT: Well, he said that's
5 what they do? Okay. I'm going to allow it. Go
6 ahead.

7 BY MR. TIBBALS:

8 Q. So did you ever get an explanation as to
9 why purchasing the property for its fair market
10 value for the contract date was not acceptable?

11 A. No.

12 Q. Did you ever get an explanation as to
13 why?

14 A. Can I maybe tighten my answer?

15 Q. Yeah, sure.

16 A. I just wanted to tell the truth and the
17 whole truth. A week ago from today, I learned
18 for the first time the phrase public policy.

19 Now maybe that was in the background,
20 the AG's thinking, but I don't believe it was
21 until a week ago from today that the Attorney
22 General's Office used a theory of public policy
23 to discuss why this contract is not -- not
24 effective.

25 Q. Okay. Did you ever receive information

1 from the AG about what factors or criteria they
2 considered in evaluating the sale in order to
3 determine whether or not it should be approved?

4 A. No.

5 Q. What was the outcome of that April 26
6 conference call?

7 A. It ended in disappointment on my end at
8 least. I didn't get any further answers or
9 explanations.

10 Q. All right. Subsequently, did you
11 receive further communication from Mr. Stringer?

12 A. Yes.

13 Q. What did Mr. Stringer advise?

14 A. The most memorable communication that I
15 remember was being told that the Association
16 would not close.

17 (PLF. EXH. 70 was marked for
18 identification.)

19 Q. And I hand you what's been marked as
20 Exhibit No. 70 and ask if you could identify
21 Exhibit 70?

22 A. Yes. Exhibit 70 is a letter from
23 Mr. Stringer addressed to me on May 11, 2018.

24 Q. Okay.

25 A. In which he stated he would not -- the

1 Association that would not close without the
2 approval of the Attorney General.

3 Q. All right. What was your reaction to
4 that?

5 A. I viewed that as breach of contract and
6 felt that I would need to seek judicial relief.

7 Q. All right. And around the same time,
8 did you have further communications with the AG's
9 Office?

10 A. Yes. I remember sending them one other
11 letter.

12 Q. Or could it have been an e-mail?

13 A. Or an e-mail, yes.

14 (PLF. EXH. 69 was marked for
15 identification.)

16 Q. All right. I'm handing you what's been
17 marked as Exhibit No. 69.

18 MR. TIBBALS: And I guess I will go
19 ahead and move to admit 70 if that's okay.

20 THE COURT: Mr. Stringer's letter?

21 MR. TIBBALS: Yes, sir.

22 MR. STRINGER: No objection, Your
23 Honor.

24 THE COURT: Without objection.

25 (PLF. EXH. 70 was admitted into

1 evidence.)

2 BY MR. TIBBALS:

3 Q. All right. So if you will identify 69
4 for me, please.

5 A. Exhibit 69 is an e-mail from Michael
6 Royal to Mary Francis Jowers copying
7 Mr. Stringer, his colleague, Ms. Stringer,
8 Mr. Sonny Jones and Chantelle Neese and blind
9 copying Tread Josey and dated May 18, 2018.

10 Q. All right. So what's the significance
11 of this e-mail?

12 A. I'm going to refresh myself for just a
13 second if I may. I think there are at least two
14 things significant about this communication.

15 Q. Okay.

16 A. This communication occurred after the
17 phone call that we just discussed, and in this
18 communication, I was trying my best to have the
19 Attorney General's Office analyze the transaction
20 differently by looking at the terms.

21 But also, I was questioning the analysis
22 and the insistence that section 1202 of the code
23 had anything to do with this. And I was saying
24 that I didn't see any provision in that section
25 that gave the AG authority and that I didn't see

1 that the AG had this, what seemed to me, kind of
2 like a magical stopping power that is coming out
3 in the air.

4 But at the very end -- and this is, I
5 think, the second important thing about this
6 communication is, I plead with the Attorney
7 General, please explain this to me better because
8 we are at risk of wasting resources, and I am
9 willing to be convinced. That's what I said to
10 Ms. Jowers and her colleagues.

11 I'm willing to be convinced. I might be
12 wrong. I'm not an expert in this area, but I
13 cannot make any sense of what you are saying, and
14 if you can convince me, then that will help us
15 all avoid, you know, a legal action.

16 Q. But you remained unconvinced?

17 A. I did.

18 THE COURT: To this day.

19 BY MR. TIBBALS:

20 Q. Let me ask you this, Mr. Royal: What
21 were the factors or information that you thought
22 the AG was willing to consider in reviewing that
23 transaction?

24 A. All that they had said to me was, they
25 were looking at the purchase price.

1 MS. ARIAIL: Objection.

2 MR. TIBBALS: Again, party
3 admission. The AG is a party. They're saying
4 this --

5 MS. ARIAIL: Your Honor, a party
6 admission exception is when it's against the
7 party that's allegedly admitting him.

8 THE COURT: He is talking about his
9 correspondence with the Attorney General's
10 Office. Okay. Go ahead. I think that's pretty
11 well documented in these records, is it not?

12 MR. TIBBALS: Yes, sir.

13 THE WITNESS: Yes, it is.

14 THE COURT: That's cumulative
15 again. Do we need to go into that?

16 MR. TIBBALS: Yeah. We don't have
17 to go over it again and again.

18 THE COURT: All right.

19 MR. TIBBALS: But I did -- I did
20 want to just make sure that I button this up.

21 BY MR. TIBBALS:

22 Q. Did you ever get any understanding from
23 the AG's Office that they contested June Wells'
24 authority in any way?

25 A. I never did, and I never actually heard

1 about any approval process that indicated that
2 they were starting -- I believe they said they
3 needed to start after they got an appraisal, but
4 I never heard anything further about that.

5 MR. TIBBALS: All right. I move to
6 admit 71.

7 THE WITNESS: 69.

8 MR. TIBBALS: 69, sorry.

9 THE COURT: Which is the e-mail
10 from Mr. Royal to Ms. Jowers?

11 MR. TIBBALS: Yeah.

12 THE COURT: Any objection to that?

13 MS. ARIAIL: No objection.

14 THE COURT: All right. Very good.

15 (PLF. EXH. 69 was admitted into
16 evidence.)

17 MR. TIBBALS: All right. Your
18 Honor, we've just got a couple more, and then
19 we're going to be turning Mr. Royal over to these
20 other folks here.

21 THE COURT: Okay.

22 (PLF. EXH. 71 was marked for
23 identification.)

24 BY MR. TIBBALS:

25 Q. All right. I'm going to hand you what I

1 think I'm going to mark as 71. I've got to just
2 double check real quick, though, because I've got
3 a question about his May 14th.

4 A. Yes, sir.

5 Q. Okay. 71. Can you identify 71 for me,
6 please?

7 A. Exhibit 71 is an e-mail from myself to
8 Mr. Stringer copying Tread Josey dated May 14th,
9 2018, and I was telling Mr. Stringer, I had
10 received his letter saying that he was not
11 closing, and I said, I'm saddened to receive your
12 letter.

13 And I gave him notice that I considered
14 that to be anticipatory breach and said that I
15 felt that I would be forced to proceed with legal
16 action and just noted that I had been patiently
17 waiting for over five years at that point to be
18 able to own the property that was under contract.

19 Q. All right. Did the Attorney General
20 respond to this e-mail or answer any of the
21 questions?

22 A. This is an e-mail to Mr. Stringer.

23 Q. Oh, okay.

24 A. I don't remember off the top of my head
25 if I got a direct response to this e-mail.

1 Q. All right. So on May 25th, 2018, did
2 FKAC contact you to try to close the transaction?

3 A. No.

4 Q. Were you subsequently notified of why
5 they didn't close?

6 A. My understanding is that they would not
7 close without AG's approval of the contract and
8 that had not been forthcoming, and I had not
9 agreed to modify the terms of the contract.

10 Q. All right. Do you dispute or take issue
11 with the use of proceeds from the sale for a
12 charitable purpose and providing free public
13 education to students living on the Charleston
14 Peninsula?

15 A. No.

16 Q. So you don't take issue with the AG's
17 opinion as to the due application of the funds
18 which FKAC would receive from the sale?

19 A. Correct.

20 Q. Do you know what Free Kindergarten
21 Association of Charleston's source of funding
22 was?

23 A. I believe that in the years or several
24 decades, let's say prior to the kindergarten
25 stopping operations of the funding source of the

1 trust, Marion Hankel Trust.

2 Q. Do you have any knowledge as to whether
3 or not the General Assembly appropriated funds to
4 Free Kindergarten?

5 A. Not to my knowledge.

6 Q. Do you know whether or not the subject
7 property was conveyed to Free Kindergarten as a
8 gift?

9 A. I happen to know it was not a gift. It
10 was purchased in 1963.

11 Q. Do you know who the seller was?

12 A. The seller was four individuals and four
13 deeds that were recorded, I believe, on two days,
14 or they might have been signed on two days and
15 all recorded on the same day.

16 Q. Okay. You testified earlier that Free
17 Kindergarten owed money to the City of Charleston
18 at some point in time or had to pay money for
19 full free simple title; is that right?

20 A. Correct.

21 Q. And that was part of the deal that Free
22 Kindergarten received to take title to the
23 property originally?

24 A. Well, they had acquired one hundred
25 percent ownership of the property in 1963, and

1 then almost immediately gave an undivided 50
2 percent interest to the City, which they
3 reacquired from the City, I believe, beginning in
4 1970, and over the subsequent 15 years, at \$1,000
5 per year.

6 Q. Okay. Have you ever had any affiliation
7 with Free Kindergarten Association of Charleston,
8 such as being a member or board member, officer,
9 or donor?

10 A. No.

11 Q. So you can't be considered an insider?

12 A. No.

13 Q. Or a related party?

14 A. Correct, no.

15 Q. Did the AG's Office tell you, I
16 better -- I don't want to veer into another
17 objection here. Do you know whether or not the
18 AG normally performs an appraisal of the property
19 in these situations?

20 MS. JOWERS: Your Honor, I think
21 that's speculation about what he knows about what
22 the AG does.

23 THE WITNESS: You've answered it
24 perfectly for me. Thank you.

25 THE COURT: I will sustain that.

1 Yeah. Go ahead.

2 BY MR. TIBBALS:

3 Q. Did you and Free Kindergarten
4 Association ever execute an LOI?

5 A. No.

6 Q. The first document that you executed
7 with Free Kindergarten was a binding contract,
8 right?

9 A. Yes, sir.

10 Q. This case is not a dispute involving a
11 testamentary or other trust that provides funding
12 for FKAC, is it?

13 A. Correct.

14 Q. To your knowledge, at the time of the
15 contract execution or the closing date, was there
16 any written trust instrument or trustee that held
17 or controlled Free Kindergarten's assets?

18 A. No.

19 Q. When did you first learn of Charleston
20 County School District's involvement?

21 A. I'm not exactly sure. I know that
22 Mr. Stringer had sent me a letter mentioning the
23 Charleston County School District. I don't think
24 at that time it really registered with me. The
25 events in my memory that stands out is getting an

1 e-mail from Ms. Lynn Crooks, who was formally
2 outside counsel for the school district, and
3 then, I believe, getting a phone call from her.

4 Q. Do you know whether or not the Free
5 Kindergarten Association of Charleston ever
6 signed a contract to convey the property to the
7 school district?

8 A. No. I have no knowledge of that.

9 Q. Is it your understanding that there's
10 any question as to whether or not Free
11 Kindergarten Association has dissolved?

12 A. It absolutely has not dissolved, and all
13 evidence is to the contrary, including
14 Mr. Stringer's notice to the Attorney General
15 which specifically says that the Association
16 intends to close, and subsequently, to enter into
17 dissolution activities.

18 Q. Was Charleston County School District a
19 party to your contract?

20 A. No.

21 Q. Okay. What is your understanding as to
22 why the school district wants to prevent the
23 closing?

24 A. My understanding is that they believe
25 that through this litigation or by --

1 MS. ARIAIL: Speculation,
2 objection.

3 MR. TIBBALS: Okay.

4 THE COURT: I will sustain that.

5 BY MR. TIBBALS:

6 Q. Has CCSD advised you how it would use or
7 apply FKAC's residual assets if it is entitled to
8 those?

9 A. No.

10 Q. Okay. Has CCSD ever contacted you in an
11 attempt to reach any type of resolution or
12 agreement for --

13 A. No.

14 Q. -- the sale of the property?

15 A. No.

16 Q. What is your understanding, if the Judge
17 awards specific performance, as to how Free
18 Kindergarten Association of Charleston would
19 execute a deed at this point in time?

20 A. May I supplement my answer to your last
21 question for a moment?

22 Q. Sure.

23 A. In my response e-mail to Ms. Lynn
24 Crooks, I did offer to meet with her, and I was
25 never -- I don't believe I got a response to that

1 e-mail in 2018. Will you please restate your
2 next question?

3 Q. Sure. What is your understanding as to
4 how Free Kindergarten Association of Charleston
5 would execute a deed at this point in time if the
6 Judge grants specific performance?

7 A. My understanding is that the receiver
8 would execute a deed.

9 Q. There are documents in the record,
10 Mr. Royal, that indicate that members of the
11 board of directors assigned documents on behalf
12 of Free Kindergarten Association. Are you
13 familiar with those?

14 A. Yes.

15 Q. So if the Free Kindergarten Association
16 of Charleston didn't have the approval of all of
17 the board of directors, how could they be
18 authorized to enter into a contract?

19 MS. ARIAIL: Objection,
20 speculation.

21 THE WITNESS: I have a theory about
22 that.

23 THE COURT: Just one second. Basis
24 for the objection?

25 MS. ARIAIL: It calls for

1 speculation. He's giving a theory. That's the
2 first line out of his mouth.

3 THE COURT: I will sustain that.

4 BY MR. TIBBALS:

5 Q. All right. And based upon your review
6 of the corporate documents, do you have an
7 understanding as to whether or not the board of
8 directors' approval is required in order to enter
9 the contract like the agreement?

10 A. My understanding is that the board of
11 directors is not required and didn't formally
12 exist.

13 Q. And why didn't it exist?

14 A. Because the corporate charter makes no
15 mention of a board of directors.

16 MR. TIBBALS: In the corporate --
17 okay. All right. I might be done. Your Honor,
18 I think we're going to turn Mr. Royal over here.

19 THE COURT: Okay. All right. And
20 then we'll get -- make sure we get all of the
21 right documents in here. All right.

22 Do you want to take a break, or are you
23 ready to start?

24 MS. ARIAIL: A short break would be
25 appreciated.

1 THE COURT: All right. Let's do
2 that. Let's take five minutes. Mr. Royal, you
3 can't consult with your attorneys on the break.

4 THE WITNESS: Yes, sir.

5 THE COURT: But have a break and
6 come right on back. We'll start in on
7 cross-examination.

8 (A recess transpired.)

9 THE COURT: Mr. Royal, we're back
10 on the record.

11 Mr. Stringer, you're going to start?

12 MR. STRINGER: Yes, Your Honor.

13 THE COURT: All right. Very good.

14 MR. STRINGER: Thank you.

15 THE COURT: On behalf of the Free
16 Kindergarten Association.

17 MR. STRINGER: That's correct.

18 THE COURT: Your day has come.

19 MR. STRINGER: Can we refer to
20 Exhibit 11, which is the purchase and sale
21 agreement?

22 THE COURT: All right.

23 MR. STRINGER: I've got a copy.

24 THE COURT: Do you have a copy?

25 And make sure Mr. Royal has got one. That would

1 be executed purchase and sale agreement. All
2 right.

3 CROSS-EXAMINATION

4 BY MR. STRINGER:

5 Q. Mr. Royal, I just wanted to go over some
6 of these paragraphs in the purchase and sale
7 agreement, which is Plaintiff's No. 11.

8 A. Yes, sir.

9 Q. First of all, the paragraph 2A talks
10 about the down payment of \$5,000; is that
11 correct?

12 A. Yes, sir.

13 Q. And that was not to be refunded unless
14 the circumstances in the following sentence
15 arise, and I'm reading from the agreement. If
16 the seller A is unable to show authority for its
17 agent to act on its behalf. Was there an issue
18 as to authority in your mind when you created
19 this document?

20 A. Mr. Stringer, I -- there was not an
21 issue as to what I believe to be Ms. Wells'
22 authority. I believed and trusted in all of her
23 representations to me and all of the evidence
24 that had been before me.

25 There was, I believe, an issue related

1 to the documentation of that authority, and I was
2 eager to assemble for myself and potential third
3 parties, which is lenders and title companies,
4 the documentation of that authority.

5 Q. All right. So there were no bylaws that
6 you were aware of pointing Ms. Wells as a
7 director, board member, or anything else?

8 A. Correct. I hadn't seen a specific
9 instrument, let's say, showing an election or
10 something like that.

11 Q. Okay. And there was no resolution
12 allowing her to sign the contract or anything of
13 that nature?

14 A. I haven't seen that.

15 Q. All right. So in this paragraph 2A, if
16 she was unable to show authority to act on behalf
17 of the Free Kindergarten Association, then you
18 would be entitled to a refund if that issue came
19 up; is that correct?

20 A. That's correct, if I had opted to. I
21 eventually was quite satisfied with the
22 documentation related to authorities that I never
23 sort of activated.

24 Q. Okay. And then part B states, is
25 otherwise unable to convey good and marketable

1 title to the property as 100 percent fee simple
2 owner free from any educational use restriction.
3 So if she couldn't convey a good marketable
4 title, then you would also be entitled to a
5 refund of \$5,000, correct?

6 A. Yes, under this.

7 Q. Do you think that the issue with the
8 Attorney General's Office would come under that
9 category?

10 A. No, sir.

11 Q. Unable to convey good and marketable
12 title?

13 A. No, sir, I don't.

14 Q. All right. And, of course, the last
15 thing is defaulting under the agreement. So in
16 any event, authority was at least enough of an
17 issue for you to include it in the contract in
18 the second paragraph. Would you agree with that?

19 A. Well, I tried to nuance my answer a
20 little bit by saying, the documentation related
21 to authority. I had every reason to believe that
22 she did have authority when she signed this.

23 Q. But there was no documentation; so that
24 was enough of a concern to put it into the
25 contract?

1 A. Not exactly. Sorry, I didn't mean to
2 interrupt, Mr. Stringer. I think there was
3 documentation, but as I testified, I was quite
4 eager to keep assembling that documentation.

5 Q. Okay. And then going down to paragraph
6 3, you agreed to pay \$1,000 of the seller's
7 attorney's fees?

8 A. Yes, sir.

9 Q. Did that have to do with closing costs?
10 Is that what you were --

11 A. No, sir. I left that intentionally wide
12 open. Now, it is -- within the paragraph, it's
13 titled, closing costs, and that's because it
14 wasn't actually a payment, which would have
15 created, in my opinion, a conflict interest.

16 If I had just hired an attorney for
17 Ms. Wells, that would have created a conflict of
18 interest. It is a reimbursement of legal costs,
19 and the reason that it's in this paragraph is
20 that it would have been reimbursed at the
21 closing. But there is absolutely no restriction
22 on how she could have used that, and indeed, I
23 had encouraged her to hire legal counsel for the
24 Association in connection with the sale.

25 And I was hoping that this would be

1 evidence to her, that would encourage her to get
2 legal counsel. But she also could have used it
3 for a closing, absolutely. I felt that the
4 \$1,000 would have been very sufficient for the
5 association's needs.

6 Q. All right. On paragraph 4, you said at
7 closing, the seller shall convey to purchaser in
8 fee simple by limited warranty deed, good
9 marketable title. Why was it not by a general
10 warranty deed?

11 A. That was very intentional, sir.
12 Throughout the language of this entire contract,
13 I was trying to make the terms as favorable to
14 the seller as I could, and also to make the
15 contract relatively simple, although I will
16 admit, the provision around the closing date is
17 unusual.

18 And, again, that was due strictly to
19 what I felt the seller's needs and requirements
20 were, but otherwise, in this contract, I was
21 trying to make everything as favorable to the
22 seller as possible, and I was quite aware of the
23 difference between a general warranty deed and a
24 limited warranty deed. I was not asking for a
25 general warranty deed.

1 Q. Well, isn't a general warranty deed the
2 standard type of deed in these sort of real
3 estate transactions?

4 A. It may be the standard, yes, but I will
5 tell you that, in my activities as an asset
6 manager, whenever I'm on the selling side, I want
7 a -- I want to sign a limited warranty deed. And
8 I've found that to be probably more attractive
9 from Ms. Wells and the association's point of
10 view.

11 Q. All right. Let's go to paragraph 5.
12 Title defect not to be considered of default by
13 seller, and it goes on, that the title to the
14 property -- should the title to the property
15 prove to be defective, the seller shall not, for
16 that reason, be in default of this agreement and
17 shall not be required to incur any expense to
18 render title to the property marketable.

19 That's a fairly unusual paragraph,
20 wouldn't you say?

21 A. Yes. I would say that's unusual.

22 Q. Yeah. And was that again -- did you
23 have some reason to think that the title would
24 have a problem?

25 A. Yes, sir.

1 Q. What was that?

2 A. That related to the City of Charleston.
3 I may have overplayed this paragraph somewhat,
4 but my intention behind this, I knew that there
5 was a cloud on title, that the City of Charleston
6 apparently had some interest in -- a one-half
7 undivided interest in the property that had not
8 been resolved.

9 I had spoken with Ms. Wells about it,
10 and I had spoken with the City of Charleston
11 about it. I was hopeful that it could be
12 resolved, but at the time of the signing of this,
13 I didn't know if it would be resolved. And I
14 also didn't want to create any financial burden
15 on the Association in terms of trying to get it
16 resolved.

17 Q. And what about the authority issue with
18 regard to Ms. Wells being able to sign not only
19 the contract but the deed? That was also an
20 issue, was it not?

21 A. I'm not aware of any issues. Can you
22 clarify the issue?

23 Q. Well, if she didn't have authority, she
24 couldn't sign the deed, and that would be a title
25 issue, wouldn't it? If she signed it without

1 authority?

2 A. Yes, that would be a problem.

3 Q. And if the --

4 A. Again, I might just add, and I've
5 already testified to this, but I was satisfied
6 with her authority. I was just hoping to find
7 more documentation.

8 And during the year 2013, these
9 provisions that relate to Ms. Wells providing
10 further documentation of authority, although I
11 had the right to pursue them, I didn't. I never
12 did because I didn't feel the need to, especially
13 after seeing Judge Condon's order.

14 Q. The agreement says that the seller shall
15 not be required to incur any expense to render
16 title to the property marketable. Would you
17 agree that the -- if she lacked authority, that a
18 Court would need to rule on that?

19 A. No.

20 Q. That would be expensed to her or to the
21 Free Kindergarten Association?

22 A. No. I don't believe that a Court's
23 determination of her authority would be needed
24 for her to have had authority. I believe that
25 the Court can rule that she has authority, but

1 the Court would in essence, in my view, be
2 recognizing the authority that she already had,
3 not giving her authority.

4 Q. All right. Let's talk about paragraph
5 6, further assurances.

6 A. Yes, sir.

7 Q. All right. The seller -- and I'm going
8 to cut through some of it. The seller shall use
9 reasonable and timely efforts to take any actions
10 and execute and deliver such further documents as
11 may reasonably be required in good faith to
12 consummate the transaction.

13 And then the next sentence, however, the
14 parties do not intend for seller to bear any
15 expenses arising from such further actions, and
16 purchaser agrees to bear any such expenses.

17 Again, we're here today trying to get
18 some direction and to get some answers as to
19 whether she, June Wells, had authority to enter
20 into this transaction. Do you think the Free
21 Kindergarten Association should have to pay for
22 that?

23 A. I would just beg to differ with the
24 statement, I think, embedded in your question.
25 I'm not here today to question Ms. Wells'

1 authority or to determine her authority. I'm
2 here to enforce the contract, and that's why I
3 filed the lawsuit.

4 I'm fully satisfied with her authority,
5 but to the larger point is that, the language in
6 paragraph 6 assumes a basis of fair dealing and
7 good faith. I believe that I extended in every
8 way, fair dealing and good faith in my
9 interactions with Ms. Wells and the seller.

10 And I don't think that it is a
11 reasonable argument to insinuate that I ought to
12 pay for the association's litigation costs when
13 the Association breaches the contract.

14 Q. Well, I'm just reading this paragraph.
15 The last sentence is interesting. For example,
16 if seller is unable to provide documentation, and
17 you've testified that there was no
18 documentation --

19 A. That's the opposite of what I testified
20 to.

21 Q. -- as far as bylaws or resolutions or
22 that type of authority, correct?

23 A. I need to -- beg to differ with that
24 statement. I testified a moment ago that I had
25 not seen a specific resolution or instrument

1 conferring authority to Ms. Wells to bind the
2 Association in this particular agreement. I did
3 not say that I have no documentation of her
4 authority. That is the opposite of what I have
5 been saying.

6 Q. I didn't say you had no documentation
7 either.

8 A. Okay. So I did have, I believe,
9 documentation throughout this process, and as I
10 testified a moment ago, within the year 2013, I
11 was so fully satisfied with that documentation
12 and other representations that she had made to
13 me, I felt no need to pursue the actions that are
14 described in the last sentence of paragraph 6.

15 Q. And on the last few words of that
16 sentence, the purchaser shall bear any court
17 costs. What did you mean by court costs?

18 A. This last sentence refers to the good
19 faith efforts of the parties, if needed, to get
20 some instruments showing authority, that they
21 would cooperate to seek that -- that
22 documentation and that I would bear the cost.

23 Q. Mr. Royal, can you explain paragraph 8
24 for us?

25 A. If I might read it into the record.

1 Conditions to closing. If the seller chooses a
2 closing date after May 31, 2013, then by the
3 close date, if purchaser, in his sole discretion,
4 determines that a purchase of the property is not
5 suitable for himself financially, he shall not
6 have an obligation to close the agreement and the
7 agreement shall terminate. Yes, sir, I can
8 explain that.

9 Q. Yeah. What does that mean, not suitable
10 for himself financially?

11 A. What that means is that, I entered the
12 agreement on April 23rd, 2013, with the
13 Association. My intention was to move quickly
14 towards the closing. My understanding was that
15 the seller also wanted to do that.

16 I did not know that there was actually
17 going to be a five-year waiting period; however,
18 I knew that there was at least the risk. I had
19 bound myself to close under any circumstances
20 except the ones that you named earlier. Again, I
21 had no right of due diligence. I had no right of
22 inspection.

23 I couldn't go in the property. I was
24 giving up a lot of things that a typical
25 purchaser would have wanted and made this

1 contract as simple and as favorable for seller as
2 possible so that it would be an attractive
3 contract.

4 However, because I was giving this
5 extraordinary freedom to the seller to choose a
6 closing date and she had complete discretion over
7 that, I was not sure that, at the time she
8 decided to close, if it was more than a
9 reasonable period from the effective date, I
10 would be in a financial position to take on this
11 large obligation.

12 Q. That's my question really. What does
13 that mean, a financial position?

14 A. For example --

15 Q. It's kind of nebulous to me.

16 A. Okay. Well, I can give you an example.
17 Would you like me to give you an example?

18 Q. I could give you an example.

19 A. Okay.

20 Q. You know, I don't -- it could be almost
21 anything --

22 A. Yes.

23 Q. -- from your standpoint, so it gave you
24 a right to walk away from the contract?

25 A. It gave me right to walk away from the

1 contract. I would have had to say I had a
2 financial reason. I understand that that leaves
3 quite a lot of discretion to the purchaser, if
4 that's what you're getting at. It certainly
5 does.

6 Q. Exactly. It's almost like an option --

7 A. It is.

8 Q. -- with that clause.

9 A. It's almost like an option, but it is
10 not exactly the same. But I agree with you, and
11 I'm happy to admit, it creates a great deal of
12 discretion for the seller.

13 Q. Okay.

14 A. Or excuse me, for the purchaser.

15 Q. When you checked the title back in -- I
16 think you said it was 2011 when you first -- did
17 you do a title search yourself or --

18 A. In 2012, I hired Mr. Tread Josey in part
19 for that purpose.

20 Q. Did you, yourself, when you were
21 initially interested in this property, did you
22 take a look at the tax records to see what the
23 county --

24 A. Yes.

25 Q. -- appraised it at?

1 A. Yes.

2 Q. And what did they appraise it at in
3 2012?

4 A. Zero dollars. There was no reflection
5 on the tax appraiser's website or tax assessor's
6 website of any value given to this property
7 because it was exempt. And I have more recently
8 looked back at it, and it still says zero.

9 Now, I don't think that they think that
10 the property is worth zero, but there -- I have
11 no indication of how the county was valuing the
12 property.

13 Q. Okay. Well, in 2014, do you know what
14 they assessed it at? Because if you look at the
15 tax records, it seems like the county, in some
16 years, was still taxing it, and then they have
17 other years where it's zero.

18 A. No. Every year that I've looked at it,
19 it has said zero, every single time.

20 Q. I don't necessarily want to put this
21 into evidence, but it's something I want to ask
22 you about. In 2014 -- and this is from the
23 Charleston County South Carolina tax records, and
24 I ask you if it shows a value for 2014 and 2015?

25 A. Mr. Stringer, this is not a document

1 I've ever seen. Has this been produced to the
2 parties?

3 Q. Yes.

4 A. I'm not aware of ever seeing this
5 document before.

6 Q. Okay.

7 A. Can you give me the Bates number?

8 Q. I've got another one with a Bates
9 number. Bear with me one moment, please.

10 THE COURT: Let me see what you've
11 got.

12 MR. STRINGER: Your Honor, this was
13 a letter that -- it's actually --

14 THE COURT: There was some
15 discussion, and I just saw it, in going through
16 the booklet, under tab 40. It had a bunch of
17 stuff about a tax sale, and he testified he's --

18 MR. STRINGER: This is different.

19 THE COURT: -- retrieved it from a
20 tax sale.

21 MR. STRINGER: Your Honor, this is
22 an e-mail. I may have troubled with this. This
23 is my secretary, Gretchen, my sister wrote an
24 e-mail on April 11, 2018 --

25 THE COURT: 2018?

1 MR. STRINGER: -- to Ms. Jowers
2 about the Charleston County records and attached
3 a copy of what we found as far as value on this
4 property. It's odd because there are tax years
5 with no value. In 2014, there is a value.

6 THE COURT: Which would have
7 generated the December '15 tax sale?

8 MR. STRINGER: It's possible.

9 THE COURT: Yeah.

10 MR. STRINGER: Because there are
11 taxes owed, but no value on it. It's confusing.
12 We tried to go back further than 2014, but
13 couldn't find anything.

14 THE COURT: So you can add to -- he
15 says he's not seen it, correct?

16 MR. STRINGER: That's what he says.

17 THE COURT: Okay. All right.

18 MR. STRINGER: So if you haven't
19 seen it, then --

20 THE WITNESS: Mr. Stringer, I will
21 stipulate, there are a hell of a lot of documents
22 in this case. It's possible it could have passed
23 by without me seeing it, but I will tell you that
24 I don't recognize the document. I don't think
25 it's been produced.

1 THE COURT: Does it generate a tax
2 bill? What is the purpose behind doing that?
3 Are you trying to establish value?

4 MR. STRINGER: The value, just to
5 show what the county said it was worth in 2014.

6 MR. TIBBALS: I would object to
7 relevance. I would object to foundation. I
8 mean, I know he has to admit it because he's
9 got -- he's trying to use it for impeachment, I
10 suppose. But I don't know where we're going with
11 it.

12 THE COURT: I'm not sure either,
13 but the '14 tax bill would have generated a 2015
14 tax sale, your Exhibit 40. But y'all didn't go
15 into it, I don't think. But he did talk about it
16 with Toy Glennon and retrieving it from the tax
17 sale; so something happened to generate a bill at
18 some point in time.

19 MR. TIBBALS: Yeah, but I don't
20 think it's probative evidence of value. I don't
21 think so.

22 THE COURT: Well, of course you
23 don't. I'm with you. All right. Let's move on.

24 MS. STRINGER: Your Honor, that's
25 all the questions I have of this witness. I

1 would like to submit my attorney's fee affidavit
2 at this time.

3 THE COURT: Sure. I will let you
4 do that. It wouldn't be more than \$1,000,
5 though, would it?

6 MR. STRINGER: That's all, yeah.
7 Judge, I've never seen a case with so many pieces
8 of paper. We killed a lot of trees on this one.

9 THE COURT: All right. Very good.
10 Thank you, Mr. Stringer.

11 MR. STRINGER: Thank you, Judge.

12 THE COURT: Very good. Okay.
13 Who's going next?

14 MS. SIMONS: We do have a couple of
15 questions, Your Honor.

16 THE COURT: Sure, sure.
17 Ms. Simons, go ahead.

18 CROSS-EXAMINATION

19 BY MS. SIMONS:

20 Q. Good afternoon, Mr. Royal.

21 A. Good afternoon.

22 Q. Would you agree with me, in the Black's
23 Law Dictionary, the definition of fair market
24 value, that it is the price that a seller is
25 willing to accept and a buyer is willing to pay

1 on the open market in an arm's length
2 transaction?

3 A. I don't know if that's the definition in
4 Black's Law Dictionary, but I don't have any
5 reason to disbelieve you.

6 Q. Okay. I believe you've testified at
7 length that on April 23rd, 2013, when you entered
8 into this contract, that you were a willing
9 buyer?

10 A. Correct.

11 Q. But Ms. Wells or FKAC wasn't a willing
12 seller at that time, were they?

13 A. They absolutely were.

14 Q. Well, then what is the necessity of
15 paragraph 7, allowing five years?

16 A. Are you referring to an exhibit?

17 Q. Yes, Exhibit 11 of the contract of sale.

18 A. In paragraph 5?

19 Q. Right. Well, in 7, I believe it is, but
20 it has the closing contingency.

21 A. Yes, ma'am. I'm going to read this if I
22 may.

23 Q. Sure. Go ahead.

24 A. Paragraph 7, closing. The closing
25 agreement shall be held at the location property

1 or at such other location mutually agreed to by
2 the parties on April 9, 2018 or on such prior
3 date chosen by the seller on reasonable notice to
4 the purchaser.

5 If for any reason, the seller's
6 authorization changes to a person other than
7 June M. Wells, the seller shall notify the
8 purchaser and a closing date shall be within 60
9 days after such change unless otherwise agreed to
10 by the parties.

11 As I have testified extensively today,
12 Ms. Wells seemed particularly anxious about a
13 deadline by which she needed to move her and the
14 association's possessions and contents out of the
15 building, and therefore, although I have been
16 trying for, at that point, I think about 14
17 months to acquire the building, the only way that
18 I could figure to do it was to give her a
19 superabundant amount of time and flexibility.

20 Now, I didn't think that it would take
21 that time, and to my best knowledge and belief,
22 Ms. Wells was also very hopeful of getting to a
23 quick closing, but there was something about
24 Ms. Wells' mindset that created a serious anxiety
25 about having a deadline, and therefore, I created

1 that provision to remove the anxiety.

2 Q. Okay.

3 A. But the seller absolutely was a willing
4 seller.

5 Q. Ms. Wells didn't exercise her rights
6 under this contract to close on April 23rd, 2013,
7 did she?

8 A. I wouldn't consider that a right. I
9 think we may have a disagreement in terms. I
10 consider it an obligation.

11 Q. You didn't close in 2013?

12 A. Correct. Sorry, I may have
13 misunderstood. I thought you were talking about
14 '18. You're correct. She did not close in 2013.

15 Q. You didn't close in 2014?

16 A. Correct.

17 Q. You didn't close in 2015?

18 A. Correct.

19 Q. You didn't close in 2016, 2017? It
20 wasn't until 2018 that Ms. Wells indicated some
21 willingness to move forward with the closing,
22 correct?

23 A. No, that's not the way I would state it.
24 She was continuously giving me signals and
25 telling me that the closing was just around the

1 corner.

2 MS. ARIAIL: Objection, hearsay.

3 THE WITNESS: I've been asked a
4 question about what Ms. Wells said.

5 THE COURT: I'm going to allow it.
6 Go ahead.

7 THE WITNESS: In our conversations,
8 Ms. Wells continuously gave me hope that we were
9 very close to a closing and that she was making
10 great progress in transitioning out of the
11 building.

12 In fact, on more than one occasion, she
13 brought me to the building to look at her
14 progress. So she gave me every reason to hope
15 that we would be closing soon at every point that
16 I talked with her.

17 BY MS. SIMONS:

18 Q. All right. And that point didn't come
19 until 2018?

20 A. It never came. I'm still waiting for
21 it.

22 Q. This property was never listed on the
23 MLS, Multiple Listing Service?

24 A. Not to my knowledge.

25 Q. I believe you indicated that at the time

1 that you were entering with this contract, that
2 there was other interest in the property?

3 A. My understanding, from conversations
4 with Ms. Wells, was that other people had
5 expressed an interest in the property, yes.

6 Q. And you're aware that around the time
7 that you entered into this contract, there was
8 another offer on the property?

9 A. I have been made aware of that.

10 Q. And that that offer was for \$400,000?

11 A. That's what I have come to understand
12 recently.

13 MS. SIMONS: Okay. All right.
14 Thank you, Mr. Royal. No further questions.

15 THE WITNESS: Thank You.

16 THE COURT: All right. Ms. Ariail?

17 CROSS-EXAMINATION

18 BY MS. ARIAIL:

19 Q. Mr. Royal, Bright Ariail for Charleston
20 County School District. Let's go back to what
21 you just said. You just said that you just
22 recently learned that Ms. Wells had an offer of
23 \$400,000 on the 34 Pitt Street property. But
24 that's not correct, is it?

25 A. Excuse me?

1 Q. That's what you just said, right?

2 A. I am confirming that that is what I just
3 said. I'm not going to confirm that anything
4 that I said today is untrue.

5 Q. Okay. Do you recall your deposition a
6 couple weeks ago?

7 A. Yes, ma'am.

8 Q. Do you remember a conversation about a
9 gentleman named Carter Rowson?

10 A. Yes.

11 Q. And that Mr. Rowson and you were
12 acquainted, I believe it was in 2013? Do you
13 recall that?

14 A. I believe we were acquainted in 2013.

15 Q. In fact, just last week, you just
16 produced documents, e-mails between you and
17 Mr. Rowson, correct?

18 A. Correct.

19 Q. And Mr. Rowson is the real estate agent
20 that had made the -- that had approached
21 Ms. Wells and had made that \$400,000 offer; isn't
22 that correct?

23 A. I believe that he made an offer, and I'm
24 saying that based on production that I believe
25 was made by your client.

1 Q. Well, actually, you had conversations
2 with him via e-mail, right?

3 A. I did. I was aware that he was
4 interested in the property, and I believe he --
5 we had e-mail communications in which I told him
6 that I believed that Ms. Wells was aware of his
7 interest.

8 MS. ARIAIL: I apologize, Your
9 Honor. I've got to get organized.

10 THE COURT: All right. Take your
11 time.

12 MS. ARIAIL: For housekeeping, how
13 would you like for me to mark my exhibits? CCSD
14 1 through --

15 THE COURT: That would be fine.
16 You've got a different sticker, too, it looks
17 like.

18 MS. ARIAIL: Is that good or bad?

19 THE COURT: That's good. They'll
20 stick out.

21 (CCSD EXH. 1, was marked for
22 identification.)

23 BY MS. ARIAIL:

24 Q. Mr. Royal, I've marked as Exhibit CCSD
25 No. 1, an e-mail -- it's got an e-mail chain

1 between you and Mr. Rowson. The top e-mail is
2 dated -- which is the last one I believe, is
3 dated December 4th of 2013. Are you familiar
4 with that document?

5 A. I believe this is a document that I am
6 familiar with.

7 Q. In fact, this is the document that was
8 produced to me just days before your deposition;
9 is that correct?

10 A. Yes, I believe so.

11 Q. And we looked at it during a deposition,
12 right?

13 A. I believe so.

14 Q. And if you go to the very first couple
15 of pages, it's just title blocks, what have you.
16 So if you go to Royal -- the page that's
17 designated as Royal 5802. It looks likes that's
18 the first e-mail, and it's also on December 3rd;
19 is that correct?

20 A. Yes.

21 Q. And it indicates that you and Mr. Rowson
22 met at someone's home a couple of weeks ago. Is
23 that what the title block says?

24 A. Yes.

25 Q. All right. And do you agree that this

1 is a true representation of the e-mails that
2 transpired between you and Mr. Rowson on December
3 3rd and December 4th?

4 A. I have no reason to think that it's not
5 authentic.

6 MS. ARIAIL: All right. I would
7 like to submit this as CCSD 1.

8 THE COURT: Is there a question?

9 MS. ARIAIL: Yes, sir.

10 THE COURT: What's the question?

11 BY MS. ARIAIL:

12 Q. Question is, let's go back to 5802. The
13 first e-mail from Mr. Rowson to you. Hello,
14 Michael, I wanted to reach out to you and give
15 you my contact information. Then it goes on and
16 talks about a couple of things.

17 I also looked at your website and
18 noticed that your office address is 34 Pitt
19 Street. I have been sending letters to the owner
20 listed in the tax records about trying to
21 purchase this space. What a small world. Here's
22 a letter of intent I was trying to send below.
23 Did you receive that letter of intent? You did,
24 right?

25 A. I may have. I don't have a memory of

1 seeing that.

2 Q. You haven't produced it, have you?

3 A. No.

4 THE COURT: That e-mail was from
5 Mr. Rowson to Mr. Royal?

6 MS. ARIAIL: And there are also
7 responses back from Mr. Royal.

8 THE COURT: Okay.

9 MS. ARIAIL: It's a whole e-mail
10 chain.

11 THE COURT: Okay. All right.

12 MS. ARIAIL: I didn't bring you a
13 notebook.

14 THE COURT: That's okay. That's
15 all right. Do you want that in evidence?

16 MS. ARIAIL: Yes, sir.

17 THE COURT: Any objection?

18 MR. TIBBALS: You know, based upon
19 the Court's ruling today, it does have some
20 hearsay in it.

21 THE COURT: I was trying to figure
22 out, was this for impeachment purposes, or is
23 this substantive evidence that you're offering
24 this?

25 MS. ARIAIL: Your Honor, he

1 mentioned offers from other people in cross with
2 the AG's office.

3 THE COURT: Correct.

4 MS. ARIAIL: There are -- I have a
5 copy of the letter of intent, which will be
6 offered in my case in chief.

7 THE COURT: Okay.

8 MS. ARIAIL: This is to impeach
9 Mr. Royal and say that he did -- he has indeed
10 received that information back in 2013.

11 THE COURT: Okay. All right. He
12 doesn't recall receiving a letter of intent was
13 his testimony, but he does recall and acknowledge
14 the e-mail chain?

15 MS. ARIAIL: Yes, sir.

16 THE COURT: All right. It does not
17 need to come into evidence. Okay?

18 MS. ARIAIL: Okay.

19 THE COURT: All right. The point
20 is made.

21 BY MS. ARIAIL:

22 Q. Do you still have the exhibits in front
23 of you?

24 A. I do.

25 Q. So I understood at the end of your

1 testimony on direct, you indicated that a board
2 of directors for Free Kindergarten did not
3 formally exist; is that correct?

4 A. I mentioned a little while ago that I
5 had a theory about how these things work, the
6 line of work that I was about to do and got
7 objected to. But, yes, the charter from 1901
8 does not mention a board of directors.

9 Q. And so your theory is that, there's no
10 board of directors required to approve any
11 transaction to substantially sell the assets?

12 A. Will I not be allowed to give my answer
13 in full to my theory?

14 THE COURT: Well, first, you've got
15 to answer her question.

16 THE WITNESS: Yes.

17 THE COURT: And then I'm going to
18 allow you to explain your answer. First, you've
19 got to answer her question.

20 THE WITNESS: Can I get you to
21 repeat the question, please?

22 BY MS. ARIAIL:

23 Q. I was referring to your prior testimony,
24 as I understood it, while you were on direct.

25 A. Yes, ma'am.

1 Q. And what I read was that the board of
2 directors did not formally exist. So my question
3 is, if the board of directors does not formally
4 exist, then there's no requirement for a board of
5 directors to approve this transaction? Is that
6 your testimony?

7 A. That's part of my theory, and I would
8 agree with that statement.

9 Q. Do you want to explain your theory for
10 the Judge?

11 A. I would. I was actually very late
12 seeing the charter, and I have CCSD to thank for
13 production. I believe that it probably was
14 within materials that I provided to the receiver.
15 I provided box loads of documents, many of which
16 I hadn't even seen so many of them.

17 But that charter, which I saw for the
18 first time a few weeks ago, provides nothing
19 about there being a board of directors; however,
20 there are, as we've seen already today, documents
21 from the 1990's and maybe before that talk about
22 a board of directors.

23 My theory is that this is a membership
24 corporation that was formed based on a law that
25 was passed in 1900 which did not require boards

1 of directors for what we now call nonprofit
2 corporations. And if I may expand on this for
3 just a moment, it won't take long.

4 I believe the two exhibits that are
5 already in evidence today, No. 61 and 62, are a
6 perfect illustration of this theory. In it, the
7 amendment of the resolution that was passed in
8 1970, not 1971, was passed by the members, not
9 the board of directors, as CCSD has alleged in
10 its pleadings.

11 But the members of the Association
12 passed a resolution to benefit Charleston School
13 District No. 20. That resolution passed by the
14 members was certified by someone called directors
15 or authorized managing board. The undersigners
16 were five individuals who signed in their
17 capacity as officers, not as directors of a board
18 of directors.

19 And one of those signers was Ms. Wade
20 Murray, Ms. June Wells' mother. She signed as
21 director of kindergarten, meaning that that
22 position, which her daughter, June Wells was
23 ultimately to occupy, was one of the positions
24 which had authority and would have been called
25 the managing board.

1 Now, if you go from Exhibit 61 to
2 Exhibit 62, then you will see that the State of
3 South Carolina called this group of individuals,
4 who were not calling themselves directors on a
5 board of directors, it called them a board of
6 directors in the first sentence of the document
7 certifying this resolution from the State of
8 South Carolina.

9 So my theory is that this is an
10 organization that did not have a formal board of
11 directors, but because South Carolina's statutory
12 law was changing and because it was becoming more
13 common for nonprofit organizations to have boards
14 of directors, the authorized agents, if you will,
15 within the organization came to call themselves,
16 in effect, a board of directors even though there
17 was not a formal election into a board of
18 directors.

19 But they were calling themselves the
20 board of directors, even though it was probably
21 better to have called themselves the managing
22 board. That's my theory.

23 Q. So based on your theory then, all of
24 this documentation that you've submitted as
25 evidence, for example, Plaintiff's 7, where

1 Ms. Wells is shown as a director is -- relates to
2 an administrative director; is that correct?

3 A. No, that's not exactly what I'm saying.
4 I believe that she did occupy a role as
5 administrative director.

6 Q. And that's what Exhibit 7 says, correct?

7 A. I believe that exhibit refers to a
8 director of the kindergarten, and that most
9 likely would have been an administrative
10 position. That does not exclude that role from
11 also having been a position of authority.

12 And as I've just pointed out, this
13 resolution, which your client is relying upon for
14 its interest in this case, one of the signers on
15 the managing board is Ms. Wade Murray, signing as
16 director of the kindergarten. She had previously
17 occupied the role of president of the
18 Association.

19 By this point in time, she was occupying
20 the role of director of the kindergarten and was
21 one of the five people signing this document,
22 authorizing charter amendments.

23 Q. But you agree that Exhibit 7 provides no
24 support for your theory that Ms. Wells had
25 authority to sign purchase and sale agreement,

1 which allows for Free Kindergarten to transfer
2 their remaining assets to you as an individual?

3 A. Ms. Ariail, I'm going to do my best
4 today to avoid making statements by way of your
5 questions. The statement in your question is
6 saying the exact opposite of what I just
7 testified to.

8 The article that you're holding in your
9 hand, the News and Courier article is an article,
10 which says June Murray Wells was director of the
11 kindergarten. I just pointed out three times in
12 a row that --

13 Q. All right. Let's talk about it then.

14 A. Excuse me, I would like to make a full
15 answer. I have sworn to do so today.

16 Q. This is cross-examination. Let me ask
17 you questions about this document.

18 THE WITNESS: Am I allowed to --

19 THE COURT: I think you've made
20 your point, at least I understand it. Go ahead
21 and let's move forward.

22 BY MS. ARIAIL:

23 Q. All right. Do you have Exhibit 7 in
24 front of you?

25 A. No.

1 Q. Please find it. That's the exhibit
2 we've been talking about.

3 THE COURT: It's the newspaper
4 article.

5 THE WITNESS: I have it.

6 BY MS. ARIAIL:

7 Q. All right. The title of this article
8 is, part-time job at Hankel Kindergarten grows on
9 director, correct?

10 A. Yes, ma'am.

11 Q. And it shows a picture of Ms. Wells; is
12 that right?

13 A. Yes, ma'am.

14 Q. And it explains how she first got
15 involved with the kindergarten, that her
16 mother -- this is paragraph 2 -- who was director
17 of the kindergarten, needing someone to help out
18 until she returns, specifically talking about a
19 teacher that had been in the wreck; is that
20 correct?

21 A. Yes, ma'am.

22 Q. And it goes on, and it talks about
23 Ms. Wells first worked as a driver; is that
24 right?

25 A. Yes, ma'am.

1 Q. And then it goes on and says, Ms. Wells
2 became director of the school when her mother
3 died in August, right?

4 A. Yes, that's right.

5 Q. And she talks about all the children
6 that they teach. Some of them are from
7 one-parent families; some of them shy. But they
8 come -- once they come here, they become more
9 self-confident, right?

10 A. Yes.

11 Q. And then it says, Ms. Wells and her
12 assistant Ms. Norman Sedano are responsible for
13 keeping up with 20 4- and 5-year-olds from 9 to
14 11:30 a.m. That's a typical position for a
15 school administrator or a kindergarten
16 administrator, correct?

17 A. I don't know. I've not been in that
18 occupation before. I will accept what you are
19 saying.

20 Q. And then she talks about operating on a
21 shoestring budget because they are funded through
22 the interest from the estate that's been
23 mentioned here a number of times today.
24 Everything we have, from art supplies, toys,
25 paper towels. This is the sort of thing that

1 Ms. Wells was involved with, correct?

2 A. I think she was involved in multiple
3 levels and different roles. She certainly did do
4 the things, to my knowledge, that are mentioned
5 in this article.

6 Q. And that's what a kindergarten director
7 or administrative-type person over a kindergarten
8 would do, right?

9 A. That would be speculative on my part,
10 but I'm going to agree with you.

11 Q. And those sorts of duties do not
12 transmit to an affirmative authority to be able
13 to sell the primary asset remaining in a
14 nonprofit, correct?

15 A. Incorrect, incorrect. And I would point
16 you again to Exhibit 61, Plaintiff's Exhibit 61.
17 Ms. Wells' mother, Ms. Wade Murray, is signing as
18 director of the kindergarten. Is it -- something
19 is being missed in translation, but I think only
20 the --

21 Q. I understand what you're saying loud and
22 clear. I don't need to hear it repetitively,
23 but --

24 A. Then I'm not sure why you're still
25 asking the questions. It is theoretically

1 possible for a person to occupy two roles at one
2 in the exact same instance, and that is the case
3 here. You can be a director of the kindergarten
4 and also a member of the managing board that is
5 authorized to sign amendments into law in South
6 Carolina under the --

7 Q. Let's look at Exhibit 9, please,
8 Plaintiff's Exhibit 9.

9 A. I see it.

10 Q. This is an e-mail chain back and forth
11 between you and Mr. Robinson; is that right?

12 A. Yes.

13 Q. And what is the date of the first one
14 that's from you to Mr. Robinson?

15 A. The date is November 20, 2012.

16 Q. And so that was prior to Mr. Robinson
17 performing his appraisal; is that right?

18 A. Correct.

19 Q. And in fact, Mr. Robinson had not even
20 seen the property yet at that point; is that
21 right?

22 A. I believe that's correct.

23 Q. Okay. And if you look at the third
24 paragraph, I mentioned that I described the
25 property to you and that you told me, there is a

1 potential that your value conclusion may be lot
2 value. She didn't seem phased by that at all.

3 So prior to Mr. Robinson even seeing the
4 property, you were providing information to him
5 related to what you believed the value should be,
6 correct?

7 A. I'm not aware of him not having ever
8 seen the property. He had not conducted the
9 appraisal, to my knowledge, at this point, which
10 is what you asked me earlier.

11 But I certainly wouldn't testify that
12 Mr. Robinson didn't have knowledge of the
13 property, hadn't seen the property, hadn't gone
14 on Google maps and looked at the property. So,
15 no, I would disagree with your statement.

16 Q. Let's look at Plaintiff's Exhibit No.
17 12.

18 MR. TIBBALS: Your Honor,
19 Plaintiff's 12 was proffered and not admitted
20 into evidence.

21 THE COURT: Right. So that's not
22 in evidence.

23 MS. ARIAIL: All right.

24 BY MS. ARIAIL:

25 Q. Plaintiff's 12 is a letter from Dodds &

1 Hennessy to Ms. Wells.

2 A. I'm not seeing it here.

3 THE COURT: He might not have it if
4 it's not in.

5 MR. TIBBALS: I'm happy for it to
6 be admitted into evidence if she wants to ask him
7 about it.

8 MS. ARIAIL: We can do that, or I
9 can save it for my case-in-chief. I understand
10 that the Court's --

11 THE COURT: I understand how trials
12 work, but it was objected to, and I kept it out.

13 MS. ARIAIL: Okay.

14 THE COURT: And so it's probably
15 best that we not go into it at this time.

16 MS. ARIAIL: All right.

17 BY MS. ARIAIL:

18 Q. You testified a couple of times today
19 that you recommended to Ms. Wells that she find
20 legal counsel to assist her with the negotiations
21 and the execution review of the purchase and the
22 sales agreement, correct?

23 A. I encouraged her to get legal counsel in
24 connection with the association's sale of
25 property.

1 Q. But you have no written evidence of that
2 recommendation, correct?

3 A. No, I don't. That was the first time I
4 heard Mr. Stringer's name back in 2012 or '13.

5 Q. But you never wrote her, in any of your
6 communications with either her by letter or by --
7 with her son, and recommended that she get legal
8 counsel in writing, correct?

9 A. Not to my memory. My communications
10 with Ms. Wells were usually by phone or by
11 visiting her at the Confederate Museum.

12 Q. But there was a time that you
13 recommended that her son assist her with this
14 sort of information, this sort of decision,
15 correct?

16 A. Yes.

17 Q. You did do that in writing, correct?

18 A. Yes.

19 Q. Let's look at Exhibit 10, Plaintiff's
20 10. All right. Have you got Exhibit No. 10?

21 A. 10? Yes.

22 Q. All right. And I believe you testified
23 that this was the cover letter from you to
24 Ms. Wells when you first sent her a draft. I
25 used that word. Real estate purchase and sale

1 agreement; is that right?

2 A. I had sent her an offer. It was a
3 finalized offer.

4 Q. Okay. And this is the cover letter that
5 accompanied that offer, right?

6 A. Correct.

7 Q. And that offer is attached to this cover
8 letter, correct?

9 A. Yes.

10 Q. And in paragraph 2 -- excuse me, 3, you
11 indicate that another important feature of the
12 contract is that it is structured like an option;
13 is that right?

14 A. Yes.

15 Q. And that option allowed you to get out
16 of the contract if it was not at your financial
17 advantage; is that right?

18 A. Incorrect, or at least partially
19 incorrect. This contract had different terms
20 than the ones that Ms. Wells eventually signed on
21 behalf of the Association, and this contract
22 would have closed in 2013. This is at an earlier
23 date, January '14 instead of April.

24 I did not have as much information at
25 that point about the City of Charleston's

1 interest in the property and other matters
2 including FEMA maps, the possibility of using the
3 building towards my intended purpose, et cetera.

4 So, yeah, there were -- as I had
5 mentioned in that same paragraph that you just
6 referenced, possible insurmountable challenges.
7 That was the term that I used.

8 Q. And so you structured it like an option;
9 is that right?

10 A. Correct.

11 Q. And the option is found in paragraph 7,
12 which indicates purchaser's option to close.
13 Purchaser and seller intend for this agreement to
14 function similarly to an option contract in that
15 the purchaser shall have the option but not the
16 obligation to close the agreement by the closing
17 date, right?

18 A. Correct.

19 Q. Is that the option that you were
20 addressing there?

21 A. Yes. And I would say that would be
22 similar to what you might find in a commercial
23 contract. There's an inspection period in which
24 the purchaser can walk away and generally has the
25 right to walk away with their down payment. That

1 was the intention here. I subsequently, in the
2 executed version, did not have that -- that
3 language.

4 Q. But there is an option in the second
5 contract, right?

6 A. It's not exactly an option, but it's
7 close. As I said to Mr. Stringer, I believe it
8 was -- is it Mr. Stringer?

9 THE COURT: Yes. Yes.

10 THE WITNESS: It gave discretion,
11 but it was pinned down to financial difficulty or
12 financial hardships. I agreed, though, earlier
13 that that does give quite a lot of discretion to
14 the purchaser.

15 Q. In fact, it gives you an option from the
16 period of June 1st, 2013 until April 9th of 2018,
17 you could decide whether you close or not, right?

18 A. Now, are you referring to Exhibit 10?
19 Because I --

20 Q. No. I moved on to Exhibit 11.

21 A. I have not, okay. I didn't hear that,
22 Exhibit 11. Yes, under this signed contract, I
23 was one hundred percent obligated to close if the
24 seller chose a closing date within 38 days, which
25 I was very hopeful of.

1 Beyond that, it would seem like the
2 normal scope that you might see in a residential
3 contract. And there was no particular reason for
4 choosing May 31st. That's what I put down on
5 paper.

6 But the thinking was, if it didn't close
7 within a reasonable period of time, then I was
8 not going to necessarily be aware of what my
9 future financial status would be. For example, I
10 might have lost hope or moved on or purchased a
11 different property, or I might have maintained
12 hope.

13 But because life circumstances -- and
14 this actually happened -- I ended up moving into
15 a different place. If I hadn't been in a
16 financial position to close, I wanted to be able
17 to walk away --

18 Q. And this is an option -- this was an
19 option for you, right? You had the ability to
20 decide whether or not, at your sole discretion,
21 you closed any time from June 1st, 2013 until the
22 closing date on this particular version before
23 amendment is April 9th of 2018?

24 A. Ma'am, you have --

25 Q. So that was your option, correct?

1 A. -- asked me, I think, three or four
2 times now if this is an option. I have said in
3 each and every occurrence that it is not exactly
4 the same as an option. When I hear the word
5 option, that means that there is --

6 MS. ARIAIL: Your Honor --

7 THE WITNESS: -- a right for any
8 reason at all --

9 MS. ARIAIL: Your Honor, would you
10 instruct the witness to --

11 THE COURT: I think he's trying to
12 explain his position. Go ahead, Mr. Royal.

13 THE WITNESS: Yes, sir, thank you.
14 And the word option has a particular meaning in
15 contracts and securities, and what it means is
16 that, the owner of an option can walk away for
17 any reason at all. In this contract, although as
18 I've said before, it gives a great deal of
19 discretion, I was putting myself within the
20 bounds of financial hardship, and that was the
21 intention.

22 I don't know if you want to go into
23 this, but there is absolutely not one second that
24 passed from the effective date until today when I
25 had any intention of exercising what you're

1 calling as an option and what I'm saying was a
2 way for me to walk away if I was in a financial
3 hardship. At every single point, I wanted to
4 close it.

5 BY MS. ARIAIL:

6 Q. And this clause that you and I are
7 discussing, which I'm calling an option, you
8 never paid an option fee for that option, did
9 you?

10 A. If you are going to call this an option,
11 then I would say, I absolutely did. I paid a
12 \$5,000 option fee, and again, I'm not agreeing
13 with your language. But I paid \$5,000 that was
14 nonrefundable except for under various
15 circumstances. So if you want to call this an
16 option, I paid \$5,000 for it.

17 Q. And let's talk about this \$5,000. That
18 \$5,000 was a portion of the purchase price,
19 correct? It was merely a down payment; it was
20 not an option fee, correct?

21 A. Incorrect. And again, we're talking in
22 analogies and metaphors. You're insisting on
23 calling this an option.

24 I'm saying, I want to register my
25 disagreement with that term. But if we're going

1 to have to use your metaphor, then I disagree
2 with you saying that the \$5,000 down wouldn't be
3 considered, in this metaphorical universe you're
4 creating, an option fee.

5 Q. It was part of the purchase price,
6 correct?

7 A. Yes.

8 THE COURT: 27 I've got as the
9 handwritten letter.

10 MS. ARIAIL: I'm showing 27 and 28
11 in my notes is the order and the affidavit.

12 THE COURT: I don't think so.

13 MS. ARIAIL: I think it's 29A.

14 THE COURT: Yeah. 28 is the letter
15 from Ms. Jowers; 29A is affidavit of Ms. Wells,
16 and 29 is the Probate Court order.

17 MS. ARIAIL: Okay.

18 MR. TIBBALS: Is that what
19 Mr. Royal has, too?

20 Mr. Royal: I have 28 as the cover
21 letter; 29A as the affidavit and 29 as the order.

22 THE COURT: That's what I've got.

23 MR. TIBBALS: And I apologize, Your
24 Honor.

25 THE COURT: That's all right.

1 MS. ARIAIL: I'm just going to stop
2 and ask.

3 THE COURT: All of those were in
4 evidence, as I recall.

5 BY MS. ARIAIL:

6 Q. Mr. Royal, let's look at Exhibit 29A
7 first. That's the affidavit of June Murray
8 Wells. And paragraph 1 says, I am the last
9 living advisory member of the Free Kindergarten
10 Association of Charleston, correct?

11 A. Correct.

12 Q. And this is another name that I believe
13 you have relied on that proves that Ms. Wells
14 intentionally had authority to sell the last
15 remaining asset of Free Kindergarten; is that
16 right?

17 A. Yes.

18 Q. And if you'll look at Exhibit 29, which
19 is the order. If you look at the second page,
20 Bates Royal 197, if you look at this first full
21 paragraph, second paragraph of that document, it
22 starts, June Mary Wells is the last advisory
23 board member of Free Kindergarten; is that
24 correct?

25 A. Almost. It says, June Murray Wells is

1 the last --

2 Q. I said it starts, correct?

3 A. You had it incorrect.

4 Q. It starts, June Murray Wells is the last
5 living advisory board member of the Free
6 Kindergarten.

7 A. Yes, ma'am. You deleted the word
8 living.

9 Q. If you look at the affidavit and you
10 look at that language in the order, they're
11 essentially the same language, correct?

12 A. Well, the word board is missing.

13 Q. The word board is missing, but other
14 than that, the remainder of the paragraph is
15 basically verbatim from Ms. Wells' affidavit; is
16 that correct?

17 A. No. The affidavit says, I, because it's
18 speaking from the first person. And this order
19 is speaking from the Judge.

20 So it says, June Murray Wells in the
21 third person, and they both say, last living
22 advisory. Then the Court can search the word
23 board which was missing apparently from the
24 affidavit, and then they both say the word
25 member.

1 Q. Okay. And the remainder of the
2 affidavit and the remainder of the paragraph in
3 the order is essentially a regurgitation of
4 Ms. Wells --

5 A. I'm not prepared to testify to that.

6 Q. Why don't you take a look.

7 A. Okay.

8 THE COURT: Let me just ask: Is
9 that your position, Ms. Ariail?

10 MS. ARIAIL: Sure.

11 THE COURT: All right. I can read
12 it myself. All right?

13 MS. ARIAIL: All right.

14 THE COURT: I got it.

15 MS. ARIAIL:

16 Q. And, Mr. Royal, you've recently
17 discovered information about the advisory board
18 for the Free Kindergarten Association; isn't that
19 correct?

20 A. Yes, ma'am. The night after the
21 third -- the second day of deposition and before
22 the third day of deposition of myself, I saw the
23 charter for this organization for the first time.

24 And I did notice that there was
25 something at the very end called an advisory

1 board which was made up of men and must always be
2 made up of men. And my idea, this board advisory
3 was probably mistaken in these documents, and it
4 wasn't drafted by Ms. Wells, to my knowledge.

5 Q. All right. So you're no longer claiming
6 that she was on an advisory board and -- as it
7 occurs in this order or that she was the last
8 living advisory member of Free Kindergarten; is
9 that right?

10 A. I believe she was the last surviving
11 member of the Association. I also believe that
12 she was a member of a board, in whatever that
13 meant to the Association, but probably was
14 intended to mean managing the board, people with
15 authority. I don't know where the word advisory
16 came from in these documents.

17 Q. But clearly Ms. Wells was not a man,
18 right?

19 A. Not to my knowledge.

20 Q. Let's look at Plaintiff's Exhibit
21 No. 32.

22 A. Yes, ma'am.

23 Q. I believe this is a document that you
24 testified to earlier trying to discern what the
25 City of Charleston's interest in the property

1 was; is that correct?

2 A. Yes. I was trying to work out the title
3 issue that I had identified going back to 1963.

4 Q. All right. And this document is dated
5 May 29th of 2013; is that right?

6 A. Yes, ma'am.

7 Q. And by this letter to Ms. Carducci,
8 third paragraph in, Ms. June Murray Wells was
9 associated with both the kindergarten, where she
10 began teaching in the 1960's and the Association,
11 where she became and remains the director.

12 At this point in time, the only thing
13 that you saw fit to share with the City of
14 Charleston was that she was a kindergarten
15 teacher and a director. You didn't mention
16 anything about her going on a board of directors
17 or any other type of official capacity other than
18 administrative director; is that right?

19 A. When I was writing this letter, my
20 intention and my belief at that time was that she
21 was --

22 Q. Please answer my question first.

23 A. I was trying to, but can you repeat the
24 question?

25 Q. It was a yes or no question.

1 A. Okay. Go ahead.

2 Q. At the time that you wrote this letter
3 and you were dealing with the city, in an
4 official capacity, taking it on yourself on a
5 property that you did not own, to deal with a
6 claim made by the city on the property, rather
7 than inform Ms. Carducci that Ms. Wells had some
8 sort of authority related to the property and
9 that she had asked you to do this, your
10 indication was, she's a teacher. She's the
11 kindergarten director.

12 That's the extent of it at this point in
13 time on May 29th, 2013, correct?

14 A. I can't answer that question without
15 addressing the many statements that you've made.
16 I cannot answer that question with a yes or no,
17 ma'am. Can I ask for some clarification?

18 First of all, what do you mean that I
19 was writing in an official capacity to the city?
20 I want to answer your question, but I'm unclear
21 on what you're meaning.

22 Q. I'm not here to answer your questions,
23 you're here to answer mine.

24 A. I'm trying to get clarification on your
25 question.

1 Q. All you called her was a teacher and a
2 kindergarten director, right?

3 A. No, that's totally incorrect. I don't
4 know how you read it that way.

5 Q. Ms. June Murray Wells was associated
6 with both the kindergarten, where she began
7 teaching in the 1960's and the Association, where
8 she became and remains the director.

9 A. Yes.

10 Q. As the director of the kindergarten.

11 A. No. That sentence explicitly divides
12 role related to kindergarten and role related to
13 Association. It explicitly divides those things.

14 Q. Where does it explicitly say, board of
15 directors?

16 A. Again, you're inserting a statement into
17 my mouth. But my understanding, at this point in
18 time, is that Ms. Wells, the way she described
19 herself to me was not only the last member, but
20 the last surviving director on the board of
21 directors.

22 Now, my understanding and the reason
23 that I use the language this way is that, I
24 believe that she had a role with the kindergarten
25 and with the Association, and her primary role

1 with the Association was director. Now, I don't
2 know how you read that in a different way.

3 Q. I don't see board of directors on there.

4 A. Well, okay. I'm not going to ask
5 questions.

6 Q. You talked about the tax sale.

7 MS. ARIAIL: My notes and their
8 document numbers are not numbered after all, I
9 apologize.

10 THE COURT: That's all right. Tax
11 sale stuff. I think it was around 40 or
12 something, wasn't it?

13 MS. ARIAIL: Yes, sir.

14 THE COURT: I think we looked at
15 that a minute ago.

16 THE WITNESS: Your Honor, would it
17 be possible to take a one-minute break and get a
18 drink of water?

19 THE COURT: Sure, sure.

20 (A recess transpired.)

21 BY MS. ARIAIL:

22 Q. All right. Let's look at Plaintiff's
23 40.

24 A. My exhibits go from 38 to 46. If you
25 will bear with me for just a moment so I can find

1 it.

2 THE COURT: Did y'all have 40 come
3 in?

4 MR. TIBBALS: I don't think 40 came
5 in, Your Honor.

6 THE COURT: I'm not sure they ever
7 offered it. We talked about it twice, but I
8 don't -- I'm not sure that it was offered.

9 MS. ARIAIL: All right. I'll move
10 on.

11 THE COURT: 38 was that quitclaim
12 deed from the city, though, was what that one
13 was.

14 MS. ARIAIL: Yeah, I've got tax
15 sale written, but it is in my notebook now.

16 THE COURT: All right.

17 BY MS. ARIAIL:

18 Q. All right. Let's look at 47.

19 A. Okay. I have it.

20 Q. All right. When you testified about
21 Exhibit 47, which is a letter from you to
22 Ms. Wells that contains an example about you
23 possibly renting the property back from her,
24 going ahead and closing and renting the property
25 back, you indicated that that -- you did not want

1 to do that and put the Association in a worse
2 financial position; is that right?

3 A. Not exactly. There were two ideas
4 referenced in this letter. The first idea
5 referenced in paragraph 1 was about an idea --
6 was about June Wells offered to close the
7 contract and have the Association rent it back
8 from me, which I told her I would not do because
9 it would put the Association into financial
10 obligations that it had no reason to do.

11 The remaining part of the letter
12 discusses the proposal that I had in the
13 alternative, which I believe would not put the
14 Association into further financial obligations
15 but would allow me go ahead and close the
16 contract. I would allow her to continue to
17 possess the property as long as she needed up
18 until the end of five years.

19 Q. And you actually made the decision not
20 to do that; is that right?

21 A. She made the decision not to do that, I
22 believe. She did not respond to this alternative
23 proposal.

24 Q. Do you remember having communications
25 with Mr. Bill Wells about this?

1 A. Yes.

2 Q. And during your deposition, you actually
3 testified that you decided not to do this, that
4 this was not in your best interest; is that
5 right?

6 A. I think you're mixing two things up. I
7 believe the thing that I talked about with Bill
8 Wells, that I had decided not to do, was to make
9 improvements to the property to try to keep it
10 secure. But I might be getting things mixed up.

11 It's possible that we were discussing
12 this proposal. I might be mixed up on that. I
13 know that there was something that arose between
14 Mr. Wells and I, where I believe he did
15 eventually speak with his mother about it, and I
16 feel like Ms. Wells did not want to do it. But
17 there was some concern about getting financing
18 and so forth.

19 Q. In fact, it was your decision not to do
20 that because of financing, right? There's an
21 e-mail that we discussed during your deposition;
22 so you say, I have run into a few traps. I don't
23 think it's going to be possible to get financed
24 given the short-term nature of the lease and the
25 current condition of the building.

1 What were the few traps you ran into?
2 Do you remember that conversation at your
3 deposition?

4 A. I remember having some conversation
5 about that language. I don't have the document
6 in front of me.

7 Q. Okay. But that's what the -- that was
8 your ultimate response about this lease --

9 A. I'm still unsure --

10 Q. -- arrangement, correct?

11 A. Sorry, I didn't mean to interrupt.

12 Q. That was your ultimate response related
13 to this lease agreement, correct?

14 A. I'm still not sure if that language
15 relates to this letter or to an entirely
16 different proposition that I was making about
17 trying to repair the roof and do some repair to
18 the building while it was still possessed by the
19 Association. I remember discussing both of those
20 ideas.

21 MS. ARIAIL: Your Honor, I have the
22 original transcript.

23 THE COURT: You can open it if
24 you'd like.

25 BY MS. ARIAIL:

1 Q. Mr. Royal, I have the original
2 transcript of your deposition. This is volume 3,
3 which was December 3rd, 2021. I hand that up to
4 you and ask you to take a look at exhibits -- I
5 believe it's 34 and 35.

6 A. I see 34 here.

7 Q. All right.

8 A. Okay. Yes, so I believe you're correct.
9 This conversation with Bill Wells was in relation
10 to the letter you indicated earlier.

11 Q. Okay. So despite that you testified
12 this morning that Ms. Wells rejected that idea,
13 it actually was you that rejected that idea?

14 A. Incorrect, incorrect.

15 Q. Why don't you read that e-mail out to
16 us.

17 A. That e-mail is immaterial. I gave that
18 letter to Ms. Wells long before this e-mail
19 transaction took place. Ms. Wells did not
20 accept. What that means is that she rejected the
21 offer.

22 I believe this e-mail relates to a later
23 conversation in which Mr. Wells spoke with his
24 mother about this again, and I believe that I was
25 trying to find out whether or not she would

1 reconsider it. And Mr. Wells --

2 Q. All right. Let's go to page 387 of your
3 deposition transcript. You can start at line 14.

4 A. My deposition transcript again is on
5 page 333.

6 THE COURT: Go to page 387, line
7 14.

8 THE WITNESS: Sorry. 387, line 3.

9 BY MS. ARIAIL:

10 Q. Line 14.

11 A. Line 14.

12 THE COURT: And then, Ms. Ariail,
13 you can read the question and then Mr. Royal, you
14 can read the answer.

15 MS. ARIAIL: All right.

16 THE COURT: All right.

17 MS. ARIAIL:

18 Q. And the question is on page 386, line
19 22. I've marked as Exhibit 34, Plaintiff's
20 document 273. Single page e-mail chain between
21 Bill Wells and Michael Royal dated March 7th,
22 2016.

23 It looks like the bottom page where you
24 are writing Bill Wells, tell me that -- let me
25 back up. It says, I found the letter I sent to

1 Ms. Wells last year that outlines the ideas that
2 I mentioned to you on the phone. There were a
3 couple of different e-mails or a couple of
4 letters I have seen.

5 One was talking about needing to get it
6 closed because of financing issues, and then
7 there was another one about maybe renting the
8 property. Which of those -- I assume it's one of
9 those two situations. Which letter is this
10 referencing to? Do you know?

11 THE COURT: And your answer? You
12 can read that, Mr. Royal.

13 THE WITNESS: Line 14, my
14 understanding is, this is making reference to the
15 letter to June Wells in which she had previously
16 offered to close on the property and lease it
17 back from me, referring to the first paragraph in
18 a letter that we have discussed.

19 I had said that it would not be fair to
20 the Association, let's not do that, but here's an
21 alternative proposal that would not change or
22 impact the economic rights and obligations of the
23 parties substantially.

24 BY MS. ARIAIL:

25 Q. Keep going.

1 A. All right. And I mentioned here in this
2 e-mail that I would incur, you know, some further
3 economic obligations under this arrangement, but
4 that I would be willing to do that if given the
5 opportunity to close.

6 Q. And then we talk about Mr. Wells'
7 response. Okay. I got the material you sent,
8 and I asked what you were talking about then.
9 Then we went to Exhibit No. 35.

10 Do you have that one in front of you
11 also? I believe I asked you to get that one out.

12 A. I'm starting to lose track. Oh, you
13 mean back here?

14 Q. Yes, No. 35.

15 A. 35, I see it.

16 Q. Okay. So page 388, line 19. In about
17 the middle of the page, it says, on March 7th,
18 Michael Royal wrote, hey, Bill, I'm attaching the
19 purchase and sale agreement. So this is when you
20 sent that to him, correct?

21 A. Correct.

22 Q. And then the next e-mail is a March 30
23 e-mail from him to you asking what your status is
24 and then at the top you discuss the lease issue.

25 What happened between you when Exhibit

1 34's e-mail and your top e-mail here on Exhibit
2 35, where it looks like you decided the lease
3 arrangement wouldn't work?

4 A. May I just read that e-mail from --

5 Q. I want you to read your deposition
6 transcript, page 389, line 7.

7 A. Okay. Which page?

8 Q. 389.

9 A. Line 7?

10 Q. I read through line 6.

11 A. March 7 to March 30th is the period
12 you're referring to?

13 Q. My question was, sure.

14 A. I don't have any specific memories of
15 what happened during that period of time.

16 Q. Were you attempting to get financing for
17 the building?

18 A. No, I didn't. And by attempting, I
19 assume you mean, made contact with any financing
20 institution.

21 Q. Right, right.

22 A. No.

23 Q. So you say -- this is page 389, line 19.
24 So you say, I've run it through a few traps, and
25 I don't think it's going to be possible to get

1 financing given the short-term nature of the
2 lease and the current condition of the building.
3 And I asked, what were the few traps you ran it
4 through?

5 A. Traps would have just been my research,
6 thinking through the idea. I will just
7 supplement my answer by saying, if I did reach
8 out to any financing institutions in regard to
9 this matter, I have no memory of it here.

10 Q. All right. So when you testified prior
11 that the lease agreement didn't work out because
12 Ms. Wells rejected it, it was actually you that
13 rejected it, correct?

14 A. That's not what I testified to. I'm not
15 trying to ask questions to my examiner --

16 THE COURT: All right. That
17 answers the question. We're good to go. Okay?
18 All right. It didn't happen. There was no lease
19 back, purchase and lease back, right?

20 THE WITNESS: There was not.

21 THE COURT: I got it. All right.
22 I got that. I figured that one out.

23 MS. ARIAIL: 16 is the bank
24 resolution?

25 THE COURT: What number?

1 MS. ARIAIL: I believe it was 16.

2 I'm trying to confirm that.

3 THE COURT: Yes.

4 MR. TIBBALS: Yes.

5 BY MS. ARIAIL:

6 Q. Are you looking for Exhibit 16?

7 A. I'm just putting everything in order,
8 but I put that one aside because I heard you say
9 it.

10 Q. I'm ready for you.

11 A. I'm ready when you are.

12 Q. Plaintiff's Exhibit No. 16.

13 A. Yes, ma'am.

14 Q. This is the only document where the word
15 board members occurs and Ms. Wells' signature is
16 on this document, correct?

17 A. No, I'm not sure if that's true. I can
18 tell you that board members does appear by her
19 name in this document, but I don't think I'm
20 ready to testify that, this is the only document
21 where that happens.

22 Q. So let's look at that document for a
23 minute. This is just a standard document that a
24 bank uses, correct, to open a -- well, it doesn't
25 say what kind of an account. But it's a banking

1 account, correct?

2 A. Yes. This is a --

3 Q. It's entitled, resolution of school,
4 church, club, lodge, or other unincorporated
5 organization designating depository; is that
6 right?

7 A. Yes.

8 Q. That's the purpose of this document?

9 A. As I understand it.

10 Q. Well, you are relying on this document,
11 correct?

12 A. This is one of many, yes, I am.

13 Q. And about a third of the way down, it
14 says, further resolve that all checks, drafts, or
15 other orders from the payment of money from said
16 account shall be signed by Paulina Roark, Irene
17 Barnes, June Murray Wells. Each of those look
18 like individual signatures, correct?

19 A. Yes, they do.

20 Q. And you're familiar with Ms. Wells'
21 signature; is that right?

22 A. I've seen it on a number of occasions.

23 Q. And you believe that that signature up
24 at the top of hers is her signature; is that
25 right?

1 A. I believe it is, yes.

2 Q. And then it appears that somebody in a
3 handwritten fashion, has written slash or dash
4 board members. That's a different handwriting,
5 correct?

6 A. No, ma'am, I don't think so. I mean,
7 it's a different style. It's called print rather
8 than cursive. And from the voluminous records in
9 this case, I can testify to the fact that I
10 believe to have seen both print and cursive.

11 But what I do notice about what is very
12 similar between the print and the cursive here
13 is, there is a similar thickness of line
14 indicating -- and I'm not a signature expert
15 here. I'm not trying to be -- hold myself out as
16 one. But you will notice that there's a very
17 thin line for the first two signatures. For the
18 third signature, it appears to be in the same
19 pen, the same thickness.

20 Q. And do you recall when you took
21 Mr. Wells, Mr. Bill Wells' deposition, Mr. Wells
22 indicated that his mother was extremely proud of
23 her cursive and that he had never seen her print
24 in his entire life? Do you recall that?

25 A. I don't recall that part. I'm not

1 questioning the truth of what you're saying. I
2 don't recall that.

3 Q. All right. And let's look at the bottom
4 where there's signatures. It has got name,
5 title, and signature, and the top one is June
6 Murray Wells, handwritten again, correct?

7 A. Yes.

8 Q. Director beside her name, right?

9 A. I see director beside her name in two
10 different places at the bottom of the page.

11 Q. I'm talking about the section that has
12 the three names.

13 A. Yes, ma'am.

14 Q. Which have been basically the people
15 that have -- that are signing up for authority to
16 operate this account.

17 THE COURT: Signatories on the
18 account.

19 MS. ARIAIL: There you go,
20 signatories. Thank you, sir.

21 BY MS. ARIAIL:

22 Q. Signatories. Do you see the three
23 signatories? That's the portion I'm speaking of
24 right now. Do you see that?

25 A. Yes. These are people certifying,

1 right.

2 Q. All right. And we've got three
3 handwritten names to the left; is that right?

4 A. Yes. To the left, I see print.

5 Q. And they all appear to be in that same
6 handwriting. Would you agree with that?

7 A. Again, I'm not an expert in this area,
8 but it looks like they have the same thickness of
9 the lines, and they are all in print in the first
10 two columns, cursive in the third column.

11 Q. Okay. And the three -- under the
12 signature block, the three cursive writings again
13 are the same three ladies that signed up top in
14 what appears to be their handwriting; is that
15 right?

16 A. It appears to be the same.

17 Q. And on this particular portion of the
18 document, it actually has Ms. Wells as the
19 director.

20 A. Yes.

21 Q. And then there is a bracket and it shows
22 that the other two ladies are selected board
23 members, correct?

24 A. Yes, ma'am.

25 Q. And at the bottom of the page, it shows

1 that Ms. Wells is the director, correct?

2 A. Yes, ma'am.

3 Q. And also on the second page of that
4 document?

5 A. Yes.

6 Q. All right. And you don't recall telling
7 me, during your deposition, that this was the
8 only document that you had that says board of
9 directors anywhere in conjunction with Ms. Wells'
10 name?

11 A. I don't recall that specifically
12 happening, and I will just note that this
13 document actually says board members. It doesn't
14 exactly say board of directors.

15 Q. All right. Isn't this the only document
16 within your possession that shows Ms. Wells as a
17 board member?

18 A. I don't know if that's true, ma'am, and
19 I would say that I have had in my possession,
20 dozens or maybe hundreds of documents that I have
21 not even viewed yet. I turned them over to the
22 receiver. Among those documents, apparently, was
23 even the charter, the constitution that I have
24 not seen until very recently.

25 So, no, I would not testify today that

1 this is the one and only document that's been in
2 my possession where the term board is connected
3 with Ms. Wells. And, in fact, I can name you
4 another one. You know, Judge Condon had a
5 document that was important to me that said the
6 word board in it in Association with Ms. Wells'
7 name.

8 Q. But that was advisory board, correct?
9 And we've already established that that was
10 comprised of all on that, right?

11 A. No, ma'am. I said that I believe that
12 to be a mistake in the document and was not
13 drafted by Ms. Wells herself.

14 Q. So are you relying on that document
15 saying board, or are you not relying on that
16 document saying board?

17 A. Can you clarify?

18 THE COURT: That's a yes or no
19 answer.

20 THE WITNESS: I'm relying on that
21 document for her authority. I'm not sure if I am
22 relying on -- I believed it to be Judge Condon's
23 opinion that she was on board, yes.

24 Q. But you just said that was a mistake,
25 and you just -- and you said this morning that

1 that --

2 A. I said --

3 Q. -- was a mistake?

4 A. Excuse me, I didn't mean to interrupt.

5 Q. Correct?

6 A. No, what I testified to was that the
7 term advisory appearing in the affidavit and
8 Mr. Condon's order, appears to me to have been a
9 mistake. That is perhaps speculation. I'm not
10 going to object to my own testimony here, but I
11 believe the word advisory was a mistake and not
12 necessarily the word board in the order.

13 Q. But you have relied on that document
14 heavily to support your claim that she had
15 authority to sell the last remaining asset of
16 Free Kindergarten, correct?

17 A. Yes, ma'am. Yes, ma'am.

18 Q. Let's talk about these documents. You
19 had boxes and boxes and boxes of documents that
20 Ms. Wells provided to you over the years after
21 you met her; is that correct?

22 A. I believe I had three boxes, and
23 actually, they may not have been originally in
24 boxes. There were bags. There were boxes.
25 There were loose documents. And, ultimately,

1 when I turned them over to the receiver, I turned
2 over one box initially and later found more
3 documents and I believe I turned those over in
4 the form of two boxes.

5 Q. And when you were served discovery by
6 Charleston County School District in November,
7 October, sometime in the fall of 2000 and -- I
8 believe it was February 2nd of 2019, I believe is
9 the date that it was first discovered it was
10 served on you.

11 At that point in time, you didn't -- you
12 made the determination that none of those
13 documents needed to be produced to any of the
14 other parties in this litigation because you
15 didn't think they were relevant to the lawsuit;
16 is that correct?

17 A. No. That's a hundred percent incorrect.
18 And first of all, I beg to differ with the idea
19 that I was served with discovery on the date that
20 you just mentioned because I was just reading
21 Ms. Wells' -- the transcript of her deposition
22 recently in which I -- when we were discussing
23 documents, I offered that I had documents that I
24 was -- wished to make available to parties.

25 And in the next line, you said, I will

1 be sending a discovery notice to you soon. So I
2 don't remember the whole history of what --
3 everything that's happened, but I believe that
4 her deposition was held in 2020. And so that
5 would mean -- you indicated in 2020, that you had
6 not yet served discovery on me.

7 Q. No. I believe I said in -- I might have
8 the date wrong, but I can promise you, there was
9 discovery served on you before Ms. Wells'
10 deposition.

11 The reason that discovery was not served
12 on you at the same time that it was served on
13 Free Kindergarten was because at that time, you
14 were in default. I didn't think it was proper to
15 serve discovery on a party in default. I believe
16 that default hearing was held in June of 2019,
17 which means, after that, I would have served
18 discovery on you.

19 A. Okay.

20 Q. Ms. Wells' deposition was taken in
21 June -- in January of 2020, very early. I
22 believe it was the 9th.

23 During that deposition, even though
24 discovery had been served on you, as the
25 plaintiff in this case, you did not feel like it

1 was necessary to turn those documents over to the
2 other parties in this case because you did not
3 think they were relevant to the case; is that
4 correct?

5 MR. TIBBALS: I object to that
6 question. That's more than I can even think
7 about.

8 THE COURT: The objection is to the
9 length of the question?

10 MR. TIBBALS: Yes, Your Honor, and
11 to the complexity and the fact that it's -- it
12 puts a lot of words into his mouth about --

13 THE COURT: All right. Hold on one
14 second.

15 Ms. Ariail, I'm not sure what you're
16 driving at, but it has something to do with not
17 turning over documents, I think was what I -- is
18 what the gist of what I was trying to get at.

19 MS. ARIAIL: Yes, sir.

20 THE COURT: Are you're trying to
21 get, the significant of it is that it was just
22 not turned over or it was given somewhere else?
23 What's the --

24 MS. ARIAIL: Well, the problem is,
25 the documents in this case have been a major

1 target since day one.

2 THE COURT: Right.

3 MS. ARIAIL: He was served
4 discovery. He did not -- he had boxes of
5 documents from Ms. Wells that he collected over
6 the years, according to him, to show her
7 authority.

8 THE COURT: Right.

9 MS. ARIAIL: He made the statement
10 that those documents were not relevant to this
11 case, and so he had not turned them over to us.

12 THE COURT: Okay.

13 MS. ARIAIL: When I deposed
14 Ms. Wells, I did not have the benefit of those
15 documents.

16 THE COURT: Okay.

17 MS. ARIAIL: We get those
18 documents. Mr. Royal did not want to turn them
19 over to me. I said fine, I will have them copied
20 by ProCopy. Eventually he agreed to that.

21 THE COURT: Okay.

22 MS. ARIAIL: Two years later, or at
23 least a year later --

24 THE COURT: Okay.

25 MS. ARIAIL: -- in the spring of

1 2021, we found out there was a whole nother box
2 of documents.

3 THE COURT: Okay.

4 MS. ARIAIL: The problem has been
5 that one minute they're not relevant, one minute
6 they're turned over to the receiver, one week
7 before his deposition, I'm getting documents from
8 Carter Rowson.

9 THE COURT: Right.

10 MS. ARIAIL: That's my point, Your
11 Honor.

12 THE COURT: Well, he's the
13 plaintiff. He's got the burden of proof, right?

14 MS. ARIAIL: Yes, sir.

15 THE COURT: Okay. All right.

16 MR. WILLIAMS: Your Honor, I would
17 just object and state that, if we want to talk
18 discovery, we'll have to put it in the record.
19 They were served after the date of this cumulous
20 deposition.

21 THE COURT: All right. Okay.
22 Thank you, all right.

23 THE WITNESS: If I may, I would
24 like to respond.

25 THE COURT: No, don't do that.

1 Just answer her questions as best you can.

2 THE WITNESS: Was there a question?

3 THE COURT: She's made a statement.

4 MR. TIBBALS: Well, I had the
5 objection. I mean, if we want to -- if I want to
6 state it better, I can say it's argumentative.
7 It's compounded. It's confusing. It's
8 repetitious, and it's unintelligible. I've got
9 my little handy-dandy --

10 THE COURT: All right. I'm
11 sustaining that objection. Okay? So let's move
12 on. All right.

13 BY MS. ARIAIL:

14 Q. Mr. Royal, isn't it true that until the
15 spring of 2021, you had boxes in your possession
16 that contained the charters, the articles of
17 incorporation, and other documents that were very
18 important to this lawsuit?

19 A. Not to my knowledge, not to my
20 knowledge, no. When I made my answers to
21 interrogatories, I also scanned -- provided
22 voluminous documents that I had scanned, and
23 these are the documents that I had scanned long
24 before, I think, back in 2012 or 2013.

25 I also said, I have within my possession

1 a box of documents, which I have not scanned or
2 at least many of which I have not scanned, and
3 I'm making them available to all parties. Let me
4 know if you would like to have them. I believe I
5 even offered to take them to Proscan eventually,
6 and I believe I did take them to Proscan.

7 I did the work of getting them there,
8 but I, at no point, refused to give documents or
9 make any delays. There was a --

10 THE COURT: All right. That's good
11 enough. That's enough. Let's move on. Let's
12 move on to somewhere else. Let's get somewhere.

13 MS. ARIAIL: That's all I have,
14 Your Honor.

15 THE COURT: Okay.

16 MS. ARIAIL: That completes my
17 cross-examination of Mr. Royal.

18 THE COURT: All right. Thank you,
19 Ms. Ariail.

20 MR. TIBBALS: Do you have
21 questions?

22 THE COURT: I will, but go ahead.

23 MR. TIBBALS: All right. I'll go
24 ahead and start.

25 THE COURT: On redirect, anything

1 they went into, you're entitled to ask about.

2 MR. TIBBALS: Yes, okay. So
3 Mr. Stringer asked a number of questions about
4 the documentation that you relied upon relating
5 to (inaudible)?

6 A. Yes, sir.

7 MR. TIBBALS: And so I would renew
8 my proffer then with all of these documents that
9 he relied upon because the door has been opened
10 now by Mr. Stringer.

11 THE COURT: Of all the documents he
12 relied upon? Do you want to put them into
13 evidence?

14 MR. TIBBALS: Yes.

15 THE COURT: On the proffer, I'm
16 going to allow you to, provided we don't go into
17 them. All right?

18 MR. TIBBALS: Okay.

19 THE COURT: They're just in the
20 record.

21 MR. TIBBALS: Fair enough.

22 THE COURT: All right. Whatever
23 didn't come in.

24 MR. TIBBALS: Okay. Thank you.

25